

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1767

H.P. 1287

House of Representatives, February 8, 1996

An Act to Revise the Sunrise Review Process for Occupational and Professional Regulation.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative ROWE of Portland.
Cosponsored by Representatives: CAMERON of Rumford, DAVIDSON of Brunswick,
LIBBY of Kennebunk, POVICH of Ellsworth, SIROIS of Caribou, Senator: GOLDTHWAIT
of Hancock.

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

Sec. 1. 5 MRSA §12015, sub-§3, as enacted by PL 1985, c. 748, §13, is repealed and the following enacted in its place:

3. Occupational or professional licensing boards; preauthorization review. Any professional or occupational group or organization, any individual or any other interested party that proposes the creation of a board to regulate any unregulated professional or occupational group or to substantially expand existing regulation shall comply with the provisions of Title 32, chapter 1-A, subchapter II. Any joint standing committee of the Legislature that considers legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand the scope of the functions or practices regulated by an existing occupational or professional licensing board shall provide to the Legislature a response to the questions in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II.

Sec. 2. 32 MRSA c. 1-A, sub-c. II is enacted to read:

SUBCHAPTER II

**OCCUPATIONAL AND PROFESSIONAL REGULATION;
PREAUTHORIZATION REVIEW**

§60-J. Letter of intent; application; contents

Any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of existing regulation shall submit a letter of intent to file an application to the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," on forms prescribed by the commissioner. The letter of intent must identify the applicant group, the proposed regulation or change in scope of practice sought and such other information as the commissioner may consider necessary for the commissioner to determine whether the application is eligible for review. The commissioner shall notify the applicant group as to whether it is eligible for review within 15 days of the receipt of the letter of intent. The final application must be submitted to the commissioner, who shall notify the applicant group of its acceptance for review within 15 days of receipt of the final application. If more than one application is received in a given year, the commissioner may establish the order in which applications are reviewed. The application must include:

2 **1. Data on group.** A description of the professional or
occupational group proposed for regulation, including the number
4 of individuals or business entities that would be subject to
regulation, and the names of associations, organizations and
6 other groups representing the practitioners and an estimate of
the number of practitioners in each group;

8 **2. Specialized skill.** Whether practice of the profession
or occupation proposed for regulation requires such a specialized
10 skill that the public is not qualified to select a competent
practitioner without assurances that minimum qualifications have
12 been met;

14 **3. Public health; safety; welfare.** The nature and extent
of potential harm to the public if the profession or occupation
16 is not regulated, the extent to which there is a threat to the
public's health, safety or welfare and production of evidence of
18 potential harm, including a description of any complaints filed
with state law enforcement authorities, courts, departmental
20 agencies, other professional or occupational boards and
professional and occupational associations that have been lodged
22 against practitioners of the profession or occupation in this
State within the past 5 years;

24 **4. Voluntary and past regulatory efforts.** A description of
the voluntary efforts made by practitioners of the profession or
26 occupation to protect the public, a statement of why these
efforts are inadequate to protect the public and the details of
28 any previous efforts in this State to implement regulation of the
profession or occupation;

30 **5. Cost; benefit.** The extent to which regulation will
increase the cost of goods or services provided by practitioners;
32 the method proposed to finance the regulation; and whether the
overall cost-effectiveness and economic impact of the proposed
34 regulation, including the indirect costs to consumers, will be
favorable;

36 **6. Service availability.** The extent to which regulation
would increase or decrease the availability of services to the
38 public;

40 **7. Existing laws and regulations.** The extent to which
existing legal remedies are inadequate to prevent or redress the
42 kinds of harm potentially resulting from nonregulation and
whether regulation can be provided through an existing state
44 agency or in conjunction with presently regulated practitioners;

46 **8. Method of regulation.** Why registration, certification,
48 license to use the title, license to practice or another type of
50 license to use the title, license to practice or another type of

regulation is being proposed and why that regulatory alternative was chosen;

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of each state's laws and available evidence from those states of the effect on regulation of the practice or profession or occupation in terms of a before-and-after analysis;

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation;

11. Mandated benefits. Whether the profession plans to apply for mandated benefits; and

12. Minimal competence. Whether the requirements for regulation exceed the standards of minimal competence and what those standards are.

§60-K. Application fee; waiver; disposition

Each application must be accompanied by an application fee of \$500, submitted at the time the letter of intent is filed. The application fee is not refundable but the commissioner may waive all or part of the fee if the commissioner finds it in the public interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that the application is eligible for review and;

1. State agency. The applicant group is an agency of State Government;

2. Members not affected. Members of the applicant group are not materially affected by the implementation of the proposed regulation or change in scope of practice; or

3. Hardship. Payment of the application fee would impose unreasonable hardship on members of the applicant group.

§60-L. Technical committee; appointment; membership; duties

1. Technical committee. The commissioner shall appoint a technical committee consisting of 7 members to examine and investigate each application.

A. Two persons must be from the profession or occupation being proposed for regulation and at least one of those persons may not be a member of the proposing group.

2 B. Two persons must be from professions or occupations with
4 a scope of practice that overlaps that of the profession or
6 occupation being proposed for regulation. If there is more
 than one overlapping profession or occupation,
 representatives of the 2 with the greatest number of
 practitioners must be appointed.

8
10 C. The commissioner or the commissioner's designee from the
12 department that has responsibility for the services of the
 regulated profession or occupation, as opposed to the
 department that regulates those persons in the profession or
 occupation.

14
16 D. Two persons must be public members. These persons and
18 their spouses, parents or children may not be or ever have
20 been members of, and may not have or ever have had a
 material financial interest in, the profession or occupation
 being proposed for regulation or another profession or
 occupation with a scope of practice that may overlap that of
 the profession or occupation being proposed for regulation.

22 The public members of the committee are entitled to per diem at
24 the legislative rate and expenses, pursuant to Title 3, section
26 2. The other members serve without compensation. The chair of
28 the committee may not be a member of the applicant group, any
30 health profession sought to be regulated by the application or
32 any health profession that is directly or indirectly affected by
 the application. The commissioner shall ensure that the total
 composition of the committee is fair, impartial and equitable.
 No more than 2 members of the same regulated health profession,
 the applicant group or the health profession sought to be
 regulated by an application may serve on a technical committee.

34 2. Meetings. As soon as possible after appointment, a
36 technical committee shall meet and review the application
38 assigned to it. Each committee shall conduct public fact-finding
 hearings and shall take other action to investigate the
 application.

40
42 3. Procedure for review. Applicant groups are responsible
44 for furnishing evidence upon which a technical committee makes
46 its findings. Each committee shall make a report of its findings
48 and file the report with the commissioner. Each committee shall
50 evaluate the application presented to it based on the information
 provided as required by section 60-J. If the committee finds
 that additional information is required to assist in developing
 its recommendations, it may require that the applicant group
 provide this information. If the committee recommends approval
 of an application for regulation of a profession or occupation
 not currently regulated, it shall also recommend the least
 restrictive method of regulation to be implemented, consistent

2 with the cost-effective protection of the public and with section
4 60-N. The committee may recommend a specific method of
6 regulation not listed in section 60-N if it finds that the method
8 is the best alternative method of regulation. Whether it
recommends approval or denial of an application, the committee
may make additional recommendations regarding solutions to
problems identified during the review.

10 **§60-M. Commissioner; final report; recommendations**

12 **1. Commissioner report.** After receiving and considering
14 reports from the technical committee, the commissioner shall
16 prepare a final report for the Legislature including any
18 legislation required to implement the commissioner's
20 recommendation. The final report must include copies of the
22 committee report, but the commissioner is not bound by the
24 findings and recommendations of the report. In compiling the
26 report, the commissioner shall apply the criteria established in
section 60-J and may consult with the committee. The
recommendations of the commissioner must be developed in a manner
consistent with sections 60-L and 60-N. The final report must be
submitted to the joint standing committee of the Legislature
having jurisdiction over occupational and professional regulation
matters no later than 9 months after the application is submitted
to the commissioner and must be made available to all other
members of the Legislature upon request.

28 **2. Recommendations.** The commissioner may recommend that no
30 legislative action be taken on an application. If the
32 commissioner recommends that an application of an applicant group
34 be approved, the commissioner shall recommend an agency to be
responsible for the regulation and the level of regulation to be
assigned to the applicant group.

36 **3. Resubmission.** An application that is resubmitted must
be considered in the same manner as a new application.

38 **§60-N. Least restrictive method of regulation; how implemented**

40 If, after evaluating the information provided in section
42 60-J and the recommendations of the technical committee and the
44 commissioner and considering governmental and societal costs and
46 benefits, the Legislature finds that it is necessary to regulate
48 an occupation or profession not previously regulated by law, then
the least restrictive alternative method of regulation must be
implemented consistent with the public interest and this section,
according to the following criteria.

50 **1. Minor threat.** If the threat to the public health,
safety, welfare or economic well-being is minor, the method of

regulation must be by means other than direct regulation of the occupation or profession. This method of regulation may include, but is not limited to:

A. Inspection requirements;

B. The enabling of an appropriate state agency to terminate a harmful practice by injunctive relief in court;

C. The regulation of the business or professional activity or entity providing the service rather than the regulation of the professionals or employees of the business or entity; or

D. The regulation of or modification of the regulation of the occupation or profession supervising the service being performed.

2. Registration. When there are a diversity of approaches, methods and theories by which services may be rendered and when the right of the consumer to choose freely among those options is considered as important as the need to protect the public from harm, the method of regulation must include a system of registration within its implementation.

3. Certification. When the consumer has a substantial basis for relying on the services of a practitioner, the method of regulation must include a system of certification or title licensing.

4. Licensing. When it is apparent that adequate regulation can not be achieved by means other than restricting practice of the service, the method of regulation must include a system of practice licensing within its implementation.

STATEMENT OF FACT

This bill changes the procedure for an occupation or profession to become regulated.

Currently, if an occupation or profession wishes to be regulated by a state board, a bill must be submitted and the legislative committee to whom it is referred must answer a series of questions in the Maine Revised Statutes, Title 5, section 12015, subsection 3 if the committee's recommendation is that the occupation or profession be regulated by a board.

This bill requires that an application containing the answers to questions similar to those in Title 5, section 12015,

subsection 3 be made to the Commissioner of Professional and
2 Financial Regulation, who is required to assemble a technical
committee to make a recommendation on the application. The
4 commissioner is to attach the department's recommendation and
forward this material to the appropriate legislative committee.