

## Office of Policy and Legal Analysis

Date: April 20, 2021  
To: Joint Standing Committee on Innovation, Development, Economic Advancement and Business  
From: Rachel Olson, Legislative Analyst  
Re: LD 891, An Act To Eliminate or Forgive Fines and Penalties on Persons and Businesses Due to the COVID-19 Pandemic (Hutchins)

---

### Bill Summary

This bill is a concept draft pursuant to Joint Rule 208.

This bill would eliminate or forgive fines and penalties on persons and businesses due to the pandemic caused by coronavirus disease 2019, known as COVID-19.

#### Testimony ([link](#)):

**Proponents:** Representative Hutchins, sponsor; Danny Emerson; Wayne Gray; Linda Reardon; Robert Rosati; Mary Roy;

**Opponents:** None

**Neither for nor against:** None

#### Potential Issues or Technical Problems:

The sponsor did not submit any language to replace the concept draft for consideration by the committee. In his written testimony he did clarify the title by saying that “fines and penalties imposed during the COVID-10 crisis due to COVID-19 restrictions will be returned to the affected parties during the 2021 supplemental budget process.”<sup>1</sup>

#### Information Requests:

*1. What were the types of fines or penalties assessed as a result of the pandemic or a total number of fines/penalties as a result of the pandemic?*

Fines or penalties assessed as a result of the pandemic can come from a variety of sources, including the different licensing boards for various occupations and professions, from the Department of Agriculture, Conservation and Forestry for grocery store and food processing plants, through the Health Inspection Program which oversees restaurants and accommodations, and from cities and towns. This may not be a complete list.

According to a Bangor Daily News article from April 19, 2021, from April 1, 2020 through March 9, 2021, 23 businesses had their license temporarily suspended through the Maine Health Inspection Program. Only one business had a temporary license suspension through the Department of Agriculture, Conservation and Forestry.<sup>2</sup>

---

<sup>1</sup> Representative Hutchins, written testimony, April 8, 2021.

<sup>2</sup> Lori Valigra, “Complaints about Maine Businesses Flouting Pandemic Rules Expected to Rise during Tourist Season,” *Bangor Daily News*, April 19, 2021, <https://bangordailynews.com/2021/04/19/business/coronavirus-complaints-expected-to-rise-during-tourism-season/>.

The following information came from DHHS:

Stats on complaints, fines and temporary suspensions 2020-2021

- 4100 total COVID complaints - HIP followed up on 1700 and local health reps followed up on 2400
- 93 Imminent Health Hazard Findings (not enforcement)
- 23 Temporary Suspensions
- 6 received fines for operating on a temporary suspended license - \$56,000
- 4 received fines for unlicensed operation - \$1250

Complaint stats for 2019 (pre-COVID)

- 507 complaints
- 82 Imminent Health Hazards Findings (not enforcement)
- Temporary suspensions - These were so rare pre-COVID that we did not keep a formal count. To our knowledge there were none.
- 43 received fines for violations for a total of \$39,575

Commissioner Head indicated during her oral testimony that no fines or penalties for such infractions were issued from OPOR.

Ms. Vaillancourt, the Executive Director of the Board of Dental Practice, indicated in her oral testimony that there were two individuals who were fined for unprofessional conduct related to violations of the Governor's executive orders and board policies. Those cases are available on the [public website](#) for disciplinary actions related to licenses, registrations and permits that is managed by the State of Maine. In each case, the individual was fined \$1,500 and the case was resolved through a consent agreement signed by both parties.

*2. What is the process that boards go through when assessing fines or penalties on individuals or businesses?*

Statutory authority comes from [Title 10, section 8003, subsections 5 and 5-A](#), as well as within the sections specifically related to each of the bureaus, offices, boards or commissions. Any nonconsensual disciplinary action may only be imposed after a hearing conforming to the requirements of [Title 5, chapter 375](#), subchapter 4 (Adjudicatory Proceedings) and, in most cases, is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7 (Judicial Review – Final Agency Action).

The following comes from an overview of the complaint procedures and process within OPOR. For more detailed information, please see the complete document linked below and uploaded to the electronic LD file. Additionally, DHHS Administrative Hearings Regulations and a research memo related to the due process rights of businesses are included below.

*Adjudicatory hearings are held before the board and are conducted in accordance with the Maine Administrative Procedure Act. The Assistant Attorney General assigned to the board presents the case against the licensee by calling witnesses to testify, presenting documentary evidence, etc. The licensee also has the right to testify, to call other witnesses to testify on his/her behalf, and to present documentary evidence. Many times, the complainant will be called as a witness as well. The licensee has the right to be represented by a lawyer and to*

*compel the attendance of witnesses and the production of documents. Each side may cross-examine witnesses called by the other side. All testimony is taken under oath.*

*At the close of the hearing, the board deliberates and votes on whether or not a violation of the board's statutes or rules occurred. If the board determines that one or more violations occurred, the board decides on what action to take. Once the board's decision has been reduced to writing and signed by the board chair, the writing is called a Decision and Order and constitutes the final action of the board.*

*The licensee can appeal the Decision and Order to court. The complaint committee or complainant cannot appeal the board's decision.*

*The Complaint Division cannot tell you the outcome of a complaint over the phone, but a written notification will be mailed once it is completed.<sup>3</sup>*

**Fiscal Impact:** Not yet determined.

**Other information:**

- [DECD Online Reporting for Alleged Non-Compliance with Executive Orders](#) found on [DECD website under the COVID-19 Prevention Checklists](#) and on the [Maine DACF](#) and the [Maine DOL webpage for resources related to COVID-19](#). This form will be reviewed by the appropriate agency or agencies and responded to as needed.
- [Health Inspection Program through the Maine CDC's Division of Environmental and Community Health](#)
- [Overview of OPOR Complaint Procedures and Process](#)
- [DHHS Administrative Hearings Regulations](#)
- [Communication from the Health Inspection Program/Bureau of Alcoholic Beverages and Lottery Operations \(May 6, 2020\)](#)
- [COVID Citation Due Process Memo](#)

---

<sup>3</sup> Administrative Complaint Procedures for All Other Programs; OPOR.