

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2032

H.P. 1553 House of Representatives, February 3, 1984

Submitted by the Joint Standing Committee on State Government pursuant to Joint Rule 19. Approved by Legislative Council June 1, 1983.

Reported by Representative Gwadosky from the Committee on State Government and printed under Joint Rule 19.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Authorize the Public Advocate
to Intervene in Proceedings Pertaining
to Health Insurance and Workers' Compensation
before the Superintendent of Insurance and
in Proceedings of the Health Care Finance
Commission.

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

Sec. 1. 5 MRSA Pt. 13-A, c. 339 is enacted to read:

PART 13-A

ROLE OF THE PUBLIC ADVOCATE

CHAPTER 339

PUBLIC ADVOCATE

1 §5101. Appointment of the Public Advocate

2 The Public Advocate shall be appointed by the
3 Governor, subject to review by the joint standing
4 committee of the Legislature having jurisdiction over
5 State Government and to confirmation by the Legisla-
6 ture, and shall serve at the pleasure of the Gover-
7 nor. Any vacancy shall be filled by similar appoint-
8 ment.

9 §5102. Definitions

10 As used in this chapter, unless the context indi-
11 cates otherwise, the following terms have the follow-
12 ing meanings.

13 1. Credit insurance. "Credit insurance" means
14 credit life and credit health insurance as defined in
15 Title 24-A, chapter 37.

16 2. Health insurance. "Health insurance" means
17 individual health insurance as defined in Title 24-A,
18 chapter 33, group health insurance as defined in Ti-
19 tle 24-A, chapter 35, except group health insurance
20 policies and contracts negotiated through collective
21 bargaining agreements, and health insurance provided
22 by nonprofit hospital or medical service organiza-
23 tions as defined in Title 24, chapter 19.

24 3. Superintendent. "Superintendent" means the
25 Superintendent of Insurance as defined in Title 24-A.

26 4. Workers' compensation. "Workers' compensa-
27 tion" means workers' compensation insurance, includ-
28 ing insurance policies, contracts, rate filings, reg-
29 ulations and proceedings within the jurisdiction of
30 the Superintendent of Insurance, as provided in Title
31 24-A and Title 39. Workers' compensation does not
32 refer to matters before the Workers' Compensation
33 Commission.

34 §5103. Scope of authority

35 The authority and responsibilities of the Public
36 Advocate shall extend to matters before the Public
37 Utilities Commission, credit insurance matters,
38 health insurance matters, workers' compensation mat-

1 ters and credit insurance before the Superintendent
2 of Insurance and proceedings before the Health Care
3 Finance Commission.

4 §5104. Duties and powers

5 1. Matters before the Public Utilities Commis-
6 sion. The duties and responsibilities of the Public
7 Advocate with respect to public utilities shall be to
8 represent the using and consuming public in matters
9 within the jurisdiction of the commission, including
10 but not limited to:

11 A. Reviewing, investigating and making appropri-
12 ate recommendations to the commission with re-
13 spect to the reasonableness of rates charged or
14 proposed to be charged by any public utility or
15 regulated carrier and, when deemed necessary by
16 the Public Advocate, intervening in related pro-
17 ceedings before the commission;

18 B. Reviewing, investigating and making appropri-
19 ate recommendations to the commission with re-
20 spect to the reasonableness and adequacy of the
21 service furnished or proposed to be furnished by
22 any public utility or regulated carrier and, when
23 deemed necessary by the Public Advocate, inter-
24 vening in related proceedings before the commis-
25 sion;

26 C. Petitioning the commission to initiate pro-
27 ceedings to review, investigate and take appro-
28 priate action with respect to the rates or ser-
29 vice of any public utility or regulated carrier,
30 when deemed necessary by the Public Advocate;

31 D. Reviewing, investigating and making appropri-
32 ate recommendations to the commission with re-
33 spect to any proposal by a public utility or reg-
34 ulated carrier to reduce or abandon service to
35 the public and, when deemed necessary by the Pub-
36 lic Advocate, intervening in related proceedings
37 before the commission;

38 E. Reviewing, investigating and making appropri-
39 ate recommendations, including alternative analy-
40 ses and plans as necessary, to the commission

1 with respect to the issuance of certificates of
2 public convenience and necessity and, when deemed
3 necessary by the Public Advocate, intervening in
4 related proceedings before the commission;

5 F. Reviewing, investigating and making appropri-
6 ate recommendations to the commission with re-
7 spect to mergers and consolidations of public
8 utilities and regulated carriers and, when deemed
9 necessary by the Public Advocate, intervening in
10 related proceedings before the commission;

11 G. Reviewing, investigating and making appropri-
12 ate recommendations to the commission with re-
13 spect to contracts of public utilities or regu-
14 lated carriers with affiliates or subsidiaries
15 and, when deemed necessary by the Public Advo-
16 cate, intervening in related proceedings before
17 the commission;

18 H. Reviewing, investigating and making appropri-
19 ate recommendations to the commission with re-
20 spect to securities, regulations and transactions
21 of public utilities or regulated carriers and,
22 when deemed necessary by the Public Advocate, in-
23 tervening in related proceedings before the com-
24 mission;

25 I. Investigating complaints affecting the using
26 and consuming public generally, or particular
27 groups of the using and consuming public, and,
28 where appropriate, making recommendations to the
29 commission with respect to the complaints;

30 J. When deemed necessary by the Public Advocate,
31 in the interest of the using and consuming pub-
32 lic, or any particular group of the using and
33 consuming public, intervening and appearing on
34 their behalf in any proceedings before the com-
35 mission, appeals from orders of the commission or
36 proceedings before state and federal agencies and
37 courts in which the subject matter of the action
38 affects the customers of any utility doing busi-
39 ness in this State, except that the Public Advo-
40 cate shall not intervene in any proceeding in
41 which the commission staff is representing a po-
42 sition substantially similar to that of the Pub-

1 lic Advocate, as determined by the Public Advo-
2 cate; and

3 K. Preparing and submitting an annual report of
4 the activities of the Public Advocate to the Gov-
5 ernor and to the joint standing committee of the
6 Legislature having jurisdiction over public util-
7 ities by August 1st of each year, with copies
8 available to all Legislators on request.

9 2. Health insurance, credit insurance and work-
10 ers' compensation insurance matters before the Super-
11 intendent of Insurance. The Public Advocate shall
12 represent the using and consuming public, including
13 employers, in health insurance matters within the ju-
14 risdiction of the Superintendent of Insurance, the
15 using and consuming public in credit insurance mat-
16 ters within the jurisdiction of the superintendent
17 and employers and employees in workers' compensa-
18 tion insurance matters within the jurisdiction of the Su-
19 perintendent of Insurance. The Public Advocate shall
20 not be involved in any health insurance proceedings
21 relating to group health policies or rates negotiated
22 between employers and employees through collective
23 bargaining agreements. The duties of the Public Ad-
24 vocate shall include, but not be limited to:

25 A. Reviewing and investigating contracts, poli-
26 cies, rate filings and regulations as they relate
27 to health insurance, credit insurance and work-
28 ers' compensation;

29 B. Petitioning the superintendent to initiate
30 proceedings to review, investigate and take ap-
31 propriate action with respect to contracts, poli-
32 cies, rate filings and regulations relating to
33 health insurance, credit insurance and workers'
34 compensation insurance;

35 C. Intervening in proceedings and hearings be-
36 fore the superintendent with respect to health
37 insurance, credit insurance and workers' compen-
38 sation insurance. The Public Advocate, in these
39 cases, shall be deemed a party;

40 D. Proposing rates, contract or policy provi-
41 sions and regulations as they relate to health

1 insurance, credit insurance and workers' compen-
2 sation insurance to the superintendent;

3 E. Intervening and participating in any proceed-
4 ings before state and federal agencies and courts
5 which, in the opinion of the Public Advocate, af-
6 fect the using and consuming public of health in-
7 surance, credit insurance or employers and em-
8 ployees with respect to workers' compensation;

9 F. Investigating any complaints which, in the
10 opinion of the Public Advocate, affect the using
11 and consuming public of health insurance, credit
12 insurance and employers and employees with re-
13 spect to workers' compensation insurance; and

14 G. Reviewing, investigating and making appropri-
15 ate recommendations to the superintendent with
16 respect to securities, investments, transactions,
17 mergers, consolidations and accounting procedures
18 of health insurance companies, credit insurance
19 companies, nonprofit hospital or medical service
20 organizations and insurance companies offering
21 workers' compensation insurance, as they relate
22 to the rates and policy provisions.

23 3. Matters before the Health Care Finance Com-
24 mission. The Public Advocate shall represent the
25 using and consuming public ultimately affected by the
26 decisions of the Health Care Finance Commission.
27 The duties of the Public Advocate include:

28 A. Reviewing, investigating and making appropri-
29 ate recommendations to the Health Care Finance
30 Commission with respect to matters, including
31 proposed rules before this commission;

32 B. Investigating complaints affecting the using
33 and consuming public generally, or particular
34 groups of the using and consuming public, and,
35 where appropriate, make recommendations to the
36 Health Care Finance Commission with respect to
37 the complaints;

38 C. Petitioning the Health Care Finance Commis-
39 sion to initiate proceedings to review, investi-
40 gate and take appropriate action with respect to

1 matters within the jurisdiction of this commis-
2 sion; and

3 D. When deemed necessary by the Public Advocate,
4 in the interest of the using and consuming pub-
5 lic, or any particular group of the using and
6 consuming public, intervening and appearing on
7 their behalf in any proceedings before this com-
8 mission, appeals from orders of the commission or
9 proceedings before state and federal agencies and
10 courts in which the subject matter of the action
11 ultimately affects the using and consuming pub-
12 lic.

13 4. Preparation of annual report. The Public Ad-
14 vocate shall prepare and submit an annual report to
15 the Governor and to the joint standing committee of
16 the Legislature having jurisdiction over State Gov-
17 ernment by December 31st of each year. This report
18 shall describe the activities and achievements of the
19 Public Advocate, as well as the problems encountered
20 by the Public Advocate. Reports shall be made avail-
21 able to all Legislators upon request.

22 §5105. Appeal from orders or decisions

23 The Public Advocate has the same rights of appeal
24 from orders or decisions of the Public Utilities Com-
25 mission, the Superintendent of Insurance and the
26 Health Care Finance Commission to which he has been a
27 party as other parties to the proceedings.

28 §5106. Staff of the Public Advocate

29 The staff of the Public Advocate shall consist of
30 such other personnel, including staff attorneys, as
31 the Public Advocate deems necessary. All personnel
32 shall be appointed, supervised and directed by the
33 Public Advocate. The Public Advocate is not subject
34 to the supervision, direction or control of the
35 chairman or members of the Public Utilities Commis-
36 sion, the Health Care Finance Commission or the Su-
37 perintendent of Insurance.

38 1. Application of the Personnel Law. The pro-
39 fessional employees of the Public Advocate shall
40 serve during the pleasure of the Public Advocate.

1 All other employees of the Public Advocate shall be
2 subject to the Personnel Law.

3 §5107. Legal representation

4 Notwithstanding the provisions of section 191,
5 the Public Advocate, or a staff attorney, may act as
6 the counsel for the office of the Public Advocate.
7 The Public Advocate may request the assistance of the
8 Attorney General or employ private counsel for this
9 purpose.

10 §5108. Relationship with the Attorney General

11 This section shall in no way limit the rights of
12 the Attorney General to intervene before the Public
13 Utilities Commission, the Health Care Finance Commis-
14 sion or the Superintendent of Insurance or to appeal
15 from the orders or decisions of these organizations.

16 §5109. Expert witnesses

17 The Public Advocate may employ expert witnesses
18 and pay appropriate compensation and expenses to em-
19 ploy the witnesses.

20 §5110. Expenses of the Public Advocate

21 The Public Advocate, within established budgetary
22 limits and as allowed by law, shall authorize and ap-
23 prove travel, subsistence and related necessary ex-
24 penditures of the Public Advocate or members of the staff
25 of the Public Advocate incurred while traveling on
26 official business.

27 §5111. Information from regulated organizations

28 Utilities, insurance companies, nonprofit hospital
29 or medical service organizations and hospitals
30 shall provide to the Public Advocate copies of all
31 reports and other information required to be filed
32 with or which may be submitted to the state agencies
33 described in section 5104, except to the extent that
34 this requirement is waived, in writing, by the Public
35 Advocate. The Public Advocate shall have the same
36 right to request data as an intervenor in a proceed-
37 ing before the state agencies described in section

1 5104 and, in addition, may petition these agencies,
2 for good cause shown, to be allowed such other infor-
3 mation as may be necessary to carry out the purposes
4 of this section.

5 §5112. Conflicts of interest

6 In addition to the limitations of section 18,
7 neither the Public Advocate nor any employee of the
8 Public Advocate shall have any official connection or
9 relation with or hold any stock or securities in any
10 public utility, as defined in Title 35, section 15,
11 any insurance company offering health insurance with-
12 in the scope of the Public Advocate's duties, any
13 credit insurance, any workers' compensation insurance
14 or any hospital operating within the State, nor shall
15 the Public Advocate render any professional service
16 against any of the organizations described in this
17 section or shall he be a member of a firm which ren-
18 ders those services.

19 §5113. Repeal

20 This chapter is repealed on July 1, 1987, unless
21 reenacted by the Legislature. If this chapter is re-
22 pealed on July 1, 1987, Title 35, section 1-A is re-
23 enacted to read as it read immediately prior to the
24 effective date of this chapter.

25 Sec. 2. 22 MRSA §400 is enacted to read:

26 §400. Role of the Public Advocate

27 The Public Advocate may participate or act as an
28 intervenor in any proceedings of the commission. The
29 Public Advocate, among other duties, may:

30 1. Review, investigate and make recommendations.
31 Review, investigate and make appropriate recommenda-
32 tions to the commission with respect to all matters
33 within the jurisdiction of the commission;

34 2. Investigate complaints. Investigate com-
35 plaints that ultimately affect the using and consum-
36 ing public or particular groups of the using and con-
37 suming public and make recommendations to the commis-
38 sion with respect to these complaints;

1 3. Petition the commission to initiate proceed-
2 ings. Petition the commission to initiate proceed-
3 ings to review, investigate and take appropriate ac-
4 tion with respect to all matters within the jurisdic-
5 tion of the commission; and

6 4. Appeal orders or decisions of the commission.
7 Appeal orders or decisions of the commission to state
8 and federal agencies and courts.

9 Sec. 3. 24 MRSA §2321, sub-§1, as amended by PL
10 1979, c. 558, §1, is further amended to read:

11 1. Filing of rate information. Every nonprofit
12 hospital and medical service organization shall file
13 with the superintendent, ~~except as to group subscrib-~~
14 ~~er and membership contracts,~~ every rate, rating for-
15 mula and every modification of any of the foregoing
16 which it proposes to use. Copies of all filings and
17 information required by this section shall also be
18 provided simultaneously by every nonprofit hospital
19 and medical service organization to the Public Advo-
20 cate. Every ~~such~~ filing shall state the effective
21 date thereof. Every ~~such~~ filing shall be made not
22 less than 60 days in advance of the stated effective
23 date unless ~~such~~ the 60-day requirement is waived by
24 the superintendent, and the effective date may be
25 suspended by the superintendent for a period of time
26 not to exceed 30 days.

27 Sec. 4. 24 MRSA §2327, as enacted by PL 1979, c.
28 558, §5, is repealed.

29 Sec. 5. 24 MRSA §2332 is enacted to read:

30 §2332. Role of the Public Advocate

31 The provisions of this chapter pertaining to
32 health insurance rates, contracts, policies, rules
33 and proceedings are subject to the provisions of Ti-
34 tle 5, chapter 339.

35 Copies of all information required by the super-
36 intendent shall be provided simultaneously by non-
37 profit hospital or medical service organizations to
38 the Public Advocate as provided in Title 5, chapter
39 339.

1 Sec. 6. 24-A MRSA §237 is enacted to read:

2 §237. Role of the Public Advocate

3 The provisions of this Title pertaining to insur-
4 ance rates, policies, contracts, rules and proceed-
5 ings are subject to the provisions of Title 5, chap-
6 ter 339.

7 Sec. 7. 24-A MRSA §2412, sub-§1, as amended by
8 PL 1973, c. 585, §12, is further amended to read:

9 1. No basic insurance policy or annuity contract
10 form, or application form where written application
11 is required and is to be made a part of the policy or
12 contract, or printed rider or endorsement form or
13 form of renewal certificate, shall be delivered, or
14 issued for delivery in this State, unless the form
15 has been filed with and approved by the superintend-
16 ent. This provision shall not apply to surety bonds,
17 or to specially rated inland marine risks, or to pol-
18 icies, riders, endorsements or forms of unique char-
19 acter designed for and used with relation to insur-
20 ance upon a particular subject, or which relate to
21 the manner of distribution of benefits or to the res-
22 ervation of rights and benefits under life or health
23 insurance policies and are used at the request of the
24 individual policyholder, contract holder, or certifi-
25 cate holder. ~~As to group insurance policies effectuated~~
26 ~~and delivered outside this State but covering~~
27 ~~persons resident in this State, the group certifi-~~
28 ~~cates to be delivered or issued for delivery in this~~
29 ~~State shall be filed, for the superintendent's infor-~~
30 ~~mation only, with the superintendent at his request.~~
31 Copies of policies and contract forms and any other
32 information required by this section shall be pro-
33 vided simultaneously by insurance companies to the
34 Public Advocate as these policies, contracts and in-
35 formation pertain to health insurance, credit insur-
36 ance and workers' compensation insurance as provided
37 in this Title. As to forms for use in property, ma-
38 rine other than wet marine and transportation insur-
39 ance, casualty and surety insurance coverages the
40 filing required by this subsection may be made by
41 rating organizations on behalf of its members and
42 subscribers; but this provision shall not be deemed
43 to prohibit any such member or subscriber from filing
44 any such forms on its own behalf.

1 Sec. 8. 24-A MRSA §2701, sub-§2, as enacted by
2 PL 1969, c. 132, §1, is amended to read:

3 2. Any group or blanket policy that is negoti-
4 ated through collective bargaining agreements;

5 Sec. 9. 24-A MRSA §2839, as reallocated by PL
6 1979, c. 663, §149, is repealed and the following en-
7 acted in its place:

8 §2839. Rate filings on group health insurance poli-
9 cies

10 1. Filing of rate information. Every insurer
11 issuing group health insurance policies for delivery
12 in this State shall file with the superintendent ev-
13 ery rate, rating formula and classification of risks
14 pertaining to group health policies and every modifi-
15 cation of any of the foregoing which it proposes to
16 use. Every insurer shall file with the superintend-
17 ent every rate and rating formula and every modifica-
18 tion of any of the foregoing which it proposes to
19 use. Every filing shall state the effective date.
20 Every filing shall be made not less than 60 days in
21 advance of the stated effective date, unless the
22 60-day requirement is waived by the superintendent,
23 and the effective date may be suspended by the super-
24 intendent for a period of time not to exceed 30 days.

25 A. Copies of the information required by this
26 subsection and subsection 2 shall be filed simul-
27 taneously by every insurer with the Public Advoca-
28 cate.

29 2. Rate filing; public information. When a fil-
30 ing is not accompanied by the information upon which
31 the insurer supports the filing or the superintendent
32 does not have sufficient information to determine
33 whether the filing meets the requirements that rates
34 shall not be excessive, inadequate or unfairly dis-
35 criminate, the superintendent shall require the in-
36 surer to furnish the information upon which it sup-
37 ports the filing. A filing and supporting informa-
38 tion shall be a public record within the meaning of
39 Title 1, section 402, subsection 3, and shall become
40 part of the official record of any hearing held pur-
41 suant to section 2736-A.

1 3. Exclusions. The provisions of this section
2 shall not apply to group health insurance policies,
3 contracts and rates subject to negotiation through
4 collective bargaining agreements.

5 Sec. 10. 24-A MRSA §§2839-A and 2839-B are en-
6 acted to read:

7 §2839-A. Hearing

8 If, at any time, the superintendent has reason to
9 believe that a filing does not meet the requirements
10 that rates shall not be excessive, inadequate or un-
11 fairly discriminatory or that the filing violates any
12 of the provisions of chapter 23, he shall cause a
13 hearing to be held.

14 Hearings held under this section shall conform to
15 the procedural requirements set forth in the Maine
16 Administrative Procedure Act, Title 5, chapter 375,
17 subchapter IV.

18 §2839-B. Order

19 The superintendent shall issue his order or deci-
20 sion within 30 days after the close of the hearing.
21 In his order or decision, the superintendent shall
22 either approve or disapprove the rate filing. If he
23 disapproves the rate filing, the superintendent shall
24 establish the date on which the filing is no longer
25 effective, specify the filing he would approve and
26 authorize the insurer to submit a new filing in ac-
27 cordance with the terms of his order or decision.

28 The Public Advocate may appeal a decision of the
29 superintendent as a party to the proceedings to the
30 courts of the State.

31 Sec. 11. 24-A MRSA §2858, sub-§3, as amended by
32 PL 1973, c. 585, §12, is further amended to read:

33 3. Notice of disapproval; waiting period. If the
34 superintendent notifies the insurer that the form or
35 rates are disapproved or that the Public Advocate has
36 requested a hearing, it is unlawful thereafter for
37 such insurer to issue or use such form or rates. In
38 such notice, the superintendent shall specify the

1 reason for his disapproval and state that a hearing
2 will be granted within 20 days after request in writ-
3 ing by the insurer. No such policy, certificate of
4 insurance, notice of proposed insurance, or any ap-
5 plication, endorsement or rider or rate ~~shall~~ may be
6 issued or used until the expiration of 30 days after
7 it has been so filed, unless the superintendent shall
8 give his prior written approval thereto and if the
9 Public Advocate has not appealed the policy provi-
10 sions or rates to the superintendent.

11 Sec. 12. 39 MRSA §5 is enacted to read:

12 §5. Role of the Public Advocate

13 The provisions of this Title pertaining to mat-
14 ters within the jurisdiction of the Superintendent of
15 Insurance shall be subject to the provisions of Title
16 5, chapter 339.

17 Copies of all information, including information
18 defined in section 23, subsection 10, required by the
19 Superintendent of Insurance shall be simultaneously
20 provided by insurance companies and insurance rating
21 organizations to the Public Advocate in accordance
22 with Title 5, chapter 339.

23 Sec. 13. Appropriation. The following funds are
24 appropriated from the General Fund to carry out the
25 purposes of this Act.

26 1984-85

27 EXECUTIVE DEPARTMENT

28 Office of Public Advocate

29	Positions	(2)
30	Personal Services	\$ 46,601
31	All Other	50,997
32	Capital Expenditures	<u>6,067</u>
33	Total	\$103,665

1

STATEMENT OF FACT

2 The purpose of this bill is to provide the Super-
3 intendent of Insurance with additional information
4 and a different perspective from that of insurance
5 companies with respect to rate hearings and other
6 proceedings pertaining to health insurance, credit
7 insurance and workers' compensation insurance. This
8 bill does not replace or alter in any way the deci-
9 sion-making authority of the Superintendent of Insur-
10 ance.

11 The Public Advocate may participate in hearings
12 and proceedings before the superintendent, except
13 property and casualty insurance, life insurance and
14 group health plans subject to collective bargaining
15 agreements. Insurance companies are required to file
16 information with the Public Advocate who may request
17 the superintendent to hold a hearing.

18 This bill allows the Public Advocate to intervene
19 or participate in all proceedings before the Health
20 Care Finance Commission. The purpose of this provi-
21 sion is to enable the Public Advocate to become in-
22 volved in proceedings that have the greatest impact
23 on health insurance costs and thereby help limit
24 these costs to users.

25

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