

OPLA RESEARCH REQUEST MEMO

To: Rachel Olson, Legislative Analyst, IDEA

From: Kristin Brawn, Legislative Researcher

Date: April 22, 2021

RE: Due Process for Businesses Cited for Violation of Executive Orders Related to COVID-19

Hi Rachel,

You asked me to research the due process rights of businesses in this state when they are cited for violations of the Executive Orders related to the COVID-19 state of emergency, resulting in suspension of licensure and/or fines. Please see my findings below regarding the enforcement authorities provided in the Executive Orders and the due process procedures outlined in statute in the Administrative Procedure Act (APA) and other sections of statute.

I. Enforcement Authorities in Executive Orders

Section III of [Executive Order 19-A FY 20/21](#), which directs owners and operators of all indoor public settings to require the wearing of face coverings in all publicly accessible areas, provides for “all available means of enforcement” of this order “including civil injunctive relief pursuant to Rule 65 of the Maine Rules of Civil Procedure, criminal prosecution pursuant to 37-B M.R.S. § 786(1) and the Maine Criminal Code, and administrative action under applicable licensing standards and requirements.” The most recent Executive Order regarding capacity limits on indoor and outdoor gatherings, [Executive Order 35 FY 20/21](#), also provides for “all available means of enforcement.”

II. Due Process Procedures in Statute

A. Administrative Procedure Act ([5 MRSA, Ch. 375](#))

[Section 10003](#) of the Administrative Procedure Act (APA) states that a state agency “may not amend or modify any license unless it has afforded the licensee an opportunity for hearing in conformity with subchapter IV, [the adjudicatory hearing provisions of the APA] nor may it refuse to renew any license unless it has afforded the licensee either an opportunity for an agency hearing in conformity with subchapter IV or an opportunity for a hearing in the District Court.” [Section 10051](#) of the APA grants the District Court exclusive jurisdiction upon complaint of any state agency regarding a licensee to revoke or suspend licenses issued by the agency.

However, [section 1004](#) of the APA permits state agencies to revoke, suspend or refuse to renew any license in certain circumstances without an administrative hearing or District Court hearing, including if “the health or physical safety of a person or the continued well-being of a significant natural resource is in immediate jeopardy at the time of the agency's action, and acting in accordance with subchapter IV or VI [District Court hearing] would fail to adequately respond to a known risk, provided that the revocation, suspension or refusal to renew shall not continue for more than 30 days;” or if “the action is based solely upon the physical test, examination or inspection by a state-certified inspector of any product, animal, material or equipment, from which the agency concludes that action in accordance with subchapter IV or VI would not adequately protect public health or safety, provided that action under this subsection shall not be effective for a period of more than 30 days.”

B. Licensure of Eating Establishments and Lodging Places

[Title 22, Chapter 562](#) governs the licensure of eating establishments and lodging places. The Department of Health and Human Services (DHHS) is the licensing authority for these establishments. [Section 2498](#) authorizes DHHS to impose fines for violations of statute or rules governing licensure and authorizes DHHS to direct an eating establishment or lodging place to correct any violations. The licensee may appeal any fine issued by DHHS through an administrative hearing in conformity with the APA.

To revoke or suspend a license, DHHS is required by [Section 2500](#) to file a complaint with the District Court in conformity with the APA. The licensee may appeal the suspension or revocation in accordance with the APA. However, in conditions which “may endanger the life, health or safety of persons living in or attending the licensed establishment,” DHHS may request an emergency suspension of the license from the District Court, pursuant to [Title 4, section 184, subsection 6](#). The court may grant suspension subject to reinstatement following a hearing if cause is not shown.

[Title 4, section 184, subsection 6](#) provides that the “District Court has jurisdiction to revoke temporarily or suspend a license without notice or hearing upon the verified complaint or complaint accompanied by affidavits of a licensing agency or the Attorney General. The verified complaint or complaint accompanied by affidavits must demonstrate that summary action is necessary to prevent an immediate threat to the public health, safety or welfare.” Upon issuance of an order revoking or suspending a license, the District Court must schedule a hearing on the agency's complaint. The hearing may be advanced on the docket and receive priority over other cases. An order to temporarily suspend or revoke a license expires within 30 days of issuance unless it is renewed by the court.

Following a hearing of the agency’s complaint, on default or agreement of the parties, the District Court may decide to suspend, revoke or modify the license or reinstate the license.

I hope that you find this information helpful. Please let me know if you have any questions or would like me to do further research on this.