

Regular Session, 2013

SENATE BILL NO. 180

BY SENATORS ERDEY AND LAFLEUR

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE DEPARTMENT. Provides relative to the division of insurance fraud in the Department of Insurance. (8/1/13)

1 AN ACT
2 To amend and reenact R.S. 22:3, 1921, 1922, 1926, 1927, 1928(A) introductory paragraph
3 and 1929(A), and R.S. 36:681(C)(1), to enact R.S. 36:691.1, and to repeal R.S.
4 36:691, relative to the Department of Insurance; to provide with respect to the
5 division of insurance fraud; to provide for powers and duties of the division of
6 insurance fraud; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:3, 1921, 1922, 1926, 1927, 1928(A) introductory paragraph, and
9 1929(A) are hereby amended and reenacted to read as follows:

10 §3. Composition of Department of Insurance

11 The Department of Insurance shall be comprised of the office of the
12 commissioner, the office of management and finance, the office of property and
13 casualty, the office of receivership, the office of licensing and compliance, the office
14 of financial solvency, the office of consumer advocacy, the office of health
15 insurance, **the division of insurance fraud**, the division of legal services, the
16 division of public affairs, the division of minority affairs, and any other office or
17 division that may be included by the Executive Reorganization Act or other law.

1 Each office or division shall be administered as prescribed by Titles 36 and 39 of the
2 Louisiana Revised Statutes of 1950.

3 * * *

4 §1921. Purpose and powers

5 A. The purpose of this Part is to create within the Department of Insurance
6 a ~~section~~ **division** of insurance fraud. This ~~section~~ **division** shall be charged with the
7 responsibility, when ~~requested~~ **directed** by the commissioner of insurance, to
8 conduct investigations and background criminal checks on ~~all applicants~~ **each**
9 **applicant** for a license or certificate of authority to transact a business of insurance.

10 **The division of insurance fraud shall be governed by the provisions of this Part**
11 **including the powers and duties relating to the investigation, prosecution, and**
12 **prevention of violations of the insurance laws of this state.**

13 B. In the event the applicant is a corporation, partnership, or other legal
14 entity, the criminal background and checks shall be limited to those individuals who
15 are directors, officers, employees, or individuals who own or control at least ten
16 percent of the entity.

17 C. If the ~~section~~ **division** has reason to believe, whether acting on its own
18 initiative or as a result of complaints, that a person has engaged in, or is engaging in,
19 an act or practice that violates this Part or any other provision of this Code, it may
20 examine and investigate ~~into~~ the affairs of such person and may administer oaths and
21 affirmations, serve subpoenas ordering the attendance of witnesses, and collect
22 evidence.

23 D. If during the course of investigation, the ~~Department of Insurance~~
24 **division of insurance fraud** determines that there may be a violation of any criminal
25 law, ~~the investigation~~ **the division** shall then ~~be turned over to~~ **coordinate further**
26 **actions with** the Department of Justice, the Department of Public Safety and
27 Corrections, public safety services, office of state police, and **any** other appropriate
28 law enforcement or prosecutorial agency, ~~for further investigation, enforcement, or~~
29 ~~prosecution.~~

1 §1922. Additional powers and duties

2 A. The ~~Department of Insurance, section~~ division of insurance fraud, is
3 hereby designated as a law enforcement agency and conferred all investigative
4 powers and privileges appurtenant to a law enforcement agency under state law
5 as necessary and in furtherance of the authority, duties, powers, and functions
6 set forth in this Part. These powers and privileges shall include arrest powers
7 related to insurance fraud, as provided in Subsections D and E of this Section,
8 and access to computer systems, information maintained for the use of law
9 enforcement personnel, any information contained in the criminal history
10 record and identification file of the Louisiana Bureau of Criminal Identification
11 and Information, is authorized to have and direct access to information compiled
12 by the Federal Bureau of Investigation, as contained in the National Crime
13 Identification Center for the purposes of ~~licensure or the granting, denying,~~
14 ~~revocation, suspension or any other action on an application for a license or~~
15 ~~certificate of authority to be an insurer in the state, subject to the approval of the~~
16 ~~office of state police~~ carrying out its responsibilities under this Part.

17 B. The ~~Department of Insurance, section of insurance fraud;~~ commissioner
18 of insurance is authorized to may require all applicants each applicant for a license
19 or certificate of authority to submit physical evidence of the identity of the applicant.
20 The commissioner of insurance ~~is authorized to~~ may promulgate rules and
21 regulations defining the type of physical identification acceptable and the manner in
22 which such evidence is to be received by the Department of Insurance.

23 C. The commissioner of insurance may deny a license or certificate of
24 authority when the applicant, or if the applicant is a corporation, partnership, limited
25 liability company or partnership, or other legal entity, any officer, director, managing
26 person, employee, or principal stockholder has been convicted of a felony.

27 D. The deputy commissioner of insurance fraud and the compliance
28 investigators of the insurance fraud division shall be peace officers with all
29 privileges, immunities, and defenses accorded to peace officers. In addition, the

1 deputy commissioner and each compliance investigator, while engaged in the
2 performance of their duties to investigate insurance fraud, shall have the
3 authority to investigate and cause the arrest of individuals suspected of having
4 violated the following criminal laws:

5 (1) R.S. 22:184, violations relating to reciprocal insurers.

6 (2) R.S. 22:216, violations relating to nonprofit funeral service
7 associations.

8 (3) R.S. 22:316, violations relating to fraternal benefit societies.

9 (4) R.S. 22:987, violations relating to standards and contract
10 requirements for health and accident policies.

11 (5) R.S. 22:1562, prohibited acts relating to procuring surplus lines
12 insurance.

13 (6) R.S. 22:1584, prohibited acts relating to bail bond producers.

14 (7) R.S. 22:1924 and 1925, committing insurance fraud.

15 (8) R.S. 22:2007, failure of officers, owners, and employees to cooperate
16 in an investigation.

17 (9) Any other criminal laws making unlawful an attempt or conspiracy
18 to commit the foregoing offenses.

19 E. The commissioner of insurance may issue a commission authorizing
20 any deputy commissioner of insurance fraud or any compliance investigator
21 who is P.O.S.T.-certified to carry and use firearms and to arrest persons
22 suspected of violating the crimes enumerated in this Section. The commissioner
23 shall also provide appropriate credentials and badges of authority.

24 * * *

25 §1926. Duties of companies and others

26 A. Any person, company, or other legal entity including but not limited to
27 those engaged in the business of insurance, including producers and adjusters, ~~which~~
28 **that** suspects that a fraudulent insurance act will be, is being, or has been committed
29 shall, within sixty days of the receipt of such notice, send to the ~~section~~ **division** of

1 insurance fraud, on a form prescribed by the ~~section~~ **commissioner**, the information
2 requested and such additional information relative to the insurance act and the parties
3 claiming loss or damages because of an occurrence or accident as the ~~section~~
4 **commissioner** may require. The ~~section~~ **division** of insurance fraud shall review
5 such reports and select such insurance acts as, in its judgment, may require further
6 investigation. It shall then cause an independent examination of the facts surrounding
7 such insurance act to be made to determine the extent, if any, to which fraud, deceit,
8 or intentional misrepresentation of any kind exists in the submission of the insurance
9 act.

10 B. The ~~section~~ **division** of insurance fraud shall report any alleged violations
11 of law which its investigations disclose to the appropriate licensing agency, the
12 insurance fraud investigation unit of the office of state police, the insurance fraud
13 support unit of the Department of Justice, and the prosecutive authority having
14 jurisdiction with respect to any such violation. These units shall work jointly on
15 criminal referrals.

16 §1927. Materials and evidence

17 A. If matter that the ~~section~~ **division** seeks to obtain by request is located
18 outside the state, the person so requested may make it available to the ~~section~~
19 **division** or its representative to examine at the place where it is located. The ~~section~~
20 **division** may designate representatives, including officials of the state in which the
21 matter is located, to inspect the matter on its behalf, and it may respond to similar
22 requests from officials of other states.

23 B. The ~~section's~~ **division's** papers, documents, reports, or evidence relative
24 to the subject of an investigation under this Part shall not be subject to public
25 inspection for so long as the ~~section~~ **commissioner** deems reasonably necessary to
26 complete the investigation, to protect the person investigated from unwarranted
27 injury, or to be in the public domain. Further, such papers, documents, reports, or
28 evidence relative to the subject of investigation under this Section shall not be
29 subject to subpoena until opened for public inspection by the ~~section~~ **commissioner**,
30 unless the ~~section~~ **commissioner** consents, or until after notice to the ~~section~~

1 commissioner and a hearing, a court of competent jurisdiction determines the
2 ~~section~~ division would not be necessarily hindered by such subpoena. ~~Section~~
3 ~~investigators~~ Division personnel shall not be subject to subpoena in civil actions by
4 any court of this state to testify concerning any matter of which they have knowledge
5 pursuant to a pending insurance fraud investigation ~~by the section.~~

6 §1928. Civil immunity

7 A. No insurer, employees, or agents of any insurer, or any other person acting
8 without malice, fraudulent intent, or bad faith, shall be subject to civil liability for
9 libel, slander, or any other relevant tort, and no civil cause of action of any nature
10 shall exist against such person or entity by virtue of the filing of reports or furnishing
11 other information, either orally or in writing, concerning suspected, anticipated, or
12 completed fraudulent insurance acts when such reports or information are required
13 by this Part or required by the ~~section~~ division of insurance fraud as a result of the
14 authority herein granted or when such reports or information are provided to or
15 received from:

16 * * *

17 §1929. Confidentiality of criminal background checks, civil penalties

18 A. Notwithstanding any other provision of law to the contrary, criminal
19 background information in the possession of the ~~fraud-section~~ insurance fraud
20 division of the Department of Insurance shall be confidential and shall not be
21 disclosed to others outside of the ~~fraud-section~~ insurance fraud division except as
22 necessary for action on the application of the applicant.

23 * * *

24 Section 2. R.S. 36:681(C)(1) is hereby amended and reenacted and R.S. 36:691.1 is
25 hereby enacted to read as follows:

26 §681. Department of Insurance; creation; domicile; purposes and functions

27 * * *

28 C.(1) The officers of the department shall be the commissioner of insurance,
29 the chief deputy commissioner, the deputy commissioner for management and
30 finance, the deputy commissioner for property and casualty, the deputy

1 commissioner for ~~receivership~~ **insurance fraud**, the deputy commissioner for
 2 licensing and compliance, the deputy commissioner for financial solvency, the
 3 deputy commissioner for health insurance, the deputy commissioner for public
 4 affairs, the deputy commissioner for minority affairs, the deputy commissioner for
 5 consumer advocacy, and the executive counsel.

6 * * *

7 **§691.1. Division of insurance fraud**

8 **There is hereby created a division of insurance fraud in the Department**
 9 **of Insurance that shall be under the direction of the deputy commissioner for**
 10 **insurance fraud. The duties and functions of the division of insurance fraud**
 11 **and the deputy commissioner of insurance fraud shall be the investigation of**
 12 **alleged fraudulent insurance acts and other violations of the insurance laws of**
 13 **this state, executive security, and assigned by the commissioner.**

14 Section 3. R.S. 36:691 is hereby repealed.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Cheryl Horne.

DIGEST

Present law provides for a section of insurance fraud within the Dept of Insurance with the responsibility to conduct investigations and criminal background checks on all applicants for licenses or certificates of authority to transact a business of insurance.

Proposed law creates a division of insurance fraud and a deputy commissioner of insurance fraud within the Dept. of Insurance with the responsibilities provided in present law for the insurance fraud section and adds certain powers and duties as they relate to the investigation, prosecution, and prevention of violations of La. insurance laws.

Present law provides that if, during the course of investigation, the Dept. of Insurance determines that there may be a violation of any criminal law, the investigation shall be turned over to the Dept. of Justice, the Dept. of Public Safety and Corrections, public safety services, office of state police, and any other appropriate law enforcement or prosecutorial agency for further investigation, enforcement, or prosecution.

Proposed law provides that if the division of insurance fraud determines that there may be a violation of any criminal law, the division shall then coordinate further actions with the agencies in present law.

Proposed law creates the division of insurance fraud as a law enforcement agency and confers all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary in furtherance of the authority, duties, powers and functions of the division. Provides that the powers and privileges shall include arrest powers related to insurance fraud, access to computer systems, information maintained for the use of law enforcement personnel, any information contained in the criminal history record and

identification file of the La. Bureau of Criminal Identification and Information as well as direct access to information compiled by the Federal Bureau of Investigation for the purposes of carrying out the division's responsibilities.

Proposed law requires the deputy commissioner of insurance fraud and all compliance investigators of the insurance fraud division to be peace officers with all privileges, immunities, and defenses accorded to peace officers, including the authority to investigate insurance fraud cases and cause the arrest of individuals suspected of having violated insurance fraud as defined in present law. Permits the commissioner of insurance to issue a commission authorizing any deputy commissioner of insurance fraud or any compliance investigator who is P.O.S.T.-certified to carry and use firearms.

Proposed law eliminates the office of receivership within the Department of Insurance.

Effective August 1, 2013.

(Amends R.S. 22:3, 1921, 1922, 1926, 1927, 1928(A) (intro para), 1929(A), and R.S. 36:681(C)(1); adds R.S. 36:691.1; repeals R.S. 36:691)