

17B:30-17, 17B:30-20, 17:29B-7

LEGISLATIVE HISTORY CHECKLIST

(Penalties for violations of the unfair trade practices provisions of Life & Health Insurance Code)

NJSA 17B:30-17, 17B:30-20, 17:29B-7

LAWS 1981

CHAPTER 452

Bill No. A1385

Sponsor(s) Bornheimer

Date Introduced March 13, 1980

Committee: Assembly Banking and Insurance

Senate Labor

Amended during passage

Yes

~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly May 1, 1980

Senate June 29, 1981

Date of approval Jan. 11, 1982

Following statements are attached if available:

Sponsor statement

Yes

~~XX~~ Also attached: Assembly amendments, adopted 11-23-81 and 4-28-80 and  
~~XX~~ Senate amendments, adopted 6-25-81  
(with statements)  
~~XX~~

Committee Statement: Assembly

Yes

Senate

Yes

Fiscal Note

~~XXX~~

No

Veto Message

~~XXX~~

No

Message on signing

~~XXX~~

No

Following were printed:

Reports

~~XXX~~

No

Hearings

~~XXX~~

No

Recommendations of National Association of Insurance Commissioners (as mentioned in Assembly committee statement):

~~18140~~ Niars Corporation.

~~1878~~ Official N.A.I.C. model insurance laws... Minneapolis.  
(see p. 900-9)

KF1165

N5

6/22/81

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## ASSEMBLY, No. 1385

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1980

By Assemblymen BORNHEIMER, PATERNITI, PATERO, KARCHER, MAYS, T. GALLO, KOSCO, D. GALLO, HURLEY and KAVANAUGH

Referred to Committee on Banking and Insurance

AN ACT to provide civil penalties for engaging in unfair methods of competition or unfair or deceptive acts or practices under the Life and Health Insurance Code **\*\*and Property-Casualty Insurance Code\*\*** and amending N. J. S. 17B:30-17 and N. J. S. 17B:30-20 **\*\*and P. L. 1947, c. 379\*\***.

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

1 1. N. J. S. 17B:30-17 is amended to read as follows:

2 17B:30-17. a. If the commissioner has reason to believe that  
3 any person has been engaged or is engaging in this State in any  
4 unfair method of competition, or any unfair or deceptive act or  
5 practice expressly prohibited in this chapter, and that a proceeding  
6 by him in respect thereto would be to the interest of the public,  
7 he shall issue and serve upon such person a statement of the charges  
8 in that respect and a notice of a hearing thereon as provided in the  
9 Administrative Procedure Act (P. L. 1968, c. 410) and any rules  
10 adopted thereunder.

11 b. If, after such hearing, the commissioner shall determine that  
12 the method of competition or the act or practice in question is  
13 defined in this chapter and that the person complained of has en-  
14 gaged in such method of competition, act or practice in violation  
15 of this chapter, he shall make his findings in writing and shall issue  
16 and cause to be served upon the person charged with the violation  
17 an order requiring such person to cease and desist from engaging  
18 in such method of competition, act or practice *and the commissioner*  
19 *may order payment of a penalty not to exceed \$1,000.00 for \***[the***  
20 *first violation and \$2,000.00 for each subsequent violation of this*  
21 *chapter.]\* **\*\*\*[each and every act or violation but not to exceed***

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

22 an aggregate penalty of \$10,000.00 unless the person knew or rea-  
 22A sonably should have known he was in violation of this chapter, in  
 22B which case the penalty shall be not more than \$5,000.00 for each  
 22C and every act or violation]\*\*\* \*\*\*\*[\*\*\*the first violation and  
 23 \$2,000.00 for each subsequent violation of this chapter\*\*\*]\*\*\*\*  
 23A \*\*\*\*each and every act or violation \*\*\*\*\*[but not to exceed an  
 23B aggregate penalty of \$10,000.00]\*\*\*\*\* unless the person knew or  
 23C reasonably should have known he was in violation of this chapter,  
 23D in which case the penalty shall be not more than \$5,000.00 for every  
 23E act or violation \*\*\*\*\*[but not to exceed an aggregate penalty of  
 23F \$50,000.00 in any 6 month period]\*\*\*\*\* \*\*[but not to exceed  
 23G an aggregate penalty of \$50,000.00 in any 6 month period]\*\*.\* The  
 23H penalty shall be collected by the commissioner in the name of the  
 23I State in a summary proceeding in accordance with the "penalty  
 23J enforcement law" (N. J. S. 2A:58-1 et seq.).

24 c. Until the expiration of the time limited for judicial review,  
 25 if no proceeding for review has been instituted within such time or,  
 26 if a proceeding for review has been instituted within such time,  
 27 then until the transcript of the record in the proceeding has been  
 28 filed in the Superior Court, as hereinafter provided, the commis-  
 29 sioner may at any time, upon such notice and in such manner as  
 30 he shall deem proper, modify or set aside in whole or in part any  
 31 order issued by him under this section.

32 d. After the expiration of the time limited for judicial review  
 33 if no such proceeding has been instituted within such time, the com-  
 34 missioner may at any time, after notice and opportunity for hear-  
 35 ing, reopen and alter, modify or set aside, in whole or in part, any  
 36 order issued by him under this section, whenever in his opinion  
 37 the facts or the laws have so changed as to require such action or  
 38 if the public interest shall so require.

39 e. No order or proceeding, or absence of such order or pro-  
 40 ceeding of the commissioner pursuant to this chapter or order of  
 41 court to enforce such order, if made, shall in any way relieve or  
 42 absolve any person affected thereby from any other liability, pen-  
 43 alty or forfeiture provided by another law.

1 2. N. J. S. 17B:30-20 is amended to read as follows:

2 17B:30-20. Any person who violates a cease and desist order of  
 3 the commissioner issued under this chapter shall be liable to a  
 4 penalty not exceeding \$5,000.00 for each violation, to be collected  
 5 by the commissioner in the name of the State in a summary pro-  
 6 ceeding in accordance with the Penalty Enforcement Law (N. J. S.  
 7 2A:58-1 et seq.). The commissioner in his discretion may revoke  
 8 or suspend the license or certificate of authority of any such person.

1 \*3. Section 7 of P. L. 1947, c. 379 (C. 17:29B-7) is amended to  
2 read as follows:

3 7. (a) If, after such hearing, the commissioner shall determine  
4 that the method of competition or the act or practice in question is  
5 defined in section four and that the person complained of has en-  
6 gaged in such method of competition, act or practice in violation  
7 of this act, he shall make his findings in writing and shall issue and  
8 cause to be served upon the person charged with the violation an  
9 order requiring such person to cease and desist from engaging in  
10 such method of competition, act or practice *and the commissioner*  
11 *may order payment of a penalty not to exceed \$1,000.00 for \*\*\*[each*  
12 *and every act or violation but not to exceed an aggregate penalty*  
13 *of \$10,000.00 unless the person knew or reasonably should have*  
14 *known he was in violation of this chapter, in which case the penalty*  
15 *shall be not more than \$5,000.00 for each and every act or viola-*  
16 *tion]\*\*\* \*\*\*\*[\*\*\*the first violation and \$2,000.00 for each subse-*  
17 *quent violation of this act\*\*\*]\*\*\*\* \*\*\*\*each and every act or*  
18 *violation \*\*\*\*\*[but not to exceed an aggregate penalty of*  
19 *\$10,000.00]\*\*\*\*\* unless the person knew or reasonably should have*  
19A *known he was in violation of this chapter, in which case the penalty*  
19B *shall be not more than \$5,000.00 for every act or violation \*\*\*\*\*[but*  
19C *not to exceed an aggregate penalty of \$50,000.00 in any 6 month*  
19D *period\*\*\*\*\*]\*\*\*\*\* \*\*[but not to exceed an aggregate penalty of*  
19E *\$50,000.00 in any 6 month period]\*\*. The penalty shall be collected*  
19F *by the commissioner in the name of the State in a summary pro-*  
19G *ceeding in accordance with "the penalty enforcement law"*  
19H *(N. J. S. 2A:58-1 et seq.).*

20 (b) Until the expiration of the time limited for judicial review,  
21 if no proceeding for review has been instituted within such time or,  
22 if a proceeding for review has been instituted within such time, then  
23 until the transcript of the record in the proceeding has been filed  
24 in the Superior Court, as hereinafter provided, the commissioner  
25 may at any time, upon such notice and in such manner as he shall  
26 deem proper, modify or set aside in whole or in part any order  
27 issued by him under this section.

28 (c) After the expiration of the time limited for judicial review  
29 if no such proceeding has been instituted within such time, the  
30 commissioner may at any time, after notice and opportunity for  
31 hearing, reopen and alter, modify or set aside, in whole or in part,  
32 any order issued by him under this section, whenever in his opinion  
33 the facts or the laws have so changed as to require such action or  
34 if the public interest shall so require.\*

1 \***[3.]**\* \*4.\* This act shall take effect immediately.

24 c. Until the expiration of the time limited for judicial review,  
 25 if no proceeding for review has been instituted within such time or,  
 26 if a proceeding for review has been instituted within such time,  
 27 then until the transcript of the record in the proceeding has been  
 28 filed in the Superior Court, as hereinafter provided, the commis-  
 29 sioner may at any time, upon such notice and in such manner as  
 30 he shall deem proper, modify or set aside in whole or in part any  
 31 order issued by him under this section.

32 d. After the expiration of the time limited for judicial review  
 33 if no such proceeding has been instituted within such time, the com-  
 34 missioner may at any time, after notice and opportunity for hear-  
 35 ing, reopen and alter, modify or set aside, in whole or in part, any  
 36 order issued by him under this section, whenever in his opinion  
 37 the facts or the laws have so changed as to require such action or  
 38 if the public interest shall so require.

39 e. No order or proceeding, or absence of such order or pro-  
 40 ceeding of the commissioner pursuant to this chapter or order of  
 41 court to enforce such order, if made, shall in any way relieve or  
 42 absolve any person affected thereby from any other liability, pen-  
 43 alty or forfeiture provided by another law.

1 2. N. J. S. 17B:30-20 is amended to read as follows:

2 17B:30-20. Any person who violates a cease and desist order of  
 3 the commissioner issued under this chapter shall be liable to a  
 4 penalty not exceeding \$5,000.00 *for each violation*, to be collected  
 5 by the commissioner in the name of the State in a summary pro-  
 6 ceeding in accordance with the Penalty Enforcement Law (N. J. S.  
 7 2A:58-1 et seq.). The commissioner in his discretion may revoke  
 8 or suspend the license or certificate of authority of any such person.

1 3. This act shall take effect immediately.

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#### STATEMENT

This bill gives the Commissioner of Insurance the authority to impose penalties for violations of the unfair trade practice provisions of the Life and Health Insurance Code, Title 17B of the New Jersey Statutes. A penalty of up to \$1,000.00 may be imposed for the first violation and up to \$2,000.00 for each subsequent violation.

Under current law, the commissioner may impose penalties only after a cease and desist order has been violated. There is no penalty for the initial violations of the unfair trade practice provisions.

This bill also clarifies that the \$5,000.00 penalty for violation of a cease and desist order is for each violation of the order.

A1385 (1981)

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1385**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: APRIL 21, 1980

This legislation amends the Chapter 30 of Title 17B, which regulates trade practices with respect to life insurance; the bill provides for penalties not to exceed \$1,000.00 for the first violation and \$2,000.00 for each subsequent violation if the insurer or other person has violated this act.

The unfair trade practices section of Title 17B prohibits discrimination in the making of rates, misrepresentations and false advertising of policies or annuity contracts, the filing of false financial statements, prohibits "twisting," or the inducing of individuals to cancel one contract of insurance in order to purchase another, as well as certain other practices which are delineated in the law. At present, the Commissioner of Insurance has the authority to hold a hearing and issue a cease and desist order, but he does not have the authority to levy and fine except a fine of \$5,000.00 for the violation of a cease and desist order. This legislation would permit him, after a hearing, to levy a fine for the violation itself.

The Assembly Banking and Insurance Committee has amended the legislation in two respects. The committee has included property and casualty insurance within the purview of the bill and has modified the penalty section to place an aggregate limit of \$10,000.00 on the fine unless the person knew or should have known he was in violation of the act. In the latter case the penalty would be \$5,000.00 for each violation up to an aggregate of \$50,000.00. These modifications are consonant with the recommendations of the National Association of Insurance Commissioners.

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ASSEMBLY AMENDMENTS TO  
**ASSEMBLY, No. 1385**  
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**STATE OF NEW JERSEY**

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ADOPTED APRIL 28, 1980

Amend page 1, title, line 3, after "Code", insert "and Property-Casualty Insurance Code".

Amend page 1, title, line 4, after "N. J. S. 17B:30-20", insert "and P. L. 1947, c. 379".

Amend page 2, section 1, lines 23b and 23c, omit "but not to exceed an aggregate penalty of \$50,000.00 in any 6 month period".

Amend page 3, section 3, lines 16 and 17, omit "but not to exceed an aggregate penalty of \$50,000.00 in any 6 month period".

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STATEMENT

The first two amendments would amend the title of the bill to reflect the committee's inclusion of an amendment to P. L. 1947, c. 379, which regulates the trade practices of property-casualty insurers.

The second two amendments would remove the ceiling on the aggregate amount of fines for knowing violations of the law. This change is intended to protect insurance consumers from knowing violations of the unfair trade practices acts. While a cap on the penalty for inadvertent violations protects companies from huge fines resulting from repetition of an inadvertent error in numerous mailings, there appears to be no reason to cap fines for knowing violations of these laws which are designed to protect insurance consumers.

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SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1385**

with Assembly committee amendment and Assembly amendment

**STATE OF NEW JERSEY**

DATED: JUNE 8, 1981

This bill would provide civil penalties for engaging in unfair methods of competition or unfair or deceptive acts or practices under the Life and Health Insurance Code and the Property-Casualty Insurance Code. As amended by the Senate Labor, Industry, and Professions Committee, the Commissioner of Insurance would be authorized to levy a fine against an offender of up to \$1,000.00 for the first violation, and \$2,000.00 for each subsequent violation.

Nothing in the bill is intended to blur the distinction in current law (C. 17:29B-4) between unfair methods of competition, or unfair or deceptive acts, and unfair claim settlement practices. While a single unfair method of competition may result in the assessment of a penalty, it is the committee's understanding that unfair claim settlement practices would be punished when committed or performed "with such frequency as to indicate a general business practice."

At present, the commissioner has the authority to hold a hearing and issue a cease and desist order, but he does not have the authority to levy any fine except a fine of \$5,000.00 for the violation of a cease and desist order. This bill would permit him, after a hearing, to levy a fine for the violation itself.



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SENATE AMENDMENTS TO  
**ASSEMBLY, No. 1385**

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**STATE OF NEW JERSEY**

ADOPTED JUNE 25, 1981

Amend page 2, section 1, lines 22c-23, omit "the first violation and \$2,000.00 for each subsequent violation of this chapter", insert "each and every act or violation but not to exceed an aggregate penalty of \$10,000.00 unless the person knew or reasonably should have known he was in violation of this chapter, in which case the penalty shall be not more than \$5,000.00 for every act or violation but not to exceed an aggregate penalty of \$50,000.00 in any 6 month period".

Amend page 2, section 3, lines 16-17, omit "the first violation and \$2,000.00 for each subsequent violation of this act", insert "each and every act or violation but not to exceed an aggregate penalty of \$10,000.00 unless the person knew or reasonably should have known he was in violation of this chapter, in which case the penalty shall be not more than \$5,000.00 for every act or violation but not to exceed an aggregate penalty of \$50,000.00 in any 6 month period".

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STATEMENT

These amendments reimpose the caps on fines.

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ASSEMBLY AMENDMENTS TO  
**ASSEMBLY, No. 1385**  
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**STATE OF NEW JERSEY**

ADOPTED NOVEMBER 23, 1981

Amend page 2, section 1, lines 23A, B, omit "but not to exceed an aggregate penalty of \$10,000.00".

Amend page 2, section 1, lines 23E, F, omit "but not to exceed an aggregate penalty of \$50,000.00 in any 6 month period".

Amend page 3, section 3, line 18, omit "but not to exceed an aggregate penalty of \$10,000.00".

Amend page 3, section 3, lines 19B, C, omit "but not to exceed an aggregate penalty of \$50,000.00 in any 6 month period".

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STATEMENT

The amendment would remove the ceiling on the aggregate amount of fines that may be levied by the commissioner for knowing and unknowing violations of the law. This change is intended to give the commissioner the authority to take the profit out of a company's violations whether knowing or unknowing. This protects consumers as it encourages insurers to be cognizant of the law, makes regulatory responsibilities more practical to administer by providing for an adequate intermediate remedy, and may be fairer to an insurer who is willing to consent to a penalty in lieu of a potentially more costly hearing process.