# MAINE STATE LEGISLATURE

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# 115th WAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

### Legislative Document

No. 284

H.P. 191

House of Representatives, February 2, 1991

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative MARSANO of Belfast.

Cosponsored by Representative TRACY of Rome, Senator COLLINS of Aroostook and Senator BUSTIN of Kennebec.

#### STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

An Act to Amend and to Clarify Confidentiality Provisions in the Maine Insurance Code.



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

- Sec. 1. 24 MRSA §2321, sub-§2, as amended by PL 1979, c. 558, §2, is further amended to read:
- 2. Filing information. When a filing is not accompanied by - 6 the information upon which the organization supports such that 8 the superintendent does not have information to determine whether such that filing meets requirements that the rates shall may not be excessive, inadequate or unfairly discriminatory, he the superintendent 10 12 shall require the organization to furnish the information upon which it supports the filing. A-filing-and supporting information 14 shall-be-a-public-record-within-the-meaning-of-Title-1,-section 402,-subsection-3-and-shall-become-part-of-the-official-record-of any-hearing-held-pursuant-to-section-2322; For the purpose of 16 determining whether the filing produces rates that are excessive, inadequate or unfairly discriminatory, 18 superintendent may employ consultants, including actuaries, and the reasonable costs of the consultants, including actuaries, 20 which shall must include costs of testifying at any hearing held pursuant to section 2322, shall must be borne by the organization 22 making such the filing. 24
  - Sec. 2. 24-A MRSA §216, as amended by PL 1989, c. 269, §5, is repealed.
    - Sec. 3. 24-A MRSA §216-A is enacted to read:

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#### §216-A. Records; destruction; inspection; confidentiality

- 1. Records. The superintendent shall carefully preserve in the bureau and in permanent form a correct account of all official transactions and of all fees and money received by virtue of the superintendent's office, together with all financial statements, examination reports, correspondence, filings and documents duly received by the bureau. All records and documents of the bureau are subject to subpoena by a court of competent jurisdiction. The superintendent may destroy unneeded or obsolete records and filings in the bureau in accordance with provisions and procedures generally applicable to administrative agencies of the State.
  - 2. Public records; exceptions. All records of the bureau are subject to public inspection except as otherwise expressly provided by law as to particular matters. The following documents are confidential:
    - A. Except as otherwise provided by law, form filings, rule filings and rate filings, including actuarial information and other supporting data, but only until the filings become effective or until a notice of hearing, pursuant to Title 5, chapter 375, subchapter IV, has been issued;

| 2         |   | B. Filings and supporting data in connection with insurance  |
|-----------|---|--|
|           |   | company applications for certificates of authority until the   |
| 4         | . • •   | certificates of authority become effective;  |
| 6         |   | C. Working papers and interoffice and intraoffice memoranda  |
|           | e nië i skriver   | generated by bureau employees in connection with insurer or  |
| . В       | j + ++ - \$   | agency financial examinations;   |
| 7 i i i i |   | The state of the s |
| 10        |   | D. Working papers and interoffice and intraoffice memoranda  |
| •         | en e                | used or prepared by bureau employees in connection with  |
| 12        |   | investigations and preparation for hearings, and agency  |
|           |   | actions, except to the extent they are incorporated into the   |
| 14        |   | administrative record pursuant to Title 5, section 9059;   |
| 16        |   | E. Information regarding individual insureds, except when  |
| ŤO        |   | that information is or may be relied upon by the   |
| 18        |   | superintendent to conclude investigations as described in  |
| 0         |   | paragraph F; and   |
| 20        |   | paragraph ry and   |
| 20        |   | F. Complaints, records, correspondence, reports and any  |
| 22        |   | other information gathered by bureau employees as a result   |
|           |   | of pending investigations in connection with actual or   |
| 24        |   | claimed violations of this Title until the investigation is  |
|           |   | concluded. For the purposes of this subsection, an   |
| 26        | ម៉ូ ខេត្ត។<br>-   | investigation is concluded when:   |
| 28        |   | (1) A notice of an adjudicatory hearing pursuant to  |
| 20        |   | Title 5, chapter 375, subchapter IV is issued; or  |
| 30        |   | Title 3, thepter 3,3, Bubenapeer IV 18 IBBuca, Or  |
| 30        | 4.  | (2) A consent order is signed by the superintendent.   |
| 3.2       |   | (2) A consent order is signed by the superincendent.   |
|           |   | 3. Disclosure during pending investigation.  |
| 34        | Notw  | ithstanding subsection 2, paragraph F, a complaint or  |
|           |   | stigative record may be disclosed during the pendency of an  |
| 36        |   | stigation:   |
| 30        | 11106.  | scigacion.   |
| 38        | major (n. e.)   | A. By the superintendent as part of an interstate complaint  |
|           |   | handling system that may involve the sharing of information  |
| 40        | e to the second   | with insurance regulatory officials and with the National  |
| 40        | 100   | Association of Insurance Commissioners, except that the  |
| 42        | 10.40   | names of the complainant and the insured must remain   |
| 42        |   |  |
| 11        |   | <pre>confidential;</pre>   |
| 44        | ** * * * * * * * * * * * * * * * * * *                  | P To the public of portains to semplaint information   |
| 46        |   | B. To the public, as pertains to complaint information   |
| ± U       | $\mathcal{L}_{\mathcal{A}} = \mathcal{L}_{\mathcal{A}}$ | regarding insurers, only in the form of complaint ratios;  |
| 48        |   | C. To bureau employees involved in the investigation;  |
|           |   |  |
| 50        |   | D. By a bureau employee designated by the superintendent   |
|           | in the second   | when negoggary to familitate the investigation.  |

| 2     | E. 10 Other state or rederal agencies when the files              |  |
|-------|---|--|
|       | contain evidence of possible violations of laws enforced by       |  |
| 4     | those agencies;   |  |
| -     | choos agenered?   |  |
|       |   |  |
| . 6   | F. By the superintendent when necessary to avoid imminent         |  |
|       | and serious harm;   |  |
| 8     |   |  |
| 0     |   |  |
| Sec.  | G. To insurers, as pertains to potential agents, but only         |  |
| 10    | to the extent of advising that an investigation is pending;       |  |
|       |   |  |
|       | <u>and</u>  |  |
| 12    |   |  |
|       | H. To the person investigated upon request, except that the       |  |
| 14    |   |  |
| 14    | names of the complainant and the insured must remain              |  |
|       | <u>confidential.</u>  |  |
| 16    |   |  |
|       | The givenintendent may refuge to displace part or all of any      |  |
| 1.2   | The superintendent may refuse to disclose part or all of any      |  |
| 18    | 8 <u>investigative information, including the fact of an</u>      |  |
|       | investigation, when the superintendent determines that disclosure |  |
| 20    | would prejudice the investigation.                                |  |
| 20    | would prejudice the investigation.                                |  |
|       |   |  |
| 22    | 4. Attorney General records. The provision or disclosure          |  |
|       | of investigative records of the Department of the Attorney        |  |
|       |   |  |
| 24    | General to a bureau employee designated by the superintendent     |  |
|       | does not constitute a waiver of the confidentiality, provided     |  |
| 26    | under Title 5, section 200-D, of those records for any other      |  |
| 20    |   |  |
| . * * | purposes. Further disclosure of those investigative records is    |  |
| 28    | subject to the discretion of the Attorney General.                |  |
|       |   |  |
| 20    | Sec. 4. 24-A MRSA §2304, sub-§4, as amended by PL 1989, c.        |  |
| 30    |   |  |
|       | 843, §1, is repealed.   |  |
| 32    |   |  |
|       | Sec. 5. 24-A MRSA §2304-A, sub-§7, as enacted by PL 1989, c.      |  |
|       |   |  |
| 34    | 797, $\S 8$ , and affected by $\S \S 3$ 7 and 38, is repealed.    |  |
|       |   |  |
| 36    | Sec. 6. 24-A MRSA §2736, sub-§2, as amended by PL 1979, c.        |  |
| 30    | · · · · · · · · · · · · · · · · · · ·                             |  |
|       | 558, §7, is further amended to read:                              |  |
| 38    |   |  |
| -     | 2 Date filing When a filing is well assumption by the             |  |
|       | 2. Rate filing. When a filing is not accompanied by the           |  |
| 40    | information upon which the insurer supports such that filing, or  |  |
|       | the superintendent does not have sufficient information to        |  |
| 42    | determine whether such that filing meets the requirements that    |  |
| 42    |   |  |
|       | rates shall <u>may</u> not be excessive, inadequate or unfairly   |  |
| 44    | discriminatory, the superintendent shall require the insurer to   |  |
| _     | furnish the information upon which it supports the filing. A      |  |
|       |   |  |
| 46    | filing-and-supporting-information-shall-be-a-public-record-within |  |
|       | the-meaning-of-Title-1,-section-402,subsection-3-and-shall        |  |
| 40    |   |  |
| 48    | become-part-of-the-official-record-of-any-hearing-held-pursuant   |  |
|       | to-section-2736-A-  |  |
| 50    |   |  |
| - 0   | Sec 7 24 A MIDSA 84223 per property by 1005 - 704 87              |  |
|       | Sec. 7. 24-A MRSA §4223, as amended by PL 1985, c. 704, §7,       |  |
| 52    | is further amended to read:                                       |  |

#### §4223. Filings and reports as public documents

All applications, filings and reports required under this chapter shall must be treated as public documents subject to limitations and exceptions provided in Title 1, chapter 13, subchapter I and section 216-A.

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#### STATEMENT OF FACT

Currently, the confidentiality provisions are ambiguous and incomplete regarding the disclosure of records of the Bureau of Insurance pertaining to investigations, complaints information and other data received in connection with filings or applications. The Maine Revised Statutes, Title 24-A, section 216 prevents disclosure of complaint information to the public except under limited circumstances and is ambiguous regarding disclosure of bureau records pertaining to disciplinary actions. Laws regarding disclosure of actuarial information submitted with rate filings differ from line to line in haphazard ways. addition, there is no confidentiality provision to protect financial information received by the bureau from companies during the licensing procedure.

bill clarifies existing law regarding confidentiality of investigatory files, bringing the bureau's laws in line with the provisions regarding investigative records of the Department of Professional and Financial Regulation as codified in Title 10, section 8003-B, except to the extent concerns unique to insurance warrant different standards. At the same time the bill provides a comprehensive, consistent and rational confidentiality law which allows for dissemination of valid complaint information regarding companies in the form of complaint ratios to the public and which clarifies provisions in the law pertaining to the confidential nature of actuarial or financial information received by the bureau with filings.