

17:29B-1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:29B-1 et seq.

(Insurance
companies--trade
practices)

LAWS OF: 1947

CHAPTER: 379

Bill No: S237

Sponsor(s): Farley

Date Introduced: March 17, 1947

Committee: Assembly: -----

Senate: Banking and Insurance

Amended during passage: Yes

Date of Passage: Assembly: April 21, 1947

Senate: April 21, 1947

Date of Approval: July 3, 1947

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

(Over)

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Sponsors Statement:

The purpose of this bill is clearly expressed in section one. It is recommended by the Council of State Governments, by the Commissioner of Banking and Insurance and by the National Association of Insurance Commissioners.

SENATE, No. 237

STATE OF NEW JERSEY

INTRODUCED MARCH 17, 1947

By Mr. FARLEY

Referred to Committee on Banking and Insurance

AN ACT concerning insurance, regulating the trade practices in the business of insurance, defining and prohibiting unfair and deceptive acts and practices in the business of insurance, and supplementing subtitle three of Title 17 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. Declaration of purpose. The purpose of this act is to regulate trade
2 practices in the business of insurance in accordance with the intent of Con-
3 gress as expressed in the Act of Congress of March 9, 1945 (Public Law 15,
4 79th Congress), by defining, or providing for the determination of, all such
5 practices in this State which constitute unfair methods of competition or un-
6 fair or deceptive acts or practices and by prohibiting the trade practices so
7 defined or determined.

1 2. Definitions. When used in this act:

2 (a) "Person" shall mean any individual, corporation, association, part-
3 nership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit
4 society, and any other legal entity engaged in the business of insurance,
5 including agents, brokers and adjusters.

6 (b) "Commissioner" shall mean the Commissioner of Banking and
7 Insurance of this State.

1 3. Unfair methods of competition or unfair and deceptive acts or prac-
2 tices prohibited.

3 No person shall engage in this State in any trade practice which is defined
4 in this act as or determined pursuant to this act to be an unfair method of
5 competition or an unfair or deceptive act or practice in the business of
6 insurance.

1 4. Unfair methods of competition and unfair or deceptive acts or prac-
2 tices defined.

3 (a) The following are hereby defined as unfair methods of competition
4 and unfair and deceptive acts or practices in the business of insurance :

5 (1) Misrepresentations and false advertising of policy contracts.
6 Making, issuing, circulating, or causing to be made, issued or circulated,
7 any estimate, illustration, circular or statement misrepresenting the terms
8 of any policy issued or to be issued or the benefits or advantages
9 promised thereby or the dividends or share of the surplus to be received
10 thereon, or making any false or misleading statement as to the dividends
11 or share of surplus previously paid on similar policies, or making any
12 misleading representation or any misrepresentation as to the financial
13 condition of any insurer, or as to the legal reserve system upon which
14 any life insurer operates, or using any name or title of any policy or class
15 of policies misrepresenting the true nature thereof, or making any mis-
16 representation to any policyholder insured in any company for the pur-
17 pose of inducing or tending to induce such policyholder to lapse, forfeit,
18 or surrender his insurance.

19 (2) False information and advertising generally. Making, publish-
20 ing, disseminating, circulating, or placing before the public, or causing,
21 directly or indirectly, to be made, published, disseminated, circulated, or
22 placed before the public, in a newspaper, magazine or other publication,
23 or in the form of a notice, circular, pamphlet, letter or poster, or over
24 any radio station, or in any other way, an advertisement, announcement
25 or statement containing any assertion, representation or statement with

26 respect to the business of insurance or with respect to any person in the
27 conduct of his insurance business, which is untrue, deceptive or mis-
28 leading.

29 (3) Defamation, making, publishing, disseminating, or circulating,
30 directly or indirectly, or aiding, abetting or encouraging the making, pub-
31 lishing, disseminating or circulating of any oral or written statement or
32 any pamphlet, circular, article or literature which is false, or maliciously
33 critical of or derogatory to the financial condition of an insurer, and
34 which is calculated to injure any person engaged in the business of
35 insurance.

36 (4) Boycott, coercion and intimidation. (a) Entering into any
37 agreement to commit, or by any concerted action committing, any act of
38 boycott, coercion or intimidation resulting in or tending to result in
39 unreasonable restraint of the business of insurance, or (b) by any act of
40 boycott, coercion or intimidation monopolizing or attempting to monopo-
41 lize any part of the business of insurance.

42 (5) False financial statements. Filing with any supervisory or other
43 public official, or making, publishing, disseminating, circulating or deliver-
44 ing to any person, or placing before the public, or causing directly or
45 indirectly, to be made, published, disseminated, circulated, delivered to
46 any person, or placed before the public, any false statement of financial
47 condition of an insurer with intent to deceive.

48 Making any false entry in any book, report or statement of any in-
49 surer with intent to deceive any agent or examiner lawfully appointed
50 to examine into its condition or into any of its affairs, or any public
51 official to whom such insurer is required by law to report, or who has
52 authority by law to examine into its condition or into any of its affairs,
53 or, with like intent, willfully omitting to make a true entry of any ma-
54 terial fact pertaining to the business of such insurer in any book, report
55 or statement of such insurer.

56 (6) Stock operations and advisory board contracts. Issuing or de-
57 livering or permitting agents, officers, or employees to issue or deliver,
58 agency company stock or other capital stock, or benefit certificates or
59 shares in any common-law corporation, or securities or any special or
60 advisory board contracts or other contracts of any kind promising returns
61 and profits as an inducement to insurance.

62 (7) Unfair discrimination. (a) Making or permitting any unfair
63 discrimination between individuals of the same class and equal expecta-
64 tion of life in the rates charged for any contract of life insurance or
65 of life annuity or in the dividends or other benefits payable thereon, or
66 in any other of the terms and conditions of such contract.

67 (b) Making or permitting any unfair discrimination between individuals
68 of the same class and of essentially the same hazard in the amount of
69 premium, policy fees, or rates charged for any policy or contract of accident
70 or health insurance or in the benefits payable thereunder, or in any of the
71 terms or conditions of such contract, or in any other manner whatever.

72 (8) Rebates. (a) Except as otherwise expressly provided by law,
73 knowingly permitting or offering to make or making any contract of life
74 insurance, life annuity or accident and health insurance, or agreement as
75 to such contract other than as plainly expressed in the contract issued
76 thereon, or paying or allowing, or giving or offering to pay, allow, or give,
77 directly or indirectly, as inducement to such insurance, or annuity, any
78-79 rebate of premiums payable on the contract, or any special favor or
80 advantage in the dividends or other benefits thereon, or any valuable
81 consideration or inducement whatever not specified in the contract; or
82 giving, or selling, or purchasing or offering to give, sell, or purchase as
83 inducement to such insurance or annuity or in connection therewith, any
84 stocks, bonds, or other securities of any insurance company or other
85 corporation, association, or partnership, or any dividends or profits
86 accrued thereon, or anything of value whatsoever not specified in the
87 contract.

88 (b) Nothing in clause seven or paragraph (a) of clause eight of this
89 subsection shall be construed as including within the definition of dis-
90 crimination or rebates any of the following practices: (i) in the case of
91 any contract of life insurance or life annuity, paying bonuses to policy-
92 holders or otherwise abating their premiums in whole or in part out of
93 surplus accumulated from nonparticipating insurance; *provided*, that any
94 such bonuses or abatement of premiums shall be fair and equitable to
95 policyholders and for the best interests of the company and its policy-
96 holders; (ii) in the case of life insurance policies issued on the industrial
97 debit plan, making allowance to policyholders who have continuously for
98 a specified period made premium payments directly to an office of the
99 insurer in an amount which fairly represents the saving in collection
100 expense; (iii) readjustment of the rate of premium for a group insurance
101 policy based on the loss or expense experience thereunder, at the end of
102 the first or any subsequent policy year of insurance thereunder, which
103 may be made retroactive only for such policy year.

104 (9) The enumeration in this act of specific unfair methods of
105 competition and unfair or deceptive acts and practices in the business of
106 insurance is not exclusive or restrictive or intended to limit the powers
107 of the commissioner or any court of review under the provisions of sec-
108 tion nine of this act.

1 5. Power of commissioner. The commissioner shall have power to ex-
2 amine and investigate into the affairs of every person engaged in the bus-
3 iness of insurance in this State in order to determine whether such per-
4 son has been or is engaged in any unfair method of competition or in any
5 unfair or deceptive act or practice prohibited by section three of this act.

1 6. Hearings, witnesses, appearances, production of books and service of
2 process.

3 (a) Whenever the commissioner shall have reason to believe that any
4 such person has been engaged or is engaging in this State in any unfair
5 method of competition or any unfair or deceptive act or practice defined in

6 section four, and that a proceeding by him in respect thereto would be to
7 the interest of the public, he shall issue and serve upon such person a state-
8 ment of the charges in that respect and a notice of a hearing thereon to be
9 held at a time and place fixed in the notice, which shall not be less than ten
10 days after the date of the service thereof.

11 (b) At the time and place fixed for such hearing, such person shall have
12 an opportunity to be heard and to show cause why an order should not be
13 made by the commissioner requiring such person to cease and desist from
14 the acts, methods or practices so complained of. Upon good cause shown,
15 the commissioner shall permit any person to intervene, appear and
16 be heard at such hearing by counsel or in person.

17 (c) Nothing contained in this act shall require the observance at any
18 such hearing of formal rules of pleading or evidence.

19 (d) The commissioner, upon such hearing, may administer oaths, ex-
20 amine and cross-examine witnesses, receive oral and documentary evidence,
21 and shall have the power to subpoena witnesses, compel their attendance,
22 and require the production of books, papers, records, correspondence, or
23 other documents which he deems relevant to the inquiry. The commissioner,
24 upon such hearing, may, and upon the request of any party shall, cause to be
25 made a stenographic record of all the evidence and all the proceedings had
26 at such hearing. If no stenographic record is made and if a judicial review
27 is sought, the commissioner shall prepare a statement of the evidence and
28 proceeding for use on review. In case of a refusal of any person to comply
29 with any subpoena issued hereunder or to testify with respect to any matter
30 concerning which he may be lawfully interrogated, the Supreme Court of
31 New Jersey, on application of the commissioner, may issue an order requir-
32 ing such person to comply with such subpoena and to testify; and any fail-
33 ure to obey any such order of the court may be punished by the court as
34 a contempt thereof.

35 (e) Statements of charges, notices, orders, and other processes of the
36 commissioner under this act may be served by anyone duly authorized by

7
37 the commissioner, either in the manner provided by law for service of proc-
38 ess in civil actions, or by registering and mailing a copy thereof to the
39 person affected by such statement, notice, order, or other process at his or
40 its residence or principal office or place of business. The verified return
41 by the person so serving such statement, notice, order, or other process,
42 setting forth the manner of such service, shall be proof of the same, and the
43 return postcard receipt for such statement, notice, order, or other process,
44 registered and mailed as aforesaid, shall be proof of the service of the same.

1 7. Cease and desist orders and modifications thereof.

2 (a) If, after such hearing, the commissioner shall determine that the
3 method of competition or the act or practice in question is defined in section
4 four and that the person complained of has engaged in such method of com-
5 petition, act or practice in violation of this act, he shall reduce his findings
6 to writings and shall issue and cause to be served upon the person charged
7 with the violation an order requiring such person to cease and desist from
8 engaging in such method of competition, act or practice.

9 (b) Until the expiration of the time allowed under section eight (a) of
10 this act for filing a petition for review by writ of certiorari, if no such peti-
11 tion has been duly filed within such time or, if a petition for review has been
12 filed within such time, then until the transcript of the record in the proceed-
13 ing has been filed in the Supreme Court, as hereinafter provided, the com-
14 missioner may at any time, upon such notice and in such manner as he shall
15 deem proper, modify or set aside in whole or in part any order issued by him
16 under this section.

17 (c) After the expiration of the time allowed for filing such a petition for
18 review if no such petition has been duly filed within such time, the com-
19 missioner may at any time, after notice and opportunity for hearing, re-
20 open and alter, modify or set aside, in whole or in part, any order issued
21 by him under this section, whenever in his opinion conditions of fact or of
22 law have so changed as to require such action or if the public interest shall
23 so require.

1 8. Judicial review of cease and desist orders.

2 (a) Any person required by an order of the commissioner under section
3 seven to cease and desist from engaging in any unfair method of competition
4 or any unfair or deceptive act or practice defined in section four may obtain
5 a review of such order by filing in the Supreme Court of New Jersey within
6 thirty days from the date of the service of such order, a written petition pray-
7 ing that the order of the commissioner be set aside. A copy of such petition
8 shall be forthwith served upon the commissioner, and thereupon the commis-
9 sioner forthwith shall certify and file in such court a transcript of the entire
10 record in the proceeding, including all the evidence taken and the report and
11 order of the commissioner. Upon such filing of the petition and transcript
12 such court shall have jurisdiction of the proceeding and of the question de-
13 termined therein, shall determine whether the filing of such petition shall
14 operate as a stay of such order of the commissioner, and shall have power to
15 make and enter upon the pleadings, evidence, and proceedings set forth in
16 such transcript a decree modifying, affirming or reversing the order of the
17 commissioner, in whole or in part. The findings of the commissioner as to the
18 facts, if supported by evidence, shall be conclusive.

19 (b) To the extent that the order of the commissioner is affirmed, the
20 court shall thereupon issue its own order commanding obedience to the terms
21 of such order of the commissioner. If either party shall apply to the court
22 for leave to adduce additional evidence, and shall show to the satisfaction of
23 the court that such additional evidence is material and that there were rea-
24 sonable grounds for the failure to adduce such evidence in the proceedings
25 before the commissioner, the court may order such additional evidence to be
26 taken before the commissioner and to be adduced upon the hearing in such
27 manner and upon such terms and conditions as to the court may seem proper.
28 The commissioner may modify his findings of fact, or make new findings by
29 reason of the additional evidence so taken, and he shall file such modified
30 or new findings which shall be conclusive, and his recommendation, if any,
31 for the modification or setting aside of his original order, with the return of
32 such additional evidence.

33 (c) A cease and desist order issued by the commissioner under section
34 seven shall become final

35 (1) Upon the expiration of the time allowed for filing a petition for
36 review if no such petition has been duly filed within such time; except
37 that the commissioner may thereafter modify or set aside his order to
38 the extent provided in section seven (b); or

39 (2) Upon the final decision of the court if the court directs that the
40 order of the commissioner be affirmed or the petition for review dis-
41 missed.

42 (d) No order of the commissioner under this act or order of a court to
43 enforce the same shall in any way relieve or absolve any person affected by
44 such order from any liability under any other laws of this State.

1 9. Procedure as to unfair methods of competition and unfair or decep-
2 tive acts or practices which are not defined.

3 (a) Whenever the commissioner shall have reason to believe that any
4 person engaged in the business of insurance is engaging in this State in any
5 method of competition or in any act or practice in the conduct of such busi-
6 ness which is not defined in section four, that such method of competition is
7 unfair or that such act or practice is unfair or deceptive and that a proceed-
8 ing by him in respect thereto would be to the interest of the public, he may
9 issue and serve upon such person a statement of the charges in that respect
10 and a notice of a hearing thereon to be held at a time and place fixed in the
11 notice, which shall not be less than ten days after the date of the service
12 thereof. Each such hearing shall be conducted in the same manner as the
13 hearings provided for in section six. The commissioner shall, after such
14 hearing, make a report in writing in which he shall state his findings as to
15 the facts, and he shall serve a copy thereof upon such person.

16 (b) If such report charges a violation of this act and if such method of
17 competition, act or practice has not been discontinued, the commissioner
18 may, through the Attorney-General of this State, at any time after ten days
19 after the service of such report cause a petition to be filed in the Court of

20 Chancery to enjoin and restrain such person from engaging in such method,
21 act or practice. The court shall have jurisdiction of the proceeding and shall
22 have power to make and enter appropriate orders in connection therewith and
23 to issue such writs as are ancillary to its jurisdiction or are necessary in its
24 judgment to prevent injury to the public pendente lite. To the extent that
25 the order of the commissioner is affirmed, the court shall thereupon issue its
26 order commanding obedience to the terms of such order of the commissioner.

27 (c) A transcript of the proceedings before the commissioner including
28 all evidence taken and the report and findings shall be filed with such peti-
29 tion. If either party shall apply to the court for leave to adduce additional
30 evidence and shall show, to the satisfaction of the court, that such additional
31 evidence is material and there were reasonable grounds for the failure to ad-
32 duce such evidence in the proceeding before the commissioner, the court may
33 order such additional evidence to be taken before the commissioner and to be
34 adduced upon the hearing in such manner and upon such terms and conditions
35 as to the court may seem proper. The commissioner may modify his findings
36 of fact or make new findings by reason of the additional evidence so taken,
37 and he shall file such modified or new findings with the return of such addi-
38 tional evidence.

39 (d) If the court finds that the method of competition complained of is
40 unfair or that the act or practice complained of is unfair or deceptive, that
41 the proceeding by the commissioner with respect thereto is to the interest
42 of the public and that the findings of the commissioner are supported by the
43 weight of the evidence, it shall issue its order enjoining and restraining the
44 continuance of such method of competition, act or practice.

1 10. Judicial review by intervenor. If the report of the commissioner does
2 not charge a violation of this act, then any intervenor in the proceedings may,
3 within thirty days after the service of such report, cause a petition for a
4 writ of certiorari to be filed in the Supreme Court of New Jersey for a re-
5 view of such report. Upon such review, the court shall have authority to
6 issue appropriate orders and decrees in connection therewith, including, if

7 the court finds that it is to the interest of the public, orders enjoining and
8 restraining the continuance of any method of competition, act or practice
9 which it finds, notwithstanding such report of the commissioner, constitutes
10 a violation of this act.

1 11. Penalty. Any person who violates a cease and desist order of the
2 commissioner under section seven, after it has become final, and while such
3 order is in effect, shall forfeit and pay to the State of New Jersey a sum not
4 to exceed five thousand dollars (\$5,000.00) for each violation, which may be
5 recovered in a civil action. In determining the amount of the penalty the
6 question of whether the violation was willful shall be taken into consideration.
7 Nothing herein shall be construed as limiting a court in enforcing its own
8 orders.

1 12. Provisions of act additional to existing law. The powers vested in
2 the commissioner by this act shall be additional to any other powers to
3 enforce any penalties, fines or forfeitures authorized by law with respect to
4 the methods, acts and practices hereby declared to be unfair or deceptive.

1 13. Immunity from prosecution. If any person shall ask to be excused
2 from attending and testifying or from producing any books, papers, records,
3 correspondence or other documents at any hearing on the ground that the
4 testimony or evidence required of him may tend to incriminate him or sub-
5 ject him to a penalty or forfeiture, and shall notwithstanding be directed
6 to give such testimony or produce such evidence, he must none the less com-
7 ply with such direction, but he shall not thereafter be prosecuted or subjected
8 to any penalty or forfeiture for or on account of any transaction, matter or
9 thing concerning which he may testify or produce evidence pursuant thereto,
10 and no testimony so given or evidence produced shall be received against
11 him upon any criminal action, investigation or proceeding; *provided, how-*
12 *ever,* that no such individual so testifying shall be exempt from prosecution
13 or punishment for any perjury committed by him while so testifying and the
14 testimony or evidence so given or produced shall be admissible against him
15 upon any criminal action, investigation or proceeding concerning such per-

16 jury, nor shall he be exempt from the refusal, revocation or suspension of
17 any license, permission or authority conferred, or to be conferred, pursu-
18 ant to the insurance law of this State. Any such individual may execute,
19 acknowledge and file in the office of the commissioner a statement expressly
20 waiving such immunity or privilege in respect to any transaction, matter or
21 thing specified in such statement and thereupon the testimony of such per-
22 son or such evidence in relation to such transaction, matter or thing may be
23 received or produced before any judge or justice, court, tribunal, grand jury
24 or otherwise, and if so received or produced such individual shall not be
25 entitled to any immunity or privilege on account of any testimony he may
26 so give or evidence so produced.

1 14. Separability provision. If any provision of this act, or the applica-
2 tion of such provision to any person or circumstances, shall be held invalid,
3 the remainder of the act, and the application of such provision to persons
4 or circumstances other than those as to which it is held invalid, shall not be
5 affected thereby.

STATEMENT

The purpose of this bill is clearly expressed in section one. It is recom-
mended by the Council of State Governments, by the Commissioner of Bank-
ing and Insurance and by the National Association of Insurance Commissioners.

[OFFICIAL COPY REPRINT]

SENATE, No. 237

STATE OF NEW JERSEY

INTRODUCED MARCH 17, 1947

By Mr. FARLEY

Referred to Committee on Banking and Insurance

AN ACT concerning insurance, regulating the trade practices in the business of insurance, defining and prohibiting unfair and deceptive acts and practices in the business of insurance, and supplementing subtitle three of Title 17 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. Declaration of purpose. The purpose of this act is to regulate trade
2 practices in the business of insurance in accordance with the intent of Con-
3 gress as expressed in the Act of Congress of March 9, 1945 (Public Law 15,
4 79th Congress), by defining, or providing for the determination of, all such
5 practices in this State which constitute unfair methods of competition or un-
6 fair or deceptive acts or practices and by prohibiting the trade practices so
7 defined or determined.

1 2. Definitions. When used in this act:

2 (a) "Person" shall mean any individual, corporation, association, part-
3 nership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit
4 society, and any other legal entity engaged in the business of insurance,
5 including agents, brokers and adjusters.

6 (b) "Commissioner" shall mean the Commissioner of Banking and
7 Insurance of this State.

1 3. Unfair methods of competition or unfair and deceptive acts or prac-
2 tices prohibited.

3 No person shall engage in this State in any trade practice which is defined
4 in this act as or determined pursuant to this act to be an unfair method of
5 competition or an unfair or deceptive act or practice in the business of
6 insurance.

1 4. Unfair methods of competition and unfair or deceptive acts or prac-
2 tices defined.

3 The following are hereby defined as unfair methods of competition and
4 unfair and deceptive acts or practices in the business of insurance:

5 (1) Misrepresentations and false advertising of policy contracts.
6 Making, issuing, circulating, or causing to be made, issued or circulated,
7 any estimate, illustration, circular or statement misrepresenting the terms
8 of any policy issued or to be issued or the benefits or advantages
9 promised thereby or the dividends or share of the surplus to be received
10 thereon, or making any false or misleading statement as to the dividends
11 or share of surplus previously paid on similar policies, or making any
12 misleading representation or any misrepresentation as to the financial
13 condition of any insurer, or as to the legal reserve system upon which
14 any life insurer operates, or using any name or title of any policy or class
15 of policies misrepresenting the true nature thereof, or making any mis-
16 representation to any policyholder insured in any company for the pur-
17 pose of inducing or tending to induce such policyholder to lapse, forfeit,
18 or surrender his insurance.

19 (2) False information and advertising generally. Making, publish-
20 ing, disseminating, circulating, or placing before the public, or causing,
21 directly or indirectly, to be made, published, disseminated, circulated, or
22 placed before the public, in a newspaper, magazine or other publication,
23 or in the form of a notice, circular, pamphlet, letter or poster, or over
24 any radio station, or in any other way, an advertisement, announcement
25 or statement containing any assertion, representation or statement with

26 respect to the business of insurance or with respect to any person in the
27 conduct of his insurance business, which is untrue, deceptive or mis-
28 leading.

29 (3) Defamation. Making, publishing, disseminating, or circulating,
30 directly or indirectly, or aiding, abetting or encouraging the making, pub-
31 lishing, disseminating or circulating of any oral or written statement or
32 any pamphlet, circular, article or literature which is false, or maliciously
33 critical of or derogatory to the financial condition of an insurer, and
34 which is calculated to injure any person engaged in the business of
35 insurance.

36-38 (4) Boycott, coercion and intimidation. Entering into any agreement
39 to commit, or by any concerted action committing, any act of boycott,
40 coercion or intimidation resulting in or tending to result in unreasonable
41 restraint of, or monopoly in, the business of insurance.

42 (5) False financial statements. Filing with any supervisory or other
43 public official, or making, publishing, disseminating, circulating or deliver-
44 ing to any person, or placing before the public, or causing directly or
45 indirectly, to be made, published, disseminated, circulated, delivered to
46 any person, or placed before the public, any false statement of financial
47 condition of an insurer with intent to deceive.

48 Making any false entry in any book, report or statement of any in-
49 surer with intent to deceive any agent or examiner lawfully appointed
50 to examine into its condition or into any of its affairs, or any public
51 official to whom such insurer is required by law to report, or who has
52 authority by law to examine into its condition or into any of its affairs,
53 or, with like intent, willfully omitting to make a true entry of any ma-
54 terial fact pertaining to the business of such insurer in any book, report
55 or statement of such insurer.

56 (6) Stock operations and advisory board contracts. Issuing or de-
57 livering or permitting agents, officers, or employees to issue or deliver,
58 agency company stock or other capital stock, or benefit certificates or

59 shares in any common-law corporation, or securities or any special or
60 advisory board contracts or other contracts of any kind promising returns
61 and profits as an inducement to insurance.

62 (7) Unfair discrimination. (a) Making or permitting any unfair
63 discrimination between individuals of the same class and equal expecta-
64 tion of life in the rates charged for any contract of life insurance or
65 of life annuity or in the dividends or other benefits payable thereon, or
66 in any other of the terms and conditions of such contract.

67 (b) Making or permitting any unfair discrimination between indi-
68 viduals of the same class and of essentially the same hazard in the
69 amount of premium, policy fees, or rates charged for any policy or con-
70 tract of accident or health insurance or in the benefits payable there-
71 under, or in any of the terms or conditions of such contract, or in any
72 other manner whatever.

73 (8) Rebates. (a) Except as otherwise expressly provided by law,
74 knowingly permitting or offering to make or making any contract of life
75 insurance, life annuity or accident and health insurance, or agreement as
76 to such contract other than as plainly expressed in the contract issued
77 thereon, or paying or allowing, or giving or offering to pay, allow, or give,
78 directly or indirectly, as inducement to such insurance, or annuity, any
79 rebate of premiums payable on the contract, or any special favor or
80 advantage in the dividends or other benefits thereon, or any valuable
81 consideration or inducement whatever not specified in the contract; or
82 giving, or selling, or purchasing or offering to give, sell, or purchase as
83 inducement to such insurance or annuity or in connection therewith, any
84 stocks, bonds, or other securities of any insurance company or other
85 corporation, association, or partnership, or any dividends or profits
86 accrued thereon, or anything of value whatsoever not specified in the
87 contract.

88 (b) Nothing in clause seven or paragraph (a) of this clause
89 eight shall be construed as including within the definition of dis-

90 crimination or rebates any of the following practices: (i) in the case of
91 any contract of life insurance or life annuity, paying bonuses to policy-
92 holders or otherwise abating their premiums in whole or in part out of
93 surplus accumulated from nonparticipating insurance; *provided*, that any
94 such bonuses or abatement of premiums shall be fair and equitable to
95 policyholders and for the best interests of the company and its policy-
96 holders; (ii) in the case of life insurance policies issued on the industrial
97 debit plan, making allowance to policyholders who have continuously for
98 a specified period made premium payments directly to an office of the
99 insurer in an amount which fairly represents the saving in collection
100 expense; (iii) readjustment of the rate of premium for a group insurance
101 policy based on the loss or expense experience thereunder, at the end of
102 the first or any subsequent policy year of insurance thereunder, which
103 may be made retroactive only for such policy year.

104 (9) The enumeration in this act of specific unfair methods of
105 competition and unfair or deceptive acts and practices in the business of
106 insurance is not exclusive or restrictive or intended to limit the powers
107 of the commissioner or any court of review under the provisions of sec-
108 tion nine of this act.

1 5. Power of commissioner. The commissioner shall have power to ex-
2 amine and investigate into the affairs of every person engaged in the bus-
3 iness of insurance in this State in order to determine whether such per-
4 son has been or is engaged in any unfair method of competition or in any
5 unfair or deceptive act or practice prohibited by section three of this act.

1 6. Hearings, witnesses, appearances, production of books and service of
2 process.

3 (a) Whenever the commissioner shall have reason to believe that any
4 such person has been engaged or is engaging in this State in any unfair
5 method of competition or any unfair or deceptive act or practice defined in
6 section four, and that a proceeding by him in respect thereto would be to
7 the interest of the public, he shall issue and serve upon such person a state-

8 ment of the charges in that respect and a notice of a hearing thereon to be
9 held at a time and place fixed in the notice, which shall not be less than ten
10 days after the date of the service thereof.

11 (b) At the time and place fixed for such hearing, such person shall have
12 an opportunity to be heard and to show cause why an order should not be
13 made by the commissioner requiring such person to cease and desist from
14 the acts, methods or practices so complained of. Upon good cause shown,
15 the commissioner shall permit any person to intervene, appear and
16 be heard at such hearing by counsel or in person.

17 (c) Nothing contained in this act shall require the observance at any
18 such hearing of formal rules of pleading or evidence.

19 (d) The commissioner, upon such hearing, may administer oaths, ex-
20 amine and cross-examine witnesses, receive oral and documentary evidence,
21 and shall have the power to subpoena witnesses, compel their attendance,
22 and require the production of books, papers, records, correspondence, or
23 other documents which he deems relevant to the inquiry. The commissioner,
24 upon such hearing, may, and upon the request of any party shall, cause to be
25 made a stenographic record of all the evidence and all the proceedings had
26 at such hearing. If no stenographic record is made and if a judicial review
27 is sought, the commissioner shall prepare a statement of the evidence and
28 proceeding for use on review. In case of a refusal of any person to comply
29 with any subpoena issued hereunder or to testify with respect to any matter
30 concerning which he may be lawfully interrogated, the Supreme Court of
31 New Jersey, on application of the commissioner, may issue an order requir-
32 ing such person to comply with such subpoena and to testify; and any fail-
33 ure to obey any such order of the court may be punished by the court as
34 a contempt thereof.

35 (e) Statements of charges, notices, orders, and other processes of the
36 commissioner under this act may be served by anyone duly authorized by
37 the commissioner, either in the manner provided by law for service of proc-
38 ess in civil actions, or by registering and mailing a copy thereof to the

39 person affected by such statement, notice, order, or other process at his or
40 its residence or principal office or place of business. The verified return
41 by the person so serving such statement, notice, order, or other process,
42 setting forth the manner of such service, shall be proof of the same, and the
43 return postcard receipt for such statement, notice, order, or other process,
44 registered and mailed as aforesaid, shall be proof of the service of the same.

1 7. Cease and desist orders and modifications thereof.

2 (a) If, after such hearing, the commissioner shall determine that the
3 method of competition or the act or practice in question is defined in section
4 four and that the person complained of has engaged in such method of com-
5 petition, act or practice in violation of this act, he shall reduce his findings
6 to writing and shall issue and cause to be served upon the person charged
7 with the violation an order requiring such person to cease and desist from
8 engaging in such method of competition, act or practice.

9 (b) Until the expiration of the time allowed under section eight (a) of
10 this act for filing a petition for review by writ of certiorari, if no such peti-
11 tion has been duly filed within such time or, if a petition for review has been
12 filed within such time, then until the transcript of the record in the proceed-
13 ing has been filed in the Supreme Court, as hereinafter provided, the com-
14 missioner may at any time, upon such notice and in such manner as he shall
15 deem proper, modify or set aside in whole or in part any order issued by him
16 under this section.

17 (c) After the expiration of the time allowed for filing such a petition for
18 review if no such petition has been duly filed within such time, the com-
19 missioner may at any time, after notice and opportunity for hearing, re-
20 open and alter, modify or set aside, in whole or in part, any order issued
21 by him under this section, whenever in his opinion conditions of fact or of
22 law have so changed as to require such action or if the public interest shall
23 so require.

1 8. Judicial review of cease and desist orders.

2 (a) Any person required by an order of the commissioner under section
3 seven to cease and desist from engaging in any unfair method of competition
4 or any unfair or deceptive act or practice defined in section four may obtain
5 a review of such order by filing in the Supreme Court of New Jersey within
6 thirty days from the date of the service of such order, a written petition pray-
7 ing that the order of the commissioner be set aside. A copy of such petition
8 shall be forthwith served upon the commissioner, and thereupon the commis-
9 sioner forthwith shall certify and file in such court a transcript of the entire
10 record in the proceeding, including all the evidence taken and the report and
11 order of the commissioner. Upon such filing of the petition and transcript
12 such court shall have jurisdiction of the proceeding and of the question de-
13 termined therein, shall determine whether the filing of such petition shall
14 operate as a stay of such order of the commissioner, and shall have power to
15 make and enter upon the pleadings, evidence, and proceedings set forth in
16 such transcript a decree modifying, affirming or reversing the order of the
17 commissioner, in whole or in part. The findings of the commissioner as to the
18 facts, if supported by the weight of the evidence, shall be conclusive.

19 (b) To the extent that the order of the commissioner is affirmed, the
20 court shall thereupon issue its own order commanding obedience to the terms
21 of such order of the commissioner. If either party shall apply to the court
22 for leave to adduce additional evidence, and shall show to the satisfaction of
23 the court that such additional evidence is material and that there were rea-
24 sonable grounds for the failure to adduce such evidence in the proceedings
25 before the commissioner, the court may order such additional evidence to be
26 taken before the commissioner and to be adduced upon the hearing in such
27 manner and upon such terms and conditions as to the court may seem proper.
28 The commissioner may modify his findings of fact, or make new findings by
29 reason of the additional evidence so taken, and he shall file such modified
30 or new findings which shall be conclusive, and his recommendation, if any,

31 for the modification or setting aside of his original order, with the return of
32 such additional evidence.

33 (c) A cease and desist order issued by the commissioner under section
34 seven shall become final

35 (1) Upon the expiration of the time allowed for filing a petition for
36 review if no such petition has been duly filed within such time; except
37 that the commissioner may thereafter modify or set aside his order to
38 the extent provided in section seven (b); or

39 (2) Upon the final decision of the court if the court directs that the
40 order of the commissioner be affirmed or the petition for review dis-
41 missed.

42 (d) No order of the commissioner under this act or order of a court to
43 enforce the same shall in any way relieve or absolve any person affected by
44 such order from any liability under any other laws of this State.

1 9. Procedure as to unfair methods of competition and unfair or decep-
2 tive acts or practices which are not defined.

3 (a) Whenever the commissioner shall have reason to believe that any
4 person engaged in the business of insurance is engaging in this State in any
5 method of competition or in any act or practice in the conduct of such busi-
6 ness which is not defined in section four, that such method of competition is
7 unfair or that such act or practice is unfair or deceptive and that a proceed-
8 ing by him in respect thereto would be to the interest of the public, he may
9 issue and serve upon such person a statement of the charges in that respect
10 and a notice of a hearing thereon to be held at a time and place fixed in the
11 notice, which shall not be less than ten days after the date of the service
12 thereof. Each such hearing shall be conducted in the same manner as the
13 hearings provided for in section six. The commissioner shall, after such
14 hearing, make a report in writing in which he shall state his findings as to
15 the facts, and he shall serve a copy thereof upon such person.

16 (b) If such report charges a violation of this act and if such method of
17 competition, act or practice has not been discontinued, the commissioner
18 may, through the Attorney-General of this State, at any time after ten days
19 after the service of such report cause a petition to be filed in the Court of
20 Chancery to enjoin and restrain such person from engaging in such method,
21 act or practice. The court shall have jurisdiction of the proceeding and shall
22 have power to make and enter appropriate orders in connection therewith and
23 to issue such writs as are ancillary to its jurisdiction or are necessary in its
24 judgment to prevent injury to the public pendente lite.

25-27 (c) A transcript of the proceedings before the commissioner including
28 all evidence taken and the report and findings shall be filed with such peti-
29 tion. If either party shall apply to the court for leave to adduce additional
30 evidence and shall show, to the satisfaction of the court, that such additional
31 evidence is material and there were reasonable grounds for the failure to ad-
32 duce such evidence in the proceeding before the commissioner, the court may
33 order such additional evidence to be taken before the commissioner and to be
34 adduced upon the hearing in such manner and upon such terms and conditions
35 as to the court may seem proper. The commissioner may modify his findings
36 of fact or make new findings by reason of the additional evidence so taken,
37 and he shall file such modified or new findings with the return of such addi-
38 tional evidence.

39 (d) If the court finds that the method of competition complained of is
40 unfair or that the act or practice complained of is unfair or deceptive, that
41 the proceeding by the commissioner with respect thereto is to the interest
42 of the public and that the findings of the commissioner are supported by the
43 weight of the evidence, it shall issue its order enjoining and restraining the
44 continuance of such method of competition, act or practice.

1 10. Judicial review by intervenor. If the report of the commissioner
2 does not charge a violation of this act, then any intervenor in the
3 proceedings may, within thirty days after the service of such report,
4 cause a petition for a petition to be filed in the Court of Chancery for a re-

5 view of such report. Upon such review, the court shall have authority to
6 issue appropriate orders and decrees in connection therewith, including, if
7 the court finds that it is to the interest of the public, orders enjoining and
8 restraining the continuance of any method of competition, act or practice
9 which it finds, notwithstanding such report of the commissioner, constitutes
10 a violation of this act.

1 11. Penalty. Any person who violates a cease and desist order of the
2 commissioner under section seven, after it has become final, and while such
3 order is in effect, shall forfeit and pay to the State of New Jersey a sum not
4 to exceed five thousand dollars (\$5,000.00) for each violation, which may be
5 recovered in a civil action. In determining the amount of the penalty the
6 question of whether the violation was willful shall be taken into consideration.
7 Nothing herein shall be construed as limiting a court in enforcing its own
8 orders.

1 12. Provisions of act additional to existing law. The powers vested in
2 the commissioner by this act shall be additional to any other powers to
3 enforce any penalties, fines or forfeitures authorized by law with respect to
4 the methods, acts and practices hereby declared to be unfair or deceptive.

1 13. Immunity from prosecution. If any person shall ask to be excused
2 from attending and testifying or from producing any books, papers, records,
3 correspondence or other documents at any hearing on the ground that the
4 testimony or evidence required of him may tend to incriminate him or sub-
5 ject him to a penalty or forfeiture, and shall notwithstanding be directed
6 to give such testimony or produce such evidence, he must none the less com-
7 ply with such direction, but he shall not thereafter be prosecuted or subjected
8 to any penalty or forfeiture for or on account of any transaction, matter or
9 thing concerning which he may testify or produce evidence pursuant thereto,
10 and no testimony so given or evidence produced shall be received against
11 him upon any criminal action, investigation or proceeding; *provided, how-*
12 *ever,* that no such individual so testifying shall be exempt from prosecution
13 or punishment for any perjury committed by him while so testifying and the

14 testimony or evidence so given or produced shall be admissible against him
15 upon any criminal action, investigation or proceeding concerning such per-
16 jury, nor shall he be exempt from the refusal, revocation or suspension of
17 any license, permission or authority conferred, or to be conferred, pursu-
18 ant to the insurance law of this State. Any such individual may execute,
19 acknowledge and file in the office of the commissioner a statement expressly
20 waiving such immunity or privilege in respect to any transaction, matter or
21 thing specified in such statement and thereupon the testimony of such per-
22 son or such evidence in relation to such transaction, matter or thing may be
23 received or produced before any judge or justice, court, tribunal, grand jury
24 or otherwise, and if so received or produced such individual shall not be
25 entitled to any immunity or privilege on account of any testimony he may
26 so give or evidence so produced.

1 14. Separability provision. If any provision of this act, or the applica-
2 tion of such provision to any person or circumstances, shall be held invalid,
3 the remainder of the act, and the application of such provision to persons
4 or circumstances other than those as to which it is held invalid, shall not be
5 affected thereby.