

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2063

H.P. 1465

House of Representatives, January 23, 2020

An Act To Provide Program Solvency, Clarity, Consistency and Flexibility in Routine Public Health Licensing Activities

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

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

2 **Sec. 1. 22 MRSA §2175**, as amended by PL 2013, c. 533, §§21 to 23, is repealed.

3 **Sec. 2. 22 MRSA c. 562, headnote** is amended to read:

4 **CHAPTER 562**

5 **EATING ESTABLISHMENTS, LODGING PLACES, CAMPGROUNDS,**
6 **RECREATIONAL OR SPORTING CAMPS, YOUTH CAMPS AND EATING**
7 **ESTABLISHMENTS, PUBLIC POOLS AND PUBLIC SPAS**

8 **Sec. 3. 22 MRSA §2491, sub-§1**, as amended by PL 2011, c. 193, Pt. A, §1, is
9 further amended to read:

10 **1. Campground.** "Campground" means, in addition to the generally accepted
11 definitions, camping areas, recreational vehicle parks, seashore resorts, lakeshore places,
12 picnic and lunch grounds or other premises where tents, recreational vehicles, rental
13 cabins and cottages are permitted on 5 or more sites for compensation ~~either directly or~~
14 ~~indirectly, including indirect compensation.~~ "Campground" includes, but is not limited to,
15 sites intended for recreational purposes rather than permanent residency. "Campground"
16 does not include parking lots or areas where camping is not authorized.

17 **Sec. 4. 22 MRSA §2491, sub-§7-F**, as amended by PL 2013, c. 264, §4, is
18 further amended to read:

19 **7-F. Lodging place.** "Lodging place" means a ~~building or~~ structure, or any part of a
20 ~~building or~~ structure, used, maintained, or advertised or held out to the public as a place
21 where sleeping accommodations are furnished to the public for business purposes and
22 that offers stays that are temporary in nature and consist of 90 or fewer consecutive days.
23 "Lodging place" includes accommodations in the entertainment, hospitality, recreation
24 and tourism industries, including but is not limited to, hotels, motels, bed and breakfasts
25 ~~and, inns where the owner or managing entity maintains the lodging facilities and the~~
26 ~~structures are located in the same general physical location.~~ "Lodging place" includes a
27 property and properties under common management and at the same location where 4 or
28 more rooms, cottages or condominium units are ~~rented to the public available.~~ "Lodging
29 place" does not include vacation rentals, youth camps, dormitories of charitable,
30 educational or philanthropic institutions, fraternity or sorority houses affiliated with
31 educational institutions, permanent residences, ~~rooming houses, tenancies at will~~ or rental
32 properties with tenant and landlord relationships as described in Title 14, chapters 709 to
33 710-D.

34 **Sec. 5. 22 MRSA §2491, sub-§7-G** is enacted to read:

35 **7-G. Indirect compensation.** "Indirect compensation" means a nonmonetary
36 remuneration provided to a consumer or patron.

37 **Sec. 6. 22 MRSA §2491, sub-§10-C** is enacted to read:

1 **10-C. Permanent residence.** "Permanent residence" means the primary location
2 where an individual lives for the majority of the year, with the intent to remain at that
3 location. "Permanent residence" is determined when an individual:

4 A. Occupies a room for more than 90 consecutive days;

5 B. Lists that location's address for tax purposes;

6 C. Receives mail with that location's address;

7 D. Votes with that location's address;

8 E. Holds a driver's license with that location's address;

9 F. Has children enrolled in school who are staying at that location;

10 G. Has furnished or decorated that location;

11 H. Shows no evidence of living at a different location; or

12 I. Shows any other evidence indicating that the individual is living at that location.

13 "Permanent residence" includes nursing homes as defined in section 1812-A, assisted
14 living programs as defined in section 7852, subsection 4 and residential care facilities as
15 defined in section 7852, subsection 14.

16 **Sec. 7. 22 MRSA §2491, sub-§11**, as repealed and replaced by PL 2011, c. 193,
17 Pt. A, §9, is amended to read:

18 **11. Recreational camp or sporting camp.** "Recreational camp" or "sporting camp"
19 means a building or group of buildings devoted primarily to the offering of ~~primitive~~
20 ~~eating and lodging facilities to guests only and that rents out 4 or more rooms or cottages~~
21 ~~for a fee to persons who want primitive seeking recreation, including snowmobiling,~~
22 ~~hunting, fishing and similar camps, not including summer sports activities.~~ "Recreational
23 ~~camp" or "sporting camp" does not include~~ programs overseen by employees or
24 volunteers of municipalities and educational institutions when the activities generally take
25 place at municipal or institutional properties and buildings.

26 **Sec. 8. 22 MRSA §2491, sub-§16**, as amended by PL 2011, c. 193, Pt. A, §13, is
27 further amended to read:

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

36 **Sec. 9. 22 MRSA §2492, sub-§1**, as amended by PL 2017, c. 322, §4, is further
37 amended to read:

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

- 4 A. An eating establishment;
- 5 C. A lodging place;
- 6 D. A recreational camp or sporting camp;
- 7 E. A campground;
- 8 F. A youth camp;
- 9 G. A public pool; or
- 10 H. A public spa.

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

13 **Sec. 10. 22 MRSA §2492, sub-§3**, as amended by PL 2011, c. 193, Pt. A, §15, is
14 further amended to read:

15 **3. Campground; presumption.** If a campground consists of 5 or more tents or
16 recreational vehicles on a commercial lot, regardless of fees charged, it is presumed that
17 the owner or renter of the lot is receiving compensation for the use of a campground. The
18 owner or renter may rebut the presumption if the owner or renter presents a
19 preponderance of evidence to the contrary.

20 **Sec. 11. 22 MRSA §2494, sub-§2**, as amended by PL 2011, c. 193, Pt. B, §2, is
21 further amended to read:

22 **2. Sixty One hundred dollars.** Sixty One hundred dollars for each inspection for
23 any an establishment that is located in a municipality that requires local inspections of
24 establishments to cover the costs of standardizing inspection practices; administrative
25 licensing and maintaining a centralized database; ongoing training, investigation,
26 compliance and technical assistance; and legal interpretation and advice; and

27 **Sec. 12. 22 MRSA §2495**, as amended by PL 2017, c. 322, §6, is further amended
28 to read:

29 **§2495. Issuance of licenses**

30 The department shall, within 30 days following receipt of a complete application,
31 issue an annual license to operate any eating establishment, lodging place, recreational
32 camp, youth camp, public pool, public spa or campground that is found to comply with
33 this chapter and the rules adopted by the department.

34 When ~~any initial~~ an applicant is found, based upon an inspection by the department or
35 by municipal inspection made according to section 2499, not in compliance with the
36 requirements of this chapter or departmental regulations adopted and approved pursuant
37 to section 2496 or 2499, subsection 1, the department may refuse issuance of the ~~initial~~

1 license, ~~but~~ and shall issue a conditional license, except when conditions are found that
2 present a serious danger to the health and safety of the public. ~~A conditional license may~~
3 ~~not exceed 90 days.~~ The department may issue only one conditional license, which is
4 valid for up to one year, per applicant. Failure by the conditional licensee to meet the
5 conditions specified by the department permits the department to void the conditional
6 license.

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

10 The conditional licensee may apply for an annual license if the conditional license is
11 voided or expires. The conditional licensee must meet all conditions before applying for
12 an annual license.

13 The department may redistribute expiration dates for new and renewed licenses to
14 provide for comparable distribution of licenses on a quarterly basis throughout the year
15 and shall prorate the fees for licenses with a term less or more than one year. The
16 prescribed fee ~~shall~~ must accompany the application for a new license, or the renewal of a
17 license.

18 Licenses ~~shall~~ must be renewed ~~upon application therefor~~ annually and upon payment
19 of the prescribed fee, including late fees, additional inspection fees and fines if assessed,
20 and subject to compliance with regulations of the department and with this chapter. The
21 department shall provide licensees with notice of the need for renewal and necessary
22 forms no less than 30 days prior to the expiration of the license.

23 The issuance of the license provided for in this chapter does not provide exemption
24 from other state or local laws, ordinances or regulations, notwithstanding any other
25 provision of law.

26 Licenses erroneously issued by the department are void and ~~shall~~ must be returned to
27 the department on demand in a notice delivered by hand or by certified mail to the
28 licensee. For cause, the department may revoke or suspend any license pursuant to
29 section 2500.

30 **Sec. 13. 22 MRSA §2496, sub-§3** is enacted to read:

31 **3. Confidential information.** Information that identifies, directly or indirectly, a
32 reference, complainant or reporter of a suspected licensing violation is confidential
33 information, as defined in section 1828.

34 **Sec. 14. 22 MRSA §2498, sub-§1, ¶A**, as amended by PL 2017, c. 322, §7, is
35 further amended to read:

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, lodging place,
38 recreational camp, youth camp, public pool or public spa or campground. The
39 penalties may not be greater than \$100 for each violation, except that the penalty for
40 a 2nd or subsequent adjudication of a violation of this chapter or the rules adopted

1 pursuant to this chapter may not be less than \$200 nor more than \$500. Each day that
2 the violation remains uncorrected may be counted as a separate offense. Penalties
3 may be imposed for each violation of the rules.

4 **Sec. 15. 22 MRSA §2499, sub-§6**, as amended by PL 2011, c. 193, Pt. A, §17, is
5 further amended to read:

6 **6. License fee.** When a license is issued to an establishment, as described in section
7 2492, subsection 1, located in a municipality to which authority to conduct inspection has
8 been delegated by the department as specified in this section, the requirement for
9 payment of a license fee by the establishment to the department as set forth in section
10 2494 must be waived. However, the licensee is required to pay the department a sum not
11 to exceed \$100 to support the costs of mailing and handling cover the costs of
12 standardizing inspection practices; administrative licensing and maintaining a centralized
13 database; ongoing training, investigation, compliance and technical assistance; and legal
14 interpretation and advice.

15 **Sec. 16. 32 MRSA §1222, sub-§1**, as amended by PL 2013, c. 264, §8, is further
16 amended to read:

17 **1. License required.** A person may not practice electrology in this State unless that
18 person is licensed by the department under this chapter. A license issued under this
19 chapter is valid for one year from the date of issuance.

20 The department shall renew a license annually upon payment of the prescribed fee,
21 including late fees, additional inspection fees and fines if assessed, and the licensee is
22 subject to compliance with regulations of the department and this chapter. The
23 department shall provide a licensee with notice of the need for renewal and necessary
24 forms no later than 30 days prior to the expiration of the license.

25 **Sec. 17. 32 MRSA §1222, sub-§1-A** is enacted to read:

26 **1-A. Conditional license.** When an applicant for a license or a licensee applying for
27 license renewal under this chapter is found, based upon an inspection by the department,
28 not in compliance with the requirements of this chapter or rules adopted under section
29 1242, subsection 1, the department may refuse to issue or renew the license and shall
30 issue a conditional license, except when conditions are found that present a serious
31 danger to the health and safety of the public. Failure by the conditional licensee to meet
32 the conditions specified by the department permits the department to void the conditional
33 license.

34 An applicant who is issued a conditional license may reapply for a license if the
35 conditional license is voided or expires; however, the department may not issue another
36 conditional license. In order for an applicant to be issued an annual license, all conditions
37 specified by the department must be met.

38 **Sec. 18. 32 MRSA §1233**, as amended by PL 2013, c. 264, §§11 and 12, is
39 repealed and the following enacted in its place:

1 **§1233. Revocation; suspension; refusal to issue; probation**

2 The department may revoke, suspend or refuse to issue a license or to renew a license
3 or place a person on probation if:

4 **4. Conviction of crime.** The person has been convicted of a crime related to the
5 practice of electrology;

6 **5. Deception or misrepresentation.** The person has engaged in any deception or
7 misrepresentation to the department or the public in applying for a license under this
8 chapter or in the advertising or practice of electrology;

9 **6. Negligence, incompetence or danger.** The person has demonstrated negligence,
10 incompetence or danger to the public in the practice of electrology; or

11 **7. Rules violation.** The person has violated any of the rules adopted by the
12 department under this chapter.

13 **Sec. 19. 32 MRSA §1243,** as amended by PL 2009, c. 589, §10, is further
14 amended to read:

15 **§1243. Inspections; right of entry and determination of compliance**

16 Upon any person's request and payment of a fee not to exceed \$150, the department
17 shall inspect that person's training, place of practice and equipment for compliance with
18 the rules adopted by the department under this chapter. All fees collected by the
19 department must be deposited in a special revenue account dedicated to a health
20 inspection program.

21 The department and any duly designated officer or employee of the department have
22 the right, without an administrative inspection warrant, to enter upon and into the
23 premises of any establishment licensed, or a place where a licensed electrologist
24 practices, pursuant to this chapter at any reasonable time in order to determine the state of
25 compliance with this chapter and any rules in force pursuant to this chapter. Such right of
26 entry and inspection extends to any premises that the department has reason to believe is
27 being operated or maintained without a license or a place where an electrologist practices
28 without a license, but no such entry and inspection of any premises may be made without
29 the permission of the owner or person in charge unless a search warrant is obtained
30 authorizing entry and inspection. Determination of compliance with this chapter and any
31 rules adopted pursuant to this chapter must be made at least once every 2 years by
32 inspection or other method as determined by the department.

33 **Sec. 20. 32 MRSA §4204, sub-§3** is enacted to read:

34 **3. Revocation; suspension; refusal to issue; probation.** The department may
35 revoke, suspend or refuse to issue a license or to renew a license or place a person on
36 probation if:

37 A. The person has been convicted of a crime related to the practice of tattooing;

1 B. The person has engaged in any deception or misrepresentation to the department
2 or the public in applying for a license under this chapter or in the advertising or
3 practice of tattooing;

4 C. The person has demonstrated negligence, incompetence or danger to the public in
5 the practice of tattooing; or

6 D. The person has violated any of the rules adopted by the department under this
7 chapter.

8 **Sec. 21. 32 MRSA §4204, sub-§4** is enacted to read:

9 **4. Right of entry, inspection and determination of compliance.** The department
10 and any duly designated officer or employee of the department have the right, without an
11 administrative inspection warrant, to enter upon and into the premises of any
12 establishment licensed, or a place where a person licensed to perform tattooing practices,
13 pursuant to this chapter at any reasonable time in order to determine the state of
14 compliance with this chapter and any rules in force pursuant to this chapter. Such right of
15 entry and inspection extends to any premises that the department has reason to believe is
16 being operated or maintained without a license or a place where a person practices
17 tattooing without a license, but no such entry and inspection of any premises may be
18 made without the permission of the owner or person in charge unless a search warrant is
19 obtained authorizing entry and inspection. Determination of compliance with this chapter
20 and any rules adopted pursuant to this chapter must be made at least once every 2 years
21 by inspection or other method as determined by the department.

22 **Sec. 22. 32 MRSA §4252, sub-§1** is enacted to read:

23 **1. Renewal.** The department shall renew a license annually upon payment of the
24 prescribed fee, including late fees, additional inspection fees and fines if assessed, and the
25 licensee is subject to compliance with regulations of the department and this chapter. The
26 department shall provide a licensee with notice of the need for renewal and necessary
27 forms no later than 30 days prior to the expiration of the license.

28 **Sec. 23. 32 MRSA §4301, sub-§2** is enacted to read:

29 **2. Conditional license.** When an applicant for a license or a licensee applying for
30 license renewal under this chapter is found, based upon an inspection by the department,
31 not in compliance with the requirements of this chapter and rules adopted under section
32 4251, the department may refuse to issue or to renew the license and shall issue a
33 conditional license, except when conditions are found that present a serious danger to the
34 health and safety of the public. Failure by the conditional licensee to meet the conditions
35 specified by the department permits the department to void the conditional license.

36 An applicant who is issued a conditional license may reapply for a license if the
37 conditional license is voided or expires; however, the department may not issue another
38 conditional license. In order for an applicant to be issued an annual license, all conditions
39 specified by the department must be met.

1 **Sec. 24. 32 MRSA §4312, sub-§2**, as enacted by PL 1997, c. 383, §1, is amended
2 to read:

3 **2. Term of license.** A license issued under this chapter expires on September 30th
4 and is renewable biennially. The department shall renew a license biennially upon
5 payment of the prescribed fee, including late fees, additional inspection fees and fines if
6 assessed, and the licensee is subject to compliance with regulations of the department and
7 this chapter. The department shall provide a licensee with notice of the need for renewal
8 and necessary forms no later than 30 days prior to the expiration of the license.

9 **Sec. 25. 32 MRSA §4312, sub-§4** is enacted to read:

10 **4. Conditional license.** When an applicant for a license or a licensee applying for
11 license renewal under this chapter is found, based upon an inspection by the department,
12 not in compliance with the requirements of this chapter or rules adopted under section
13 4313, the department may refuse to issue or to renew the license and shall issue a
14 conditional license, except when conditions are found that present a serious danger to the
15 health and safety of the public. Failure by the conditional licensee to meet the conditions
16 specified by the department permits the department to void the conditional license.

17 An applicant who is issued a conditional license may reapply for a license if the
18 conditional license is voided or expires; however, the department may not issue another
19 conditional license. In order for an applicant to be issued a biennial license, all
20 conditions specified by the department must be met.

21 **Sec. 26. 32 MRSA §4318, sub-§3** is enacted to read:

22 **3. Right of entry, inspection and determination of compliance.** The department
23 and any duly designated officer or employee of the department have the right, without an
24 administrative inspection warrant, to enter upon and into the premises of any
25 establishment licensed, or a place where a licensed micropigmentation practitioner
26 practices, pursuant to this chapter at any reasonable time in order to determine the state of
27 compliance with this chapter and any rules in force pursuant to this chapter. Such right of
28 entry and inspection extends to any premises that the department has reason to believe is
29 being operated or maintained without a license or a place where a micropigmentation
30 practitioner practices without a license, but no such entry and inspection of any premises
31 may be made without the permission of the owner or person in charge unless a search
32 warrant is obtained authorizing entry and inspection. Determination of compliance with
33 this chapter and any rules adopted pursuant to this chapter must be made at least once
34 every 2 years by inspection or other method as determined by the department.

35 **Sec. 27. 32 MRSA §4325, sub-§1** is enacted to read:

36 **1. Renewal.** The department shall renew a license annually upon payment of the
37 prescribed fee, including late fees, additional inspection fees and fines if assessed, and the
38 licensee is subject to compliance with regulations of the department and this chapter. The
39 department shall provide a licensee with notice of the need for renewal and necessary
40 forms no later than 30 days prior to the expiration of the license.

1 **Sec. 28. 32 MRSA §4325, sub-§2** is enacted to read:

2 **2. Conditional license.** When an applicant for a license or a licensee applying for
3 license renewal under this chapter is found, based upon an inspection by the department,
4 not in compliance with the requirements of this chapter or rules adopted under section
5 4326, the department may refuse to issue or to renew the license and shall issue a
6 conditional license, except when conditions are found that present a serious danger to the
7 health and safety of the public. Failure by the conditional licensee to meet the conditions
8 specified by the department permits the department to void the conditional license.

9 An applicant who is issued a conditional license may reapply for a license if the
10 conditional license is voided or expires; however, the department may not issue another
11 conditional license. In order for an applicant to be issued an annual license, all conditions
12 specified by the department must be met.

13 **Sec. 29. 32 MRSA §4327, sub-§3** is enacted to read:

14 **3. Revocation; suspension; refusal to issue; probation.** The department may
15 revoke, suspend or refuse to issue a license or to renew the license or place a person on
16 probation if:

- 17 A. The person has been convicted of a crime related to the practice of body piercing;
- 18 B. The person has engaged in any deception or misrepresentation to the department
19 or the public in applying for a license under this chapter or in the advertising or
20 practice of body piercing;
- 21 C. The person has demonstrated negligence, incompetence or danger to the public in
22 the practice of body piercing; or
- 23 D. The person has violated any of the rules adopted by the department under this
24 chapter.

25 **Sec. 30. 32 MRSA §4327, sub-§4** is enacted to read:

26 **4. Right of entry, inspection and determination of compliance.** The department
27 and any duly designated officer or employee of the department have the right, without an
28 administrative inspection warrant, to enter upon and into the premises of any
29 establishment licensed, or a place where a licensed body piercer practices, pursuant to
30 this chapter at any reasonable time in order to determine the state of compliance with this
31 chapter and any rules in force pursuant to this chapter. Such right of entry and inspection
32 extends to any premises that the department has reason to believe is being operated or
33 maintained without a license or a place where a body piercer practices 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. Determination of compliance with this chapter and any rules adopted
37 pursuant to this chapter must be made at least once every 2 years by inspection or other
38 method as determined by the department.

1

SUMMARY

2 This bill does the following.

3 1. It corrects a conflict regarding fees related to municipal inspections in the laws
4 governing eating establishments, lodging places, campgrounds, recreational and sporting
5 camps, youth camps, public pools and public spas and adds provisions regarding
6 applications and conditional licensing. It adds a fine for 2nd and subsequent violations
7 and a provision stating that information identifying a reference, complainant or reporter
8 of a suspected licensing violation is confidential. The bill also adds clarifying definitions
9 and changes the chapter headnote to better reflect the content of that chapter.

10 2. It repeals the laws governing the defunct Maine Wild Mushroom Harvesting
11 Certification Program.

12 3. It amends the laws governing body artists, including electrologists, tattoo artists,
13 micropigmentation practitioners and body piercers, to include late fees, inspection fees
14 and fines in the payment of all license fees; to allow the issuance of conditional licenses;
15 to add grounds for license refusal, suspension or revocation; and to add right of entry and
16 inspection frequency language that is consistent with other professional licenses.