

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1939

H.P. 1435

House of Representatives, March 18, 2004

An Act To Decrease Insurance Fraud in This State

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BUNKER of Kossuth Township.
Cosponsored by Senator LAFOUNTAIN of York and
Representatives: O'NEIL of Saco, PERRY of Calais, Senator: DOUGLASS of Androscoggin.

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

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Sec. 1. 24-A MRSA §2186, sub-§1, ¶C is enacted to read:

C. "Fraud unit" means the Insurance Fraud Investigative Unit established in section 2188.

Sec. 2. 24-A MRSA §2186, sub-§4, ¶A, as enacted by PL 1997, c. 675, §2, is amended to read:

A. An insurer shall, annually on or before March 1st or within any reasonable extension of time granted by the superintendent, file with the ~~superintendent~~ fraud unit a report relating to fraudulent insurance acts that the insurer knew or reasonably believed had been committed during the previous calendar year. The report must contain information required by the ~~superintendent~~ fraud unit in the manner prescribed by the ~~superintendent~~ fraud unit. The information must be reported on an aggregate basis and may not contain any information identifying any individuals or entities. The superintendent shall adopt by January 1, 1999 rules necessary to define the information that must be reported. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A 2-A.

Sec. 3. 24-A MRSA §2186, sub-§5, ¶¶C and D, as enacted by PL 1997, c. 675, §2, are amended to read:

C. ~~Provide for the hiring--of--or--contracting--for--fraud investigators~~ establishment of a special investigative unit as required by subsection 5-A; and

D. ~~Report insurance fraud to appropriate--law--enforcement and--regulatory--authorities---in--the--investigation--and prosecution--of--insurance~~ the fraud unit. An insurer that believes that a fraudulent insurance act has been committed shall, within 60 days of forming that belief, send to the fraud unit, on a form prescribed by the fraud unit, the information requested and any other information relative to the claim and any information relative to other parties claiming loss or damage because of the claim as the fraud unit may require.

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Sec. 4. 24-A MRSA §2186, sub-§5-A is enacted to read:

5-A. Insurer antifraud units. Every insurer writing direct insurance who in the previous calendar year reported \$10,000,000 or more in direct written premiums in this State, except for an insurer writing only credit, home warranty, travel or title

2 insurance, shall establish a special investigative unit. The
3 duties of the special investigative unit are to detect, help
4 prosecute and prevent fraudulent insurance acts committed against
5 that insurer. The special investigative unit shall report the
6 results of its investigation to the fraud unit. The special
7 investigative unit must include fraud investigators, who may be
8 employees of the insurer or independent contractors.

9 **Sec. 5. 24-A MRSA §2188** is enacted to read:

10 **§2188. Insurance Fraud Investigative Unit**

11 **1. Fraud unit established; powers and duties.** There is
12 established in the bureau the Insurance Fraud Investigative Unit,
13 referred to in this section as "the fraud unit." The fraud unit
14 shall assist the superintendent, or any law enforcement agency,
15 in investigating fraudulent insurance acts, as defined in section
16 2186, subsection 1, paragraph A or other insurance-related
17 criminal activity and in developing and implementing programs to
18 prevent fraudulent insurance acts and abuse. The fraud unit may
19 subpoena witnesses and administer oaths in an investigation it
20 conducts and compel the production of any books, papers or other
21 memoranda or documents by subpoena duces tecum. The fraud unit
22 shall promptly notify the Attorney General of any insurance
23 application, claim or activity that involves criminal conduct.
24 When required by the superintendent and the Attorney General, the
25 fraud unit shall cooperate with the Attorney General in the
26 investigation and prosecution of criminal violations.

27 **2. Staff; assistance from Attorney General.** The
28 superintendent shall appoint to the fraud unit 3 full-time,
29 classified persons who are qualified by training and experience
30 to perform the duties of their positions. When requested by the
31 superintendent, the Attorney General may assign an assistant
32 attorney general to assist the fraud unit in the performance of
33 the fraud unit's duties.

34 **3. Inspection of material outside State.** If material the
35 fraud unit seeks to obtain by request is located outside the
36 State, with the permission of the holder of the material, the
37 fraud unit or its representative may examine the material at the
38 place where it is located. The fraud unit may designate
39 representatives, including officials of the state in which the
40 material is located, to inspect the material on behalf of the
41 fraud unit and it may respond to similar requests from officials
42 of other states.

43 **4. Review of fraudulent claims reports by insurers.** The
44 fraud unit shall review reports received from insurers pursuant
45 to section 2186, subsection 5, paragraph D and select those

2 claims that, in the judgment of the fraud unit, warrant further
3 investigation.

4 5. Immunity. In the absence of fraud, malice or bad faith,
5 an insurer that furnished information relating to a suspected,
6 anticipated or completed fraudulent insurance act is not liable
7 for any damages in any civil action for furnishing the
8 information if that information is furnished to or received from
9 the fraud unit. This subsection is not intended to abrogate or
10 modify in any way any common law or statutory privilege or
11 immunity previously enjoyed by any person.

12 6. Material information disclosure. The fraud unit's
13 papers, documents, reports and evidence relative to the subject
14 of investigation under this section are confidential and are not
15 public records as described in Title 1, section 407 and are not
16 subject to public inspection or disclosure. Papers, documents,
17 reports or evidence relative to the subject of an investigation
18 under this section are privileged and are not subject to
19 subpoena, discovery or disclosure in any proceeding other than
20 the action initiated by the unit, except as specifically
21 authorized in this chapter. For the purposes of this subsection,
22 "investigative materials" includes the testimony of fraud unit
23 personnel concerning any matter of which they have knowledge
24 pursuant to a pending investigation by the fraud unit.

25 7. Rulemaking. The superintendent shall adopt routine
26 technical rules, as defined in Title 5, chapter 375, subchapter
27 2-A to carry out the purposes of this section.

28 **Sec. 6. 36 MRSA §2513-C is enacted to read:**

29 **§2513-C. Special assessment for fraud prevention**

30 1. Generally; purpose. In addition to any other assessment
31 imposed, every insurer writing direct insurance who in the
32 previous calendar year reported \$10,000,000 or more in direct
33 written premiums in this State, except for an insurer writing
34 only credit, home warranty, travel or title insurance, is subject
35 to the assessment imposed by this section. The purpose of the
36 assessment is to fund the Department of Professional and
37 Financial Regulation, Bureau of Insurance, Insurance Fraud
38 Investigative Unit, as established in Title 24-A, section 2188.

39 2. Rate of assessment. Each insurer subject to the
40 assessment shall pay to the Treasurer of State an amount up to
41 0.1% of the gross direct premiums written in this State less the
42 amount of all direct return premiums on those policies and all
43 dividends paid to policyholders on direct premiums on those
44 policies. The assessment must be paid as provided in section
45 2521-A.

2 3. Implementing an assessment on insurers of up to 0.1% of
3 direct premiums written in the State to fund the Insurance Fraud
4 Investigative Unit. The Superintendent of Insurance is required
5 to review annually the rate of assessment and the expenses of the
6 fraud unit to determine an appropriate rate of assessment to
provide sufficient revenue to the fraud unit.