



130th MAINE LEGISLATURE

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Legislative Document

No. 835

H.P. 603

House of Representatives, March 8, 2021

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

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ANDREWS of Paris.

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

2 **Sec. 1. 5 MRSA §8075** is enacted to read:

3 **§8075. Occupational rules**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Agency" means the State, all units of State Government and all units of
7 governmental entities established under the Constitution of Maine or laws of the State
8 or established by any entity that was established by the Constitution of Maine or the
9 laws of the State.

10 B. "Occupational rule" means any rule, regulation, policy, fee, condition, test, permit,
11 administrative practice or other provision that allows an individual to use an
12 occupational title or engage in an occupation, trade or profession or a cease and desist
13 demand or other regulatory requirement that prevents an individual from using an
14 occupational title or working in an occupation, trade or profession.

15 C. "Welfare" means the protection of a member of the public against fraud or harm,
16 and does not include the protection of an existing public or private agency or business
17 from competition.

18 **2. Limitation of occupational rules.** All occupational rules are limited to those
19 demonstrated to be necessary and carefully tailored to fulfill legitimate public health, safety
20 or welfare objectives and may not unnecessarily burden the entry into a profession, trade
21 or occupation.

22 **3. Review of occupational rules.** By January 1, 2022, every agency shall conduct a
23 comprehensive review of all occupational rules within that agency's jurisdiction, and for
24 each occupational rule the agency shall:

25 A. Articulate with specificity the public health, safety or welfare objective served by
26 the rule;

27 B. Articulate the reason why the rule is necessary to serve the specified objective;

28 C. Analyze, where information is readily available, the effects of the rule on
29 opportunities for workers, consumer choices and costs, general employment, market
30 competition, governmental costs and other similar effects; and

31 D. Compare the rule to whether and how other jurisdictions regulate the same business
32 or profession.

33 **4. Repeal of nonconforming occupational rules.** Notwithstanding sections 8071 and
34 8072, after review under subsection 3 if the agency determines that an occupational rule
35 does not meet the standard of subsection 2, the agency shall:

36 A. Repeal the rule or modify the rule to meet the standard in subsection 2; or

37 B. If repeal or modification of the rule is not within the agency's authority, recommend
38 to the Legislature actions necessary to repeal or modify the rule to meet the standard
39 in subsection 2.

40 By January 1, 2022, each agency shall report to the Legislature on all actions taken by the
41 agency to conform to subsections 3 and 4.

1 **5. Administrative proceedings.** A person may petition any agency at any time to
2 repeal or modify an occupational rule within the agency's jurisdiction that the person avers
3 does not meet the standard in subsection 2. Within 90 days of a petition filed under this
4 subsection, the agency shall either repeal the occupational rule, modify the occupational
5 rule to meet the standard of subsection 2 or state the basis in which the agency determines
6 the rule conforms to the standard in subsection 2.

7 **6. Judicial proceedings.** A person may file an action in District Court at any time to
8 repeal or modify an occupational rule that the person avers does not meet the standard in
9 subsection 2. The court shall repeal or modify the rule if the court finds by a preponderance
10 of evidence that the rule on its face or in its effect does not meet the standard of subsection
11 2. If the court finds for the plaintiff, the court shall enjoin further enforcement of the rule
12 and award the plaintiff reasonable court costs and attorney's fees. A plaintiff is not required
13 to file a petition under subsection 5 to file a petition under this subsection.

14 **SUMMARY**

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