

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)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 713

S.P. 230

February 13, 2007

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

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARRACHÉ of Kennebec.
Cosponsored by Representative TARDY of Newport and Senator: SULLIVAN of York,
Representatives: PERRY of Calais, VAUGHAN of Durham.

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

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

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

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

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

36 **Sec. 3. 24-A MRSA §2186, sub-§4, ¶C** is enacted to read:

37 C. An insurer having knowledge or a reasonable belief that a fraudulent insurance
38 act is being, will be or has been committed shall provide to the superintendent the

1 information required by the superintendent in a manner prescribed by the
2 superintendent by rule. Rules adopted pursuant to this paragraph are routine
3 technical rules as defined in Title 5, chapter 375, subchapter 2-A. For purposes of
4 this subsection, "insurer" does not include an insurance producer or other person
5 acting on behalf of an insurer.

6 **Sec. 4. 24-A MRSA §2186, sub-§4, ¶D** is enacted to read:

7 D. Any person having knowledge or a reasonable belief that a fraudulent insurance
8 act is being, will be or has been committed may provide to the superintendent the
9 information required by the superintendent in a manner prescribed by the
10 superintendent by rule. Rules adopted pursuant to this paragraph are routine
11 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

12 **Sec. 5. 24-A MRSA §2187, sub-§1, ¶B**, as amended by PL 2005, c. 433, §1 and
13 affected by §28, is further amended to read:

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

- 15 (1) The Attorney General;
- 16 (2) A district attorney responsible for prosecution in the municipality where the
17 fraud occurred;
- 18 (3) The Federal Bureau of Investigation, or any other federal agency, only for the
19 purposes of subsection 2;
- 20 (4) The State Fire Marshal;
- 21 (5) The Superintendent of Insurance;
- 22 (6) The Superintendent of Financial Institutions;
- 23 (7) The United States Attorney's office when authorized or charged with
24 investigation or prosecution of the insurance fraud in question, only for the
25 purposes of subsection 2;
- 26 (8) The State Police, state law enforcement officials or local law enforcement
27 officials; ~~or~~
- 28 ~~(9) The National Association of Insurance Commissioners. A national~~
29 association of insurance commissioners;
- 30 (10) An international association of insurance supervisors;
- 31 (11) An international police organization;
- 32 (12) A national insurance crime bureau or similar organization that collects,
33 receives, investigates or analyzes information concerning insurance fraud;
- 34 (13) Insurance supervisors or law enforcement authorities outside the United
35 States; or
- 36 (14) The Workers' Compensation Board.

1 **Sec. 6. 24-A MRSA §2187, sub-§4**, as enacted by PL 1997, c. 675, §2, is
2 repealed.

3 **Sec. 7. 24-A MRSA §2187, sub-§5**, as enacted by PL 1997, c. 675, §2, is
4 amended to read:

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

15 **Sec. 8. 24-A MRSA §2188** is enacted to read:

16 **§2188. Insurance Fraud Division**

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

21 **2. Duties.** The duties of the division are, with respect to a fraudulent insurance act
22 as defined in section 2186, a deceptive insurance practice under Title 17-A, section
23 901-A or an insurance deception under Title 17-A, section 354-A, to:

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

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

32 C. Conduct independent examinations of alleged fraudulent insurance acts,
33 deceptive insurance practices and insurance deception and undertake independent
34 studies to determine the extent of fraudulent and deceptive insurance acts and
35 practices;

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

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

1 F. Prepare any reports regarding insurance fraud, deceptive insurance practices and
2 insurance deception required by law.

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

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

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

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

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

19

SUMMARY

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