

# MAINE STATE LEGISLATURE

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*R.S.*

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HEALTH AND HUMAN SERVICES

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STATE OF MAINE

SENATE

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 165, L.D. 462, Bill, "An Act To Amend the Retail Tobacco and Liquor Licensing Laws"

Amend the bill by striking out all of section 5 (page 2, lines 8 to 40 in L.D.) and inserting the following:

'Sec. 5. 22 MRSA §1558, sub-§2, as enacted by PL 1995, c. 470, §9 and affected by §19 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

2. Notice and hearing. Except as provided under subsection 7, upon receipt of a signed complaint prepared under subsection 1, paragraph A, ~~the District Court shall notify the licensee and hold a hearing~~ notice must be provided and a hearing must be held according to the following procedures.

A. ~~The District Court commissioner or the commissioner's designee shall notify the licensee or the licensee's agent or employee by serving the licensee or the licensee's agent or employee with a copy of the complaint and a notice that states the time and place of the hearing and that the licensee or the licensee's agent or employee may appear in person or be represented by counsel at the hearing. Service of the complaint and hearing notice upon the licensee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the licensee at the time of application for a license. Service of the complaint and hearing notice upon a licensee's agent or employee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the agent or employee at the time the agent or employee was initially notified by the department of the violation. The commissioner or the commissioner's designee shall file proof of service with the District Court.~~

B. The District Court shall conduct a hearing limited to the facts, laws and rules specified in the complaint.

C. The District Court shall conduct the hearing in the following manner.

COMMITTEE AMENDMENT

1           (1) The District Court may subpoena and examine witnesses, administer oaths  
2           and subpoena and administer oaths to witnesses and issue subpoenas at the  
3           request of any party, including subpoenas to compel the attendance of parents  
4           and legal guardians of unemancipated minors.

5           (a) The department shall pay to the witnesses the legal fees for travel and  
6           attendance, except that, notwithstanding Title 16, section 253, the department  
7           is not required to pay the fees before the travel and attendance occur.

8           (2) Hearsay testimony is not admissible during the hearing. The licensees,  
9           agents or employees named in the complaint have the right to have all witnesses  
10          testify in person at the hearing.

11          (3) The District Court shall state in writing the findings and render a decision in  
12          each case based on the facts, laws and rules cited in the complaint. The findings  
13          must specify the facts found and the laws or rules violated.'

14          Amend the bill by striking out all of section 7 (page 3, lines 15 to 40 and page 4, lines  
15          1 to 9 in L.D.) and inserting the following:

16          '**Sec. 7. 28-A MRSA §803, sub-§2**, as amended by PL 1997, c. 373, §77 and PL  
17          1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

18          **2. Notice and hearing.** Except as provided under subsection 6, upon receipt of a  
19          signed complaint prepared under subsection 1, paragraph A, ~~the District Court Judge shall~~  
20          ~~notify the licensee and hold a hearing~~ notice must be provided and a hearing must be held  
21          according to the following procedures.

22          A. ~~The District Court Judge~~ commissioner or the commissioner's designee shall  
23          notify the licensee or the licensee's agent or employee by serving on the licensee or  
24          the licensee's agent or employee a copy of the complaint and a notice stating the time  
25          and place of the hearing and that the licensee or the licensee's agent or employee may  
26          appear in person or by counsel at the hearing. Service of the complaint and hearing  
27          notice upon the licensee is sufficient if when served in hand by the commissioner's  
28          designee or when sent by registered or certified mail at least 7 days before the date of  
29          the hearing to the address given by the licensee at the time of the licensee's  
30          application for a license. Service of the complaint and hearing notice upon a  
31          licensee's agent or employee is sufficient when served in hand by the commissioner's  
32          designee or when sent by registered or certified mail at least 7 days before the date of  
33          the hearing to the address given by the agent or employee at the time the agent or  
34          employee was initially notified by the bureau of the violation. The commissioner or  
35          the commissioner's designee shall file proof of service with the District Court.

36          B. The District Court Judge shall conduct a hearing limited to the facts, the law and  
37          rules of the bureau, as specified in the complaint.

38          C. The District Court Judge shall conduct the hearing in the following manner.

39          (1) The District Court Judge may subpoena and examine witnesses, administer  
40          oaths and subpoena and administer oaths to witnesses and issue subpoenas at the  
41          request of any party, including subpoenas to compel the attendance of parents  
42          and legal guardians of unemancipated minors.

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(a) The bureau shall pay to the witnesses the legal fees for travel and attendance, except that, notwithstanding Title 16, section 253, the bureau is not required to pay the fees before the travel and attendance occur.

(2) Hearsay testimony is not admissible during the hearing. The licensees, agents or employees named in the complaint have the right to have all witnesses testify in person at the hearing.

(3) The District Court Judge shall conduct hearings in one or more designated places that are the most convenient and economical for all parties concerned in the hearing.

D. The District Court Judge shall ~~state in writing the findings and~~ render a decision in each case, based upon the facts, the law and the rules of the bureau. The findings must specify the facts found and the law or rules found to be violated.

**SUMMARY**

This amendment provides consistent notice and hearing procedures for the District Court to follow when retail tobacco licensees and liquor licensees or their agents and employees are charged with administrative violations.

**FISCAL NOTE REQUIRED**  
**(See attached)**



# 124th MAINE LEGISLATURE

LD 462

LR 498(02)

An Act To Amend the Retail Tobacco and Liquor Licensing Laws

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

## Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
<b>Net Cost (Savings)</b>				
General Fund	(\$167,493)	\$0	\$0	\$0
<b>Revenue</b>				
General Fund	\$167,493	\$0	\$0	\$0

### Fiscal Detail and Notes

The bill's change to the term of tobacco licenses from the current start date of July 30th to April 1st would result in the collection of two years of annual license fees in fiscal year 2009-10. The fiscal note reflects the one-time impact of an additional year of license fees collected in 2009-10.