

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1675

H.P. 1163

House of Representatives, December 20, 2017

An Act To Clarify Definitions in the Laws Regarding the Licensing of Eating Establishments and Lodging Places

Submitted by the Department of Health and Human Services pursuant to Joint Rule 203.

Received by the Clerk of the House on December 18, 2017. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HYMANSON of York.

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

2 **Sec. 1. 5 MRSA §13063, sub-§5**, as amended by PL 2011, c. 304, Pt. C, §2 and
3 c. 682, §38, is further amended to read:

4 **5. Retail business permitting program.** ~~By February 1, 2012, the~~ The ombudsman
5 shall establish and administer a central permitting program for all permits required by
6 retail businesses selling directly to the final consumer, including, but not limited to,
7 permits required for the operation of hotels and motels, convenience stores and eating ~~and~~
8 ~~lodging places~~ establishments, and permits required for the sale of liquor or beer, tobacco,
9 food, beverages, lottery tickets and gasoline. Permits issued by the Department of
10 Environmental Protection, the Department of Marine Resources and the Maine Land Use
11 Planning Commission are not included in this program. The ombudsman shall:

12 A. Create a consolidated permit procedure that allows each business to check on a
13 cover sheet all state permits for which it is applying and to receive all permit
14 applications from a centralized office;

15 B. Total all permit fees due from a business, collect those fees on a semiannual basis,
16 with 1/2 of the total fees due by January 1st and 1/2 of the total fees due by July 1st,
17 and distribute the fees to the appropriate funds or permitting entities;

18 C. Forward a copy of the appropriate permit application to any commission,
19 department, municipality or other agency that has responsibility for permitting that
20 retail business;

21 D. Develop a tracking system to track permits issued by state agencies. This system
22 must at a minimum include information on the applicant, agency involvement, time
23 elapsed or expended on the permit and action taken;

24 E. Coordinate and supervise the permitting process to ensure that all involved state
25 agencies process the applications and complete any necessary inspections in a timely
26 fashion; and

27 F. Respond to inquiries from the business community and requests for information
28 from the individual permitting entities, including reports on the status of an
29 application.

30 A retail business is not required to participate in the retail business permitting program.
31 An enforcement action taken against a retail business for a permit obtained through the
32 retail business permitting program does not affect other permits issued to that same retail
33 business through that program.

34 **Sec. 2. 22 MRSA §2491, sub-§6**, as amended by PL 2011, c. 193, Pt. A, §3, is
35 repealed.

36 **Sec. 3. 22 MRSA §2491, sub-§7**, as amended by PL 2013, c. 264, §3, is repealed
37 and the following enacted in its place:

38 **7. Eating establishment.** "Eating establishment" means any place where food or
39 drink is prepared and served or served to the public for consumption on the premises or
40 prepared and served or served ready to eat to the public for consumption off the premises.

1 "Eating establishment" includes places in the entertainment, hospitality, recreation,
2 restaurant and tourism industries; catering establishments; correctional facilities; hospital
3 cafeterias; mobile eating places; public and private schools; retail frozen dairy product
4 establishments; and workplace eating establishments and places where food is prepared
5 for vending machines dispensing food other than in original sealed packages. "Eating
6 establishment" does not include:

7 A. A place preparing and serving food that is licensed pursuant to state law by a state
8 agency other than the department as long the licensing of the place includes regular
9 food safety inspections;

10 B. A place serving food only to residents, such as a boarding home, a retirement
11 home or an independent living place; and

12 C. A farm stand that offers only whole, uncut fresh fruits and vegetables.

13 **Sec. 4. 22 MRSA §2492, sub-§1, ¶B**, as enacted by PL 2003, c. 452, Pt. K, §20
14 and affected by Pt. X, §2, is repealed.

15 **Sec. 5. 22 MRSA §2494, first ¶**, as amended by PL 2011, c. 193, Pt. B, §1, is
16 further amended to read:

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

24 **Sec. 6. 22 MRSA §2495, first ¶**, as amended by PL 2011, c. 193, Pt. B, §3, is
25 further amended to read:

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

30 **Sec. 7. 22 MRSA §2498, sub-§1**, as amended by PL 2013, c. 264, §6, is further
31 amended to read:

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

36 A. The department may impose penalties for violations of this chapter, or the rules
37 adopted pursuant to this chapter, on any eating establishment, ~~eating and lodging~~
38 ~~place~~, lodging place, recreational camp, youth camp, public pool or public spa or
39 campground. The penalties may not be greater than \$100 for each violation. Each

1 day that the violation remains uncorrected may be counted as a separate offense.
2 Penalties may be imposed for each violation of the rules.

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

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

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

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

- 22 (1) May be referred to the Attorney General for appropriate enforcement action;
23 and
- 24 (2) In addition to all fines and penalties imposed pursuant to this chapter, is
25 liable for any interest, costs and fees incurred by the department, including
26 attorney's fees.

27 **Sec. 8. 25 MRSA §2468, sub-§2, ¶A**, as amended by PL 2015, c. 396, §1, is
28 further amended to read:

29 A. Each unit in any building of multifamily occupancy; a fraternity house, sorority
30 house or dormitory that is affiliated with an educational facility; a children's home,
31 emergency children's shelter, children's residential care facility, shelter for homeless
32 children or specialized children's home as defined in Title 22, section 8101; or a
33 hotel, motel, inn or bed and breakfast licensed as an eating ~~and lodging place~~
34 establishment or a lodging place under Title 22, chapter 562. The owner shall use a
35 carbon monoxide detector that is powered by:

- 36 (1) Both the electrical service in the building and a battery;
- 37 (2) A nonreplaceable 10-year battery; or
- 38 (3) A replaceable battery if the carbon monoxide detector uses a low-power
39 radio frequency wireless communication signal, uses multiple sensors, has low-
40 frequency audible notification capability or is connected to a control panel;

