

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1177

H.P. 875

House of Representatives, March 17, 2011

An Act To Make Minor Changes to Municipal Health Inspection Activities

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 SANBORN of Gorham.
Cosponsored by Senator BRANNIGAN of Cumberland and
Representatives: EVES of North Berwick, ROCHELO of Biddeford, WELSH of Rockport.

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

2 **PART A**

3 **Sec. A-1. 22 MRSA §2491, sub-§1**, as amended by PL 1979, c. 30, §1, is further
4 amended to read:

5 **1. Campground.** "~~Camping area~~ Campground" means, in addition to the ~~general~~
6 ~~generally~~ accepted interpretations definitions, camping areas, recreational vehicle parks,
7 seashore resorts, lakeshore places, picnic and lunch grounds or other premises where tents
8 ~~or recreational vehicles, rental cabins and cottages are permitted to be parked on 5 or~~
9 more sites for compensation either directly or indirectly. "Campground" includes, but is
10 not limited to, sites intended for recreational purposes rather than permanent residency.
11 "Campground" does not include parking lots used only for emergency stops of less than
12 12 hours or areas where camping is not authorized.

13 **Sec. A-2. 22 MRSA §2491, sub-§4**, as enacted by PL 1975, c. 496, §3, is
14 amended to read:

15 **4. Cottage.** "Cottage" means a single structure where sleeping accommodations are
16 furnished to the public as a business for a day, week or month, but not for ~~more~~ longer
17 than the an entire summer season, for temporary occupancy for recreational purposes
18 only and not for permanent residency.

19 **Sec. A-3. 22 MRSA §2491, sub-§6**, as enacted by PL 1975, c. 496, §3, is
20 repealed.

21 **Sec. A-4. 22 MRSA §2491, sub-§7**, as amended by PL 2009, c. 211, Pt. A, §1, is
22 further amended to read:

23 **7. Eating establishment.** "Eating establishment" means any place where food or
24 drink is prepared and served, or served to the public for consumption on the premises, or
25 catering establishments, or establishments dispensing food from vending machines, or
26 establishments preparing foods for vending machines dispensing foods other than in
27 original sealed packages, such as hotels, motels, boarding homes, restaurants, take-out
28 restaurants, mobile eating places, coffee shops, cafeterias, short order cafes,
29 luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges,
30 night clubs, roadside stands, industrial feeding establishments, private or public
31 institutions routinely serving foods, retail frozen dairy product establishments, airports,
32 parks, theaters, recreational camps, youth camps or any other catering or nonalcoholic
33 drinking establishments or operations where food is prepared and served or served for
34 consumption on the premises, or catering establishments where food is prepared, or
35 where foods are prepared for vending machines dispensing food other than in original
36 sealed packages.

37 **Sec. A-5. 22 MRSA §2491, sub-§7-E** is enacted to read:

38 **7-E. Health inspector.** "Health inspector" means a person whose education and
39 experience in the biological and sanitary sciences qualify that person to engage in the

1 promotion and protection of the public health and who applies technical knowledge to
2 solve problems of a sanitary nature and develops methods and carries out procedures for
3 the control of those factors of the environment that affect the health, safety and
4 well-being of others.

5 **Sec. A-6. 22 MRSA §2491, sub-§7-F** is enacted to read:

6 **7-F. Lodging place.** "Lodging place" means a building or structure, or any part of a
7 building or structure, used, maintained, advertised or held out to the public as a place
8 where sleeping accommodations are furnished to the public for business purposes.
9 "Lodging place" includes, but is not limited to, hotels, motels, guest homes and cottages
10 where the owner maintains the sleeping accommodations. "Lodging place" does not
11 include permanent residences, rooming houses, tenancies at will or rental properties with
12 tenant and landlord relationships.

13 **Sec. A-7. 22 MRSA §2491, sub-§10-A** is enacted to read:

14 **10-A. Public pool.** "Public pool" means any constructed or prefabricated pool other
15 than a residential pool or medical facility pool that is intended to be used for swimming,
16 recreational bathing or wading and is operated by an owner, lessee, tenant or
17 concessionaire or by a person licensed by the department whether or not a fee is charged
18 for use. "Public pool" includes a pool on the premises of a child care facility that is
19 licensed or required to be licensed under section 8301-A.

20 **Sec. A-8. 22 MRSA §2491, sub-§10-B** is enacted to read:

21 **10-B. Public spa.** "Public spa" means any constructed spa other than a residential
22 spa or medical facility spa.

23 **Sec. A-9. 22 MRSA §2491, sub-§11,** as amended by PL 2009, c. 211, Pt. A, §2,
24 is repealed and the following enacted in its place:

25 **11. Recreational camp or sporting camp.** "Recreational camp" or "sporting camp"
26 means a building or group of buildings devoted primarily to the offering of primitive
27 lodging for a fee to persons who want primitive recreation, snowmobiling, hunting,
28 fishing and similar camps, not including summer sports programs overseen by employees
29 or volunteers of municipalities and educational institutions when the activities generally
30 take place at municipal or institutional properties and buildings.

31 **Sec. A-10. 22 MRSA §2491, sub-§12,** as enacted by PL 1975, c. 496, §3, is
32 repealed.

33 **Sec. A-11. 22 MRSA §2491, sub-§13,** as enacted by PL 1975, c. 496, §3, is
34 repealed.

35 **Sec. A-12. 22 MRSA §2491, sub-§14,** as enacted by PL 1975, c. 496, §3, is
36 amended to read:

1 **14. Vending machine.** "Vending machine" ~~shall mean~~ means any self-service
2 device offered for public use ~~which that,~~ upon insertion of ~~a coin, coins or token~~ money
3 or by other similar means, dispenses unit servings of food other than in original sealed
4 packages without the necessity of replenishing the device between vending operations.

5 **Sec. A-13. 22 MRSA §2491, sub-§16,** as enacted by PL 2009, c. 211, Pt. A, §3,
6 is amended to read:

7 **16. Youth camp.** "Youth camp" means a combination of program and facilities
8 established for the primary purpose of providing an outdoor group living experience for
9 children with social, recreational, spiritual and educational objectives and operated and
10 used for 5 or more consecutive days during one or more seasons of the year. "Youth
11 camp" includes day camps, residential camps and trip and travel camps. "Youth camp"
12 does not include summer sports programs overseen by employees or volunteers of
13 municipalities and educational institutions when the activities generally take place at
14 municipal or institutional properties and buildings.

15 **Sec. A-14. 22 MRSA §2492, sub-§1,** as amended by PL 2009, c. 211, Pt. A, §§4
16 to 6, is further amended to read:

17 **1. License required.** A person, corporation, firm or copartnership may not conduct,
18 control, manage or operate the following establishments for compensation, directly or
19 indirectly, without a license issued by the department:

- 20 A. An eating establishment;
- 21 ~~B. An eating and lodging place;~~
- 22 C. A lodging place;
- 23 D. A recreational camp or sporting camp;
- 24 E. A ~~camping area~~ campground; ~~or~~
- 25 F. A youth camp;
- 26 G. A public pool; or
- 27 H. A public spa.

28 Licenses issued must be displayed in a place readily visible to customers or other persons
29 using a licensed establishment.

30 **Sec. A-15. 22 MRSA §2492, sub-§3,** as enacted by PL 2003, c. 452, Pt. K, §20
31 and affected by Pt. X, §2, is amended to read:

32 **3. Campground; presumption.** If a ~~camping area~~ campground consists of 5 or
33 more tents or recreational vehicles on a commercial lot, it is presumed that the owner or
34 renter of the lot is receiving compensation for the use of a ~~camping area~~ campground. The
35 owner or renter may rebut the presumption if the owner or renter presents a
36 preponderance of evidence to the contrary.

1 **Sec. A-16. 22 MRSA §2499, sub-§4**, as enacted by PL 1975, c. 496, §3, is
2 amended to read:

3 **4. Inspection reports.** The municipalities shall furnish ~~the department~~ electronic
4 copies of its inspection reports ~~relating to said inspections on a monthly basis~~ in a format
5 and on a schedule determined by the department.

6 **Sec. A-17. 22 MRSA §2499, sub-§6**, as amended by PL 2003, c. 673, Pt. X, §4,
7 is further amended to read:

8 **6. License fee.** When a license is issued to an ~~eating~~ eating establishment, as described in
9 section 2492, subsection 1, located in a municipality to which authority to conduct
10 inspection has been delegated by the department as specified in this section, the
11 requirement for payment of a license fee by the establishment to the department as set
12 forth in section 2494 must be waived. However, the licensee is required to pay the
13 department a sum not to exceed \$60 to support the costs of mailing and handling.

14 **Sec. A-18. 22 MRSA §2499, sub-§9**, as enacted by PL 2003, c. 673, Pt. X, §6, is
15 amended to read:

16 **9. Delegation renewal.** Beginning January 1, 2005, and every 3 years thereafter, the
17 department shall review the ~~restaurant~~ inspection program of the municipalities to which
18 authority to conduct inspections has been delegated. The process for the delegation of
19 this authority and other such provisions describing the assignment of and removal of this
20 delegation of authority must be established by rule and must include, but not be limited
21 to, staff competency, enforcement and compliance history, inspection practices and
22 reporting practices. Rules adopted pursuant to this subsection are routine technical rules
23 pursuant to Title 5, chapter 375, subchapter 2-A.

24 **Sec. A-19. Maine Revised Statutes headnote amended; revision clause.** In
25 the Maine Revised Statutes, Title 22, chapter 562, in the chapter headnote, the words
26 "camping areas, recreational camps, youth camps and eating establishments" are amended
27 to read "campgrounds, recreational camps, youth camps and eating establishments" and
28 the Revisor of Statutes shall implement this revision when updating, publishing or
29 republishing the statutes.

30 **PART B**

31 **Sec. B-1. 22 MRSA §2494, first ¶**, as amended by PL 2009, c. 211, Pt. A, §7, is
32 further amended to read:

33 Each application for, or for renewal of, a license to operate an eating establishment,
34 ~~eating and lodging place~~, lodging place, recreational camp, youth camp or ~~camping area~~
35 campground within the meaning of this chapter must be accompanied by a fee,
36 appropriate to the size of the establishment, place, camp or area of the licensee,
37 determined by the department and not to exceed the fees listed below. All fees collected
38 by the department must be deposited into a special revenue account established for this
39 purpose. No such fee may be refunded. No license may be assignable or transferable.
40 The fees may not exceed:

1 **Sec. B-2. 22 MRSA §2494, sub-§2**, as amended by PL 2003, c. 673, Pt. X, §1, is
2 further amended to read:

3 **2. Sixty dollars.** Sixty dollars for each inspection for any ~~eating~~ establishment that
4 is located in a municipality that requires local inspections of ~~eating~~ establishments; and

5 **Sec. B-3. 22 MRSA §2495, first ¶**, as amended by PL 2009, c. 211, Pt. A, §8, is
6 further amended to read:

7 The department shall, within 30 days following receipt of application, issue an annual
8 license to operate any eating establishment, ~~eating and lodging place~~, lodging place,
9 recreational camp, youth camp or ~~camping area~~ campground that is found to comply with
10 this chapter and the rules adopted by the department.

11 **Sec. B-4. 22 MRSA §2498, sub-§1, ¶A**, as amended by PL 2009, c. 211, Pt. A,
12 §10, is further amended to read:

13 A. The department may impose penalties for violations of this chapter, or the rules
14 adopted pursuant to this chapter, on any eating establishment, ~~eating and lodging~~
15 ~~place~~, lodging place, recreational camp, youth camp or ~~camping area~~ campground.
16 The penalties may not be greater than \$100 for each violation. Each day that the
17 violation remains uncorrected may be counted as a separate offense. Penalties may
18 be imposed for each violation of the rules.

19 **Sec. B-5. 22 MRSA §2498, sub-§1, ¶B**, as amended by PL 2009, c. 211, Pt. A,
20 §11, is further amended to read:

21 B. The department may direct an eating establishment, ~~eating and lodging place~~,
22 lodging place, recreational camp, youth camp or ~~camping area~~ campground to correct
23 any violations in a manner and within a time frame that the department determines is
24 appropriate to ensure compliance with state rules or to protect the public health.
25 Failure to correct violations within the time frames constitutes a separate finable
26 violation.

27 **Sec. B-6. 22 MRSA §2498, sub-§1, ¶C**, as amended by PL 2009, c. 211, Pt. A,
28 §12, is further amended to read:

29 C. Any person, corporation, firm or copartnership that operates any eating
30 establishment, ~~eating and lodging place~~, lodging place, recreational camp, youth
31 camp or ~~camping area~~ campground without first obtaining a license as required by
32 this chapter must be punished, upon adjudication of unlicensed operation, by a fine of
33 not less than \$25 nor more than \$200, and upon a 2nd or subsequent adjudication of
34 unlicensed operation must be punished by a fine of not less than \$200 nor more than
35 \$500. Each day any such person, corporation, firm or copartnership operates without
36 obtaining a license constitutes a separate offense.

37 **Sec. B-7. 22 MRSA §2499, first ¶**, as enacted by PL 1975, c. 496, §3, is
38 amended to read:

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

6 **Sec. B-8. 22 MRSA §2499, sub-§2**, as enacted by PL 1975, c. 496, §3 and
7 amended by PL 2003, c. 689, Pt. B, §7, is further amended to read:

8 **2. Qualified to make inspections.** ~~No municipal~~ A municipally employed
9 ~~sanitarians shall~~ health inspector may not make inspections under the provisions of this
10 chapter unless certified as qualified by the Commissioner of Health and Human Services.

11 **Sec. B-9. 22 MRSA §2499, sub-§8**, as enacted by PL 1975, c. 496, §3, is
12 amended to read:

13 **8. Certification.** Certification of municipally employed ~~sanitarians shall~~ health
14 inspectors must be in accordance with standards set by the commissioner and ~~shall~~ be for
15 a period of 3 years.

16 **Sec. B-10. 22 MRSA §2501**, as amended by PL 2007, c. 428, §1, is further
17 amended to read:

18 **§2501. Exceptions**

19 Private homes are not deemed or considered lodging places and subject to a license
20 when not more than 5 rooms are let; such private homes must post in a visible location in
21 each rented room a card with the following statement in text that is easily readable in no
22 less than 18-point boldface type of uniform font "This lodging place is not regulated by
23 the State of Maine Department of Health and Human Services, Maine Center for Disease
24 Control and Prevention." The homes must provide guests upon check-in with a notice
25 containing the same information. A license is not required from dormitories of
26 charitable, educational or philanthropic institutions, fraternity and sorority houses
27 affiliated with educational institutions, or from private homes used in emergencies for the
28 accommodation of persons attending conventions, fairs or similar public gatherings, nor
29 from temporary eating establishments and temporary lodging places for the same, nor
30 from railroad dining or buffet cars, nor from construction camps, nor from boarding
31 houses and camps conducted in connection with wood cutting and logging operations, nor
32 from any boarding care facilities or children's homes that are licensed under section 7801.

33 ~~Cottages shall~~ Rooms and cottages are not ~~be~~ deemed or considered lodging places
34 and subject to a license where not more than 3 rooms and cottages are let.

35 Stores or other establishments, where bottled soft drinks or ice cream is sold for
36 consumption from the original containers only, and where no tables, chairs, glasses or
37 other utensils are provided in connection with such sale, ~~shall~~ are not ~~be~~ considered
38 eating ~~places within the meaning of this section~~ establishments. At such establishments,
39 straws or spoons may be provided to aid in the consumption of such bottled soft drinks or

1 ice cream, ~~provided as long as they shall be~~ are supplied in original individual single
2 service sterile packages.

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

7 **SUMMARY**

8 This bill amends the laws regarding the municipal licensing and inspection of
9 campgrounds, recreational camps, youth camps and eating establishments. It clarifies
10 definitions for campgrounds, cottages, eating establishments, lodging places, vending
11 machines, recreational camps and youth camps. The bill adds definitions for health
12 inspectors, public pools, public spas and sporting camps. It repeals definitions for eating
13 and lodging places, sanitarians and vending machine establishments. It requires owners
14 of public pools and spas and sporting camps to obtain a license from the Department of
15 Health and Human Services. Municipal inspection reports must be furnished
16 electronically in a format and on a schedule determined by the department, and fees as set
17 forth in the Maine Revised Statutes, Title 22, section 2494 for municipal license types as
18 described in Title 22, section 2492 must be waived for establishments located in
19 municipalities to which authority to conduct inspections has been delegated by the
20 department. However, the licensee is required to pay the department a sum not to exceed
21 \$60 for each license type. It also exempts, for the purposes of the law requiring licensure
22 of camping areas, those camping areas that are parking lots of shopping malls and store
23 parking areas from the presumption that the owner of a camping area with 5 or more tents
24 or recreational vehicles on a commercial lot is receiving compensation. The bill also
25 fixes cross-references. It provides that the Department of Health and Human Services
26 will not inspect or license lodging places that let 3 or fewer rooms.