

MAINE STATE LEGISLATURE

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N I N E T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 57

S. P. 44

In Senate, January 20, 1953

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Reid of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

AN ACT Relating to Hearings Before the Insurance Commissioner.

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

R. S., c. 56, §§ 308 - 311, additional. Chapter 56 of the revised statutes, as amended, is hereby further amended by adding thereto 4 new sections, to be numbered 308 to 311, inclusive, to read as follows:

'Hearings

Sec. 308. Procedure at hearings; authority of commissioner. Whenever by any provision of the revised statutes the commissioner is required to give to any person a hearing on any proposed action, in the absence of express provision elsewhere provided by law, it shall be a sufficient compliance with such requirement if the commissioner gives to such person notice of the time and place at which an opportunity for hearing shall be given; and if opportunity for hearing is so given to such person, in the event that he appears at the time and place specified in the notice, any hearing of which notice is given may be adjourned from time to time without other or further notice than the announcement thereof at such hearing.

In all cases in which the commissioner is required or authorized to hold a hearing or an investigation, such hearing or investigation may be conducted by the commissioner, the deputy commissioner or any competent

salaried employee of the department whom the commissioner may authorize to act. The person conducting such hearing or investigation may administer oaths, examine and cross-examine witnesses, either personally or by counsel or other representative, and receive oral and documentary evidence. He may subpoena witnesses and require the production of books, papers, records, correspondence and other documents relevant to the inquiry. He may in any case cause a complete stenographic record to be made of the evidence and proceedings at the inquiry, and may compel any witness to subscribe to his testimony after it has been correctly reduced to writing. Every such hearing or investigation shall be open to the public, unless the commissioner or person holding the same shall determine that a private hearing would be in the public interest, in which case it shall be private. Parties in interest shall be allowed to be present during the giving of all testimony, and shall be allowed a reasonable opportunity to inspect all adverse documentary evidence, to examine and cross-examine witnesses, and to present evidence of their respective interests. Nothing herein contained shall require the observance at such inquiry of formal rules of pleading or evidence, but in any case in which a hearing or investigation is requested for alleged violation of law, the commissioner may require that the complaint be reduced to writing, signed, and sworn to by some person competent to be a witness in civil actions. If the inquiry is conducted by some person other than the commissioner, such person shall report his findings orally or in writing to the commissioner, with or without recommendations. Such report, if adopted by the commissioner, may be the basis of any determination made by him or by his authority. Unless otherwise expressly provided, findings of fact made by the commissioner shall be final, but an appeal may be taken from the commissioner's rulings in matters of law. Unless otherwise expressly provided, such appeal shall be taken within 10 days after the commissioner has made his decision, unless for good cause the person conducting the inquiry shall allow a longer time. Any person aggrieved by the commissioner's rulings shall present to a justice of the supreme judicial court or of the superior court a petition, setting forth the grounds for appeal, in term time or vacation, and such justice shall fix a time and place for hearing and cause notice to be given the commissioner as in equity; and after such hearing, the justice may affirm, modify or reverse the decision of the commissioner and shall remand the cause to the commissioner for action in accordance with the court decree.

Sec. 309. Duties of a witness. Every person subpoenaed to appear at any hearing or investigation held by the commissioner or by his authority is required to obey the subpoena, testify truthfully, conduct himself with

decorum and do nothing that might in any way obstruct the purpose of the hearing. No person shall be excused from attending and testifying in obedience to a subpoena issued hereunder on the ground that the proper witness fee was not paid or tendered, unless the witness shall have made demand for such payment as a condition precedent to attending such hearing or investigation and unless such demand shall not have been complied with. Witnesses shall be entitled to the same fees and allowances as witnesses in the superior court; provided, however, that no insurer, insurance agent, insurance broker or other person subject to the provisions of this chapter, whose conduct, condition or practices are being investigated, and no officer, director or employee of any such person shall be entitled to witness or mileage fees.

Sec. 310. Immunity of a witness. If any person shall ask to be excused from attending and testifying or from producing any writings, at a hearing or investigation conducted pursuant to the provisions of this chapter or in any cause or proceeding instituted by the commissioner, on the ground that the testimony or evidence may tend to incriminate him, and shall notwithstanding be directed by any authorized person who is conducting the inquiry to give such testimony or produce such evidence, he must comply with such direction, but he shall not thereafter be prosecuted for or on account of any transaction, matter or thing concerning which he may testify or give evidence pursuant thereto; and no testimony so given or evidence so produced shall be received against him in any criminal investigation or proceeding; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying. The testimony or evidence so given or produced shall be admissible against him in any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred or to be conferred by the commissioner under the provisions of this or any other chapter of the revised statutes. Any such person may execute, sign, swear to and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such person or his evidence in relation to such transaction, matter or thing may be produced at a hearing or investigation, and the person so testifying or so producing evidence shall not be entitled to any immunity or privilege on account of any testimony or evidence he may so give or produce.

Sec. 311. Commissioner's orders, how enforced. Whoever, without reasonable excuse, fails to appear when summoned as a witness, or refuses

to answer a lawful and pertinent question, or refuses to produce a book or writing when directed to do so by the person lawfully conducting a hearing or investigation, or deports himself in a disrespectful or disorderly manner at such inquiry, or obstructs the proceedings by any means, whether or not he be in the presence of the person lawfully conducting the inquiry, or wilfully neglects or refuses to obey any lawful order of the person conducting the inquiry is guilty of contempt and may be dealt with as follows: the commisioner, or other person lawfully conducting the inquiry, may address to a justice of the supreme judicial court or the superior court a petition, setting forth under oath the facts constituting the contempt and asking for an order returnable in not less than 2 nor more than 5 days, directing the alleged contemner to show cause before the justice who signed the order, or before any other justice of the supreme judicial court or superior court to whom the order may be made returnable, why he should not be committed to jail; upon the return of such order, the justice before whom the matter shall come on for hearing shall examine under oath the alleged contemner and the alleged contemner shall be given an opportunity to be heard; and if the justice shall determine that the respondent has committed any alleged contempt, the justice may forthwith commit the offender to jail, there to remain until he submits to do the act which he was required to do, or is discharged according to law.'