

MAINE STATE LEGISLATURE

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DMA
R. G. J.

L.D. 1580

Date: 6/18/19

Majority

(Filing No. H-631)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1142, L.D. 1580, Bill, "An Act To Protect Licensing Information of Medical Professionals"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 32 MRSA §2109-A is enacted to read:

§2109-A. Inspection or copying of record; procedure

1. Request for record; redaction. When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

2. Notice and opportunity to review. When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a description of the review process provided to the applicant or licensee pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party. The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted record. If the applicant or licensee so requests, the board shall send a copy of the redacted record to the applicant or licensee for review. The board shall make the redacted record available to the requester for inspection or copying 10 business days after sending the redacted record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

COMMITTEE AMENDMENT

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3. Reasonable costs. Reasonable costs related to the review of a record by the applicant or licensee are considered part of the board's costs to make the redacted record available for inspection or copying under subsection 2 and may be charged to the requester.

4. Action based on personal safety. An applicant or licensee may petition the board to withhold the release of all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the record within 10 business days after the board sends the applicant or licensee the redacted record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 60 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.

5. Injunction based on personal safety. An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide written notice to the board that the action has been filed, and the board may not make the record available for inspection or copying until the action is resolved.

6. Hearing. The hearing on an action filed under subsection 5 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

7. Application. This section does not apply to requests for records from other governmental licensing or disciplinary authorities or from any health care providers located within or outside this State that are concerned with granting, limiting or denying an applicant's or licensee's employment or privileges.

Sec. 2. 32 MRSA §2600-E is enacted to read:

§2600-E. Inspection or copying of record; procedure

1. Request for record; redaction. When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

2. Notice and opportunity to review. When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a

1 description of the review process provided to the applicant or licensee pursuant to this
2 section, including the fact that all or part of the record may be withheld if the board finds
3 that disclosure of all or part of the redacted record creates a potential risk to the
4 applicant's or licensee's personal safety or the personal safety of any 3rd party. The
5 applicant or licensee has 10 business days from the date the board sends the notice to
6 request the opportunity to review the redacted record. If the applicant or licensee so
7 requests, the board shall send a copy of the redacted record to the applicant or licensee for
8 review. The board shall make the redacted record available to the requester for
9 inspection or copying 10 business days after sending the redacted record to the applicant
10 or licensee for review unless the board receives a petition from the applicant or licensee
11 under subsection 4.

12 **3. Reasonable costs.** Reasonable costs related to the review of a record by the
13 applicant or licensee are considered part of the board's costs to make the redacted record
14 available for inspection or copying under subsection 2 and may be charged to the
15 requester.

16 **4. Action based on personal safety.** An applicant or licensee may petition the
17 board to withhold the release of all or part of a record under subsection 2 based on the
18 potential risk to the applicant's or licensee's personal safety or the personal safety of any
19 3rd party if the record is disclosed to the public. The applicant or licensee must petition
20 the board to withhold all or part of the record within 10 business days after the board
21 sends the applicant or licensee the redacted record. The petition must include an
22 explanation of the potential safety risks and a list of items requested to be withheld.
23 Within 60 days of receiving the petition, the board shall notify the applicant or licensee of
24 its decision on the petition. If the applicant or licensee disagrees with the board's
25 decision, the applicant or licensee may file a petition in Superior Court to enjoin the
26 release of the record under subsection 5.

27 **5. Injunction based on personal safety.** An applicant or licensee may bring an
28 action in Superior Court to enjoin the board from releasing all or part of a record under
29 subsection 2 based on the potential risk to the applicant's or licensee's personal safety or
30 the personal safety of any 3rd party if the record is disclosed to the public. The applicant
31 or licensee must file the action within 10 business days after the board notifies the
32 applicant or licensee under subsection 4 that the board will release all or part of the
33 redacted record to the requester. The applicant or licensee shall immediately provide
34 written notice to the board that the action has been filed, and the board may not make the
35 record available for inspection or copying until the action is resolved.

36 **6. Hearing.** The hearing on an action filed under subsection 5 may be advanced on
37 the docket and receive priority over other cases when the court determines that the
38 interests of justice so require.

39 **7. Application.** This section does not apply to requests for records from other
40 governmental licensing or disciplinary authorities or from any health care providers
41 located within or outside this State that are concerned with granting, limiting or denying
42 an applicant's or licensee's employment or privileges.

43 **Sec. 3. 32 MRSA §3300-H** is enacted to read:

R. G. S.

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§3300-H. Inspection or copying of record; procedure

1. Request for record; redaction. When the board receives a request to inspect or copy all or part of the record of an applicant or licensee, the board shall redact information that is not public before making the record available for inspection or copying.

2. Notice and opportunity to review. When the board acknowledges a request to inspect or copy an applicant's or a licensee's record as required by Title 1, section 408-A, subsection 3, the board shall send a notice to the applicant or licensee at the applicant's or licensee's last address on file with the board explaining that the request has been made and that the applicant or licensee may review the redacted record before it is made available for inspection or copying. The acknowledgment to the requester must include a description of the review process provided to the applicant or licensee pursuant to this section, including the fact that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party. The applicant or licensee has 10 business days from the date the board sends the notice to request the opportunity to review the redacted record. If the applicant or licensee so requests, the board shall send a copy of the redacted record to the applicant or licensee for review. The board shall make the redacted record available to the requester for inspection or copying 10 business days after sending the redacted record to the applicant or licensee for review unless the board receives a petition from the applicant or licensee under subsection 4.

3. Reasonable costs. Reasonable costs related to the review of a record by the applicant or licensee are considered part of the board's costs to make the redacted record available for inspection or copying under subsection 2 and may be charged to the requester.

4. Action based on personal safety. An applicant or licensee may petition the board to withhold the release of all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must petition the board to withhold all or part of the record within 10 business days after the board sends the applicant or licensee the redacted record. The petition must include an explanation of the potential safety risks and a list of items requested to be withheld. Within 60 days of receiving the petition, the board shall notify the applicant or licensee of its decision on the petition. If the applicant or licensee disagrees with the board's decision, the applicant or licensee may file a petition in Superior Court to enjoin the release of the record under subsection 5.

5. Injunction based on personal safety. An applicant or licensee may bring an action in Superior Court to enjoin the board from releasing all or part of a record under subsection 2 based on the potential risk to the applicant's or licensee's personal safety or the personal safety of any 3rd party if the record is disclosed to the public. The applicant or licensee must file the action within 10 business days after the board notifies the applicant or licensee under subsection 4 that the board will release all or part of the redacted record to the requester. The applicant or licensee shall immediately provide

1 written notice to the board that the action has been filed, and the board may not make the
2 record available for inspection or copying until the action is resolved.

3 6. Hearing. The hearing on an action filed under subsection 5 may be advanced on
4 the docket and receive priority over other cases when the court determines that the
5 interests of justice so require.

6 7. Application. This section does not apply to requests for records from other
7 governmental licensing or disciplinary authorities or from any health care providers
8 located within or outside this State that are concerned with granting, limiting or denying
9 an applicant's or licensee's employment or privileges.'

SUMMARY

11 This amendment is the majority report of the Joint Standing Committee on Judiciary.
12 It replaces the bill but retains the basic concept of protecting information in applicants'
13 and licensees' records held by medical licensing boards when the records are requested to
14 be inspected or copied.

15 This amendment revises terminology to refer to an applicant's or licensee's record
16 rather than a licensing file as in the bill. It requires that the acknowledgement that the
17 licensing board must send to a requester that a request for a record has been received
18 include a description of the review process provided to the applicant or licensee,
19 including the fact that all or part of the record may be withheld if the board finds that
20 disclosure of all or part of the redacted record creates a risk to the applicant's or licensee's
21 personal safety or the personal safety of any 3rd party.

22 The amendment extends the time for the licensing board to review the applicant's or
23 licensee's petition to withhold all or part of the record from 30 days in the bill to 60 days.

24 It allows an applicant or licensee who does not agree with the licensing board's
25 decision to seek an injunction in Superior Court.

26 It clarifies that the restriction on releasing an applicant's or licensee's record does not
27 apply to requests for records from other governmental licensing or disciplinary authorities
28 or from any health care providers located within or outside this State that are concerned
29 with granting, limiting or denying an applicant's or licensee's employment or privileges.

FISCAL NOTE REQUIRED

(See attached)



129th MAINE LEGISLATURE

LD 1580

LR 1795(02)

An Act To Protect Licensing Information of Medical Professionals

Fiscal Note for Bill as Amended by Committee Amendment *A(H-631)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund
Minor cost increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional filing fees may increase General Fund and other dedicated revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure in Medicine, affiliated with the Department of Professional and Financial Information, to implement the requirements of this legislation can be absorbed within existing budgeted resources.