MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

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.

ROBERT B. HUNT

R(+ 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 5	1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
6 7 8 9	A. "Agency" means the State, all units of State Government and all units of governmental entities established under the Constitution of Maine or laws of the State or established by any entity that was established by the Constitution of Maine or the laws of the State.
10 11 12 13 14	B. "Occupational rule" means any rule, regulation, policy, fee, condition, test, permit, administrative practice or other provision that allows an individual to use an occupational title or engage in an occupation, trade or profession or a cease and desist demand or other regulatory requirement that prevents an individual from using an occupational title or working in an occupation, trade or profession.
15 16 17	C. "Welfare" means the protection of a member of the public against fraud or harm, and does not include the protection of an existing public or private agency or business from competition.
18 19 20 21	2. Limitation of occupational rules. All occupational rules are limited to those demonstrated to be necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives and may not unnecessarily burden the entry into a profession, trade or occupation.
22 23 24	3. Review of occupational rules. By January 1, 2022, every agency shall conduct a comprehensive review of all occupational rules within that agency's jurisdiction, and for each occupational rule the agency shall:
25 26	A. Articulate with specificity the public health, safety or welfare objective served by the rule;
27	B. Articulate the reason why the rule is necessary to serve the specified objective;
28 29 30	C. Analyze, where information is readily available, the effects of the rule on opportunities for workers, consumer choices and costs, general employment, market competition, governmental costs and other similar effects; and
31 32	D. Compare the rule to whether and how other jurisdictions regulate the same business or profession.
33 34 35	4. Repeal of nonconforming occupational rules. Notwithstanding sections 8071 and 8072, after review under subsection 3 if the agency determines that an occupational rule 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 38 39	B. If repeal or modification of the rule is not within the agency's authority, recommend to the Legislature actions necessary to repeal or modify the rule to meet the standard in subsection 2.

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

40 41 5. Administrative proceedings. A person may petition any agency at any time to repeal or modify an occupational rule within the agency's jurisdiction that the person avers does not meet the standard in subsection 2. Within 90 days of a petition filed under this subsection, the agency shall either repeal the occupational rule, modify the occupational rule to meet the standard of subsection 2 or state the basis in which the agency determines the rule conforms to the standard in subsection 2.

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

14 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.