

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1561

H.P. 1099

House of Representatives, April 7, 2005

An Act To Create an Insurance Fraud Unit within the Bureau of Insurance

(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 PERRY of Calais.

Cosponsored by Representatives: FISHER of Brewer, MARRACHÉ of Waterville.

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

4 **Sec. 1. 5 MRSA §12004-G, sub-§21-C is enacted to read:**

6 21-C. Board of Not 24-A MRSA
Insurance Insurance Authorized §2192
8 Fraud

10 **Sec. 2. 24-A MRSA c. 23 is amended by inserting before §2151**
the following:

12 **SUBCHAPTER 1**

14 **INSURANCE FRAUD**

16 **Sec. 3. 24-A MRSA c. 23, sub-c. 2 is enacted to read:**

18 **SUBCHAPTER 2**

20 **INSURANCE FRAUD UNIT**

22 **§2191. Insurance Fraud Unit**

24 **1. Insurance Fraud Unit.** There is established within the
26 bureau the Insurance Fraud Unit, referred to in this subchapter
as "the unit."

28 **2. Duties.** The duties of the unit are:

30 **A. To initiate inquiries concerning and review complaints**
32 **and conduct investigations of suspected insurance fraud;**

34 **B. To assist the superintendent in developing and**
implementing programs to prevent fraudulent insurance acts
36 **and abuse;**

38 **C. To review reports of insurance fraud submitted by**
insurance companies, special investigation groups under
40 **section 2194 and law enforcement agencies;**

42 **D. To assist the Attorney General in the prosecution and**
prevention of insurance fraud; and

44 **E. To investigate and prosecute organized fraud.**

46 **§2192. Board of Insurance Fraud**

48 **The Board of Insurance Fraud as established in Title 5,**
50 **section 12004-G, subsection 21-C is the policy-making authority**
and governing body of the unit.

2 1. Membership. There are 9 members of the Board of
3 Insurance Fraud:

4 A. Three members appointed by the Governor after nomination
5 by an association representing licensed insurance companies
6 in the State;

7 B. Two members of the general public, appointed by the
8 Governor;

9 C. Two representatives of State Government, one of whom is
10 appointed by the President of the Senate and one of whom is
11 appointed by the Speaker of the House of Representatives;

12 D. One member appointed by the Superintendent of Insurance;
13 and

14 E. One member appointed by the Governor after nomination by
15 a statewide association of licensed private investigators.

16 2. Chair. The Board of Insurance Fraud shall choose
17 annually one of its members to serve as chair.

18 3. Duties and powers. The duties and powers of the Board
19 of Insurance Fraud are:

20 A. Appointing and overseeing the activities of the director;

21 B. In the absence of the director, appointing the chief
22 investigator;

23 C. Approving the mission of the unit;

24 D. Adopting rules to administer the unit and to carry out
25 the purposes of this chapter pursuant to section 2197;

26 E. Adjudging fines against insurers and self-insurers for
27 violations of this chapter, provisions in this Title
28 concerning the reporting of insurance fraud and rules
29 adopted by the Board of Insurance Fraud and for misconduct
30 of special investigation groups under section 2194. A fine
31 adjudged under this paragraph must be deposited in the
32 Insurance Fraud Fund under section 2196, subsection 2;

33 F. Reviewing and approving the budget for the unit
34 submitted by the director;

35 G. Assisting the superintendent in carrying out the
36 purposes of this chapter; and

2 H. Borrowing money as approved by the Legislature.

4 4. Meetings. The Board of Insurance Fraud shall meet at
6 least 4 times a year at regular intervals.

8 5. Terms. The term of a member of the Board of Insurance
10 Fraud is 4 years. A member may be appointed for consecutive terms.

12 6. Report. The Board of Insurance Fraud shall report
14 annually on the state of the unit and its operations to the joint
16 standing committees of the Legislature having jurisdiction over
18 insurance matters and over criminal matters.

20 7. Oversight by superintendent. The superintendent shall
22 oversee the activities of the Board of Insurance Fraud.

24 §2193. Staff

26 1. Director. The Director of the Insurance Fraud Unit,
28 referred to in this subchapter as "the director," has the
30 following powers and duties:

32 A. Supervising the operation of the unit in accordance with
34 this subchapter and with the rules adopted under this
36 subchapter;

38 B. Acting as the chief administrative and executive officer
40 of the unit, having general charge of the office and records
42 and employing such personnel as may be necessary to fulfill
44 the purposes of this subchapter;

46 C. Acting as executive secretary of the Board of Insurance
48 Fraud;

D. Administering the Insurance Fraud Fund under section
 2196, subsection 2;

E. Appointing and overseeing the chief investigator; and

F. Acting as the chief financial officer of the unit,
 including administering the financial operations of the unit
 and preparing and presenting the annual budget to the Board
 of Insurance Fraud prior to the beginning of the fiscal year.

2. Chief investigator. The chief investigator, appointed
 by the director, has the following powers and duties:

A. Supervising the day-to-day operation of the unit;

- 2 B. Hiring and supervising field investigators and office
3 staff;
- 4
- 5 C. Assigning cases;
- 6
- 7 D. Supervising the conduct of and disciplining unit
8 personnel; and
- 9
- 10 E. Determining and overseeing the investigatory procedures
11 and other technical tasks carried out by the unit's
12 personnel.
- 13
- 14 3. Field investigators. The unit shall employ field
15 investigators as necessary to carry out the purposes of the
16 unit. A field investigator under this subsection must have
17 qualifications required to perform the duties of field
18 investigator, including prior experience as a law enforcement
19 officer or an insurance fraud investigator.
- 20
- 21 4. Prosecutors. The Attorney General shall assign an
22 assistant attorney general on a full-time, permanent basis to the
23 unit for the prosecution of insurance fraud cases. The assistant
24 attorney general assigned pursuant to this subsection is the lead
25 prosecutor for the unit and is responsible directly to the
26 Attorney General. An assistant district attorney may be
27 temporarily assigned to the unit as necessary and upon the
28 approval of the district attorney from the prosecutorial district
29 in which the assistant district attorney is employed. The
30 assistant attorney general assigned to the unit pursuant to this
31 subsection is the supervisor of an assistant district attorney
32 assigned to the unit pursuant to the subsection. The personnel
33 costs of a prosecutor assigned to the unit pursuant to this
34 subsection must be paid for through the Insurance Fraud Fund
35 established in section 2196, subsection 2.
- 36
- 37 5. Powers and duties. Personnel of the unit have the
38 powers of law enforcement officers in carrying out law
39 enforcement functions as defined in Title 30-A, section 451,
40 subsection 11 to fulfill the purposes of this subchapter. In
41 performing law enforcement functions under this subsection,
42 personnel of the unit have the following powers and duties:
- 43
- 44 A. Initiating investigations of alleged fraudulent conduct
45 involving insurance claims;
- 46
- 47 B. Initiating investigations of alleged fraudulent conduct
48 of insurers and self-insured entities, including, but not
 limited to, claims of injury, loss, death, material

2 misrepresentation, concealment, malfeasance, deceptive
3 practices or any other fraudulent conduct as described in
4 this chapter;

6 C. Executing warrants;

8 D. Requesting court orders;

10 E. Subpoenaing witnesses and administering oaths pursuant
11 to an investigation; and

12 F. Compelling the production of books, papers, reports or
13 other documents or electronic files by subpoena duces tecum.

14 **§2194. Special investigation groups**

16 An insurer or self-insured entity licensed or authorized
17 under this Title shall create a special investigation group
18 within the insurer's or self-insured's organization. The special
19 investigation group must consist of at least one employee or
20 outside contractor who is licensed as a private investigator
21 under Title 32, chapter 89 and has experience in insurance fraud
22 investigations and monitoring. A special investigation group
23 under this section shall monitor the organization under which it
24 is formed for instances of insurance fraud and report all
25 fraudulent claims and other fraudulent activity to the unit
26 pursuant to section 2186 and provide assistance as requested by
27 the unit.

30 **§2195. Confidentiality and privilege**

32 All papers, documents, files, reports and evidence related
33 to an investigation by the unit are confidential and not public
34 records pursuant to Title 1, section 402, subsection 3, paragraph
35 A. All papers, documents, files, reports and evidence related to
36 an investigation by the unit are privileged and not subject to
37 subpoena, discovery or disclosure in any proceeding except in a
38 related action initiated by the unit.

40 **§2196. Funding**

42 1. Assessment. A 25¢ fee must be assessed on an insurance
43 policy for direct insurance in the State, except an insurance
44 policy for credit, home warranty or title insurance. For every
45 insurance policy in which a fee is assessed under this
46 subsection, the insurance contract for that insurance policy must
47 state the following: "A fee of 25¢ has been assessed on this
48 policy to fight insurance fraud in the State of Maine." The fee
49 assessed pursuant to this subsection must be deposited in the
50 Insurance Fraud Fund established under subsection 2.

2 **2. Insurance Fraud Fund.** There is established the
4 Insurance Fraud Fund, a nonlapsing, interest-bearing account
6 referred to in this subsection as "the fund," administered by the
8 director. The fund receives money from the fee assessed pursuant
10 to subsection 1 and fines adjudged by the Board of Insurance
12 Fraud pursuant to section 2192, subsection 3, paragraph E.
14 Interest accrued by the fund must remain in the fund. All money
16 deposited in the fund and the earnings on that money remain in
18 the fund and may be used to fund the operations and
20 administration of the unit, the personnel costs associated with
22 the assignment of an assistant attorney general and any assistant
24 district attorneys to the unit pursuant to section 2193,
26 subsection 4 and for the necessary administrative and personnel
28 costs associated with the management of the fund.

§2197. Rules

2 The Board of Insurance Fraud may adopt rules to carry out
4 the purposes of this subchapter. Rules adopted pursuant to this
6 section are routine technical rules pursuant to Title 5, chapter
8 375, subchapter 2-A.

Sec. 4. Initial funding and appointments for Bureau of Insurance, Insurance Fraud Unit.

2 **1. Initial funding.** The Superintendent of Insurance shall
4 transfer all funds held by the Bureau of Insurance that are not
6 encumbered in the fiscal year in which this Act becomes effective
8 to the Insurance Fraud Fund established in the Maine Revised
10 Statutes, Title 24-A, section 2196, subsection 2. Within 30 days
12 of its first meeting, the Board of Insurance Fraud established in
14 Title 5, section 12004-G, subsection 21-C shall adopt rules
16 pursuant to Title 24-A, section 2197 to assess the fee required
18 by Title 24-A, section 2196, subsection 1, which must be assessed
20 on every applicable insurance policy entered into after the
22 effective date of this Act. The Board of Insurance Fraud may
24 borrow money and issue evidences of indebtedness to finance the
26 expenses associated with the formation of the Bureau of
28 Insurance, Insurance Fraud Unit, established under Title 24-A,
30 section 2191, pursuant to Title 24-A, section 2192, subsection 3,
32 paragraph H, and to provide for the security and payment of those
34 evidences of indebtedness and for the rights of the holders of
36 them, except that any borrowing pursuant to that provision may
38 not exceed in the aggregate principal amount outstanding at any
40 time 30% of the start-up expenses associated with the Bureau of
42 Insurance, Insurance Fraud Unit, and except that no borrowing may
44 be effected pursuant to this section unless the amount of the
46 borrowing is submitted to the legislative Office of Fiscal and
48

2 Program Review for review by the joint standing committee of the
Legislature having jurisdiction over appropriations and financial
4 affairs at least 60 days before closing on such borrowing for the
project or projects is to be initiated.

6 **2. Initial appointments and staff.** Within 30 days of the
effective date of this Act, the appointing authorities under the
8 Maine Revised Statutes, Title 24-A, section 2192, subsection 1
shall make those appointments. Notwithstanding the provisions of
10 Title 24-A, section 2192, subsection 3, paragraph A, the Governor
shall appoint the initial Director of the Insurance Fraud Unit
12 within the Bureau of Insurance under Title 24-A, section 2193,
subsection 1 and the Attorney General shall assign an assistant
14 attorney general to the Insurance Fraud Unit pursuant to Title
24-A, section 2193, subsection 4. Within 30 days of appointment,
16 the Director of the Insurance Fraud Unit shall prepare an initial
budget for review by the Board of Insurance Fraud pursuant to
18 Title 24-A, section 2193, subsection 1, paragraph F and appoint a
chief investigator of the Insurance Fraud Unit pursuant to Title
20 24-A, section 2193, subsection 2. Within 30 days of appointment,
the chief investigator shall hire as initial staff 5 field
22 investigators under Title 24-A, section 2193, subsection 3 and
any clerical staff as needed.

26 SUMMARY

28 This bill creates the Bureau of Insurance, Insurance Fraud
Unit, overseen by the Board of Insurance Fraud and administered
30 by a director. The personnel of the Insurance Fraud Unit include
the director, a chief investigator, field investigators, clerical
32 staff and an assistant attorney general permanently assigned to
the unit. Assistant district attorneys may also be temporarily
34 assigned to the Insurance Fraud Unit. The purpose of the
Insurance Fraud Unit is to respond to complaints of and
36 investigate and prosecute instances of insurance fraud. This
bill requires insurers and self-insureds in the State to create
38 special investigation groups within their organizations that have
at least one licensed private investigator who is either an
40 employee or independent contractor to report any suspected
insurance fraud to the Insurance Fraud Unit. Personnel of the
42 Insurance Fraud Unit have law enforcement powers to carry out
their investigatory duties, including the power to subpoena,
44 administer oaths, execute warrants and request court orders as
part of their investigations. The Insurance Fraud Unit is funded
46 by a 25¢ fee on certain insurance policies and the Board of
Insurance Fraud is authorized to borrow up to 30% of the start-up
48 costs of the Insurance Fraud Unit.