

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1295

H.P. 881

House of Representatives, April 9, 2015

An Act To Streamline Regulation of Farms, Food Producers and Food Establishments

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HICKMAN of Winthrop.
Cosponsored by Senator LANGLEY of Hancock and
Representatives: McCABE of Skowhegan, SANDERSON of Chelsea, SAUCIER of Presque
Isle, SIROCKI of Scarborough, Senators: BRAKEY of Androscoggin, DILL of Penobscot,
JOHNSON of Lincoln, KATZ of Kennebec.

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

2 **PART A**

3 **Sec. A-1. 7 MRSA c. 8-F** is enacted to read:

4 **CHAPTER 8-F**

5 **EATING ESTABLISHMENTS**

6 **§271. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Calories per serving.** "Calories per serving" means the caloric information for a
10 food or beverage item being offered for consumption by one person, as usually prepared
11 and as offered for sale on the menu, menu board or food display tag.

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

15 **3. Chain restaurant.** "Chain restaurant" means an eating establishment that does
16 business under the same trade name in 20 or more locations, at least one of which is
17 located in the State, that offers predominantly the same type of meals, food, beverages
18 and menus, regardless of the type of ownership of an individual location. "Chain
19 restaurant" does not include a grocery store. "Chain restaurant" does not include a hotel
20 or motel that provides a separately owned eating establishment but does include the
21 separately owned eating establishment if the eating establishment meets the criteria of
22 this subsection. "Chain restaurant" does not include a movie theater.

23 **4. 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 such as schools, retail frozen dairy product
32 establishments, airports, parks, theaters, recreational camps as defined in Title 22, section
33 2491, subsection 11, youth camps as defined in Title 22, section 2491, subsection 16 or
34 any other catering or nonalcoholic drinking establishments or operations where food is
35 prepared and served or served for consumption on the premises, or catering
36 establishments where food is prepared, or where foods are prepared for vending machines
37 dispensing food other than in original sealed packages.

1 **5. Food display tag.** "Food display tag" means a written or printed description of a
2 food or beverage item, such as a label or placard, placed in the vicinity of the food or
3 beverage item identifying the type or price of the food or beverage.

4 **6. Grocery store.** "Grocery store" means a store primarily engaged in the retail sale
5 of canned food, dry goods, fresh fruits and vegetables and fresh meats, fish and poultry.
6 "Grocery store" includes a convenience store, but does not include a separately owned
7 eating establishment located within a grocery store.

8 **7. Health inspector.** "Health inspector" means a person whose education and
9 experience in the biological and sanitary sciences qualify that person to engage in the
10 promotion and protection of the public health and who applies technical knowledge to
11 solve problems of a sanitary nature and develops methods and carries out procedures for
12 the control of those factors of the environment that affect the health, safety and well-
13 being of others.

14 **8. Menu.** "Menu" means a written or printed list describing food or beverage items
15 offered for sale at an eating establishment that may be distributed on or off the premises,
16 but does not include a menu board.

17 **9. Menu board.** "Menu board" means a list of food or beverage items offered for
18 sale at an eating establishment that is posted in a public area for viewing by multiple
19 customers, including a backlit marquee sign, chalkboard or drive-through menu sign.

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

23 **11. Retail frozen dairy product establishment.** "Retail frozen dairy product
24 establishment" means any place, premises or establishment and any part thereof where
25 frozen dairy products, such as ice cream, frozen custard, ice milk, sherbet, ices and
26 related food products, are prepared for consumption on or off premises.

27 **12. Vending machine.** "Vending machine" means any self-service device offered
28 for public use that, upon insertion of money or by other similar means, dispenses unit
29 servings of food other than in original sealed packages without the necessity of
30 replenishing the device between vending operations.

31 **§272. License required**

32 **1. License required.** A person, corporation, firm or copartnership may not conduct,
33 control, manage or operate an eating establishment for compensation, directly or
34 indirectly, without a license issued by the department. Licenses issued must be displayed
35 in a place readily visible to customers or other persons using a licensed establishment.

36 **2. Violation.** A person, corporation, firm or copartnership may not:

37 A. Violate subsection 1; or

38 B. Violate subsection 1 after having previously violated subsection 1.

1 **§273. Applicant**

2 A person, corporation, firm or copartnership desiring a license must submit
3 satisfactory evidence of ability to comply with the minimum standards of this chapter and
4 rules adopted under this chapter.

5 **§274. Fees**

6 Each application for, or for renewal of, a license to operate an eating establishment
7 under this chapter must be accompanied by a fee, appropriate to the size of the eating
8 establishment of the licensee, determined by the department and not to exceed the fees
9 listed below. All fees collected by the department must be deposited into a special
10 revenue account established for this purpose. No such fee may be refunded. No license
11 may be assignable or transferable. The fees may not exceed:

12 **1. One hundred dollars. One hundred dollars for:**

13 A. Public schools governed by a school board of an administrative unit;

14 B. Private secondary schools approved for tuition when school enrollments are at
15 least 60% publicly funded students as determined by the previous school year's
16 October to April average enrollment; and

17 C. Schools operated by an agency of State Government for the education of children
18 in unorganized territories;

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

21 **3. Three hundred dollars. Three hundred dollars for all other eating establishments**
22 **not included in subsection 1 or 2.**

23 All fees under this section are for the license, one licensure inspection and one
24 follow-up inspection. When additional inspections are required to determine an
25 applicant's eligibility for licensure, the department is authorized through its rules to
26 charge an additional fee not to exceed \$100 to cover the costs of each additional
27 inspection or visit. Failure to pay such charges within 30 days of the billing date
28 constitutes grounds for revocation of the license, unless an extension for a period not to
29 exceed 60 days is granted in writing by the commissioner.

30 **§275. Issuance of licenses**

31 The department shall, within 30 days following receipt of an application, issue an
32 annual license to operate any eating establishment that is found to comply with this
33 chapter and the rules adopted by the department.

34 When any initial applicant is found, based upon an inspection by the department or
35 by municipal inspection made according to section 279, not in compliance with the
36 requirements of this chapter or department rules adopted and approved pursuant to
37 section 276 or section 279, subsection 1, the department may refuse issuance of the initial
38 license, but shall issue a conditional license, except when conditions are found that

1 present a serious danger to the health and safety of the public. A conditional license may
2 not exceed 90 days. Failure by the conditional licensee to meet the conditions specified
3 by the department permits the department to void the conditional license.

4 The conditional license is void when the department has delivered in hand or by
5 certified mail a written notice to the conditional licensee or, if the licensee cannot be
6 reached for service in hand or by certified mail, has left notice thereof at the facility.

7 The department may redistribute expiration dates for new and renewed licenses to
8 provide for comparable distribution of licenses on a quarterly basis throughout the year
9 and shall prorate the fees for licenses with a term less or more than one year. The
10 prescribed fee must accompany the application for a new license or the renewal of a
11 license.

12 Licenses must be renewed upon application and upon payment of the prescribed fee
13 and subject to compliance with department rules and with this chapter. The department
14 shall provide licensees with notice of the need for renewal and necessary forms no less
15 than 30 days prior to the expiration of the license.

16 The issuance of a license under this chapter does not provide exemption from other
17 state or local laws, ordinances or rules, notwithstanding any other provision of law.

18 Licenses erroneously issued by the department are void and must be returned to the
19 department on demand in a notice delivered by hand or by certified mail to the licensee.
20 For cause, the department may revoke or suspend any license pursuant to section 280.

21 **§276. Rules and policies**

22 The department is authorized and empowered to make and enforce all necessary rules
23 for the administration of this chapter and may rescind or modify such rules from time to
24 time as may be in the public interest, insofar as such action is not in conflict with any of
25 the provisions of this chapter. Rules adopted pursuant to this section are routine technical
26 rules as defined in Title 5, chapter 375, subchapter 2-A.

27 **§277. Right of entry, inspection and determination of compliance**

28 The department and any duly designated officer or employee of the department have
29 the right, without an administrative inspection warrant, to enter upon and into the
30 premises of any eating establishment licensed pursuant to this chapter at any reasonable
31 time in order to determine the state of compliance with this chapter and any rules in force
32 pursuant to this chapter. Such right of entry and inspection extends to any premises that
33 the department has reason to believe is being operated or maintained without a license,
34 but no such entry and inspection of any premises may be made without the permission of
35 the owner or person in charge unless a search warrant is obtained authorizing entry and
36 inspection.

37 Determination of compliance with this chapter and any rules adopted pursuant to this
38 chapter must be made at least once every 2 years by inspection or other method as
39 determined by the department.

1 **§278. Fines and penalties**

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

6 A. The department may impose penalties for violations of this chapter, or the rules
7 adopted pursuant to this chapter, on any eating establishment. The penalties may not
8 be greater than \$100 for each violation. Each day that the violation remains
9 uncorrected may be counted as a separate offense. Penalties may be imposed for each
10 violation of the rules.

11 B. The department may direct an eating establishment to correct any violations in a
12 manner and within a time frame that the department determines is appropriate to
13 ensure compliance with state rules or to protect the public health. Failure to correct
14 violations within the time frames constitutes a separate finable violation.

15 C. A person, corporation, firm or copartnership that operates an eating establishment
16 without first obtaining a license as required by this chapter must be punished, upon
17 adjudication of unlicensed operation, by a fine of not less than \$25 nor more than
18 \$200 and, upon a 2nd or subsequent adjudication of unlicensed operation, must be
19 punished by a fine of not less than \$200 nor more than \$500. Each day any such
20 person, corporation, firm or copartnership operates without obtaining a license
21 constitutes a separate offense.

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

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

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

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

32 **2. Schedule of penalties.** The department shall establish a schedule of penalties
33 according to the nature and duration of the violation.

34 **3. Enforcement and appeal.** Enforcement and appeal of this section are governed
35 by this subsection.

36 A. The department may impose any fine in conformity with Title 5, chapter 375,
37 subchapter 4, providing the licensee the opportunity for an administrative hearing.

38 B. Licensees that are fined pursuant to this chapter are required to pay the
39 department the amount of the penalties. If a licensee has not paid any collectible fines
40 by the time of its license renewal, the department may collect such fines by requiring
41 their payment prior to the processing of any license renewal application. An appeal of

1 the department's decision to fine a licensee stays the collection of any fine. Interest
2 must accrue on fines at a rate described in Title 14, section 1602-B prior to the
3 completion of any appeal. After the completion of any appeal process or after any
4 appeal period has passed, interest must accrue pursuant to Title 14, section 1602-C.

5 **§279. Municipal inspections**

6 Notwithstanding any other provisions of this chapter, in order to ensure statewide
7 uniformity in health standards, health inspector certification and the maintenance of
8 inspection report records, a municipality must be delegated authority by the department to
9 conduct inspections and demonstrate adherence to requirements under this section prior
10 to performing any municipal inspections under such authority. Any municipal inspection
11 of an eating establishment under this section conducted by a municipality that has not
12 been delegated authority is void. The department may issue a license to an eating
13 establishment on the basis of an inspection performed by a health inspector who works
14 for and is compensated by the municipality in which the eating establishment is located,
15 but only if the following conditions have been met.

16 **1. Adopted rules; code of standards.** The municipality involved has adopted
17 ordinances or a code of standards for the eating establishments that has been approved by
18 the department and that is consistent with the rules used by the department for the
19 issuance of licenses in effect at the time of inspection.

20 **2. Qualified to make inspections.** A municipally employed health inspector may
21 not make inspections under the provisions of this chapter unless certified as qualified by
22 the commissioner.

23 **3. Inspection to ascertain intent.** The department may from time to time inspect
24 municipally inspected eating establishments to ascertain that the intent of these statutes is
25 being followed.

26 **4. Inspection reports.** A municipality performing an inspection under this section
27 shall furnish electronic copies of its inspection reports in a format and on a schedule
28 determined by the department.

29 **5. Charge.** A municipality may not charge the department for performing
30 inspections under this section.

31 **6. License fee.** When a license is issued to an eating establishment located in a
32 municipality to which authority to conduct inspection has been delegated by the
33 department as specified in this section, the requirement for payment of a license fee by
34 the eating establishment to the department as set forth in section 274 must be waived.
35 However, the licensee is required to pay the department a sum not to exceed \$100 to
36 support the costs of mailing and handling.

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

1 **8. Certification.** Certification of municipally employed health inspectors must be in
2 accordance with standards set by the commissioner and be for a period of 3 years.

3 **9. Delegation renewal.** Beginning January 1, 2016, and every 3 years thereafter, the
4 department shall review the inspection program of the municipalities to which authority
5 to conduct inspections has been delegated. The process for the delegation of this authority
6 and other such provisions describing the assignment of and removal of this delegation of
7 authority must be established by rule and must include, but is not limited to, staff
8 competency, enforcement and compliance history, inspection practices and reporting
9 practices. Rules adopted pursuant to this subsection are routine technical rules pursuant to
10 Title 5, chapter 375, subchapter 2-A.

11 **§280. Suspension or revocation; appeals**

12 When the department believes a license should be suspended or revoked, it shall file a
13 complaint with the District Court in conformity with the Maine Administrative Procedure
14 Act. A person aggrieved by the refusal of the department to issue a license may request a
15 hearing in conformity with the Maine Administrative Procedure Act.

16 Whenever, upon inspection, conditions are found that violate this chapter or rules
17 adopted under this chapter, or that may endanger the life, health or safety of persons
18 living in or attending any licensed eating establishment under this chapter, the department
19 may request an emergency suspension of license of the District Court pursuant to Title 4,
20 section 184, subsection 6, and the court may grant suspension subject to reinstatement
21 following a hearing before the court if cause is not shown.

22 **§281. Menu labeling for chain restaurants**

23 The provisions of this section apply to chain restaurants that are located in the State.

24 **1. Caloric information.** A chain restaurant shall state on a food display tag, menu
25 or menu board the total amount of calories per serving of each food and beverage item
26 listed for sale on the food display tag, menu or menu board. The statement of calories
27 required in this subsection must be:

28 A. Clear and conspicuous;

29 B. Adjacent to or in close proximity and clearly associated with the item to which the
30 statement refers; and

31 C. Printed in a font and format at least as prominent in size and appearance as the
32 name or the price of the item to which the statement refers.

33 As the statement of calories pertains to beer, wine and spirits, the statement must also
34 meet the requirements of subsection 6.

35 **2. Determining caloric content.** The caloric content information required by
36 subsection 1 must be determined on a reasonable basis and may be determined only once
37 per standard menu item if the chain restaurant follows a standardized recipe, trains to a
38 consistent method of preparation and maintains a reasonably consistent portion size. For
39 the purposes of this subsection, a reasonable basis for determining caloric content means

1 use of a recognized method for determining caloric content, including, but not limited to,
2 nutrient databases, laboratory testing and other reliable methods of analysis. Caloric
3 content may be rounded to the nearest 10 calories for caloric content above 50 calories
4 and to the nearest 5 calories for caloric content of 50 calories and below.

5 **3. Required statement.** A menu or menu board or written nutrition information
6 provided to a customer by a chain restaurant must contain the following statement in a
7 clear and conspicuous manner and in a prominent location: "To maintain a healthy
8 weight, a typical adult should consume approximately 2,000 calories per day; however,
9 individual calorie needs may vary." A menu, menu board or written nutrition information
10 provided to a customer by a chain restaurant may include the following statement or a
11 statement similar to the following: "Nutrition information is based upon standard recipes
12 and product formulations; however, modest variations may occur due to differences in
13 preparation, serving sizes, ingredients or special orders."

14 **4. Different varieties.** For a food or beverage item that is listed as a single item but
15 includes more than one variety, the caloric information required under subsection 1 for
16 that item must be the median value of calories for all varieties offered for that item if the
17 caloric information for each variety of the item is within 20% of the median for that item.
18 If the caloric information required by subsection 1 for a variety of a food or beverage
19 item is not within 20% of the median for that item, the caloric information must be stated
20 for each variety of that item. If a food display tag is used to identify a specific variety of a
21 food or beverage item, the caloric information required by subsection 1 must be for that
22 specific variety of the item.

23 **5. Exceptions.** A chain restaurant is not required to provide information pursuant to
24 subsection 1 for:

25 A. Food items served at a self-service salad bar or buffet;

26 B. An item offered for a limited time that appears on a menu, menu board or food
27 display tag for less than 90 days per year;

28 C. A condiment or other item offered to a customer for general use without charge;

29 D. An item sold to a customer in a manufacturer's original sealed package that
30 contains nutrition information as required by federal law; or

31 E. A custom order for a food or beverage item that does not appear on a menu, menu
32 board or food display tag.

33 **6. Alcoholic beverages.** A chain restaurant shall state on a food display tag, menu
34 or menu board the average caloric value for beer, wine and spirits as established by the
35 United States Department of Agriculture, Agriculture Research Service in the National
36 Nutrient Database for Standard Reference. A food display tag, menu or menu board for
37 beer, wine and spirits may include the following statement: "Signature drinks or liqueurs
38 with added ingredients may contain increased caloric content."

39 **7. Compliance; enforcement.** The department or an agent authorized to inspect an
40 eating establishment under section 279 shall ensure compliance with the provisions of
41 this section but is not required to verify the accuracy of the caloric information required

1 by this section. Upon request a chain restaurant shall provide to the department
2 documentation of the accuracy of the information required by subsection 1. A violation of
3 this section is a violation of the Maine Unfair Trade Practices Act, enforceable against the
4 owner or franchisee of the chain restaurant, except that no private remedies exist under
5 Title 5, section 213. This section may not be construed to create or enhance any claim,
6 right of action or civil liability that did not exist under state law prior to the effective date
7 of this subsection or limit any claim, right of action or civil liability that otherwise exists
8 under state law. No private right of action arises out of this section. The only mechanism
9 for enforcing this section is as provided in this subsection.

10 **8. Uniformity of regulation; preemption.** To the extent consistent with federal
11 law, the regulation of disclosure of caloric and nutrition information is a matter of
12 statewide concern, and state law governing that disclosure occupies the whole field of
13 regulation regarding disclosure by chain restaurants of nutrition information and
14 requirements regarding the content required to be posted on menus, menu boards and
15 food display tags. A local government may not adopt an ordinance regulating the
16 dissemination of caloric or nutrition information or requiring information to be placed on
17 menus, menu boards or food display tags by a chain restaurant, and any ordinance or
18 regulation that violates this subsection is void and has no force or effect.

19 **§282. Exceptions**

20 A license is not required for temporary eating establishments or for railroad dining or
21 buffet cars.

22 Stores or other establishments where bottled soft drinks or ice cream is sold for
23 consumption from the original containers only and where no tables, chairs, glasses or
24 other utensils are provided in connection with such sale are not considered eating
25 establishments. At such establishments, straws or spoons may be provided to aid in the
26 consumption of such bottled soft drinks or ice cream, as long as they are supplied in
27 original individual single service sterile packages.

28 Nonprofit organizations including, but not limited to, 4-H Clubs, councils and local
29 units of incorporated nonprofit national scouting organizations and agricultural societies
30 are exempt from department rules relating to dispensing foods and nonalcoholic
31 beverages at not more than 12 public events or meals within one calendar year.

32 **§283. Transaction fee for electronic renewal of license**

33 The department may collect a transaction fee from a licensee who renews a license
34 electronically under this chapter. The fee may not exceed the cost of providing the
35 electronic license renewal service. The department may adopt rules necessary to
36 implement this section. Rules adopted pursuant to this section are routine technical rules
37 as defined in Title 5, chapter 375, subchapter 2-A.

38 **Sec. A-2. Transition provisions.** The following provisions govern the transfer of
39 the authority to regulate the sale of prepared food under the Maine Revised Statutes, Title
40 22, chapter 562 from the Department of Health and Human Services to the Department of
41 Agriculture, Conservation and Forestry.

1 **Sec. B-13. 22 MRSA §2492, sub-§1, ¶¶A and B**, as enacted by PL 2003, c.
2 452, Pt. K, §20 and affected by Pt. X, §2, are repealed.

3 **Sec. B-14. 22 MRSA §2494**, as amended by PL 2011, c. 193, Pt. B, §§1 and 2
4 and c. 375, §1, is further amended to read:

5 **§2494. Fees**

6 Each application for, or for renewal of, a license to operate ~~an eating establishment,~~
7 ~~eating and lodging place,~~ a lodging place, recreational camp, youth camp or campground
8 within the meaning of this chapter must be accompanied by a fee, appropriate to the size
9 of the ~~establishment,~~ place, camp or area of the licensee, determined by the department
10 and not to exceed the fees listed below. All fees collected by the department must be
11 deposited into a special revenue account established for this purpose. No such fee may be
12 refunded. No license may be assignable or transferable. The fees may not exceed:

13 **1. One hundred dollars.** One hundred dollars for:

14 A. Public schools governed by a school board of an administrative unit;

15 B. Private secondary schools approved for tuition when school enrollments are at
16 least 60% publicly funded students as determined by the previous school year's
17 October to April average enrollment; and

18 C. Schools operated by an agency of State Government for the education of children
19 in unorganized territories; and

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

22 **3. Three hundred dollars.** Three hundred dollars for all other ~~establishments,~~
23 places and camps not included in subsection 1 ~~or 2~~.

24 All such fees are for the license, one licensure inspection and one follow-up
25 inspection. When additional inspections are required to determine an applicant's
26 eligibility for licensure, the department is authorized through its rules to charge an
27 additional fee not to exceed \$100 to cover the costs of each additional inspection or visit.
28 Failure to pay such charges within 30 days of the billing date constitutes grounds for
29 revocation of the license, unless an extension for a period not to exceed 60 days is
30 granted in writing by the commissioner.

31 **Sec. B-15. 22 MRSA §2495, first ¶**, as amended by PL 2011, c. 193, Pt. B, §3, is
32 further amended to read:

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

37 **Sec. B-16. 22 MRSA §2498, sub-§1, ¶¶A to C**, as amended by PL 2013, c.
38 264, §6, are further amended to read:

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

7 B. The department may direct ~~an eating establishment, eating and lodging place,~~ a
8 lodging place, recreational camp, youth camp, public pool or public spa or
9 campground to correct any violations in a manner and within a time frame that the
10 department determines is appropriate to ensure compliance with state rules or to
11 protect the public health. Failure to correct violations within the time frames
12 constitutes a separate finable violation.

13 C. Any person, corporation, firm or copartnership that operates any ~~eating~~
14 ~~establishment, eating and lodging place,~~ lodging place, recreational camp, youth
15 camp, public pool or public spa or campground without first obtaining a license as
16 required by this chapter must be punished, upon adjudication of unlicensed operation,
17 by a fine of not less than \$25 nor more than \$200, and upon a 2nd or subsequent
18 adjudication of unlicensed operation must be punished by a fine of not less than \$200
19 nor more than \$500. Each day any such person, corporation, firm or copartnership
20 operates without obtaining a license constitutes a separate offense.

21 **Sec. B-17. 22 MRSA §2500-A**, as amended by PL 2011, c. 691, Pt. D, §9, is
22 repealed.

23 **Sec. B-18. 22 MRSA §2501**, as amended by PL 2013, c. 264, §7, is further
24 amended to read:

25 **§2501. Exceptions**

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

41 Rooms and cottages are not deemed or considered lodging places and subject to a
42 license where not more than 3 rooms and cottages are let.

1 Stores or other establishments, where bottled soft drinks or ice cream is sold for
2 consumption from the original containers only, and where no tables, chairs, glasses or
3 other utensils are provided in connection with such sale, are not considered eating
4 establishments. At such establishments, straws or spoons may be provided to aid in the
5 consumption of such bottled soft drinks or ice cream, as long as they are supplied in
6 original individual single service sterile packages.

7 Nonprofit organizations including, but not limited to, 4 H Clubs, scouts and
8 agricultural societies are exempt from department rules and regulations relating to
9 dispensing foods and nonalcoholic beverages at not more than 12 public events or meals
10 within one calendar year.

11 **Sec. B-19. Maine Revised Statutes headnote amended; revision clause.** In
12 the Maine Revised Statutes, Title 22, chapter 562, in the chapter headnote, the words
13 "campgrounds, recreational camps, youth camps and eating establishments" are amended
14 to read "campgrounds, recreational camps and youth camps" and the Revisor of Statutes
15 shall implement this revision when updating, publishing or republishing the statutes.

16 PART C

17 **Sec. C-1. 7 MRSA §2902-B, sub-§2,** as amended by PL 2009, c. 652, Pt. B, §1,
18 is further amended to read:

19 **2. Sale of unpasteurized milk or milk product at eating establishment.** Except as
20 provided in subsection 5, a person may not sell unpasteurized milk or a product made
21 from unpasteurized milk at an eating establishment as defined in ~~Title 22, section 2494~~
22 271, subsection ~~7 4~~.

23 **Sec. C-2. 7 MRSA §2902-B, sub-§5,** as reallocated by PL 2005, c. 683, Pt. A,
24 §12, is further amended to read:

25 **5. Sale of heat-treated cheese at eating establishment.** Notwithstanding
26 subsection 2, heat-treated cheese may be offered for consumption at an eating
27 establishment as defined in ~~Title 22, section 2494~~ 271, subsection ~~7 4~~ provided the menu
28 identifies items on the menu that contain or are made with heat-treated cheese and
29 provides notice that heat-treated cheese is not pasteurized using the words "not
30 pasteurized" on the menu.

31 **Sec. C-3. 14 MRSA §166, sub-§5,** as enacted by PL 1991, c. 739, §1 and
32 amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

33 **5. Immunity of facilities and establishments.** Notwithstanding any other provision
34 of law, a hospital or other health care facility licensed by the Department of Health and
35 Human Services, or an eating establishment licensed under Title ~~22 7~~, chapter ~~562 8-F~~
36 that, in good faith and in accordance with guidelines established by the recipient
37 organization, donates food that is apparently fit for human consumption at the time it is
38 donated to a bona fide charitable or nonprofit organization for free distribution is immune
39 from civil liability arising from injury, illness or death due to the condition or content of
40 the food, unless the injury, illness or death is a direct result of intentional misconduct of

1 the donor. Nothing in this subsection prevents a licensed hospital, health care facility or
2 eating establishment from receiving the immunity provided in subsection 2 if the donor
3 qualifies for immunity under the terms of that subsection.

4 **Sec. C-4. 22 MRSA §1471-C, sub-§5-A, ¶C**, as enacted by PL 2007, c. 245, §2,
5 is amended to read:

6 C. In a food establishment licensed under chapter 551 or an eating establishment
7 licensed under Title 7, chapter ~~562~~ 8-F, except that "custom application" does not
8 include a pesticides application at a licensed food or eating establishment when:

9 (1) The establishment is ancillary to the production of an agricultural
10 commodity;

11 (2) The owner or an employee of that establishment is certified as a private
12 applicator under section 1471-D, subsection 2; and

13 (3) The property is not open to the public.

14 **Sec. C-5. 22 MRSA §1550, sub-§1**, as enacted by PL 2009, c. 140, §2, is
15 amended to read:

16 **1. Definition.** As used in this section, "outdoor eating area" means a patio, deck or
17 other property that is partially enclosed or open to the sky that is permitted for outdoor
18 eating or drinking under the control of an eating establishment, as defined in Title 7,
19 section ~~2494~~ 271, subsection 7 4, as long as food or drink is served by the eating
20 establishment to the public for consumption on the premises.

21 **Sec. C-6. 22 MRSA §1685, sub-§1**, as enacted by PL 1987, c. 8, §2 and
22 amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

23 **1. Eating establishment.** "Eating establishment" means an eating establishment
24 licensed by the Department of ~~Health and Human Services under chapter 562 which~~
25 Agriculture, Conservation and Forestry under Title 7, chapter 8-F that prepares and serves
26 food to the public for consumption inside the premises. "Eating establishment" does not
27 include catering establishments, establishments dispensing food solely from vending
28 machines, pushcarts and mobile eating places, roadside stands, retail frozen dairy product
29 establishments or any other such places where customers do not consume food inside the
30 building where the food is prepared and served.

31 **Sec. C-7. 22 MRSA §2152, sub-§4-A, ¶A**, as enacted by PL 1995, c. 331, §1, is
32 amended to read:

33 A. Eating establishments, as defined in Title 7, section ~~2494~~ 271, subsection 7 4;

34 **Sec. C-8. 22 MRSA §2511, sub-§26-B**, as enacted by PL 2013, c. 304, §1, is
35 amended to read:

36 **26-B. Locally owned restaurant.** "Locally owned restaurant" means an eating
37 establishment at least 51% of which is owned by one or more residents of the State and
38 that is not a chain restaurant pursuant to Title 7, section ~~2494~~ 271, subsection ~~2-B~~ 3.

