

17:33A-1 to 17:33A-14

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:33A-1 to 17:33A-14

"Insurance Fraud Prevention Act"

LAWS OF: 1983

CHAPTER: 320

Bill No: A1719

Sponsor(s): D. Gallo and Bocchini

Date Introduced: July 8, 1982

Committee: Assembly: Banking and Insurance

Senate: Labor, Industry and Professions

Amended during passage: YES

Amendments during passage denoted by asterisks. Substituted for S1333 (not attached since identical to A1719)

Date of Passage:

Assembly: April 11, 1983

Senate: June 30, 1983

Date of Approval: August 30, 1983

Following statements are attached if available:

Sponsor statement: YES

Committee statement: Assembly YES

Senate YES

Fiscal Note: NO

Veto Message: NO

Message on Signing: YES

Following were printed:

Reports: NO

Hearings: NO

Florida statute referred to in sponsor's statement:

Fla. Stat Ann. S626.951 et seq.

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ASSEMBLY, No. 1719

STATE OF NEW JERSEY

INTRODUCED JULY 8, 1982

By Assemblymen D. GALLO and BOCCHINI

AN ACT concerning insurance fraud, establishing a certain fund, defining certain civil offenses, establishing a Division of Insurance Fraud Prevention in the Department of Insurance and making an appropriation therefor.

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

1 1. This act shall be known and may be cited as the "New Jersey  
2 Insurance Fraud Prevention Act \***[of 1982]**\*."

1 2. The purpose of this act is to confront aggressively the problem  
2 of insurance fraud in New Jersey by facilitating the detection of  
3 insurance fraud, eliminating the occurrence of such fraud through  
4 the development of fraud prevention programs, requiring the  
5 restitution of fraudulently obtained insurance benefits, and reducing  
6 the amount of premium dollars used to pay fraudulent claims.

1 3. As used in this act:

2 a. "Attorney General" means the Attorney General of New  
3 Jersey or his designated representatives.

4 b. "Commissioner" means the Commissioner of Insurance.

5 c. "Director" means the Director of the Division of Insurance  
6 Fraud Prevention in the Department of Insurance.

7 d. "Division" means the Division of Insurance Fraud Preven-  
8 tion established by this act.

9 e. "Hospital" means any general hospital, mental hospital, con-  
10 valescent home, nursing home or any other institution, whether  
11 operated for profit or not, which maintains or operates facilities  
12 for health care.

**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:

\*—Assembly committee amendments adopted March 14, 1983.

13     \*f. "Person" means a person as defined in R. S. 1:1-2, and shall  
14 include, unless the context otherwise requires, a practitioner.\*

15     \*[f.]\* \*g.\* "Practitioner" means a \*[person licensed by]\* \*li-  
16 censee of\* this State \*authorized\* to practice medicine and sur-  
17 gery, psychology, chiropractic, or law or any other \*[person li-  
18 censed by]\* \*licensee of\* this State whose services are compensated,  
19 directly or indirectly, by insurance proceeds, or a \*[person]\* \*li-  
20 censee\* similarly licensed in other states and nations or the prac-  
21 titioner of any nonmedical treatment rendered in accordance with  
22 a recognized religious method of healing.

23     \*[g.]\* \*h.\* "Producer" means an agent, broker or solicitor li-  
24 censed to \*[sell]\* \*transact the business of\* insurance in this State.

25     \*[h.]\* \*i.\* "Statement" includes but is not limited to, any writ-  
26 ing, notice, expression, statement, proof of loss, bill of lading,  
27 receipt, invoice, account, estimate of property damages, bill for  
28 services, diagnosis, prescription, hospital or physician records,  
29 X-ray, test result or other evidence of loss, injury or expense.

1     4. a. A person or a practitioner, violates this act if he:

2     (1) Presents or causes to be presented any written or oral state-  
3 ment as part of, or in support of or opposition to, a claim for  
4 payment or other benefit pursuant to an insurance policy, knowing  
5 that the statement contains any false or misleading information  
6 concerning any fact or thing material to the claim; or

7     (2) Prepares or makes any written or oral statement that is  
8 intended to be presented to any insurance company or any insur-  
9 ance claimant in connection with, or in support of or opposition  
10 to any claim or payment or other benefit pursuant to an insur-  
11 ance policy, knowing that the statement contains any false or  
12 misleading information concerning any fact or thing material to  
13 the claim; or

14     (3) Conceals or \*knowingly\* fails to disclose the occurrence of  
15 an event which affects any person's initial or continued right or  
16 entitlement to (a) any insurance benefit or payment or (b) the  
17 amount of any benefit or payment to which the person is entitled.

18     b. A person or practitioner violates this act if he knowingly  
19 assists, conspires with, or urges any person or practitioner to  
20 violate any of the provisions of this act.

21     c. A person or practitioner violates this act if, due to the assist-  
22 ance, conspiracy or urging of any person or practitioner, he know-  
23 ingly benefits, directly or indirectly, from the proceeds derived  
24 from a violation of this act.

25     d. A person or practitioner who is the owner, administrator or  
26 employee of any hospital violates this act if he knowingly allows

27 the use of the facilities of the hospital by any person in furtherance  
 28 of a scheme or conspiracy to violate any of the provisions of this act.  
 29 e. A person or practitioner violates this act if, for pecuniary  
 30 gain, for himself or another, he directly or indirectly solicits any  
 31 person or practitioner to engage, employ or retain either himself  
 32 or any other person to manage, adjust or prosecute any claim or  
 33 cause of action, against any person, for damages for negligence, or,  
 34 for pecuniary gain, for himself or another, directly or indirectly  
 35 solicits other persons to bring causes of action to recover damages  
 36 for personal injuries or death, or for pecuniary gain, for himself or  
 37 another, directly or indirectly solicits other persons to make a  
 38 claim for personal injury protection benefits pursuant to P. L. 1972,  
 39 c. 70 (C. 39:6A-1 et seq.); provided, however, that this subsection  
 40 shall not apply to **\*[advertising]\*** *\*any conduct\** otherwise per-  
 41 mitted by law or by rule of the Supreme Court.

1 5. a. **\*[A]\*** *\*If a\** person or practitioner **\*[who violates]\*** *\*is*  
 2 *found by a court of competent jurisdiction, pursuant to a claim*  
 2A *initiated by the commissioner, to have violated\** any provision of  
 2B *this act\*, the person or practitioner\** shall be subject to a civil  
 2C penalty not to exceed **\*[\$1,000.00]\*** *\*\$2,500.00\** for the first vio-  
 2D lation, **\*[\$2,500.00]\*** *\*\$5,000.00\** for the second violation and  
 3 **\*[\$5,000.00]\*** *\*\$10,000.00\** for each subsequent violation. The  
 4 penalty shall be **\*[enforced and collected by the commissioner in**  
 4A *an administrative proceeding held pursuant to the "Administra-*  
 4B *tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.)]\**  
 5 *\*paid to the commissioner to be used in accordance with subsection*  
 5A *b. of this section. The court may also award court costs and rea-*  
 5B *sonable attorney fees to the commissioner\*.*

6 *\*Nothing in this subsection shall be construed to prohibit, in the*  
 6A *case of a first offense, the commissioner and the person or prac-*  
 6B *titioner alleged to be guilty of a violation of this act, from entering*  
 6C *into a written agreement in which the person or practitioner does*  
 6D *not admit or deny the charges but consents to payment of the civil*  
 7 *penalty. A consent agreement may not be used in a subsequent*  
 7A *civil or criminal proceeding relating to any violation of this act,*  
 7B *nor shall notification thereof be made to a licensing authority as*  
 7C *required pursuant to subsection c. of section 10 of this act.\**

8 **\*[b.** Upon the failure of any person or practitioner to comply  
 9 within 10 days after service of any order of the commissioner or  
 10 his designee directing payment of any amount found to be due  
 11 pursuant to subsection a. of this section, the commissioner may  
 12 issue a certificate to the Clerk of the Superior Court that such  
 13 person or practitioner is indebted to the State for the payment of

14 the amount. A copy of that certificate shall be served upon the  
 15 person or practitioner against whom the order was entered. The  
 16 clerk shall immediately enter upon his record of docketed judg-  
 17 ments the name of the person or practitioner, so indebted, and of  
 18 the State, a designation of the statute under which the amount is  
 19 found to be due, the amount due, and the date of the certification.  
 20 The entry shall have the same effect as the entry of a docketed  
 21 judgment in the Superior Court. The entry, however, shall be  
 22 without prejudice to the right of appeal to the Appellate Division  
 23 of the Superior Court from the final order of the commissioner or  
 24 his designee.]\*

25 \***[c.]**\* \*b.\* The New Jersey Automobile Full Insurance Under-  
 26 writing Association Auxiliary Fund (hereinafter referred to as the  
 27 "fund" is established as a nonlapsing, revolving fund into which  
 28 shall be deposited all revenues from the \***[fines]**\* \*civil penalties\*  
 29 imposed pursuant to this section. Interest received on moneys in  
 30 the fund shall be credited to the fund. The fund shall be adminis-  
 31 tered by the Commissioner of Insurance and shall be used to help  
 32 defray the operating expenses of the New Jersey Automobile Full  
 33 Insurance Underwriting Association created pursuant to P. L.  
 34 \*1983\*, c. \*65\* (C. \*17:30E-1\* et seq.)\***[**, (now pending before the  
 35 Legislature as Assembly Bill No. 1696 of 1982)\***]**.\*

1 6. a. Insurance claim forms shall contain a statement in a form  
 2 approved by the commissioner that clearly states in substance the  
 3 following: "Any person who knowingly files a statement of claim  
 4 containing any false or misleading information is subject to crimi-  
 5 nal and civil penalties."

6 b. The commissioner \***[may]**\* \*shall\* promulgate rules and  
 7 regulations requiring any or all persons or practitioners seeking  
 8 payment for services or materials which will be reimbursed by  
 9 \***[a property casualty]**\* \*an\* insurer to verify, under oath, that  
 10 the services and materials furnished were necessary and were, in  
 11 fact, furnished. The furnishing of a verification required under  
 12 this subsection shall be a condition precedent to payment by the  
 13 insurer or recourse against the insured.

1 7. a. Any insurance company damaged as the result of a violation  
 2 of any provision of this act may sue therefor in any court of  
 3 competent jurisdiction to recover compensatory damages, which  
 4 may include reasonable investigation expenses, costs of suit and  
 5 attorneys fees.

6 b. A successful claimant under subsection a. shall recover treble  
 7 damages if the court determines that the defendant has engaged  
 8 in a pattern \***[and practice]**\* of violating this act.

9 c. A **\*[successful]\*** claimant under this section *shall mail a*  
10 *copy of the initial claim, amended claim, counterclaims, briefs and*  
11 *legal memoranda to the commissioner at the time of filing of such*  
12 *documents with the court wherein the matter is pending. A suc-*  
13 *cessful claimant\** shall report to the **\*[department]\*** *\*commis-*  
14 *sioner\**, on a form prescribed by the commissioner, the amount  
15 recovered and such other information as is required by the com-  
16 missioner.

17 *\*d. Upon receipt of notification of the filing of a claim by an*  
18 *insurer, the commissioner may join in the action for the purpose*  
19 *of seeking judgment for the payment of a civil penalty authorized*  
20 *under section 5 of this act. If the commissioner prevails, the court*  
21 *may also award court costs and reasonable attorney fees actually*  
22 *incurred by the commissioner.\**

1 8. a. There is established in the Department of Insurance the  
2 Division of Insurance Fraud Prevention. The division shall assist  
3 the commissioner in administratively investigating allegations of  
4 insurance fraud and in developing and implementing programs  
5 to prevent insurance fraud and abuse. The division shall promptly  
6 notify the Attorney General of any claim which involves criminal  
7 activity. When so required by the commissioner and the Attorney  
8 General, the division shall cooperate with the Attorney General in  
9 the investigation and prosecution of criminal violations.

10 b. The commissioner shall appoint the full-time supervisory and  
11 investigative personnel of the division, including the director, who  
12 shall hold their employment at the pleasure of the commissioner  
13 without regard to the provisions of Title 11 of the Revised Statutes  
14 and shall receive such salaries as the commissioner from time to  
15 time designates, and who shall be qualified by training and experi-  
16 ence to perform the duties of their position.

17 c. When so requested by the commissioner, the Attorney General  
18 may assign one or more deputy attorneys general to assist the  
19 division in the performance of its duties.

20 d. The commissioner shall also appoint the clerical and other  
21 staff necessary for the division to fulfill its responsibilities under  
22 this act. The personnel shall be employed subject to the provisions  
23 of Title 11 of the Revised Statutes, and other applicable statutes.

24 e. The commissioner shall appoint an insurance fraud advisory  
25 board consisting of eight representatives from insurers doing busi-  
26 ness in this State. The members of the board shall serve for two  
27 year terms and until their successors are appointed and qualified.  
28 The members of the board shall receive no compensation. The  
29 board shall advise the commissioner with respect to the implemen-  
30 tation of this act, when so requested by the commissioner.

31 f. The Director of the Division of Budget and Accounting in  
 32 the Department of the Treasury shall, on or before September  
 33 1 in each year, ascertain and certify to the commissioner the total  
 34 amount of expense incurred by the State in connection with the  
 35 administration of this act during the preceding fiscal year, which  
 36 expenses shall include, in addition to the direct cost of personal  
 37 service, the cost of maintenance and operation, the cost of retire-  
 38 ment contributions made *\*and\** the workers' compensation paid  
 39 for and on account of personnel, rentals for space occupied in State  
 40 owned or State leased buildings and all other direct and indirect  
 41 costs of the administration thereof.

42 g. The commissioner shall, on or before October 15 in each  
 43 year, apportion the amount so certified to him among all of the  
 44 companies writing the class or classes of insurance described in  
 45 R. S 17:17-1 within this State in the proportion that the net pre-  
 46 miums received by each of them for such insurance written or  
 47 renewed on risks within this State during the calendar year im-  
 48 mediately preceding, as reported to him, bears to the sum total of  
 49 all such net premiums received by all companies writing that in-  
 50 surance within the State during the year, as reported, except that  
 51 no one company shall be assessed for more than 5% of the amount  
 52 apportioned. The commissioner shall certify the sum apportioned  
 53 to each company on or before November 15 next ensuing, and to  
 54 the Division of Taxation in the Department of the Treasury. Each  
 55 company shall pay the amount so certified as apportioned to it to  
 56 the said Division of Taxation on or before December 31 next en-  
 57 suing, and the sum paid shall be paid into the State Treasury in  
 58 reimbursement to the State for the expenses paid.

58A *\*\*\*"Net premiums received" means gross premiums written, less*  
 58B *return premiums thereon and dividends credited or paid to policy-*  
 58C *holders.\**

59 h. The total appropriations recoverable under this section  
 60 for the operations of the division shall not exceed \$500,00.00  
 61 during its first full fiscal year of operation. During subsequent  
 62 fiscal years, the appropriations subject to recovery under this sec-  
 63 tion shall not increase by more than the amount by which State  
 64 expenditures *\*[may]\* \*shall\** increase for that fiscal year, ex-  
 65 pressed as a percent per annum\***[**, under the "State Expenditures  
 66 Limitation Act," P. L. 1976, c. 67 (C. 52:9H-5 et seq.)**]**.\*

1 9. a. Any insurance company or producer who believes that a  
 2 violation of this act has been or is being made shall, within *\*[60]\**  
 3 *\*30\** days after discovery of the alleged violation of this act send  
 4 to the division, on a form prescribed by the commissioner, the

5 information requested and such additional information relative to  
6 the claim and the parties claiming loss or damages as the division  
7 may require. The division shall review the reports and select those  
8 claims as may require further investigation. It shall then cause  
9 an independent examination or evaluation of the facts surround-  
10 ing the claim to be made to determine the extent, if any, to which  
11 fraud, deceit, or intentional misrepresentation of any kind exists  
12 in the submission or processing of the claim.

13 b. No person shall be subject to civil liability for libel, viola-  
14 tion of privacy or otherwise by virtue of the filing of reports or  
15 furnishing of other information\*, *in good faith and without malice*\*,  
16 required by this section or required by the division as a result of  
17 the authority conferred upon it by law.

18 c. The commissioner may\*,\* by regulation, require insurance  
19 companies licensed to do business in this State to keep such records  
20 and other information as he deems necessary for the effective en-  
21 forcement of this act.

1 10. a. If the division has reason to believe that a person has en-  
2 gaged in, or is engaging in, an act or practice which violates this  
3 act, or any other relevant statute or regulation, the commissioner  
4 or his designee may administer oaths and affirmations, request or  
5 compel the attendance of witnesses or the production of documents.  
6 The commissioner may issue, or designate another to issue, sub-  
7 penas to compel the attendance of witnesses and the production of  
8 books, records, accounts, papers and documents. Witnesses who  
9 are not licensees of the Department of Insurance shall be entitled to  
10 receive the same fees and mileage as persons summoned to testify  
11 in the courts of the State.

12 If a person subpenaed pursuant to this section shall neglect  
13 or refuse to obey the command of the subpena, a judge of the  
14 Superior Court \***[or a municipal court]**\* may, on proof by affidavit  
15 of service of the subpena, of payment or tender of the fees required  
16 and of refusal or neglect by the person to obey the command of the  
17 subpena, issue a warrant for the arrest of said person to bring  
18 him before the judge, who is authorized to proceed against the  
19 person as for a contempt of court.

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



27 c. If (1) a practitioner, (2) an owner, administrator or employee  
 28 of any hospital, **\*[or]\*** (3) an insurance company, agent, broker\*,  
 29 *solicitor\** or adjuster**\*[;]\*** \*, or (4) any other person licensed by  
 30 a licensing authority of this State,\* or an agent, representative or  
 31 employee of any of them **\*[violates]\*** *\*is found to have violated\**  
 32 any provision of this act, the commissioner or the Attorney General  
 33 shall notify the appropriate licensing authority of the violation  
 34 so that the licensing authority may take appropriate administra-  
 35 tive action.

1 11. **\*[The department's papers]\*** *\*Papers\**, documents, reports,  
 2 or evidence relative to the subject of an investigation under this  
 3 act shall not be subject to public inspection except as specifically  
 4 provided in this act. The commissioner shall not detain subpenaed  
 4A records after an investigation is closed **\*[and shall return such**  
 5 **records]\*** *\*or, if a claim for a civil penalty is filed by the commis-*  
 6 *sioner pursuant to section 5 or subsection d. of section 7, upon final*  
 7 *disposition of the claim by a court of competent jurisdiction, which-*  
 8 *ever shall be the later date. Subpenaed records shall be returned\**  
 9 to the persons from whom they were obtained. The commissioner  
 10 may, in his discretion, make relevant papers, documents, reports,  
 11 or evidence available to the Attorney General, an appropriate  
 12 licensing authority, an insurance company or insurance claimant  
 13 injured by a violation of this act, consistent with the purposes of  
 14 this act and under such conditions as he deems appropriate. Such  
 15 papers, documents, reports, or evidence shall not be subject to  
 16 subpena, unless the commissioner consents, or until, after notice  
 17 to the **\*[department]\*** *\*commissioner\** and a hearing, a court of  
 18 competent jurisdiction determines that the **\*[department]\*** *\*com-*  
 19 *missioner\** would not be unnecessarily hindered by such subpena.  
 20 Division investigators shall not be subject to subpena in civil ac-  
 21 tions by any court of this State to testify concerning any matter  
 22 of which they have knowledge pursuant to a pending insurance  
 23 fraud investigation by the division\*, or a pending claim for civil  
 24 penalties initiated by the commissioner\*.

1 12. The commissioner may promulgate such regulations as he  
 2 deems necessary for the effective implementation of this act.

1 13. There is appropriated the sum of \$250,000.00 to the Depart-  
 2 ment of Insurance for the initial implementation of this act, subject  
 3 to recovery pursuant to section 8 of this act.

1 14. The commissioner shall report annually to the Senate Labor,  
 2 Industry and Professions Committee and the Assembly Banking  
 3 and Insurance Committee as to the activities of the division and  
 4 the cost effectiveness of the programs established by the division.

1 15. The imposition of any fine or other remedy under this act

2 shall not preclude prosecution for a violation of the criminal law of  
3 this State.

1 16. This act shall take effect 90 days after enactment, except  
2 that any appointment and any action permitted or required by  
3 this act and necessary to effectuate this act as of such date may  
4 be made or undertaken prior to such date.

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1 14. The commissioner shall report annually to the Senate Labor,  
2 Industry and Professions Committee and the Assembly Banking  
3 and Insurance Committee as to the activities of the division and  
4 the cost effectiveness of the programs established by the division.

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2 that any appointment and any action permitted or required by  
3 this act and necessary to effectuate this act as of such date may  
4 be made or undertaken prior to such date.

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STATEMENT

This legislation deals with the problem of insurance fraud. It would provide that any individual who presents an oral or written statement in support of a claim for payment of benefits under an insurance policy which contains any false, incomplete, or misleading information, could be charged with violation of the act. Any individuals such as doctors or other health care practitioners or any provider such as a hospital who assist in any conspiracy to obtain benefits fraudulently would also be charged with violating the act.

The bill prohibits any person from retaining, for pecuniary gain, any other individuals to manage, adjust, or prosecute any claim or cause of action against any person for damages for negligence; the bill also prohibits any person from soliciting, for pecuniary gain, directly or indirectly, other individuals to bring causes of action to recover damages for personal injuries or death, or to make any personal injury protection claim for pecuniary gain.

Individuals found guilty of violating the act would be subject to a civil penalty not to exceed \$1,000.00 for the first violation, \$2,500.00 for the second violation and \$5,000.00 for each subsequent violation. Insurance claim forms would be required to contain a statement that any one who files a fraudulent claim is liable to criminal and civil penalties. Any insurance company or producer may report violations of the act to the division; those reporting violations are not subject to civil liability for libel. There is no intent in this section to preclude suit on proof of actual malice. As originally drafted, insurance companies and insurance claimants damaged as the result of a violation of this act would be able to sue for compensatory damages, including reasonable investigation expenses, costs of suit and attorneys fees.

This legislation establishes the New Jersey Automobile Full

Insurance Underwriting Association Auxiliary Fund. All fines collected by the Commissioner of Insurance pursuant to section 5 of this bill would be deposited in this nonlapsing fund. The fund shall be used to help defray the operating expenses of the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P. L. , c. (C. et seq.), (now pending before the Legislature as Assembly Bill No. 1696 of 1982).

This legislation establishes within the Department of Insurance the Division of Insurance Fraud Prevention. The division would assist the commissioner in investigating allegations of insurance fraud and in developing and implementing programs to prevent insurance fraud and abuse. The division would notify the Attorney General of any claim which involves criminal activity. The commissioner would appoint full-time investigative and supervisory personnel, and could request the Attorney General to assign one or more deputy attorneys general to assist the division. The division would be funded by assessments on the industry on the basis of their total premiums written in the property-casualty lines.

This legislation is designed to set up a division similar to one which exists in Florida. The Florida division is staffed by a number of trained investigators who have investigated and obtained convictions of a number of individuals, including doctors and other health care professionals, who made fraudulent claims against insurance companies.

Attorneys are not prohibited by section 4e. from advertising as permitted by law or by rule of the Supreme Court.

Witnesses not licensees of the Department of Insurance who are subpoenaed by the commissioner as being in violation of the act, would receive the same fees and mileage as persons summoned to testify in the courts of the State. Enforcement of compliance with subpoenas issued to violators of the act would be the responsibility of a judge of the Superior Court or a municipal court, not of the Commissioner of Insurance.

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ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1719**

with Assembly committee amendment

**STATE OF NEW JERSEY**

DATED: MARCH 14, 1983

Assembly Bill No. 1719, designated the "New Jersey Insurance Fraud Prevention Act of 1982," establishes a Division of Insurance Fraud Prevention to facilitate the detection and improve the prosecution of fraudulent insurance claims, and to aid in the development of fraud prevention programs.

In addition to establishing a Division of Insurance Fraud Prevention in the Department of Insurance, this bill:

- (1) Authorizes creation of an Insurance Fraud Advisory Board;
- (2) Defines various kinds of acts of fraud subject to the bill's provisions;
- (3) Establishes civil penalties for such acts of fraud;
- (4) Authorizes insurers to recover compensatory damages from the perpetrators of acts of fraud;
- (5) Authorizes the Commissioner of Insurance to assess property and casualty insurers for certain costs of operations of the division; and
- (6) Appropriates the sum of \$250,000.00 to cover the start-up costs of the division, which amount shall be recovered from assessments imposed on subject insurers.

Section 4 of the bill defines the types of acts of fraud subject to the provisions of the bill.

Section 5 prescribes the civil penalties that may be imposed by the commissioner for violations of the provisions of the act. Subsection c. of section 5 requires that all moneys from such civil penalties be deposited in a special fund for use to defray the operating expenses of the New Jersey Automobile Full Insurance Underwriting Association. The civil remedies available under section 5 (or, for that matter, the compensatory damages provisions of section 7) would not preclude criminal prosecution for any act which also violates the state's criminal laws (section 15).

Section 6 requires a provider of reimbursable services or materials to verify under oath that the services or materials for which a payment claim is filed have been furnished.

Section 7 allows an insurer damaged by a violation of the bill's provisions to recover compensatory damages therefor, including reasonable investigation expenses, the costs of the action and attorneys fees. Subsection b. of section 7 allows an insurer to recover punitive damages, in addition to compensatory damages.

Section 8 establishes a Division of Insurance Fraud Prevention. It also:

(1) Allows the commissioner to appoint full-time supervisory and investigative personnel to the division outside the requirements of civil service law;

(2) Allows the commissioner to request the assignment of one or more deputy attorney generals to assist in the division's work;

(3) Requires the commissioner to appoint an insurance fraud advisory board, consisting of insurer representatives;

(4) Requires (a) the Director of the Division of Budget and Accounting to ascertain and certify to the commissioner the annual direct and indirect costs of the division's operations, and (b) the commissioner to apportion such costs, subject to certain limitations, to property and casualty insurers, except that no one company shall be assessed more than 5% of the amount apportioned in any one year, which amount shall be paid to the Division of Taxation on or before December 31 of each year; and

(5) Statutorily limits the amount of State appropriation to the division that may be recovered in any one year.

Section 9 authorizes the division to conduct an independent examination of any alleged violation of the bill's provisions filed by an insurer or producer with the commissioner, and exempts from liability, persons filing reports pursuant to the provisions of section 9.

Section 10 authorizes the division to initiate its own investigation and grants the commissioner, or his designee, certain investigative powers. Subsection c. of section 10 requires the commissioner or Attorney General to notify any appropriate state licensing authority of any licensee violations of the bill's provisions.

Section 11 concerns the use, availability and disposition of papers, documents, reports or evidence acquired in the course of an investigation.

Section 13 appropriates \$250,000.00 to cover the initial implementation of the act which amount shall be recoverable from insurer assessments levied pursuant to section 8.

Section 14 requires annual reports to be made to the Senate Labor, Industry and Professions Committee and the Assembly Banking and Insurance Committee as to the activities of the division and cost effectiveness of its programs.

The main substantive provisions contained in the Assembly Committee amendments are:

*Section 2:* Defines "person" so as to underscore the distinction between "person" and "practitioner." The term "person" shall however be construed in certain instances to include "practitioner."

*Section 5:* (1) Transfers civil penalty hearing powers from commissioner to the court, but gives commissioner authority to enter into consent agreements in the case of first offenses.

(2) Increases amounts of the civil penalties to \$2,500/\$5,000/\$10,000.

*Section 7:* Requires an insurer seeking to recover damages for violations of bill's provisions to notify commissioner, and authorizes the commissioner to join in the action for the purpose of assessing a civil penalty.

*Section 9:* Limits the immunity to liability section to persons providing information in good faith and without malice.

*Section 10:* Extends the reporting requirement of the commissioner and the Attorney General to cover any licensees.

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SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 1719**

[OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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DATED: JUNE 16, 1983

This bill creates the Division of Insurance Fraud Prevention within the Department of Insurance. The division would assist the commissioner in investigating allegations of insurance fraud and in developing and implementing programs to prevent insurance fraud and abuse. The division would be funded by assessments on the insurance industry on the basis of their total premiums written in the property-casualty lines.

In addition to other prohibitions, the bill prohibits a person from:

- a. Presenting an oral or written statement in support of, or opposition to, a claim for benefits under an insurance policy which contains any false, incomplete or misleading information concerning any fact or thing material to the claim;
- b. Assisting in any conspiracy to obtain benefits fraudulently;
- c. Soliciting, for pecuniary gain, another person to retain himself or any other person to manage, adjust or prosecute any claim or cause of action against any person for damages for negligence;
- d. Soliciting, for pecuniary gain, any other person to bring causes of action to recover damages for personal injuries or death, or to make a claim for personal injury protection benefits.

However, in regard to the prohibition against certain soliciting, attorneys are not prohibited from any conduct permitted by law or by rule of the Supreme Court.

The bill requires the commissioner to promulgate rules and regulations requiring all persons seeking reimbursement from an insurer for services or materials to verify, under oath, that the services and materials were necessary and were furnished.

Insurance claim forms would be required to contain a statement that anyone who files a fraudulent claim is liable to criminal and civil penalties.

Persons found guilty by a court of violating the act would be subject to a civil penalty not to exceed \$2,500.00 for the first violation, \$5,000.00 for the second violation and \$10,000.00 for each subsequent violation. In addition, the commissioner is given the authority to enter into



written consent agreements with alleged violators to pay civil penalties without admitting or denying the charges in cases of first offenders. All moneys from such civil penalties would be deposited in a special fund for use to defray the operating expenses of the New Jersey Automobile Full Insurance Underwriting Association.

Insurance companies damaged as a result of a violation of this act would be able to sue for compensatory damages, which may include reasonable investigation expenses, costs of suit and attorneys' fees. If the defendant has engaged in a pattern of violating the act, a successful plaintiff would be awarded treble damages.

The imposition of any fine or other remedy under this act does not preclude prosecution for a violation of the criminal law of this State.

Any insurance company or producer may report violations of this act to the division. Those reporting violations in good faith and without malice will not be subject to civil liability for libel.

Papers, documents, reports, or evidence relating to investigations of insurance fraud are confidential, but the commissioner may make relevant papers, documents, reports, or evidence available to the Attorney General or an appropriate licensing authority, as well as to an insurance company or insurance claimant.

The sum of \$250,000.00 is appropriated to cover the initial implementation of the act. The amount shall be recoverable from insurer assessments.

Annual reports are to be made to the Senate Labor, Industry and Professions Committee and the Assembly Banking and Insurance Committee as to the activities of the division and cost effectiveness of its programs.

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TUESDAY, AUGUST 30, 1983

Governor Thomas H. Kean today signed legislation to create a Division of Insurance Fraud Prevention and predicted that steps to uncover and eliminate fraudulent claims "would lead to additional premium savings to the motoring public of New Jersey."

Kean signed the bill, A-1719, sponsored by Assembly Minority Leader Dean A. Gallo, R-Morris, at a public ceremony in his office.

"The fraud prevention program is a part of our overall reform of the no-fault insurance system in New Jersey, reforms which are long overdue," Kean said. "It has been estimated that fraud within the system accounts for 15 to 20 per cent of the premium dollar and it is our intention to reduce as much of that amount as possible."

"Based on insurance premiums of \$2.5 billion annually, this legislation holds a potential for savings of some \$500 million to the premium payers," Kean said.

Anyone convicted of violating the provisions of the law is subject to a fine of \$2,500 for the first offense; \$5,000 for the second offense, and \$10,000 for each subsequent offense.

The legislation also establishes a fund into which the fines from violators will be placed and the proceeds used to administer and operate the recently-created Joint Underwriting Association.

Under the law, fraud is defined as failure to disclose pertinent information, misleading claims or statements, receiving benefits which a person knows were fraudulently obtained and permitting a hospital to be used in any plan to violate the law.

- more -

DIVISION OF INSURANCE FRAUD PREVENTION

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TUESDAY, AUGUST 30, 1983

The legislation appropriates \$250,000 for initial implementations of the act, but provides that the Division be funded in the future through assessments on the insurance industry based on their total premiums written in the property-casualty lines.

The legislation is effective in 90 days.

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