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Date: April 27, 2020

**Committee Amendment to LD 2001, An Act to Create an Administrative Review Process for Hunting Violations**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

**Sec. 1. 12 MRSA §10902-A is enacted to read:**

**§10901-A. Suspension of License and Permit Through Administrative Process for Violations of Civil Trespass While Hunting**

The Department in an adjudicatory proceeding may impose an administrative penalty for a violation of section 10657 in accordance with this section.

**1. Initiation and notice; mutually exclusive penalties.** If the chief of the Warden Service delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of section 10657 while hunting has occurred, and the person alleged to violate section 10657 has not been charged with a civil or criminal violation under that section, the commissioner shall immediately examine the statement and determine whether to conduct an adjudicatory proceeding for the purpose of imposing an administrative penalty under this section. If the commissioner determines that the imposition of a penalty is necessary, the commissioner shall immediately notify the person who is alleged to have violated the law in accordance with Title 5, section 9052. Notice under this section must state that the recipient may request a hearing within 10 days of receipt of notice. Notice is deemed received 3 days after the mailing. If a person who has been noticed pursuant to this subsection does not request a hearing within 10 days after receipt of notice, the commissioner may implement administrative penalties under subsection 3 without a hearing in accordance with subsection 2.

**2. Hearing.** If a hearing is requested pursuant to subsection 1, the commissioner or commissioner's designee must appoint a presiding officer who must hold the hearing within 30 business days after the request if the person alleged to have committed the violation requests the hearing. If the hearing is continued, it must be held no later than 60 days after the original notice, unless the presiding officer finds that a continuance beyond 60 days is warranted. The hearing must be held in accordance with 5 MRSA chapter 375, subchapter 4, except that:

**A. Issues of the hearing are limited to whether the person while hunting violated section 10657;**

B. If the presiding officer determines that the person while hunting committed a violation of section 10657, the presiding officer shall immediately notify the commissioner of the finding; and

C. The presiding officer shall provide a written decision that contains the findings and recommended penalties under subsection 3 no more than 10 business days after completion of the hearing, after which the commissioner or the commissioner's designee may take administrative action under subsection 3.

**3. Administrative action.** In accordance with this section, if the commissioner or the commissioner's designee determines, after receiving the findings and recommendations of the presiding officer under subsection 2, or, in accordance with Title 5, Section 9053, if no hearing has been requested, that a person who holds a license to hunt violated section 10657 while hunting, the commissioner or the commissioner's designee may impose the following penalties:

A. For a first violation, revocation of the person's hunting licenses for one year from the date the commissioner or the commissioner's designee issues a decision under this subsection;

B. For a second violation, revocation of the person's hunting licenses for two years from the date the commissioner or the commissioner's designee issues a decision under this subsection; or

C. For subsequent violations, three years from the date the commissioner or the commissioner's designee issues a decision under this subsection.

In addition to the penalties above, the person who violates section 10657 while hunting, as determined by the commissioner or the commissioner's designee under this subsection, must successfully complete the hunter ethics course under section 10903-A before the person is eligible to obtain a hunting license. If a person who violates this section while hunting does not possess a hunting license at the time of violation the commissioner or commissioner's designee may refuse to issue any hunting license to that person for up to 5 years following the violation in addition to any of the actions in this subsection.. If the person alleged to violate 10657 is charged with a civil or criminal violation under that section, the commissioner or the commissioner's designee may not impose an administrative penalty under this section

**4. Appeal.** A person may appeal an administrative action under subsection 3 to the Superior Court within 30 days of receipt of the commissioner or the commissioner's designee's decision under subsection 3.

**Sec. 2.** Amend 12 MRSA §10657 as follows:

### **§10657. Civil trespass**

**1. Prohibition.** While engaging in any activity regulated under this Part, a person, knowing that the person is not licensed or privileged to do so, may not:

A. Enter or cause a projectile to enter any place from which that person may lawfully be excluded and that is posted in accordance with Title 17-A, section 402, subsection 4 or in

a manner reasonably likely to come to the attention of intruders or that is fenced or otherwise enclosed in a manner designed to exclude intruders; or

B. Enter or remain in or cause a projectile to enter or remain in any place in defiance of a lawful order not to enter or an order to vacate that was personally communicated to that person by the owner of the place or another authorized person.

**2. Civil Penalties.** The following penalties apply to violations of this section.

1. A person who violates this section commits a civil violation for which a fine of not less than \$100 and not more than \$500 may be adjudged.

2. A person who violates this section after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

**2-B. Administrative penalties.** A person who violates this section who is not charged with a civil or criminal penalty under subsection 2 may be subject to administrative penalties under section 10902-A. A person who violates this section and receives an administrative penalty for that violation under section 10902-A is not subject to a civil or criminal action under this section for that violation.

## SUMMARY

This bill establishes a procedure for the Commissioner of Inland Fisheries and Wildlife to take administrative action regarding civil trespass while hunting without first requiring criminal conviction or civil adjudication. If a person alleged to have committed a violation of section 10657 while hunting is not charged for violating section 10657, the Department may initiate administrative proceedings, which include notice and an opportunity to be heard, and administer penalties. The decision of the Commissioner may be appealed in Superior Court.