

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

---

Legislative Document

No. 1990

H.P. 1394

House of Representatives, February 1, 2006

---

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

---

Reported by Representative PERRY of Calais for the Joint Standing Committee on Insurance and Financial Services pursuant to Resolve 2005, chapter 47.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

4 **Sec. 1. 24-A MRSA §2179**, as amended by PL 1973, c. 585, §12,  
is repealed.

6 **Sec. 2. 24-A MRSA §2186**, as amended by PL 1999, c. 5, §1 and  
affected by §2, is repealed.

8 **Sec. 3. 24-A MRSA §2187**, as amended by PL 2005, c. 433, §1  
10 and affected by §28, is repealed.

12 **Sec. 4. 24-A MRSA c. 89** is enacted to read:

14 **CHAPTER 89**

16 **INSURANCE FRAUD**

18 **§7001. Definitions**

20 For the purposes of this chapter, unless the context  
22 indicates otherwise, the following terms have the following  
meanings.

24 1. Act. "Act" includes nonaction or the failure to take  
26 action.

28 2. Authorized agency. "Authorized agency" or "authorized  
agencies" means:

30 A. The Administrator of the Office of Securities within the  
32 Department of Professional and Financial Regulation;

34 B. The Attorney General;

36 C. A district attorney responsible for prosecution in the  
municipality where the fraud occurred;

38 D. The Federal Bureau of Investigation, or any other  
40 federal agency, only for the purposes of section 7005,  
subsection 1;

42 E. An international association of insurance supervisors;

44 F. The International Criminal Police Organization;

46 G. A national insurance crime bureau;

48 H. Insurance supervisors or law enforcement authorities  
50 outside the United States;

2 I. The State Fire Marshal within the Department of Public  
3 Safety;

4 J. The superintendent;

6 K. The Superintendent of Financial Institutions within the  
7 Department of Professional and Financial Regulation;

8 L. The United States Attorney's office when authorized or  
10 charged with investigation or prosecution of the insurance  
11 fraud in question, only for the purposes of section 7005,  
12 subsection 1;

14 M. The State Police or local law enforcement officials;

16 N. A national association of insurance commissioners; or

18 O. The Workers' Compensation Board.

20 3. Deceptive insurance practices. "Deceptive insurance  
21 practices" has the same meaning as in Title 17-A, section 901-A.

22 4. Fraudulent insurance act. "Fraudulent insurance act"  
24 means any of the following acts or omissions when committed  
25 knowingly:

26 A. Presenting, or causing to be presented, or preparing any  
28 information containing false representations as to a  
29 material fact with the intent to defraud an insurer,  
30 insurance producer or other person engaged in the business  
31 of insurance concerning any of the following:

32 (1) An application for the issuance or renewal of an  
34 insurance policy;

36 (2) The rating of an insurance policy;

38 (3) A claim for payment or benefit pursuant to an  
39 insurance policy;

40 (4) Payments made in accordance with an insurance  
42 policy; or

44 (5) Premiums paid on an insurance policy;

46 B. Presenting, or causing to be presented, or preparing any  
47 information containing false representations as to a  
48 material fact with the intent to defraud an insurer,  
49 insurance producer or other person engaged in the business  
50 of insurance concerning any of the following:

2           (1) A document filed with the superintendent or the  
4           insurance regulatory official or agency of a  
          jurisdiction outside this State;

6           (2) The financial condition of an insurer;

8           (3) The formation, acquisition, merger,  
10          reconsolidation, dissolution or withdrawal from one or  
12          more lines of insurance in all or part of this State by  
          an insurer;

14          (4) The issuance of written evidence of insurance; or

16          (5) The reinstatement of an insurance policy;

18          C. Soliciting or accepting new or renewal insurance risks  
20          on behalf of an insurer or other person engaged in the  
22          business of insurance by a person who knows or should know  
          that the insurer or other person responsible for the risk is  
          insolvent at the time of the transaction;

24          D. Removing, concealing, altering or destroying the assets  
26          or records of an insurer or other person engaged in the  
          business of insurance;

28          E. Embezzling, exercising unauthorized control over or  
30          converting money, funds, premiums, credits or other property  
          of an insurer or other person engaged in the business of  
          insurance;

32          F. Transacting the business of insurance in violation of  
34          laws requiring a license, certificate of authority or other  
          legal authority for the transaction of the business of  
          insurance; or

36          G. Attempting to commit, aiding or abetting in the  
38          commission of, or conspiring to commit the acts or omissions  
40          described in this subsection.

42          5. Insurance deception. "Insurance deception" has the same  
          meaning as in Title 17-A, section 354-A.

44          6. Insurer. "Insurer" means an authorized insurance  
46          company, reinsurer, surplus lines insurer, unauthorized insurer,  
48          nonprofit hospital and medical service organization, health  
          maintenance organization, risk retention group or multiple  
50          employer welfare organization. "Insurer" also includes an  
          insurance producer or other person acting on the behalf of an  
          insurer.

2           7. Policy. "Policy" means an individual or group policy,  
group certificate, contract or arrangement of insurance or  
4           reinsurance affecting the rights of a resident of this State or  
bearing a reasonable relation to this State, regardless of  
6           whether delivered or issued for delivery in this State.

8           8. Reinsurance. "Reinsurance" means a contract, binder of  
coverage, including a placement slip, or arrangement under which  
10          an insurer procures insurance for itself from another insurer as  
to all or part of an insurance risk of the originating insurer.

12           **§7002. Insurance Fraud Division**

14           1. Division established. The Insurance Fraud Division,  
16          referred to in this chapter as "the division," is established  
within the bureau. The division shall work in coordination with  
18          other bureau sections and staff and other regulatory and law  
enforcement agencies to accomplish its duties.

20           2. Duties. The duties of the division are to:

22           A. Initiate independent inquiries and conduct independent  
24          investigations when the division has cause to believe that a  
fraudulent insurance act, insurance deception or deceptive  
26          insurance practice may be or has been committed;

28           B. Review reports or complaints of alleged fraudulent  
insurance activities, insurance deception and deceptive  
30          insurance practices from federal, state and local law  
enforcement and regulatory agencies, persons engaged in the  
32          business of insurance and the public to determine whether  
the reports or complaints require further investigation and  
34          to conduct these investigations;

36           C. Conduct independent examinations of alleged fraudulent  
insurance acts and undertake independent studies to  
38          determine the extent of fraudulent insurance acts;

40           D. Assist the superintendent in developing and implementing  
programs to prevent fraudulent insurance acts and abuse,  
42          deceptive insurance practices and insurance deception; and

44           E. Assist the Attorney General in the prosecution and  
prevention of insurance fraud, deceptive insurance practices  
46          and insurance deception and prepare any reports regarding  
insurance fraud required by law.

48           3. Authority. The division has the authority to:

50

2           A. Inspect, copy or collect records and evidence;

4           B. Serve subpoenas;

6           C. Administer oaths and affirmations;

8           D. Share records and evidence with federal, state and local  
law enforcement and regulatory agencies in accordance with  
the requirements of section 216, subsection 5;

10          E. Make criminal referrals to prosecuting authorities; and

12          F. Conduct investigations outside of this State. If,  
during an investigation, the division seeks to obtain  
information located outside this State and the person from  
whom the information is sought makes that information  
available for examination at the place where the information  
is located, the division may designate representatives,  
including officials of the state in which the matter is  
located, to inspect information on behalf of the division.  
The division may respond to similar requests from officials  
of other states.

24        **§7003. Fraudulent insurance acts prohibited**

26           A person may not commit a fraudulent insurance act.

28        **§7004. Insurance fraud prevention**

30           **1. Fraud warning required.** Fraud warnings are required in  
accordance with this subsection.

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

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

46           C. This subsection applies to all insurers except  
reinsurers.

2           **2. Annual reporting of fraudulent insurance acts.**  
3 Fraudulent insurance acts must be reported on an annual basis in  
4 accordance with this subsection.

5           A. An insurer shall, annually on or before March 1st or  
6 within any reasonable extension of time granted by the  
7 superintendent, file with the superintendent a report  
8 relating to fraudulent insurance acts that the insurer knew  
9 or reasonably believed had been committed during the  
10 previous calendar year. The report must contain information  
11 required by the superintendent in the manner prescribed by  
12 the superintendent. The information must be reported on an  
13 aggregate basis and may not contain any information  
14 identifying any individuals or entities. The superintendent  
15 shall adopt rules necessary to define the information that  
16 must be reported. Rules adopted pursuant to this paragraph  
17 are routine technical rules as defined in Title 5, chapter  
18 375, subchapter 2-A.

19           B. On or before July 1st of each year, the superintendent  
20 shall report to the joint standing committee of the  
21 Legislature having jurisdiction over insurance matters. The  
22 report must include aggregate information detailing the  
23 fraudulent insurance activity experienced by insurers in  
24 this State.

25           **3. Reporting of specific fraudulent insurance acts.**  
26 Fraudulent insurance acts must be reported on an individual basis  
27 in accordance with this subsection.

28           A. A person engaged in the business of insurance having  
29 knowledge or a reasonable belief that a fraudulent insurance  
30 act is being, will be or has been committed shall provide to  
31 the superintendent the information required by, and in a  
32 manner prescribed by, the superintendent.

33           B. Any person having knowledge or a reasonable belief that  
34 a fraudulent insurance act is being, will be or has been  
35 committed may provide to the superintendent the information  
36 required by, and in a manner prescribed by, the  
37 superintendent.

38           **4. Insurer antifraud plans.** Every insurer writing direct  
39 insurance shall prepare and implement an antifraud plan. This  
40 subsection does not apply to any agency, producer or other person  
41 acting on behalf of an insurer. The superintendent may review an  
42 insurer's antifraud plan to determine if the plan complies with  
43 the requirements of this subsection. The antifraud plan must  
44 outline specific procedures, appropriate to the lines of  
45 insurance the insurer writes in the State, to:



- 2           A. Prevent, detect and investigate all forms of insurance  
3           fraud;
- 4
- 5           B. Educate appropriate employees on the antifraud plan and  
6           fraud detection;
- 7
- 8           C. Provide for the hiring of or contracting for fraud  
9           investigators; and
- 10
- 11           D. Report insurance fraud to appropriate law enforcement  
12           and regulatory agencies in the investigation and prosecution  
13           of insurance fraud.
- 14

15           **§7005. Insurance fraud reporting immunity**

16

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

24

- 25           A. A history of previous claims made by the insured;
- 26
- 27           B. Insurance policy information relevant to fraud under  
28           investigation and any application for that policy;
- 29
- 30           C. Material relating to the investigation of a loss  
31           including statements and proof of loss; and
- 32
- 33           D. Policy premium payment records.
- 34

35           2. Exchange of information. An authorized agency or  
36           insurer provided with information pursuant to this section may  
37           release or provide that information to any other authorized  
38           agency or insurer with an interest in the insurance fraud under  
39           investigation.

40

41           3. Right to receive upon request. Any insurer providing  
42           information to an authorized agency pursuant to this section has  
43           the right, upon request, to receive other information relevant to  
44           the fraud from that authorized agency within 30 days.

45

46           4. Immunity. In the absence of fraud, malice or bad faith,  
47           any person, including, but not limited to, an insurer or  
48           authorized agency, that furnished information relating to  
49           suspected, anticipated or completed fraudulent insurance acts is  
50           not liable for any damages in any civil action for furnishing the

2 information if that information is furnished to or received from  
3 an authorized agency. This subsection is not intended to  
4 abrogate or modify in any way any common law or statutory  
5 privilege or immunity previously enjoyed by any person.

6 **§7006. Confidentiality**

8 **1. Documents, materials and other information.** Documents,  
9 materials and other information in the possession or control of  
10 the bureau that are provided pursuant to section 7005 or obtained  
11 by the superintendent in an investigation of suspected or actual  
12 fraudulent insurance acts are confidential by law and privileged,  
13 are not subject to disclosure as public records under Title 1,  
14 chapter 13, are not subject to subpoena and are not subject to  
15 discovery or admissible in evidence in any private civil action,  
16 except that the superintendent is authorized to use the  
17 documents, materials and other information in the furtherance of  
18 any regulatory or legal action brought as a part of the  
19 superintendent's official duties.

20 **2. Testimony in civil action.** The superintendent or any  
21 person who received documents, materials or other information  
22 while acting under the authority of the superintendent may not be  
23 permitted or required to testify in any private civil action  
24 concerning any confidential documents or information subject to  
25 subsection 1.

26 **3. Superintendent may share or receive documents.** In order  
27 to assist in the performance of the superintendent's duties, the  
28 superintendent may share or receive documents, materials or other  
29 information, including the confidential and privileged documents,  
30 materials or information subject to subsection 1 in accordance  
31 with section 216, subsection 5.

32 **4. Sharing of documents for law enforcement purposes.** This  
33 section does not prohibit the superintendent from providing  
34 information to or receiving information from any local, state,  
35 federal or international law enforcement authorities, including  
36 any prosecutorial authority, or from complying with subpoenas or  
37 other lawful process in criminal actions or as may otherwise be  
38 provided in this chapter.

39 **5. No waiver.** No waiver of any applicable privilege or  
40 claim of confidentiality in documents, materials or information  
41 occurs as a result of their disclosure to the superintendent  
42 under this chapter or as a result of sharing as authorized in  
43 subsection 3.

44 **§7007. Civil penalties**

2 Any person who violates this chapter is subject to  
3 suspension or revocation of license or certificate of authority  
4 issued pursuant to Title 24 or this Title or civil penalties and  
5 other remedies as provided in section 12-A or both.  
6 Notwithstanding section 2165-A, subsection 1, the superintendent  
7 may issue emergency cease and desist orders on the basis of  
8 conduct involving fraudulent insurance acts.

9 **§7008. Recovery costs**

10  
11 In a civil action in which it is proven that a person  
12 committed a fraudulent insurance act, the court may award  
13 reasonable attorney's fees and costs to the plaintiff insurer.  
14 In a civil action in which the insurer alleges that a party  
15 committed a fraudulent insurance act that is not established at  
16 trial, the court may award reasonable attorney's fees and costs  
17 to the party if the allegation is not supported by any reasonable  
18 basis of law or fact.

19 **§7009. Rulemaking**

20  
21 The superintendent may adopt rules as necessary for the  
22 administration of this chapter. Rules adopted pursuant to this  
23 section are routine technical rules as defined in Title 5,  
24 chapter 375, subchapter 2-A.

25 **§7010. Construction**

26  
27 **1. Other law enforcement or regulatory authority.** This  
28 chapter does not preempt the authority or relieve the duty of  
29 other law enforcement or regulatory agencies to investigate,  
30 examine and prosecute suspected violations of law.

31  
32 **2. Voluntary disclosure concerning insurance fraud.** This  
33 chapter does not prevent or prohibit a person from disclosing  
34 voluntarily information concerning insurance fraud, insurance  
35 deception or deceptive insurance practices to a law enforcement  
36 or regulatory agency other than the division.

37  
38 **3. No limitation on superintendent.** This chapter does not  
39 limit the powers granted elsewhere by the laws of this State to  
40 the superintendent or the division to investigate and examine  
41 possible violations of law and to take appropriate action against  
42 wrongdoers.

43  
44  
45 **SUMMARY**

46  
47 This bill establishes the Insurance Fraud Division within  
48 the Department of Professional and Financial Regulation, Bureau  
49

2 of Insurance to investigate acts of insurance fraud. The bill  
retains existing statutory provisions requiring insurers to  
4 include fraud warnings on insurance applications and claim forms,  
to file antifraud plans and to file annual reports with the  
6 Superintendent of Insurance. The bill requires persons in the  
business of insurance with knowledge or suspicion of fraudulent  
insurance acts to report those to the Superintendent of Insurance.

8