

Introduction to Professional Licensing

State Licensing Authority and the Role of Licensing Boards

Part I: Authority of the State to License Professions and Occupations

- US Constitution--promotion of public welfare is state responsibility
- Regulation of professions—carried out by states
- State purpose—protection of public is only legitimate purpose; backed by state police power
- State-issued license—creates a property right for the individual
- Property right—protected under due process laws of Constitution
- State legislatures pass laws to protect the public; states establish licensing programs to regulate professions; exclusive grant of authority by Legislature to licensing boards
- Licensing program (public interest) vs. professional/trade association (promotion of professional or business interests)
- Associations seek licensure for their members to:
 - Increase economic benefits to members
 - Provide members with enhanced status
 - Protect reputation of profession
 - Gain symbol of respectability
 - Serve as basis for reimbursement by third party payers in health settings

Part II: Professional and Occupational Licensing in Maine

A state occupational or professional **license** is a State's grant of legal authority to practice a profession or occupation within a designed "scope of practice." The Legislature sets the standards for the minimum qualifications needed to

practice in a specific profession. A license is required in order to practice or to call oneself a licensed professional and may only be issued by a state licensing board or program.

Under a licensure system, state legislatures define in licensing laws the tasks, functions and scope of practice of a profession and provide that these tasks may be legally performed only by those who are licensed. These licensing laws are implemented by **licensing boards** that are authorized by the Legislature to carry out the intent of the Legislature to protect its citizens from unethical or incompetent licensees.

Example-The majority of states, including Maine, require individuals to meet a set of minimum standards of competency to legally practice as an accountant. These minimum standards described in a licensing statute are important because members of the public may not have the knowledge or experience to determine whether someone calling themselves an accountant is actually qualified to provide those services. A license to practice accountancy is a signal to the public that the holder of the license has met minimum state standards.

Part III. Role of Licensing Boards

The general public may not have sufficient knowledge or experience to recognize when an accountant is not qualified to offer services, so a licensing board statute sets the minimum standards an applicant for an accountant license must meet in order to become licensed.

Here's the sequence—the Legislature determines when the public needs to be protected from harm in a particular field of knowledge. The state licensing board authorized by the legislature then implements the licensing law by adopting rules to explain the provisions of the statute. It is the role of a state licensing board to implement the licensing law enacted by the Legislature for the sole purpose of protecting the health, safety and welfare of the citizens of Maine from harm and for no other purpose.

Licensing boards act to protect the public in three ways:

- 1) By issuing licenses to applicants who have met minimum competency standards and qualifications set in statute;

- 2) By providing a complaint mechanism to allow members of the public to submit complaints against licensees and by imposing discipline, when warranted; and,
- 3) By adopting board rules to amplify the meaning and intent of licensing laws through the Maine Administrative Practice Act.

Licensing boards established by the Legislature have a narrow but important mission—to protect the public through the three mechanisms just discussed. If you look at a licensing board’s enabling statute, you will see that the role of the board is limited to those three areas. Their focus is on regulating their licensees so that the public is not harmed. Only licensing boards sitting as a panel have authority to issue licenses to those who qualify, adopt rules to explain the statute and act on complaints filed by consumers. The Legislature has granted these licensing boards exclusive jurisdiction over their licensees.

The role of a licensing board and its members may sometimes be misunderstood by the public. Licensing boards are not advocates for members of the public who file complaints. Their statutory responsibility in the handling of complaints against a licensee is to safeguard the licensee’s due process rights during in the complaint and disciplinary process. At all times, board members must make decisions in the public interest and not in the profession’s interests.

Finally, although the activities of licensing boards may look similar to the judicial system, it is not a substitute for the judicial system. Complainants and licensees who are dissatisfied with a licensing board’s decision in a particular matter may file a civil lawsuit in district or superior court in Maine.

Part IV: Purpose of State Licensing of Professions and Occupations and the Sunrise Review Act

Each session, proposals to establish new licensing programs or expand existing scopes of practice in existing regulated professions appear on the docket. Several years ago, when the number of new licensing proposals became overwhelming, the legislature established a statutory process to be used by committees in deciding whether a new professional licensing program was warranted. Today these proposals trigger the Sunrise Review Act (Title 5,

section 60-J.)

Sunrise review is a systematic review of proposed new or expanded regulation to assist the Maine Legislature to determine when state regulation is necessary to protect the health, safety, and welfare of the public. **An important consideration for the committee when reviewing a bill that proposes new regulation, is that the proponents of new or expanded regulation must be able to show direct evidence of harm to the public in the absence of licensing.**

Section 60-J requires a legislative committee to gather information and apply the evaluation criteria to the proposed system of regulation to determine whether the occupation or profession should be regulated, or whether current regulation should be expanded. The sunrise review process may be conducted by the committee in one of three ways: *All three mechanisms require that proponents of new or expanded regulation submit a detailed licensing proposal, not simply a request for a sunrise review study.*

1. The committee considering the proposed legislation may hold a **public hearing** to accept information addressing the statutory evaluation criteria submitted by the bill's proponents;
2. The committee may request the commissioner to conduct **an independent assessment** of the applicant's responses to the evaluation criteria and report those findings to the committee; or
3. The committee may request that the commissioner establish a **technical review committee** to assess the applicant's answers and report its finding to the commissioner.

This Committee may have a few legislative proposals this session that will trigger **sunrise review**. Some of these proposals have been considered in past sessions and others propose new regulation.

I would like the Committee to know that in the past, I have personally undertaken the research and writing of these Sunrise Reviews. While I am proud of the work I have done, I must share with the committee that it is a tremendously time-consuming process that is beyond the staffing of our Department. If the committee would like to initiate any Sunrise Reviews, I respectfully request that the

committee include funding to hire consultants to support the research, similar to how the Bureau of Insurance hires consultants for their mandated benefit studies.

I've attached a summary document outlining the Sunrise Review Process to this document.

I'd be happy to answer any questions the Committee may have.

Prepared for IDEAB Committee

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Summary of Maine Sunrise Process (5 MRS §12015; 32 MRS § 60-J)

Maine law requires that any joint standing committee that considers proposed legislation "to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated."

Purpose of State Regulation of Professions and Occupations

The sole valid reason for a state to regulate a profession or occupation through licensing is to protect the state's citizens whose health and safety is clearly jeopardized in the absence of regulation. If harm to the public cannot be clearly demonstrated, then state licensing is not warranted.

Purpose of Sunrise Review

In the early 1990's, many legislative proposals to establish new licensing programs were submitted to the Maine Legislature. As a result of the significant time and resources needed to evaluate these proposals, the predecessor committee of this Committee determined that it needed to standardize the process of evaluating these proposals. The Sunrise Review Process was adopted by the Maine Legislature in 1995 to provide a mechanism to gather and analyze pertinent information that the Committee would need to make an informed decision about whether to regulate a particular group of individuals or entities.

Evaluation of Proposals to establish new licensing programs

Maine law requires that proponents of new state regulation provide information in thirteen categories. These categories are set forth in 32 MRS §60-J as follows:

1. Data on Group to be regulated
2. Specialized skill required to practice the profession
3. Demonstrated harm to the public without regulation
4. Voluntary and Past efforts of profession to protect the public (self-regulation)
5. Economic Cost/Benefit Analysis - extent to which regulation will increase cost of goods or services to the public
6. Service Availability—whether regulation would increase or decrease

- availability of service to the public
7. Existing laws and rules—why existing legal remedies are not sufficient to address potential harm to the public
 8. Other less burdensome methods of regulation
 9. Other states' regulation
 10. Previous efforts to implement regulation of the profession or occupation
 11. Mandated benefits
 12. Minimum competence—whether the proposed requirements for regulation exceed minimal competence
 13. Financial Analysis—method proposed to finance proposed regulation

Mechanism for Sunrise Review

The Committee has three options when the Sunrise Review provisions are triggered by a legislative proposal:

- Hold a public hearing to accept information required by 32 MRS § 60-J and allow testimony for and against the proposal;
- Request DPFR to conduct an independent assessment of the need for regulation and report back to the Committee with a recommendation by a specific date; or
- Request DPFR to form a technical committee to assess the applicant's information and report back to the Committee within 6 months of establishment of the technical committee

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