

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1154

H.P. 852

House of Representatives, March 17, 2011

An Act To Implement the Recommendations of the Right To Know Advisory Committee

Reported by Representative NASS of Acton for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

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

2 **PART A**

3 **Sec. A-1. 22 MRSA §1065**, as enacted by PL 2005, c. 628, §1, is repealed.

4 **Sec. A-2. 24 MRSA §2329, sub-§8**, as enacted by PL 1983, c. 527, §1, is
5 amended to read:

6 **8. Confidentiality.** ~~The confidentiality of all alcoholism~~ Alcoholism and drug
7 treatment patient records ~~shall be protected~~ are confidential.

8 **Sec. A-3. 24-A MRSA §225, sub-§3**, as enacted by PL 1991, c. 828, §10, is
9 amended to read:

10 **3.** All working papers, recorded information, documents and copies of any of these
11 media produced by, obtained by or disclosed to the superintendent or any other person in
12 the course of an examination made under this chapter ~~must be given~~ are confidential
13 ~~treatment~~, are not subject to subpoena and may not be made public by the superintendent
14 or any other person, except to the extent provided in sections 226 and 227. Access may
15 be granted to the National Association of Insurance Commissioners. Any parties granted
16 access must agree in writing prior to receiving the information to provide the information
17 with the same confidential treatment as required by this section unless prior written
18 consent of the insurer to which the information pertains has been obtained.

19 **Sec. A-4. 24-A MRSA §226, sub-§2**, as amended by PL 1999, c. 113, §15, is
20 further amended to read:

21 **2.** If requested by the person examined, within the period allowed under subsection
22 1, or if determined advisable by the superintendent without such request, the
23 superintendent shall hold a hearing relative to the report and may not file the report in the
24 bureau until after the hearing and the superintendent's order on the report; except that the
25 superintendent may furnish a copy of the report to the Governor, Attorney General or
26 Treasurer of State pending final decision and, if the copies are so furnished, they are
27 ~~deemed~~ confidential ~~information~~ until the other requirements of this section with regard
28 to examination reports have been satisfied. In lieu of convening a hearing, the
29 superintendent may reopen the examination or, if supported by the information obtained,
30 may adopt some or all of the modifications proposed by the person examined.

31 **Sec. A-5. 24-A MRSA §227**, as amended by PL 1991, c. 828, §12, is further
32 amended to read:

33 **§227. Examination report**

34 The report of examination of those persons, partnerships, corporations or other
35 business associations that are subject to examination by the superintendent as provided
36 for in sections 221 and 222 ~~shall~~ must, upon satisfaction of the requirements of section
37 226 and so long as no court of competent jurisdiction has stayed its publication, be filed

1 in the bureau as a public record, except for that any information relating to an individual
2 insured or individual applicant for insurance, ~~which is deemed~~ confidential.

3 **Sec. A-6. 24-A MRSA §952-A, sub-§4, ¶H**, as repealed and replaced by PL
4 2001, c. 89, §1, is amended to read:

5 H. Except as provided in paragraphs K, L and M, any memorandum in support of the
6 opinion and any other documents, materials or other information provided by the
7 insurer to the superintendent in connection with the memorandum are confidential
8 ~~must be kept confidential by the superintendent and are not public records within the~~
9 ~~meaning of the freedom of access laws~~ and are not subject to subpoena or discovery,
10 nor admissible in evidence in any private civil action. The superintendent is
11 authorized to use the documents, materials or other information in the furtherance of
12 any regulatory or legal action brought as a part of the superintendent's official duties.

13 **Sec. A-7. 24-A MRSA §2315**, as amended by PL 1989, c. 797, §17 and affected
14 by §§37 and 38, is repealed.

15 **Sec. A-8. 24-A MRSA §2323, sub-§4**, as amended by PL 1989, c. 797, §27 and
16 affected by §§37 and 38, is further amended to read:

17 **4.** Each insurer shall report its loss or expense experience to the lawful rating
18 organization, advisory organization or agency of which it is a member or subscriber, but
19 ~~shall~~ is not be required to report its loss or expense experience to any rating organization,
20 advisory organization or agency of which it is not a member or subscriber. Any insurer
21 not reporting such experience to a rating organization, advisory organization or other
22 agency may be required to report such experience to the superintendent. Any report of
23 such experience of any insurer filed with the superintendent ~~shall be deemed~~ is
24 confidential and ~~shall~~ may not be revealed by the superintendent to any other insurer or
25 other person, but the superintendent may make compilations including such experience.

26 **Sec. A-9. 24-A MRSA §2325-B, sub-§9**, as enacted by PL 2003, c. 671, Pt. B,
27 §2, is amended to read:

28 **9. Modified policy form and rate filings.** A modified policy form and modified
29 rate developed by a member insurer must be filed with the superintendent. A modified
30 rate to be used in connection with an existing policy form that consists solely of a
31 permissible surcharge not in excess of the maximum allowable cap contained in rules
32 adopted under subsection 8 may be used by a member insurer immediately upon filing
33 that modified rate with the superintendent. For any other modified filings, a modified
34 policy form and modified rate must be filed with the superintendent not less than 30 days
35 in advance of the stated effective date. A modified rate filing subject to the 30-day
36 advance filing requirement must include any supplementary rating information to be used
37 in conjunction with a rate and, to the extent available, sufficient supporting information to
38 support a rate. A modified rate may not be excessive, inadequate or unfairly
39 discriminatory with respect to risks written through the program. A modified policy form
40 may only be disapproved for the grounds specified in section 2413. All modified policy
41 form and rate filings are confidential until ~~effective or~~ approved in accordance with
42 applicable law.

1 **PART D**

2 **Sec. D-1. 1 MRSA §432, sub-§1**, as amended by PL 2005, c. 631, §3, is further
3 amended to read:

4 **1. Recommendations.** During the second regular session of each Legislature, the
5 review committee may report out legislation containing its recommendations concerning
6 the repeal, modification and continuation of public records exceptions and any
7 recommendations concerning the exception review process and the accessibility of public
8 records. Before reporting out legislation, the review committee shall notify the
9 appropriate committees of jurisdiction concerning public hearings and work sessions and
10 shall allow members of the appropriate committees of jurisdiction to participate in work
11 sessions.

12 **Sec. D-2. 1 MRSA §432, sub-§2-C** is enacted to read:

13 **2-C. Accessibility of public records.** The advisory committee may include in its
14 evaluation of public records statutes the consideration of any factors that affect the
15 accessibility of public records, including but not limited to fees, request procedures and
16 timeliness of responses.

17 **Sec. D-3. 1 MRSA §434**, as amended by PL 2005, c. 631, §6, is further amended
18 to read:

19 **§434. Review of proposed exceptions to public records; accessibility of public**
20 **records**

21 **1. Procedures before legislative committees.** Whenever a legislative measure
22 containing a new public records exception is proposed or a change that affects the
23 accessibility of a public record is proposed, the joint standing committee of the
24 Legislature having jurisdiction over the proposal shall hold a public hearing and
25 determine the level of support for the proposal among the members of the committee. If
26 there is support for the proposal among a majority of the members of the committee, the
27 committee shall request the review committee to review and evaluate the proposal
28 pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed
29 exception or proposed change that affects the accessibility of a public record may not be
30 enacted into law unless review and evaluation pursuant to ~~subsection~~ subsections 2 and
31 2-B have been completed.

32 **2. Review and evaluation.** Upon referral of a proposed public records exception
33 from the joint standing committee of the Legislature having jurisdiction over the
34 proposal, the review committee shall conduct a review and evaluation of the proposal and
35 shall report in a timely manner to the committee to which the proposal was referred. The
36 review committee shall use the following criteria to determine whether the proposed
37 exception should be enacted:

38 A. Whether a record protected by the proposed exception needs to be collected and
39 maintained;

- 1 B. The value to the agency or official or to the public in maintaining a record
2 protected by the proposed exception;
- 3 C. Whether federal law requires a record covered by the proposed exception to be
4 confidential;
- 5 D. Whether the proposed exception protects an individual's privacy interest and, if so,
6 whether that interest substantially outweighs the public interest in the disclosure
7 of records;
- 8 E. Whether public disclosure puts a business at a competitive disadvantage and, if so,
9 whether that business's interest substantially outweighs the public interest in the
10 disclosure of records;
- 11 F. Whether public disclosure compromises the position of a public body in
12 negotiations and, if so, whether that public body's interest substantially outweighs the
13 public interest in the disclosure of records;
- 14 G. Whether public disclosure jeopardizes the safety of a member of the public or the
15 public in general and, if so, whether that safety interest substantially outweighs the
16 public interest in the disclosure of records;
- 17 H. Whether the proposed exception is as narrowly tailored as possible; and
- 18 I. Any other criteria that assist the review committee in determining the value of the
19 proposed exception as compared to the public's interest in the record protected by the
20 proposed exception.

21 **2-A. Accountability review of agency or official.** In evaluating each proposed
22 public records exception, the review committee shall, in addition to applying the criteria
23 of subsection 2, determine whether there is a publicly accountable entity that has
24 authority to review the agency or official that collects, maintains or uses the record
25 subject to the exception in order to ensure that information collection, maintenance and
26 use are consistent with the purpose of the exception and that public access to public
27 records is not hindered.

28 **2-B. Accessibility of public records.** In reviewing and evaluating whether a
29 proposal may affect the accessibility of a public record, the review committee may
30 consider any factors that affect the accessibility of public records, including but not
31 limited to fees, request procedures and timeliness of responses.

32 **3. Report.** The review committee shall report its findings and recommendations on
33 whether the proposed exception or proposed limitation on accessibility should be enacted
34 to the joint standing committee of the Legislature having jurisdiction over the proposal.

35 **Sec. D-4. Maine Revised Statutes headnote amended; revision clause.** In
36 the Maine Revised Statutes, Title 1, chapter 13, subchapter 1-A, in the subchapter
37 headnote, the words "exceptions to public records" are amended to read "public records
38 exceptions and accessibility" and the Revisor of Statutes shall implement this revision
39 when updating, publishing or republishing the statutes.

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PART E

Sec. E-1. 1 MRSA §402, sub-§3, ¶N, as amended by PL 2009, c. 176, §1 and c. 339, §1, is further amended to read:

N. Social security numbers ~~in the possession of the Department of Inland Fisheries and Wildlife;~~

SUMMARY

This bill implements the recommendations of the Right to Know Advisory Committee as included in the advisory committee's 5th annual report.

PART A

The recommendations resulting from the review of existing public records exceptions are contained in Part A. The Maine Revised Statutes, Title 1, section 433 directs the advisory committee to review existing public records exceptions found in Titles 22 to 25 in 2012.

Part A:

- 1. Repeals Title 22, section 1065 to eliminate reporting requirements regarding influenza immunization agents because the information is no longer collected;
- 2. Makes changes to achieve language consistency. These changes are not intended to change the effect of the law;
- 3. Repeals Title 24-A, section 2315 to eliminate obsolete language referring to "stamping bureaus," which are no longer in existence; and
- 4. Makes a substantive change to provide that specific modified property and casualty policy form and rate filings are confidential until approved in accordance with applicable law. Current law refers to confidentiality until the filings are effective.

PART B

Part B is in response to Resolve 2009, chapter 171, which, among other charges, directed the advisory committee to examine the use of technologies to ensure that decisions are made in public proceedings that are open and accessible to the public. Part B amends the public policy section of the freedom of access laws to specifically allow communications outside of public proceedings between members of a public body if those communications are not used to defeat the purposes of the freedom of access laws.

PART C

Part C contains the advisory committee's recommendations pursuant to Resolve 2009, chapter 186. Part C requires that public bodies keep records of their meetings if they are required under the freedom of access laws to give notice of their meetings and the public body is not purely advisory in its authority.

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The meeting records must include:

1. The date, time and place of the public proceeding;
2. The members of the body holding the public proceeding recorded as either present or absent; and
3. All motions and votes taken, by individual member, if there is a roll call.

An audio, video or other electronic recording of a public proceeding is an acceptable record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to these meeting records. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required.

PART D

Part D consists of the advisory committee's recommendations to broaden the review requirements for both existing public records exceptions and the Legislature's review of proposed public records exceptions. Part D provides that the review and evaluation process includes language that affects the public accessibility of a public record. Any factors that affect the accessibility may be considered, including but not limited to fees, request procedures and timeliness of responses.

PART E

Part E exempts social security numbers from the definition of "public records" under the freedom of access laws.