

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 875 - L.D. 1177

An Act To Make Minor Changes to Municipal Health Inspection Activities

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

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

PART A

Sec. A-1. 22 MRSA §2491, sub-§1, as amended by PL 1979, c. 30, §1, is further amended to read:

1. Campground. "Camping area Campground" means, in addition to the general generally accepted interpretations definitions, camping areas, recreational vehicle parks, seashore resorts, lakeshore places, picnic and lunch grounds or other premises where tents or, recreational vehicles, rental cabins and cottages are permitted to be parked on 5 or more sites for compensation either directly or indirectly. "Campground" includes, but is not limited to, sites intended for recreational purposes rather than permanent residency. "Campground" does not include parking lots or areas where camping is not authorized.

Sec. A-2. 22 MRSA §2491, sub-§4, as enacted by PL 1975, c. 496, §3, is amended to read:

4. Cottage. "Cottage" means a single structure where sleeping accommodations are furnished to the public as a business for a day, week or month, but not for more longer than the an entire summer season, for temporary occupancy for recreational purposes only and not for permanent residency.

Sec. A-3. 22 MRSA §2491, sub-§6, as enacted by PL 1975, c. 496, §3, is amended to read:

6. Eating and lodging place. "Eating and lodging place or lodging place" means every building or structure or any part thereof kept, used as, maintained as, advertised as

or held out to the public to be a place where eating and sleeping ~~or sleeping~~ accommodations are furnished to the public as a business, such as hotels, motels, guest homes and cottages.

Sec. A-4. 22 MRSA §2491, sub-§7, as amended by PL 2009, c. 211, Pt. A, §1, is further amended to read:

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

Sec. A-5. 22 MRSA §2491, sub-§7-E is enacted to read:

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

Sec. A-6. 22 MRSA §2491, sub-§7-F is enacted to read:

7-F. Lodging place. "Lodging place" means a building or structure, or any part of a building or structure, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for business purposes. "Lodging place" includes, but is not limited to, hotels, motels, guest homes and cottages where the owner maintains the sleeping accommodations. "Lodging place" does not include permanent residences, rooming houses, tenancies at will or rental properties with tenant and landlord relationships.

Sec. A-7. 22 MRSA §2491, sub-§10-A is enacted to read:

10-A. Public pool. "Public pool" means any constructed or prefabricated pool other than a residential pool or medical facility pool that is intended to be used for swimming, recreational bathing or wading and is operated by an owner, lessee, tenant or concessionaire or by a person licensed by the department whether or not a fee is charged for use. "Public pool" includes a pool on the premises of a child care facility that is licensed or required to be licensed under section 8301-A.

Sec. A-8. 22 MRSA §2491, sub-§10-B is enacted to read:

10-B. Public spa. "Public spa" means any constructed spa other than a residential spa or medical facility spa.

Sec. A-9. 22 MRSA §2491, sub-§11, as amended by PL 2009, c. 211, Pt. A, §2, is repealed and the following enacted in its place:

11. Recreational camp or sporting camp. "Recreational camp" or "sporting camp" means a building or group of buildings devoted primarily to the offering of primitive lodging for a fee to persons who want primitive recreation, snowmobiling, hunting, fishing and similar camps, not including summer sports programs overseen by employees or volunteers of municipalities and educational institutions when the activities generally take place at municipal or institutional properties and buildings.

Sec. A-10. 22 MRSA §2491, sub-§12, as enacted by PL 1975, c. 496, §3, is repealed.

Sec. A-11. 22 MRSA §2491, sub-§13, as enacted by PL 1975, c. 496, §3, is repealed.

Sec. A-12. 22 MRSA §2491, sub-§14, as enacted by PL 1975, c. 496, §3, is amended to read:

14. Vending machine. "Vending machine" shall mean means any self-service device offered for public use which that, upon insertion of a coin, coins or token money or by other similar means, dispenses unit servings of food other than in original sealed packages without the necessity of replenishing the device between vending operations.

Sec. A-13. 22 MRSA §2491, sub-§16, as enacted by PL 2009, c. 211, Pt. A, §3, is amended to read:

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

Sec. A-14. 22 MRSA §2492, sub-§1, as amended by PL 2009, c. 211, Pt. A, §§4 to 6, is further amended to read:

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

A. An eating establishment;

- B. An eating and lodging place;
- C. A lodging place;
- D. A recreational camp or sporting camp;
- E. A camping area campground; or
- F. A youth camp;
- G. A public pool; or
- H. A public spa.

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

Sec. A-15. 22 MRSA §2492, sub-§3, as enacted by PL 2003, c. 452, Pt. K, §20 and affected by Pt. X, §2, is amended to read:

3. Campground; presumption. If a camping area campground consists of 5 or more tents or recreational vehicles on a commercial lot, it is presumed that the owner or renter of the lot is receiving compensation for the use of a camping area campground. The owner or renter may rebut the presumption if the owner or renter presents a preponderance of evidence to the contrary.

Sec. A-16. 22 MRSA §2499, sub-§4, as enacted by PL 1975, c. 496, §3, is amended to read:

4. Inspection reports. The municipalities shall furnish the department electronic copies of its inspection reports relating to said inspections on a monthly basis in a format and on a schedule determined by the department.

Sec. A-17. 22 MRSA §2499, sub-§6, as amended by PL 2003, c. 673, Pt. X, §4, is further amended to read:

6. License fee. When a license is issued to an eating establishment, as described in section 2492, subsection 1, located in a municipality to which authority to conduct inspection has been delegated by the department as specified in this section, the requirement for payment of a license fee by the establishment to the department as set forth in section 2494 must be waived. However, the licensee is required to pay the department a sum not to exceed \$60 \$100 to support the costs of mailing and handling.

Sec. A-18. 22 MRSA §2499, sub-§9, as enacted by PL 2003, c. 673, Pt. X, §6, is amended to read:

9. Delegation renewal. Beginning January 1, 2005, and every 3 years thereafter, the department shall review the restaurant inspection program of the municipalities to which authority to conduct inspections has been delegated. The process for the delegation of this authority and other such provisions describing the assignment of and removal of this delegation of authority must be established by rule and must include, but not be limited to, staff competency, enforcement and compliance history, inspection practices and

reporting practices. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

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

PART B

Sec. B-1. 22 MRSA §2494, first ¶, as amended by PL 2009, c. 211, Pt. A, §7, is further amended to read:

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

Sec. B-2. 22 MRSA §2494, sub-§2, as amended by PL 2003, c. 673, Pt. X, §1, is further amended to read:

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

Sec. B-3. 22 MRSA §2495, first ¶, as amended by PL 2009, c. 211, Pt. A, §8, is further amended to read:

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

Sec. B-4. 22 MRSA §2498, sub-§1, ¶A, as amended by PL 2009, c. 211, Pt. A, §10, is further amended to read:

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

Sec. B-5. 22 MRSA §2498, sub-§1, ¶B, as amended by PL 2009, c. 211, Pt. A, §11, is further amended to read:

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

Sec. B-6. 22 MRSA §2498, sub-§1, ¶C, as amended by PL 2009, c. 211, Pt. A, §12, is further amended to read:

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

Sec. B-7. 22 MRSA §2499, sub-§2, as enacted by PL 1975, c. 496, §3 and amended by PL 2003, c. 689, Pt. B, §7, is further amended to read:

2. **Qualified to make inspections.** ~~No municipal~~ A municipally employed ~~sanitarians shall~~ health inspector may not make inspections under the provisions of this chapter unless certified as qualified by the Commissioner of Health and Human Services.

Sec. B-8. 22 MRSA §2499, sub-§8, as enacted by PL 1975, c. 496, §3, is amended to read:

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

Sec. B-9. 22 MRSA §2499, first ¶, as enacted by PL 1975, c. 496, §3, is amended to read:

Notwithstanding any other provisions of this chapter, the department may issue a license to ~~establishments~~ an establishment as defined in section 2491 on the basis of an inspection performed by ~~an~~ a health inspector who works for and is compensated by the municipality in which such an establishment is located, but only if the following conditions have been met.

Sec. B-10. 22 MRSA §2501, as amended by PL 2007, c. 428, §1, is further amended to read:

§2501. Exceptions

Private homes are not deemed or considered lodging places and subject to a license when not more than 5 rooms are let; such private homes must post in a visible location in each rented room a card with the following statement in text that is easily readable in no

less than 18-point boldface type of uniform font "This lodging place is not regulated by the State of Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention." The homes must provide guests upon check-in with a notice containing the same information. A license is not required from dormitories of charitable, educational or philanthropic institutions, fraternity and sorority houses affiliated with educational institutions, or from private homes used in emergencies for the accommodation of persons attending conventions, fairs or similar public gatherings, nor from temporary eating establishments and temporary lodging places for the same, nor from railroad dining or buffet cars, nor from construction camps, nor from boarding houses and camps conducted in connection with wood cutting and logging operations, nor from any boarding care facilities or children's homes that are licensed under section 7801.

~~Cottages shall~~ Rooms and cottages are not ~~be~~ deemed or considered lodging places and subject to a license where not more than 3 rooms and cottages are let.

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

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

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor