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No. 1511

H.P. 1103

House of Representatives, April 4, 2019

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Public Records Exceptions**

Reported by Representative BAILEY of Saco for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

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

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 1 MRSA §402, sub-§3, ¶C-1**, as enacted by PL 2011, c. 264, §1, is
3 amended to read:

4 C-1. Information contained in a communication between a constituent and an elected
5 official if the information:

6 (1) Is of a personal nature, consisting of:

7 (a) An individual's medical information of any kind, including information
8 pertaining to diagnosis or treatment of mental or emotional disorders;

9 (b) Credit or financial information;

10 (c) Information pertaining to the personal history, general character or
11 conduct of the constituent or any member of the constituent's immediate
12 family; or

13 (d) Complaints, charges of misconduct, replies to complaints or charges of
14 misconduct or memoranda or other materials pertaining to disciplinary
15 action; or

16 ~~(e) An individual's social security number; or~~

17 (2) Would be confidential if it were in the possession of another public agency or
18 official;

19 **Sec. 2. 1 MRSA §402, sub-§3, ¶K**, as amended by PL 2003, c. 392, §1, is further
20 amended to read:

21 K. Personally identifying information concerning minors that is obtained or
22 maintained by a municipality in providing recreational or nonmandatory educational
23 programs or services, ~~if the municipality has enacted an ordinance that specifies the~~
24 ~~circumstances in which the information will be withheld from disclosure.~~ This
25 paragraph does not apply to records governed by Title 20-A, section 6001 and does
26 not supersede Title 20-A, section 6001-A;

27 **Sec. 3. 1 MRSA §402, sub-§3, ¶M**, as amended by PL 2011, c. 662, §2, is
28 further amended to read:

29 M. Records or information describing the architecture, design, access authentication,
30 encryption or security of information technology infrastructure, systems and
31 software, including records or information maintained to ensure government
32 operations and technology continuity and to enable disaster recovery. Records or
33 information covered by this paragraph may be disclosed to the Legislature or, in the
34 case of a political or administrative subdivision, to municipal officials or board
35 members under conditions that protect the information from further disclosure;

36 **Sec. 4. 3 MRSA §997, sub-§§1 and 3**, as enacted by PL 2001, c. 702, §2, are
37 amended to read:

1 **1. Review and response.** Prior to the presentation of a program evaluation under
2 this chapter to the committee by the office, the director of the evaluated state agency or
3 other entity must have an opportunity to review a draft of the program evaluation report.
4 Within 15 calendar days of receipt of the draft report, the director of the evaluated state
5 agency or other entity may provide to the office comments on the draft report. If
6 provided to the office by the comment deadline, the comments must be included in the
7 final report when it is presented to the committee. Failure by the director of an evaluated
8 agency or other entity to submit its comments on the draft report by the comment
9 deadline may not delay the submission of a report to the committee or its release to the
10 public.

11 All documents, writings, drafts, electronic communications and information transmitted
12 pursuant to this subsection are confidential and may not be released to the public ~~prior to~~
13 ~~the time the office issues its program evaluation report pursuant to subsection 3.~~ A
14 person violating the provisions of this subsection regarding confidentiality is guilty of a
15 Class E crime.

16 **3. Confidentiality.** ~~The director shall issue program evaluation reports, favorable or~~
17 ~~unfavorable, of any state agency or other entity, and these reports are public records,~~
18 ~~except that, prior to the release of a program evaluation report pursuant to subsection 2 or~~
19 ~~the point at which a program evaluation is no longer being actively pursued, all papers,~~
20 ~~physical and electronic records and correspondence and other supporting materials~~
21 ~~comprising the working Working papers in the possession of the director or other entity~~
22 ~~charged with the preparation of a program evaluation report an entity with which the~~
23 ~~director has contracted for the conduct of program evaluations pursuant to section 995,~~
24 ~~subsection 2 are confidential and exempt from disclosure pursuant to Title 1, chapter 13,
25 ~~including disclosure to the Legislative Council or an agent or representative of the~~
26 ~~Legislative Council.~~ All other records or materials in the possession of the director or
27 other entity charged with the preparation of a program evaluation report under this
28 chapter an entity with which the director has contracted for the conduct of program
29 evaluations pursuant to section 995, subsection 2 that would otherwise be confidential or
30 exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1,
31 chapter 13. ~~Prior to the release of a program evaluation report pursuant to subsection 2 or~~
32 ~~the point at which a program evaluation is no longer being actively pursued, all papers,~~
33 ~~physical and electronic records and correspondence and other supporting materials~~
34 ~~comprising the working papers in the possession of the director or other entity charged~~
35 ~~with the preparation of a program evaluation report are confidential and may not be~~
36 ~~released or disclosed by the director to the Legislative Council or an agent or~~
37 ~~representative of the Legislative Council.~~ This subsection may not be construed to
38 prohibit or prevent public access to the records of a state agency or other entity in the
39 possession of the director that would otherwise be subject to disclosure pursuant to the
40 provisions of Title 1, chapter 13. The director shall refer requests for access to those
41 records directly to the state agency or other entity that is the official custodian of the
42 requested records, which shall respond to the request for public records.~~

43 **Sec. 5. 5 MRSA §4572, sub-§2, ¶C,** as enacted by PL 1995, c. 393, §13, is
44 amended to read:

1 C. A covered entity may require a medical examination after an offer of employment
2 has been made to a job applicant and prior to the commencement of the employment
3 duties of the applicant and may condition an offer of employment on the results of the
4 examination, if:

5 (1) All entering employees are subjected to the same examination regardless of
6 disability;

7 (2) Information obtained regarding the medical ~~condition or~~ and disability
8 information and history of the applicant is collected and maintained on separate
9 forms and in separate medical files and is treated as a confidential medical
10 record, except that:

11 (a) Supervisors and managers may be informed regarding necessary
12 restrictions on the work or duties of the employee and necessary
13 accommodations;

14 (b) First aid and safety personnel may be informed, when appropriate, if the
15 disability might require emergency treatment; and

16 (c) Government officials investigating compliance with this Act are provided
17 relevant information on request; and

18 (3) The results of the examination are used only in accordance with this Act.

19 **Sec. 6. 5 MRSA §4572, sub-§2, ¶E**, as enacted by PL 1995, c. 393, §13, is
20 amended to read:

21 E. A covered entity may conduct voluntary medical examinations, including
22 voluntary medical ~~histories and disability information and history~~, that are part of an
23 employee health or wellness program available to employees at that work site. A
24 covered entity may make inquiries into the ability of an employee to perform job-
25 related functions. Information obtained under this paragraph regarding the medical
26 ~~condition or~~ and disability information and history of an employee is subject to the
27 requirements of paragraph C, subparagraphs (2) and (3).

28 **Sec. 7. 5 MRSA §4573, sub-§2**, as amended by PL 1995, c. 393, §16, is further
29 amended to read:

30 **2. Records.** After employment or admission to membership, to make a record of
31 such features of an individual as are needed in good faith for the purpose of identifying
32 them, provided the record is intended and used in good faith solely for identification, and
33 not for the purpose of discrimination in violation of this Act. ~~Records of features~~
34 regarding physical or mental disability that are collected must be collected and
35 maintained on separate forms and in separate files and be treated as confidential records;

36 SUMMARY

37 This bill implements statutory changes recommended by the Right To Know
38 Advisory Committee pursuant to its responsibility to review existing public records
39 exceptions.

1 The bill eliminates specific protection for social security numbers in the context of
2 constituent communications because social security numbers are designated as not public
3 records for all contexts.

4 Current law provides that personally identifying information concerning minors that
5 is obtained or maintained by a municipality in providing recreational or nonmandatory
6 educational programs or services is not a public record as long as the municipality has
7 adopted an ordinance that protects the information from disclosure. The bill repeals the
8 requirement that a municipality adopt such an ordinance in order to protect the
9 information about minors.

10 Current law provides a public record exception for records or information describing
11 the architecture, design, access authentication, encryption or security of information
12 technology infrastructure, systems and software. The bill amends the provision to
13 specifically include records or information maintained to ensure government operations
14 and technology continuity and to enable disaster recovery.

15 The bill amends the statutes governing the confidentiality of the working papers of
16 the Office of Program Evaluation and Government Accountability to clarify that the
17 working papers, whether in the possession of the office or an entity with which the office
18 director has contracted, remain confidential even after the report is released to the public.
19 It removes duplicative language that is already captured in the definition of "working
20 papers."

21 The bill amends the Maine Human Rights Act to update and clarify the language
22 describing medical history and information about disabilities, as well as to update a
23 reference to employee health and wellness programs.