

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 487

H.P. 385

House of Representatives, February 1, 2001

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**An Act to Allow the Agencies of the Department of Professional and Financial Regulation to Revoke Professional and Occupational Licenses.**

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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.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative LaVERDIERE of Wilton.  
Cosponsored by Senator SHOREY of Washington and  
Representatives: BOWLES of Sanford, CLOUGH of Scarborough, MENDROS of Lewiston,  
MICHAUD of Fort Kent, RICHARDSON of Brunswick.

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

**Sec. 1. 10 MRSA §8003, sub-§5**, as amended by PL 1999, c. 547, Pt. B, §78 and affected by §80 and amended by c. 687, Pt. C, §7, is further amended to read:

**5. Authority of bureaus, offices, boards or commissions.**

In addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law, each bureau, office, licensing board and commission within or affiliated with the department may take one or more of the following actions, except that this subsection does not apply to the Bureau of Banking.

A-1. For each violation of applicable laws, rules or conditions of licensure or registration, the bureau, office, board or commission may take one or more of the following actions:

(1) Issue warnings, censures or reprimands to a licensee or registrant. Each warning, censure and reprimand issued must be based upon violations of different applicable laws, rules or conditions of licensure or must be based upon separate instances of actionable conduct or activity;

(2) Suspend a license or registration for up to 90 days for each violation of applicable laws, rules and conditions of licensure or registration or for instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively ~~and, in total, may not exceed one year.~~ 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 or registrant's record;

(2-A) Revoke a license or registration;

(3) Impose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity; and

(4) Impose conditions of probation upon an applicant, licensee or registrant. Probation may run for such time period as the bureau, office, board or commission determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or

2 evaluations; mandatory professional or occupational  
3 supervision of the applicant, licensee or registrant;  
4 and other conditions as the bureau, office, board or  
5 commission determines appropriate. Costs incurred in  
6 the performance of terms of probation are borne by the  
7 applicant, licensee or registrant. Failure to comply  
8 with the conditions of probation is a ground for  
disciplinary action against a licensee or registrant.

10 B. The bureau, office, board or commission may execute a  
11 consent agreement that resolves a complaint or investigation  
12 without further proceedings. Consent agreements may be  
13 entered into only with the consent of: the applicant,  
14 licensee or registrant; the bureau, office, board or  
15 commission; and the Department of the Attorney General. Any  
16 remedy, penalty or fine that is otherwise available by law,  
17 even if only in the jurisdiction of the District Superior  
18 Court, may be achieved by consent agreement, including  
19 long-term suspension and permanent revocation of a  
20 professional or occupational license or registration. A  
21 consent agreement is not subject to review or appeal, and  
22 may be modified only by a writing executed by all parties to  
23 the original consent agreement. A consent agreement is  
24 enforceable by an action in Superior Court.

26 C. The bureau, office, board or commission may:

28 (1) Require all applicants for license or registration  
29 renewal to have responded under oath to all inquiries  
30 set forth on renewal forms;

32 (2) Require applicants for license or registration  
33 renewal to present proof of satisfactory completion of  
34 continuing professional or occupational education in  
35 accordance with each bureau's, office's, board's or  
36 commission's rules. Failure to comply with the  
37 continuing education rules may, in the bureau's,  
38 office's, board's or commission's discretion, result in  
39 a decision to deny license or registration renewal or  
40 may result in a decision to enter into a consent  
41 agreement and probation setting forth terms and  
42 conditions to correct the licensee's or registrant's  
43 failure to complete continuing education. Terms and  
44 conditions of a consent agreement may include requiring  
45 completion of increased hours of continuing education,  
46 civil penalties, suspension and other terms as the  
47 bureau, office, board, commission, the licensee or  
48 registrant and the Department of the Attorney General  
49 determine appropriate. Notwithstanding any contrary  
50 provision set forth in a bureau's, office's, board's or

2 commission's governing law, continuing education  
requirements may coincide with the license or  
4 registration renewal period;

6 (3) Refuse to renew a license or registration when the  
bureau, office, board or commission finds a licensee or  
8 registrant to be in noncompliance with a bureau,  
office, board or commission order or consent agreement;

10 (4) Allow licensees or registrants to hold inactive  
status licenses or registrations in accordance with  
12 each bureau's, office's, board's or commission's  
rules. The fee for an inactive license or registration  
14 may not exceed the statutory fee cap established for  
the bureau's, office's, board's or commission's license  
16 or registration renewal set forth in its governing law;  
or

18 (5) Delegate to staff the authority to review and  
20 approve applications for licensure pursuant to  
procedures and criteria established by rule. Rules  
22 developed pursuant to this subparagraph are routine  
technical rules as described in Title 5, chapter 375,  
24 subchapter II-A.

26 D. The bureau, office, board or commission may require  
surrender of licenses and registrations. In order for a  
28 licensee's or registrant's surrender of a license or  
registration to be effective, a surrender must first be  
30 accepted by vote of the bureau, office, board or  
commission. Bureaus, offices, boards and commissions may  
32 refuse to accept surrender of licenses and registrations if  
the licensee or registrant is under investigation or is the  
34 subject of a pending complaint or proceeding, unless a  
consent agreement is first entered into pursuant to this  
36 chapter.

38 E. The bureau, office, board or commission may issue  
letters of guidance or concern to a licensee or registrant.  
40 Letters of guidance or concern may be used to educate,  
reinforce knowledge regarding legal or professional  
42 obligations and express concern over action or inaction by  
the licensee or registrant that does not rise to the level  
44 of misconduct sufficient to merit disciplinary action. The  
issuance of a letter of guidance or concern is not a formal  
46 proceeding and does not constitute an adverse disciplinary  
action of any form. Notwithstanding any other provision of  
48 law, letters of guidance or concern are not confidential.  
The bureau, office, board or commission may place letters of  
50 guidance or concern, together with any underlying complaint,

2 report and investigation materials, in a licensee's or  
3 registrant's file for a specified amount of time, not to  
4 exceed 10 years. Any letters, complaints and materials  
5 placed on file may be accessed and considered by the bureau,  
6 office, board or commission in any subsequent action  
7 commenced against the licensee or registrant within the  
8 specified time frame. Complaints, reports and investigation  
9 materials placed on file are only confidential to the extent  
10 that confidentiality is required pursuant to Title 24,  
chapter 21, the Maine Health Security Act.

12 F. A bureau, office, board or commission may establish, by  
13 rule, procedures for licensees in another state to be  
14 licensed in this State by written agreement with another  
15 state, by entering into written licensing compacts with  
16 other states or by any other method of license recognition  
17 considered appropriate that ensures the health, safety and  
18 welfare of the public. Rules adopted pursuant to this  
19 paragraph are routine technical rules pursuant to Title 5,  
20 chapter 375, subchapter II-A.

22 The jurisdiction to suspend and revoke occupational and  
23 professional licenses conferred by this subsection is concurrent  
24 with that of the District Superior Court. Civil penalties must be  
25 paid to the Treasurer of State.

26 Any nonconsensual disciplinary action taken under authority of  
27 this subsection may be imposed only after a hearing conforming to  
28 the requirements of Title 5, chapter 375, subchapter IV, and is  
29 subject to judicial review exclusively in the District Superior  
30 Court in accordance with Title 5, chapter 375, subchapter VII,  
31 ~~substituting the term "District Court" for "Superior Court,"~~  
32 ~~notwithstanding any other provision of law.~~

## 36 SUMMARY

38 This bill authorizes the agencies and professional and  
39 occupational licensing boards within or affiliated with the  
40 Department of Professional and Financial Regulation to revoke  
41 licenses and registrations issued by the respective boards.

42 The bill also transfers concurrent jurisdiction over license  
43 revocations and suspensions from the District Court to the  
44 Superior Court and provides that any nonconsensual disciplinary  
45 action is subject to judicial review exclusively in the Superior  
46 Court.