

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.

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§3. Composition of Department of Insurance

The Department of Insurance shall be comprised of the office of the commissioner, the office of management and finance, the office of property and casualty, ~~the office of receivership~~, the office of licensing and compliance, the office of financial solvency, the office of consumer advocacy, the office of health insurance, **the division of insurance fraud**, the division of legal services, the division of public affairs, the division of minority affairs, and any other office or division that may be included by the Executive Reorganization Act or other law. Each office or division shall be administered as prescribed by Titles 36 and 39 of the Louisiana Revised Statutes of 1950.

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§1921. Purpose and powers

A. The purpose of this Part is to create within the Department of Insurance a ~~section~~ **division** of insurance fraud. This ~~section~~ **division** shall be charged with the responsibility, when ~~requested~~ **directed** by the commissioner of insurance, to

1 conduct investigations and background criminal checks on ~~all applicants~~ **each**
 2 **applicant** for a license or certificate of authority to transact a business of insurance.
 3 **The division of insurance fraud shall be governed by the provisions of this Part**
 4 **including the powers and duties relating to the investigation and prevention of**
 5 **administrative or civil violations of the insurance laws of this state.**

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

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

16 D. If during the course of investigation, the ~~Department of Insurance~~
 17 **division of insurance fraud** determines that there may be a violation of any criminal
 18 law, ~~the investigation~~ **the division** shall ~~then be turned~~ **turn the matter** over to the
 19 Department of Justice; ~~the~~ Department of Public Safety and Corrections, public
 20 safety services; ~~the~~ office of state police; ~~and~~ **any** other appropriate law enforcement
 21 or prosecutorial agency, for further investigation, enforcement, or prosecution.

22 §1922. Additional powers and duties

23 A. The ~~Department of Insurance,~~ ~~section~~ **division** of insurance fraud; **is**
 24 **authorized to have access to computer systems, information maintained for the**
 25 **use of law enforcement personnel, any information contained in the criminal**
 26 **history record and identification file of the Louisiana Bureau of Criminal**
 27 **Identification and Information,** ~~is authorized to have~~ **and** direct **and timely** access
 28 to information compiled by the Federal Bureau of Investigation, as contained in the
 29 National Crime ~~Identification~~ **Information** Center, ~~for the purposes of licensure or~~
 30 ~~the granting, denying, revocation, suspension or any other action on an application~~

1 for a license or certificate of authority to be an insurer in the state, subject to the
2 approval of the office of state police carrying out its responsibilities under this
3 Part.

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

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

14 D. The commissioner of insurance may issue a commission authorizing
15 the deputy commissioner of insurance fraud or any compliance investigator who
16 is certified by the Council on Peace Officer Standards and Training (P.O.S.T.),
17 or who may be qualified by the P.O.S.T. Council, to carry and use firearms in
18 performance of their duties in investigating suspected administrative or civil
19 insurance fraud. These powers and privileges shall not include arrest powers.
20 The commissioner shall also provide appropriate credentials and badges of
21 authority.

22 * * *

23 §1926. Duties of companies and others

24 A. Any person, company, or other legal entity including but not limited to
25 those engaged in the business of insurance, including producers and adjusters, ~~which~~
26 that suspects that a fraudulent insurance act will be, is being, or has been committed
27 shall, within sixty days of the receipt of such notice, send to the ~~section~~ division of
28 insurance fraud, on a form prescribed by the ~~section~~ commissioner, the information
29 requested and such additional information relative to the insurance act and the parties
30 claiming loss or damages because of an occurrence or accident as the ~~section~~

1 commissioner may require. The ~~section~~ division of insurance fraud shall review
2 such reports and select such insurance acts as, in its judgment, may require further
3 investigation. It shall then cause an independent examination of the facts surrounding
4 such insurance act to be made to determine the extent, if any, to which fraud, deceit,
5 or intentional misrepresentation of any kind exists in the submission of the insurance
6 act.

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

13 §1927. Materials and evidence

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

20 B. The ~~section's~~ division's papers, documents, reports, or evidence relative
21 to the subject of an investigation under this Part shall not be subject to public
22 inspection for so long as the ~~section~~ commissioner deems reasonably necessary to
23 complete the investigation, to protect the person investigated from unwarranted
24 injury, or to be in the public domain. Further, such papers, documents, reports, or
25 evidence relative to the subject of investigation under this Section shall not be
26 subject to subpoena until opened for public inspection by the ~~section~~ commissioner,
27 unless the ~~section~~ commissioner consents, or until after notice to the ~~section~~
28 commissioner and a hearing, a court of competent jurisdiction determines the
29 ~~section~~ division would not be necessarily hindered by such subpoena. ~~Section~~
30 ~~investigators~~ Division personnel shall not be subject to subpoena in civil actions by

1 any court of this state to testify concerning any matter of which they have knowledge
2 pursuant to a pending insurance fraud investigation ~~by the section.~~

3 §1928. Civil immunity

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

13 * * *

14 §1929. Confidentiality of criminal background checks, civil penalties

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

20 * * *

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

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

24 * * *

25 C.(1) The officers of the department shall be the commissioner of insurance,
26 the chief deputy commissioner, the deputy commissioner for management and
27 finance, the deputy commissioner for property and casualty, the deputy
28 commissioner for ~~receivership~~ **insurance fraud**, the deputy commissioner for
29 licensing and compliance, the deputy commissioner for financial solvency, the
30 deputy commissioner for health insurance, the deputy commissioner for public

