

# **129th MAINE LEGISLATURE**

### **SECOND REGULAR SESSION-2020**

Legislative Document

No. 2001

H.P. 1417

House of Representatives, January 8, 2020

#### An Act To Create an Administrative Review Process for Hunting and Fishing Violations

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered printed.

R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative DILLINGHAM of Oxford. Cosponsored by Representative: MILLETT of Waterford.

- 1 Be it enacted by the People of the State of Maine as follows:
- 2 Sec. 1. 12 MRSA §10902-A is enacted to read:

## 3 <u>§10902-A. Procedure for administrative action without criminal conviction or civil</u> 4 <u>adjudication</u>

5 1. Initiation and notice. If the director of the Bureau of Warden Service delivers to 6 the commissioner a written statement under oath that the director has probable cause to suspect that a violation of section 10652 or 10657 has been committed by a person 7 holding a license or permit issued under this Part, the commissioner shall immediately 8 9 examine the affidavit and determine whether administrative action as set forth in 10 subsection 3 is necessary. If the commissioner determines based on a preponderance of the evidence that administrative action is necessary, the commissioner shall immediately 11 notify in writing the person determined by the commissioner to be in violation of the law. 12 13 The notice must state that there is an opportunity for a hearing if the person requests the 14 hearing in writing within 10 days of the notice. The notice is deemed received 3 days 15 after the mailing. If a person who has been notified pursuant to this subsection does not request a hearing within the allowed time, the commissioner may implement 16 17 administrative action in accordance with subsection 3.

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 2. Hearing. A hearing requested under subsection 1 must be held within 30 business
 days after receipt by the commissioner of the request for hearing, except that a hearing
 may be held more than 30 business days after the request if the delay is requested by the
 person requesting the hearing. If the hearing is continued, it must be held no later than 60
 days after the original notice, and any further continuance must be with the consent of
 both parties. The hearing must be held in accordance with the Maine Administrative
 Procedure Act, except that:

- A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether
   the person requesting the hearing had a license or permit and whether that person
   committed a violation of section 10652 or 10657; and
- B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under
   Title 5, section 9062 must be made not more than 10 business days after completion
   of the hearing.
- If the presiding officer of the hearing finds that a violation of section 10652 or 10657 has
   been committed, the presiding officer shall immediately notify the commissioner of the
   finding.

34 3. Administrative action. Upon a determination under subsection 1 or notification
 35 of a finding under subsection 2 that a violation of section 10652 or 10657 has been
 36 committed:

A. For a first violation of section 10652 or 10657, the commissioner may order that,
 notwithstanding any exemption from hunter safety course requirements contained in
 section 11105 or any other law, the person must complete a hunter safety course or
 other safety course designated by the commissioner;

<u>B.</u> For a 2nd violation of section 10652 or 10657, the commissioner may order that all licenses and permits issued under this Part to the person be suspended for a period of 2 years; and

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4 C. For a 3rd or subsequent violation of section 10652 or 10657, the commissioner 5 may order that all licenses and permits issued under this Part to the person be 6 permanently suspended.

Appeal. An administrative action by the commissioner to suspend a license or
 permit pursuant to this section may be appealed to the Superior Court if it is filed with the
 court within 30 days of the decision.

#### SUMMARY

11 This bill establishes a procedure for the Commissioner of Inland Fisheries and 12 Wildlife to take administrative action regarding alleged property violations without first 13 requiring criminal conviction or civil adjudication of the allegation. Under this bill, if the 14 director of the Bureau of Warden Service has probable cause to suspect that civil trespass 15 or abuse of another person's property while fishing, hunting or trapping has been 16 committed by a person holding a fishing, hunting or trapping license or permit, the 17 commissioner may:

- 18 1. For a first violation, order that the person complete a hunter safety course or other 19 safety course designated by the commissioner, regardless of whether the person is exempt 20 from hunter safety course requirements;
- 2. For a 2nd violation, order that all licenses and permits issued to the person by the 22 Department of Inland Fisheries and Wildlife be suspended for a period of 2 years; and
- 3. For a 3rd or subsequent violation, order that all licenses and permits issued to the
  person by the Department of Inland Fisheries and Wildlife be permanently suspended.
- The bill provides a mechanism for notice and opportunities for hearing and appeal of administrative action taken by the commissioner.