

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

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No. 1387

H.P. 990

House of Representatives, April 10, 2013

An Act To Provide Clarity and Consistency in Routine Public Health Licensing Activities

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FARNSWORTH of Portland.
Cosponsored by Senator HAMPER of Oxford.

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

2 **Sec. 1. 17 MRSA §3966**, as amended by PL 2011, c. 369, §9, is further amended
3 to read:

4 **§3966. Animals in food stores**

5 It is unlawful for any person, ~~other than the owner or manager~~, to bring an animal
6 into a store where food is sold for human consumption or into a restaurant where food is
7 prepared and served on the premises. This section does not apply to a person requiring the
8 services of a service animal.

9 For the purposes of this section, "service animal" has the same meaning as set forth in
10 Title 5, section 4553, subsection 9-E, ~~paragraph A or B~~.

11 **Sec. 2. 22 MRSA §1686, first ¶**, as repealed and replaced by PL 1987, c. 769, Pt.
12 A, §73, is amended to read:

13 ~~Unless it is licensed for fewer than 13 seats and is not licensed for on-premise~~
14 ~~consumption of alcoholic beverages, an~~ An eating establishment ~~shall~~ must provide at
15 least one toilet facility for the use of its customers. Toilet facilities ~~which~~ that require
16 access through the food preparation area or the use of which would in any way cause the
17 establishment to be in violation of any state law or rule ~~shall~~ may not be considered as
18 fulfilling this requirement. The location of the toilets ~~shall~~ must be clearly marked,
19 maintained in a sanitary condition, in good repair and their location identifiable from the
20 eating area. There ~~shall~~ may not be ~~no~~ a charge for their use. Lavatory facilities ~~shall~~
21 must be located within or immediately adjacent to all toilet rooms or vestibules.

22 **Sec. 3. 22 MRSA §2491, sub-§7**, as amended by PL 2011, c. 193, Pt. A, §4, is
23 further amended to read:

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

38 **Sec. 4. 22 MRSA §2491, sub-§7-F**, as enacted by PL 2011, c. 193, Pt. A, §6, is
39 amended to read:

1 **7-F. Lodging place.** "Lodging place" means a building or structure, or any part of a
2 building or structure, used, maintained, advertised or held out to the public as a place
3 where sleeping accommodations are furnished to the public for business purposes.
4 "Lodging place" includes a room or cottage rented by a person that rents 4 or more rooms
5 or cottages. "Lodging place" includes, but is not limited to, hotels, motels, guest homes
6 and cottages where the owner maintains the sleeping accommodations. "Lodging place"
7 includes a condominium unit rented to the public by a condominium association that
8 routinely rents 4 or more units to the public. "Lodging place" does not include
9 dormitories of charitable, educational or philanthropic institutions, fraternity or sorority
10 houses affiliated with educational institutions, permanent residences, rooming houses,
11 tenancies at will or rental properties with tenant and landlord relationships.

12 **Sec. 5. 22 MRSA §2498, sub-§1,** as amended by PL 2011, c. 193, Pt. B, §§4 to 6,
13 is further amended to read:

14 **1. Authorization.** The department is authorized to impose one or more of the
15 following sanctions when a violation of this chapter, or rules enacted pursuant to this
16 chapter, occurs and the department determines that a sanction is necessary and
17 appropriate to ensure compliance with state licensing rules or to protect the public health.

18 A. The department may impose penalties for violations of this chapter, or the rules
19 adopted pursuant to this chapter, on any eating establishment, eating and lodging
20 place, lodging place, recreational camp, youth camp, public pool or public spa or
21 campground. The penalties may not be greater than \$100 for each violation. Each
22 day that the violation remains uncorrected may be counted as a separate offense.
23 Penalties may be imposed for each violation of the rules.

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

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

38 D. In the event of any violation of this section or any rule pursuant to this chapter,
39 the Attorney General may seek to enjoin a further violation, in addition to any other
40 remedy.

41 E. A person, corporation, firm or copartnership that fails to pay a penalty imposed
42 pursuant to this chapter:

1 (1) May be referred to the Attorney General for appropriate enforcement action;
2 and

3 (2) In addition to all fines and penalties imposed pursuant to this chapter, is
4 liable for any interest, costs and fees incurred by the department, including
5 attorney's fees.

6 **Sec. 6. 32 MRSA §1222**, as enacted by PL 1979, c. 87, §1, is amended to read:

7 **§1222. Licensure; penalty**

8 **1. License required.** ~~No~~ A person may not practice electrology in this State unless
9 that person is ~~registered with~~ licensed by the department under this chapter. A license
10 issued under this chapter is valid for one year from the date of issuance.

11 ~~**2. Criminal penalty.** Any person who practices electrology in violation of~~
12 ~~subsection 1 is guilty of a Class E crime.~~

13 **3. Civil penalty.** A person who practices electrology without a license or who
14 violates the sterilization, sanitation or safety standards adopted by the department under
15 this chapter commits a civil violation for which a fine of not less than \$500 nor more than
16 \$1,000 may be adjudged for each violation.

17 **4. Enforcement.** A person who fails to pay a penalty imposed pursuant to this
18 chapter:

19 A. May be referred to the Attorney General for appropriate enforcement action; and

20 B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for
21 any interest, costs and fees incurred by the department, including attorney's fees.

22 **Sec. 7. 32 MRSA §1231-A**, as enacted by PL 1991, c. 416, §3, is amended to
23 read:

24 **§1231-A. Licensure requirements**

25 **1. Licensure requirements.** Except as provided in section 1233, the department
26 shall ~~register~~ issue a license to any person under this chapter who:

27 A. Is at least 17 years of age;

28 B. Has a high school diploma or its equivalent; and

29 C. Passes an inspection under section 1243 within 60 days before ~~that person is~~
30 ~~registered~~ the license is issued.

31 **2. Exemption.** A person who has a valid electrology license from the department as
32 of January 1, 1991 is exempt from the requirements of subsection 1.

33 **3. Reciprocity.** Except as provided in section 1233 and notwithstanding the
34 requirements of subsection 1, the department shall ~~register~~ issue a license to any applicant
35 under this chapter who provides the department with evidence that the applicant has 3
36 years of experience as an electrologist in another state. That proof must consist of

1 notarized copies of the license or registration issued by the state where the applicant last
2 practiced electrology.

3 **Sec. 8. 32 MRSA §1232**, as enacted by PL 1979, c. 87, §1, is repealed.

4 **Sec. 9. 32 MRSA §1233, first ¶**, as enacted by PL 1979, c. 87, §1 and amended
5 by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

6 The following ~~shall be~~ are grounds for the department's refusal to ~~register~~ issue a
7 license to any person or for the District Court's suspension or revocation of the
8 ~~registration~~ license of any person:

9 **Sec. 10. 32 MRSA §1233, sub-§3**, as enacted by PL 1979, c. 87, §1, is amended
10 to read:

11 **3. Fraudulently obtaining license.** Attempting to ~~register~~ obtain a license or
12 ~~registering~~ obtaining a license under this chapter by means of fraud or under false
13 pretenses.

14 **Sec. 11. 32 MRSA §1241**, as enacted by PL 1979, c. 87, §1 and amended by PL
15 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

16 **§1241. Powers and duties**

17 The department ~~shall register or refuse to register persons under this chapter,~~ may
18 investigate, inspect, examine and review persons and premises as necessary to properly
19 administer this chapter; and may make any appropriate complaint to the District Court.

20 **Sec. 12. 32 MRSA §4204** is repealed and the following enacted in its place:

21 **§4204. Penalties**

22 **1. Penalty.** A person who fails to be licensed as required by this chapter, violates
23 the sterilization, sanitation or safety standards adopted by the Department of Health and
24 Human Services under section 4251 or performs tattooing on a minor commits a civil
25 violation for which a fine of not less than \$500 nor more than \$1,000 may be adjudged
26 for each violation.

27 **2. Enforcement.** A person who fails to pay a penalty imposed pursuant to this
28 chapter:

29 A. May be referred to the Attorney General for appropriate enforcement action; and

30 B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for
31 any interest, costs and fees incurred by the Department of Health and Human
32 Services, including attorney's fees.

33 **Sec. 13. 32 MRSA §4252**, as amended by PL 2009, c. 589, §11, is further
34 amended to read:

1 **§4252. Issuance of licenses**

2 The Department of Health and Human Services ~~is empowered to~~ may license persons
3 to practice the art of tattooing. Such licenses are issued ~~annually by the department upon~~
4 ~~the payment of a~~ for a term of one year and may be renewed annually. The fee for an
5 initial license or a renewal license may not to exceed \$250. Licenses expire on September
6 30th of each year. All fees collected by the department pursuant to this section must be
7 deposited in a special revenue account dedicated to a health inspection program.

8 **Sec. 14. 32 MRSA §4318** is enacted to read:

9 **§4318. Penalties**

10 **1. Penalty.** A person who fails to be licensed as provided by section 4312 or
11 violates the sterilization, sanitation or safety standards adopted by the department under
12 section 4313 commits a civil violation for which a fine of not less than \$500 nor more
13 than \$1,000 may be adjudged for each violation.

14 **2. Enforcement.** A person who fails to pay a penalty imposed pursuant to this
15 chapter:

16 A. May be referred to the Attorney General for appropriate enforcement action; and

17 B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for
18 any interest, costs and fees incurred by the department, including attorney's fees.

19 **Sec. 15. 32 MRSA §4327**, as enacted by PL 1997, c. 206, §1, is repealed and the
20 following enacted in its place:

21 **§4327. Penalties**

22 **1. Penalty.** A person who fails to be licensed as provided by section 4324, violates
23 the sterilization, sanitation or safety standards adopted by the department under section
24 4326 or performs body piercing on a minor without parental consent under section 4323
25 commits a civil violation for which a fine of not less than \$500 nor more than \$1,000 may
26 be adjudged for each violation.

27 **2. Enforcement.** A person who fails to pay a penalty imposed pursuant to this
28 chapter:

29 A. May be referred to the Attorney General for appropriate enforcement action; and

30 B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for
31 any interest, costs and fees incurred by the department, including attorney's fees.

32 **Sec. 16. Maine Revised Statutes headnote amended; revision clause.** In
33 the Maine Revised Statutes, Title 32, chapter 18, subchapter 2, in the subchapter
34 headnote, the word "registration" is amended to read "licensure" and the Revisor of
35 Statutes shall implement this revision when updating, publishing or republishing the
36 statutes.

1 **SUMMARY**

2 This bill makes changes in licensing laws administered by the Department of Health
3 and Human Services for the purposes of clarity and consistency. The bill clarifies to
4 whom the definitions of "eating establishment" and "lodging place" apply, applies license
5 fine and penalty provisions to public pools and public spas and provides a procedure for
6 the referral of persons who fail to pay certain licensing penalties to the Attorney General's
7 office for prosecution.

8 The bill makes changes in the laws governing electrologists, tattoo artists and persons
9 performing micropigmentation and body piercing to increase fines for violations and
10 provide consistency in regulation and enforcement among these professions.

11 The bill also makes toilet facility requirements for eating establishments consistent
12 with rules of the Plumbers' Examining Board and provides that the law prohibiting
13 animals in food stores also applies to animals owned by store owners and managers.