

## CHAPTER 562

### EATING ESTABLISHMENTS, LODGING PLACES, CAMPGROUNDS, RECREATIONAL AND SPORTING CAMPS, YOUTH CAMPS, PUBLIC POOLS AND PUBLIC SPAS

#### §2491. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1975, c. 496, §3 (NEW).]

**1. Campground.** "Campground" means, in addition to the generally accepted definitions, camping areas, recreational vehicle parks, seashore resorts, lakeshore places, picnic and lunch grounds or other premises where tents, recreational vehicles, rental cabins and cottages are permitted on 5 or more sites for compensation or indirect compensation. "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.

[PL 2021, c. 125, §3 (AMD).]

**2. Catering establishments.** "Catering establishments" means any kitchen, commissary or similar place in which food or drink is prepared for sale or service elsewhere or for service on the premises during special catered events.

[PL 1975, c. 496, §3 (NEW).]

**2-A. Calories per serving.** "Calories per serving" means the caloric information for a food or beverage item being offered for consumption by one person, as usually prepared and as offered for sale on the menu, menu board or food display tag.

[PL 2009, c. 395, §1 (NEW); PL 2009, c. 395, §8 (AFF).]

**2-B. Chain restaurant.** "Chain restaurant" means an eating establishment that does business under the same trade name in 20 or more locations, at least one of which is located in the State, that offers predominantly the same type of meals, food, beverages or menus, regardless of the type of ownership of an individual location. "Chain restaurant" does not include a grocery store. "Chain restaurant" does not include a hotel or motel that provides a separately owned eating establishment but does include the separately owned eating establishment if the eating establishment meets the criteria of this subsection. "Chain restaurant" does not include a movie theater.

[PL 2009, c. 395, §2 (NEW); PL 2009, c. 395, §8 (AFF).]

**3. Commissioner.** "Commissioner" means the Commissioner of Health and Human Services.

[PL 1975, c. 293, §4 (AMD); PL 2003, c. 689, Pt. B, §7 (REV).]

**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 longer than an entire season, for temporary occupancy for recreational purposes only and not for permanent residency.

[PL 2011, c. 193, Pt. A, §2 (AMD).]

**5. Department.** "Department" means the Department of Health and Human Services.

[PL 1975, c. 293, §4 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]

**6. Eating and lodging place.**

[PL 2017, c. 322, §2 (RP).]

**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 prepared and served or served ready to eat to the public for consumption off the premises. "Eating establishment" includes places in the entertainment, hospitality, recreation, restaurant and tourism industries; catering establishments;

correctional facilities; hospital cafeterias; mobile eating places; public and private schools; retail frozen dairy product establishments; and workplace eating establishments and places where food is prepared for vending machines dispensing food other than in original sealed packages. "Eating establishment" does not include:

A. A place preparing and serving food that is licensed pursuant to state law by a state agency other than the department as long the licensing of the place includes regular food safety inspections; [PL 2017, c. 322, §3 (NEW).]

B. A place serving food only to residents, such as a boarding home, a retirement home or an independent living place; and [PL 2017, c. 322, §3 (NEW).]

C. A farm stand that offers only whole, uncut fresh fruits and vegetables. [PL 2017, c. 322, §3 (NEW).]

[PL 2017, c. 322, §3 (RPR).]

**7-A. Food display tag.** "Food display tag" means a written or printed description of a food or beverage item, such as a label or placard, placed in the vicinity of the food or beverage item identifying the type or price of the food or beverage.

[PL 2009, c. 395, §3 (NEW); PL 2009, c. 395, §8 (AFF).]

**7-B. Grocery store.** "Grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry. "Grocery store" includes a convenience store, but does not include a separately owned eating establishment located within a grocery store.

[PL 2009, c. 395, §4 (NEW); PL 2009, c. 395, §8 (AFF).]

**7-C. Menu.** "Menu" means a written or printed list describing food or beverage items offered for sale at an eating establishment that may be distributed on or off the premises, but does not include a menu board.

[PL 2009, c. 395, §5 (NEW); PL 2009, c. 395, §8 (AFF).]

**7-D. Menu board.** "Menu board" means a list of food or beverage items offered for sale at an eating establishment that is posted in a public area for viewing by multiple customers, including a backlit marquee sign, chalkboard or drive-through menu sign.

[PL 2009, c. 395, §6 (NEW); PL 2009, c. 395, §8 (AFF).]

**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.

[PL 2011, c. 193, Pt. A, §5 (NEW).]

**7-F. Lodging place.** "Lodging place" means a fixed structure, or any part of a structure, used, maintained or advertised as a place where sleeping accommodations are furnished that offers stays that are temporary in nature and consist of fewer than 183 days in the aggregate per year. "Lodging place" includes accommodations in the entertainment, hospitality, recreation and tourism industries, including, but not limited to, hotels, motels, bed and breakfasts, inns and properties under common management at the same location where 4 or more rooms, cottages or condominium units are available. "Lodging place" does not include vacation rentals, youth camps, dormitories of charitable, educational or philanthropic institutions, fraternity or sorority houses affiliated with educational institutions, permanent residences, rental properties with tenant and landlord relationships as described under Title 14, chapters 709 to 710-D, nursing facilities as defined in section 1812-A, assisted living facilities as defined in section 7852, subsection 4-A or residential care facilities as defined in section 7852, subsection 14.

[PL 2023, c. 176, §3 (AMD).]

**7-G. Indirect compensation.** "Indirect compensation" means nonmonetary consideration provided to a consumer or patron.

[PL 2021, c. 125, §5 (NEW).]

**8. Mobile eating place.** "Mobile eating place" means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.

[PL 1975, c. 496, §3 (NEW).]

**9. Mobile home.**

[PL 1983, c. 553, §18 (RP).]

**10. Mobile home park.**

[PL 1983, c. 553, §18 (RP).]

**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.

[PL 2011, c. 193, Pt. A, §7 (NEW).]

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

[PL 2011, c. 193, Pt. A, §8 (NEW).]

**10-C. Permanent residence.** "Permanent residence" means the primary location where a person lives 183 days or more in a year in the aggregate, as determined in accordance with department rule.

[PL 2021, c. 125, §6 (NEW).]

**11. Recreational camp or sporting camp.** "Recreational camp" or "sporting camp" means a building or group of buildings devoted primarily to the offering of eating and lodging facilities to guests only, with 4 or more rooms or cottages for rent, for a fee to persons seeking recreation, including snowmobiling, hunting, fishing and similar activities, not including programs overseen by employees or volunteers of municipalities and educational institutions when the activities generally take place at municipal or institutional properties and buildings.

[PL 2021, c. 125, §7 (AMD).]

**12. Sanitarian.**

[PL 2011, c. 193, Pt. A, §10 (RP).]

**13. Vending machine establishment.**

[PL 2011, c. 193, Pt. A, §11 (RP).]

**14. Vending machine.** "Vending machine" means any self-service device offered for public use that, upon insertion of 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.

[PL 2011, c. 193, Pt. A, §12 (AMD).]

**15. Retail frozen dairy product establishment.** "Retail frozen dairy product establishment" means any place, premise or establishment and any part thereof where frozen dairy products, such as ice cream, frozen custard, ice milk, sherbert, ices and related food products are prepared for consumption on or off premises.

[PL 1979, c. 672, Pt. A, §60 (NEW).]

**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 programs overseen by employees or volunteers of municipalities and educational institutions when the activities generally take place at municipal or institutional properties and buildings.

[PL 2021, c. 125, §8 (AMD).]

**17. Vacation rental.** "Vacation rental" means a residential property that is rented for vacation, leisure or recreation purposes for a day, a week or a month, and typically under 30 days but not for more than an entire summer or winter season, to a person who has a place of permanent residence to which the person intends to return.

[PL 2013, c. 264, §5 (NEW).]

#### SECTION HISTORY

PL 1975, c. 293, §4 (AMD). PL 1975, c. 496, §3 (NEW). PL 1979, c. 30, §1 (AMD). PL 1979, c. 672, §§A59,60 (AMD). PL 1983, c. 553, §18 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2009, c. 211, Pt. A, §§1-3 (AMD). PL 2009, c. 395, §§1-6 (AMD). PL 2009, c. 395, §8 (AFF). PL 2011, c. 193, Pt. A, §§1-13 (AMD). PL 2013, c. 264, §§3-5 (AMD). PL 2017, c. 322, §§2, 3 (AMD). PL 2021, c. 125, §§3-8 (AMD). PL 2023, c. 176, §3 (AMD).

#### §2492. License required

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

- A. An eating establishment; [PL 2003, c. 452, Pt. K, §20 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- B. [PL 2017, c. 322, §4 (RP).]
- C. A lodging place; [PL 2003, c. 452, Pt. K, §20 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- D. A recreational camp or sporting camp; [PL 2011, c. 193, Pt. A, §14 (AMD).]
- E. A campground; [PL 2011, c. 193, Pt. A, §14 (AMD).]
- F. A youth camp; [PL 2011, c. 193, Pt. A, §14 (AMD).]
- G. A public pool; or [PL 2011, c. 193, Pt. A, §14 (NEW).]
- H. A public spa. [PL 2011, c. 193, Pt. A, §14 (NEW).]

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

[PL 2021, c. 125, §9 (AMD).]

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

- A. Violate subsection 1; or [PL 2003, c. 452, Pt. K, §20 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- B. Violate subsection 1 after having previously violated subsection 1. [PL 2003, c. 452, Pt. K, §20 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

[PL 2003, c. 452, Pt. K, §20 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

**3. Campground; presumption.** If a campground consists of 5 or more tents or recreational vehicles on a commercial lot, regardless of fees charged, it is presumed that the owner or renter of the

lot is receiving compensation for the use of a campground. The owner or renter may rebut the presumption if the owner or renter presents a preponderance of evidence to the contrary.

[PL 2021, c. 125, §10 (AMD).]

#### SECTION HISTORY

PL 1975, c. 496, §3 (NEW). PL 1979, c. 30, §2 (AMD). PL 1983, c. 553, §19 (AMD). PL 2003, c. 452, §K20 (RPR). PL 2003, c. 452, §X2 (AFF). PL 2009, c. 211, Pt. A, §§4-6 (AMD). PL 2011, c. 193, Pt. A, §§14, 15 (AMD). PL 2017, c. 322, §4 (AMD). PL 2021, c. 125, §§10, 9 (AMD).

#### §2493. Applicant

Any person, corporation, firm or copartnership desiring a license shall submit satisfactory evidence of the person's, corporation's, firm's or copartnership's ability to comply with the minimum standards of this chapter and all rules adopted thereunder. [RR 2021, c. 2, Pt. B, §127 (COR).]

#### SECTION HISTORY

PL 1975, c. 496, §3 (NEW). RR 2021, c. 2, Pt. B, §127 (COR).

#### §2494. Fees

Each application for, or for renewal of, a license to operate an eating establishment, lodging place, recreational camp, youth camp, public pool, public spa or campground within the meaning of this chapter must be accompanied by a fee, appropriate to the size of the establishment, place, camp, pool, spa 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: [PL 2021, c. 125, §11 (AMD).]

##### 1. One hundred dollars. One hundred dollars for:

A. Public schools governed by a school board of an administrative unit; [PL 1987, c. 838, §1 (NEW).]

B. Private secondary schools approved for tuition when school enrollments are at least 60% publicly funded students as determined by the previous school year's October to April average enrollment; and [PL 1987, c. 838, §1 (NEW).]

C. Schools operated by an agency of State Government for the education of children in unorganized territories; [PL 1987, c. 838, §1 (NEW).]

[PL 2003, c. 673, Pt. X, §1 (AMD).]

**2. One hundred dollars.** One hundred dollars for an establishment that is located in a municipality that requires local inspections of establishments to cover the costs of standardizing inspection practices; administrative licensing and maintaining a centralized database; ongoing training, investigation, compliance and technical assistance; and legal interpretation and advice; and [PL 2021, c. 125, §12 (AMD).]

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

[PL 2009, c. 589, §2 (AMD).]

All such fees are for the license, one licensure inspection and one follow-up inspection. When additional inspections are required to determine an applicant's eligibility for licensure, the department is authorized through its rules to charge an additional fee not to exceed \$100 to cover the costs of each additional inspection or visit. Failure to pay such charges within 30 days of the billing date constitutes grounds for revocation of the license, unless an extension for a period not to exceed 60 days is granted in writing by the commissioner. [PL 2011, c. 375, §1 (AMD).]

## SECTION HISTORY

PL 1975, c. 496, §3 (NEW). PL 1981, c. 703, §§A17,A18 (AMD). PL 1983, c. 553, §20 (AMD). PL 1987, c. 838, §1 (AMD). PL 2003, c. 673, §X1 (AMD). PL 2007, c. 539, Pt. F, §1 (AMD). PL 2009, c. 211, Pt. A, §7 (AMD). PL 2009, c. 589, §2 (AMD). PL 2011, c. 193, Pt. B, §§1, 2 (AMD). PL 2011, c. 375, §1 (AMD). PL 2017, c. 322, §5 (AMD). PL 2021, c. 125, §§11, 12 (AMD).

### **§2495. Issuance of licenses**

The department shall, within 30 days following receipt of a complete application, issue an annual license to operate any eating establishment, lodging place, recreational camp, youth camp, campground, public pool or public spa that is found to comply with this chapter and the rules adopted by the department. [PL 2021, c. 125, §13 (AMD).]

When any applicant is found, based upon an inspection by the department or by municipal inspection made according to section 2499, not in compliance with the requirements of this chapter or departmental rules adopted and approved pursuant to section 2496 or 2499, subsection 1, the department may refuse issuance of the license and shall issue a conditional license, except when conditions are found that present a serious danger to the health and safety of the public. The department may issue only one conditional license per applicant, which is valid for up to one year. Failure by the conditional licensee to meet the conditions specified by the department permits the department to void the conditional license. [PL 2021, c. 125, §13 (AMD).]

The conditional license is void when the department has delivered in hand or by certified mail a written notice to the conditional licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left notice thereof at the facility. [PL 2021, c. 125, §13 (AMD).]

A conditional licensee may apply for an annual license if the conditional license is voided or expires. A conditional licensee must meet all conditions before applying for an annual license. [PL 2021, c. 125, §13 (NEW).]

The department may redistribute expiration dates for new and renewed licenses to provide for comparable distribution of licenses on a quarterly basis throughout the year and shall prorate the fees for licenses with a term less or more than one year. The prescribed fee must accompany the application for a new license or the renewal of a license. [PL 2021, c. 125, §13 (AMD).]

Licenses must be renewed annually and upon payment of the prescribed fee, including late fees, additional inspection fees and fines if assessed, and subject to compliance with rules of the department and with this chapter. The department shall provide licensees with notice of the need for renewal and necessary forms no less than 30 days prior to the expiration of the license. [PL 2021, c. 125, §13 (AMD).]

The issuance of the license provided for in this chapter does not provide exemption from other state or local laws, ordinances or rules, notwithstanding any other provision of law. [PL 2021, c. 125, §13 (AMD).]

Licenses erroneously issued by the department are void and must be returned to the department on demand in a notice delivered by hand or by certified mail to the licensee. For cause, the department may revoke or suspend any license pursuant to section 2500. [PL 2021, c. 125, §13 (AMD).]

## SECTION HISTORY

PL 1975, c. 496, §3 (NEW). PL 1977, c. 459 (AMD). PL 1981, c. 203, §1 (RPR). PL 1983, c. 553, §21 (AMD). PL 2003, c. 673, §X2 (AMD). PL 2009, c. 211, Pt. A, §8 (AMD). PL 2011, c. 193, Pt. B, §3 (AMD). PL 2017, c. 322, §6 (AMD). PL 2021, c. 125, §13 (AMD).

### **§2496. Rules and policies**

**1. Department rulemaking.** The department is authorized and empowered to make and enforce all necessary rules and regulations for the administration of this chapter, and may rescind or modify such rules and regulations from time to time as may be in the public interest, insofar as such action is not in conflict with any of the provisions of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2005, c. 140, §1 (NEW).]

**2. Youth camps; emergency medication.** A youth camp must have a written policy authorizing campers to self-administer emergency medication, including, but not limited to, an asthma inhaler or an epinephrine autoinjector as defined in section 2150-F, subsection 3. The written policy must include the following requirements:

A. A camper who self-administers emergency medication must have the prior written approval of the camper's primary health care provider and the camper's parent or guardian; [PL 2005, c. 140, §1 (NEW).]

B. The camper's parent or guardian must submit written verification to the youth camp from the camper's primary health care provider confirming that the camper has the knowledge and the skills to safely self-administer the emergency medication in camp; [PL 2009, c. 211, Pt. A, §9 (AMD).]

C. The youth camp health staff must evaluate the camper's technique to ensure proper and effective use of the emergency medication in camp; and [PL 2009, c. 211, Pt. A, §9 (AMD).]

D. The emergency medication must be readily available to the camper. [PL 2005, c. 140, §1 (NEW).]

[PL 2019, c. 560, §4 (AMD).]

#### SECTION HISTORY

PL 1975, c. 496, §3 (NEW). PL 1977, c. 694, §351 (AMD). PL 1999, c. 727, §1 (AMD). PL 2005, c. 140, §1 (RPR). PL 2009, c. 211, Pt. A, §9 (AMD). PL 2019, c. 560, §4 (AMD).

#### §2497. Right of entry, inspection and determination of compliance

The department and any duly designated officer or employee of the department have the right, without an administrative inspection warrant, to enter upon and into the premises of any establishment licensed pursuant to this chapter at any reasonable time in order to determine the state of compliance with this chapter and any rules in force pursuant to this chapter. Such right of entry and inspection extends to any premises that the department has reason to believe is being operated or maintained without a license but no such entry and inspection of any premises may be made without the permission of the owner or person in charge unless a search warrant is obtained authorizing entry and inspection. The department and any duly designated officer or employee of the department do not have the right to enter, for inspection under this chapter, upon and into the premises of any establishment that is licensed under chapter 551, subchapter 1. [PL 2011, c. 375, §2 (AMD).]

Determination of compliance with this chapter and any rules adopted pursuant to this chapter must be made at least once every 2 years by inspection or other method as determined by the department. [PL 2011, c. 375, §2 (AMD).]

#### SECTION HISTORY

PL 1975, c. 496, §3 (NEW). PL 1979, c. 672, §A61 (AMD). PL 1985, c. 771, §5 (AMD). PL 1987, c. 838, §2 (AMD). PL 1991, c. 528, §J4 (AMD). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 591, §J4 (AMD). PL 2011, c. 375, §2 (AMD).

#### §2498. Fines and penalties

**1. Authorization.** The department is authorized to impose one or more of the following sanctions when a violation of this chapter, or rules enacted pursuant to this chapter, occurs and the department

determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules or to protect the public health.

A. The department may impose penalties for violations of this chapter, or the rules adopted pursuant to this chapter, on any eating establishment, lodging place, recreational camp, youth camp, public pool or public spa or 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. [PL 2017, c. 322, §7 (AMD).]

B. The department may direct an eating establishment, lodging place, recreational camp, youth camp, public pool or public spa or 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. [PL 2017, c. 322, §7 (AMD).]

C. The department may impose penalties up to \$5,000 on any person, corporation, firm or copartnership that operates any eating establishment, lodging place, recreational camp, youth camp, public pool or public spa or campground without an active, valid license, as determined by the department. Each day any such person, corporation, firm or copartnership operates without an active, valid license constitutes a separate offense. [PL 2021, c. 125, §14 (AMD).]

D. In the event of any violation of this section or any rule pursuant to this chapter, the Attorney General may seek to enjoin a further violation, in addition to any other remedy. [PL 1991, c. 528, Pt. J, §5 (NEW); PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 591, Pt. J, §5 (NEW).]

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

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

(2) In addition to all fines and penalties imposed pursuant to this chapter, is liable for any interest, costs and fees incurred by the department, including attorney's fees. [PL 2013, c. 264, §6 (NEW).]

[PL 2021, c. 125, §14 (AMD).]

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

[PL 1991, c. 528, Pt. J, §5 (NEW); PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 591, Pt. J, §5 (NEW).]

**3. Enforcement and appeal.** Enforcement and appeal of this section is as follows.

A. The department may impose any fine in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, providing the licensee the opportunity for an administrative hearing. [PL 1991, c. 528, Pt. J, §5 (NEW); PL 1991, c. 528, Pt. RRR (AFF); PL 1991, c. 591, Pt. J, §5 (NEW).]

B. Licensees that are fined pursuant to this chapter are required to pay the department the amount of the penalties. If a licensee has not paid any collectible fines by the time of its license renewal, the department may collect such fines by requiring their payment prior to the processing of any license renewal application. An appeal of the department's decision to fine a licensee stays the collection of any fine. Interest must accrue on fines at a rate described in Title 14, section 1602-B prior to the completion of any appeal. After the completion of any appeal process or after any appeal period has passed, interest must accrue pursuant to Title 14, section 1602-C. [PL 2003, c. 460, §11 (AMD).]

[PL 2003, c. 460, §11 (AMD).]

## SECTION HISTORY



PL 1975, c. 496, §3 (NEW). PL 1983, c. 553, §22 (AMD). PL 1991, c. 528, §J5 (RPR). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 591, §J5 (RPR). PL 2003, c. 460, §11 (AMD). PL 2003, c. 673, §X3 (AMD). RR 2005, c. 2, §17 (COR). PL 2005, c. 481, §1 (AMD). PL 2009, c. 211, Pt. A, §§10-12 (AMD). PL 2011, c. 193, Pt. B, §§4-6 (AMD). PL 2013, c. 264, §6 (AMD). PL 2017, c. 322, §7 (AMD). PL 2021, c. 125, §14 (AMD).

### **§2499. Municipal inspections**

Notwithstanding any other provisions of this chapter, in order to ensure statewide uniformity in health standards, health inspector certification and the maintenance of inspection report records, a municipality must have been delegated authority by the department to conduct inspections and demonstrated adherence to requirements under this section prior to performing any municipal inspections under such authority. Any municipal inspection of an establishment under this section conducted by a municipality that has not been delegated authority is void. The department may issue a license to an establishment as defined in section 2491 on the basis of an inspection performed by 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. [PL 2011, c. 589, §1 (RPR).]

**1. Adopted rules; code of standards.** The municipality involved has adopted ordinances or a code of standards for the establishments that has been approved by the department and that is consistent with the rules used by the department for the issuance of licenses in effect at the time of inspection. [PL 2011, c. 295, §2 (AMD).]

**2. Qualified to make inspections.** A municipally employed health inspector may not make inspections under the provisions of this chapter unless certified as qualified by the Commissioner of Health and Human Services. [PL 2011, c. 193, Pt. B, §7 (AMD).]

**3. Inspection to ascertain intent.** The department may from time to time inspect such municipally inspected establishments to ascertain that the intent of these statutes is being followed. [PL 1975, c. 496, §3 (NEW).]

**4. Inspection reports.** The municipalities shall furnish electronic copies of its inspection reports in a format and on a schedule determined by the department. [PL 2011, c. 193, Pt. A, §16 (AMD).]

**5. Charge.** Municipalities may not charge the department for performing such inspections. [PL 1975, c. 496, §3 (NEW).]

**6. License fee.** When a license is issued to an 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 \$100 to cover the costs of standardizing inspection practices; administrative licensing and maintaining a centralized database; ongoing training, investigation, compliance and technical assistance; and legal interpretation and advice. [PL 2021, c. 125, §15 (AMD).]

**7. Licenses.** Licenses issued under this section must be displayed, renewed and in every other way treated the same as licenses issued under this chapter on the basis of inspection by the department. [PL 2003, c. 673, Pt. X, §5 (AMD).]

**8. Certification.** Certification of municipally employed health inspectors must be in accordance with standards set by the commissioner and be for a period of 3 years. [PL 2011, c. 193, Pt. B, §8 (AMD).]

**9. Delegation renewal.** Beginning January 1, 2005, and every 3 years thereafter, the department shall review the 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.

[PL 2011, c. 193, Pt. A, §18 (AMD).]

#### SECTION HISTORY

PL 1975, c. 293, §4 (AMD). PL 1975, c. 496, §3 (NEW). PL 1981, c. 703, §A19 (AMD). PL 2003, c. 673, §§X4-6 (AMD). PL 2003, c. 689, §B7 (REV). PL 2011, c. 193, Pt. A, §§16-18 (AMD). PL 2011, c. 193, Pt. B, §§7-9 (AMD). PL 2011, c. 295, §§1, 2 (AMD). PL 2011, c. 589, §1 (AMD). PL 2021, c. 125, §15 (AMD).

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

When the department believes a license should be suspended or revoked, it shall file a complaint with the District Court in conformity with the Maine Administrative Procedure Act. A person aggrieved by the refusal of the department to issue a license may request a hearing in conformity with the Maine Administrative Procedure Act. [PL 1977, c. 694, §352 (AMD); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

Whenever, upon inspection, conditions are found which violate this chapter or regulations adopted thereunder, or which may endanger the life, health or safety of persons living in or attending any licensed establishment under this chapter, the department may request an emergency suspension of license of the District Court pursuant to Title 4, section 184, subsection 6, and the court may grant suspension subject to reinstatement following a hearing before the court if cause is not shown. [PL 1999, c. 547, Pt. B, §41 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

#### SECTION HISTORY

PL 1975, c. 496, §3 (NEW). PL 1977, c. 694, §352 (AMD). PL 1981, c. 203, §2 (AMD). PL 1999, c. 547, §§B41,78 (AMD). PL 1999, c. 547, §B80 (AFF).

#### **§2500-A. Menu labeling for chain restaurants**

The provisions of this section apply to chain restaurants that are located in the State. [PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

**1. Caloric information.** A chain restaurant shall state on a food display tag, menu or menu board the total amount of calories per serving of each food and beverage item listed for sale on the food display tag, menu or menu board. The statement of calories required in this subsection must be:

- A. Clear and conspicuous; [PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]
- B. Adjacent to or in close proximity and clearly associated with the item to which the statement refers; and [PL 2011, c. 691, Pt. D, §9 (AMD).]
- C. Printed in a font and format at least as prominent in size and appearance as the name or the price of the item to which the statement refers. [PL 2011, c. 691, Pt. D, §9 (AMD).]
- D. [PL 2011, c. 691, Pt. D, §9 (RP).]

As the statement of calories pertains to beer, wine and spirits, the statement must also meet the requirements of subsection 6.

[PL 2011, c. 691, Pt. D, §9 (AMD).]

**2. Determining caloric content.** The caloric content information required by subsection 1 must be determined on a reasonable basis and may be determined only once per standard menu item if the eating establishment follows a standardized recipe, trains to a consistent method of preparation and maintains a reasonably consistent portion size. For the purposes of this subsection a reasonable basis for determining caloric content means use of a recognized method for determining caloric content, including, but not limited to, nutrient databases, laboratory testing and other reliable methods of analysis. Caloric content may be rounded to the nearest 10 calories for caloric content above 50 calories and to the nearest 5 calories for caloric content of 50 calories and below.

[PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

**3. Required statement.** A menu or menu board or written nutrition information provided to a customer by a chain restaurant must contain the following statement in a clear and conspicuous manner and in a prominent location: "To maintain a healthy weight, a typical adult should consume approximately 2,000 calories per day; however, individual calorie needs may vary." A menu, menu board or written nutrition information provided to a customer by a chain restaurant may include the following statement or a statement similar to the following: "Nutrition information is based upon standard recipes and product formulations; however, modest variations may occur due to differences in preparation, serving sizes, ingredients or special orders."

[PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

**4. Different varieties.** For a food or beverage item that is listed as a single item but includes more than one variety, the caloric information required under subsection 1 for that item must be the median value of calories for all varieties offered for that item if the caloric information for each variety of the item is within 20% of the median for that item. If the caloric information required by subsection 1 for a variety of a food or beverage item is not within 20% of the median for that item, then the caloric information must be stated for each variety of that item. If a food display tag is used to identify a specific variety of a food or beverage item, the caloric information required by subsection 1 must be for that specific variety of the item.

[PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

**5. Exceptions.** A chain restaurant is not required to provide information pursuant to subsection 1 for:

A. Food items served at a self-service salad bar or buffet; [PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

B. An item offered for a limited time that appears on a menu, menu board or food display tag for less than 90 days per year; [PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

C. A condiment or other item offered to a customer for general use without charge; [PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

D. An item sold to a customer in a manufacturer's original sealed package that contains nutrition information as required by federal law; or [PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

E. A custom order for a food or beverage item that does not appear on a menu, menu board or food display tag. [PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

[PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

**6. Alcoholic beverages.** A chain restaurant shall state on a food display tag, menu or menu board the average caloric value for beers, wines and spirits as established by the United States Department of Agriculture, Agriculture Research Service in the National Nutrient Database for Standard Reference. A food display tag, menu or menu board for beer, wine and spirits may include the following statement: "Signature drinks or liqueurs with added ingredients may contain increased caloric content."

[PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

**7. Compliance; enforcement.** The department or an agent authorized to inspect an eating establishment under section 2499 shall ensure compliance with the provisions of this section but is not required to verify the accuracy of the caloric information required by this section. Upon request a chain restaurant shall provide to the department documentation of the accuracy of the information required by subsection 1. A violation of this section is a violation of the Maine Unfair Trade Practices Act, enforceable against the owner or franchisee of the eating establishment, except that no private remedies exist under Title 5, section 213. This section may not be construed to create or enhance any claim, right of action or civil liability that did not exist under state law prior to the effective date of this subsection or limit any claim, right of action or civil liability that otherwise exists under state law. No private right of action arises out of this section. The only mechanism for enforcing this section is as provided in this subsection.

[PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

**8. Uniformity of regulation; preemption.** To the extent consistent with federal law, the regulation of disclosure of caloric and nutritional information is a matter of statewide concern, and state law governing that disclosure occupies the whole field of regulation regarding disclosure by chain restaurants of nutritional information and requirements regarding the content required to be posted on menus, menu boards and food display tags. A local government may not adopt an ordinance regulating the dissemination of caloric or nutritional information or requiring information to be placed on menus, menu boards or food display tags by a chain restaurant, and any ordinance or regulation that violates this subsection is void and has no force or effect.

[PL 2009, c. 395, §7 (NEW); PL 2009, c. 395, §8 (AFF).]

#### SECTION HISTORY

PL 2009, c. 395, §7 (NEW). PL 2009, c. 395, §8 (AFF). PL 2011, c. 691, Pt. D, §9 (AMD).

#### §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 vacation rentals, dormitories of charitable, educational or philanthropic institutions or fraternity and sorority houses affiliated with educational institutions, or 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. [PL 2015, c. 494, Pt. D, §4 (AMD).]

Rooms and cottages are not deemed or considered lodging places and subject to a license where not more than 3 rooms and cottages are let. [PL 2011, c. 193, Pt. B, §10 (AMD).]

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, are not considered eating establishments. At such establishments, straws or spoons may be provided to aid in the consumption of such bottled soft drinks or ice cream, as long as they are supplied in original individual single service sterile packages. [PL 2011, c. 193, Pt. B, §10 (AMD).]

Nonprofit organizations including, but not limited to, 4-H Clubs, scouts and agricultural societies are exempt from department rules and regulations relating to dispensing foods and nonalcoholic

beverages at not more than 24 public events or meals within one calendar year. [PL 2023, c. 7, §1 (AMD).]

#### SECTION HISTORY

PL 1975, c. 496, §3 (NEW). PL 1977, c. 78, §148 (AMD). PL 2007, c. 428, §1 (AMD). PL 2011, c. 193, Pt. B, §10 (AMD). PL 2013, c. 264, §7 (AMD). PL 2015, c. 494, Pt. D, §4 (AMD). PL 2023, c. 7, §1 (AMD).

#### **§2502. Transaction fee for electronic renewal of license**

The department may collect a transaction fee from a licensee who renews a license electronically under this chapter. The fee may not exceed the cost of providing the electronic license renewal service. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 589, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 589, §3 (NEW).

#### **§2503. Articles detained, embargoed and condemned**

Whenever a duly designated officer or employee of the department finds or has reason to believe that an establishment licensed under this chapter prepares or sells any food that is adulterated pursuant to section 2156 or misbranded pursuant to section 2157, an order detaining or embargoing that food may be issued to any person or persons with possession or control thereof and the officer or employee may affix or require the person to whom the order is directed to affix to such article a tag or other appropriate marking giving notice that such article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such officer or employee or the court. It is unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission. Orders relating to detention and embargo issued pursuant to this chapter may not be considered licensing or an adjudicatory proceeding, as those terms are defined under Title 5, chapter 375. [PL 2021, c. 125, §16 (NEW).]

When any such officer or employee finds an article detained or embargoed under this section to be adulterated or misbranded, the officer or employee may petition the District Court or Superior Court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article if the licensee is unwilling to dispose of the article. When such officer or employee has found that an article so detained or embargoed is not adulterated or misbranded, the officer or employee shall remove the tag or other marking. [PL 2021, c. 125, §16 (NEW).]

If the court finds that a detained or embargoed article is adulterated or misbranded, such article must, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such officer or employee, and all court costs and fees and storage and other proper expenses must be taxed against the claimant of such article or the claimant's agent. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article will be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an officer or employee of the department. The expense of such supervision must be paid by the claimant. Such bond must be returned to the claimant of the article on representation to the court by the commissioner that the article is no longer in violation of this chapter and that the expenses of such supervision have been paid. For purposes of this paragraph, proper labeling may include displaying required information by law, on a menu board, on a sign or in an open manner at the location where the article is for sale and served. [PL 2021, c. 125, §16 (NEW).]

Whenever the commissioner or an officer or employee of the department finds in any room, building, vehicle of transportation or other structure of an establishment licensed under this chapter any meat, seafood, poultry, vegetable, fruit or other perishable articles that are unsound or contain any filthy, decomposed or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the same being declared to be a nuisance, the commissioner or the officer or employee shall forthwith destroy the same or in any other manner render the same unsalable as human food. [PL 2021, c. 125, §16 (NEW).]

The department is authorized to enact rules pursuant to this chapter to ensure compliance with this chapter and to protect public health. [PL 2021, c. 125, §16 (NEW).]

#### SECTION HISTORY

PL 2021, c. 125, §16 (NEW).

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