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Legislative Document

No. 1588

H.P. 1147

House of Representatives, April 18, 2019

An Act To Create a Registration Process and Permits for Vacation Rentals

Reference to the Committee on Labor and Housing suggested and ordered printed.

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

ROBERT B. HUNT
Clerk

Presented by Representative ZEIGLER of Montville. (BY REQUEST)
Cosponsored by Representatives: ALLEY of Beals, DODGE of Belfast, DOUDERA of Camden, HOBBS of Wells, HUBBELL of Bar Harbor, VEROW of Brewer, Senators: CHIPMAN of Cumberland, CYRWAY of Kennebec.

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

2 **Sec. 1. 22 MRSA §2492**, as amended by PL 2017, c. 322, §4, is further amended
3 to read:

4 **§2492. License or permit required**

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

- 8 A. An eating establishment;
- 9 C. A lodging place;
- 10 D. A recreational camp or sporting camp;
- 11 E. A campground;
- 12 F. A youth camp;
- 13 G. A public pool; or
- 14 H. A public spa.

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

17 **1-A. Permit required for vacation rental.** A person may not conduct, control,
18 manage or operate a vacation rental for compensation, directly or indirectly, without
19 registering with the department and obtaining a permit from the department. In order to
20 obtain a permit under this subsection, the applicant shall provide proof of appropriate
21 insurance from an insurance carrier. A permit obtained pursuant to this subsection must
22 be displayed in a place readily visible to customers or other persons using the vacation
23 rental.

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

- 25 A. Violate subsection 1 or 1-A; or
- 26 B. Violate subsection 1 or 1-A after having previously violated subsection 1 or 1-A.

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

32 **Sec. 2. 22 MRSA §2493**, as enacted by PL 1975, c. 496, §3, is amended to read:

33 **§2493. Applicant**

34 ~~Any A~~ person, ~~corporation, firm or copartnership~~ desiring a license or permit shall
35 submit satisfactory evidence of ~~his, her or its~~ the person's ability to comply with the

1 minimum standards of this chapter and all ~~regulations~~ rules adopted ~~thereunder~~ pursuant
2 to this chapter.

3 **Sec. 3. 22 MRSA §2494**, as amended by PL 2017, c. 322, §5, is further amended
4 to read:

5 **§2494. Fees**

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

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

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

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

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

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

23 **2-A. Fifty dollars.** Fifty dollars for a vacation rental required to be registered
24 pursuant to section 2492, subsection 1-A; and

25 **3. Three hundred dollars.** Three hundred dollars for all other establishments,
26 places and camps not included in subsection 1 ~~or~~, 2 or 2-A.

27 All ~~such~~ fees imposed pursuant to subsections 1, 2 and 3 are for the license, one
28 licensure inspection and one follow-up inspection. The fee imposed pursuant to
29 subsection 2-A is for the permit. When additional inspections are required to determine
30 an applicant's eligibility for licensure, the department is authorized through its rules to
31 charge an additional fee not to exceed \$100 to cover the costs of each additional
32 inspection or visit. Failure to pay such charges within 30 days of the billing date
33 constitutes grounds for revocation of the license, unless an extension for a period not to
34 exceed 60 days is granted in writing by the commissioner.

35 **Sec. 4. 22 MRSA §2495**, as amended by PL 2017, c. 322, §6, is further amended
36 to read:

1 **§2495. Issuance of licenses and permits**

2 The department shall, within 30 days following receipt of application, issue an annual
3 license to operate any eating establishment, lodging place, recreational camp, youth camp
4 or campground that is found to comply with this chapter and the rules adopted by the
5 department. The department, within 30 days following receipt of application, shall issue
6 an annual permit to operate a vacation rental that is found to comply with this chapter and
7 the rules adopted by the department.

8 When any initial applicant is found, based upon an inspection by the department or
9 by municipal inspection made according to section 2499, not in compliance with the
10 requirements of this chapter or departmental ~~regulations~~ rules adopted and approved
11 pursuant to section 2496 or 2499, subsection 1, the department may refuse issuance of the
12 initial license or permit, but shall issue a conditional license or permit, except when
13 conditions are found that present a serious danger to the health and safety of the public. A
14 conditional license or permit may not exceed 90 days. Failure by the conditional licensee
15 or conditional permittee to meet the conditions specified by the department permits the
16 department to void the conditional license or permit.

17 The conditional license ~~shall be~~ or permit is void when the department has delivered
18 in hand or by certified mail a written notice to the conditional licensee or conditional
19 permittee or, if the conditional licensee or conditional permittee cannot be reached for
20 service in hand or by certified mail, has left notice ~~thereof~~ that the license or permit is
21 void at the facility.

22 The department may redistribute expiration dates for new and renewed licenses and
23 permits to provide for comparable distribution of licenses and permits on a quarterly basis
24 throughout the year and shall prorate the fees for licenses and permits with a term less or
25 more than one year. The ~~prescribed fee~~ shall required by section 2494 must accompany
26 the application for a new license or permit, or the renewal of a license or permit.

27 Licenses ~~shall~~ and permits must be renewed upon application ~~therefor~~ and ~~upon~~
28 payment of the ~~prescribed fee~~ fees and are subject to compliance with ~~regulations~~ rules of
29 the department and with this chapter. The department shall provide licensees and
30 permittees with notice of the need for renewal and necessary forms no less than 30 days
31 prior to the expiration of the license or permit.

32 The issuance of the license or permit provided for in this chapter does not provide
33 exemption from other state or local laws, ordinances or regulations, notwithstanding any
34 other provision of law to the contrary.

35 Licenses or permits erroneously issued by the department are void and ~~shall~~ must be
36 returned to the department on demand in a notice delivered by hand or by certified mail to
37 the licensee or permittee. For cause, the department may revoke or suspend any license or
38 permit pursuant to section 2500.

39 **Sec. 5. 22 MRSA §2496, sub-§3** is enacted to read:

1 **3. Registration of vacation rentals.** The department shall establish and maintain a
2 registry of vacation rentals for which a person has sought a permit under this chapter and
3 shall include in the registry information including, but not limited to, ownership,
4 violations and the resolution of those violations.

5 **Sec. 6. 22 MRSA §2497, first ¶**, as amended by PL 2011, c. 375, §2, is further
6 amended to read:

7 The department and any duly designated officer or employee of the department have
8 the right, without an administrative inspection warrant, to enter upon and into the
9 premises of any establishment licensed or permitted pursuant to this chapter at any
10 reasonable time in order to determine the state of compliance with this chapter and any
11 rules in force pursuant to this chapter. ~~Such~~ This right of entry and inspection extends to
12 any premises that the department has reason to believe is being operated or maintained
13 without a license ~~but no such~~ or permit except that entry and inspection of any unlicensed
14 or unpermitted premises may not be made without the permission of the owner or person
15 in charge unless a search warrant is obtained authorizing entry and inspection. The
16 department and any duly designated officer or employee of the department do not have
17 the right to enter, for inspection under this chapter, upon and into the premises of any
18 establishment that is licensed under chapter 551, subchapter 1.

19 **Sec. 7. 22 MRSA §2498**, as amended by PL 2017, c. 322, §7, is further amended
20 to read:

21 **§2498. Fines and penalties**

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

26 A. The department may impose penalties for violations of this chapter, or the rules
27 adopted pursuant to this chapter, on any eating establishment, lodging place, vacation
28 rental, recreational camp, youth camp, public pool or public spa or campground. The
29 penalties may not be greater than \$100 for each violation. Each day that the violation
30 remains uncorrected may be counted as a separate offense. Penalties may be imposed
31 for each violation of the rules.

32 B. The department may direct an eating establishment, lodging place, vacation
33 rental, recreational camp, youth camp, public pool or public spa or campground to
34 correct any violations in a manner and within a time frame that the department
35 determines is appropriate to ensure compliance with state rules or to protect the
36 public health. Failure to correct violations within the time frames constitutes a
37 separate finable violation.

38 C. Any person, ~~corporation, firm or copartnership~~ that operates any an eating
39 establishment, lodging place, vacation rental, recreational camp, youth camp, public
40 pool or public spa or campground without first obtaining a license or permit as
41 required by this chapter must be punished, upon adjudication of unlicensed or
42 unpermitted operation, by a fine of not less than \$25 nor more than \$200, and upon a

1 2nd or subsequent adjudication of unlicensed or unpermitted operation must be
2 punished by a fine of not less than \$200 nor more than \$500. Each day any ~~such~~
3 ~~person, corporation, firm or copartnership~~ operates without obtaining a license or
4 permit constitutes a separate offense.

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

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

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

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

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

17 **3. Enforcement and appeal.** Enforcement and appeal of this section ~~is~~ are as
18 follows.

19 A. The department may impose any fine in conformity with ~~the Maine~~
20 ~~Administrative Procedure Act~~, Title 5, chapter 375, subchapter ~~IV~~ 4, providing the
21 licensee or permittee the opportunity for an administrative hearing.

22 B. ~~Licensees~~ A licensee or permittee that ~~are~~ is fined pursuant to this chapter ~~are~~ is
23 required to pay the department the amount of the penalties. If a licensee or permittee
24 has not paid any collectible fines by the time of its license or permit renewal, the
25 department may collect such fines by requiring their payment prior to the processing
26 of any license or permit renewal application. An appeal of the department's decision
27 to fine a licensee or permittee stays the collection of any fine. Interest ~~must accrue~~
28 accrues on fines at a rate described in Title 14, section 1602-B prior to the completion
29 of any appeal. After the completion of any appeal process or after any appeal period
30 has passed, interest ~~must accrue~~ accrues pursuant to Title 14, section 1602-C.

31 **Sec. 8. 22 MRSA §2499**, as amended by PL 2011, c. 589, §1, is further amended
32 by adding at the end a new paragraph to read:

33 This section does not apply to vacation rentals.

34 **Sec. 9. 22 MRSA §2500**, as amended by PL 1999, c. 547, Pt. B, §§41 and 78 and
35 affected by §80, is further amended to read:

36 **§2500. Suspension or revocation; appeals**

37 When the department believes a license or permit should be suspended or revoked, it
38 shall file a complaint with the District Court in conformity with the Maine Administrative
39 Procedure Act. A person aggrieved by the refusal of the department to issue a license or

1 permit may request a hearing in conformity with the Maine Administrative Procedure
2 Act.

3 Whenever, upon inspection, conditions are found ~~which that~~ violate this chapter or
4 ~~regulations rules~~ adopted ~~thereunder under~~ this chapter, or ~~which that~~ may endanger the
5 life, health or safety of persons living in or attending any licensed or permitted
6 establishment under this chapter, the department may request an emergency suspension of
7 license or permit of the District Court pursuant to Title 4, section 184, subsection 6, and
8 the court may grant suspension subject to reinstatement following a hearing before the
9 court if cause is not shown.

10 **Sec. 10. 22 MRSA §2501**, as amended by PL 2015, c. 494, Pt. D, §4, is further
11 amended to read:

12 **§2501. Exceptions**

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

29 Rooms and cottages are not deemed or considered lodging places and subject to a
30 license where not more than 3 rooms and cottages are let; such rooms or cottages are
31 considered vacation rentals, subject to the provisions of this chapter.

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

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

