

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1436

H.P. 1025

House of Representatives, February 23, 1999

**An Act to Transfer the Regulatory Responsibilities of the Arborist  
Examining Board to the Department of Agriculture, Food and Rural  
Resources.**

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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 O'NEAL of Limestone.  
Cosponsored by Senator KONTOS of Cumberland and  
Representatives: BOLDUC of Auburn, BOWLES of Sanford, CLOUGH of Scarborough,  
MENDROS of Lewiston, SHOREY of Calais, TRIPP of Topsham, USHER of Westbrook,  
Senator: MacKINNON of York.

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

2           **Sec. 1. 5 MRSA §12004-A, sub-§2,** as enacted by PL 1987, c.  
4 786, §5 is repealed.

6           **Sec. 2. 7 MRSA §1044-A first ¶,** as amended by PL 1995, c. 435,  
8 §1 and affected by §3, is further amended to read:

10           For the purpose of providing revenues to defray the expense  
12 of the inspection and analysis prescribed in this subchapter, the  
14 commissioner shall license seed labelers. The commissioner shall  
16 prescribe the license application form. License fees established  
under this subchapter may be collected on other than an annual  
basis if the license required in this section is issued in  
conjunction with a nursery operator's license issued under Title  
32, section 1901 2171.

18           **Sec. 3. 7 MRSA c. 404** is enacted to read:

20                                   **CHAPTER 404**

22                                   **ARBORIST LICENSING**

24                                   **SUBCHAPTER I**

26                                   **NURSERY OWNERS AND DEALERS GENERALLY**

28           **§2171. License required; fee; violations**

30           A person, firm or corporation may not engage in or continue  
32 in the business of selling or dealing in nursery stock, as  
34 defined in section 2211, without first obtaining a license to  
36 conduct such business in this State. The State Horticulturist  
38 shall prescribe the form of the license. Upon proper  
40 application, a license must be issued in the name of the nursery  
42 owner or dealer and that license may not be transferred. Each  
44 agent and each store acting under a general agent or store must  
have a license as provided in this section. A license may be  
issued for a one-year, 2-year or 3-year period. Licenses for a  
period in excess of one year may only be issued with the  
agreement of or at the request of the applicant. The fee for a  
2-year license is 2 times the annual fee. The fee for a 3-year  
license is 3 times the annual fee.

46           1. Fees. The following provisions apply to the fees  
payable for a license issued under this section.

48           A. An applicant who has a nursery stock retail sales area  
in excess of 150 square feet or gross annual sales of

2 nursery stock in excess of \$500 shall pay a license fee of  
3 \$25 per year.

4 B. An applicant who has gross annual sales of nursery stock  
5 of \$500 or less and a nursery stock retail sales area of 150  
6 square feet or less shall pay a license fee of \$5 per year.

8 C. Educational institutions are exempt from the license fee.

10 2. Violations. Licenses may be revoked by the  
11 Administrative Court, as provided in the Maine Administrative  
12 Procedure Act, for failure to comply with the requirements of  
13 chapter 405-A.

14 **SUBCHAPTER II**

16 **TREE SPECIALISTS**

18 **ARTICLE 1**

20 **GENERAL PROVISIONS**

22 **§2173. Definitions**

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

28 1. Arborist. "Arborist" means a person who, for  
29 compensation, takes down or fells, diagnosis or evaluates the  
30 condition of shade or ornamental trees; solicits, recommends or  
31 supervises the treatment of those trees; or in any manner or for  
32 any purpose treats or cares for those trees.

34 2. Ornamental trees. "Ornamental trees" means trees of  
35 shade, beauty or landscape value, or those trees intended to  
36 become ornamental trees.

38 3. Person. "Person" means an individual, partnership or  
39 any group of persons, whether incorporated or not.

40 4. Regular employer. "Regular employer" means a person  
41 doing business in or operating a business in the State.

44 5. Shade trees. "Shade trees" means trees grown,  
45 established or used to screen persons or grounds, structures,  
46 walks, pools or other similar objects from wind, sunlight,  
47 observation or sound.

2       6. Takes down or fells. "Takes down or fells" means the  
cutting for removal of any part of a tree by topping or sections  
or felling the tree whole.

4  
6       7. Treats or cares for. "Treats or cares for" means the  
pruning, trimming and shaping of trees when the care requires the  
person to leave the ground. "Treats or cares for" also includes  
8       installing lightning protections, cabling or bracing of trees.

10       **§2174. Exemptions**

12               This subchapter does not apply to:

14               1. Certain property. Any person with reference to trees on  
that person's own premises or on the property of that person's  
16       regular employer;

18               2. Personnel. Any individual performing labor or services  
in connection with trees on a site where a licensed arborist is  
20       present;

22               3. Certain employees. State, county, municipal,  
quasi-municipal or public utility employees while engaged in  
24       their regular line of duty or those individuals contracted during  
emergencies that result in public hardships;

26               4. Scientific specialists. Scientific specialists such as  
28       plant pathologists, entomologists, botanists, foresters,  
horticulturists and others who are not arborists but who by  
30       academic training are professionally qualified to perform certain  
services performed by licensed arborists. Services performed by  
32       those specialists for a fee are limited to consultation, advisory  
or expert diagnostic services. Those specialists are prohibited  
34       from performing all other activities of practicing arborists  
without examination; or

36               5. Others. Highway contractors, subcontractors and their  
38       employees who remove trees during the performance of contracts  
for the construction or maintenance of highways and general  
40       contractors who remove interfering shade or ornamental trees or  
interfering parts of shade or ornamental trees in the conduct of  
42       their regular business.

44       **§2175. Penalties; injunction**

46               1. Penalties. Any person who violates this subchapter is  
guilty of a Class E crime.

48               2. Injunction. The State may bring an action in Superior  
50       Court to enjoin any person from violating this chapter.

2 regardless of whether proceedings have been or may be instituted  
3 in the Administrative Court or whether criminal proceedings have  
4 been or may be instituted.

6 **§2176. Powers**

8 The department has the following duties and powers, in  
9 addition to those otherwise set forth in this chapter.

10 1. Licenses; enforcement. The department shall evaluate  
11 the qualifications and supervise the examination of applicants  
12 for licensure under this chapter and shall investigate or cause  
13 to be investigated all complaints made to it and all cases of  
14 noncompliance with this chapter.

16 2. Rules. The department may, in accordance with  
17 procedures established by Title 5, chapter 375, subchapter II,  
18 adopt such rules as may be reasonably necessary for the proper  
19 performance of its duties and the administration of this  
20 chapter. Rules adopted pursuant to this subsection are routine  
21 technical rules as defined in Title 5, chapter 375, subchapter  
22 II-A.

24 3. Hearings. Hearings may be conducted by the department  
25 to assist with investigations, to determine whether grounds exist  
26 for suspension, revocation or denial of a license or as otherwise  
27 considered necessary to fulfill its responsibilities under this  
28 chapter.

30 The department may not refuse to renew a license for any reason  
31 other than failure to pay a required fee, unless it has afforded  
32 the licensee an opportunity for an adjudicatory hearing. The  
33 department shall hold an adjudicatory hearing at the written  
34 request of any person who is denied a license for any reason  
35 other than failure to pay a required fee, if the request for  
36 hearing is received by the department within 30 days of the  
37 person's receipt of written notice of the denial, the reasons for  
38 the denial and the person's right to request a hearing. Hearings  
39 must be conducted in conformity with Title 5, chapter 375,  
40 subchapter IV, to the extent applicable. The department may  
41 subpoena witnesses, records and documents in any hearing it  
42 conducts.

44 **§2177. Lists of arborists**

46 The department shall compile and maintain a complete and  
47 up-to-date list of all licenses issued under this chapter. This  
48 list must be made available to any person upon request and  
49 payment of a fee established by rule by the department. Rules

2 adopted pursuant to this section are routine technical rules as  
3 defined by Title 5, chapter 375, subchapter II-A.

4 **ARTICLE 2**

6 **LICENSES**

8 **§2179. License required**

10 Except as provided in section 2180, a person may not  
11 advertise, solicit, contract or in any way engage for  
12 compensation in the business of an arborist, or make  
13 representation as being able to do so, without being licensed as  
14 an arborist.

16 **§2180. Exemptions to licensing requirements for tree removal in**  
17 **municipalities having populations under 2,500 persons**

18 A municipality having a population of fewer than 2,500  
19 persons may adopt, amend or repeal an ordinance regulating and  
20 permitting the removal of trees by a person without an arborist's  
21 license, as otherwise required under section 2179. The ordinance  
22 may authorize the municipal officers to issue a permit to a  
23 person to remove trees in the municipality without an arborist's  
24 license. The ordinance may establish qualifications and  
25 conditions of financial responsibility for the permittee if those  
26 qualifications and conditions do not exceed those required for an  
27 arborist's license under this subchapter.

28 A permit issued under a municipal ordinance must state the  
29 name of the permittee, the location and number of trees to be  
30 removed, the date on which the trees must be removed and any  
31 other restrictions that the municipal officers or their designees  
32 consider necessary to ensure the safe and responsible removal of  
33 the trees. The ordinance may provide for a fee for the issuance  
34 of permits that is reasonable and necessary to cover the expenses  
35 of issuing permits and otherwise administering this section.

36 **§2181. Qualifications; types of licenses**

37 A license may not be issued under this subchapter, except to  
38 an individual who is 18 years of age or older, who is  
39 specifically qualified as defined in this subchapter, who passes  
40 an examination and who gives proof of financial responsibility in  
41 amounts to be determined under rules of the department. When a  
42 company is under the control of one person who is solely  
43 responsible for the contracts, methods of work and supervision of  
44 each piece of work, this person alone must procure a license but  
45 when more than one person is responsible for contracts, methods  
46 and supervision of work, the company must procure a license.

2 of work and supervision of the same, each person must procure a  
3 license.

4 A regular or restricted license may be issued under this  
5 chapter. A regular license allows a licensed individual to  
6 engage in all operations in which an arborist is normally  
7 involved. A restricted license allows a licensed individual to  
8 perform operations only in those areas stated on the license  
9 issued. The department may restrict a licensed individual to  
10 those operations for which that individual is judged qualified by  
11 the department.

12 **§2182. Applications**

13 Applications for examination must be in writing on forms  
14 prescribed by the department and must be accompanied by the  
15 prescribed fee. The application form may require whatever  
16 information the department finds necessary to judge  
17 qualifications of an applicant.

18 **§2183. Nonresidents**

19 Each nonresident applicant for an original license or a  
20 renewal license shall file an irrevocable consent that actions  
21 against the applicant may be filed in any appropriate court of  
22 any county or district of this State where some part of the  
23 transaction occurred out of which the alleged cause of action  
24 arose, and that process in any action may be served on the  
25 applicant by leaving 2 copies of the process with the  
26 department. The consent must stipulate and agree that the  
27 service of process must be taken and held to be valid and binding  
28 for all purposes. The department shall send a copy of the  
29 process to the applicant by registered mail at the address shown  
30 in its records.

31 **§2184. Examinations**

32 Each license applicant shall take an examination prepared by  
33 the department.

34 Applicants for restricted licenses must be examined in those  
35 subjects to which their activities are restricted.

36 Examinations must be given at least once a year at times and  
37 places as the department determines. The grading and passing of  
38 applicants are the exclusive responsibilities of the department.

39 Applicants failing the first examination may apply and take  
40 the next or a subsequently scheduled examination upon payment of  
41 the required fee.



2       **§2185. Forms**

4           Each license issued consists of 2 parts: a certificate that  
6           must be displayed at each place of business of the arborist and a  
8           license card that must be carried by the arborist when occupied  
          in a business capacity.

10           When the arborist conducts business at more than one  
12           address, additional certificates must be issued. The department  
14           may not issue more than one license card to an individual  
          qualified to receive a license, except as provided in section  
          2187.

16           A license holder shall display the holder's license to and  
18           upon the request, at any time, of any client, other licensed  
          arborist, law enforcement officer or employee of the department.

20       **§2186. Term**

22           A license expires on December 31st or at another time  
24           designated by the commissioner and becomes invalid on that date  
          unless renewed.

26           A license may be renewed up to 90 days after the date of  
28           expiration upon payment of a late fee of \$10 in addition to the  
30           renewal fee. Any person who submits an application for renewal  
32           more than 90 days after the license renewal date is subject to  
34           all requirements governing new applicants under this chapter,  
          except that the department may in its discretion, giving due  
          consideration to the protection of the public, waive examination  
          if the renewal application is made within 2 years from the date  
          of the expiration.

36           Any arborist whose license expires while the arborist is in  
38           federal service on active duty with the Armed Forces of the  
40           United States or the National Guard, is called into service or  
42           training or is in training or education under the supervision of  
44           the Armed Forces of the United States preliminary to induction  
46           into the military service may have the license renewed without  
          paying any intervening renewal license fees within one year after  
          termination of that service, training or education other than by  
          dishonorable discharge if the arborist furnishes the department  
          with an affidavit to the effect that the arborist has been so  
          engaged and that the service, training or education has been so  
          terminated.

48       **§2187. Renewals**

2       The department shall notify every person licensed under this  
3       subchapter of the date of expiration of that person's certificate  
4       and the fee required for its annual renewal. The notice must be  
5       mailed to the person's last known address at least 30 days in  
6       advance of the expiration of the license. An application for a  
7       license renewal must contain whatever information is necessary  
8       for the department to determine whether the applicant may  
9       continue to hold a license and must be accompanied by the  
10       required fee, which is returnable if the applicant is denied a  
11       renewal license. A licensed arborist must file an application  
12       and fee of \$5 for replacement of a lost license.

### 13       **§2188. Fees**

14       An application fee and an examination fee may be established  
15       by the department in amounts that are reasonable and necessary  
16       for their respective purposes. After an applicant is notified of  
17       the applicant's eligibility for a license following examination,  
18       the applicant shall submit the annual license fee before a  
19       license is issued.

20       The fee for an original or renewal annual license may not  
21       exceed \$75.

22       All money, including application fees, examination fees and  
23       license fees received pursuant to this section, must be paid to  
24       the Treasurer of State and credited to a separate, nonlapsing  
25       account in the department. Money received pursuant to this  
26       section must be used for the expenses of administering this  
27       chapter.

### 28       **§2189. Reciprocity**

29       If a nonresident applicant for a license holds a valid  
30       arborist license from another state or province, examination of  
31       the applicant may be waived by the department if the other state  
32       or province in which the applicant holds the license has  
33       qualification and examination requirements equivalent to those of  
34       this subchapter. If the requirements of the other state or  
35       province do not meet the standards set forth in this subchapter,  
36       the department may decide in which respects they are lacking and  
37       what requirements the applicant must meet for waiver of  
38       examination.

### 39       **§2190. Denial of license; suspension or revocation**

40       The department may suspend or revoke a license pursuant to  
41       Title 5, section 10004. In addition, the department may refuse  
42       to issue or renew or the Administrative Court may suspend, revoke  
43       or refuse to renew a license on any of the following grounds:  
44

2           1. Misstatement.   Deliberate misstatement in the  
application for original license or in the application for any  
4           renewal license under this subchapter;

6           2. Violation.   Violating any provision of this chapter or  
any rule of the department;

8  
10           3. Aiding or abetting.   Willfully aiding or abetting  
another in the violation of this subchapter or of any rule issued  
12           pursuant to this subchapter;

14           4. Unauthorized use of license.   Allowing one's license  
under this subchapter to be used by an unlicensed person;

16           5. Misrepresentation.   Making substantial misrepresentation  
or false promises of a character likely to influence, persuade or  
18           induce in connection with the business of an arborist;

20           6. False advertising.   Pursuing a continued course of  
misrepresentation or of making false promises through  
22           advertising, sales representatives, agents or otherwise in  
connection with the business of an arborist; or

24  
26           7. Qualifications.   Failure to possess the necessary  
qualifications or to meet the requirements of this subchapter for  
the issuance or holding of a license.

28           **Sec. 4.** 22 MRSA §1471-D, sub-§11, as enacted by PL 1975, c.  
30           397, §2, is amended to read:

32           **11. Arborists.** In the case of persons licensed under Title  
34           32 7, chapter 29 404, subchapter II, the board may waive the  
application fee and may consider the arborist license as prima  
36           facie evidence of qualification to use pesticides in the  
categories of use provided by Title 32 7, chapter 29 404.

38           **Sec. 5.** 32 MRSA c. 29, as amended, is repealed.

40           **Sec. 6. Rules enacted by Arborist Examining Board.** All rules  
enacted by the Arborist Examining Board that were in effect on  
42           January 1, 1999 are rules of the Department of Agriculture, Food  
and Rural Resources and may only be altered pursuant to the Maine  
44           Administrative Procedure Act.

## SUMMARY

46  
48  
50           This bill repeals the laws relating to the Arborist  
Examining Board and the laws that give the Department of

2 Professional and Financial Regulation the duty to license  
arborists. Laws similar to the current laws governing the  
licensing of arborists are enacted that give the Department of  
4 Agriculture, Food and Rural Resources the duty to license  
arborists.