

17:37B-1 to 5

10/26/88

LEGISLATIVE HISTORY CHECKLIST

**NJSA:** 17:37B-1 to 14:37B-5 (Insurance, Dept. of-- establish Division of Examination)

**LAWS OF:** 1987 **CHAPTER:** 406

**BILL NO:** S2402

**Sponsor(s):** Cardinale and others

**Date Introduced:** July 17, 1986

**Committee:** **Assembly:** Insurance  
**Senate:** Labor, Industry and Professions

**Amended during passage:** Yes Amendments during passage denoted by asterisks.

**Date of Passage:** **Assembly:** January 11, 1987  
**Senate:** December 4, 1986

**Date of Approval:** January 14, 1987

**following statements are attached if available:**

**Sponsor statement:** Yes

**Committee statement:** **Assembly** Yes  
**Senate** Yes

**Fiscal Note:** No

**Veto Message:** No

**Message on Signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** No

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SENATE, No. 2402

STATE OF NEW JERSEY

INTRODUCED JULY 17, 1986

By Senators CARDINALE, GAGLIANO, BASSANO, BUBBA,  
EWING, DUMONT, HAINES, GARIBALDI, CONNORS,  
BROWN and HURLEY

Referred to Committee on Labor, Industry and Professions

AN ACT providing for the regulation of insurance companies writ-  
ing property and casualty insurance in this State, and supple-  
menting Title 17 of the Revised Statutes.

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

1 1. The Legislature finds and declares:

2 a. That the present crisis in commercial insurance, which is  
3 characterized by the lack of availability and rapidly escalating in-  
4 surance costs, has severely disrupted the economy of this State and  
5 has caused many of its small businesses to be without insurance  
6 protection entirely; and

7 b. While the crisis is due in part to significant increases in the  
8 frequency and severity of insurance claims and significant increases  
9 in the amount of personal injury litigation, it is also due to the  
10 cyclical nature of the insurance industry and the utilization by the  
11 industry of certain business practices which have proved to be  
12 detrimental to the financial condition of many insurers and to the  
13 functioning of the insurance system as a whole; and

14 c. While it is the duty of the several states to regulate the busi-  
15 ness of insurance, the present regulatory structure proved itself to  
16 be inadequate to detect the harmful business practices which were  
17 being pursued by the insurance industry, including imprudent cash-  
18 flow underwriting practices, the use of rates which were inadequate,  
19 and the use of reinsurers which were new entrants into the United

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

**Matter enclosed in asterisks or stars has been adopted as follows:**

\*—Senate committee amendments adopted October 20, 1986.

\*\*—Assembly committee amendments adopted June 22, 1987.

20 States insurance market and unfamiliar with the operation of the  
21 American tort system; and

22 d. It is essential that the regulatory structure be modified in such  
23 a manner so that the State may be in a position to detect potential  
24 problems in the insurance system and to intervene to stop imprudent  
25 and harmful business practices before they have a catastrophic  
26 effect upon the market, similar to the present crisis.

1 2. a. There is created in the Department of Insurance a Division  
2 of Property-Casualty Examination. The division shall perform all  
3 financial examinations of property and casualty insurers, as pro-  
4 vided in this act and as otherwise provided by law.

5 b. The commissioner shall appoint at least the following full-time  
6 personnel to the division\***]**, who shall hold their employment at the  
7 pleasure of the commissioner, and shall receive salaries as the com-  
8 missioner shall from time to time designate]\*:

9 (1) Six certified public accountants *\*or other qualified*  
9A *individuals\**;

10 (2) Two persons holding the degree of Master of Business  
11 Administration in fields related to the analysis of the financial  
12 condition of insurance companies;

13 (3) One economist, who shall hold a doctoral degree.

14 c. When requested by the commissioner, the Attorney General  
15 shall assign one or more deputy attorneys general to represent the  
16 Department of Insurance in proceedings related to the financial  
17 examination of insurance companies or other functions performed  
18 by the division pursuant to the provisions of this act.

19 d. The commissioner shall appoint clerical and other staff  
20 necessary for the division to carry out its responsibilities. These  
21 personnel shall be employed subject to the provisions of Title \***]**  
22 of the Revised Statutes]\* *\*11A of the New Jersey Statutes\**.

1 **\*\*]**3. a. The Director of the Division of Budget and Accounting  
2 in the Department of the Treasury shall, on or before September  
3 1 in each year, ascertain and certify to the commissioner the total  
4 amount of expense incurred by the State in connection with the  
5 administration of this act during the preceding fiscal year, which  
6 expenses shall include, in addition to the direct cost of personal  
7 service, the cost of maintenance and operation and the cost of  
8 retirement contributions made and workers' compensation paid for  
9 the personnel appointed pursuant to the provisions of this act.

10 b. The commissioner shall, on or before October 15 in each year,  
11 apportion the amount so certified among all insurers writing the  
12 class or classes of insurance described in R. S. 17:17-1 within this  
13 State. The amount shall be apportioned to the insurers in the pro-

14 portion that the net premiums received by each of them for in-  
15 surance written or renewed on risks within this State during the  
16 calendar year immediately preceding, as reported to him, bears to  
17 the sum total of all such net premiums received by all insurers  
18 writing the insurance within the State during that calendar year,  
19 as so reported, and shall certify the sum so apportioned to each  
20 insurer on or before November 15 next following to the Division of  
21 Taxation. Each insurer shall pay that part of the amount so  
22 certified as is apportioned to it on or before December 31 next ensu-  
23 ing, and the sum so paid shall be paid to the State Treasury in  
24 reimbursement to the State.

25 c. The amount of any assessment paid by an insurer pursuant  
26 to this section shall be allowed as an offest against the taxes which  
27 associations and insurers pay pursuant to P. L. 1945, c. 132 (C.  
28 54:18A-1 et seq.)\*\*

1 \***[4. a.** Within three months after the effective date of this act,  
2 every insurer writing insurance pursuant to the provisions of P. L.  
3 1982, c. 114 (C. 17:29AA-1 et seq.) shall file with the commissioner  
4 a statement of its criteria for utilizing experience rating plans,  
5 schedule rating plans, or individual risk modifications plans with  
6 respect to any risk or category of risks.

7 b. In any plan where debits and credits are used, the insurer shall  
8 file a statement of the method of applying debits and credits to  
9 individual risks. No insurer shall use any method of applying  
10 debits or credits which is discriminatory as to like risks.

11 c. Every insurer which utilizes a system of schedule rating for  
12 risks written pursuant to the provisions of P. L. 1982, c. 114 (C.  
13 17:29AA-1 et seq.) shall file the schedule with the department at  
14 least annually, at a time to be established by the commissioner by  
15 regulation, as well as the debits and credits which are applicable  
16 thereto. In addition to the requirements established by this sub-  
17 section, every insurer shall file with the department, at least  
18 annually, or more frequently if so required by the commissioner, a  
19 statement of the rates which have actually been charged to insureds  
20 under a schedule rating plan.

21 d. The information required to be filed pursuant to subsection c.  
22 of this section may be filed by means of computer tape or by any  
23 other form prescribed by the commissioner.

1 5. If the commissioner deems it necessary, he may promulgate a  
2 regulation limiting the degree of fluctuation, both upward and down-  
3 ward, for any debits or credits which are applicable to any rating  
4 plan used by an insurer. No debit or credit may exceed the degree  
5 of fluctuation established by the commissioner. Any rate to be

6 charged in excess of the amount established by the commissioner  
7 shall be accompanied by a rate filing.]\*

1 \***[6.]**\* \*\***[\*4.\*]**\*\* \*\*3.\*\* a. In addition to any other duties other-  
2 wise prescribed by law, the division shall analyze the general busi-  
3 ness practices being followed by insurers writing the class or  
4 classes of insurance provided for in R. S. 17:17-1, including, but  
4A not limited to:

5 (1) The policies being followed by the insurer in procuring  
6 reinsurance; and

7 (2) The general pricing policies being utilized by the insurer,  
8 and the effect of those pricing policies upon the insurer's overall  
9 operations; and

10 (3) The investment policies being utilized by the insurer, and  
11 the effect of these policies upon the insurer's overall operations.

12 b. In addition to the duties prescribed by this act or otherwise  
13 prescribed by law, the division established pursuant to section 2 of  
14 this act shall, from time to time, examine the overall operation of  
15 the insurance market, with respect to commercial lines insurance  
16 and personal lines insurance. If the division finds that any business  
17 practice or practices being followed by any insurer or insurers will  
18 result in market instability, the lack of the availability of coverage,  
19 or will result in premiums which are excessive, inadequate or un-  
20 fairly discriminatory, the division shall so report to the commis-  
21 sioner.

1 \***[7.]**\* \*\***[\*5.\*]**\*\* \*\*4.\*\* For the purposes of this act:

2 a. "Commissioner" shall mean the Commissioner of Insurance;

3 b. "Division" shall mean the Division of Property-Casualty  
4 Examination established by section 2 of this act.

1 \***[8.]**\* \*\***[\*6.\*]**\*\* \*\*5.\*\* The commissioner shall promulgate  
2 rules and regulations as are necessary to carry out the purposes  
3 of this act.

1 \***[9.]**\* \*\***[\*7.\*]**\*\* \*\*6.\*\* This act shall take effect immediately.

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#### INSURANCE — PROPERTY AND CASUALTY

Establishes a Division of Examination in the Department of In-  
surance.

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3 followed by insurers writing the class or classes of insurance pro-  
4 vided for in R. S. 17:17-1, including, but not limited to:

5 (1) The policies being followed by the insurer in procuring  
6 reinsurance; and

7 (2) The general pricing policies being utilized by the insurer,  
8 and the effect of those pricing policies upon the insurer's overall  
9 operations; and

10 (3) The investment policies being utilized by the insurer, and  
11 the effect of these policies upon the insurer's overall operations.

12 b. In addition to the duties prescribed by this act or otherwise  
13 prescribed by law, the division established pursuant to section 2 of  
14 this act shall, from time to time, examine the overall operation of  
15 the insurance market, with respect to commercial lines insurance  
16 and personal lines insurance. If the division finds that any business  
17 practice or practices being followed by any insurer or insurers will  
18 result in market instability, the lack of the availability of coverage,  
19 or will result in premiums which are excessive, inadequate or un-  
20 fairly discriminatory, the division shall so report to the commis-  
21 sioner.

1 7. For the purposes of this act:

2 a. "Commissioner" shall mean the Commissioner of Insurance;

3 b. "Division" shall mean the Division of Property-Casualty  
4 Examination established by section 2 of this act.

1 8. The commissioner shall promulgate rules and regulations as  
2 are necessary to carry out the purposes of this act.

1 9. This act shall take effect immediately.

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#### STATEMENT

This bill would establish a Division of Property-Casualty Examination in the Department of Insurance, which would be funded in part by assessments from the industry. In addition to other examination functions already provided by law, the division would be charged with monitoring industry business practices in order to meliorate the cyclical nature of the insurance business which often results in availability and affordability crises. In addition, insurers would be required to file certain information about rates which are charged to insureds which deviate from the manual rate, and would permit the commissioner to control the degree of deviation from the manual rate which an insurer may use.

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#### INSURANCE — PROPERTY AND CASUALTY

Establishes a Division of Examination in the Department of Insurance.

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ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

**SENATE, No. 2402**

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with Assembly committee amendments

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**STATE OF NEW JERSEY**

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DATED: JUNE 22, 1987

This bill establishes a Division of Property-Casualty Examination in the Department of Insurance. The division would be charged with performing financial examinations of property and casualty insurers. The bill provides for the appointment of at least six certified public accountants or other qualified individuals, two persons holding the degree of Master of Business Administration in fields related to the analysis of the financial condition of insurance companies, and an economist with a doctoral degree in economics. The Attorney General would be required to assign one or more deputy attorneys general to represent the Department of Insurance in proceedings related to the financial examination of insurance companies. As amended by the Assembly Insurance Committee, the cost of establishing and maintaining the division would be funded by an assessment on insurers which are examined by the division.

The bill also requires the division to analyze the general business practices being followed by insurers writing property and casualty insurance, including the insurers' practices in procuring reinsurance, the general pricing policies being utilized by insurers, the effect of those pricing policies on the insurers' overall operations, and the investment policies being utilized by the insurer. In addition to these duties, the division would be charged with overseeing the overall operation of the insurance market. If it is found that any business practice or practices being followed by any insurer would result in market instability, a lack of availability of coverage, or would result in premiums which do not meet the statutory standards of not being excessive, inadequate or unfairly discriminatory, the division would be required to report this to the commissioner.

This bill is aimed at providing the Department of Insurance with a means to monitor the insurance marketplace more broadly. The recent commercial insurance problems were allegedly caused in part by problems in the reinsurance market, excessive discounts on commercial insurance premiums, and the use of so-called "cash-flow" underwriting,

whereby insurers attempt to increase their premium volume dramatically in order to take advantage of high interest rates.

While the Department of Insurance does have a Division of Financial Examination, it is not statutorily created. The existing division's duties are more narrow than those contemplated by the bill, focusing primarily on matters relating to financial solvency. Moreover, the present division examines both property and casualty insurers and life and health insurers. 35 insurers were examined by the division in Fiscal Year 1987. It is the intent of this bill to expand the financial analysis of the division to matters other than solvency, including market conduct. Because much commercial property and casualty insurance is individually rated rather than manually rated, it is more difficult to determine whether individual premiums meet the statutory standards of not being excessive, inadequate, or unfairly discriminatory. In many cases, this determination can only be done by audit. It is the purpose of this legislation to provide the department with this capability.

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SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO

**SENATE, No. 2402**

with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: OCTOBER 20, 1986

This bill establishes the Division of Property-Casualty Examination in the Department of Insurance to perform all the financial examinations and market practice examinations of property and casualty insurers writing personal lines insurance and commercial lines insurance. The commissioner must staff the division with at least six certified public accountants or other qualified individuals, two persons holding MBA's and an economist. In addition to other examination functions already provided by law, the division would monitor industry practices in order to moderate the cyclical nature of the insurance business which often results in availability and affordability crises. The division would analyze the general business practices of property and casualty insurers, including policies of these insurers in procuring reinsurance, in general pricing and in investments.

The division would be funded by assessments on property and casualty insurers and the insurers would be allowed to offset these assessments against their premium taxes.