

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1301

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H.P. 944

House of Representatives, March 19, 2019

### **An Act Regarding the Confidentiality of Investigations by the Bureau of Forestry**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative DUNPHY of Old Town.  
Cosponsored by Senator BLACK of Franklin and  
Representatives: HICKMAN of Winthrop, MASTRACCIO of Sanford, WARREN of  
Hallowell, Senators: DAVIS of Piscataquis, DILL of Penobscot.

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

2 **Sec. 1. 12 MRSA §8006** is enacted to read:

3 **§8006. Confidentiality of complaints and investigative records**

4 **1. During investigation.** All complaints and investigative records of the  
5 Department of Agriculture, Conservation and Forestry, referred to in this section as "the  
6 department," related to violations of this Part are confidential during the pendency of an  
7 investigation. Those records become public records upon the conclusion of an  
8 investigation unless confidentiality is required by some other provision of law. For  
9 purposes of this section, an investigation is concluded when:

10 A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter 5 has  
11 been issued;

12 B. A consent agreement has been executed;

13 C. An enforcement proceeding has been filed in a court of competent jurisdiction; or

14 D. The investigation has been closed.

15 **2. Exceptions.** Notwithstanding subsection 1, during the pendency of an  
16 investigation, a complaint or investigative record may be disclosed:

17 A. To department employees designated by the Commissioner of Agriculture,  
18 Conservation and Forestry;

19 B. By a department employee or complaint officer designated by the Commissioner  
20 of Agriculture, Conservation and Forestry when and to the extent considered  
21 necessary to facilitate the investigation;

22 C. To other state or federal agencies when the files contain evidence of possible  
23 violations of laws enforced by those agencies;

24 D. When and to the extent considered necessary by the Commissioner of  
25 Agriculture, Conservation and Forestry to avoid imminent and serious harm. The  
26 authority of the commissioner to make such a disclosure may not be delegated;

27 E. Pursuant to rules adopted by the department, when it is determined that  
28 confidentiality is no longer warranted due to general public knowledge of the  
29 circumstances surrounding the complaint or investigation and when the investigation  
30 would not be prejudiced by the disclosure; and

31 F. To the person investigated on that person's request. The Commissioner of  
32 Agriculture, Conservation and Forestry may refuse to disclose part or all of any  
33 investigative information, including the fact of an investigation, when the  
34 commissioner determines that disclosure would prejudice the investigation. The  
35 authority of the commissioner to make such a determination may not be delegated.

36 **3. Attorney General records.** The provision or disclosure of investigative records  
37 of the Department of the Attorney General to a department employee designated by the  
38 Commissioner of Agriculture, Conservation and Forestry does not constitute a waiver of

1 the confidentiality of those records for any other purposes. Further disclosure of those  
2 investigative records is subject to Title 16, section 804 and the discretion of the Attorney  
3 General.

4 **4. Violation.** A person who knowingly or intentionally makes a disclosure in  
5 violation of this section commits a civil violation for which a fine not to exceed \$1,000  
6 may be adjudged.

7 **SUMMARY**

8 This bill makes all complaints and investigative records of the Department of  
9 Agriculture, Conservation and Forestry related to violations of the forestry laws  
10 confidential during the pendency of an investigation. The bill provides exceptions to  
11 allow disclosures to department employees and other agencies and otherwise as  
12 determined warranted by the Commissioner of Agriculture, Conservation and Forestry.  
13 The provision or disclosure of investigative records of the Department of the Attorney  
14 General to a Department of Agriculture, Conservation and Forestry employee designated  
15 by the commissioner does not constitute a waiver of the confidentiality of those records.  
16 A person who knowingly or intentionally makes a disclosure in violation of this provision  
17 commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.