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STATE OF MAINE
DEPARTMENT OF
PROFESSIONAL & FINANCIAL REGULATION



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Commissioner

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Testimony of Joan Cohen, Commissioner
Department of Professional and Financial Regulation
In Opposition to L.D. 1919

An Act to Expand the Types of Convictions Eligible for Sealing Through a Post-Judgment Motion to Seal Criminal History Record Information

Senator Beebe-Center, Representative Hasenfus, and Members of the Committee, my name is Joan Cohen and I am the Commissioner for the Department of Professional and Financial Regulation (DPFR or the Department). Thank you for the opportunity to provide the Department's concerns with LD 1919.

The Department is an umbrella regulatory agency that includes the Bureaus of Insurance, Consumer Credit Protection, and Financial Institutions; the Offices of Securities and Professional and Occupational Regulation (OPOR); and five affiliated licensing boards, including the Boards of Medicine, Osteopathic Medicine, Nursing, Optometry, and Professional Engineers. Collectively, the Department's mission is to protect the public through effective professional licensing, financial regulation, and consumer protection.

The Department opposes LD 1919 because it could impair the ability of Department agencies and affiliated boards to conduct meaningful criminal background checks on individuals seeking licensure or renewal. Criminal history information is a critical tool that the Department uses to fulfill its public protection responsibilities and its obligations pursuant to various interstate licensing compacts. That criminal history review can reveal conduct that is highly relevant to an agency's or board's responsibility to impose appropriate safeguards, monitoring, or conditions on applicants or licensees to protect the public.

The Department recognizes that LD 1919 raises an important policy question: how to balance the goal of providing a fresh start to individuals following criminal convictions against the

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need to give regulators sufficient discretion to make informed decisions on the relevance of that past conduct to public protection. While the statutory balance is ultimately for policymakers to determine, the Department believes LD 1919, as drafted, tips the scale too far by limiting regulatory access to information essential to public safety and consumer protection.

Criminal history is not an automatic bar to licensure in Maine. Current Maine law (Title 5, Chapter 341) guides the use of criminal history in the context of license eligibility determinations. Importantly, Chapter 341 provides that a criminal conviction *shall not operate as an automatic bar to state licensure*. Per Maine law, a licensing board *may* take criminal history into account but *only if* the licensing agency determines that the applicant has not been sufficiently rehabilitated to warrant the public trust. *The applicant is always given the opportunity to prove rehabilitation.* We believe the current process of allowing the licensing boards the discretion to determine if an applicant is sufficiently rehabilitated is working well, as evidenced by the overwhelming majority of applicants becoming licensed despite past criminal history.

Similarly, the Maine Uniform Securities Act directs the securities administrator to consider whether to condition, limit or deny an application based on multiple factors, including Class D and E crimes involving fraud and dishonesty, but only if such action is “in the public interest.” 32 M.R.S. 16412. The vast majority of applications are approved, and no application is conditioned or denied without individualized consideration.

The Department appreciates that LD 1919 preserves the existing ability of criminal justice agencies to share sealed criminal history record information with Department agencies and affiliated boards pursuant to 15 M.R.S. § 2265. However, the bill could lead individuals with sealed convictions to mistakenly believe that they are not required to self -disclose their criminal history in response to inquiries from the Department’s agencies and boards. Additionally, while LD 1919 preserves the ability of DPFR regulatory agencies and licensing boards to access criminal history information pursuant to 15 M.R.S. § 2265, we are concerned that the breadth of bills seeking to amend criminal history access creates confusion about what DPFR regulatory agencies and licensing entities can access and what information other agencies, such as the Department of Public Safety, believe they are permitted to share.

LD 1919 would significantly expand the list of criminal convictions eligible for sealing through a post-judgment motion. In addition to certain drug offenses, the bill also would allow sealing of most Class D crimes, including:

- Repeated unlicensed practice offenses under 10 M.R.S. § 8003-C,
- Certain corrupt practices under Title 17-A, chapter 25,
- Offenses against public administration under Title 17-A, chapter 31, and
- Fraud offenses under Title 17-A, chapter 37.

A history of fraud or dishonesty is an important licensing consideration and public protection tool for all Department agencies and boards, but especially the financial regulatory agencies. The Bureau of Insurance, for example, takes into consideration crimes involving dishonesty (fraud, theft), and the entire record of those crimes when making licensing determinations for insurance industry professionals. The Bureau of Insurance also must have access to information regarding the criminal history of officers, directors, and ultimate controlling persons of Maine domiciled insurance companies as part of the initial insurance company licensing process and ongoing solvency monitoring. These insurance professionals have access to sensitive financial information and consumers rely on the judgement of these professionals to make important decisions with potentially large financial impacts on the lives of the consumers. The Insurance Code (Title 24-A) currently does not have a time limit for consideration of those crimes and the sealing of those records contemplated by this bill could allow a person with a history of fraud or dishonest conduct to gain a trusted position as a broker or agent or other insurance industry professional.

The Bureau of Insurance processes applications for both resident and non-resident insurance professionals. These applicants complete a uniform application utilized by most states, facilitating reciprocity in a field where many licensees hold licenses in multiple jurisdictions. This uniform application requires applicants to self-disclose criminal history. Similarly, the Office of Securities uses a uniform national application form for broker agents and investment adviser representatives that requires disclosure of all felony arrests, charges and convictions as well as dishonesty-related misdemeanors regardless of when the offense occurred.

Drug offenses can be an important indicator for a licensing board – especially when licensees have access to prescribing systems and controlled substances like physicians, pharmacists, dentists, nurses, and veterinarians. The bill includes as an “eligible criminal conviction” any conviction, regardless of class of the offense, for unlawful possession of a scheduled drug under Title 17-A, section 1107-A or former section 1107. For example, this could include possession of specific amounts of cocaine, methamphetamine, heroin and fentanyl. Sealing of these kinds of drug offenses presents great concern for these licensing boards.

If licensing boards cannot access criminal history it could also could put at risk Maine’s ability to comply with the requirements of national licensing compacts and, therefore, Maine’s ability to remain a member of those compacts. Licensing compacts require their member states to comply with certain uniform rules. For example, the Physician Associate (PA) Compact requires its member states to determine if Physician Associates have ever been convicted of a crime. The compacts to which Maine belongs which may be affected by LD 1919 include: Nursing, Physician Associate, Counseling, Dental Practice, Occupational Therapy, Physical Therapy, Psychology, Speech-Language and Audiology, and Social Work. If Maine is removed from these multi state compacts, Maine patients would have less access to care, it would be more

difficult to attract providers to Maine, and Maine-licensed professionals would have reduced employment opportunities across state lines.

Finally, we note that this bill goes beyond the reforms recommended in the December 2004 report by the Criminal History Review Committee (“CRRC Report”), which notably did not explore the impact of sealing on Department agencies and boards and did not solicit input from Department representatives. As such, the Department believes this bill is premature. As noted in the CRRC Report:

- ***Recommendation G (vi):***

G. Enact legislation establishing a permanent criminal records review commission to conduct ongoing review of the laws, rules and procedures pertaining to criminal history record information in this State, using LD 2252 from the 131st Legislature as a model but further specifying that the issues studied by the Commission shall include but are not limited to the topics for further study identified in other committee recommendations:

vi. Whether and how to amend the laws governing consideration of criminal history record information by professional and occupational licensing agencies.

- **Appendix G to the report of the Criminal Records Review Committee** includes the following: “*Note: The CRRC has not explored the use of sealed criminal records by DPFR under state and federal law.*”

For these reasons, the Department respectfully opposes LD 1919 and urges the Legislature to carefully consider the unintended consequences this bill would have on professional licensing, financial regulation, and public protection in Maine. I would be happy to answer any questions now or at the work session.