

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

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December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

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FIRST REGULAR SESSION
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SEPTEMBER 17, 2005

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2005

Sec. 13. 24-A MRSA §4619, as enacted by PL 1989, c. 751, §13, is repealed.

Sec. 14. 24-A MRSA §§4620 and 4621 are enacted to read:

§4620. Prohibited advertisement of association in insurance sales

A person, including an insurer or an agent or affiliate of an insurer, may not make, publish, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in any newspaper, magazine or publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio station or television station or in any other way any advertisement, announcement or statement, written or oral, that uses the existence of the association for the purpose of sales, solicitation or inducement to purchases of any form of insurance covered by this chapter. This section does not apply to the Maine Life and Health Insurance Guaranty Association or any other entity that does not sell or solicit insurance.

§4621. Credits for assessments paid; tax offsets

1. Credit allowed. A member insurer may offset against its premium tax liability to this State an assessment described in section 4609, subsection 2-A, paragraph B and for which a certificate under section 4609, subsection 9 is issued, to the extent of 20% of the amount of the assessment for each of the 5 calendar years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2. Refunds. Any sums that are acquired by refund, pursuant to section 4609, subsection 6, from the association by member insurers, and that have been offset against premium taxes as provided in subsection 1, must be recaptured in such manner as required by the State Tax Assessor under Title 36. The association shall notify the superintendent and the State Tax Assessor that refunds have been made. The association also shall provide the State Tax Assessor with a list of all members who were issued refunds and the dates and amounts of such refunds.

3. Application. This section applies to assessments paid to the association by a member insurer on or after January 1, 2005.

Sec. 15. 36 MRSA §2530 is enacted to read:

§2530. Maine Life and Health Insurance Guaranty Association credit

A taxpayer is allowed a credit against the tax otherwise due under this chapter as determined under Title 24-A, section 4621.

Sec. 16. Application. This Act does not apply to any insurer that is insolvent or unable to fulfill its contractual obligations on the effective date of this Act.

See title page for effective date.

CHAPTER 347

H.P. 1071 - L.D. 1524

An Act To Update Professional and Occupational Licensing Laws

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 5 MRSA §5301, sub-§2, ¶E, as repealed and replaced by PL 1995, c. 625, Pt. A, §11, is amended to read:

E. Convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant for massage therapy licensure or a licensed massage therapist or an applicant or licensee of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Examiners, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the Board of Chiropractic Licensure, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Examiners on Speech-language Pathology and Audiology, the Board of Hearing Aid Dealers and Fitters, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Nursing and the Emergency Medical Services' Board.

Sec. A-2. 5 MRSA §5303, sub-§2, as repealed and replaced by PL 1995, c. 625, Pt. A, §12, is amended to read:

2. Ten-year limits. For applicants to and licensees and registrants of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Examiners, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the State Board of Nursing, the Board of Chiropractic Licensure, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Examiners on Speech-language Pathology and Audiology, the Board of Hearing Aid Dealers and Fitters, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, and the Emergency Medical Services' Board and applicants for massage therapy licensure or licensed massage therapists, the following apply.

A. The procedures outlined in sections 5301 and 5302 for the consideration of prior criminal conviction as an element of fitness to practice a licensed profession, trade or occupation apply within 10 years of the applicant's or licensee's final discharge, if any, from the correctional system.

B. Beyond the 10-year period, ex-offender applicants or licensees with no additional convictions must be considered in the same manner as applicants or licensees possessing no prior criminal record for the purposes of licensing decisions.

C. There is no time limitation for consideration of a registrant's, an applicant's or licensee's conduct that gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action.

PART B

Sec. B-1. 32 MRSA §1101, sub-§4-A, ¶¶A and B, as enacted by PL 1983, c. 413, §32, are amended to read:

A. School administrative units; and

B. Nonprofit organizations; ~~and~~.

Sec. B-2. 32 MRSA §1101, sub-§4-A, ¶C, as amended by PL 1995, c. 325, §5, is repealed.

PART C

Sec. C-1. 32 MRSA §4861, sub-§5, ¶B, as amended by PL 2003, c. 251, §2, is further amended to read:

B. Has paid the ~~application~~ required examination and license ~~fees~~ fee as set under section 4863-A;

Sec. C-2. 32 MRSA §4864, sub-§9, as repealed and replaced by PL 1977, c. 78, §187, is amended to read:

9. Cruelty to animals. The performance of any inhumane or cruel act, as established by the board ~~in accordance with Title 17, chapter 43 and Title 17-A, section 510, and by applicable civil and criminal laws and rules~~ in the treatment or care of any animal;

Sec. C-3. 32 MRSA §4865, as amended by PL 1993, c. 404, Pt. A, §10, is further amended to read:

§4865. Veterinary technicians

A qualified person desiring registration as a veterinary technician, as defined in section 4853, subsection 11, shall ~~make written~~ submit a completed application to the board, ~~providing together with~~ such information as the board requires and the required examination and license fee pursuant to section 4863-A.

~~All veterinary technicians must reregister annually on or before September 30th, or any other date designated by the commissioner, and each registration must be accompanied by a reregistration fee.~~

Sec. C-4. 32 MRSA §4865-A, sub-§8, as repealed and replaced by PL 1975, c. 740, §132, is amended to read:

8. Cruelty to animals. The performance of any ~~act prohibited by Title 17-A, section 510~~ inhumane or cruel act, as established by the board and by applicable civil and criminal laws and rules in the treatment or care of any animal;

PART D

Sec. D-1. 32 MRSA §12228, sub-§3, ¶A, as amended by PL 1999, c. 245, §3, is repealed.

Sec. D-2. 32 MRSA §12228, sub-§3, ¶B, as amended by PL 1999, c. 245, §3, is further amended to read:

B. ~~After October 1, 2002,~~ At least 150 semester hours of education, including a minimum 4-year baccalaureate or higher degree conferred by a college or university acceptable to the

board, the total educational program to include basic courses in accounting and auditing determined to be appropriate under board rules. Rules adopted by the board pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A 2-A~~; and

Sec. D-3. 32 MRSA §12228, sub-§10, as amended by PL 2003, c. 688, Pt. C, §21, is further amended by amending the first paragraph to read:

10. Experience. ~~During the 5 year period immediately following October 1, 1997, the applicant shall show that the applicant has had 2 years of experience in the practice of public accountancy or its equivalent, meeting requirements prescribed by the board by rule; or, if the applicant's educational qualifications include a masters degree conferred by a college or university approved by the board, then only one year of experience in that practice or its equivalent is required. After October 1, 2002, for~~ For initial issuance of a certificate under this subsection, an applicant shall demonstrate 2 years of experience under the direction of a licensee certified public accountant licensed by any state or territory of the United States or equivalent direction, as determined by the board, by a licensed professional in another country and shall must meet the other requirements prescribed by the board by rule. The applicant's experience must include the use of accounting or auditing skills, including the issuance of reports on financial statements, and at least one of the following: the provision of management advisory, financial advisory or consulting services; the preparation of tax returns; the furnishing of advice on tax matters; or equivalent activities defined by the board by rule. Board rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. To the extent the applicant's experience is as a revenue agent or in a similar position engaged in the examination of personal and corporate income tax returns for the Bureau of Revenue Services, the applicant receives credit at the rate of 50% toward the experience required by this subsection. To the extent the applicant's experience is as an examiner engaged in financial examinations for the Bureau of Insurance, the applicant receives credit under this subsection if that experience meets the following standards:

Sec. D-4. 32 MRSA §12251, sub-§4, as amended by PL 1999, c. 245, §8, is further amended to read:

4. Out-of-state certificates. The board shall issue a permit to a holder of a certificate as a certified public accountant or a public accountant issued by another state upon showing that:

~~A. The applicant passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this State;~~

B. The applicant:

(1) Meets all current requirements in this State for issuance of a certificate at the time the application is made;

(2) At the time of the issuance of the applicant's certificate in the other state, met all the requirements then applicable in this State; or and

~~(3) Had 4 years of experience in the practice of public accountancy or equivalent meeting requirements prescribed by the board by rule, after passing the examination upon which the certificate was based and within the 10 years immediately preceding the application; and~~

(4) Was eligible to take and passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this State;

C. The applicant meets the requirements of subsection 3, paragraph B-; or

D. The applicant had 4 years of experience in the practice of public accountancy or equivalent meeting requirements prescribed by the board by rule, after passing the examination upon which the certificate is based and within the 10 years preceding the submission of the application.

Sec. D-5. 32 MRSA §12252, sub-§8, as enacted by PL 1999, c. 619, §3, is amended to read:

8. Peer review for certified public accountancy firms. ~~Effective January 1, 2001, the board shall require, as As a condition to the granting or renewal of permits to certified public accountancy firms, that each applicant that provides a defined service other than compilations must successfully participate in an approved peer review program. Participation in such a program is governed by the following.~~

~~A. If the firm provides a defined service other than compilations as of the date of the initial granting or first renewal of a certified public accountancy firm's permit following December 15, 2000, a A peer review must be completed within 18 months after the initial granting or first renewal of the permit following December 15, 2000. After December 15, 2000, the The firm must undergo a peer review every 3 years for as~~

long as it provides a defined service other than compilations. ~~The firm may satisfy this requirement by showing evidence of the satisfactory completion of a peer review within 18 months prior to January 1, 2001.~~

B. A certified public accountancy firm that does not provide a defined service other than compilations is not required to undergo a peer review if the firm annually confirms in writing to the board that it does not provide a defined service other than compilations. A certified public accountancy firm that subsequently provides a defined service other than compilations must undergo a peer review within 18 months after the fiscal year end of the first defined services engagement other than compilations that it accepts. ~~Subsequent peer reviews are governed by the provisions of paragraph A.~~

The board is authorized to adopt rules to carry out the intent of this subsection. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

PART E

Sec. E-1. 32 MRSA §14701, sub-§4, as amended by PL 2005, c. 65, Pt. C, §19, is further amended to read:

4. Merchandise. "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food or technical or vocational schools located outside of the State that are registered pursuant to Title 20-A, section 9501. "Merchandise" does not include securities that are registered or exempt from registration pursuant to chapter 135, the Maine Uniform Securities Act and rules adopted pursuant to that Act or insurance products that are regulated under Title 24-A.

PART F

Sec. F-1. 32 MRSA §14805, sub-§2, as enacted by PL 1995, c. 389, §4, is amended to read:

2. Inspection. State propane and natural gas inspectors, upon written complaint or whenever they consider it necessary for purposes of examination, may enter into and upon and inspect all buildings, dispensing stations and premises within their jurisdiction at all reasonable hours. They may enter a building, dispensing station or other premises within their jurisdiction only with the permission of the person having control of the building, dispensing station or other premises or, after hearing, upon order of court. If an inspector finds any propane or natural gas installation that does not comply with this Act, the

inspector shall order that the installation be removed or remedied, and that order must be complied with immediately by the owner or occupant of the building, dispensing station or other premises or building or by the installer of the propane or natural gas equipment in violation. If the inspector finds any propane or natural gas installation in any building, dispensing station or structure on premises within the inspector's jurisdiction that creates a danger to other property or to the public, the inspector may forbid the use of the building, dispensing station or structure on premises within the inspector's jurisdiction by serving a written order upon the owner and the occupant, if any, to vacate within a reasonable period of time to be stated in the order.

See title page for effective date.

CHAPTER 348

H.P. 1176 - L.D. 1667

An Act To Allow Lincoln and Sagadahoc Counties an Exemption from the Limitation on County Assessments

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period to allow for the continuation of construction of the new jail of the Lincoln and Sagadahoc Multicounty Jail Authority; and

Whereas, the jail can become fully staffed and operational in time for the completion of the building only if the jail costs are exempted from the county tax assessment limit for a 2-year period; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §706-A, sub-§5, ¶D is enacted to read:

D. For fiscal years 2005-06 and 2006-07 in Sagadahoc County, and fiscal years 2006 and 2007 in Lincoln County, that portion of the county assessment that is attributable to the costs of construction, debt service, operation and