

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 8, 2021  
To: Committee on Innovation, Development, Economic Advancement and Business  
From: Rachel Olson, Legislative Analyst  
RE: LD 149 *An Act To Facilitate Licensure for Credentialed Individuals from Other Jurisdictions* (Cloutier)

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### Bill Summary

This bill implements some of the recommendations of Resolve 2019, chapter 79 directing the Commissioner of Professional and Financial Regulation to form a working group to assess barriers to professional licensure for skilled individuals with foreign credentials and licensees of other states who apply for Maine licensure.

It allows the Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation to exercise discretionary authority, after consultation with licensing entities, to waive documentation requirements for licensure submitted by applicants educated in or with relevant experience or licensure in other jurisdictions, including other states, United States territories, foreign nations and foreign administrative divisions, as long as the waiver does not reduce the requisite standards of proficiency for the licensed profession or occupation. It allows the director to exercise discretionary authority to waive examination fees and license fees for applicants for licensure educated in or with relevant experience or licensure in other jurisdictions, including other states, United States territories, foreign nations and foreign administrative divisions. It also allows the office, or a licensing board or commission within the office, to grant provisional licenses to applicants educated in or with relevant experience or licensure in other jurisdictions, including other states, United States territories, foreign nations and foreign administrative divisions.

It provides the director with rule-making authority to implement these discretionary authorities. It provides the director with the authority to adopt rules to define the term "jurisdiction" for licensing purposes to mean a state, a United States territory, a foreign nation or a foreign administrative division that issues a license or credential.

It provides the director with the authority to accept funds from the Federal Government, from any political subdivision of the State or from any individual, foundation or corporation, to expend those funds for purposes consistent with the purposes of the Maine Revised Statutes, Title 10, section 8003 and to provide grants to nongovernmental entities for purposes consistent with that law.

It also develops a process for licensure by endorsement for United States license holders who meet certain criteria.

**Testimony:**

**Proponents:** Representative Cloutier, Sponsor; Commissioner Anne Head, DPFR/OPOR; Kate Foye, DECD; Mufalo Chitam, Maine Immigrants' Rights Coalition; Maria Millard Povec, Governor's Office of Policy Innovation and the Future; Claude Rwaganje, Westbrook City Council; Beth Stickney, Esq., Maine Business Immigration Coalition; Sally Sutton, New Mainers Resource Center; Julia Trujillo Luengo, City of Portland, Office of Economic Opportunity; Simon West, Maine State Chamber of Commerce; Sarah Calder, MaineHealth; Shanna Cox, Lewiston Auburn Metropolitan Chamber of Commerce; Eamonn Dundon, Portland Regional Chamber of Commerce; Jacki Esposito, World Education Services; Stefanie Trice Gill, IntWork, LLC; Terry Johnson and Carrie Green Yardley, Assoc. for Consulting Expertise; Lisa Harvey-McPherson, Northern Light Health; Jason Judd, Educate Maine; Michael Kebede, ACLU of Maine; Jessica Laliberte, Manufacturers Assoc. of Maine; Matt Marks, Associated General Contractors of Maine; Fortunat Mueller, ReVision Energy, Inc.; James Myall, Maine Center for Economic Policy; Meredith Owen, World Church Services; Thomas Rainey, Maine Center for Entrepreneurs; Barbara Lamont, Maine Angels; Kathryn Vezina, Maine unitarian Universalist State Advocacy Network;

**Opponents:** None

**Neither for nor against:** Donald Dostie, Maine Society of Land Surveyors; Nick Murray, Maine Policy Institute;

**Additional Information:**

- [Resolve 2019, c. 79](#)
- [Report from Resolve, Directing the Commissioner of the Department of Professional and Financial Regulation to Create a Working Group to Study Barriers to Credentialing](#)
- [OPOR Licensing Boards and Programs](#)
- [Fees within OPOR \(2019\), as established by rule](#)
- [Average Days to Licensure within OPOR \(2018 and 2019\)](#)
- [Interstate Licensure Compacts, by state](#)
- [Universal Licensure States, side-by-side comparison](#)
- [States that Accept Foreign Credentials for Occupational Licensure Memo](#)

**Possible Amendments:**

- Donald Dostie, from the MSLS, suggested a few small changes to the bill in his document connected to [his testimony](#).
- Representative Andrews shared [an amendment](#) with the committee via email on 4/7/21.

**Other Considerations:** Representative Andrews and Representative Hutchins both submitted bills, LD 612 and LD 1131 respectively, that have similar goals, but a different approach. Also, those bills do not address foreign-trained skilled workers.

**Fiscal Impact:** As it is written, no fiscal note is required. [The fiscal detail and notes](#) are:  
*Additional costs to the Office of Professional and Occupational Regulation, Department of Professional and Financial Regulation, to implement the requirements of this legislation can be absorbed within existing budgeted*

*resources. Additional revenue from licensing and other fees is expected to be minor.*

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## **Statute Being Amended:**

Title 10: Commerce and Trade

Part 9: Department of Professional and Financial Regulation

[Chapter 901: Department of Professional and Financial Regulation](#)

[§8003. Departmental organization; duties](#) (sub-§ 2-A and 5-A)

**2-A. Office of Professional and Occupational Regulation.** There is created an Office of Professional and Occupational Regulation, referred to in this subsection as the "office," composed of the boards, commissions and regulatory functions set forth in section 8001, subsection 38. The commissioner may appoint a Director of the Office of Professional and Occupational Regulation and those clerical and technical assistants who are necessary to discharge the duties of the office and shall outline their duties and fix their compensation, subject to the Civil Service Law. Notwithstanding any other provision of law granting authority to a board or commission, the Director of the Office of Professional and Occupational Regulation has the following superseding powers, duties and functions:

- A. To administer the office and maximize and direct the use of personnel and financial resources to regulate professionals in the best interest of the public; [PL 1999, c. 687, Pt. C, §6 (NEW).]
- B. To prepare and administer, with the advice of the boards and commissions, budgets necessary to carry out the regulatory purposes of the boards and commissions. The Director of the Office of Professional and Occupational Regulation shall maintain one office budget that includes a separate account for each board or commission. The Director of the Office of Professional and Occupational Regulation has the authority to disapprove expenditures by boards and commissions that are not necessary to protect the public health and welfare or that would seriously jeopardize a board's or commission's fiscal well-being; [PL 1999, c. 687, Pt. C, §6 (NEW); PL 2011, c. 286, Pt. B, §5 (REV).]
- C. To provide all staffing necessary and appropriate to administer the office and carry out the statutory missions of the boards, commissions and regulatory functions. All clerks, technical support staff and supervisors must be assigned to the office and allocated by the director to perform functions on behalf of the various boards, commissions and regulatory functions according to need; [PL 1999, c. 687, Pt. C, §6 (NEW).]
- D. To establish by rule and after reasonable notice to the affected board all fees necessary and appropriate for all boards, commissions and regulatory functions within the office, subject to any fee cap established by statute and applicable to that board, commission or regulatory function. The Director of the Office of Professional and Occupational Regulation shall set the criteria for all fees. The criteria must include, but are not limited to, the costs, statutory requirements, enforcement requirements and fees and expenses of each board, commission or regulatory function. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; [PL 2001, c. 323, §9 (AMD); PL 2011, c. 286, Pt. B, §5 (REV).]

E. To establish by rule, such processes and procedures necessary to administer the various boards, commissions and regulatory functions of the office, including, but not limited to, a uniform complaint procedure, a uniform procedure regarding protested checks, a uniform policy regarding the treatment of late renewals and a uniform procedure for substantiating continuing education requirements. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; [PL 1999, c. 687, Pt. C, §6 (NEW).]

F. To keep records of public meetings, proceedings and actions and to make those records available to the public at cost upon request, unless otherwise prohibited by state or federal law; [PL 1999, c. 687, Pt. C, §6 (NEW).]

G. To enter into contracts to ensure the provision of goods and services necessary to perform regulatory functions and to fulfill statutory responsibilities. This authority includes the ability to employ and engage experts, professionals or other personnel of other state or federal regulatory agencies as necessary to assist the office in carrying out its regulatory functions and to contract office staff to other state and federal regulatory agencies to assist those agencies in carrying out their regulatory functions; [PL 1999, c. 687, Pt. C, §6 (NEW).]

H. To perform licensing functions for other state agencies on a fee-for-service basis; [PL 1999, c. 687, Pt. C, §6 (NEW).]

I. To enter into cooperative agreements with other state, federal or foreign regulatory agencies to facilitate the regulatory functions of the office, including, but not limited to, information sharing, coordination of examinations or inspections and joint examinations or inspections. Any information furnished pursuant to this paragraph by or to the office that has been designated confidential by the agency furnishing the information remains confidential and the property of the agency furnishing the information and may not be disclosed by the recipient of the information unless disclosure has been authorized by the agency that furnished the information; [PL 1999, c. 687, Pt. C, §6 (NEW).]

J. To direct staff to review and approve applications for licensure or renewal in accordance with criteria established in statute or in rules adopted by a board or commission. Licensing decisions made by staff may be appealed to the full board or commission; [PL 1999, c. 687, Pt. C, §6 (NEW).]

K. To prepare and submit to the commissioner an annual report of the office's operations, activities and goals; [PL 2017, c. 173, §1 (AMD).]

L. To study jurisdictional overlap between the department's boards and commissions and other state agencies for purposes of streamlining and consolidating related legal authorities and administrative processes; [PL 2017, c. 173, §1 (AMD).]

**M.** To exercise discretionary authority, after consultation with licensing boards if applicable, to review and determine on a case-by-case basis examination and licensing eligibility for applications for licensure submitted by individuals who identify themselves as veterans with military service, experience and training; and [PL 2017, c. 173, §2 (NEW).]

**N.** To exercise discretionary authority to waive examination fees and license fees for applicants for licensure who identify themselves as veterans with military service, experience and training. [PL 2017, c. 173, §2 (NEW).]

**5-A. Authority of Office of Professional and Occupational Regulation.** In addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law, the Office of Professional and Occupational Regulation, referred to in this subsection as "the office," including the licensing boards and commissions and regulatory functions within the office, have the following authority.

A. The office, board or commission may deny or refuse to renew a license, may suspend or revoke a license and may impose other discipline as authorized in this subsection for any of the following reasons:

- (1) The practice of fraud, deceit or misrepresentation in obtaining a license from a bureau, office, board or commission, or in connection with services rendered while engaged in the occupation or profession for which the person is licensed;
- (2) Any gross negligence, incompetence, misconduct or violation of an applicable code of ethics or standard of practice while engaged in the occupation or profession for which the person is licensed;
- (3) Conviction of a crime to the extent permitted by Title 5, chapter 341;
- (4) Any violation of the governing law of an office, board or commission;
- (5) Any violation of the rules of an office, board or commission;
- (6) Engaging in any activity requiring a license under the governing law of an office, board or commission that is beyond the scope of acts authorized by the license held;
- (7) Continuing to act in a capacity requiring a license under the governing law of an office, board or commission after expiration, suspension or revocation of that license;
- (8) Aiding or abetting unlicensed practice by a person who is not licensed as required by the governing law of an office, board or commission;
- (9) Noncompliance with an order or consent agreement of an office, board or commission;
- (10) Failure to produce any requested documents in the licensee's possession or under the licensee's control concerning a pending complaint or proceeding or any matter under investigation;
- (11) Any violation of a requirement imposed pursuant to section 8003-G; or
- (12) Failure of an individual subject to Title 22, section 1711 or Title 22, section 1711-B to provide to a patient, upon written request, a copy of that patient's treatment records in accordance with the requirements of Title 22, section 1711 or Title 22, section 1711-B, whichever is applicable. [PL 2019, c. 503, Pt. A, §1 (AMD).]

B. The office, board or commission may impose the following forms of discipline upon a licensee or applicant for licensure:

- (1) Denial or refusal to renew a license, or issuance of a license in conjunction with the imposition of other discipline;
- (2) Issuance of warning, censure or reprimand. Each warning, censure or reprimand issued must be based upon violation of a single applicable law, rules or condition of licensure or must be based upon a single instance of actionable conduct or activity;
- (3) Suspension of a license for up to 90 days for each violation of applicable laws, rules or conditions of licensure or for each instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's record;
- (4) Revocation of a license;

- (5) Imposition of civil penalties of up to \$1,500, or such greater amount as may be authorized by statute, for each violation of applicable laws, rules or conditions of licensure or for each instance of actionable conduct or activity; or
- (6) Imposition of conditions of probation upon an applicant or licensee. Probation may run for such time period as the office, board or commission determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or licensee; practice restrictions; and other conditions as the office, board or commission determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or licensee. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee. [PL 2009, c. 112, Pt. B, §4 (AMD).]

C. The office, board or commission may execute a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant or licensee; the office, board or commission; and the Department of the Attorney General. 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 suspension and permanent revocation of a professional or occupational license. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court. [PL 2007, c. 402, Pt. C, §3 (NEW).]

D. The office, board or commission may:

(3) Except as provided in Title 37-B, section 390-A, adopt rules requiring continuing professional or occupational education and require applicants for license renewal to present proof of satisfactory completion of continuing professional or occupational education in accordance with such rules. Failure to comply with the continuing education rules is punishable by nonrenewal of the license and other discipline authorized by this subsection. Notwithstanding any contrary provision set forth in the governing law of an office, board or commission, continuing education requirements may coincide with the license renewal period. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A;

(4) Issue continuing education deferments in cases of undue hardship;

(5) Grant inactive status licenses to licensees in accordance with rules that may be adopted by each office, board or commission. The fee for an inactive status license may not exceed the statutory fee cap for license renewal set forth in the governing law of the office, board or commission. Licensees in inactive status are required to pay license renewal fees for renewal of an inactive status license and may be required to pay a reinstatement fee as set by the Director of the Office of Professional and Occupational Regulation if the license is reactivated on a date other than the ordinary renewal date of the license. Any rules of an office, board or commission regulating inactive status licensure must describe the obligations of an inactive status licensee with respect to any ongoing continuing education requirement in effect for licensees of the office, board or commission and must set forth any requirements for reinstatement to active status, which requirements may include continuing education. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A; and

(6) Delegate to staff the authority to review and approve applications for licensure pursuant to procedures and criteria established by rule. Rules adopted pursuant to this

subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 286, Pt. B, §2 (AMD).]

E. The office, board or commission may require surrender of licenses. In order for a licensee's surrender of a license to be effective, a surrender must first be accepted by vote of the office, board or commission. The office, board or commission may refuse to accept surrender of a license if the licensee is under investigation or is the subject of a pending complaint or proceeding, unless a consent agreement is first entered into pursuant to this subsection. The consent agreement may include terms and conditions for reinstatement. [PL 2007, c. 402, Pt. C, §3 (NEW).]

F. The office, board or commission may issue a letter of guidance or concern to a licensee as part of the dismissal of a complaint against the licensee. 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 licensee 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 of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The office, board or commission may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee'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 office, board or commission in any subsequent action commenced against the licensee within the specified time frame. Complaints, reports and investigation materials placed on file are confidential only to the extent that confidentiality is required pursuant to Title 24, chapter 21. [PL 2013, c. 217, Pt. A, §1 (AMD).]

G. The office, board or commission may establish, by rule, procedures for licensees in another state to be licensed in this State by written agreement with another state, by entering into written licensing compacts with other states or by any other method of license recognition considered appropriate that ensures the health, safety and welfare of the public. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 402, Pt. C, §3 (NEW).]

The jurisdiction to impose discipline against occupational and professional licenses conferred by this subsection is concurrent with that of the District Court. Civil penalties must be paid to the Treasurer of State.

Any nonconsensual disciplinary action taken under authority of this subsection other than denial or nonrenewal of a license may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

The office, board or commission shall hold a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 at the written request of any person who is denied an initial or renewal license without a hearing for any reason other than failure to pay a fee, provided that the request for hearing is received by the office, board or commission within 30 days of the applicant's receipt of written notice of the denial of the application, the reasons for the denial and the applicant's right to request a hearing.

The office, board or commission may subpoena witnesses, records and documents in any adjudicatory hearing it conducts.

Rules adopted to govern judicial appeals from agency action apply to cases brought under this subsection.

In the event of appeal to Superior Court from any form of discipline imposed pursuant to this subsection, including denial or nonrenewal of a license, the office, board or commission may assess the licensed person or entity for the costs of transcribing and reproducing the administrative record.

[PL 2019, c. 503, Pt. A, §1 (AMD).]

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