

**LD 835 An Act To Allow Citizens To Petition Government Agencies To Repeal or Modify Occupational Regulations**

To: Members, Joint Standing Committee on State and Local Government  
From: Lynne Caswell, Esq., Legislative Analyst  
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filed*

<http://legislature.maine.gov/ctl/SLG/04-30-2021?panel=0&time=0&sortdir=0&sortby=2>

**SUMMARY**

This bill requires, by January 1, 2022, all state agencies and other units of government to review all rules regarding a person's ability to use an occupational title or work in an occupation, trade or profession to determine whether the rule is necessary and carefully tailored to protect health, safety and welfare and does not unnecessarily burden a person's ability to enter an occupation, trade or profession. After review, the agency is required to repeal or modify every rule that does not meet the standard of review or recommend to the Legislature the necessary steps to repeal or modify the rule if it is not within the agency's authority to do so. Any person can at any time petition the agency or the District Court to repeal or modify a rule that does not meet the standard of review required by this legislation.

**TESTIMONY<sup>1</sup>**

**Sponsor:** Representative Andrews

- Right to earn a living (AZ & TN)
- Any regulation is limited to protecting public health, safety and welfare
- Remove arbitrary requirements

**Proponents:** Maine Policy Institute by Nick Murray

- 2018 Report - Let Us Work<sup>2</sup>
- Occupational licensing reduces competition, and increase costs without measurable health, safety benefits to public
- ME licenses professional not licensed in other states
- Maine lost 29,206 jobs and \$276 million in economic output due to occupational licensing.
- Maine's occupational regulatory regime was the cause of \$2.6 billion of forgone economic growth.
- Licensing regime should help and not hinder working in Maine
- 8-year GEA review is too long

**Opponent:** State Board of Licensure for Professional Engineers by David Jackson; DPFR/OPOR and Medical Board of Licensure by Denise Smith (written only: DPFR by Commissioner Head; State Board of Nursing by Kim Esquibel)

- Redundant of existing law (rule review, appeals process, judicial review, GEA process)
- Lack of staff resources across agencies to undertake review and reporting required

**NFNA:** none

<sup>1</sup> The section is not intended to reflect all comments and may include unintentionally errors.

<sup>2</sup> <https://mainepolicy.org/project/letuswork/>

***RULEMAKING UNDER THE MAINE ADMINISTRATIVE PROCEDURE ACT***

(Title 5, ch. 375)

1. Rulemaking Process 5 MRSA requires
  - Notice – SOS & newspaper §8053
  - Public hearing (not always required)
  - Response to public written comments
  - Legality / form review by OAG §8056
2. Petition for Adoption or Modification of Rule. Under 5 MRSA §8055:
  - “any person may petition an agency for the adoption or modification of any rule.” The agency must respond w/i 60 days
  - When 150 or more registered voters submit a petition to adopt or modify a rule, the agency “shall initiate rulemaking proceedings within 60 days”
2. Judicial Review of Rules 5 MRSA §8058
  - any aggrieved person may file an action in Superior Court for judicial review of an agency rule or refusal or failure to adopt a rule
  - Rules found to exceed rule-making authority are void
  - Court may invalidate the rule if error is “substantial and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if the error had not occurred.
  - Substantive review of that rule to determine whether the rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.
  - Court may issue such orders as are necessary and appropriate to remedy such failures.

***APPEALS OF ACTIONS AFFECTING LICENSE***

1. 10 MRSA §8003 governs suspensions, revocations, and disciplinary action taken by the Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation

***Suspend or Revoke***

The jurisdiction to suspend and revoke 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 may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and, except for revocation actions, is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

Any nonconsensual revocation of an occupational or professional license taken under authority of this subsection is subject to, upon appeal within the time frames provided in Title 5, section 11002,

subsection 3, de novo judicial review exclusively in District Court. Rules adopted to govern judicial appeals from agency action apply to cases brought under this section.

*Disciplinary Action*

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.

*Denial or Initial or Renewal*

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.

2. Maine Rules of Civil Procedure Rule 80C - Judicial Review of Final Agency Action

- The Superior Court has jurisdiction to hear appeals of “final agency action” or “failure of agency to act”
- The District Court has jurisdiction over disciplinary decisions of occupational licensing board and commissions

**FISCAL IMPACT - Preliminary (OFPR)**

None provided as of this date.