

MAINE STATE LEGISLATURE

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5. of 5.

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L.D. 2190

(Filing No. S-392)

STATE OF MAINE
SENATE
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 844, L.D. 2190,
Bill, "AN ACT to Allow Disclosure of Confidential
Information Relevant to Personnel and Licensure
Actions."

Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 5 MRSA §9057, sub-§6 is enacted to
read:

6. Confidential information. Information may be
disclosed which is confidential pursuant to Title 22,
chapters 958-A and 1071 and section 7703; and Title
34-A, except for information, the disclosure of which
is absolutely prohibited under Title 34-A, section
3003. Disclosure may be only for the determination of
issues involving unemployment compensation proceedings
relating to a state employee, state agency personnel
actions and professional or occupational board
licensure, certification or registration.

A. For the purpose of this subsection, "hearing
officer" means presiding officer, judge, board
chairman, arbitrator or any other person deemed
responsible for conducting a proceeding or hearing
subject to this subsection. In the case of the
Civil Service Appeals Board, the presiding officer
shall be the entire board. "Employees of the
agency" means employees of a state agency or

R. of S

COMMITTEE AMENDMENT " A " to S.P. 844, L.D. 2190

1 department or members, agents or employees of a
2 board who are directly related to and whose
3 official duties involve the matter at issue.

4 B. The confidential information disclosed
5 pursuant to this subsection is subject to the
6 following limitations:

7 (1) The hearing officer determines that
8 introduction of the confidential information
9 is necessary for the determination of an
10 issue before the hearing officer;

11 (2) During the introduction of confidential
12 information, the proceeding is open only to
13 the hearing officer, employees of the agency,
14 parties, parties' representatives, counsel of
15 record and the witness testifying regarding
16 the information, and access to the
17 information is limited to these people.
18 Disclosure is limited to information directly
19 related to the matter at issue;

20 (3) Witnesses shall be sequestered during
21 the introduction of confidential information,
22 except when offering testimony at the
23 proceeding;

24 (4) The names or identities of reporters of
25 confidential information or of other persons
26 shall not be disclosed, except when
27 disclosure is deemed necessary and relevant
28 by the hearing officer; and

29 (5) After hearing, the confidential
30 information is sealed within the record and
31 shall not be further disclosed, except upon
32 order of court.

33 Sec. 2. 22 MRSA Pt. 1-B, c. 857 is enacted to
34 read:

35 PART 1-B

36 DISCLOSURE OF CONFIDENTIAL INFORMATION

37 CHAPTER 857

R of S

COMMITTEE AMENDMENT "A " to S.P. 844, L.D. 2190

1 USE OF CONFIDENTIAL INFORMATION FOR
2 PERSONNEL AND LICENSURE ACTIONS

3 §3291. Definitions

4 As used in this chapter, unless the context
5 indicates otherwise, the following terms have the
6 following meanings.

7 1. Bureau. "Bureau" means the Bureau of Social
8 Services with respect to chapters 958-A and 1071, and
9 the Bureau of Social Services or the Bureau of Medical
10 Services with respect to section 7703.

11 2. Confidential information. "Confidential
12 information" means information deemed confidential by
13 chapters 958-A and 1071, and section 7703.

14 3. Department. "Department" means the Department
15 of Human Services.

16 4. Director. "Director" means the Director of
17 the Bureau of Social Services with respect to
18 confidential information derived from chapters 958-A
19 and 1071, and the Director of the Bureau of Medical
20 Services or the Director of the Bureau of Social
21 Services with respect to confidential information
22 derived from section 7703.

23 5. Hearing officer. "Hearing officer" means
24 presiding officer, judge, board chairman, arbitrator
25 or any other person deemed responsible for conducting
26 a proceeding or hearing subject to this chapter.

27 6. Licensing board. "Licensing board" means a
28 professional or occupational licensing board that
29 licenses, certifies or registers a person in a
30 profession or occupation which is included in the list
31 of professional and occupational licensing boards in
32 Title 5, section 12004, subsection 1, paragraph A.

33 §3292. Disclosure and use of confidential information;
34 governing provisions

35 Any information derived by the department from the

COMMITTEE AMENDMENT " A " to S.P. 844, L.D. 2190

1 implementation of chapters 958-A and 1071, and section
2 7703 deemed confidential by these chapters and
3 relating to a state employee or a person licensed,
4 certified or registered by a licensing board as
5 defined in section 3291 who is alleged to have engaged
6 in any unlawful activity or professional misconduct,
7 or in conduct in violation of laws or rules relating
8 to a licensing board may be disclosed to and used by
9 the appropriate state agencies and licensing boards
10 only in accordance with this chapter. The department,
11 other state agencies and licensing boards shall comply
12 with the following.

13 1. Purpose for which disclosure is made. Any
14 confidential information provided to a state agency,
15 department or licensing board shall be used only for
16 investigative and other action within the scope of the
17 authority of that agency, department or licensing
18 board and to determine whether the employee or the
19 person licensed, certified or registered by the board
20 has engaged in unlawful activity, professional
21 misconduct or activities in violation of the laws or
22 rules relating to the board.

23 2. Designation of person to receive confidential
24 information. State agencies, departments and
25 licensing boards reasonably expected to be recipients
26 of confidential information, as determined by the
27 director of the bureau, shall designate a person to
28 receive the confidential information for investigative
29 purposes.

30 3. Limitations on disclosure. Disclosure is
31 limited to information which is directly related to
32 the matter at issue. The identity of reporters and
33 other persons shall not be disclosed except as
34 necessary and relevant. Access to the information
35 shall be limited to parties, parties' representatives,
36 counsel of record and the hearing officers responsible
37 for the determinations. The information shall be used
38 only for the purpose for which the release was
39 intended.

40 §3293. Confidential information provided to state
41 employees, the Bureau of Human Resources and
42 the Bureau of Employee Relations

7 of 8

COMMITTEE AMENDMENT " A " to S.P. 844, L.D. 2190

1 1. Disclosure to state employees. Confidential
2 information which is relevant to a grievance or a
3 disciplinary procedure within the department shall be
4 provided to the affected employee and the employee's
5 designated representative.

6 2. Disclosure to Bureau of Employee Relations and
7 the Bureau of Human Resources. Confidential
8 information which is relevant to a grievance or
9 disciplinary procedure within the department shall be
10 provided to the Bureau of Employee Relations in cases
11 regarding state employment subject to the State
12 Employee Labor Relations Act, Title 26, chapter 9-B,
13 and to the Bureau of Human Resources for state
14 employees not subject to Title 26, chapter 9-B, when
15 the Bureau of Employee Relations or the Bureau of
16 Human Resources become involved in the grievance or
17 disciplinary process, including appeals to an
18 arbitrator or the Civil Service Appeals Board.

19 3. Procedures governed by contract. If any other
20 procedure relating to the use of confidential
21 information in state employee personnel actions is
22 governed by collective bargaining agreements, the
23 collective bargaining agreements shall control, except
24 as provided in section 3292.

25 §3294. Confidential information provided to
26 professional and occupational licensing boards

27 If confidential information regarding a person
28 subject to or seeking licensure, certification or
29 registration by a licensing board indicates that the
30 person may have engaged in unlawful activity,
31 professional misconduct or conduct which may be in
32 violation of the laws or rules relating to the
33 licensing board, the director may release this
34 information to the appropriate licensing board.
35 Confidential information shall be disclosed and used
36 in accordance with section 3292 and may also be
37 disclosed to members, employees and agents of a
38 licensing board who are directly related to the matter
39 at issue.

40 1. Notice to the licensee or applicant. Notice
41 of the release of confidential information shall be

R. of S.
COMMITTEE AMENDMENT " A " to S.P. 844, L.D. 2190

1 provided by the board to the licensee or applicant in
2 accordance with the law and rules relating to the
3 licensing board. If the law or rules relating to a
4 licensing board do not provide for notice to licensees
5 or applicants subject to or seeking licensure,
6 certification or registration, the licensing board
7 shall provide notice to the licensee or applicant upon
8 determination of the board to take further action
9 following its investigation.

10 2. Licensing board requests for confidential
11 information. Any licensing board pursuing action
12 within the scope of the board's authority or
13 conducting an investigation of any person subject to
14 or seeking licensure, certification or registration by
15 the board for engaging in unlawful activity,
16 professional misconduct or conduct which may be in
17 violation of the laws or rules relating to the board
18 may request confidential information from the bureau.
19 Any information provided to the board for an
20 investigation shall be governed by section 3292 and
21 this section.

22 3. Use of confidential information in
23 proceedings. The use of confidential information in
24 proceedings, informal conferences and adjudicatory
25 hearings shall be governed by Title 5, section 9057,
26 subsection 6.

27 §3295. Information provided for unemployment
28 compensation proceedings relevant to state
29 employment

30 If confidential information relevant to an
31 unemployment compensation proceeding with respect to
32 the provision of, denial or termination of
33 unemployment compensation benefits related to a
34 person's state employment, the director may release
35 the confidential information to the Commissioner of
36 Labor or the commissioner's designee. The
37 commissioner may request from the director of the
38 bureau confidential information that may be directly
39 related to an unemployment compensation proceeding
40 with respect to a person's state employment. The
41 director may release the confidential information to
42 the commissioner or the commissioner's designee if the
43 confidential information is related to the

Page 5

COMMITTEE AMENDMENT " A " to S.P. 844, L.D. 2190

1 proceeding. The commissioner shall provide the
2 claimant with access to the information.

3 §3306. Penalty for violations

4 Any person who violates this chapter shall be
5 subject to the applicable penalty as provided in
6 chapters 958-A and 1071 and section 7702.

7 Sec. 3. 22 MRSA §3474, sub-§2, ¶E and F, as
8 enacted by PL 1981, c. 527, §2, are amended to read:

9 E. A person having the legal responsibility or
10 authorization to care for, evaluate, treat or
11 supervise an incapacitated or dependent adult;
12 and

13 F. Any person engaged in bona fide research,
14 provided that no personally identifying
15 information is made available, unless it is
16 essential to the research and the commissioner or
17 his designee gives prior approval. If the
18 researcher desires to contact a subject of a
19 record, the subject's consent shall be obtained by
20 the department prior to the contact; and

21 Sec. 4. 22 MRSA §3474, sub-§2, ¶G is enacted to
22 read:

23 G. Persons and organizations pursuant to Title 5,
24 section 9057, subsection 6, and pursuant to
25 chapter 857.

26 Sec. 5. 22 MRSA §4008, sub-§2, ¶F, as amended
27 by PL 1983, c. 354, §1, is further amended to read:

28 F. Any person engaged in bona fide research,
29 provided that no personally identifying
30 information is made available, unless it is
31 essential to the research and the commissioner or
32 his designee gives prior approval. If the
33 researcher desires to contact a subject of a
34 record, the subject's consent shall be obtained by
35 the department prior to the contact; and

36 Sec. 6. 22 MRSA §4008, sub-§2, ¶G, as enacted
37 by PL 1987, c. 354, §2, is amended to read:

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COMMITTEE AMENDMENT "A" to S.P. 844, L.D. 2190

1 G. Any agency involved in approving homes for the
2 placement of children, with protection for
3 identity of reporters and other persons when
4 appropriate; and

5 Sec. 7. 22 MRSA §4008, sub-§2, ¶H is enacted to
6 read:

7 H. Persons and organizations pursuant to Title 5,
8 section 9057, subsection 6, and pursuant to
9 chapter 857.

10 Sec. 8. 22 MRSA §7703, sub-§3, ¶¶G and H, as
11 enacted by PL 1983, c. 691, §2, are amended to read:

12 G. An individual seeking to place a child or
13 adult in a particular facility with protection for
14 the identity of any reference, complainant,
15 reporter of suspected abuse or neglect or other
16 person, when appropriate; or

17 H. An owner or operator of a facility which is
18 the subject of a record, provided that the
19 identity of any reference, complainant, reporter
20 of suspected abuse or neglect or other person is
21 protected, when appropriate; or

22 Sec. 9. 22 MRSA §7703, sub-§3, ¶I is enacted to
23 read:

24 I. Persons and organizations pursuant to Title 5,
25 section 9057, subsection 6, and pursuant to
26 chapter 857.

27 Sec. 10. 34-A MRSA §3003, sub-§3 is enacted to
28 read:

29 3. Disclosure of confidential information. The
30 disclosure of confidential information as provided by
31 this section shall also be governed by Title 5,
32 section 9057, subsection 6.

33 STATEMENT OF FACT

34 The Department of Human Services which is

P of 5

COMMITTEE AMENDMENT " A " to S.P. 844, L.D. 2190

1 responsible for licensing or using various types of
2 facilities and providing services to specific groups
3 of clients often obtains information deemed
4 confidential by law which cannot be provided to other
5 state agencies or professional and occupational
6 licensing boards for investigative purposes. The
7 protection afforded alleged violators of law or rules
8 by the confidentiality of this information may pose a
9 serious risk to the health, safety and welfare of
10 Maine citizens.

11 In many cases, proper use of this confidential
12 information could enable the appropriate authorities
13 to undertake an investigation to determine whether
14 state employees or persons licensed, certified or
15 registered by certain professional and occupational
16 licensing boards have engaged in unlawful activities,
17 professional misconduct or activities in violation of
18 laws or rules pertaining to these boards. If an
19 investigation reveals that adjudicatory or
20 disciplinary hearings and measures are needed, the
21 health, safety and welfare of Maine citizens will be
22 protected.

23 The intent of this amendment is not limited to the
24 use of confidential information for investigative and
25 disciplinary purposes. The intent also includes
26 protection of client information and protection of
27 rights of persons alleged to be in violation of law or
28 professional or occupational ethics.

29 This amendment authorizes the Director of the
30 Bureau of Social Services and the Director of the
31 Bureau of Medical Services to disclose confidential
32 information to the Bureau of Human Resources, the
33 Bureau of Employee Relations, the Commissioner of
34 Labor or to the appropriate professional or
35 occupational licensing board when there is sufficient
36 grounds for an investigation. If the confidential
37 information shows or indicates that a state employee
38 or a licensed member of a profession or occupation has
39 engaged in unlawful activity, professional misconduct
40 or activities in violation of laws or rules related to
41 a licensing board, the confidential information may be
42 released upon the following conditions:

R. of S
COMMITTEE AMENDMENT "A " to S.P. 844, L.D. 2190

1 1. The confidential information is edited to
2 protect the identity of the persons related to the
3 matter at issue except for the name of the alleged
4 violator;

5 2. Access to or a copy of this information is
6 provided to the alleged violator;

7 3. The confidential information is provided only
8 to those people who need the information to carry out
9 their official duties; and

10 4. The confidential information in the
11 investigation is used only for the purpose for which
12 the information was released.

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