

# MAINE STATE LEGISLATURE

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1 (After Deadline)

2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE  
5

6 Legislative Document

No. 2202

7  
8 S.P. 822

In Senate, March 8, 1984

9 Approved for introduction by the majority of the Legislative Council  
10 pursuant to Joint Rule 27.

11 Referred to the Committee on State Government is suggested and ordered  
printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Violette of Aroostook.

Cosponsor: Representative Gwadosky of Fairfield.  
12

13 STATE OF MAINE  
14

15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-FOUR  
17

18 AN ACT Authorizing the Public Advocate to  
19 Intervene in Health Insurance Proceedings  
20 before the Superintendent of Insurance and in  
21 the Proceedings of the Health Care Finance  
22 Commission.  
23

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

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

28 PART 13-A

29 ROLE OF THE PUBLIC ADVOCATE

30 CHAPTER 339

31 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     §5103. Scope of authority

27            The authority and responsibilities of the Public  
28 Advocate shall extend to matters before the Public  
29 Utilities Commission, credit insurance matters and  
30 health insurance matters before the Superintendent of  
31 Insurance and proceedings before the Health Care Fi-  
32 nance Commission.

33     §5104. Duties and powers

34            1. Matters before the Public Utilities Commis-  
35 sion. The duties and responsibilities of the Public  
36 Advocate with respect to public utilities shall be to  
37 represent the using and consuming public in matters

1 within the jurisdiction of the commission, including,  
2 but not limited to:

3 A. Reviewing, investigating and making appropri-  
4 ate recommendations to the commission with re-  
5 spect to the reasonableness of rates charged or  
6 proposed to be charged by any public utility or  
7 regulated carrier and, when deemed necessary by  
8 the Public Advocate, intervening in related pro-  
9 ceedings before the commission;

10 B. Reviewing, investigating and making appropri-  
11 ate recommendations to the commission with re-  
12 spect to the reasonableness and adequacy of the  
13 service furnished or proposed to be furnished by  
14 any public utility or regulated carrier and, when  
15 deemed necessary by the Public Advocate, inter-  
16 vening in related proceedings before the commis-  
17 sion;

18 C. Petitioning the commission to initiate pro-  
19 ceedings to review, investigate and take appro-  
20 priate action with respect to the rates or ser-  
21 vice of any public utility or regulated carrier,  
22 when deemed necessary by the Public Advocate;

23 D. Reviewing, investigating and making appropri-  
24 ate recommendations to the commission with re-  
25 spect to any proposal by a public utility or reg-  
26 ulated carrier to reduce or abandon service to  
27 the public and, when deemed necessary by the Pub-  
28 lic Advocate, intervening in related proceedings  
29 before the commission;

30 E. Reviewing, investigating and making appropri-  
31 ate recommendations, including alternative analy-  
32 ses and plans as necessary, to the commission  
33 with respect to the issuance of certificates of  
34 public convenience and necessity and, when deemed  
35 necessary by the Public Advocate, intervening in  
36 related proceedings before the commission;

37 F. Reviewing, investigating and making appropri-  
38 ate recommendations to the commission with re-  
39 spect to mergers and consolidations of public  
40 utilities and regulated carriers and, when deemed  
41 necessary by the Public Advocate, intervening in  
42 related proceedings before the commission;

1 G. Reviewing, investigating and making appropri-  
2 ate recommendations to the commission with re-  
3 spect to contracts of public utilities or regu-  
4 lated carriers with affiliates or subsidiaries  
5 and, when deemed necessary by the Public Adv-  
6 ocate, intervening in related proceedings before  
7 the commission;

8 H. Reviewing, investigating and making appropri-  
9 ate recommendations to the commission with re-  
10 spect to securities, regulations and transactions  
11 of public utilities or regulated carriers and,  
12 when deemed necessary by the Public Advocate, in-  
13 tervening in related proceedings before the com-  
14 mission;

15 I. Investigating complaints affecting the using  
16 and consuming public generally, or particular  
17 groups of the using and consuming public, and,  
18 where appropriate, making recommendations to the  
19 commission with respect to the complaints;

20 J. When deemed necessary by the Public Advocate,  
21 in the interest of the using and consuming pub-  
22 lic, or any particular group of the using and  
23 consuming public, intervening and appearing on  
24 their behalf in any proceedings before the com-  
25 mission, appeals from orders of the commission or  
26 proceedings before state and federal agencies and  
27 courts in which the subject matter of the action  
28 affects the customers of any utility doing busi-  
29 ness in this State, except that the Public Adv-  
30 ocate shall not intervene in any proceeding in  
31 which the commission staff is representing a po-  
32 sition substantially similar to that of the Pub-  
33 lic Advocate, as determined by the Public Adv-  
34 ocate; and

35 K. Preparing and submitting an annual report of  
36 the activities of the Public Advocate to the Gov-  
37 ernor and to the joint standing committee of the  
38 Legislature having jurisdiction over public util-  
39 ities by August 1st of each year, with copies  
40 available to all Legislators on request.

41 2. Health insurance and credit insurance matters  
42 before the Superintendent of Insurance. The Public

1 Advocate shall represent the using and consuming pub-  
2 lic, including employers, in health insurance matters  
3 within the jurisdiction of the Superintendent of In-  
4 surance and the using and consuming public in credit  
5 insurance matters within the jurisdiction of the su-  
6 perintendent. The Public Advocate shall not be in-  
7 involved in any health insurance proceedings relating  
8 to group health policies or rates negotiated between  
9 employers and employees through collective bargaining  
10 agreements. The duties of the Public Advocate shall  
11 include, but not be limited to:

12 A. Reviewing and investigating contracts, poli-  
13 cies, rate filings and regulations as they relate  
14 to health insurance and credit insurance;

15 B. Petitioning the superintendent to initiate  
16 proceedings to review, investigate and take ap-  
17 propriate action with respect to contracts, poli-  
18 cies, rate filings and regulations relating to  
19 health insurance and credit insurance;

20 C. Intervening in proceedings and hearings be-  
21 fore the superintendent with respect to health  
22 insurance and credit insurance. The Public Advoca-  
23 te, in these cases, shall be deemed a party;

24 D. Proposing rates, contract or policy provi-  
25 sions and regulations as they relate to health  
26 insurance and credit insurance to the superin-  
27 tendent;

28 E. Intervening and participating in any proceed-  
29 ings before state and federal agencies and courts  
30 which, in the opinion of the Public Advocate, af-  
31 fect the using and consuming public of health in-  
32 surance and credit insurance;

33 F. Investigating any complaints which, in the  
34 opinion of the Public Advocate, affect the using  
35 and consuming public of health insurance and  
36 credit insurance; and

37 G. Reviewing, investigating and making appropri-  
38 ate recommendations to the superintendent with  
39 respect to securities, investments, transactions,  
40 mergers, consolidations and accounting procedures

1 of health insurance companies, credit insurance  
2 companies and nonprofit hospital or medical ser-  
3 vice organizations.

4 3. Matters before the Health Care Finance Com-  
5 mission. The Public Advocate shall represent the  
6 using and consuming public ultimately affected by the  
7 decisions of the Health Care Finance Commission.  
8 The duties of the Public Advocate include:

9 A. Reviewing, investigating and making appropri-  
10 ate recommendations to the Health Care Finance  
11 Commission with respect to matters, including  
12 proposed rules before this commission;

13 B. Investigating complaints affecting the using  
14 and consuming public generally, or particular  
15 groups of the using and consuming public, and,  
16 where appropriate, make recommendations to the  
17 Health Care Finance Commission with respect to  
18 the complaints;

19 C. Petitioning the Health Care Finance Commis-  
20 sion to initiate proceedings to review, investi-  
21 gate and take appropriate action with respect to  
22 matters within the jurisdiction of this commis-  
23 sion; and

24 D. When deemed necessary by the Public Advocate,  
25 in the interest of the using and consuming pub-  
26 lic, or any particular group of the using and  
27 consuming public, intervening and appearing on  
28 their behalf in any proceedings before this com-  
29 mission, appeals from orders of the commission or  
30 proceedings before state and federal agencies and  
31 courts in which the subject matter of the action  
32 ultimately affects the using and consuming pub-  
33 lic.

34 4. Preparation of annual report. The Public Ad-  
35 vocate shall prepare and submit an annual report to  
36 the Governor and to the joint standing committee of  
37 the Legislature having jurisdiction over State Gov-  
38 ernment by December 31st of each year. This report  
39 shall describe the activities and achievements of the  
40 Public Advocate, as well as the problems encountered  
41 by the Public Advocate. Reports shall be made avail-  
42 able to all Legislators upon request.

1     §5105. Appeal from orders or decisions

2             The Public Advocate has the same rights of appeal  
3 from orders or decisions of the Public Utilities Com-  
4 mission, the Superintendent of Insurance and the  
5 Health Care Finance Commission to which he has been a  
6 party as other parties to the proceedings.

7     §5106. Staff of the Public Advocate

8             The staff of the Public Advocate shall consist of  
9 such other personnel, including staff attorneys, as  
10 the Public Advocate deems necessary. All personnel  
11 shall be appointed, supervised and directed by the  
12 Public Advocate. The Public Advocate is not subject  
13 to the supervision, direction or control of the  
14 chairman or members of the Public Utilities Commis-  
15 sion, the Health Care Finance Commission or the Su-  
16 perintendent of Insurance.

17             1. Application of the Personnel Law. The pro-  
18 fessional employees of the Public Advocate shall  
19 serve during the pleasure of the Public Advocate.  
20 All other employees of the Public Advocate shall be  
21 subject to the Personnel Law.

22     §5107. Legal representation

23             Notwithstanding the provisions of section 191,  
24 the Public Advocate, or a staff attorney, may act as  
25 the counsel for the office of the Public Advocate.  
26 The Public Advocate may request the assistance of the  
27 Attorney General or employ private counsel for this  
28 purpose.

29     §5108. Relationship with the Attorney General

30             This section shall in no way limit the rights of  
31 the Attorney General to intervene before the Public  
32 Utilities Commission, the Health Care Finance Commis-  
33 sion or the Superintendent of Insurance or to appeal  
34 from the orders or decisions of these organizations.

35     §5109. Expert witnesses

36             The Public Advocate may employ expert witnesses  
37 and pay appropriate compensation and expenses to em-  
38 ploy the witnesses.



1     §5110. Expenses of the Public Advocate

2             The Public Advocate, within established budgetary  
3 limits and as allowed by law, shall authorize and ap-  
4 prove travel, subsistence and related necessary ex-  
5 penses of the Public Advocate or members of the staff  
6 of the Public Advocate incurred while traveling on  
7 official business.

8     §5111. Information from regulated organizations

9             Utilities, insurance companies, nonprofit hospi-  
10 tal or medical service organizations and hospitals  
11 shall provide to the Public Advocate copies of all  
12 reports and other information required to be filed  
13 with or which may be submitted to the state agencies  
14 described in section 5104, except to the extent that  
15 this requirement is waived, in writing, by the Public  
16 Advocate. The Public Advocate shall have the same  
17 right to request data as an intervenor in a proceed-  
18 ing before the state agencies described in section  
19 5104 and, in addition, may petition these agencies,  
20 for good cause shown, to be allowed such other infor-  
21 mation as may be necessary to carry out the purposes  
22 of this chapter.

23     §5112. Conflicts of interest

24             In addition to the limitations of section 18,  
25 neither the Public Advocate nor any employee of the  
26 Public Advocate shall have any official connection or  
27 relation with or hold any stock or securities in any  
28 public utility, as defined in Title 35, section 15,  
29 any insurance company offering health insurance with-  
30 in the scope of the Public Advocate's duties, any  
31 credit insurance, or any hospital operating within  
32 the State, nor shall the Public Advocate render any  
33 professional service against any of the organizations  
34 described in this section or shall he be a member of  
35 a firm which renders those services.

36     §5113. Repeal

37             This chapter, except this section, is repealed on  
38 July 1, 1987, unless reenacted by the Legislature.  
39 If this chapter is repealed on July 1, 1987, Title  
40 35, section 1-A, is reenacted to read as it read im-

1 mediately prior to the effective date of this chap-  
2 ter.

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

4 §400. Role of the Public Advocate

5           The Public Advocate may participate or act as an  
6 intervenor in any proceedings of the commission. The  
7 Public Advocate, among other duties, may:

8           1. Review, investigate and make recommendations.  
9 Review, investigate and make appropriate recommenda-  
10 tions to the commission with respect to all matters  
11 within the jurisdiction of the commission;

12           2. Investigate complaints. Investigate com-  
13 plaints that ultimately affect the using and consum-  
14 ing public or particular groups of the using and con-  
15 suming public and make recommendations to the commis-  
16 sion with respect to these complaints;

17           3. Petition the commission to initiate proceed-  
18 ings. Petition the commission to initiate proceed-  
19 ings to review, investigate and take appropriate ac-  
20 tion with respect to all matters within the jurisdic-  
21 tion of the commission; and

22           4. Appeal orders or decisions of the commission.  
23 Appeal orders or decisions of the commission to state  
24 and federal agencies and courts.

25           Sec. 3. 24 MRSA §2321, sub-§1, as amended by PL  
26 1979, c. 558, §1, is further amended to read:

27           1. Filing of rate information. Every nonprofit  
28 hospital and medical service organization shall file  
29 with the superintendent, ~~except as to group subscrib-~~  
30 ~~er and membership contracts,~~ every rate, rating for-  
31 mula and every modification of any of the foregoing  
32 which it proposes to use. Copies of all filings and  
33 information required by this section shall also be  
34 provided simultaneously by every nonprofit hospital  
35 and medical service organization to the Public Advoca-  
36 te. Every ~~such~~ filing shall state the effective  
37 date thereof. Every ~~such~~ filing shall be made not  
38 less than 60 days in advance of the stated effective

1 date unless such the 60-day requirement is waived by  
2 the superintendent, and the effective date may be  
3 suspended by the superintendent for a period of time  
4 not to exceed 30 days.

5 Sec. 4. 24 MRSA §2327, as enacted by PL 1979, c.  
6 558, §5, is repealed.

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

8 §2332. Role of the Public Advocate

9 The provisions of this chapter pertaining to  
10 health insurance rates, contracts, policies, rules  
11 and proceedings are subject to the provisions of Ti-  
12 tle 5, chapter 339.

13 Copies of all information required by the super-  
14 intendent shall be provided simultaneously by non-  
15 profit hospital or medical service organizations to  
16 the Public Advocate as provided in Title 5, chapter  
17 339.

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

19 §237. Role of the Public Advocate

20 The provisions of this Title pertaining to insur-  
21 ance rates, policies, contracts, rules and proceed-  
22 ings are subject to the provisions of Title 5, chap-  
23 ter 339.

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

26 1. No basic insurance policy or annuity contract  
27 form, or application form where written application  
28 is required and is to be made a part of the policy or  
29 contract, or printed rider or endorsement form or  
30 form of renewal certificate, shall be delivered, or  
31 issued for delivery in this State, unless the form  
32 has been filed with and approved by the superintend-  
33 ent. This provision shall not apply to surety bonds,  
34 or to specially rated inland marine risks, or to po-  
35 licies, riders, endorsements or forms of unique char-  
36 acter designed for and used with relation to insur-  
37 ance upon a particular subject, or which relate to

1 the manner of distribution of benefits or to the res-  
2 ervation of rights and benefits under life or health  
3 insurance policies and are used at the request of the  
4 individual policyholder, contract holder, or certifi-  
5 cate holder. As to group insurance policies effectuated  
6 and delivered outside this State but covering  
7 persons resident in this State, the group certifi-  
8 cates to be delivered or issued for delivery in this  
9 State shall be filed, for the superintendent's infor-  
10 mation only, with the superintendent at his request.  
11 Copies of policies and contract forms and any other  
12 information required by this section shall be pro-  
13 vided simultaneously by insurance companies to the  
14 Public Advocate as these policies, contracts and in-  
15 formation pertain to health insurance, credit insur-  
16 ance and workers' compensation insurance as provided  
17 in this Title. As to forms for use in property, ma-  
18 rine other than wet marine and transportation insur-  
19 ance, casualty and surety insurance coverages the  
20 filing required by this subsection may be made by  
21 rating organizations on behalf of its members and  
22 subscribers; but this provision shall not be deemed  
23 to prohibit any such member or subscriber from filing  
24 any such forms on its own behalf.

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

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

29 Sec. 9. 24-A MRSA §2839, as reallocated by PL  
30 1979, c. 663, §149, is repealed and the following en-  
31 acted in its place:

32 §2839. Rate filings on group health insurance poli-  
33 cies

34 1. Filing of rate information. Every insurer  
35 issuing group health insurance policies for delivery  
36 in this State shall file with the superintendent ev-  
37 ery rate, rating formula and classification of risks  
38 pertaining to group health policies and every modifi-  
39 cation of any of the foregoing which it proposes to  
40 use. Every insurer shall file with the superintend-  
41 ent every rate and rating formula and every modifica-  
42 tion of any of the foregoing which it proposes to

1 use. Every filing shall state the effective date.  
2 Every filing shall be made not less than 60 days in  
3 advance of the stated effective date, unless the  
4 60-day requirement is waived by the superintendent,  
5 and the effective date may be suspended by the super-  
6 intendent for a period of time not to exceed 30 days.

7 A. Copies of the information required by this  
8 subsection and subsection 2 shall be filed simul-  
9 taneously by every insurer with the Public Advo-  
10 cate.

11 2. Rate filing; public information. When a fil-  
12 ing is not accompanied by the information upon which  
13 the insurer supports the filing or the superintendent  
14 does not have sufficient information to determine  
15 whether the filing meets the requirements that rates  
16 shall not be excessive, inadequate or unfairly dis-  
17 criminatory, the superintendent shall require the in-  
18 surer to furnish the information upon which it sup-  
19 ports the filing. A filing and supporting informa-  
20 tion shall be a public record within the meaning of  
21 Title 1, section 402, subsection 3, and shall become  
22 part of the official record of any hearing held pur-  
23 suant to section 2736-A.

24 3. Exclusions. The provisions of this section  
25 shall not apply to group health insurance policies,  
26 contracts and rates subject to negotiation through  
27 collective bargaining agreements.

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

30 §2839-A. Hearing

31 If, at any time, the superintendent has reason to  
32 believe that a filing does not meet the requirements  
33 that rates shall not be excessive, inadequate or un-  
34 fairly discriminatory or that the filing violates any  
35 of the provisions of chapter 23, he shall cause a  
36 hearing to be held.

37 Hearings held under this section shall conform to  
38 the procedural requirements set forth in the Maine  
39 Administrative Procedure Act, Title 5, chapter 375,  
40 subchapter IV.

1       §2839-B. Order

2           The superintendent shall issue his order or deci-  
3 sion within 30 days after the close of the hearing.  
4 In his order or decision, the superintendent shall  
5 either approve or disapprove the rate filing. If he  
6 disapproves the rate filing, the superintendent shall  
7 establish the date on which the filing is no longer  
8 effective, specify the filing he would approve and  
9 authorize the insurer to submit a new filing in ac-  
10 cordance with the terms of his order or decision.

11           The Public Advocate may appeal a decision of the  
12 superintendent as a party to the proceedings to the  
13 courts of the State.

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

16           3. Notice of disapproval; waiting period. If the  
17 superintendent notifies the insurer that the form or  
18 rates are disapproved or that the Public Advocate has  
19 requested a hearing, it is unlawful thereafter for  
20 such insurer to issue or use such form or rates. In  
21 such notice, the superintendent shall specify the  
22 reason for his disapproval and state that a hearing  
23 will be granted within 20 days after request in writ-  
24 ing by the insurer. No such policy, certificate of  
25 insurance, notice of proposed insurance, or any ap-  
26 plication, endorsement or rider or rate shall may be  
27 issued or used until the expiration of 30 days after  
28 it has been so filed, unless the superintendent shall  
29 give his prior written approval thereto and if the  
30 Public Advocate has not appealed the policy provi-  
31 sions or rates to the superintendent.

32           Sec. 12. Appropriation. The following funds are  
33 appropriated from the General Fund to carry out the  
34 purposes of this Act.

35           1984-85

36       EXECUTIVE DEPARTMENT

37       Office of Public Advocate

1	Positions	(2)
2	Personal Services	\$ 46,601
3	All Other	50,997
4	Capital Expenditures	<u>6,067</u>
5	Total	\$103,665

6       Sec. 13. Repeal. Sections 2 to 11 of this Act  
7 are repealed on July 1, 1987, unless reenacted by the  
8 Legislature.

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STATEMENT OF FACT

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The purpose of this bill is to provide the Superintendent of Insurance with additional information and a different perspective from that of insurance companies with respect to rate hearings and other proceedings pertaining to health insurance and credit insurance. This bill does not replace or alter in any way the decision-making authority of the Superintendent of Insurance.

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

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This bill allows the Public Advocate to intervene or participate in all proceedings before the Health Care Finance Commission. The purpose of this provision is to enable the Public Advocate to become involved in proceedings that have the greatest impact on health insurance costs and thereby help limit these costs to users.

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