

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 958

H. P. 788

House of Representatives, March 6, 1975

Referred to Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Curran of South Portland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT to Amend the Eating, Lodging and Recreational  
Place Licensing Law.

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

Sec. 1. 22 MRSA c. 561, as amended, is repealed.

Sec. 2. 22 MRSA c. 562 is enacted to read:

CHAPTER 562

CAMPING AREAS AND EATING ESTABLISHMENTS

§ 2491. Definitions

As used in this chapter, unless the context otherwise indicates the following words shall have the following meanings.

1. Camping area. "Camping area" means, in addition to the general accepted interpretations, filling stations, seashore resorts, lakeshore places, picnic and lunch grounds or other premises where trailers, tents, auto homes or house cars are permitted to be parked for compensation either directly or indirectly.

2. Catering establishments. "Catering establishments" means any kitchen, commissary or similar place in which food or drink is prepared for sale or service elsewhere or for service on the premises during special catered events.

3. Commissioner. "Commissioner" means the Commissioner of Health and Welfare.

4. Cottage. "Cottage" means a single structure where sleeping accommodations are furnished to the public as a business for a day, week or month, but not for more than the entire summer season.

5. Department. "Department" means the Department of Health and Welfare.

6. Eating and lodging places or lodging place. "Eating and lodging place or lodging place" means every building or structure or any part thereof kept, used as, maintained as, advertised as or held out to the public to be a place where eating and sleeping or sleeping accommodations are furnished to the public as a business, such as hotels, motels, guest homes and cottages.

7. Eating establishment. "Eating establishment" means any place where food or drink is prepared and served, or served to the public for consumption on the premises, or catering establishments, or establishments preparing foods for vending machines dispensing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, mobile eating places, coffee shops, cafeterias, shortorder cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, roadside stands, industrial feeding establishments, private or public institutions routinely serving foods, stores, airports, parks, theaters, vacation camps or any other catering or nonalcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for vending machines dispensing food other than in original sealed packages.

8. Mobile eating place. "Mobile eating place" means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.

9. Mobile home. "Mobile home" means a transportable, single-family trailer unit suitable for year-round occupancy and containing the same water supply, waste disposal and electrical conveniences as immobile housing.

10. Mobile home park. "Mobile home park" means a parcel of land which has been planned and improved for the placement of mobile homes for non-transient use.

11. Recreational camp. "Recreational camp" means and includes day camps, boys' and girls', family, hunting, fishing and similar camps.

12. Sanitarian. "Sanitarian" means a person whose education and experience in the biological and sanitary sciences qualify him to engage in the promotion and protection of the public health. He applies technical knowledge to solve problems of a sanitary nature and develops methods and carries out procedures for the control of those factors of man's environment which affect his health, safety and well-being.

13. Vending machine establishment. "Vending machine establishment" means any establishment preparing foods for vending machines dispensing foods other than in original sealed packages.

### § 2492. License required

No person, corporation, firm or copartnership shall conduct, control, manage or operate, for compensation, directly or indirectly, any eating establishment, eating and lodging place, lodging place, recreational camp, camping area or mobile home park, unless the same shall be licensed by the department. Licenses issued must be displayed in a place readily visible to customers or other persons using a licensed establishment.

### § 2493. Applicant

Any person, corporation, firm or copartnership desiring a license shall submit satisfactory evidence of his, her or its ability to comply with the minimum standards of this chapter and all regulations adopted thereunder.

### § 2494. Fees

Each application for, or for renewal of, a license to operate an eating establishment, eating and lodging place, lodging place, recreational camp, camping area or mobile home park within the meaning of this chapter shall be accompanied by a fee determined by the department and not to exceed \$30. No such fee shall be refunded. All fees received by the department under this chapter shall be paid into the State Treasury to the credit of the General Fund. No license shall be assignable or transferable.

All such fees are for the license and the initial licensure inspection and one follow-up inspection. When additional inspections are required to determine an applicant's eligibility for licensure, the department is authorized to levy an additional \$10 fee to cover the costs of each additional inspection or visit. Funds collected in such manner shall be credited to the General Fund. Failure to pay such charges within 90 days of the billing date shall constitute grounds for revocation of said license, unless an extension for a period not to exceed 90 days is granted in writing by the commissioner.

### § 2495. Issuance of licenses

The department is authorized to issue licenses to operate eating establishments, eating and lodging places, lodging places, recreational camps, camping areas and mobile home parks which, after inspection, are found to comply with this chapter and any rules and regulations adopted by said department. When any such applicant, upon inspection by the department, shall be found to not meet all requirements of this chapter or departmental regulations thereunder, then the department is authorized to issue either a temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department shall be made by said applicant for compliance with this chapter and departmental regulations thereunder, or a conditional license setting forth conditions which must be met by the applicant to the satisfaction of the department.

A full-year license shall be issued for one year from date of issuance and the prescribed fee shall accompany the application for license. Licenses may be renewed upon application therefor and payment of the annual fee, subject to the department's rules and regulations. Licenses erroneously issued by the department will be considered void and shall be returned to the department on demand.

The department shall, during the 2 year period following the effective date of this Act, redistribute the expiration dates of the existing licenses so that an equal number expire in each month of the year thus allowing for distributing the work of relicensure evenly throughout the year.

The department shall notify license holders no less than 30 days prior to the expiration of their license and provide them with any necessary relicensure forms.

#### § 2496. Rules and regulations

The department is authorized and empowered to make and enforce all necessary rules and regulations for the administration of this chapter, and may rescind or modify such rules and regulations from time to time as may be in the public interest, insofar as such action is not in conflict with any of the provisions of this chapter.

#### § 2497. Right of entry and inspection

The department and any duly designated officer or employee thereof shall have the right to enter upon and into the premises of any establishment licensed pursuant to this chapter at any reasonable time in order to determine the state of compliance with this chapter and any rules and regulations in force pursuant thereto. Such right of entry and inspection shall extend to any premises which the department has reason to believe is being operated or maintained without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a complaint is first obtained from the District Court.

#### § 2498. Penalties

Any person, corporation, firm or copartnership who shall operate any eating establishment, eating and lodging place, lodging place, recreational camp, camping area or mobile home park without first obtaining a license as required by this chapter shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$100, and upon 2nd or subsequent conviction, shall be punished by a fine of not less than \$100. Each day any such person, corporation, firm or copartnership operates without obtaining a license shall constitute a separate offense. In the event of any violation of this section or any rule or regulation hereunder, the Attorney General may seek to enjoin further violation thereof, in addition to any other remedy.

#### § 2499. Municipal inspections

Notwithstanding any other provisions of this chapter, the department may issue a license to establishments as defined in section 2491 on the basis of an inspection performed by an inspector who works for and is compensated by the municipality in which such establishment is located, but only if the following conditions have been met.

1. Adopted rules, regulations; code of standards. The municipality involved has adopted a set of rules and regulations, ordinances or other code of standards for such establishments which has been approved by the depart-

ment and which is no less strict than the regulations used by the department for the issuance of such licenses in effect at the time of inspection.

2. Qualified to make inspections. No municipal employed sanitarians shall make inspections under the provisions of this chapter unless certified as qualified by the Commissioner of Health and Welfare.

3. Inspection to ascertain intent. The department may from time to time inspect such municipally inspected establishments to ascertain that the intent of these statutes is being followed.

4. Inspection reports. The municipalities shall furnish the department copies of its inspection reports relating to said inspections on a monthly basis.

5. Charge. Municipalities may not charge the department for performing such inspections.

6. License fee. When a license is issued on the basis of a municipal inspection as specified in this section, the requirement for payment of a license fee to the department as set forth in section 2494 shall be waived. However, the licensee shall be required to pay the department a sum not to exceed \$5 to support the costs of mailing and handling. Such payments shall be credited to the General Fund.

7. Licenses. Licenses issued under section 2499 must be displayed, renewed and in every other way treated the same as licenses issued under this chapter on the basis of inspection by the department.

8. Certification. Certification of municipally employed sanitarians shall be in accordance with standards set by the commissioner and shall be for a period of 3 years.

#### § 2500. Suspension or revocation; appeals

When the department believes a license should be suspended or revoked, it shall file a statement or complaint with the Administrative Court Judge designated in Title 5, chapters 301 to 307. A person aggrieved by the refusal of the department to issue a license may file a statement or complaint with the Administrative Court Judge.

#### § 2501. Exceptions

Private homes shall not be deemed or considered lodging places and subject to a license where not more than 2 rooms are let to other than transient guests, unless they hold themselves in any way ready to accept or do accept transient guests. A license shall not be required from dormitories of charitable, educational or philanthropic institutions, nor from private homes used in emergencies for the accommodation of persons attending conventions, fairs or similar public gatherings, nor from temporary eating and lodging places for the same, nor from railroad dining or buffet cars, nor from construction camps, nor from boarding houses and camps conducted in connection with wood cutting and logging operations, nor from any boarding homes for the aged, blind or other persons over 16 years of age which are licensed under section 5, nor from any homes which board children exclusively and which are licensed under section 3797.

Cottages shall not be deemed or considered lodging places and subject to a license where not more than 2 cottages are let to other than transient guests, unless they hold themselves in any way as ready to accept or do accept transient guests.

Stores or other establishments, where bottled soft drinks or ice cream is sold for consumption from the original containers only, and where no tables, chairs, glasses or other utensils are provided in connection with such sale, shall not be considered eating places within the meaning of this section. At such establishments, straws or spoons may be provided to aid in the consumption of such bottled soft drinks or ice cream, provided they shall be supplied in original individual single service sterile packages.

Nonprofit organizations including, but not limited to, 4-H Clubs, scouts and argicultural societies shall be exempt from department rules and regulations relating to dispensing foods and nonalcoholic beverages at not more than 12 public events or meals within one calendar year.

**Sec. 3. Appropriation.** There is appropriated from the General Fund to the Department of Health and Welfare the sum of \$148,500 to carry out the purposes of this Act. The breakdown shall be as follows:

		1975-76
HEALTH AND WELFARE, DEPARTMENT OF		
Health Engineering		
Personal Services	(13)	\$ 98,500
All Other		50,000
		\$148 500

#### STATEMENT OF FACT

The intent of this Act is reflected in the following comments by sections.

1. The existing legislation goes back to 1933 and has been modified and amended through the years. This Act attempts to clear up the legislation and correct some of the administrative problems.

2. § 2491. Definition

This section attempts to clearly define the types of establishments the department presently licenses. There is presently some confusion as to whether the department should continue to license mobile home parks, since the occupants are not transients.

3. § 2492. License requirements

This section attempts to consolidate some of the wording presently in the existing statutes in sections 2482 and 2484.

4. § 2493. Applicant  
Self-explanatory

5. § 2494. Fees

This section increases the maximum license fee from \$15 to \$30.

The department is currently charging a licensing fee of \$15 for most establishments with no provisions for size or complexity. This increase became necessary because of the increased cost of doing business since the last legislative revision in the maximum fee in 1963.

This \$30 maximum would allow the department to establish a graduated fee schedule as recommended by the Cost Management Survey (Rec. No. 33), Department of Health and Welfare.

This section also transfers the license moneys to the General Fund as recommended by the Cost Management Survey (Rec. No. 29), Department of Health and Welfare. The income in this account in FY 1974 (\$15 Maximum Fee) was \$119,611. The accumulated balance as of September 30, 1974 was \$65,725.

6. § 2495. Issuance of licenses

This section gives the department authorization to issue temporary or conditional licenses or both.

The department has not had this authority in the past and it has resulted in some inconvenience and hardship.

This section also eliminates the present mandatory January 1st to December 31st licensing period and allows the department more flexibility in its licensing program, particularly since 45% of the establishments are seasonal type installations.

7. § 2496. Rules and regulations  
Self-explanatory

Title 5 requires that before these regulations are adopted or altered, that notice be given and public hearings be conducted in conformance with the Administrative Code.

8. § 2497. Right of entry and inspection  
Self-explanatory

9. § 2498. Penalties

The proposed penalties are much tougher than those in the existing law, section 2487, because of the continuing problem the department has with establishments which pay the fine and operate, up to 3 years, without a license, much to the consternation of the other establishments in the area which are conforming to the regulations.

10. § 2499.



Presently, approximately  $\frac{1}{8}$ th of the establishments in the State are being inspected by the State and by a municipal inspector. This section permits the department to issue licenses based on inspection performed by municipal inspectors, provided a number of conditions are met. The conditions set forth in this section should assure standardized and uniform inspections.

11. § 2500. Suspension or revocation appeals

Identical to the existing statutes, section 2486.

12. § 2501. Exceptions

Identical to the existing statutes, section 2486.

13. Appropriation.

Since the license fees are being transferred to the General Fund it is necessary that an appropriation be made to carry out the purpose of the Act.