

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2190

S.P. 844 In Senate, February 3, 1988  
Submitted by the Department of Human Services pursuant to  
Joint Rule 24.

Reference to the Committee on State and Local Government  
suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator DILLENBACK of Cumberland.

Cosponsored by Representative DELLERT of Gardiner,  
Representative DUTREMBLE of Biddeford, Representative PERRY of  
Mexico.

STATE OF MAINE

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

AN ACT to Allow Disclosure of  
Confidential Information Relevant to  
Personnel and Licensure Actions.

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

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

6. Confidential information. Information deemed

1 confidential, pursuant to Title 22, section 4008,  
2 Title 34-A, section 3003 and Title 34-B, section 1207,  
3 may be disclosed under the following limitations, only  
4 for the determination of issues involving personnel  
5 actions, licensure or certification, registration or  
6 unemployment insurance proceedings by any department,  
7 agency, board or commission of State Government:

8 A. The factfinder determines that the  
9 confidential information is necessary for the  
10 determination of an issue before it;

11 B. The hearing is closed to nonrelevant  
12 participants during introduction of the  
13 confidential information;

14 C. Disclosure is limited to relevant information,  
15 with protection for identity of reporters and  
16 other persons when appropriate;

17 D. Access to the information is limited to the  
18 factfinder, parties and counsel of record; and

19 E. After hearing, the confidential information is  
20 sealed within the record and shall not be further  
21 disclosed, except upon order of court.

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

24 E. A person having the legal responsibility or  
25 authorization to care for, evaluate, treat or  
26 supervise an incapacitated or dependent adult;  
27 and

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. 3. 22 MRSA §3474, sub-§2, ¶G is enacted to

1 read:

2 G. A state department, agency, board or  
3 commission responsible for making determinations  
4 regarding issues involving personnel actions,  
5 licensure or certification, registration or  
6 unemployment insurance proceedings pursuant to  
7 Title 5, section 9057.

8 **Sec. 4. 22 MRSA §4008, sub-§2, ¶F, as amended**  
9 **by PL 1983, c. 354, §1, is further amended to read:**

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

18 **Sec. 5. 22 MRSA §4008, sub-§2, ¶G, as enacted**  
19 **by PL 1987, c. 354, §2, is amended to read:**

20 G. Any agency involved in approving homes for the  
21 placement of children, with protection for  
22 identity of reporters and other persons when  
23 appropriate; and

24 **Sec. 6. 22 MRSA §4008, sub-§2, ¶H is enacted to**  
25 **read:**

26 H. A state department, agency, board or  
27 commission responsible for making determinations  
28 regarding issues involving personnel actions,  
29 licensure or certification, registration or  
30 unemployment insurance proceedings pursuant to  
31 Title 5, section 9057.

32 **Sec. 7. 22 MRSA §7703, sub-§3, ¶¶G and H, as**  
33 **enacted by PL 1983, c. 691, §2, are amended to read:**

34 G. An individual seeking to place a child or  
35 adult in a particular facility with protection for  
36 the identity of any reference, complainant,

1 reporter of suspected abuse or neglect or other  
2 person, when appropriate; or

3 H. An owner or operator of a facility which is  
4 the subject of a record, provided that the  
5 identity of any reference, complainant, reporter  
6 of suspected abuse or neglect or other person is  
7 protected, when appropriate; or

8 Sec. 8. 22 MRSA §7703, sub-§3, ¶I is enacted to  
9 read:

10 I. A state department, agency, board or  
11 commission responsible for making determinations  
12 regarding issues involving personnel actions,  
13 licensure or certification, registration or  
14 unemployment insurance proceedings pursuant to  
15 Title 5, section 9057.

16 STATEMENT OF FACT

17 The purpose of this bill is to provide a mechanism  
18 by which relevant information that is otherwise  
19 confidential may be disclosed in certain actions under  
20 the Maine Administrative Procedure Act, Title 5,  
21 chapter 375. Specifically, departments must have the  
22 access in personnel actions, licensure actions and  
23 unemployment insurance proceedings to information that  
24 the factfinder needs in order to make a fully informed  
25 decision in the matter. This bill would further allow  
26 persons making claims against state agencies to have a  
27 full and fair review of the information on which the  
28 agency based its action. At the present time, this may  
29 not be possible as many of the records necessary for  
30 the determination of an issue are confidential. This  
31 bill allows for a limited disclosure of this  
32 information and a method to protect the information  
33 once it is disclosed.

34 When the department learns, as a result of an  
35 investigation of violations of law by professionals,  
36 appropriate reports to law enforcement are made.  
37 However, there is no provision for disclosure to an  
38 entity responsible for personnel actions or licensing

1 which may be in a better position to govern the  
2 conduct of its staff or its licensed professional.

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