

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 674

H.P. 504

House of Representatives, February 17, 2011

**An Act To Authorize the Department of Health and Human Services  
To Administratively Suspend or Revoke Facility Licenses**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative EVES of North Berwick.

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

2 **Sec. 1. 5 MRSA §10051, sub-§1**, as amended by PL 2005, c. 65, Pt. C, §3, is  
3 further amended to read:

4 **1. Jurisdiction.** Except as provided in section 10004; Title 8, section 279-B; Title  
5 10, section 8003; Title 20-A, sections 10712 and 10713; Title 22, section 7802; Title  
6 29-A; ~~and~~ Title 32, chapters 2-B, 114 and 135; and Title 34-B, chapter 1, the District  
7 Court has exclusive jurisdiction upon complaint of any agency or, if the licensing agency  
8 fails or refuses to act within a reasonable time, upon complaint of the Attorney General to  
9 revoke or suspend licenses issued by the agency and has original jurisdiction upon  
10 complaint of an agency to determine whether renewal or reissuance of a license of that  
11 agency may be refused.

12 **Sec. 2. 22 MRSA §7802, sub-§3**, as amended by PL 1999, c. 547, Pt. B, §§42  
13 and 78 and affected by §80, is further amended to read:

14 **3. Failure to comply with applicable laws and rules.** In taking action pursuant to  
15 this subsection, the department shall notify the licensee of the opportunity to request an  
16 administrative hearing or shall file a complaint with the District Court in accordance with  
17 the Maine Administrative Procedure Act, Title 5, chapter 375.

18 A. When an applicant fails to comply with applicable law and rules, the department  
19 may refuse to issue or renew the license or approval.

20 B. If, at the expiration of a full or provisional license or approval, at the expiration  
21 of a temporary family foster home license or during the term of a full license or  
22 approval, the facility fails to comply with applicable law and rules and, in the  
23 judgment of the commissioner, the best interest of the public would be served, the  
24 department may issue a conditional license or approval, or change a full license or  
25 approval to a conditional license or approval. Failure by the conditional licensee to  
26 meet the conditions specified by the department shall permit the department to void  
27 the conditional license or approval or refuse to issue a full license or approval. The  
28 conditional license or approval ~~shall be~~ is void when the department has delivered in  
29 hand or by certified mail a written notice to the licensee or, if the licensee cannot be  
30 reached for service in hand or by certified mail, has left written notice ~~thereof that the~~  
31 conditional license or approval is void at the agency or facility. For the purposes of  
32 this subsection, the term "licensee" means the person, firm, corporation or association  
33 to whom a conditional license or approval has been issued.

34 C. Whenever, upon investigation, conditions are found ~~which that~~, in the opinion of  
35 the department, immediately endanger the health or safety of persons living in or  
36 attending a facility, the department may request the District Court for an emergency  
37 suspension pursuant to Title 4, section 184, subsection 6.

38 D. Any license or approval issued under this subtitle may be suspended or revoked  
39 for violation of applicable law and rules, committing, permitting, aiding or abetting  
40 any illegal practices in the operation of the facility or conduct or practices detrimental  
41 to the welfare of persons living in or attending the facility.

1 When the department believes that a license or approval should be suspended or  
2 revoked, ~~it shall~~ the department may suspend or revoke the license or approval after  
3 notice and opportunity for hearing is given to the licensee or the department may file  
4 a complaint with the District Court as provided in the Maine Administrative  
5 Procedure Act, Title 5, chapter 375.

6 **Sec. 3. 34-B MRSA §1203-A, sub-§1, ¶C**, as amended by PL 1999, c. 547, Pt.  
7 B, §78 and affected by §80, is further amended to read:

8 C. When a full licensee fails to comply with applicable laws and rules, the  
9 commissioner may:

10 (1) ~~File~~ Suspend or revoke the license after notice and opportunity for hearing is  
11 given to the licensee or the commissioner may file a complaint with the District  
12 Court to have the license revoked, or suspended in accordance with the Maine  
13 Administrative Procedure Act, Title 5, chapter 375, section 10051; or

14 (2) Modify the full license to a conditional license in accordance with subsection  
15 2.

16 **Sec. 4. 34-B MRSA §1203-A, sub-§2, ¶F**, as enacted by PL 1989, c. 227, §1, is  
17 amended to read:

18 F. If the conditional licensee fails to comply with conditions imposed by the  
19 commissioner, the commissioner may ~~initiate proceedings to revoke, suspend or~~  
20 ~~refuse to renew the conditional license~~ suspend or revoke the conditional license after  
21 notice and opportunity for hearing is given to the licensee or file a complaint with the  
22 District Court to have the conditional license revoked or suspended, in accordance  
23 with the Maine Administrative Procedure Act, Title 5, chapter 375, section 10051.

## 24 SUMMARY

25 This bill authorizes the Department of Health and Human Services to  
26 administratively suspend or revoke a license, after notice and opportunity for a hearing is  
27 given to a licensee, when the licensee fails to comply with applicable licensing laws and  
28 rules.

29 This bill does not apply to emergency suspensions and revocations of a license for  
30 which the department seeks a court order.

31 This bill retains the statutory alternative that allows the department, at its discretion,  
32 to initiate court action to suspend or revoke a license when a licensee fails to comply with  
33 applicable licensing laws and rules.

34 This bill applies to licenses for residential care facilities, assisted housing programs,  
35 drug treatment and mental health centers, children's residential treatment, child placing  
36 agencies, child care facilities, family child care, nursery schools, adult day care programs,  
37 residential mental health and substance abuse treatment facilities and children's homes,  
38 which includes family and specialized foster homes and shelters.