

MAINE STATE LEGISLATURE

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NEW DRAFT OF S. P. 44—L. D. 57—SAME TITLE

N I N E T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 1538

S. P. 593

In Senate, April 28, 1953.

Reported by Senator Reid of Kennebec from Committee on Judiciary and printed under Joint Rules No. 10.

CHESTER T. WINSLOW, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

AN ACT Relating to Hearings Before the Insurance Commissioner.

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

R. S., c. 56, §§ 308-312, additional. Chapter 56 of the revised statutes, as amended, is hereby further amended by adding thereto 5 new sections, to be numbered 308 to 312, inclusive, to read as follows:

‘Hearings

Sec. 308. Duties of commissioner at hearings. The commissioner shall hold a hearing if required by any provision of the revised statutes. Such hearing may be conducted by the commissioner, the deputy commissioner or by any competent salaried employee of the department whom the commissioner may authorize to act. The hearing shall be held at the place designated by the commissioner, and shall be open to the public, unless the commissioner or person holding the same shall determine that a private hearing would be in the public interest, in which case it shall be private. Application for a hearing made to the commissioner pursuant to any provision of the revised statutes shall be in writing, and shall specify in what respects the person so applying was aggrieved and the grounds to be relied upon as the basis for relief to be demanded at the hearing. In any case the commissioner may require that the application be signed and sworn to by a person competent to be a witness in civil courts. Nothing herein shall re-

quire the observance at such hearing of formal rules of pleading or evidence except that formal rules of evidence shall be followed at the election of any party who communicates notice of such election to all other parties not less than 5 days prior to the date of the hearing. The commissioner shall hold such hearing applied for within 30 days after receipt of the application, unless the commissioner shall require the application to be sworn to; in which case, he shall hold the hearing within 30 days after the application has been sworn to.

The commissioner shall, not less than 14 days in advance, give notice of the time and place of the hearing, specifying the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons directly affected by such hearing; provided, however, that by mutual or common consent, the above notice may be waived, and the hearing held at such time as may be agreed upon. Provided further, that in any case in which the commissioner is required by law to conduct an examination of a company or to conduct an investigation of a fire or other casualty, or to approve buildings, premises or equipment for licensing, no previous notice of such examination or investigation need be given.

Sec. 309. Conduct of hearings. The commissioner or person conducting the hearing may administer oaths, examine and cross-examine witnesses, either personally or by counsel or other representative, and receive oral and documentary evidence. He may subpoena witnesses and require the production of books, papers, records, correspondence and other documents relevant to the inquiry. He may in any case cause a complete stenographic record to be made of the evidence and proceedings at the inquiry; and at the expense of and at the written request seasonably made by a person affected by the hearing, the commissioner or other persons conducting the hearing shall cause a complete stenographic record to be made by a competent stenographic reporter, and such record shall be made a part of the commissioner's record of the hearing. A copy of such record shall be furnished to any other party upon the written request and at the expense of such party. Parties in interest shall be allowed to be present in person and by counsel during the giving of all testimony, and shall be allowed a reasonable opportunity to inspect all documentary evidence, to examine and cross-examine witnesses, and to present evidence of their respective interests. The commissioner or person conducting the hearing may adjourn any hearing from time to time or place to place without any notice of the adjournment other than an announcement thereof at the hearing. The validity of any hearing held in accordance with the notice thereof shall not be

affected by the failure of any person to attend or to remain in attendance. If the hearing is conducted by some person other than the commissioner, such person shall report his findings as if taken by the commissioner. Such report, if accepted by the commissioner, may be the basis of any determination made by him or by his authority. Within 15 days after the hearing, the commissioner shall make his order thereon, setting forth his action thereon, the effective date of the order, together with such summary of his findings as may be necessary. The commissioner shall give a copy of such order to each person to whom notice of the hearing was given or required to be given.

Sec. 310. Appeal. Any person aggrieved by an order of the commissioner, or by any rule or regulation promulgated by the commissioner, may appeal therefrom to a justice of the supreme judicial court or the superior court. Such appeal shall be taken within 30 days, unless a shorter or different time is specified in a particular statute, but the commissioner or person conducting the hearing may for cause shown allow a longer time. The appellant shall present to a justice of either of the above courts a petition, in term time or vacation, setting forth the grounds for appeal, and such justice shall fix a time and place for hearing and cause notice thereof to be given the commissioner and other interested parties as in equity. The appeal shall be heard on legal evidence, and after such hearing the justice may affirm, modify or reverse the decision of the commissioner, and shall remand the cause to the commissioner for further proceedings in accordance with the court decree.

Sec. 311. Duties of a witness. Every person subpoenaed to appear at any hearing, examination or investigation held by the commissioner or by his authority is required to obey the subpoena, testify truthfully, conduct himself with decorum and do nothing that might in any way obstruct the purpose of the hearing. No person shall be excused from attending and testifying in obedience to a subpoena issued hereunder on the ground that the proper witness fee was not paid or tendered, unless the witness shall have made demand for such payment as a condition precedent to attending such hearing or investigation and unless such demand shall not have been complied with. Witnesses shall be entitled to the same fees and allowances as witnesses in the superior court; provided, however, that no insurer, insurance agent, insurance broker or other person subject to the provisions of this chapter, whose conduct, condition or practices are being investigated, and no officer, director or employee of any such insurer, insurance agent, insurance broker or other person shall be entitled to witness or mileage fees.

Sec. 312. Commissioner's orders, how enforced. Whoever, without reasonable excuse, fails to appear when summoned as a witness, or refuses to answer a lawful and pertinent question, or refuses to produce a book or writing when directed to do so by the person lawfully conducting a hearing or investigation, or deports himself in a disrespectful or disorderly manner at such inquiry, or obstructs the proceedings by any means, whether or not he be in the presence of the person lawfully conducting the inquiry, or wilfully neglects or refuses to obey any lawful order of the person conducting the inquiry is guilty of contempt and may be dealt with as follows: the commissioner, or other person lawfully conducting the inquiry, may address to a justice of the supreme judicial court or the superior court a petition, setting forth under oath the facts constituting the contempt and asking for an order returnable in not less than 2 nor more than 5 days, directing the alleged contemner to show cause before the justice who signed the order, or before any other justice of the supreme judicial court or superior court to whom the order may be made returnable, why he should not be punished for contempt: upon the return of such order, the justice before whom the matter shall come on for hearing shall examine under oath the alleged contemner and the alleged contemner shall be given an opportunity to be heard; and if the justice shall determine that the respondent has committed any alleged contempt, the justice may punish the offender as if the contempt had occurred in an action arising in or pending in said court.'