

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1790

H.P. 1272

House of Representatives, May 29, 2019

**An Act To Amend the Law To Protect the Confidentiality of State
and Local Government Employees' Private Information**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative McCREIGHT of Harpswell.
Cosponsored by President JACKSON of Aroostook and
Representatives: COOPER of Yarmouth, HANINGTON of Lincoln, SCHNECK of Bangor,
Senator: CYRWAY of Kennebec.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §7070, sub-§2, ¶D-1**, as amended by PL 2007, c. 597, §6, is
3 further amended to read:

4 D-1. Personal information pertaining to the employee's race, color, religion, sex,
5 sexual orientation as defined in section 4553, subsection 9-C, national origin,
6 ancestry, genetic information, age, physical disability, mental disability and marital
7 status; social security number; personal contact information as provided in Title 1,
8 section 402, subsection 3, paragraph O; and personal employment choices pertaining
9 to elected payroll deductions, deferred compensation, savings plans, pension plans,
10 health insurance and life insurance. When there is a work requirement for public
11 access to personal information under this paragraph that is not otherwise protected by
12 law, that information may be made public. The Director of the Bureau of Human
13 Resources, upon the request of the employing agency, shall make the determination
14 that the release of certain personal information not otherwise protected by law is
15 allowed; and

16 **Sec. 2. 30-A MRSA §503, sub-§1, ¶B**, as amended by PL 1997, c. 770, §2, is
17 further amended to read:

18 B. County records containing the following:

- 19 (1) Medical information of any kind, including information pertaining to the
20 diagnosis or treatment of mental or emotional disorders;
- 21 (2) Performance evaluations and personal references submitted in confidence;
- 22 (3) Information pertaining to the creditworthiness of a named employee;
- 23 (4) Information pertaining to the personal history, general character or conduct
24 of members of an employee's immediate family; ~~and~~
- 25 (5) Complaints, charges or accusations of misconduct, replies to those
26 complaints, charges or accusations and any other information or materials that
27 may result in disciplinary action. If disciplinary action is taken, the final written
28 decision relating to that action is no longer confidential after the decision is
29 completed if it imposes or upholds discipline. If an arbitrator completely
30 overturns or removes disciplinary action from an employee personnel file, the
31 final written decision is public except that the employee's name must be deleted
32 from the final written decision and kept confidential. If the employee whose
33 name was deleted from the final written decision discloses that the employee is
34 the person who is the subject of the final written decision, the entire final written
35 report, with regard to that employee, is public.

36 For purposes of this subparagraph, "final written decision" means:

- 37 (a) The final written administrative decision that is not appealed pursuant to
38 a grievance arbitration procedure; or
- 39 (b) If the final written administrative decision is appealed to arbitration, the
40 final written decision of a neutral arbitrator.

1 A final written administrative decision that is appealed to arbitration is no longer
2 confidential 120 days after a written request for the decision is made to the
3 employer if the final written decision of the neutral arbitrator is not issued and
4 released before the expiration of the 120 days; and

5 (6) Personal information, including that which pertains to the employee's:

6 (a) Age;

7 (b) Ancestry, ethnicity, genetic information, national origin, race or skin
8 color;

9 (c) Marital status;

10 (d) Mental or physical disabilities;

11 (e) Personal contact information, as described in Title 1, section 402,
12 subsection 3, paragraph O;

13 (f) Personal employment choices pertaining to elected payroll deductions,
14 deferred compensation, savings plans, pension plans, health insurance and
15 life insurance;

16 (g) Religion;

17 (h) Sex or sexual orientation as defined in Title 5, section 4553, subsection
18 9-C; or

19 (i) Social security number; and

20 **Sec. 3. 30-A MRSA §2702, sub-§1**, as amended by PL 1997, c. 770, §3, is
21 further amended to read:

22 **1. Confidential records.** The following records are confidential and not open to
23 public inspection. They are not "public records" as defined in Title 1, section 402,
24 subsection 3. These records include:

25 A. Except as provided in this paragraph, applications, resumes, letters and notes of
26 reference, working papers, research materials, records, examinations and any other
27 documents or records and the information they contain, solicited or prepared either by
28 the applicant or the municipality for use in the examination or evaluation of
29 applicants for positions as municipal employees.

30 (1) Notwithstanding any confidentiality provision other than this paragraph,
31 applications, resumes and letters and notes of reference, other than those letters
32 and notes of reference expressly submitted in confidence, pertaining to the
33 applicant hired are public records after the applicant is hired.

34 (2) Telephone numbers are not public records if they are designated as "unlisted"
35 or "unpublished" in an application, resume or letter or note of reference.

36 (3) This paragraph does not preclude union representatives from access to
37 personnel records ~~which~~ that may be necessary for the bargaining agent to carry
38 out its collective bargaining responsibilities. Any records available to union

1 representatives ~~which~~ that are otherwise covered by this subsection ~~shall~~ must
2 remain confidential and are not open to public inspection;

3 B. Municipal records pertaining to an identifiable employee and containing the
4 following:

5 (1) Medical information of any kind, including information pertaining to
6 diagnosis or treatment of mental or emotional disorders;

7 (2) Performance evaluations and personal references submitted in confidence;

8 (3) Information pertaining to the creditworthiness of a named employee;

9 (4) Information pertaining to the personal history, general character or conduct
10 of members of an employee's immediate family; ~~and~~

11 (5) Complaints, charges or accusations of misconduct, replies to those
12 complaints, charges or accusations and any other information or materials that
13 may result in disciplinary action. If disciplinary action is taken, the final written
14 decision relating to that action is no longer confidential after the decision is
15 completed if it imposes or upholds discipline. The decision must state the
16 conduct or other facts on the basis of which disciplinary action is being imposed
17 and the conclusions of the acting authority as to the reasons for that action. If an
18 arbitrator completely overturns or removes disciplinary action from an employee
19 personnel file, the final written decision is public except that the employee's
20 name must be deleted from the final written decision and kept confidential. If the
21 employee whose name was deleted from the final written decision discloses that
22 the employee is the person who is the subject of the final written decision, the
23 entire final written report, with regard to that employee, is public.

24 For purposes of this subparagraph, "final written decision" means:

25 (a) The final written administrative decision that is not appealed pursuant to
26 a grievance arbitration procedure; or

27 (b) If the final written administrative decision is appealed to arbitration, the
28 final written decision of a neutral arbitrator.

29 A final written administrative decision that is appealed to arbitration is no longer
30 confidential 120 days after a written request for the decision is made to the
31 employer if the final written decision of the neutral arbitrator is not issued and
32 released before the expiration of the 120 days; and

33 (6) Personal information, including that which pertains to the employee's:

34 (a) Age;

35 (b) Ancestry, ethnicity, genetic information, national origin, race or skin
36 color;

37 (c) Marital status;

38 (d) Mental or physical disabilities;

39 (e) Personal contact information, as described in Title 1, section 402,
40 subsection 3, paragraph O;

