

MAINE STATE LEGISLATURE

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Report B

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE

SENATE

125TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 280, L.D. 892, Bill, "An Act To Establish an Insurance Fraud Division within the Department of Professional and Financial Regulation, Bureau of Insurance"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting 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;
- B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;
- C. Constitute an unwarranted invasion of personal privacy;
- D. Disclose the identity of a confidential source;
- E. Disclose confidential information furnished only by the confidential source;

COMMITTEE AMENDMENT

- 1 F. Disclose trade secrets or other confidential commercial or financial information
2 designated as such by the owner or source of the information or by the Department of
3 the Attorney General;
- 4 G. Disclose investigative techniques and procedures or security plans and
5 procedures not generally known by the general public;
- 6 H. Endanger the life or physical safety of any individual, including law
7 enforcement personnel;
- 8 I. Disclose conduct or statements made or documents submitted by any person in
9 the course of any mediation or arbitration conducted under the auspices of the
10 Department of the Attorney General;
- 11 J. Disclose information designated confidential by some other statute; or
- 12 K. Identify the source of complaints made to the Department of the Attorney
13 General involving violations of consumer or antitrust laws.
- 14 **Sec. 2. 24-A MRSA §2179**, as amended by PL 1973, c. 585, §12, is repealed.
- 15 **Sec. 3. 24-A MRSA §2186**, as amended by PL 2009, c. 13, §2, is repealed.
- 16 **Sec. 4. 24-A MRSA §2187**, as amended by PL 2005, c. 433, §1 and affected by
17 §28, is repealed.
- 18 **Sec. 5. 24-A MRSA c. 89** is enacted to read:

19 **CHAPTER 89**

20 **INSURANCE FRAUD**

21 **§7001. Definitions**

22 As used in this chapter, unless the context otherwise indicates, the following terms
23 have the following meanings.

24 **1. Authorized agency.** "Authorized agency" means:

25 A. The administrator of the Office of Securities within the Department of
26 Professional and Financial Regulation;

27 B. The Attorney General;

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

30 D. The Federal Bureau of Investigation, or any other federal agency, only for the
31 purposes of section 7004, subsection 1;

32 E. An international association of insurance supervisors;

33 F. An international criminal police organization;

34 G. A national insurance crime bureau;

35 H. Insurance supervisors or law enforcement authorities outside of the United States;

- 1 I. The State Fire Marshal;
- 2 J. The superintendent;
- 3 K. The Superintendent of Financial Institutions;
- 4 L. The United States Attorney's office when authorized or charged with investigation
- 5 or prosecution of the insurance fraud in question, only for the purposes of section
- 6 7004, subsection 1;
- 7 M. The State Police or local law enforcement officials;
- 8 N. The National Association of Insurance Commissioners; or
- 9 O. The Workers' Compensation Board.
- 10 **2. Deceptive insurance practice.** "Deceptive insurance practice" means an
- 11 occurrence described in Title 17-A, section 901-A.
- 12 **3. Fraudulent insurance act.** "Fraudulent insurance act" means any of the
- 13 following acts or omissions when committed knowingly:
- 14 A. Presenting, causing to be presented or preparing any information containing false
- 15 representations as to a material fact with the intent to defraud an insurer, insurance
- 16 producer or other person engaged in the business of insurance concerning any of the
- 17 following:
- 18 (1) An application for the issuance or renewal of an insurance policy;
- 19 (2) The rating of an insurance policy;
- 20 (3) A claim for payment or benefit pursuant to an insurance policy;
- 21 (4) Payments made in accordance with an insurance policy; or
- 22 (5) Premiums paid on an insurance policy;
- 23 B. Presenting, causing to be presented or preparing any information containing false
- 24 representations as to a material fact with the intent to defraud an insurer, insurance
- 25 producer or other person engaged in the business of insurance concerning any of the
- 26 following:
- 27 (1) A document filed with the superintendent or the insurance regulatory official
- 28 or agency of another jurisdiction;
- 29 (2) The financial condition of an insurer;
- 30 (3) The formation, acquisition, merger, reconsolidation, dissolution or
- 31 withdrawal from one or more lines of insurance in all or part of this State by an
- 32 insurer;
- 33 (4) The issuance of written evidence of insurance; or
- 34 (5) The reinstatement of an insurance policy;
- 35 C. Soliciting or accepting new or renewal insurance risks on behalf of an insurer or
- 36 other person engaged in the business of insurance by a person who knows or should

1 know that the insurer or other person responsible for the risk is insolvent at the time
2 of the transaction;

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

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

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

11 G. Attempting to commit, aiding or abetting in the commission of, or conspiring to
12 commit the acts or omissions described in this subsection.

13 4. Insurance deception. "Insurance deception" means an occurrence described in
14 Title 17-A, section 354-A.

15 5. Insurer. "Insurer" means an authorized insurance company, fraternal benefit
16 society, reinsurer, surplus lines insurer, unauthorized insurer, nonprofit hospital and
17 medical service organization, health maintenance organization, risk retention group or
18 multiple employer welfare organization. "Insurer" includes an insurance producer or other
19 person acting on the behalf of an insurer.

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

24 7. Reinsurance. "Reinsurance" means a contract, binder of coverage, including a
25 placement slip, or arrangement under which an insurer procures insurance for itself in
26 another insurer as to all or part of an insurance risk of the originating insurer.

27 **§7002. Insurance Fraud Division**

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

32 2. Duties. The division shall:

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

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

- 1 C. Conduct independent examinations of alleged fraudulent insurance acts, insurance
2 deception or deceptive insurance practices and undertake independent studies to
3 determine the extent of fraudulent insurance acts;
- 4 D. Assist the superintendent in developing and implementing programs to prevent
5 fraudulent insurance acts, deceptive insurance practices and insurance deception;
- 6 E. Assist the Attorney General in the prosecution and prevention of fraudulent
7 insurance acts, deceptive insurance practices and insurance deception; and
- 8 F. Prepare any reports regarding insurance fraud required by law.
- 9 **3. Authority.** The division may:
- 10 A. Inspect, copy and collect records and evidence;
- 11 B. Issue subpoenas under the authority of the superintendent;
- 12 C. Administer oaths and affirmations;
- 13 D. Subject to section 216, subsection 5, share records and evidence with federal,
14 state or local law enforcement or regulatory agencies and regulatory associations,
15 including the National Association of Insurance Commissioners;
- 16 E. Make criminal referrals to prosecuting authorities; and
- 17 F. Conduct investigations within and outside this State. If the information the
18 division seeks to obtain is located outside this State, the division may examine the
19 information at the place where the information is located. The division may
20 designate representatives, including officials of the state in which the information is
21 located, to inspect the information on behalf of the division, and the division may
22 respond to similar requests from officials of other states.
- 23 **4. Records; confidentiality.** Records that are prepared by, prepared at the direction
24 of or kept in the custody of the division that contain investigative information are subject
25 to the requirements of Title 16, section 614, except that the superintendent may share
26 information with an authorized agency. Except as provided in Title 16, section 614 or as
27 required for a criminal or civil proceeding, an authorized agency shall hold the
28 information in confidence and may not release the information to any person other than
29 an authorized agency.
- 30 **5. Funding.** The superintendent may assess insurers for necessary costs and
31 expenses of the division to the extent permitted by section 237.
- 32 **§7003. Insurance fraud prevention**
- 33 **1. Prohibited activities.** A person may not commit a fraudulent insurance act,
34 deceptive insurance practice or insurance deception.
- 35 **2. Fraud warning required.** All applications and claim forms for insurance used by
36 insurers in this State, regardless of the form of transmission, must contain the following
37 statement or a substantially similar statement permanently affixed to the application or
38 claim form: "It is a crime to knowingly provide false, incomplete or misleading
39 information to an insurance company for the purpose of defrauding the company.
40 Penalties may include imprisonment, fines or a denial of insurance benefits."

1 The lack or omission of the statement required in this subsection does not constitute a
2 defense in any criminal prosecution or civil action for a fraudulent insurance act.

3 This subsection applies to all insurers except reinsurers.

4 **3. Insurer antifraud plans.** An insurer writing direct insurance shall prepare and
5 implement an antifraud plan. This subsection does not apply to any insurance agency,
6 insurance producer or other person acting on behalf of an insurer. The superintendent
7 may review an insurer's antifraud plan to determine if the plan complies with the
8 requirements of this subsection. The antifraud plan must outline specific procedures,
9 appropriate to the lines of insurance the insurer writes in the State, to:

10 A. Prevent, detect and investigate all forms of insurance fraud;

11 B. Educate appropriate employees on the antifraud plan and fraud detection;

12 C. Provide for the hiring of or contracting for fraud investigators; and

13 D. Report insurance fraud to appropriate law enforcement and regulatory authorities
14 in the investigation and prosecution of insurance fraud.

15 **4. Reporting of specific fraudulent insurance acts.** The reporting of information
16 to the division relating to a fraudulent insurance act, deceptive insurance practice or
17 insurance deception must be done in accordance with this subsection.

18 A. An insurer having knowledge or a reasonable belief that a fraudulent insurance
19 act, deceptive insurance practice or insurance deception is being, will be or has been
20 committed shall provide to the division the information required by the
21 superintendent in a manner prescribed by the division.

22 B. A person other than an insurer under paragraph A having knowledge or a
23 reasonable belief that a fraudulent insurance act, deceptive insurance practice or
24 insurance deception is being, will be or has been committed may provide relevant
25 information to the division, and the division may establish forms and procedures to
26 facilitate the reporting of such information in a manner useful to the division.

27 **5. Annual report of aggregate information.** Aggregate information related to
28 fraudulent insurance acts must be reported to the division in accordance with this
29 subsection.

30 A. An insurer shall, annually on or before March 1st or within any reasonable
31 extension of time granted by the division, file with the division a report relating to
32 fraudulent insurance acts that the insurer knew or reasonably believed had been
33 committed during the previous calendar year. The report must contain information
34 required by the division in the manner prescribed by the division. The information
35 must be reported on an aggregate basis and may not contain any information
36 identifying any individuals or entities.

37 B. On or before July 1st of each year, the division shall report to the joint standing
38 committee of the Legislature having jurisdiction over insurance matters. The report
39 must include aggregate information detailing fraudulent insurance acts experienced
40 by insurers in this State.

1 **§7004. Insurance fraud reporting; immunity**

2 **1. Information disclosed.** An authorized agency investigating a fraudulent
3 insurance act, deceptive insurance practice or insurance deception may, in writing,
4 require the insurer at interest to release to the requesting authorized agency any relevant
5 information or evidence determined to be important to the authorized agency that the
6 insurer may have in its possession relating to the fraudulent insurance act, deceptive
7 insurance practice or insurance deception in question. This information includes, but is
8 not limited to:

9 A. A history of previous claims made by the insured;

10 B. Policy information relevant to the insurance fraud under investigation and any
11 application for that policy;

12 C. Material relating to the investigation of the loss including statements and proof of
13 loss; and

14 D. Policy premium payment records.

15 **2. Exchange of information.** An authorized agency or insurer provided with
16 information pursuant to this section may release or provide that information to any other
17 authorized agency or insurer with an interest in the insurance fraud under investigation.

18 **3. Immunity.** In the absence of fraud, malice or bad faith, a person, including, but
19 not limited to, an insurer or authorized agency, that furnishes information relating to
20 suspected, anticipated or completed fraudulent insurance acts is not liable for any
21 damages in any civil action for furnishing the information if that information is furnished
22 to or received from an authorized agency. Nothing in this subsection is intended to
23 abrogate or modify in any way any common law or statutory privilege or immunity
24 previously enjoyed by any person.

25 **§7005. Violations; penalties**

26 **1. Suspension or revocation; civil penalties.** A person who violates this chapter is
27 subject to suspension or revocation of any license or certificate of authority issued
28 pursuant to Title 24 or this Title, or civil penalties and other remedies as provided in
29 section 12-A, or both.

30 **2. Emergency cease and desist order.** Notwithstanding section 2165-A, the
31 superintendent may issue an emergency cease and desist order on the basis of conduct
32 involving fraudulent insurance acts.

33 **3. Recovery of costs in civil action.** An insurer may maintain a civil action against
34 a person whom the insurer alleges has committed a fraudulent insurance act in violation
35 of section 7003, subsection 1. In a civil action in which it is proven that a person
36 committed a fraudulent insurance act, the court may award reasonable attorney's fees and
37 costs to the insurer. In a civil action in which the insurer alleges that a party committed a
38 fraudulent insurance act that is not established at trial, the court may award reasonable
39 attorney's fees and costs to the party if the allegation is not supported by any reasonable
40 basis of law or fact.

1 **§7006. Rulemaking**

2 The superintendent may adopt rules to carry out the purposes of this chapter. Rules
 3 adopted pursuant to this section are routine technical rules as defined by Title 5, chapter
 4 375, subchapter 2-A.

5 **§7007. Construction; other law enforcement or regulatory authority**

6 This chapter may not be construed to:

7 **1. Preempt authority of other law enforcement or regulatory agency.** Preempt
 8 the authority or relieve the duty of other law enforcement or regulatory agencies to
 9 investigate, examine and prosecute suspected violations of law;

10 **2. Prevent voluntary disclosure.** Prevent or prohibit a person from voluntarily
 11 disclosing information concerning insurance fraud, insurance deception or deceptive
 12 insurance practices to a law enforcement or regulatory agency other than the division; or

13 **3. Limit powers of superintendent.** Limit the powers granted elsewhere by the
 14 laws of this State to the superintendent or the division to investigate and examine possible
 15 violations of law and to take appropriate action against wrongdoers.

16 **Sec. 6. Appropriations and allocations.** The following appropriations and
 17 allocations are made.

18 **ATTORNEY GENERAL, DEPARTMENT OF THE**

19 **Administration - Attorney General 0310**

20 Initiative: Allocates funds for one Assistant Attorney General position and general
 21 operating expenses to support the Insurance Fraud Division within the Department of
 22 Professional and Financial Regulation to be funded by the Bureau of Insurance.

23	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
24	POSITIONS - LEGISLATIVE COUNT	1.000	1.000
25	Personal Services	\$68,273	\$96,694
26	All Other	\$4,218	\$2,218
27			
28	OTHER SPECIAL REVENUE FUNDS TOTAL	\$72,491	\$98,912

29 **ATTORNEY GENERAL, DEPARTMENT OF**
 30 **THE**
 31 **DEPARTMENT TOTALS**

32		2011-12	2012-13
33	OTHER SPECIAL REVENUE FUNDS	\$72,491	\$98,912
34			
35	DEPARTMENT TOTAL - ALL FUNDS	\$72,491	\$98,912

36 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

1 **Administrative Services - Professional and Financial Regulation 0094**
 2 Initiative: Allocates funds for operating expenses to establish and administer the
 3 Insurance Fraud Division.

4	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
5	All Other	\$24,994	\$30,517
6			
7	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$24,994</u>	<u>\$30,517</u>

8 **Insurance - Bureau of 0092**
 9 Initiative: Allocates funds for one Public Service Manager II, 2 Staff Attorney, 3 Senior
 10 Market Conduct Examiner and one Auditor II positions and for general operating
 11 expenses to establish and administer the Insurance Fraud Division.

12	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
13	POSITIONS - FTE COUNT	7.000	7.000
14	Personal Services	\$387,660	\$550,464
15	All Other	\$162,308	\$180,444
16			
17	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$549,968</u>	<u>\$730,908</u>

18	PROFESSIONAL AND FINANCIAL		
19	REGULATION, DEPARTMENT OF		
20	DEPARTMENT TOTALS	2011-12	2012-13
21			
22	OTHER SPECIAL REVENUE FUNDS	\$574,962	\$761,425
23			
24	DEPARTMENT TOTAL - ALL FUNDS	<u>\$574,962</u>	<u>\$761,425</u>

25	SECTION TOTALS	2011-12	2012-13
26			
27	OTHER SPECIAL REVENUE FUNDS	\$647,453	\$860,337
28			
29	SECTION TOTAL - ALL FUNDS	<u>\$647,453</u>	<u>\$860,337</u>
30			

31 **SUMMARY**

32 This amendment replaces the bill. The amendment proposes substantially what the
 33 bill proposes but enacts a separate chapter that establishes the Insurance Fraud Division
 34 within the Department of Professional and Financial Regulation, Bureau of Insurance.
 35 The amendment requires insurers with knowledge or suspicion of fraudulent insurance

1 acts to report those activities to the Insurance Fraud Division. The amendment provides
2 for the confidentiality of records relating to insurance fraud investigations in a manner
3 similar to the provision of confidentiality under current state law for investigative and
4 intelligence information in the possession of other law enforcement entities. The
5 amendment permits the Insurance Fraud Division to share investigatory information with
6 certain state, municipal, national and international agencies. The amendment clarifies
7 that the Insurance Fraud Division may be funded by an assessment on insurers.

8 The amendment also adds an appropriations and allocations section to provide funds
9 for the administration of the Insurance Fraud Division.

10 **FISCAL NOTE REQUIRED**

11 **(See attached)**



125th MAINE LEGISLATURE

LD 892

LR 1739(02)

An Act To Establish an Insurance Fraud Division within the Department of Professional and Financial Regulation, Bureau of Insurance

Fiscal Note for Bill as Amended by Committee Amendment "A" S-211

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Appropriations/Allocations				
Other Special Revenue Funds	\$647,453	\$860,337	\$898,199	\$938,285
Revenue				
Other Special Revenue Funds	\$647,453	\$860,337	\$903,304	\$948,751

Fiscal Detail and Notes

Provides the Bureau of Insurance in the Department of Professional and Financial Regulation with an Other Special Revenue Funds allocation of \$549,968 in 2011-12 and \$730,908 in 2012-13 to establish and administer the new Insurance Fraud Division. This allocation assumes the creation of 7 new positions and related operating costs in the Bureau. Also provides the Administrative Services Division in the Department of Professional and Financial Regulation with an Other Special Revenue Funds allocation of \$24,994 in 2011-12 and \$30,517 in 2012-13 for this purpose. This fiscal note also assumes the Department of the Attorney General will require an Other Special Revenue Funds allocation of \$72,491 in 2011-12 and \$98,912 in 2012-13 for an Assistant Attorney General position to be funded by the Bureau of Insurance. The Bureau of Insurance estimates it will be required to exercise its assessment authority to support the costs of the new Insurance Fraud Division.