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

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

### **PART A**

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 A-1. 22 MRSA §1065**, as enacted by PL 2005, c. 628, §1, is repealed.

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

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

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

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

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

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

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

### **§ 227. Examination report**

The report of examination of those persons, partnerships, corporations or other business associations that are subject to examination by the superintendent as provided for in sections 221 and 222 ~~shall~~must, upon satisfaction of the requirements of section 226 and so long as no court of competent jurisdiction has stayed its publication, be filed in the bureau as a public record, except ~~for~~that any information relating to an individual insured or individual applicant for insurance, ~~which is deemed confidential.~~

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

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

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

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

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

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

**9. Modified policy form and rate filings.** A modified policy form and modified rate developed by a member insurer must be filed with the superintendent. A modified rate to be used in connection with an existing policy form that consists solely of a permissible surcharge not in excess of the maximum allowable cap contained in rules adopted under subsection 8 may be used by a member insurer immediately upon filing that modified rate with the superintendent. For any other modified filings, a modified policy form and modified rate must be filed with the superintendent not less than 30 days in advance of the stated effective date. A modified rate filing subject to the 30-day advance filing requirement must include any supplementary rating information to be used in conjunction with a rate and, to the extent available, sufficient supporting information to support a rate. A modified rate may not

be excessive, inadequate or unfairly discriminatory with respect to risks written through the program. A modified policy form may only be disapproved for the grounds specified in section 2413. All modified policy form and rate filings are confidential until effective or approved in accordance with applicable law.

**Sec. A-10. 24-A MRSA §2842, sub-§8**, as enacted by PL 1983, c. 527, §2, is amended to read:

**8. Confidentiality.** ~~The confidentiality of all alcoholism~~Alcoholism and drug treatment patient records shall be protectedare confidential.

## PART B

**Sec. B-1. 1 MRSA §401**, as repealed and replaced by PL 1975, c. 758, is amended by adding after the first paragraph a new paragraph to read:

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

## PART C

**Sec. C-1. 1 MRSA §403**, as amended by PL 2009, c. 240, §1, is repealed and the following enacted in its place:

### **§ 403. Meetings to be open to public; record of meetings**

**1. Proceedings open to public.** Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

**2. Record of public proceedings.** Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

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

**3. Audio or video recording.** An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

**4. Maintenance of record.** Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

**5. Validity of action.** The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

**6. Advisory bodies exempt from record requirements.** Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

## PART D

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

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

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

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

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

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

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

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

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;

- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the proposed exception is as narrowly tailored as possible; and
- I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

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

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

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

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

## 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.

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.