

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 and prevention of**
12 **administrative or civil 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 the Department of
26 Justice;~~;~~ the Department of Public Safety and Corrections, public safety services;~~;~~
27 office of state police;~~;~~ and **any** other appropriate law enforcement or prosecutorial
28 agency, for further investigation, enforcement, or prosecution.

29 §1922. Additional powers and duties

1 §1926. Duties of companies and others

2 A. Any person, company, or other legal entity including but not limited to
3 those engaged in the business of insurance, including producers and adjusters, ~~which~~
4 **that** suspects that a fraudulent insurance act will be, is being, or has been committed
5 shall, within sixty days of the receipt of such notice, send to the ~~section~~ **division** of
6 insurance fraud, on a form prescribed by the ~~section~~ **commissioner**, the information
7 requested and such additional information relative to the insurance act and the parties
8 claiming loss or damages because of an occurrence or accident as the ~~section~~
9 **commissioner** may require. The ~~section~~ **division** of insurance fraud shall review
10 such reports and select such insurance acts as, in its judgment, may require further
11 investigation. It shall then cause an independent examination of the facts surrounding
12 such insurance act to be made to determine the extent, if any, to which fraud, deceit,
13 or intentional misrepresentation of any kind exists in the submission of the insurance
14 act.

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

21 §1927. Materials and evidence

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

28 B. The ~~section's~~ **division's** papers, documents, reports, or evidence relative
29 to the subject of an investigation under this Part shall not be subject to public

1 inspection for so long as the ~~section~~ commissioner deems reasonably necessary to
 2 complete the investigation, to protect the person investigated from unwarranted
 3 injury, or to be in the public domain. Further, such papers, documents, reports, or
 4 evidence relative to the subject of investigation under this Section shall not be
 5 subject to subpoena until opened for public inspection by the ~~section~~ commissioner,
 6 unless the ~~section~~ commissioner consents, or until after notice to the ~~section~~
 7 commissioner and a hearing, a court of competent jurisdiction determines the
 8 ~~section~~ division would not be necessarily hindered by such subpoena. ~~Section~~
 9 ~~investigators~~ Division personnel shall not be subject to subpoena in civil actions by
 10 any court of this state to testify concerning any matter of which they have knowledge
 11 pursuant to a pending insurance fraud investigation ~~by the section.~~

12 §1928. Civil immunity

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

22 * * *

23 §1929. Confidentiality of criminal background checks, civil penalties

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

29 * * *

30 Section 2. R.S. 36:681(C)(1) is hereby amended and reenacted and R.S. 36:691.1 is

1 hereby enacted to read as follows:

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

3 * * *

4 C.(1) The officers of the department shall be the commissioner of insurance,
5 the chief deputy commissioner, the deputy commissioner for management and
6 finance, the deputy commissioner for property and casualty, the deputy
7 commissioner for ~~receivership~~ **insurance fraud**, the deputy commissioner for
8 licensing and compliance, the deputy commissioner for financial solvency, the
9 deputy commissioner for health insurance, the deputy commissioner for public
10 affairs, the deputy commissioner for minority affairs, the deputy commissioner for
11 consumer advocacy, and the executive counsel.

12 * * *

13 **§691.1. Division of insurance fraud**

14 **There is hereby created a division of insurance fraud in the Department**
15 **of Insurance that shall be under the direction of the deputy commissioner for**
16 **insurance fraud. The duties and functions of the division of insurance fraud**
17 **and the deputy commissioner of insurance fraud shall be the investigation of**
18 **alleged administrative or civil fraudulent insurance acts, other administrative**
19 **or civil violations of the insurance laws of this state and executive security as**
20 **assigned by the commissioner.**

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

The original instrument was prepared by Cheryl Horne. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard Johnson.

DIGEST

Erdey (SB 180)

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 and prevention of administrative or civil 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 authorizes the division of insurance fraud to have 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 permits the commissioner of insurance to issue a commission authorizing the deputy commissioner of insurance fraud or any compliance investigator who is P.O.S.T.-certified to carry and use firearms. Further provides that the powers and privileges shall not include arrest powers.

Proposed law eliminates the office of receivership within the Dept. 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)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Delete the office of receivership from the composition of the Dept. of Insurance.
2. Delete the designation of the fraud division as a law enforcement agency.
3. Delete the designation of the deputy commissioner and compliance investigators of the fraud division as peace officers.
4. Delete the authority of the commissioner to authorize the deputy commissioner and compliance investigators of the fraud division to arrest persons suspected of insurance fraud.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Provides that powers will not include arrest powers.
3. Removes prosecution of violations from the power and duties.
4. Provides that the powers and duties relate to the investigation and prevention of administrative or civil violations.