

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND THIRTEENTH LEGISLATURE
5

6 Legislative Document

NO. 65

8 H.P. 62 House of Representatives, January 26, 1987
9 Reference to the Committee on Labor suggested and ordered
10 printed.

EDWIN H. PERT, Clerk
11 Presented by Representative Conley of Portland.

12
13 STATE OF MAINE
14

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

18 AN ACT Relating to the Confidentiality of the
19 Office of Employment Rehabilitation
20 and Abuse Investigation Unit Files of
21 the Workers' Compensation Commission.
22

23 Emergency preamble. Whereas, Acts of the Legis-
24 lature do not become effective until 90 days after
25 adjournment unless enacted as emergencies, and

26 Whereas, records of the Department of Human Ser-
27 vices, Unit of Rehabilitation Services, are confiden-
28 tial; and

29 Whereas, investigative information records, cor-
30 respondence and reports of investigation in connec-
31 tion with violations of law are generally considered
32 confidential and not subject to public release or in-
33 spection; and

1 Whereas, public access to rehabilitation and in-
2 vestigative information and records may interfere
3 with the ability of the commission to operate effi-
4 ciently and effectively, may result in public dissem-
5 ination of information in which there is no legiti-
6 mate public interest or may expose injured workers to
7 undesired solicitation or harassment; and

8 Whereas, the legislation creating the Office of
9 Employment Rehabilitation and the Unit of Abuse In-
10 vestigation in the Workers' Compensation Act was
11 passed on an emergency basis at the First Regular
12 Session of the 112th Legislature; and

13 Whereas, in the judgment of the Legislature,
14 these facts create an emergency within the meaning of
15 the Constitution of Maine and require the following
16 legislation as immediately necessary for the preser-
17 vation of the public peace, health and safety; now,
18 therefore,

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

21 Sec. 1. 39 MRSA §82, sub-§4 is enacted to read:

22 4. Access to records. Except for purposes di-
23 rectly connected with the administration of the Of-
24 ice of Employment Rehabilitation, no person may so-
25 licit, disclose, receive or make use of, or autho-
26 rize, knowingly permit, participate in or acquiesce
27 in the use of any list of, or names of, or any infor-
28 mation concerning individuals applying for or receiv-
29 ing rehabilitation, directly or indirectly derived
30 from the records, papers, files or communications of
31 the State or subdivisions of the State or acquired in
32 the course of the performance of official duties.

33 Sec. 2. 39 MRSA §92, sub-§9, ¶B, as enacted by
34 PL 1985, c. 372, Pt. A, §31, is amended to read:

35 B. The unit shall, at the direction of the
36 chairman, investigate all complaints or allega-
37 tions of fraud, illegal or improper conduct or
38 violation of this Act or rules of the commission
39 relating to workers' compensation insurance, ben-

1 efits or programs, including those acts by em-
2 ployers, employees or insurers. All records, cor-
3 respondence and reports of investigation in con-
4 nection with actual or alleged fraud, illegal or
5 improper conduct or violation of this Act or
6 rules of the commission and all records, corre-
7 spondence and reports of criminal prosecution or
8 civil action shall be confidential. The confiden-
9 tial nature of any such record, correspondence or
10 report shall not limit or affect the use of those
11 materials in any prosecution or action.

12 Emergency preamble. In view of the emergency
13 cited in the preamble, this Act shall take effect
14 when approved.

15 STATEMENT OF FACT

16 Files of the Workers' Compensation Commission are
17 public records under the freedom of access law. The
18 Department of Human Services has for some time oper-
19 ated an analogous program to the Office of Employment
20 Rehabilitation, which was established within the
21 Workers' Compensation Commission effective January 1,
22 1986. The law under the Department of Human Services'
23 laws is that it is unlawful to allow access to reha-
24 bilitation records and information, the Maine Revised
25 Statutes, Title 22, section 3062.

26 As a general matter, complaints and investigative
27 records are confidential. Maine Rules of Evidence and
28 opinions of the Attorney General provide that the
29 identity of persons making complaints and supplying
30 information need not be disclosed. The Insurance
31 Code, Title 24-A, section 216, subsection 2, makes
32 confidential the records, correspondence and reports
33 of investigations of insurance companies. The Unit of
34 Abuse Investigation in the Workers' Compensation Act
35 is also authorized to investigate complaints about
36 actions by insurers. An incongruity results if the
37 records of the Unit of Abuse Investigation are public
38 and the records of the Bureau of Insurance investi-
39 gating the same entities and possibly the same activ-
40 ities are confidential.

1 Section 1 of the bill makes confidential workers'
2 compensation rehabilitation information to the same
3 degree that the Department of Human Services rehabil-
4 itation information is confidential.

5 Section 2 of the bill eliminates the inconsisten-
6 cies described, eases the administrative burden of
7 segregating portions of records which are privileged
8 and confidential from those which are not and im-
9 proves the integrity of the abuse unit's investiga-
10 tions.

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