

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2174

H.P. 1545

House of Representatives, January 28, 1998

**An Act to Implement the Recommendations of the Commission to Study
Insurance Fraud.**

Reported by Representative O'NEIL for the Commission to Study Insurance Fraud
pursuant to Resolve 1997, chapter 77.

Reference to the Joint Standing Committee on Banking and Insurance suggested and
printing ordered under Joint Rule 218.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

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

2 Sec. 1. 24-A MRSA §2183, as amended by PL 1997, c. 341, §§1
4 and 2, is repealed.

6 Sec. 2. 24-A MRSA §§2186 and 2187 are enacted to read:

8 §2186. Insurance fraud prevention

10 1. Definitions. As used in this section, unless the
12 context otherwise indicates, the following terms have the
following meanings.

14 A. "Fraudulent insurance act" means any of the following
16 acts or omissions when committed knowingly and with intent
to defraud:

18 (1) Presenting, or causing to be presented, or
20 preparing any information containing false
22 representations as to a material fact with knowledge or
24 belief that the information will be presented by or on
behalf of an insured, claimant or applicant to an
insurer, insurance producer or other person engaged in
the business of insurance concerning any of the
following:

26 (a) An application for the issuance or renewal of
28 an insurance policy;

30 (b) The rating of an insurance policy;

32 (c) A claim for payment or benefit pursuant to an
34 insurance policy;

36 (d) Payments made in accordance with an insurance
policy; or

38 (e) Premiums paid on an insurance policy;

40 (2) Presenting, or causing to be presented, or
42 preparing any information containing false
44 representations as to a material fact with knowledge or
46 belief that the information will be presented to or by
an insurer, insurance producer or other person engaged
in the business of insurance concerning any of the
following:

48 (a) A document filed with the superintendent or
50 the insurance regulatory official or agency of
another jurisdiction;

2 (b) The financial condition of an insurer;

4 (c) The formation, acquisition, merger,
6 reconsolidation, dissolution or withdrawal from
 one or more lines of insurance in all or part of
 this State by an insurer;

8 (d) The issuance of written evidence of
 insurance; or

10 (e) The reinstatement of an insurance policy;

12 (3) Soliciting or accepting new or renewal insurance
14 risks on behalf of an insurer or other person engaged
16 in the business of insurance by a person who knows or
18 should know that the insurer or other person
 responsible for the risk is insolvent at the time of
 the transaction;

20 (4) Removing, concealing, altering or destroying the
22 assets or records of an insurer or other person engaged
 in the business of insurance;

24 (5) Embezzling, abstracting, purloining or converting
26 money, funds, premiums, credits or other property of
 an insurer or other person engaged in the business of
 insurance;

28 (6) Transacting the business of insurance in violation
30 of laws requiring a license, certificate of authority
32 or other legal authority for the transaction of the
 business of insurance; or

34 (7) Attempting to commit, aiding or abetting in the
36 commission of, or conspiring to commit the acts or
 omissions described in this subsection.

38 B. "Insurer" means a reinsurer, surplus lines insurer,
40 unauthorized insurer, nonprofit hospital and medical service
42 organization, health maintenance organization, risk
44 retention group or multiple employer welfare organization.
 "Insurer" also includes an insurance producer or other
 person acting on the behalf of an insurer. For the purposes
 of this section, "insurer" also means the state Medicaid
 program.

46 2. Fraudulent insurance acts prohibited. A person may not
48 commit a fraudulent insurance act.

2 3. Fraud warning required. Fraud warnings are required in
3 accordance with the following.

4 A. All applications and claim forms for insurance used by
5 insurers in this State, regardless of the form of
6 transmission, must contain the following statement or a
7 substantially similar statement permanently affixed to the
8 application or claim form: "It is a crime to knowingly
9 provide false, incomplete or misleading information to an
10 insurance company for the purpose of defrauding the
11 company. Penalties may include imprisonment, fines or a
12 denial of insurance benefits."

13 B. The lack or omission of the statement required in
14 paragraph A does not constitute a defense in any criminal
15 prosecution or civil action for a fraudulent insurance act.

16 C. This subsection applies to all insurers except
17 reinsurers. The statement required in paragraph A must be
18 included in all applications and claim forms filed and
19 approved for use by the superintendent on or after January
20 1, 1999.

21 4. Reporting of fraudulent insurance acts. Fraudulent
22 insurance acts must be reported in accordance with this
23 subsection.

24 A. An insurer shall annually on or before March 1st, or
25 within any reasonable extension of time granted by the
26 superintendent, file with the superintendent a report
27 relating to fraudulent insurance acts that the insurer knew
28 or reasonably believed had been committed during the
29 previous calendar year. The report must contain information
30 required by the superintendent in the manner prescribed by
31 the superintendent. The information must be reported on an
32 aggregate basis and may not contain any information
33 identifying individuals. The superintendent shall adopt
34 rules necessary to define the information that must be
35 reported. Rules adopted pursuant to this subsection are
36 major substantive rules as defined in Title 5, chapter 375,
37 subchapter II-A. The rules must be provisionally adopted and
38 forwarded to the Legislature for review in the First Regular
39 Session of the 119th Legislature. The initial report filed
40 by insurers must cover the 12-month period following
41 adoption of the rules by the superintendent.

42 B. On the July 1st following the filing of the initial
43 reports required by paragraph A, and annually thereafter,
44 the superintendent shall report to the joint standing
45 committee

2 of the Legislature having jurisdiction over insurance
3 matters. The report must include aggregate information
4 detailing the fraudulent insurance activity experienced by
5 insurers in this State.

6 5. Insurer antifraud plans. Within 6 months of the
7 effective date of this Act, every insurer shall prepare and
8 implement an antifraud plan. The superintendent may review an
9 insurer's antifraud plan to determine if the plan complies with
10 the requirements of this subsection. The antifraud plan must
11 outline specific procedures, appropriate to the lines of
12 insurance the insurer writes in the State, to:

13 A. Prevent, detect and investigate all forms of insurance
14 fraud;

15 B. Educate appropriate employees on the antifraud plan and
16 fraud detection;

17 C. Provide for the hiring of or contracting for fraud
18 investigators; and

19 D. Report insurance fraud to appropriate law enforcement
20 and regulatory authorities in the investigation and
21 prosecution of insurance fraud.

22 6. Civil penalties. Any violation of this section is
23 subject to civil penalties and other remedies as provided in
24 section 12-A. Notwithstanding section 2165-A, subsection 1, the
25 superintendent may issue emergency cease and desist orders on the
26 basis of conduct involving fraudulent insurance acts.

27 7. Recovery costs. In a civil action in which it is
28 proven that a person committed a fraudulent insurance act, the
29 court may award reasonable attorney's fees and costs to the
30 insurer. In a civil action in which the insurer alleges that a
31 party committed a fraudulent insurance act that is not
32 established at trial, the court may award reasonable attorney's
33 fees and costs to the party if the allegation is not supported by
34 any reasonable basis of law or fact.

35 §2187. Insurance fraud reporting immunity

36 1. Definitions. As used in this section, unless the context
37 otherwise indicates, the following terms have the following
38 meanings.

39 A. "Action" includes nonaction or the failure to take action.

40 B. "Authorized agency" or "authorized agencies" means:

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- (1) The Attorney General;
- (2) A district attorney responsible for prosecution in the municipality where the fraud occurred;
- (3) The Federal Bureau of Investigation, or any other federal agency, only for the purposes of subsection 2;
- (4) The State Fire Marshal;
- (5) The Superintendent of Insurance;
- (6) The Superintendent of Banking;
- (7) The United States Attorney's office when authorized or charged with investigation or prosecution of the insurance fraud in question, only for the purposes of subsection 2;
- (8) The State Police or local law enforcement officials; or
- (9) The National Association of Insurance Commissioners.

C. "Immune" means that, in the absence of fraud, malice or bad faith, an insurer, or a person acting on its behalf, or an authorized agency that furnished information concerning suspected, anticipated or completed insurance fraud is not liable for damages in any civil action for furnishing information pursuant to this chapter if the information is provided to or received from an authorized agency.

2. Information disclosed. An authorized agency investigating insurance fraud may, in writing, require the insurance company at interest to release to the requesting agency any relevant information or evidence determined to be important to the authorized agency that the company may have in its possession relating to the insurance fraud in question. This information includes, but is not limited to:

- A. A history of previous claims made by the insured;
- B. Insurance policy information relevant to fraud under investigation and any application for that policy;
- C. Material relating to the investigation of the loss including statements and proof of loss; and

