

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1412 - L.D. 2097

An Act to Modify the Law Governing Revocation of a Code Enforcement Officer's Certification

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

Sec. 1. 30-A MRSA §4221, sub-§2, as amended by PL 2011, c. 655, Pt. FF, §7 and affected by §16, is further amended to read:

2. Certification requirements. A person may not hold the office of plumbing inspector unless currently certified as qualified pursuant to section 4451. Certification is effective for a period of 5 years unless sooner revoked or suspended by the District Court as provided for in section ~~4451~~ 4451-G.

Sec. 2. 30-A MRSA §4450 is enacted to read:

§4450. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Certificate holder. "Certificate holder" means an individual holding a code enforcement officer certificate issued under section 4451 by the former State Planning Office, the Department of Economic and Community Development, Office of Community Development, the Department of Public Safety, Office of the State Fire Marshal or the Maine Office of Community Affairs.

2. Certification review committee. "Certification review committee" or "committee" means the committee established in section 4451-A, subsection 1.

3. Division director. "Division director" means the senior employee responsible for technical codes coordination in the Division of Building Codes and Standards established within the Maine Office of Community Affairs in Title 25, section 2372.

4. Staff. "Staff" means an employee or contractor of the Maine Office of Community Affairs established in Title 5, section 3202.

Sec. 3. 30-A MRSA §4451, sub-§1, ¶D, as amended by PL 2025, c. 388, Pt. D, §38, is further amended to read:

D. An individual whose certification has expired or is about to expire may be temporarily authorized in writing by the Maine Office of Community Affairs to extend that individual's certification for a period not to exceed 12 months in cases where the necessary training or examination is suspended under subsection 3-B, paragraph E, except that beginning July 20, 2026 and ending July 20, 2028, the Maine Office of Community Affairs may extend an individual's certification for a period not to exceed 24 months.

Sec. 4. 30-A MRSA §4451, sub-§6, as amended by PL 2025, c. 388, Pt. D, §38, is further amended to read:

6. Certification; terms; revocation. The Maine Office of Community Affairs shall certify individuals as to their competency to successfully enforce ordinances and other land use regulations and permits granted under those ordinances and regulations and shall issue certificates attesting to the competency of those individuals to act as code enforcement officers. Certificates issued by the former State Planning Office, the Department of Economic and Community Development, Office of Community Development, the Department of Public Safety, Office of the State Fire Marshal or the Maine Office of Community Affairs are valid for 6 years unless revoked ~~by the District Court~~ or suspended as provided for in section 4451-G. An examination is not required for recertification of code enforcement officers. The Maine Office of Community Affairs shall recertify a code enforcement officer if the code enforcement officer successfully completes at least 12 hours of approved training in each area of job responsibility during the 6-year certification period.

~~A. The District Court may revoke the certificate of a code enforcement officer, in accordance with Title 4, chapter 5, when it finds that:~~

- ~~(1) The code enforcement officer has practiced fraud or deception;~~
- ~~(2) Reasonable care, judgment or the application of a duly trained and knowledgeable code enforcement officer's ability was not used in the performance of the duties of the office; or~~
- ~~(3) The code enforcement officer is incompetent or unable to perform properly the duties of the office.~~

~~B. Code enforcement officers whose certificates are invalidated under this subsection may be issued new certificates provided that they are newly certified as provided in this section.~~

Sec. 5. 30-A MRSA §4451-A is enacted to read:

§4451-A. Certification review committee

1. Certification review committee; established. The certification review committee is established to receive, review, investigate when appropriate and respond to complaints regarding any violation of this subchapter or rules established by the Technical Building Codes and Standards Board or the Maine Office of Community Affairs by a certificate holder.

2. Certification review committee; membership. The division director shall appoint 7 members to serve on the committee. The division director shall name one member as chair and one member as secretary of the committee.

A. Two of the members must be members of the Technical Building Codes and Standards Board, established in Title 5, section 12004-G, subsection 5-A, one of whom must hold a certification pursuant to section 4221 or 4451.

B. The remaining 5 members must be residents of this State who have professional experience and familiarity with the topic areas for which the Division of Building Codes and Standards issues certifications, except they may not be members of the Technical Building Codes and Standards Board. At least one of the 5 members must be selected from a list of names provided to the division director by a statewide organization representing code enforcement officers.

3. Quorum. A majority of the members of the committee, including at least one Technical Building Codes and Standards Board member, constitutes a quorum and must be present for deliberations and votes. A majority vote of all members present is necessary for any action or to recommend taking corrective or disciplinary action on a complaint or to order an independent investigation pursuant to section 4451-D or 4451-E.

Sec. 6. 30-A MRSA §4451-B is enacted to read:

§4451-B. Receipt and review of complaints

Upon the request of the division director or upon the committee's own motion, the committee shall review complaints about a certificate holder received regarding noncompliance with or violation of this subchapter or rules adopted by the Technical Building Codes and Standards Board established in Title 5, section 12004-G, subsection 5-A or the Maine Office of Community Affairs and recommend appropriate action to the division director.

Sec. 7. 30-A MRSA §4451-C is enacted to read:

§4451-C. Notice; response

Before proceeding with any investigation regarding a complaint filed against a certificate holder, the division director, the committee or staff shall notify the certificate holder, the municipality, state agency or entity employing the certificate holder and the administrators of the jurisdiction in which the complaint originates of the content of a complaint filed against the certificate holder and that an investigation of the complaint may occur. Notice must be given as soon as possible, but no later than 60 days after the division director, the committee or staff receives the complaint or other pertinent information.

1. Certificate holder response. The certificate holder has the right to respond to the complaint within 30 days of receiving notice of the complaint in all cases except those involving an emergency refusal to renew or an emergency suspension or revocation of a certificate, as described in Title 5, chapter 375, section 10004.

2. Review and response by employer. Within 30 days of receiving notice of a complaint, the municipality, state agency or entity employing the certificate holder shall review the alleged conduct of the certificate holder or otherwise respond to the complaint and, notwithstanding any provision of law to the contrary, report the findings of the review to the division director along with a recommended disposition.

3. Jurisdiction's response. The administrators of the jurisdiction in which the complaint originates may respond to the division director with supplementary information and recommendations relevant to the complaint.

This section does not preclude a municipality, state agency or entity employing a certificate holder from investigating and taking appropriate action, up to and including termination of employment, before it receives notice from the division director, the committee or staff under this section, as long as the municipality, state agency or entity notifies the division director following its investigation if the investigation reveals reasonable cause to believe that a certificate holder has engaged in conduct subject to disciplinary action and provides to the division director the findings related to the conduct.

This section does not preclude the division director from investigating the conduct of a certificate holder on the division director's own initiative.

Sec. 8. 30-A MRS §4451-D is enacted to read:

§4451-D. Further action

The division director may proceed with any action the division director determines appropriate after the response time periods in subsection 4451-C have passed. Further action may include, but is not limited to, the following:

1. Dismissal of complaint. If the certificate holder's response to the complaint or other information related to the complaint satisfies the division director, the committee or staff that the complaint does not merit further investigation or action, the matter may be dismissed by the division director or the committee, with notice of the dismissal to the certificate holder and the complainant, if any;

2. Referral. The division director may refer the matter of the complaint to another agency for investigation regardless of whether the division director receives a response under section 4451-C, with notice of the referral to the certificate holder; or

3. Investigation. The division director at the division director's sole discretion or, as delegated, the committee or staff, may investigate a complaint that is not dismissed or referred under this section. An investigation may include an informal conference under section 4451-E to determine whether grounds exist to deny an application for a certification or recertification or for modification, suspension or revocation of a certificate or for taking other disciplinary action pursuant to this section and section 4451-G. The division director or the committee may contract with outside investigators or agencies for use of their investigators through memoranda of understanding or other written agreement. The division director, the committee or staff may subpoena witnesses, records and documents in any investigation or hearing conducted.

Sec. 9. 30-A MRS §4451-E is enacted to read:

§4451-E. Informal conference

If, in the opinion of the division director, the committee or staff, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the division director, the committee or staff may request an informal conference with the certificate holder either prior to or during an investigation. The division director, the committee or staff shall provide the certificate holder with adequate notice of the conference and of the issues to be discussed. The certificate holder may, without prejudice, refuse to participate in an informal conference.

Sec. 10. 30-A MRS §4451-F is enacted to read:

§4451-F. Grounds for action

The division director or the committee may take action against an applicant for a certificate or a certificate holder pursuant to this subchapter or any rules adopted pursuant to this subchapter, including, but not limited to, a decision to refuse to issue or renew a certificate or to modify, suspend or revoke a certificate for one or more of the following reasons:

1. Certification or recertification requirements. Failing to meet certification or recertification requirements;

2. Material facts. Falsifying or misrepresenting material facts in obtaining or maintaining a certificate issued pursuant to section 4451;

3. Dishonest, fraudulent or illegal conduct; intentional misconduct. Engaging in conduct constituting dishonest, fraudulent or illegal dealings or intentional misconduct that, when viewed in light of the nature and purpose of the person's conduct and circumstances known to the person, involves deviation from the standard of conduct, as defined in rule, that a reasonable and prudent certificate holder would observe in the same or a similar situation; or

4. Duties authorized. Repeatedly failing to effectively perform the duties authorized by the issued certificate.

Sec. 11. 30-A MRSA §4451-G is enacted to read:

§4451-G. Action after investigation

If the division director or the committee finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, the division director or the committee may take any of the following actions.

1. Letter of guidance or concern. The division director may issue a letter of guidance or concern to a certificate holder. A letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations or express concern over action or inaction by the certificate holder that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action. Notwithstanding any provision of law to the contrary, letters of guidance or concern are not confidential. The division director may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a certificate holder's file for a specified period of time not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the division director in any subsequent action commenced against the certificate holder within the specified time frame. Complaints, reports and investigation materials placed on file remain confidential to the extent required by this subchapter.

2. Consent agreement. The division director, the committee or staff may negotiate a consent agreement that resolves a complaint or investigation without further proceedings. A consent agreement may be entered into only with the consent of the certificate holder and the division director. Notwithstanding any provision of law to the contrary, any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term modification, suspension and permanent revocation of a certificate issued under this subchapter. A consent agreement is not subject to review or appeal and may be modified

only by a writing executed by the certificate holder and the division director. A consent agreement is enforceable by an action in Superior Court.

3. Voluntary surrender of certificate. If a certificate holder offers to voluntarily surrender a certificate, the division director, the committee or staff may negotiate stipulations necessary to ensure protection of the public health and safety and the rehabilitation or education of the certificate holder. These stipulations may be set forth only in a consent agreement entered into between the division director and the certificate holder.

4. Modification, suspension, revocation of certificate or other sanction or discipline. The division director or the committee may impose the following forms of discipline upon a certificate holder or applicant for a certificate:

A. Denial of an application for a certificate or recertification, which may occur in conjunction with the imposition of another form of discipline;

B. Issuance of a written warning, censure or reprimand;

C. Suspension of a certificate for up to 3 years. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation imposed pursuant to paragraph F, except that the suspension remains part of the certificate holder's record;

D. Revocation of a certificate;

E. Modification of a certificate; or

F. Imposition of conditions of probation. Probation may run for a time period that the division director determines appropriate. Probation may include conditions such as additional continuing education, mandatory professional supervision of the applicant or certificate holder, restrictions and other conditions as the division director determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or certificate holder. Failure to comply with the conditions of probation may be grounds for disciplinary action against a certificate holder.

5. Request for adjudicatory hearing. Unless otherwise indicated in this subchapter, if the division director or the committee concludes that modification, suspension, revocation or imposition of any other sanction or discipline authorized under this subchapter is in order, the division director, the committee or staff shall notify the certificate holder and inform the certificate holder of the right to request an adjudicatory hearing. If the certificate holder requests an adjudicatory hearing in writing within 21 days, the hearing must be held by a subcommittee of 3 committee members designated by the committee chair or a hearing officer, at the committee's sole discretion. The hearing must be in accordance with Title 5, chapter 375, subchapter 4 and must be held within 60 days of the certificate holder's request for hearing. The subcommittee or the hearing officer, after conducting the hearing, shall file with the committee all papers connected with the case and report recommended findings and sanctions to the committee, which may, in consultation with the division director, approve or modify them.

If, after the adjudicatory hearing, the certificate holder wishes to appeal the final decision of the division director or the committee, the certificate holder shall file a petition for review pursuant to the Maine Rules of Civil Procedure, Rule 80C with the Superior Court within 30 days of receipt of the division director's or the committee's written decision.

Review under this subsection must be conducted pursuant to Title 5, chapter 375, subchapter 7. If a request for a hearing is not filed within 21 days, the certificate holder is deemed to have waived any right to hearing and the division director may, in consultation with the committee, impose any sanction or discipline allowed by this subchapter.

6. Injunction. The State may bring an action in Superior Court to enjoin a person from violating any provision of this subchapter, regardless of whether civil or administrative proceedings have been or may be instituted.

7. Recertification. A person whose certificate has been revoked under this subchapter may apply to the division director for reinstatement of certification if at least one year has elapsed since revocation of the certificate and the person is otherwise eligible for reinstatement. The granting of recertification under this subsection is governed by rules adopted by the Maine Office of Community Affairs pursuant to section 4451-I relating to certification. The person is subject to all training requirements applicable to persons whose certification has lapsed.

Sec. 12. 30-A MRSA §4451-H is enacted to read:

§4451-H. Confidentiality; access to documents; public records

All complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that are considered by the division director or the committee are confidential. If a person subject to this chapter requests an adjudicatory hearing under the Maine Administrative Procedure Act, that hearing must be open to the public. The subcommittee or hearing officer that presides over the hearing shall issue a written decision that states the conduct or other facts on the basis of which action is being taken and the reason for that action. Once issued, the written decision is a public record under the Freedom of Access Act, regardless of whether it is appealed. Any action taken by the division director pursuant to this subchapter as a result of a complaint, charge or accusation must be supported by a statement of findings and must be issued as a written decision of the division director. The written decision of the division director and findings are public records under the Freedom of Access Act.

Sec. 13. 30-A MRSA §4451-I is enacted to read:

§4451-I. Rulemaking

The Maine Office of Community Affairs may adopt rules necessary to implement this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.