

MAINE STATE LEGISLATURE

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**STATE OF MAINE
115TH LEGISLATURE
FIRST REGULAR SESSION**

Final Report

**PUBLIC ADVOCATE FOR
INSURANCE STUDY**

**Staff Report
to the**

**Joint Standing Committee on
Banking and Insurance**

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EXECUTIVE SUMMARY

This report is the result of a staff study by the Office of Policy and Legal Analysis examining the establishment of a public advocate for insurance to represent the public interest in proceedings with regard to all lines of insurance. The study and report were drafted by PL 1989, c. 615.

Maine law regulates the conduct of the business of insurance in Title 24-A of the Maine Revised Statutes Annotated. Title 24 governs nonprofit hospital and medical service organizations. Various provisions of current law are designed to protect the interests of consumers of insurance. Rates for property and casualty, surety and title insurance are governed by Title 24-A, Chapter 25 and are subject to the requirement that they not be excessive, inadequate or unfairly discriminatory.

Workers' compensation insurance rates are subject to the workers' compensation rate subchapter and then to the general rate subchapter of chapter 25. Maximum rates require the approval, modification or disapproval of the Superintendent of Insurance. Section 2319 provides for participation in the rate determination process by the Office of the Public Advocate. Public Advocate involvement is directed to representation of the interests of insureds and policyholders in the rate filings and also in rulemaking and proceedings regarding the termination of license authority, withdrawal plans, reasonableness and adequacy of service or rate or insurer's license authority.

Insurance contracts are governed by Title 24-A, Chapter 27 of the Maine Revised Statutes Annotated. The insurance contract and all other forms must be filed before use with the Bureau of Insurance. Unless the Superintendent of Insurance disapproves a form by order, the form may be used 30 days after filing. Section 2413 lists the grounds for disapproval which range from policies containing a misleading title to policies yielding a loss ratio standard below the statutory standard for the particular type of renewability applicable to the policy.

Unfair or deceptive trade practices in the insurance industry are detailed in Title 24-A, Chapter 23, of the Maine Revised Statutes Annotated. Prohibited acts fall within the overall category of engaging in any trade practice defined as an unfair method of competition or an unfair or deceptive act or practice. The list includes false financial statements, illegal dealing in premiums and insurer ownership of a cemetery among many others.

Maine Revised Statutes Annotated, Title 24-A governs health insurance contracts and policies while Title 24 governs nonprofit hospital and medical service organizations. Rates must not be excessive, inadequate or unfairly discriminatory. Forms are subject to "file and use" requirements. The Department of the Attorney General Consumer and Antitrust Division participates in Title 24 rate proceedings regarding Blue Cross/Blue Shield individual policy rates.

The study describes the public or consumer advocate activity in Maine and 11 other states. Florida's consumer advocate is within the Department of Insurance and participates in health, automobile and workers' compensation matters. Louisiana has an Insurance Rating Commission active in workers' compensation and property and casualty insurance rates. Maine utilizes a Public Advocate in utility matters and workers' compensation insurance rates and the Attorney General in individual Blue Cross/Blue Shield rate cases and operates a consumer complaint division within the Bureau of Insurance. Maryland's Department of Insurance Division of Consumer Affairs provides information to consumers and insurers and an active complaint resolution service. Nevada's Department of Commerce Division of Insurance contains an unfunded consumer advocate but is active in providing information to the Legislature, the Governor and the public. The independent Department of the Public Advocate of New Jersey includes rate counsel with a broad mandate to represent the public. Public interest advocacy has been limited to landlord-tenant and zoning matters. North Carolina and Oklahoma provide for consumer representation in utility and insurance rate proceedings through the Attorney General. Oregon and South Carolina have consumer advocates. Oregon's consumer advocate participates in health and auto insurance issues while a separate ombudsman handles workers' compensation issues. South Carolina's consumer advocate participates in utility and insurance agency proceedings. The Texas Consumer Advocate is an independent agency representing the public regarding insurance rates, rules and forms. The Attorney General of Virginia represents the public in all lines of insurance in ratemaking, rulemaking, data acquisition and the monitoring of legislation.

The last section of the report presents public advocate and consumer protection options for legislation in Maine. The possibilities include a state commission or department of the public advocate, expansion of the present Office of the Public Advocate, creation of a public advocate's office as a division within the Bureau of Insurance and expansion of the responsibilities of the Consumer and Antitrust Division of the Office of the Attorney General. The report goes on to list consumer protection and public interest education programs which could be instituted by state agencies, including consumer assistance, publication of rate and policy term information, research functions and public notice and hearings of changes in rates and policy terms of coverage. The report ends with a comparable list of consumer protection and public interest education programs which could be offered through insurance companies in conjunction with or independently of a new or expanded Office of the Public Advocate.

I. Introduction

Public Law 1989, chapter 615, An Act to Make Changes in the Workers' Compensation System, in Section A-56, directs the Office of Policy and Legal Analysis to study the establishment of a public advocate for insurance to represent the public interest in proceedings with regard to all lines to insurance. The provision requires the presentation of a report containing background information and options for legislative action to the Joint Standing Committee on Banking and Insurance no later than November 1, 1991.

This report is the result of the staff study by the Office of Policy and Legal Analysis. It will discuss legislation introduced during the 115th Legislature to establish a consumer advocate for insurance and during the 114th Legislature to authorize the Public Advocate to participate in property and casualty insurance rate proceedings. The study will describe provisions of Maine law relating to consumer protection and the role of the Department of the Attorney General and Office of the Public Advocate. The roles of public or consumer advocates in insurance matters in Maine and eleven other states will be presented. The location of each public or consumer advocate office within state government structure will be given. Public Advocate and consumer protection options will be outlined in the closing section of the study.

II. LD 847, 115th Legislature

During the First Regular Session of the 115th Legislature, the Joint Standing Committee on Banking and Insurance held a public hearing and one work session on Legislative Document 847 (hereafter referred to as LD 847). LD 847, An Act to Establish a Consumer Advocate for Insurance, proposes to establish the Office of Consumer Advocate for Insurance as an independent office within the Department of the Attorney General. The consumer advocate for insurance would represent the interests of consumers in property and casualty insurance matters and would be funded through assessments on property and casualty insurers in proportion to their direct gross premiums written in the State.

At the public hearing on April 9, 1991, sponsor Representative Anne Rand, co-sponsor Representative Elizabeth Mitchell and six other interested people spoke in support of the bill. Commissioner Susan Collins, of the Department of Professional and Financial Regulation, and six other interested people spoke against the bill. John Dodge, counsel to the Maine Public Advocate, testified neither for nor against the bill and offered the committee the assistance of the Office of Public Advocate.

The Office of Fiscal and Program Review provided fiscal analysis for LD 847. The estimated increases in revenues of \$343,635 for Fiscal Year 1992 and \$441,235 for Fiscal Year 1993 were matched by increases in allocations to the Department of the Attorney General and Department of Professional and Financial Regulation. The allocations are estimated to cover costs of the offices, correspondence and 2 staff persons for the Department of the Attorney General and 4 staff persons for the Department of Professional and Financial Regulation. The Office of Fiscal and Program Review suggested that the bill be amended to add a provision allowing the Bureau of Insurance to increase its assessment of insurers to increase the dedicated revenues to pay for the allocation and to add an allocation section.

Issues that were raised during the public hearing on LD 847 include the following:

1. Is there is a problem to be addressed? What is it?
2. What would be the responsibilities of a consumer advocate for insurance?
3. Should/could/does the Bureau of Insurance act as an advocate for the consumer in insurance matters? The superintendent?
4. What would be the likely effect of a consumer advocate on the cost of insurance?
5. What would be the likely effect of a consumer advocate on competition within the industry?
6. What is the best way to fund a consumer advocate? General Fund? Dedicated funds? Through an assessment?
7. What would be the cost of providing a consumer advocate? Would technical staff be needed? Would there be additional staff needed for the Bureau of Insurance?
8. What has been the experience of other states with consumer advocates (Connecticut, New Jersey and South Carolina)?

LD 847 was carried over to the Second Regular Session of the 115th Legislature.

III. LD 625, 114th Legislature

The 114th Legislature considered a bill to authorize the Public Advocate to participate in any property and casualty insurance rate proceeding. Legislative Document 625 (hereafter referred to as LD 625), An Act to Increase the Office of the Public Advocate's Involvement in

Insurance Rating, would have authorized the Public Advocate to initiate proceedings upon determining that a discontinuance or change in a service or rate for a product or service is in the public interest. Funding for LD 625 would have been provided through an assessment on each insurance company, rating organization and advisory organization in the proceeding. LD 625 was granted a leave to withdraw by the Banking and Insurance Committee.

IV. Maine Law

Maine law establishes the Bureau of Insurance to regulate the insurance industry and to enforce the provisions of Title 24 and Title 24-A of the Maine Revised Statutes Annotated. Within both titles are provisions which may be used to further the interests of the public and in particular the interests of consumers of insurance. Title 24 regulates nonprofit hospital and medical service organizations, which include Blue Cross Blue Shield of Maine. Title 24-A regulates the insurance industry. Title 24-A, section 200 establishes the Insurance Bureau and section 201 designates the Superintendent of Insurance as head of the Bureau of Insurance. Section 211 states that the superintendent shall enforce the provisions of and execute the duties imposed by this Title.

A. Rates

Title 24-A, chapter 25, the rating chapter applies to property and casualty, surety and title insurance. It contains the directive in subchapter I, section 2303, that rates shall not be excessive, inadequate or unfairly discriminatory and lists eight factors to be given consideration in determining rates. Section 2304 and section 2304-A outline the procedures for these rate filings. Rates are set by a "file and use" system in which proposed rates are filed prior to use. If there is no objection by the Superintendent of Insurance, the rates go into effect. If the superintendent objects, a hearing is held and rates are then set by order of the superintendent.

Section 2319 provides a procedure for any insured aggrieved with respect to any filing, rate, expense or premium level to apply to the Superintendent of Insurance for a hearing. The appeal, based upon the assertion that the filing, rate, expense or premium is unjust or unreasonable, is reviewed by the superintendent and may result in an order that the filing, rate, expense or premium be changed, replaced or determined to be no longer effective.

B. Workers' Compensation

Workers' compensation insurance is first subject to the requirements of Chapter 25, subchapter II-A, Workers' Compensation Rates then to

subchapter I described above. Maximum workers' compensation rates require approval, modification or disapproval by the Superintendent of Insurance. Lower rates may be used but must be filed within 5 days of commencing use. Sections 2362 and 2363 detail the procedures for determining the rates for workers' compensation insurance.

Section 2319 provides for Public Advocate participation as an aggrieved party upon the assertion by the Public Advocate that the filing, rate, expense or premium is unjust and unreasonable. Section 2363 contains the authority for participation of the Public Advocate. Section 2374 declares that the Public Advocate shall represent the interests of insureds and policyholders regarding the following matters:

1. Workers' compensation insurance rate filings in the voluntary, and residual markets;
2. Rulemakings; and
3. Proceedings regarding the termination of license authority, withdrawal plans, reasonableness and adequacy of service or rate or insurer's license authority.

C. The Insurance Contract

Title 24-A, chapter 27 regulates the insurance contract, providing in section 2412 that forms must be filed with and approved by the Superintendent of Insurance. Insurance forms subject to the approval requirement are all basic insurance policy and annuity contract forms, required application forms which are intended to be part of the policy or contract, printed riders and endorsement forms and forms of renewal certificates. The process allows new forms to be used 30 days after filing unless the superintendent disapproves by order. Section 2413 lists as grounds for disapproval the following:

1. Violating or being in noncompliance with the Insurance Code;
2. Containing or incorporating any inconsistent, ambiguous or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed;
3. Containing a misleading title, heading or provision;
4. As to an individual health insurance policy, containing benefits unreasonable in relation to the premium charged;
5. As to any health insurance contract, containing any unjust, unfair or inequitable provision;
6. As to a life or health insurance policy, containing a provision which encourages misrepresentation;

7. As to a Medicare supplement policy or contract, yielding a return of aggregate benefits compared to aggregate premiums that is less than 65% for individual policies and 75% for group policies; and
8. As to an individual specific disease health insurance policy, contract or rider, yielding a loss ratio standard below the statutory standard for each renewal type.

D. Trade Practices and Frauds

Title 24-A, chapter 23, Trade Practices and Frauds, defines and prohibits unfair or deceptive trade practices in the insurance industry. Section 2152 prohibits people from engaging in any trade practice defined as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. In additional sections the chapter prohibits the following:

1. Violation of life insurance cost disclosure rules;
2. Misrepresentation of policy terms, benefits, advantages, dividends, surplus, financial condition or legal reserve system or of the insurer or name or title of the policy;
3. Misrepresentation of the business of insurance or person conducting the business;
4. Misrepresentation or incomplete comparisons to induce action by a policyholder with regard to the policy;
5. False financial statements;
6. Defamation of an insurer;
7. Boycotting, coercing or intimidating or entering into an agreement to boycott, coerce or intimidate for unreasonable restraint or monopoly of the business of insurance;
8. Unfair discrimination in insurance;
9. Paying a rebate of premium not stated in the contract;
10. Paying a dividend based upon renewal, except for in the first year of life insurance policies;
11. Accepting an illegal rebate or inducement;
12. Issuing stock, capital, shares or certificates;
13. As to property and casualty insurance, except accident, life and health insurance, converting to direct billing absent 90 days notice to its resident agents;

14. Repairing a motor vehicle for compensation after doing the appraisal for the insurer;
15. Free competition in the appraisal or repair of motor vehicle glass;
16. Unfair claims practices;
17. Unfair practice in financing real or personal property or lending money on the security of real or personal property;
18. Forming a fictitious group, association, corporation or organization;
19. Illegal interlocking ownership or management;
20. Illegal dealing in premiums or excess charges for insurance;
21. Illegal calculation of insurance rates for public works employees;
22. Insurer ownership or operation of a funeral establishment or cemetery or contract with any such establishment;
23. False or fraudulent statements in an application for insurance, to obtain money or benefit;
24. Unfair and coercive insurance requirements regarding publicly-owned buildings.

E. Health Insurance

Health insurance contracts are subject to Title 24-A. Chapter 33, sections 2736, 2736-A and 2736-B establish procedures for individual health insurance policy rates through "file and use" procedures. Filings must be made 60 days prior to use and must meet the requirement of not being excessive, inadequate or unfairly discriminatory. The Superintendent of Insurance is directed to hold a hearing if it appears that a filing does not meet the requirements of the section or if it violates the provisions of Chapter 23, Trade Practices and Frauds.

Group and blanket health insurance are governed by Title 24-A, chapter 35. Rating practices, coverage of family members and many other aspects of the policy are governed by this chapter. Rates do not require approval from the Superintendent of Insurance but must pursuant to section 2839, be filed for informational purposes prior to use.

Nonprofit hospital and medical service organizations are regulated by Title 24, Maine Revised Statutes Annotated, chapter 19. Section 2317 makes certain provisions of Title 24-A applicable to nonprofit hospital and medical service corporations, to the extent provided for by rules and

regulations issued by the Superintendent of Insurance. Rule Chapter 200 specifies that the provisions of section 2317 are applicable to the extent not inconsistent with Title 24, chapter 19. The provisions are: Title 24-A chapter 1, General Definitions and Provisions; chapter 3, the Insurance Superintendent; chapter 23, Trade Practices and Frauds; chapter 49, Continuity and Management; and chapter 57, Delinquent insurers; rehabilitation and liquidation. Section 2321 requires that nonprofit hospital and medical service organizations file with the superintendent every rate and rating formula 60 days prior to its use. The rates must not be excessive, inadequate or unfairly discriminatory. If the rates appear not to satisfy the requirements of Section 2321, or if the filing does not satisfy Title 24-A, chapter 23, Trade Practices and Frauds, the superintendent shall hold a hearing. The Department of the Attorney General Consumer and Antitrust Division participates in these rate hearings on behalf of the public interest and may appeal, as any party to a hearing may, a rate decision by the superintendent.

Group health care contracts issued by nonprofit hospital and medical service organizations are required by Title 24, section 2327 to be filed with the Superintendent of Insurance prior to use, but do not require the approval of the superintendent.

V. Public Advocates in Other States

Public or consumer advocates in the field of insurance regulation are active in the states of Florida, Louisiana, Maine, Maryland, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, South Carolina, Texas and Virginia. The chart that follows shows each state's consumer advocate, the advocate's agency or department, the subject matter of the advocate's work, the amount and source of the advocate's funding, the size of the advocate's staff and how the consumer advocate is appointed. Some consumer advocates are within independent commissions or agencies, some are in the offices of the Attorneys General, and some are in the insurance regulatory agencies. The subject matter of the consumer advocate's work ranges from workers' compensation insurance only to all insurance except workers' compensation; from health insurance only to all insurance except health insurance; from all lines to mostly automobile insurance.

STATE	AGENCY TYPE W/I WHAT DEPT?	AGENCY HEAD	APPOINTMENT STATUS	SIZE OF STAFF	BUDGET	HOW FINANCED?	TYPES OF INSURANCE	INVOLVED IN RATE MAKING?	OTHER ACTIVITIES	OTHER COMMENTS
Florida	Consumer Advocate Office w/i Dept. of Insurance	Consumer Advocate	Appt. by Commissioner of Insurance	2	Absorbed w/i Dept. of Insurance	Assessment	Primarily health, auto and WC No utilities	Yes	-Look for systemic problems -Recommend legislation	May eventually become a separate council
Louisiana	Insurance Rating Commission and Rate Regulation w/i Dept. of Insurance	Director of Commission	Appt. by the Commission w/ approval of the Governor	50	\$2M	Assessment	Property and Casualty and WC No health No utilities	Yes		Commission is made up of seven members, 6 appt. by the governor, and the Commissioner of Insurance. The 6 appointed people are not involved in insurance outside of their Commission work. Their purpose is to promote the public welfare.
Maine	Public Advocate	Public Advocate	Appt. by Governor	6	\$512,523	Assessment	Utilities, WC for rates only	Yes		
	Consumer and Anti- trust Division of the Office of the Attorney General	Division Chief Consumer and Antitrust Division	Appt. by Attorney General	2 staff attorneys, part-time	Absorbed w/i AG	General Fund BCBS pays for AG's office experts	Individual BC/BS rates	Yes		
Maryland	Division of Consumer Affairs w/i Dept. of Insurance	Consumer Advocate	Appt. by Commissioner of Insurance	3 Also receive assistance from Insurance staff	Absorbed w/i Dept. of Insurance	General Fund	All No utility	Yes	-Public information to insurers and consumers -Assist consumers with coverage, underwriting, rating, claims and procedures	
Nevada	Consumer Services section w/i Division of Insurance	Commissioner of Insurance	Appt. by Director of Commerce	6 w/i Consumer Services Section	Absorbed w/i Division of Insurance	General Fund	All except WC No utilities	Yes	-Consumer services section -Public education and information	The position of Consumer Advocate has been approved but not funded

STATE	AGENCY TYPE W/I WHAT DEPT?	AGENCY HEAD	APPOINTMENT STATUS	SIZE OF STAFF	BUDGET	HOW FINANCED?	TYPES OF INSURANCE	INVOLVED IN RATE MAKING?	OTHER ACTIVITIES	OTHER COMMENTS
New Jersey	Department of the Public Advocate	Public Advocate (Commissioner)	Appt. by Governor	?	?	Assessment	Public Interest Advoc. handles auto Have jurisdiction to get involved in other areas but have not as often Rate Counsel handles utilities	Yes Hospital rate setting also	-Involved in development of regulations -Participate in Certificate of Need proceedings	This department includes: -Public Defenders -Rate Counsel -Public Interest Advocate -Mental Health Advocate -Citizen Complaints -Advocate for Developmentally Disabled
North Carolina	Utilities & Insurance Division w/i Attorney General's Office	Special Deputy Attorney General	Appt. by AG	19	Absorbed w/i AG	General Fund	All Including utilities	Yes		Attorneys from Insurance Commission were recently transferred into the AG's office as a cost saving measure. The extent of the office's involvement in insurance matters is still undetermined.
Oklahoma	Attorney General's Office performs consumer advocacy duties			3 part-time people - 2 utility 1 WC	Absorbed w/i AG	General Fund	WC Including utilities	Yes		
Oregon	Consumer Advocate Section w/i Department of Insurance and Finance	Consumer Advocate	Appt. by Director of Insurance and Finance	3	\$170,000	General Fund	Health No utilities	Yes	-Public education -Monitor legislation	Within the Dept. of Insur. and Finance there is a WC Ombudsman who reports to the Director of Insurance & Finance

STATE	AGENCY TYPE W/I WHAT DEPT?	AGENCY HEAD	APPOINTMENT STATUS	SIZE OF STAFF	BUDGET	HOW FINANCED?	TYPES OF INSURANCE	INVOLVED IN RATE MAKING?	OTHER ACTIVITIES	OTHER COMMENTS
South Carolina	Division of Consumer Advocacy w/i Dept. of Consumer Affairs	Consumer Advocate	Appt. by Comm. of Consumer Affairs	9	Total Utility and Insurance-\$600,000	General Fund	All insurance except group health Including utilities	Yes	-Regulate and license Continuing Care Retirement Communities -Monitor legislation -Oversee hospital expansions & CON applications	
Texas	Independent Agency Office of the Public Insurance Council			20	\$1.1M	Assessment	All No utilities	Yes	-Petition for rule changes -Compile data -Assess impact of rates, rules and forms	
Virginia	Insurance & Utilities Regulatory Section w/i Attorney General's Office	Chief of Insurance & Utilities Regulatory Section	Appt. by AG	6 This includes both utilities and insurance	Absorbed w/i AG	General Fund	All Including utilities	Yes	-Monitor legislation and rulemaking -Compile data -Involvement in administrative law hearings	

Florida

Florida's Consumer Advocate Office is located within the Department of Insurance. The advocate is appointed by the Commissioner of Insurance and has a staff of 2. The office is financed as part of the department with general fund monies. Revenues for the general fund come from a premium tax on insurers. The advocate is active in health, automobile and workers' compensation matters. The issues which concern the advocate include rate setting, forms, systemic problems and legislative recommendations.

Louisiana

Louisiana has an Insurance Rating Commission made up of seven members, the Commissioner of Insurance and 6 other members who are public representatives appointed by the governor. The commission is a budget unit of the state, is funded by an assessment on insurers, and has a budget of \$2,000,000 annually. The director of the commission is appointed by the commission with the approval of the Governor. The staff of 50 participates in property and casualty and workers' compensation insurance matters. In further protection of the public interest, Louisiana statutes grant to the Attorney General the right to represent the interest of the people of the state in all proceedings before the Insurance Rating Commission.

Maine

Maine's Public Advocate is active in representing the interests of the employers and policyholders in workers' compensation ratesetting proceedings before the Superintendent of Insurance and in utility matters before the Public Utilities Commission. The Public Advocate is appointed by the Governor and has a staff of 6 and an appropriation of \$512,523 annually. Assessments on insurers and utilities provide revenues to offset the appropriation.

The Consumer and Antitrust Division of the Department of the Attorney General represents the interests of the public in individual policy Blue Cross/Blue Shield ratesetting proceedings before the Superintendent of Insurance. The division is funded as part of the Department of the Attorney General through the General Fund and attorneys handle the Blue Cross/Blue Shield rate matters on a part-time basis. Blue Cross/Blue Shield pays for the expense of experts needed by the Office of the Attorney General in the rate proceeding.

Maryland

The Maryland Department of Insurance Division of Consumer Affairs is directed by the consumer advocate, who is appointed by the Commissioner of Insurance. The staff of 3 receives assistance from the staff of the department, which provides the funds from within its

general fund appropriation. The division handles issues related to all lines of insurance. The statutory purposes include providing information to the public and to insurers and assisting consumers with complaints against any person regulated by the insurance code.

Nevada

The Nevada Department of Commerce Division of Insurance includes a consumer section which is directed to act on behalf of consumers. The position of consumer advocate had been approved but had not been funded at the date of the writing of this report. In operation is a consumer services section at the Division of Insurance, which provides information to the legislature, the Governor and the public.

New Jersey

The Department of the Public Advocate is an independent agency in New Jersey. The department is directed by the Commissioner, who is also known as the Public Advocate, and who is appointed by the Governor. Funds are provided by an assessment on insurers. The department includes rate counsel, the public interest advocate, the mental health advocate, the public defenders, advocates for the developmentally disabled and a division of citizen complaints and dispute settlement. Rate counsel represents the public interest in proceedings before and appeals from any state department or agency regarding the fixing of a rate, toll, fare or charge for a product or service. Assessments against the business, industry or utility finance the rate counsel's expenses. Workers' compensation, utility, and automobile rates are the most common topics of involvement for rate counsel. Hospital rate setting may involve rate counsel. The Division of Public Interest Advocacy represents the public interest in administrative and court proceedings in which rate counsel is not involved, which has in the past included landlord-tenant and zoning matters.

North Carolina

North Carolina recently transferred its attorneys who had been within the Insurance Commission to the Office of the Attorney General. Representation of the public interest in utility and insurance matters, including rate setting, will be done by the Attorney General's staff, funded by the general fund appropriation. The extent of the office's involvement will become apparent as time passes.

Oklahoma

Consumer advocacy work in insurance matters is done by the Attorney General's Office in Oklahoma. Participation in insurance matters by the Attorney General may include ratemaking and

consumer protection in workers' compensation, utilities, and property and casualty insurance. The purpose of the office is to represent and protect the collective interests of insurance consumers and utility consumers in rate-related and other proceedings. 3 part-time positions, 2 of which are in utility work and 1 of which is in workers' compensation, are funded through the office's general fund appropriation.

Oregon

The Oregon Consumer Advocate is appointed by the Director of Insurance and Finance as the position is within the Department of Insurance and Finance. With funding provided by the General Fund of \$170,000 per year and a staff of 3, the consumer advocate is active in health and auto insurance issues. There is a separate ombudsman within the department for workers' compensation issues. The consumer advocate serves insurance consumers through education, legislation and representation before government agencies.

South Carolina

The Division of Consumer Advocacy of the South Carolina Department of Consumer Affairs provides legal representation of the consumer's interests before regulatory agencies which fix rates or prices for consumer products or services, enact regulations or establish policies. The consumer advocate may be the same person who is the Administrator of Consumer Affairs or may be a person appointed by the Administrator. With a staff of 9 and general fund monies, the Division of Consumer Advocacy participates in utility and insurance agency proceedings. In the insurance field, the division is involved in property and casualty, medical professional liability and workers' compensation ratemaking cases and reviews legislation.

Texas

The Texas Consumer Advocate moved in 1991 from the State Board of Insurance to an independent agency, the Office of the Public Insurance Counsel. The office has a staff of 20 and a budget of \$1,100,000, provided through an assessment. It is active in representing the public interest in all types of insurance matters, appearing before agencies on rates, rules and forms. A separate office represents the public interest on utility matters.

Virginia

The interests of the public in insurance matters are represented in Virginia by the Insurance and Utilities Regulatory Section of the Attorney General's Office. With a staff of 6 for utilities and insurance and general fund monies as part of the budget of the Attorney General's Office, the office participates in matters regarding all lines of insurance. The office is active on ratemaking, rulemaking, data acquisition and monitoring legislation.

Summary of Public Advocate Options

The statutes of the various states give some indication of the range of duties and responsibilities which may be given to a public advocate or consumer advocate for insurance. Possible duties could include dissemination of public information, submitting or commenting on legislation and participation in administrative and court proceedings. The subject matter over which state statutes grant jurisdiction to the public or consumer advocate varies from health insurance only to workers' compensation insurance only, and from everything except workers' compensation insurance, to all lines of insurance.

Placement of the public advocate or consumer advocate for insurance within the structure of state government has an impact upon the performance of the designated duties of the office. A public advocate who is part of the state department that regulates insurance has access to the expertise of the department, has ready access to the information and staff within the department but is less independent professionally from the department and ultimately from the governor.

A public advocate who is within the office of the attorney general has access to the greater legal expertise of the office but may be subject to the pressures affecting the attorney general. The method of choosing the attorney general may have an impact upon the professional independence of the public advocate who works within the attorney general's office.

An public advocate operating in an independent office avoids the external influence which may exist in the department that regulates insurance and the office of the attorney general and is free of the stresses of the internal re-ordering of priorities within the larger department or office but does not have access to the subject matter expertise of the department or the legal expertise of the office of the attorney general. An independent office of the public advocate has a higher degree of independence depending on the method used to choose the public advocate. The most independent public advocate's office is the one in which the public advocate is appointed by the governor for a term of years, subject to the advice and consent of the legislature.

VI. Public Advocate and Consumer Protection Options for Legislation

Representation of the public interest in insurance matters may be accomplished through formal or informal means and may extend to all lines of insurance or may be limited to specific lines. One option for the Legislature is to make no changes in the law preserving representation of the public interest as it is now in Maine. This would continue the duty of the Office of the Public Advocate to represent the interests of employers and policyholders in workers' compensation matters. Following is a list of options drawn from other states for the establishment of a public advocate for insurance matters and other actions to accomplish the representation and protection of the interests of the public.

- A. A state commission or department of the public advocate.
- B. Expansion of Maine's present Office of the Public Advocate to include all or specific lines of insurance and issues other than ratesetting and utilities.
- C. Creation of a public advocate's office as a division within the Bureau of Insurance to represent the public interest in all or specific lines of insurance.
- D. Expansion of the responsibilities of the Consumer and Antitrust Division of the Office of the Attorney General to represent the public interest in all or specific lines of insurance.
- E. Consumer protection and public interest education programs through the new commission or department, Office of the Public Advocate, Bureau of Insurance or Office of the Attorney General, which could include requirements such as:
 - 1. Requiring the agency to maintain "800" number telephone lines for consumer assistance and information;
 - 2. Requiring the agency to undertake a public education program, including publication of insurance rates and policy terms, provision of expanded basic insurance consumer information, required analysis of the impact of all legislation and rules on the interests of the public and publication of complaint information by insurance company name.
 - 3. Requiring the establishment of a research unit to analyze the public interest in insurance matters to report to appropriate entities and to participate in the legislative process.
 - 4. Requiring notice to the public and to policyholders and a public hearing prior to proposed changes in rates and policy terms of coverage.
- F. Consumer protection and public interest education programs through the insurance companies. These programs could be instituted in conjunction with a new or expanded Office of the Public Advocate or they could be instituted independent of a public advocate entity. The public interest education programs could include provisions such as:
 - 1. Requiring the insurer to maintain "800" number telephone lines for consumer assistance and information.
 - 2. Requiring the insurer to undertake a public education program, including publication of insurance rates and policy terms and provision of expanded basic insurance consumer information.

3. Requiring the issuance of standard policies in certain lines of insurance and the publication of the rates for such policies.
4. Requiring notice to the public and to policyholders prior to proposed changes in rates and policy terms of coverage.

1991 Public Law 615

regarding their claims with the commission. Any person or entity found by the commission to have violated this section is subject to the remedy provision of the Maine Human Rights Act, Title 5, sections 4613 and 4614.

Sec. A-54. 39 MRSA §192, first ¶, as amended by PL 1977, c. 696, §415, is further amended to read:

On request of a party or on its own motion the commission may in occupational disease cases appoint one or more competent and impartial physicians, ~~their reasonable fees and expenses to be fixed and paid by the commission.~~ Upon order of the commission, the fees and expenses of the health care provider or health care providers must be paid by the employer. These appointees shall examine the employee and inspect the industrial conditions under which he the employee has worked in order to determine the nature, extent and probable duration of ~~his~~ the occupational disease, the likelihood of its origin in the industry and the date of incapacity. Section 65 of the Workers' Compensation Act ~~shall apply~~ applies to the filing and subsequent proceedings on their report, and to examinations and treatments by the employer.

Sec. A-55. Report. The Director of the Maine Human Rights Commission and the Chair of the Workers' Compensation Commission shall consult and issue a joint report by October 1, 1992 to the Joint Standing Committee on Banking and Insurance and the Joint Standing Committee on Labor on unlawful discrimination against injured employees, the need for coordination between the Maine Human Rights Commission and the Workers' Compensation Commission and any legislation and agency rules needed to protect injured employees from unlawful discrimination.

Sec. A-56. Public advocate for insurance study. The Office of Policy and Legal Analysis shall study the establishment of a public advocate for insurance to represent the public interest in proceedings with regard to all lines of insurance. A report containing background information and options for legislative action must be presented to the Joint Standing Committee on Banking and Insurance for the Second Regular Session of the 115th Legislature no later than November 1, 1991.

Sec. A-57. Allocation. The following funds are allocated from the Safety Education and Training Fund to carry out the purposes of this Act.

1991-92

1992-93

LABOR, DEPARTMENT OF



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 847

H.P. 596

House of Representatives, February 26, 1991

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

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative RAND of Portland.

Cosponsored by Senator KANY of Kennebec, Representative PARADIS of Frenchville and Representative MITCHELL of Vassalboro.

STATE OF MAINE

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

An Act to Establish a Consumer Advocate for Insurance.

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

24-A MRSA c. 77 is enacted to read:

CHAPTER 77

OFFICE OF CONSUMER ADVOCATE FOR INSURANCE

§6401. Definitions

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

1. Consumer. "Consumer" means any person who is a named insured, insured, or beneficiary of a policy of property and casualty insurance or any other person who may be affected by the exercise of authority or failure of exercise of authority over property and casualty insurance matters by the superintendent.

2. Consumer advocate. "Consumer advocate" means the Consumer Advocate for Insurance.

§6402. Office of Consumer Advocate for Insurance

The Office of Consumer Advocate for Insurance is established as an independent office within the Department of the Attorney General to represent the interests of consumers in property and casualty insurance matters.

§6403. Consumer Advocate for Insurance

The Office of Consumer Advocate for Insurance is administered by the Consumer Advocate for Insurance.

1. Appointment. The Consumer Advocate for Insurance is appointed by the Attorney General subject to review by the joint standing committee of the Legislature having jurisdiction over insurance matters and to confirmation by the Legislature, and shall serve at the pleasure of the Attorney General. Any vacancy must be filled by similar appointment.

2. Qualifications. The consumer advocate must be qualified by reason of training, experience and attainment to represent the interests of consumers with regard to property and casualty insurance. In addition to the limitations of Title 5, section 18, the consumer advocate may not have any official or professional connection or relation with, or hold any stock or securities in any insurance company operating within this State, render any professional service for or against such insurance company or be a member of a firm which renders any such service.

2 3. Duties. The duties and responsibilities of the consumer
3 advocate are to represent the interests of property and casualty
4 insurance consumers in connection with any property or casualty
5 insurance matter involving regulation by the superintendent. In
6 performing this responsibility the consumer advocate shall
7 consider the public interest, the resources available and the
8 effect of the proceeding on the interests of consumers. Specific
9 duties include, but are not limited to, the following.

10 A. The consumer advocate may make recommendations necessary
11 or desirable to protect the interests of consumers.

12 B. When determined necessary by the consumer advocate, the
13 consumer advocate may initiate, participate in or intervene
14 in any proceeding before the superintendent, any department,
15 agency or court.

16 When the consumer advocate initiates, participates or
17 intervenes in any proceeding, the consumer advocate shall
18 file in the proceeding and shall issue to the public a
19 statement of the interests of the consumers being protected.

20 C. The consumer advocate may represent the interests of
21 consumers presented for consideration, upon petition of 25
22 registered voters who are consumers of a property and
23 casualty insurer subject to regulation by the
24 superintendent. The consumer advocate shall notify the
25 principal sponsors of the petition, within a reasonable time
26 after receipt of the petition, of the action to be taken by
27 the consumer advocate or of the reasons for inaction.

28 D. Insurers shall provide copies to the consumer advocate
29 of all filings, documents or other correspondence filed with
30 the superintendent unless notified by the consumer advocate
31 that they are not required. Insurers shall provide all
32 other nonprivileged information requested by the consumer
33 advocate and reasonably related to the performance of the
34 duties of the consumer advocate.

35 E. The consumer advocate shall prepare and submit an annual
36 report of the activities of the Office of the Consumer
37 Advocate for Insurance to the Governor and to the joint
38 standing committee of the Legislature having jurisdiction
39 over insurance matters, by August 1st of each year, with
40 copies available upon request to all Legislators and to the
41 public.

2 §6404. Assessment for expense of maintaining Office of Consumer
4 Advocate for Insurance

6 1. Funding. The expense of operating the Office of Consumer
8 Advocate for Insurance must be assessed annually by the
10 superintendent against all property and casualty insurers
12 licensed to do business in this State in proportion to their
14 respective direct gross premiums written on property and casualty
 insurance business in this State during the year ending December
 31st immediately preceding the fiscal year for which the
 assessment is made. The assessment upon all insurers must be
 applied to the budget of the Department of the Attorney General
 for the fiscal year commencing July 1st.

16 2. Payment. Payment of the assessment must be made by June
18 1st. The superintendent shall deposit all payments made pursuant
20 to this section with the Treasurer of State for the sole purpose
 of paying the expenses of the Office of the Consumer Advocate for
 Insurance.

22 §6405. Duties of superintendent in property and casualty
24 insurance matters

26 1. Filings. The superintendent may not accept a document as
28 timely filed if a copy of the document is also required to be
 provided to the consumer advocate and the insurer has not
 indicated that a copy has been provided.

30 2. Additional duties. In dealing with any proposed action
32 that may substantially affect the interests of consumers,
34 including, but not limited to, a proposed change of rates and the
 adoption of rules, guidelines, orders, standards or final policy
 decisions, the superintendent shall:

36 A. Notify the consumer advocate and provide, free of charge,
38 copies of all related documents when notice of the proposed
40 action is given to the public or at a time fixed by
 agreement with the consumer advocate; and

42 B. Consistent with the other statutory responsibilities of
44 the superintendent, take action with due consideration to
 the interests of consumers.

46 §6406. Savings provision

48 1. Consumer rights. Nothing in this chapter in any way
50 limits the right of a consumer to bring proceedings before the
 superintendent or a court.

52 2. Public interest. Nothing in this chapter may be
 construed to impair the statutory authority or responsibility of

the superintendent to regulate insurers in the public interest.

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STATEMENT OF FACT

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This bill establishes the Office of Consumer Advocate for Insurance as an independent office within the Department of the Attorney General. The Consumer Advocate for Insurance has a duty to represent the interests of consumers in property and casualty insurance matters. The office is paid for by assessments against insurers in proportion to their respective direct gross premiums written on property and casualty insurance within the State during the year.

SELECTED STATE STATUTORY REFERENCES
ADVOCATE OFFICES

Louisiana	Louisiana Rating Commission	Louisiana Revised Statutes R.S. 22:1401
Maryland	Division of Consumer Affairs	Maryland Insurance Code Article 48A, §650
New Jersey	Dept. of the Public Advocate	New Jersey Statutes Chapter 27E
Oklahoma	Attorney General's Office	Oklahoma Statutes Title 74 §18b(u)
Oregon	Consumer Advocate Section	Oregon Revised Statutes 705.010
South Carolina	Div. of Consumer Services	S.C. Code of Laws 37-6-501
Texas	Public Insurance Council	Texas Insurance Code Article 1.35A
Virginia	Attorney General's Office Insurance and Utilities	Code of Virginia 38.2-1916.1