

MAINE STATE LEGISLATURE

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L.D. 1990

DATE:

3/30/06

(Filing No. H-924)

INSURANCE AND FINANCIAL SERVICES

Majority

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1394, L.D. 1990, Bill, "An Act To Create the Insurance Fraud Division within the Bureau of Insurance"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 16 MRSA §614, sub-§1, as amended by PL 1999, c. 155, Pt. A, §5, is further amended to read:

1. **Limitation on dissemination of intelligence and investigative information.** Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the Department of Professional and Financial Regulation, Bureau of Insurance, Insurance Fraud Division; the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

A. Interfere with law enforcement proceedings;

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COMMITTEE AMENDMENT "A" to H.P. 1394, L.D. 1990

- 2 B. Result in public dissemination of prejudicial
information concerning an accused person or concerning the
4 prosecution's evidence that will interfere with the ability
of a court to impanel an impartial jury;
- 6 C. Constitute an unwarranted invasion of personal privacy;
- 8 D. Disclose the identity of a confidential source;
- 10 E. Disclose confidential information furnished only by the
confidential source;
- 12 F. Disclose trade secrets or other confidential commercial
14 or financial information designated as such by the owner or
source of the information or by the Department of the
16 Attorney General;
- 18 G. Disclose investigative techniques and procedures or
security plans and procedures not generally known by the
20 general public;
- 22 H. Endanger the life or physical safety of any individual,
including law enforcement personnel;
- 24 I. Disclose conduct or statements made or documents
submitted by any person in the course of any mediation or
26 arbitration conducted under the auspices of the Department
of the Attorney General;
- 28 J. Disclose information designated confidential by some
other statute; or
- 30 K. Identify the source of complaints made to the Department
of the Attorney General involving violations of consumer or
32 antitrust laws.

36 **Sec. 2. 24-A MRSA §2179**, as amended by PL 1973, c. 585, §12,
38 is repealed.

40 **Sec. 3. 24-A MRSA §2186, sub-§4, ¶¶C and D** are enacted to read:

42 C. An insurer having knowledge or a reasonable belief that a
44 fraudulent insurance act is being, will be or has been
46 committed shall provide to the superintendent the
48 information required by the superintendent in a manner
prescribed by the superintendent. For purposes of this
subsection, "insurer" does not include an insurance producer
or other person acting on behalf of the insurer.

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2 D. Any person having knowledge or a reasonable belief that
3 a fraudulent insurance act is being, will be or has been
4 committed may provide to the superintendent the information
5 required by the superintendent in a manner prescribed by the
6 superintendent.

7 **Sec. 4. 24-A MRSA §2187, sub-§1, ¶B,** as amended by PL 2005, c.
8 433, §1 and affected by §28, is further amended to read:

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

10 (1) The Attorney General;

11 (2) A district attorney responsible for prosecution in
12 the municipality where the fraud occurred;

13 (3) The Federal Bureau of Investigation, or any other
14 federal agency, only for the purposes of subsection 2;

15 (4) The State Fire Marshal;

16 (5) The Superintendent of Insurance;

17 (6) The Superintendent of Financial Institutions;

18 (7) The United States Attorney's office when
19 authorized or charged with investigation or prosecution
20 of the insurance fraud in question, only for the
21 purposes of subsection 2;

22 (8) The State Police, state law enforcement officials
23 or local law enforcement officials; or

24 (9) The National Association of Insurance
25 Commissioners;

26 (10) An international association of insurance
27 supervisors;

28 (11) The International Criminal Police Organization;

29 (12) A national insurance crime bureau or similar
30 organization that collects, receives, investigates or
31 analyzes information concerning insurance fraud;

32 (13) Insurance supervisors or law enforcement
33 authorities outside the United States; or

34 (14) The Workers' Compensation Board.

R. 018.

2 Sec. 5. 24-A MRSA §2187, sub-§4, as enacted by PL 1997, c. 675, §2, is repealed.

4 Sec. 6. 24-A MRSA §2187, sub-§5, as enacted by PL 1997, c. 675, §2, is amended to read:

6
8 5. **Immunity.** In the absence of fraud, malice or bad faith, any person, including, but not limited to, an insurer or authorized agency, that furnished information relating to suspected, anticipated or completed fraudulent insurance acts is not liable for any damages in any civil action for furnishing the information if that information is furnished to or received from an authorized agency. In the absence of fraud, malice or bad faith, an insurer that furnished information to or received information from another insurer for the purpose of detecting, prosecuting or preventing fraudulent insurance acts is not liable for any damages in any civil action for furnishing that information. Nothing in this subsection is intended to abrogate or modify in any way any common law or statutory privilege or immunity previously enjoyed by any person.

22 Sec. 7. 24-A MRSA §2188 is enacted to read:

24 **§2188. Insurance Fraud Division**

26 1. **Division established.** The Insurance Fraud Division, referred to in this section as "the division," is established within the bureau. The division shall work in coordination with other bureau divisions and staff and other regulatory and law enforcement agencies to accomplish its duties.

32 2. **Duties.** The duties of the division are to:

34 A. Initiate independent inquiries and conduct independent investigations when the division has cause to believe that a fraudulent insurance act as defined in section 2186, deceptive insurance practice or insurance deception may be or has been committed;

40 B. Review reports or complaints of alleged fraudulent insurance acts as defined in section 2186, deceptive insurance practices and insurance deception from federal, state and local law enforcement and regulatory agencies, persons engaged in the business of insurance and the public to determine whether the reports require further investigation and to conduct these investigations;

48 C. Conduct independent examinations of alleged fraudulent insurance acts as defined in section 2186, deceptive insurance practices and insurance deception and undertake

2 independent studies to determine the extent of fraudulent
and deceptive insurance acts and practices;

4 D. Assist the superintendent in developing and implementing
programs to prevent fraudulent insurance acts as defined in
6 section 2186 and abuse, deceptive insurance practices and
insurance deception;

8 E. Assist the Attorney General in the prosecution and
10 prevention of insurance fraud, deceptive insurance practices
and insurance deception; and

12 F. Prepare any reports regarding insurance fraud and
14 deception required by law.

16 3. Other law enforcement; regulatory authority. This
section does not:

18 A. Preempt the authority or relieve the duty of other law
20 enforcement or regulatory agencies to investigate, examine
and prosecute suspected violations of law;

22 B. Prevent or prohibit a person from disclosing voluntarily
24 information concerning insurance fraud, deceptive insurance
practices or insurance deception to a law enforcement or
26 regulatory agency other than the division; or

28 C. Limit the powers granted elsewhere by the laws of this
State to the superintendent or the division to investigate
30 and examine possible violations of law and to take
appropriate action against wrongdoers.

32 4. Confidentiality. Records that are prepared by, prepared
34 at the direction of or kept in the custody of the division that
contain investigative information are subject to the requirements
36 of Title 16, section 614, except that the superintendent may
share information with an authorized agency, as defined in
38 section 2187. Except as provided in Title 16, section 614 or
required for a criminal or civil proceeding, an authorized agency
40 shall hold the information in confidence and may not release the
information to any person other than an authorized agency.

42 **Sec. 8. Appropriations and allocations.** The following
44 appropriations and allocations are made.

46 **ATTORNEY GENERAL, DEPARTMENT OF**

48 **Administration - Attorney General 0310**

COMMITTEE AMENDMENT "A" to H.P. 1394, L.D. 1990

Initiative: Provides funds for an Assistant Attorney position and general operating expenses to support the Insurance Fraud Division within the Department of Administrative and Financial Regulation, Bureau of Insurance. This position is to be funded by the Bureau of Insurance.

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$67,067
All Other	\$0	\$7,933
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$75,000

ATTORNEY GENERAL, DEPARTMENT OF DEPARTMENT TOTALS	2005-06	2006-07
OTHER SPECIAL REVENUE FUNDS	\$0	\$75,000
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$75,000

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Bureau of Insurance 0092

Initiative: Allocates funds for one Public Service Manager II position, one Auditor III position, one Field Investigator position and one Clerk Typist III position and general operating expenses to establish and administer the new Insurance Fraud Division.

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	0.000	4.000
Personal Services	\$0	\$207,653
All Other	\$0	\$75,110
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$282,763

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF DEPARTMENT TOTALS	2005-06	2006-07
OTHER SPECIAL REVENUE FUNDS	\$0	\$282,763
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$282,763

SECTION TOTALS	2005-06	2006-07
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COMMITTEE AMENDMENT "A" to H.P. 1394, L.D. 1990

OTHER SPECIAL REVENUE FUNDS	\$0	\$357,763
SECTION TOTAL - ALL FUNDS	\$0	\$357,763

SUMMARY

This amendment is the majority report of the committee and replaces the bill. The amendment establishes the Insurance Fraud Division within the Department of Professional and Financial Regulation, Bureau of Insurance. The amendment requires insurers with knowledge or suspicion of fraudulent insurance acts to report those activities to the Bureau of Insurance. The amendment provides for the confidentiality of records relating to insurance fraud investigations in a manner similar to the provision of confidentiality under current state law for investigative and intelligence information in the possession of other law enforcement entities. The amendment does permit the Insurance Fraud Division to share investigatory information with certain national and international agencies. The amendment also extends the immunity provision in current law to certain communications between insurers with respect to fraudulent insurance acts.

The amendment also adds an appropriations and allocations section to the bill.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



122nd MAINE LEGISLATURE

LD 1990

LR 3088(02)

An Act To Create the Insurance Fraud Division within the Bureau of Insurance

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$357,763	\$455,847	\$472,125

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The collection of additional filing fees may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The Bureau of Insurance in the Department of Professional and Financial Regulation will require an additional allocation of approximately \$283,000 for fiscal year 2006-07 to establish and administer the new Insurance Fraud Division. This estimate assumes 4 new positions and related costs in the Bureau. Also assumes the Bureau of Insurance will fund an Assistant Attorney General position in the Department of the Attorney General. The Department will require an allocation of \$75,000 and the creation of one position for this purpose. The Bureau of Insurance believes it can fund these costs within existing revenue balances but should this not be the case, the Bureau has assessment authority under existing law to support the costs of the Bureau.