

# MAINE STATE LEGISLATURE

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A.S.  
L.D. 1243

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DATE: *March 23, 1998*

(Filing No. S-584 )

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**BANKING AND INSURANCE**

Reported by:

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Reproduced and distributed under the direction of the Secretary  
of the Senate.

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**STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
SECOND REGULAR SESSION**

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COMMITTEE AMENDMENT "A" to S.P. 384, L.D. 1243, Bill, "An  
Act to Protect the Privacy of Genetic Information"

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24  
Amend the bill by striking out everything after the enacting  
clause and before the summary and inserting in its place the  
following:

26  
•Sec. 1.5 MRSA c. 503 is enacted to read:

28  
**CHAPTER 503**

30  
**USE OF GENETIC INFORMATION FOR EMPLOYMENT PURPOSES**

32  
**§19301. Definitions**

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

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1. Genetic characteristic. "Genetic characteristic" means  
any inherited gene or chromosome, or alteration of a gene or  
chromosome, that is scientifically or medically believed to  
predispose an individual to a disease, disorder or syndrome or to  
be associated with a statistically significant increased risk of  
development of a disease, disorder or syndrome.

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2. Genetic information. "Genetic information" means the  
information concerning genes, gene products or inherited  
characteristics that may be obtained from an individual or family  
member.

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2 3. Genetic test. "Genetic test" means a test for  
3 determining the presence or absence of an inherited genetic  
4 characteristic in an individual, including tests of nucleic acids  
5 such as deoxyribonucleic acid, or DNA, ribonucleic acid, or RNA,  
6 or mitochondrial DNA, and tests of chromosomes or proteins in  
7 order to identify a predisposing genetic characteristic.

8 §19302. Employment discrimination on the basis of genetic  
9 information or genetic testing

10 1. Discrimination prohibited. An employer may not fail or  
11 refuse to hire, discharge or otherwise discriminate against an  
12 employee or applicant for employment with respect to the  
13 compensation, terms or conditions of employment on the basis of  
14 genetic information concerning that individual or because of the  
15 individual's refusal to submit to a genetic test or make  
16 available the results of a genetic test or on the basis that the  
17 individual received a genetic test or genetic counseling, except  
18 when based on a bona fide occupational qualification.

19 2. Enforcement; remedies. The Maine Human Rights  
20 Commission shall enforce this section. Violations of this section  
21 are subject to the remedies available under chapter 337,  
22 subchapters VI and VII.

23 Sec. 2. 24-A MRSA §2159-C is enacted to read:

24 §2159-C. Discrimination on the basis of genetic information or  
25 testing

26 1. Definitions. As used in this section, unless the  
27 context otherwise indicates, the following terms have the  
28 following meanings.

29 A. "Genetic characteristic" means any inherited gene or  
30 chromosome, or alteration of a gene or chromosome, that is  
31 scientifically or medically believed to predispose an  
32 individual to a disease, disorder or syndrome or to be  
33 associated with a statistically significant increased risk  
34 of development of a disease, disorder or syndrome.

35 B. "Genetic information" means the information concerning  
36 genes, gene products or inherited characteristics that may  
37 be obtained from an individual or family member.

38 C. "Genetic test" means a test for determining the presence  
39 or absence of an inherited genetic characteristic in an  
40 individual, including tests of nucleic acids, such as  
41 deoxyribonucleic acid, or DNA, ribonucleic acid, or RNA, or  
42 mitochondrial DNA, and tests of chromosomes or proteins in  
43 order to identify a predisposing genetic characteristic.

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2           2. Discrimination in health, hospital and dental  
3           insurance. An insurer, nonprofit hospital and medical service  
4           organization or health maintenance organization that issues  
5           individual or group hospital, health or dental insurance may not  
6           discriminate against an individual or eligible dependent on the  
7           basis of genetic information or the refusal to submit to a  
8           genetic test or make available the results of a genetic test or  
9           on the basis that the individual or eligible dependent received a  
10           genetic test or genetic counseling in the issuance, withholding,  
11           extension or renewal of any hospital confinement or other health  
12           insurance, as defined by the superintendent, by rule, or in the  
13           fixing of the rates, terms or conditions for insurance, or in the  
14           issuance or acceptance of any application for insurance. This  
15           subsection does not apply to accidental injury, specified  
16           disease, hospital indemnity, disability, long-term care and other  
17           limited benefit health insurance policies and contracts.

18           3. Discrimination in life, disability and long-term care  
19           insurance. An insurer may not make or permit any unfair  
20           discrimination against an individual in the application of  
21           genetic information or the results of a genetic test in the  
22           issuance, withholding, extension or renewal of an insurance  
23           policy for life, credit life, disability, long-term care,  
24           accidental injury, specified disease, hospital indemnity or  
25           credit accident insurance or an annuity. For the purposes of this  
26           subsection, "unfair discrimination" includes, but is not limited  
27           to, the application of the results of a genetic test in a manner  
28           that is not reasonably related to anticipated claims experience.

29           A. If the superintendent has reason to believe that unfair  
30           discrimination has occurred and that a proceeding by the  
31           superintendent is in the interest of the public, the  
32           superintendent, in accordance with chapter 3, shall serve  
33           upon the insurer a statement of the charges. Upon a  
34           determination that the practice or act of the insurer is in  
35           conflict with this subsection, the superintendent shall  
36           issue an order requiring the insurer to cease and desist  
37           from engaging in the practice or act and may order payment  
38           of a penalty consistent with the provisions of section 12-A.

39           B. If, in the issuance, withholding, extension or renewal  
40           of an insurance policy covered by this subsection, an  
41           insurer uses the results of a genetic test in compliance  
42           with this subsection, the insurer shall notify the  
43           individual who is the subject of the genetic test that such  
44           a test is required and shall obtain the individual's  
45           authorization in accordance with the requirements of chapter  
46           24. If a genetic test is required, the insurer shall  
47           ensure that the individual states in writing whether the  
48           individual is willing to be tested.

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2 individual wishes to be informed of the test results and, if  
3 authorized by the individual, shall provide a copy of the  
4 test results, along with a written interpretation of the  
5 results by a qualified professional, to the individual or to  
6 a physician or other health care practitioner designated by  
7 the individual.

8 Sec. 3. 24-A MRSA c. 24 is enacted to read:

10 CHAPTER 24

12 INSURANCE INFORMATION AND PRIVACY PROTECTION ACT

14 §2201. Short title

16 This chapter may be known and cited as the "Insurance  
17 Information and Privacy Protection Act."

18 §2202. Purpose

20 The purpose of this chapter is to establish standards for  
21 the collection, use and disclosure of information gathered in  
22 connection with insurance transactions; to maintain a balance  
23 between insurance carriers' need for information and the public's  
24 need for fair information practices that respect privacy; to  
25 establish a regulatory mechanism to enable insurance consumers to  
26 ascertain what information is being collected about them and to  
27 verify its accuracy; to limit the distribution of information  
28 collected in connection with insurance transactions; and to  
29 enable consumers to obtain the reasons for adverse underwriting  
30 decisions.

32 §2203. Scope

34 1. Scope. This chapter applies to all persons and other  
35 entities required to be licensed by the superintendent under  
36 this Title, or Title 24, and to all insurance support  
37 organizations, as defined in section 2204, that collect, maintain  
38 or distribute information on residents of this State or arising  
39 out of insurance transactions in this State. With respect to  
40 particular insurance transactions, this chapter applies if the  
41 transaction arises out of a policy, contract or certificate  
42 delivered, issued for delivery or renewed in this State or arises  
43 out of an application for such coverage. With respect to  
44 information practices, this chapter applies if information is  
45 collected or maintained in connection with an insurance  
46 transaction subject to this chapter or if personal information  
47 about residents of this State is collected or maintained in such  
48 a manner as to be accessible by the name of the insurance  
49 consumer referred to.

2        2. Residents. For purposes of this chapter, a person is  
3        considered a resident of this State if the person's last known  
4        mailing address, as shown in the records of the regulated  
5        insurance entity or insurance support organization, is in this  
6        State.

8        3. Exception. This chapter does not apply to insurance  
9        transactions arising out of workers' compensation, medical  
10       malpractice, fidelity, suretyship, boiler and machinery,  
11       property or casualty insurance or information collected from  
12       public records for the purpose of title insurance.

14       **§2204. Definitions**

16       As used in this chapter, unless the context indicates  
17       otherwise, the following terms have the following meanings.

18       1. Adverse underwriting decision. "Adverse underwriting  
19       decision" means any of the following actions with respect to  
20       consumer insurance transactions involving insurance coverage that  
21       is individually underwritten:

22       A. A declination, cancellation or nonrenewal of insurance  
23       coverage, in whole or part;

24       B. Failure of a producer or agency to apply for insurance  
25       coverage with a specific insurance institution that the  
26       producer or agency represents and that is requested by an  
27       applicant;

28       C. An offer to insure at higher than standard rates; or

29       D. Any other increase in any charge for, any reduction in  
30       or other adverse or unfavorable change in the terms of  
31       coverage or amount of any insurance, existing or applied for.

32       2. Affiliate; affiliated. "Affiliate" or "affiliated"  
33       means a person that directly, or indirectly through one or more  
34       intermediaries, controls, is controlled by or is under common  
35       control with another person.

36       3. Applicant. "Applicant" means any person who seeks to  
37       contract for insurance coverage other than a person seeking group  
38       insurance that is not individually underwritten.

39       4. Confidential investigative information. "Confidential  
40       investigative information" means any information that:

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A. Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual;

B. Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or a civil or criminal proceeding involving an individual; and

C. Has not been disclosed to 3rd parties in violation of section 2215.

5. Consumer insurance transaction. "Consumer insurance transaction" means an insurance transaction involving insurance primarily for personal, family or household needs rather than business or professional needs.

6. Consumer report. "Consumer report" has the same meaning as in Title 10, section 1312, subsection 3.

7. Consumer reporting agency. "Consumer reporting agency" has the same meaning as in Title 10, section 1312, subsection 4.

8. Control; controlled by; under common control with. "Control," including the terms "controlled by" and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or a corporate office held by the person.

9. Health care. "Health care" means preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures or counseling, including appropriate assistance with disease or symptom management and maintenance, that affects an individual's physical, mental or behavioral condition, including individual cells or their components or genetic information, or affects the structure or function of the human body or any part of the human body. "Health care" includes prescribing, dispensing or furnishing drugs, biologicals, medical devices or health care equipment and supplies, providing hospice services to a patient and the banking of blood, sperm, organs or any other tissue.

10. Health care facility. "Health care facility" means a facility, institution or entity licensed pursuant to Title 22 that offers health care to persons in this State, including a home health care entity and a hospice program, or a pharmacy licensed pursuant to Title 32. For the purposes of this chapter, "health care facility" does not include a state mental health

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institute, the Elizabeth Levinson Center, the Aroostook Residential Center or Freeport Towne Square.

11. Health care information. "Health care information" means information that:

A. Relates to an individual's physical, mental or behavioral condition, personal or family medical history or health care; and

B. Is obtained from a health care provider, from the individual or from the individual's spouse, parent or legal guardian.

12. Health care practitioner. "Health care practitioner" means a person licensed in this State to provide or otherwise lawfully providing health care, and includes a partnership or corporation made up of health care practitioners, or an officer, employee, agent or contractor of a health care practitioner acting in the course and scope of employment, agency or contract related to or supportive of the provision of health care to an individual.

13. Health care provider. "Health care provider" means a health care practitioner or health care facility.

14. Institutional source. "Institutional source" means any person or governmental entity that provides information about an individual to a regulated insurance entity or insurance support organization other than:

A. A producer or producer agency;

B. The individual who is the subject of the information; or

C. An individual acting in a personal capacity rather than in a business or professional capacity.

15. Insurance carrier; carrier. "Insurance carrier" or "carrier" means:

A. Any person or entity required to be licensed by the superintendent to assume risk, including without limitation an insurer, nonprofit hospital, medical or health care service organization, health maintenance organization or multiple-employer welfare arrangement;

B. A self-funded plan subject to state regulation as described in section 2848-A;



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2 C. A preferred provider arrangement administrator as  
defined in section 2671; or

4 D. A 3rd-party administrator, as described in section 1901,  
that provides administrative services for an entity that is  
6 not a carrier.

8 "Carrier" does not include other nonrisk-bearing regulated  
insurance entities, such as producers or agencies.

10 16. Insurance consumer; consumer. "Insurance consumer" or  
12 "consumer" means any individual who resides or obtains insurance  
in this State and:

14 A. Is a past, present or proposed principal insured or  
16 certificate holder;

18 B. Is a past, present or proposed policyowner;

20 C. Is a past or present applicant;

22 D. Is a past or present claimant; or

24 E. Derived, derives or is proposed to derive insurance  
coverage under an insurance policy or certificate subject to  
26 this chapter.

28 17. Insurance support organization. "Insurance support  
organization" means any person, other than a regulated insurance  
30 entity, health care provider or governmental agency, who  
regularly engages, in whole or in part, in the practice of  
32 assembling or collecting information for the primary purpose of  
providing the information to carriers, producers or agencies for  
34 insurance transactions, including:

36 A. Furnishing consumer reports or investigative consumer  
reports for use in connection with insurance transactions; or

38 B. Collecting personal information from regulated insurance  
40 entities or other insurance support organizations for the  
purpose of detecting or preventing fraud, material  
42 misrepresentation or material nondisclosure in connection  
with insurance underwriting or insurance claim activity.

44 18. Insurance transaction. "Insurance transaction" means  
46 any transaction that entails:

48 A. The determination of an individual's eligibility for an  
insurance coverage, benefit or payment; or

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2 B. The servicing of an insurance application, policy,  
contract or certificate.

4 19. Investigative consumer report. "Investigative consumer  
report" has the same meaning as in Title 10, section 1312,  
6 subsection 7.

8 20. Personal information. "Personal information" means any  
information that identifies an individual gathered in connection  
10 with an insurance transaction from which judgments can be made  
about an individual's character, habits, avocations, finances,  
12 occupation, general reputation, credit, health or any other  
personal characteristics. "Personal information" includes but is  
14 not limited to an individual's name and address and health care  
information.

16 21. Policyholder. "Policyholder" means any person who:

18 A. Is a present policyowner; or

20 B. In the case of group insurance that is individually  
22 underwritten, is a present group certificate holder.

24 22. Pretext interview. "Pretext interview" means an  
interview wherein a person, in an attempt to obtain information,  
26 performs one or more of the following acts:

28 A. Pretends to be someone the person is not;

30 B. Pretends to represent a person that person is not in  
fact representing;

32 C. Misrepresents the true purpose of the interview; or

34 D. Refuses to provide that person's identity upon request.

36 23. Regulated insurance entity. "Regulated insurance  
38 entity" means any person or entity required to be licensed by the  
superintendent under this Title or Title 24, including without  
40 limitation a carrier, producer, producer agency or administrator.

42 24. Residual market. "Residual market" means any  
special-purpose insurer, association, organization or other  
44 entity that provides insurance coverage to persons who are unable  
to obtain it in the voluntary market.

46 §2205. Pretext interviews

48 A regulated insurance entity or insurance support  
50 organization may not use or authorize the use of pretext

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interviews to obtain information in connection with an insurance transaction unless that entity or organization does not have a generally or statutorily recognized privileged relationship with the insurance consumer about whom the information is related, the interview is conducted for the purpose of investigating a claim and there is a reasonable basis, supported by specific information available for review by the superintendent, for suspecting criminal activity, fraud, material misrepresentation or material nondisclosure.

**§2206. Notice of insurance information practices**

The following requirements apply to notices provided by regulated insurance entities.

1. Written notice. A regulated insurance entity shall provide a written notice of information practices to the applicant, policyholder or claimant in connection with all consumer insurance transactions in accordance with the following.

A. In the case of an application for insurance, the notice must be provided no later than:

(1) The time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records;

(2) The time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records; or

(3) The time of initial notification to the consumer when the insurance transaction is not initiated by the consumer and the consumer was selected based on specific criteria derived from personal information obtained from any source.

B. In the case of a policy renewal, the notice must be provided no later than the policy renewal date, unless:

(1) Personal information is collected only from the policyholder or from public records; or

(2) A notice meeting the requirements of this section has been given within the previous 24 months.

C. In the case of a policy reinstatement or change in insurance benefits, the notice must be provided no later than the time the request for reinstatement or change in benefits is received by the carrier, unless personal

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information is collected only from the policyholder or from public records.

2. Required provisions. The notice must state:

A. Whether personal information may be collected from persons other than the insurance consumer or consumers proposed for coverage;

B. The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;

C. The types of disclosures that may be made without prior authorization under section 2215 and the circumstances under which any such disclosures may be made without prior authorization, except that only those circumstances need be described that occur with such frequency as to indicate a general business practice;

D. A description of the rights established under sections 2210 and 2211 and the manner in which those rights may be exercised;

E. That information obtained from a report prepared by an insurance support organization may be retained by the insurance support organization and disclosed to other persons; and

F. A description of the types of persons who may have access to the insurance consumer's personal information.

3. Abbreviated notice. In lieu of the notice prescribed in subsection 2, the regulated insurance entity may provide an abbreviated notice informing the applicant or policyholder that:

A. Personal information may be collected from persons other than the insurance consumer or consumers proposed for coverage;

B. Information described in paragraph A as well as other personal information subsequently collected by the regulated insurance entity may in certain circumstances be disclosed to 3rd parties without authorization pursuant to section 2215;

C. A right of access and correction exists with respect to all personal information collected; and

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2 D. The notice prescribed in subsection 2 will be furnished  
to the applicant or policyholder upon request.

4 4. Satisfaction by other carrier, producer or  
administrator. The notice requirements imposed by this section  
6 upon a regulated insurance entity may be satisfied by a carrier,  
producer or administrator authorized to act on the entity's  
8 behalf.

10 5. Standard notice forms. All carriers shall develop and  
use standard notice forms, but are not required to use the same  
12 form as other carriers.

14 §2207. Marketing and research surveys

16 A regulated insurance entity that asks questions in  
connection with an insurance transaction shall clearly identify  
18 any questions that are designed to obtain information solely for  
marketing or research purposes and shall inform consumers that  
20 answering the questions is voluntary.

22 §2208. Content of disclosure authorization forms

24 Notwithstanding any other provision of law, a regulated  
insurance entity or insurance support organization may not use a  
26 disclosure authorization form unless the form or statement:

28 1. Signed. Is signed by the insurance consumer except  
that:

30 A. A consumer's spouse, family member or other authorized  
32 individual may sign the disclosure authorization form if:

34 (1) The individual is acting under a valid written  
power of attorney or acting pursuant to the Uniform  
36 Health-care Decisions Act; or

38 (2) The individual is the consumer's parent or legal  
guardian, in which case the authorization is valid only  
40 insofar as that parent or legal guardian has the  
exclusive authority to consent for the health care  
42 services received by a minor for which the  
authorization for payment is sought and only as to  
44 those disclosures when the holder of the information  
can reasonably infer that the parent's or legal  
46 guardian's interest in disclosure is not adverse to the  
consumer's; or

48 B. A consumer may authorize disclosure in electronic or  
50 telephonic form if a unique identifier of the insurance

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consumer is provided and the insurance consumer authenticates the electronic or telephonic authorization;

2. Plain language. Is written in plain language;

3. Dated. Is dated;

4. Persons authorized to disclose. Specifies the types of persons authorized to disclose information about the consumer;

5. Nature of information. Specifies the nature of the information authorized to be disclosed;

6. Name of regulated insurance entity. Names the regulated insurance entity and identifies by generic reference representatives of the carrier to whom the consumer is authorizing information to be disclosed;

7. Purpose. Specifies the purposes for which the information is collected;

8. Time period of authorization. Specifies the period of time the authorization remains valid. The period of time may be no longer than:

A. In the case of life, disability or long-term care insurance:

(1) Thirty months from the date the authorization is signed if the authorization is signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement or a request for change in policy benefits; or

(2) The duration of the claim if the authorization is signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy; or

B. In the case of health or medical insurance, the term of coverage of the policy and any renewals of that policy;

9. Right to copy. Advises the consumer or a person authorized to act on behalf of the consumer that the consumer or the consumer's authorized representative is entitled to receive a copy of the authorization form;

10. Revocation. Advises the consumer how to revoke the authorization and that the revocation may be a basis for denying insurance benefits; and

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2           11. Failure to sign. Advises the consumer that failure to  
4           sign an authorization form may impair the ability of a regulated  
6           insurance entity to evaluate or process an application or claim  
              and may be a basis for denying an application or claims for  
              benefits.

8           **§2209. Investigative consumer reports**

10           1. Required notice. A regulated insurance entity or  
12           insurance support organization may not prepare or request an  
14           investigative consumer report about an insurance consumer in  
16           connection with an insurance transaction involving an application  
18           for insurance, a policy renewal, a policy reinstatement or a  
20           change in insurance benefits unless the regulated insurance  
              entity complies with Title 10, section 1314 and informs the  
              consumer in writing that the consumer may request to be  
              interviewed in connection with the preparation of the  
              investigative consumer report.

22           2. Personal interview. If an investigative consumer report  
24           is to be prepared by the regulated insurance entity, the  
              regulated insurance entity shall institute reasonable procedures  
              to conduct a personal interview when requested by a consumer.

26           3. Insurance support organization. If an investigative  
28           consumer report is to be prepared by an insurance support  
30           organization, the regulated insurance entity requesting the  
32           report shall inform the insurance support organization whether a  
              personal interview has been requested by the consumer. The  
              insurance support organization shall institute reasonable  
              procedures to conduct such interviews.

34           **§2210. Access to recorded personal information**

36           1. Recorded personal information. If any insurance  
38           consumer, after proper identification, submits a written request  
40           to a regulated insurance entity or insurance support organization  
42           for access to recorded personal information about the consumer  
44           that is reasonably described by the consumer and reasonably  
              locatable and retrievable by the regulated insurance entity or  
              insurance support organization, the regulated insurance entity or  
              insurance support organization shall, within 30 days after the  
              date the request is received:

46           A. Inform the consumer of the nature and substance of the  
48           recorded personal information in writing or by telephone or  
              other oral communication;

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2 B. Permit the consumer to see and copy, in person, the  
4 recorded personal information or to obtain a copy of the  
6 recorded personal information by mail, whichever method the  
8 consumer prefers, unless the recorded personal information  
10 is in coded form, in which case an accurate translation in  
12 plain language must be provided in writing;

14 C. Disclose to the consumer the identity, if recorded, of  
16 those persons to whom the regulated insurance entity or  
18 insurance support organization has disclosed the information  
20 described or similar personal information about the consumer  
22 during the 2 years preceding the request and, if the  
24 identity is not recorded, the names of those carriers,  
26 producers, agencies, insurance support organizations or  
28 other persons to whom any such information is normally  
30 disclosed; and

32 D. Provide the consumer with a summary of the procedures by  
34 which the consumer may request correction, amendment or  
36 deletion of recorded personal information.

38 2. Resident considered consumer. For purposes of this  
40 section and section 2211, as applied to insurance support  
42 organizations, any resident of this State is considered an  
44 insurance consumer.

46 3. Institutional source. Any personal information provided  
48 pursuant to subsection 1 must identify the source of the  
50 information if it is an institutional source.

4. Election relating to health care information. In lieu  
of disclosure directly to the consumer, the carrier or producer  
may elect to disclose health care information, together with the  
identity of the health care provider who provided the  
information, to a person designated by the consumer who is  
licensed to provide health care with respect to the condition to  
which the information relates. The regulated insurance entity or  
insurance support organization shall notify the consumer at the  
time of the disclosure that it has provided the information to  
the health care practitioner.

5. Fee. Except for personal information provided under  
section 2212, a regulated insurance entity or insurance support  
organization may charge a reasonable fee to cover the costs  
incurred in providing a copy of recorded personal information to  
consumers.

6. Satisfaction by other carrier, producer or  
administrator. The obligations imposed by this section upon a  
regulated insurance entity may be satisfied by another carrier,



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2 producer or administrator authorized to act on its behalf. With  
3 respect to the copying and disclosure of recorded personal  
4 information pursuant to a request under subsection 1, a regulated  
5 insurance entity or insurance support organization may make  
6 arrangements with an insurance support organization or a consumer  
7 reporting agency to copy and disclose recorded personal  
8 information on its behalf.

10 7. Confidential investigative information. Confidential  
11 investigative information and personal information in which a 3rd  
12 person has a nondisclosure right pursuant to section 2215 are not  
13 subject to the provisions of this section.

14 8. Applicability. This section does not apply to a  
15 consumer reporting agency except to the extent that this section  
16 imposes more stringent requirements on a consumer reporting  
17 agency than other state or federal law.

20 §2211. Correction, amendment or deletion of recorded personal  
21 information

22 1. Action by regulated insurance entity. Within 30 days  
23 after receiving a written request from an insurance consumer to  
24 correct, amend or delete any recorded personal information within  
25 its possession about the consumer, a regulated insurance entity  
26 or insurance support organization shall:

28 A. In the case of recorded personal information contained  
29 within a consumer report, provide the consumer with the name  
30 and address of the consumer reporting agency that furnished  
31 the report and notify the consumer of the rights under Title  
32 10, section 1317 governing the correction of inaccurate  
33 personal information contained in a consumer report; or

34 B. In the case of other recorded personal information,  
35 either:

38 (1) Correct, amend or delete the portion of the  
39 recorded personal information in dispute; or

40 (2) Notify the consumer of its refusal to make the  
41 requested correction, amendment or deletion; the  
42 reasons for the refusal; and the consumer's right to  
43 file a statement as provided in subsection 3.

46 2. Notice to others. If the regulated insurance entity or  
47 insurance support organization corrects, amends or deletes  
48 recorded personal information in accordance with subsection 1,  
49 paragraph B, the regulated insurance entity or insurance support  
50 organization shall notify the consumer in writing and furnish  
the correction, amendment or fact of deletion to:

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2           A. Any person specifically designated by the consumer who  
4           may have, within the preceding 2 years, received that  
          recorded personal information;

6           B. Any insurance support organization whose primary source  
8           of personal information is insurance carriers, if the  
10          insurance support organization has systematically received  
12          recorded personal information from the carrier within the  
14          preceding 7 years. However, the correction, amendment or  
          fact of deletion need not be furnished if the insurance  
          support organization no longer maintains recorded personal  
          information about the consumer; and

16          C. Any insurance support organization that furnished the  
          personal information that has been corrected, amended or  
18          deleted.

20          3. Consumer statement. When a consumer disagrees with a  
22          regulated insurance entity's or insurance support organization's  
24          refusal to correct, amend or delete recorded personal  
26          information, or when the regulated insurance entity or insurance  
          support organization has not made all relevant recorded personal  
          information available for verification by the consumer, the  
          consumer must be permitted to file with the regulated insurance  
          entity or insurance support organization:

28           A. A concise statement setting forth what the consumer  
30           thinks is the correct, relevant or fair information; and

32           B. A concise statement of the reasons why the consumer  
34           disagrees with the regulated insurance entity's or insurance  
          support organization's refusal to correct, amend or delete  
          recorded personal information.

36          4. Filing of statement. In the event a consumer files a  
38          statement as described in subsection 3, the regulated insurance  
          entity or insurance support organization shall:

40           A. File the statement with the disputed personal  
42           information and provide a means by which anyone reviewing  
44           the disputed personal information will be made aware of the  
          consumer's statement and have access to it;

46           B. In any subsequent disclosure by the regulated insurance  
48           entity or insurance support organization of the recorded  
50           personal information that is the subject of disagreement,  
          clearly identify the matter or matters in dispute and  
          provide the consumer's statement along with the recorded  
          personal information being disclosed; and

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2 C. Furnish the statement to the persons and in the manner  
4 specified in subsection 2.

6 5. Applicability. This section does not apply to a  
8 consumer reporting agency except to the extent that this section  
imposes more stringent requirements on a consumer reporting  
agency than other state or federal law.

10 **§2212. Reasons for adverse underwriting decisions**

12 1. Notice to consumer. In the event of an adverse  
14 underwriting decision, the carrier or producer responsible for  
the decision shall:

16 A. Comply with Title 10, section 1320, subsection 1-B if  
18 the decision is based in whole or in part on any information  
contained in a consumer report;

20 B. Either provide the consumer with the specific reason or  
22 reasons for the adverse underwriting decision in writing or  
24 advise the consumer that upon written request the consumer  
may receive the specific reason or reasons in writing; and

26 C. Provide the consumer with a summary of the rights  
established under subsection 2 and sections 2210 and 2211.

28 2. Request for explanation. If a consumer makes a written  
30 request for explanation of an adverse underwriting decision  
32 within 90 days after receiving written notice of the decision,  
the carrier or producer shall furnish to the consumer within 21  
days after receiving the request:

34 A. The specific reason or reasons for the adverse  
36 underwriting decision, in writing, if such information was  
not initially furnished in writing pursuant to subsection 1,  
38 paragraph A or B;

40 B. The specific items of personal information that support  
those reasons, except that:

42 (1) The carrier or producer is not required to furnish  
44 confidential investigative information if it has a  
46 reasonable suspicion, based upon specific information  
available for review by the superintendent, that the  
48 consumer has engaged in criminal activity, fraud,  
material misrepresentation or material nondisclosure;  
and

11. 3. 5.  
2           (2) In lieu of disclosure directly to the consumer,  
4           the carrier or producer may elect to disclose health  
6           care information to a person designated by the consumer  
8           who is licensed to provide health care with respect to  
10           the condition to which the information relates; and

12           C. The names and addresses of the institutional sources  
14           that supplied the specific items of information pursuant to  
16           paragraph B, except that the carrier may elect to disclose  
18           the identity of any health care provider to the consumer's  
20           designated health care practitioner.

22           3. Satisfaction by other carrier, producer or  
24           administrator. The obligations imposed by this section upon a  
26           carrier or producer may be satisfied by another carrier, producer  
28           or administrator authorized to act on its behalf.

30           §2213. Information concerning previous adverse underwriting  
32           decisions

34           Unless an inquiry of a regulated insurance entity or  
36           insurance support organization also requests the reasons for the  
38           underwriting decision or placement, a regulated insurance entity  
40           or insurance support organization may not seek information in  
42           connection with an insurance transaction concerning:

44           1. Previous adverse decision. Any previous adverse  
46           underwriting decision experienced by an insurance consumer; or

48           2. Residual market, surplus lines or substandard risk  
50           carrier. Any previous insurance coverage obtained by a consumer  
          through a residual market, a surplus lines insurer or a carrier  
          that specializes in substandard risks.

§2214. Previous adverse underwriting decisions

A carrier, producer or producer agency may not base an  
          adverse underwriting decision in whole or in part:

1. Previous adverse underwriting decisions. On the fact of  
          a previous adverse underwriting decision or on the fact that a  
          consumer previously obtained insurance coverage through a  
          residual market, a surplus lines insurer or a carrier that  
          specializes in substandard risks. However, a carrier or producer  
          may base an adverse underwriting decision on further information  
          obtained from a carrier, producer or producer agency responsible  
          for a previous adverse underwriting decision; or

2. Information from insurance support organizations. On  
          personal information received from an insurance support

organization whose primary source of information is insurance carriers. However, a carrier or producer may base an adverse underwriting decision on further personal information obtained as a result of information received from the insurance support organization, including primary source information confirming the information received from the insurance support organization.

**§2215. Disclosure limitations and conditions**

**1. Disclosure of personal information.** A regulated insurance entity or insurance support organization may not disclose any personal information about a consumer collected or received in connection with an insurance transaction unless the disclosure is made with due consideration for the safety and reputation of all persons who may be affected by the disclosure, is limited to the minimum amount of personal information necessary to accomplish a lawful purpose and is disclosed:

**A. With the written authorization of the individual, only:**

(1) If that authorization is submitted directly by the consumer, a person purporting to represent the consumer, another regulated insurance entity or insurance support organization and the authorization meets the requirements of section 2208; or

(2) If the authorization is submitted by a person other than a regulated insurance entity or insurance support organization and the authorization describes with reasonable particularity the nature of the information to be disclosed and the purpose of the disclosure and is:

(a) Dated;

(b) Signed by the consumer, except that another authorized individual may provide authorization or the consumer may authorize disclosure in electronic or telephonic form in accordance with section 2208, subsection 1; and

(c) Obtained one year or less before the date a disclosure is sought pursuant to this subsection;

**B. To a person other than a regulated insurance entity or insurance support organization, only if that disclosure is reasonably necessary:**

(1) To enable that person to perform a business, professional or insurance function for the disclosing

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2 regulated insurance entity or insurance support  
3 organization and that person agrees not to disclose the  
4 information further without the consumer's written  
5 authorization unless the further disclosure:

6 (a) Would otherwise be permitted by this section  
7 if made by a regulated insurance entity or  
8 insurance support organization; or

10 (b) Is reasonably necessary for that person to  
11 perform its function for the disclosing regulated  
12 insurance entity or insurance support  
13 organization; or

14 (2) To enable that person to provide information to  
15 the disclosing regulated insurance entity or insurance  
16 support organization for the purpose of:

18 (a) Determining a consumer's eligibility for an  
19 insurance benefit or payment; or

22 (b) Detecting or preventing criminal activity,  
23 fraud, material misrepresentation or material  
24 nondisclosure in connection with an insurance  
25 transaction;

26 C. To a regulated insurance entity, insurance support  
27 organization or self-insurer, only if the information  
28 disclosed is limited to that which is reasonably necessary:

30 (1) To detect or prevent criminal activity, fraud,  
31 material misrepresentation or material nondisclosure in  
32 connection with insurance transactions; or

34 (2) For either the disclosing or the receiving  
35 regulated insurance entity or insurance support  
36 organization to perform its function in connection with  
37 an insurance transaction involving the consumer;

40 D. To a health care provider for the purpose of:

42 (1) Verifying insurance coverage or benefits;

44 (2) Informing a consumer of a medical problem of which  
45 the consumer may not be aware; or

46 (3) Conducting an operations or services audit to  
47 verify the consumers of the regulated insurance entity  
48 or insurance support organization treated by the health  
49 care provider;

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- 2           E. To an insurance regulatory authority;
- 4           F. To a law enforcement or other governmental authority to  
6           protect the interests of the regulated insurance entity or  
8           insurance support organization in preventing or prosecuting  
10           the perpetration of fraud upon that entity or organization;
- 12           G. In response to a facially valid administrative or  
14           judicial order, including a search warrant or subpoena, or  
16           otherwise required by law;
- 18           H. For the purpose of conducting actuarial or research  
20           studies, except that:
  - 22               (1) No insurance consumer may be identified in any  
24               actuarial or research report;
  - 26               (2) Materials allowing the consumer to be identified  
28               must be returned or destroyed as soon as they are no  
30               longer needed; and
  - 32               (3) The actuarial or research organization agrees not  
34               to disclose the information unless the disclosure would  
36               otherwise be permitted by this section if made by a  
38               regulated insurance entity or insurance support  
40               organization;
- 42           I. To a party or representative of a party to a proposed or  
44           consummated sale, transfer, merger or consolidation of all  
46           or part of the business of the regulated insurance entity or  
48           insurance support organization, only if:
  - 50               (1) Before the consummation of the sale, transfer,  
              merger or consolidation only such information is  
              disclosed as is reasonably necessary to enable the  
              recipient to make business decisions about the  
              purchase, transfer, merger or consolidation; and
  - (2) The recipient agrees not to disclose the  
              information unless the disclosure would otherwise be  
              permitted by this section if made by a regulated  
              insurance entity or insurance support organization;
- J. To a person whose only use of the information will be in  
              connection with the marketing of a product or service, only  
              if:
  - (1) No health care information, confidential  
              investigative information or information relating to a

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2 consumer's character, personal habits, mode of living  
3 or general reputation is disclosed and no  
4 classification derived from any such information is  
5 disclosed;

6 (2) The consumer has been given an opportunity to  
7 indicate that the consumer does not want personal  
8 information disclosed for marketing purposes and has  
9 given no indication that the consumer does not want the  
10 information disclosed; and

11 (3) The person receiving the information agrees not  
12 to use it except in connection with the marketing of a  
13 product or service;

14  
15 K. By a consumer reporting agency to a person other than a  
16 regulated insurance entity;

17  
18 L. To a group policyholder for the purpose of reporting  
19 claims experience or conducting an audit of the regulated  
20 insurance entity's operations or services, only if that the  
21 information disclosed is aggregate information and  
22 reasonably necessary for the group policyholder to conduct  
23 the review or audit;

24  
25 M. To a professional peer review organization for the  
26 purpose of reviewing the service or conduct of a health care  
27 provider;

28  
29 N. To a certificate holder or policyholder for the purpose  
30 of providing information regarding the status of an  
31 insurance transaction;

32  
33 O. To a lienholder, mortgagee, assignee, lessor or other  
34 person shown on the records of a carrier or producer as  
35 having a legal or beneficial interest in a policy of  
36 insurance, only if:

37  
38 (1) No health care information is disclosed unless the  
39 disclosure would otherwise be permitted by this  
40 section; and

41  
42 (2) The information disclosed is limited to that which  
43 is reasonably necessary to permit that person to  
44 protect its interests in the policy; or

45  
46 P. To an affiliate whose only use of the information will  
47 be in connection with an audit of the regulated insurance  
48 entity or the marketing of a product or service of the  
49 affiliate, if the information disclosed for marketing  
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2 purposes does not include health care information and if the  
3 affiliate agrees not to disclose the information for any  
4 other purpose or to unaffiliated persons.

6 **§2216. Insurance support organizations**

8 1. Examination and investigation. The superintendent may  
9 examine and investigate into the affairs of every insurance  
10 support organization acting on behalf of a regulated insurance  
11 entity that either transacts business in this State or transacts  
12 business outside this State that has an effect on a resident of  
13 this State in order to determine whether the insurance support  
14 organization has been or is engaged in any conduct in violation  
15 of this chapter.

16 2. Service of process. An insurance support organization  
17 transacting business outside this State that has an effect on a  
18 resident of this State is deemed to have appointed the  
19 superintendent to accept service of process on its behalf.  
20 Service is complete when the superintendent sends a copy of the  
21 process by registered mail to the insurance support organization  
22 at its last known principal place of business. The return  
23 receipt is sufficient proof that notice was properly mailed by  
24 the superintendent.

26 **§2217. Individual remedies**

28 1. Appeal to superintendent. Any insurance consumer  
29 aggrieved by a regulated insurance entity's or insurance support  
30 organization's response or failure to respond to a request made  
31 pursuant to sections 2210, 2211 and 2212 may appeal to the  
32 superintendent, who may convene an adjudicatory hearing to  
33 determine whether there has been a violation of this chapter and  
34 may order the regulated insurance entity or insurance support  
35 organization to take such measures as are necessary to comply  
36 with this chapter.

38 2. Superior Court action. An insurance consumer who is  
39 injured by a disclosure of information relating to the consumer  
40 in violation of section 2215 may bring an action in the Superior  
41 Court against the regulated insurance entity or insurance support  
42 organization within 2 years after the disclosure is or should  
43 have been discovered. The consumer may recover damages, together  
44 with costs and disbursements, reasonable attorney's fees and  
45 interest on damages at the rate of 1 1/2% per month.

46 3. No private right of action. Except as specifically  
47 provided in this section, this chapter provides no express or  
48 implied private right of action.

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12 **§2218. Immunity**

No cause of action in the nature of defamation, invasion of privacy or negligence arises against any person for disclosing personal information in accordance with this chapter, nor does such a cause of action arise against any person for furnishing personal information to a regulated insurance entity or insurance support organization. This section provides no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

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21 **§2219. Criminal penalties**

A person who knowingly obtains personal information under false pretenses from a regulated insurance entity or insurance support organization is guilty of obtaining personal insurance information under false pretenses. Obtaining personal insurance information under false pretenses is a Class D crime.

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32 **§2220. Rulemaking**

The superintendent may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this chapter are major substantive rules as defined by Title 5, chapter 375, subchapter II-A.

**Sec. 4. 24-A MRSA §4222-B, sub-§12 is enacted to read:**

12. The requirements of chapter 24 and any rules adopted pursuant to that chapter apply to health maintenance organizations.

**Sec. 5. Application.** The requirements of the Maine Revised Statutes, Title 24-A, chapter 24 apply to all consumer insurance transactions that take place on or after January 1, 1999.

Further amend the bill by inserting at the end before the summary the following:

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42 **FISCAL NOTE**

This bill may increase prosecutions for Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$86.45 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload, administrative costs and indigent

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2 defense costs associated with the minimal number of new cases  
filed in the court system can be absorbed within the budgeted  
resources of the Judicial Department. The collection of  
4 additional fines may also increase General Fund revenue by minor  
amounts.

6  
8 This bill may also increase the number of civil suits filed  
in the court system. The additional workload and administrative  
costs associated with the minimal number of new cases filed can  
10 be absorbed within the budgeted resources of the Judicial  
Department. The collection of additional filing fees may also  
12 increase General Fund revenue by minor amounts.

14 The additional costs associated with a minimal number of new  
cases can be absorbed by the Human Rights Commission utilizing  
16 existing budgeted resources.

18 The Bureau of Insurance within the Department of  
Professional and Financial Regulation will incur some minor  
20 additional costs to administer certain discrimination  
prohibitions and privacy requirements pertaining to insurance  
22 policies and to adopt certain rules. These costs can be absorbed  
within the bureau's existing budgeted resources.'

24

26 **SUMMARY**

28 This amendment replaces the bill. It prohibits  
discrimination in health insurance on the basis of genetic  
30 information and prohibits unfair discrimination in life,  
disability, long-term care insurance and other limited health  
32 benefit policies regulated by the Bureau of Insurance. It also  
prohibits discrimination in employment on the basis of genetic  
34 information or genetic testing.

36 The amendment also enacts the provisions of the National  
Association of Insurance Commissioner's "Insurance Information  
38 and Privacy Protection Model Act" governing the collection, use  
and disclosure of personal information about insurance consumers  
40 gathered in connection with insurance transactions by regulated  
insurance entities and insurance support organizations. It  
42 exempts workers' compensation, property, casualty, medical  
malpractice, fidelity, suretyship, boiler and machinery and title  
44 insurance from the application of these provisions.

46 The amendment also adds an application section and a fiscal  
note to the bill.

48

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