

17:27A-1 et seq.

December 16, 1970

LEGISLATIVE HISTORY OF R.S.17:27A-1 et seq.  
(Insurance Holding Company Systems)

Related bills introduced (1965-69)

1968- S724 (Farley)  
Chapter 234 of 1968.

1969 - S785 (Stout, Farley, Lynch)  
Died in Committee.

L.1970 - Ch.22 - S504

January 29 - Introduced by Maturri, Farley, Sears.

March 12 - Passed Senate, amended (copy enclosed).

March 16 - Passed Assembly.

April 3 - Approved.

Bill had statement (copy enclosed).

TECHNICAL CORRECTIONS  
ONLY -- IN SECS. 142

No hearings or reports were located

Clipping located (N.J.--Insurance-1970)

Insurance takeover slowed. TET March 19, 1970.

We checked following without success:

Wall Street Journal Index, March-April 1970.

New York Times Index, March 16 - April 15 1970

New Jersey Law Journal Index.

For background, see:

Insurance holding company phenomenon and the search  
for regulating controls.

56 Virginia Law Review 636 (May 1970)

N.J.	New Jersey Insurance Law Revision Commission
KA6.2	Proposed revision...Title 17...
17A	Insurance...
1969	

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19 prerogative writ directing the commissioner to act or make such  
20 determination forthwith.

1 13. Conflict with other laws.

2 All laws and parts of laws of this State inconsistent with this  
3 chapter are hereby superseded with respect to matters covered by  
4 this chapter.

1 14. Separability of provisions.

2 If any provision of this chapter or the application thereof to any  
3 person or circumstance is held invalid, the invalidity shall not affect  
4 other provisions or applications of this chapter which can be given  
5 effect without the invalid provision or application, and for this  
6 purpose the provisions of this chapter are separable.

1 15. This act shall take effect immediately.

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STATEMENT

S 504 (1970)

The purpose of this bill is to enable the Commissioner of Banking and Insurance to regulate the acquisition of control of domestic insurers by foreign corporations, thereby protecting the interest of New Jersey policyholders and to require every insurer, which is authorized to do business in this State and which is a member of an insurance holding company system, to periodically disclose its financial condition, control, transactions and other information concerning its general operation.

SENATE, No. 504

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1970

By Senators MATTURRI, FARLEY and SEARS

Referred to Committee on Insurance

AN ACT to supplement Title 17 of the Revised Statutes by adding thereto a new chapter entitled "Insurance Holding Company Systems."

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

1 1. Definitions.

2 As used in this chapter, the following terms shall have the respec-  
3 tive meanings hereinafter set forth, unless the context shall other-  
4 wise require:

5 a. An "affiliate" of, or person "affiliated" with, a specific per-  
6 son, is a person that directly, or indirectly through one or more  
7 intermediaries, controls, or is controlled by, or is under common  
8 control with, the person specified.

9 b. The term "commissioner" shall mean the Commissioner of  
10 Banking and Insurance or his deputies.

11 c. The term "control" (including the terms "controlling," "con-  
12 trolled by" and "under common control with") means the posses-  
13 sion, direct or indirect, of the power to direct or cause the direction  
14 of the management and policies of a person, whether through the  
15 ownership of voting securities, by contract other than a commercial  
16 contract for goods or nonmanagement services, or otherwise, unless  
17 the power is the result of an official position with or corporate office  
18 held by the person. Control shall be presumed to exist if any person,  
19 directly or indirectly, owns, controls, holds with the power to vote,  
20 or holds proxies representing, 10% or more of the voting securities  
21 of any other person, provided that no such presumption of control  
22 shall of itself relieve any person so presumed to have control from  
23 any requirement of this chapter. This presumption may be rebutted  
24 by a showing made in the manner provided by section 3(i) that  
25 control does not exist in fact. The commissioner may determine,  
26 after furnishing all persons in interest notice and opportunity to be

27 heard and making specific findings of fact to support such deter-  
28 mination, that control exists in fact, notwithstanding the absence of  
29 a presumption to that effect.

30 d. An "insurance holding company system" consists of two or  
31 more affiliated persons, one or more of which is an insurer.

32 e. The term "insurer" means any person or persons, corpora-  
33 tion, partnership or company authorized by the laws of this State  
34 to transact the business of insurance in this State, except that it  
35 shall not include agencies, authorities or instrumentalities of the  
36 United States, its possessions and territories, the Commonwealth  
37 of Puerto Rico, the District of Columbia, or a state or political  
38 subdivision of a state.

39 f. A "person" is an individual, a corporation, a partnership, an  
40 association, a joint stock company, a trust, an unincorporated  
41 organization, any similar entity or any combination of the foregoing  
42 acting in concert, but shall not include any securities broker per-  
43 forming no more than the usual and customary broker's function.

44 g. A "securityholder" of a specified person is one who owns any  
45 security of such person, including common stock, preferred stock,  
46 debt obligations, and any other security convertible into or evidenc-  
47 ing the right to acquire any of the foregoing.

48 h. A "subsidiary" of a specified person is an affiliate controlled  
49 by such person directly, or indirectly through one or more inter-  
50 mediaries.

51 i. The term "voting security" shall include any security con-  
52 vertible into or evidencing a right to acquire a voting security.

1 2. Acquisition of control of or merger with domestic insurer.

2 a. Filing requirements. No person other than the issuer shall  
3 make a tender offer for or a request or invitation for tenders of, or  
4 enter into any agreement to exchange securities for, seek to acquire,  
5 or acquire, in the open market or otherwise, any voting security of  
6 a domestic insurer if, after the consummation thereof, such person  
7 would, directly or indirectly (or by conversion or by exercise of any  
8 right to acquire) be in control of such insurer, and no person shall  
9 enter into an agreement to merge with or otherwise to acquire con-  
10 trol of a domestic insurer unless, at the time any such offer, request,  
11 or invitation is made or any such agreement is entered into, or prior  
12 to the acquisition of such securities if no offer or agreement is in-  
13 volved, such person has filed with the commissioner and has sent to  
14 such insurer, and, to the extent permitted by applicable Federal  
15 laws, rules and regulations, such insurer has sent to its sharehold-  
16 ers, a statement containing the information required by this section

17 and such offer, request, invitation, agreement or acquisition has  
18 been approved by the commissioner in the manner hereinafter  
19 prescribed.

20 (1) For purposes of this section: a domestic insurer shall include  
21 any other person controlling a domestic insurer unless such other  
22 person is either directly or through its affiliates primarily engaged  
23 in business other than the business of insurance.

24 b. Content of statement. The statement to be filed with the  
25 commissioner hereunder shall be made under oath or affirmation  
26 and shall contain the following information:

27-29 (1) The name and address of each person by whom or on whose  
30 behalf the merger or other acquisition of control referred to in  
31 subsection a. is to be effected (hereinafter called "acquiring  
32 party"), and

33 (a) If such person is an individual, his principal occupation  
34 and all offices and positions held during the past 5 years, and any  
35 conviction of crimes other than minor traffic violations during the  
36 past 10 years;

37 (b) If such person is not an individual, a report of the nature  
38 of its business operations during the past 5 years or for such  
39 lesser period as such person and any predecessors thereof shall  
40 have been in existence; an informative description of the business  
41 intended to be done by such person and such person's subsid-  
42 iaries; and a list of all individuals who are or who have been  
43 selected to become directors or executive officers of such person,  
44 or who perform or will perform functions appropriate to such  
45 positions. Such list shall include for each such individual the  
46 information required by paragraph (a) of this subsection.

47 (2) The source, nature and amount of the consideration used  
48 or to be used in effecting the merger or other acquisition of control,  
49 a description of any transaction wherein funds were or are to be  
50 obtained for any such purpose, and the identity of persons furnish-  
51 ing such consideration, provided, however, that where a source of  
52 such consideration is a loan made in the lender's ordinary course of  
53 business, the identity of the lender shall remain confidential, if the  
54 person filing such statement so requests.

55 (3) Fully audited financial information as to the earnings and  
56 financial condition of each acquiring party for the preceding 5  
57 fiscal years of each such acquiring party (or for such lesser period  
58 as such acquiring party and any predecessors thereof shall have  
59 been in existence), and similar unaudited information as of a date  
60 not earlier than 90 days prior to the filing of the statement.

61. (4) Any plans or proposals which each acquiring party may have  
62 to liquidate such insurer, to sell its assets or merge or consolidate  
63 it with any person, or to make any other material change in its  
64 business or corporate structure or management.

65 (5) The number of shares of any security referred to in subsec-  
66 tion a. which each acquiring party proposes to acquire, and the  
67 terms of the offer, request, invitation, agreement, or acquisition  
68 referred to in subsection a., and a statement as to the method by  
69 which the fairness of the proposal was arrived at.

70 (6) The amount of each class of any security referred to in sub-  
71 section a. which is beneficially owned or concerning which there is a  
72 right to acquire beneficial ownership by each acquiring party.

73 (7) A full description of any contracts, arrangements or under-  
74 standings with respect to any security referred to in subsection a.  
75 in which any acquiring party is involved, including but not limited  
76 to transfer of any of the securities, joint ventures, loan or option  
77 arrangements, puts or calls, guarantees of loans, guarantees against  
78 loss or guarantees of profits, division of losses or profits, or the giv-  
79 ing or withholding of proxies. Such description shall identify the  
80 persons with whom such contracts, arrangements or understandings  
81 have been entered into.

82 (8) A description of the purchase of any security referred to in  
83 subsection a. during the 12 calendar months preceding the filing of  
84 the statement, by any acquiring party, including the dates of pur-  
85 chase, names of the purchasers, and consideration paid or agreed  
86 to be paid therefor.

87 (9) A description of any recommendations to purchase any  
88 security referred to in subsection a. made during the 12 calendar  
89 months preceding the filing of the statement, by any acquiring  
90 party, or by anyone based upon interviews or at the suggestion of  
91 such acquiring party.

92 (10) Copies of all tender offers for, requests or invitations for  
93 tenders of, exchange offers for, and agreements to acquire or ex-  
94 change any securities referred to in subsection a., and (if dis-  
95 tributed) of additional soliciting material relating thereto.

96 (11) The terms of any agreement, contract or understanding  
97 made with any broker-dealer as to solicitation of securities referred  
98 to in subsection a. for tender, and the amount of any fees, commis-  
99 sions or other compensation to be paid to broker-dealers with regard  
100 thereto.

101 (12) Such additional information as the commissioner may by  
102 rule or regulation prescribe as necessary or appropriate for the

103 protection of policyholders and securityholders of the insurer or in  
104 the public interest.

105 If the person required to file the statement referred to in sub-  
106 section a. is a partnership, limited partnership, syndicate or other  
107 group, the commissioner may require that the information called  
108 for by clauses (1) through (12) shall be given with respect to each  
109 partner of such partnership or limited partnership, each member of  
110 such syndicate or group, and each person who controls such part-  
111 ner or member. If any such partner, member or person is a corpo-  
112 ration or the person required to file the statement referred to in  
113 subsection a. is a corporation, the commissioner may require that  
114 the information called for by clauses (1) through (12) shall be given  
115 with respect to such corporation, each officer and director of such  
116 corporation, and each person who is directly or indirectly the bene-  
117 ficial owner of more than 10% of the outstanding voting securities  
118 of such corporation.

119 If any material change occurs in the facts set forth in the state-  
120 ment filed with the commissioner and sent to such insurer pursuant  
121 to this section, an amendment setting forth such change, together  
122 with copies of all documents and other material relevant to such  
123 change, shall be filed with the commissioner and sent to such insurer  
124 within 2 business days after the person learns of such change. Such  
125 insurer shall send such amendment to its shareholders.

126 c. Alternative filing materials. If any offer, request, invitation,  
127 agreement or acquisition referred to in subsection a. is proposed to  
128 be made by means of a registration statement under the Securities  
129 Act of 1933 or in circumstances requiring the disclosure of similar  
130 information under the Securities Exchange Act of 1934, or under a  
131 State law requiring similar registration or disclosure, the person  
132 required to file the statement referred to in subsection a. may  
133 utilize such documents in furnishing the information called for by  
134 that statement.

135 d. Approval by commissioner: hearings.

136 (1) The commissioner shall approve any merger or other acquisi-  
137 tion of control referred to in subsection a. unless, after a public  
138 hearing thereon, he finds that:

139 (i) After the change of control the domestic insurer referred  
139A to in subsection a. would not be able to satisfy the requirements  
140 for the issuance of a license to write the line or lines of insurance  
141 for which it is presently licensed;

142 (ii) The effect of the merger or other acquisition of control

143 would be substantially to lessen competition in insurance in this  
144 State or tend to create a monopoly therein;

145 (iii) The financial condition of any acquiring party is such as  
146 might jeopardize the financial stability of the insurer, or prejudice  
147 the interest of its policyholders or the interests of any remaining  
148 securityholders who are unaffiliated with such acquiring party;

149 (iv) The terms of the offer, request, invitation, agreement or  
150 acquisition referred to in subsection a. are unfair and unreason-  
151 able to the securityholders of the insurer;

152 (v) The plans or proposals which the acquiring party has to  
153 liquidate the insurer, sell its assets or consolidate or merge it  
154 with any person, or to make any other material change in its  
155 business or corporate structure or management, are unfair and  
156 unreasonable to policyholders of the insurer and not in the public  
157 interest; or

158 (vi) The competence, experience and integrity of those persons  
159 who would control the operation of the insurer are such that it  
160 would not be in the interest of policyholders of the insurer and  
161 of the public to permit the merger or other acquisition of control.

162 (2) The public hearing referred to in clause (1) shall be held  
163 within 30 days after the statement required by subsection a. is filed,  
164 and at least 20 days' notice thereof shall be given by the commis-  
165 sioner to the person filing the statement and the insurer. Not less  
166 than 7 days' notice of such public hearing shall be given by the  
167 person filing the statement to such other persons as may be desig-  
168 nated by the commissioner. The insurer shall give such notice to its  
169 securityholders. The commissioner shall make a determination  
170 within 30 days after the conclusion of such hearing. At such hear-  
171 ing, the person filing the statement, the insurer, any person to whom  
172 notice of hearing was sent, and any other person whose interests  
173 may be affected thereby shall have the right to present evidence,  
174 examine and cross-examine witnesses, and offer oral and written  
175 arguments and in connection therewith shall be entitled to conduct  
176 discovery proceedings in the same manner as is presently allowed  
177 in the Superior Court of this State. All discovery proceedings shall  
178 be concluded not later than 3 days prior to the commencement of  
179 the public hearings.

180 e. Mailings to shareholders; payment of expenses. To the extent  
181 permitted by applicable Federal laws, rules and regulations, all  
182 statements, amendments, or other material filed pursuant to sub-  
183 section (2) or b., and all notices of public hearings held pursuant to  
184 subsection d., shall be mailed by the insurer to its shareholders



185 within 5 business days after the insurer has received such state-  
186 ments, amendments, other material, or notices. The expenses of  
187 mailing shall be borne by the person making the filing. As security  
188 for the payment of such expenses, such person shall file with the  
189 commissioner an acceptable bond or other deposit in an amount to  
190 be determined by the commissioner.

191 f. Exemptions. The provisions of this section shall not apply to:

192 (1) Any acquisitions by the person, other than the issuer, re-  
193 ferred to in subsection a. of any newly issued voting securities  
194 referred to in subsection a. which, immediately prior to such ac-  
195 quisition, were not issued and outstanding;

196 (2) Any offer, request, invitation, agreement or acquisition which  
197 the commissioner by order shall exempt therefrom as (a) not hav-  
198 ing been made or entered into for the purpose and not having the  
199 effect of changing or influencing the control of a domestic insurer,  
200 or (b) as otherwise not comprehended within the purposes of this  
201 section; and

202 (3) Any transaction which is subject to the provisions of section  
203 24-20 of this Title.

204 g. Violations. The following shall be violations of this section:

205 (1) The failure to file any statement, amendment, or other ma-  
206 terial required to be filed pursuant to subsection a. or b.; or

207 (2) Subject to subsection f., the effectuation of an acquisition of  
208 control of, or merger with, a domestic insurer unless the commis-  
209 sioner has given his approval thereto.

210 h. Jurisdiction; consent to service of process. The courts of  
211 this State are hereby vested with jurisdiction over every person not  
212 resident, domiciled, or authorized to do business in this State who  
213 files a statement with the commissioner under this section, and over  
214 all actions involving such person arising out of violations of this  
215 section, and each such person shall be deemed to have performed  
216 acts equivalent to and constituting an appointment by such a person  
217 of the commissioner to be his true and lawful attorney upon whom  
218 may be served all lawful process in any action, suit or proceeding  
219 arising out of violations of this section. Copies of all such lawful  
220 process shall be served on the commissioner and transmitted by  
221 registered or certified mail by the commissioner to such person at  
222 his last known address.

1 3. Registration of insurers.

2 a. Registration. Every insurer which is authorized to do busi-  
3 ness in this State and which is a member of an insurance holding  
4 company system shall register with the commissioner, except a

5 foreign insurer subject to disclosure requirements and standards  
6 adopted by statute or regulation in the jurisdiction of its domicile  
7 which are substantially similar to those contained in this section.  
8 Any insurer which is subject to registration under this section shall  
9 register within 60 days after the effective date of this article or  
10 15 days after it becomes subject to registration, whichever is later,  
11 unless the commissioner for good cause shown extends the time for  
12 registration, and then within such extended time. The commis-  
13 sioner may require any authorized insurer which is a member of  
14 a holding company system which is not subject to registration  
15 under this section to furnish a copy of the registration statement  
16 or other information filed by such insurance company with the in-  
17 surance regulatory authority of domiciliary jurisdiction.

18 b. Information and form required. Every insurer subject to  
19 registration shall file a registration statement on a form provided  
20 by the commissioner, which shall contain current information  
21 about:

22 (1) The capital structure, general financial condition, ownership  
23 and management of the insurer and any person controlling the  
24 insurer;

25 (2) The identity of every member of the insurance holding com-  
26 pany system;

27 (3) The following agreements in force, relationships subsisting,  
28 and transactions currently outstanding between such insurer and  
29 its affiliates:

30-40 (a) Loans, other investment, or purchases, sales or ex-  
41 changes of securities of the affiliates by the insurer or of the  
42 insurer by its affiliates;

43 (b) Purchases, sales, or exchanges of assets;

44 (c) Transactions not in the ordinary course of business;

45 (d) Guarantees or undertakings for the benefit of an affli-  
46 ate which result in an actual contingent exposure of the in-  
47 surer's assets to liability, other than insurance contracts  
48 entered into in the ordinary course of the insurer's business;

49 (e) All management and service contracts and all cost-shar-  
50 ing arrangements, other than cost allocation arrangements  
51 based upon generally accepted accounting principles; and

52 (f) Reinsurance agreements covering all or substantially  
53 all of one or more lines of insurance of the ceding company.

54 (4) Other matters concerning transactions between registered  
55 insurers and any affiliates as may be included from time to time in  
56 any registration forms adopted or approved by the commissioner.

57 c. Materiality. No information need be disclosed on the regis-

58 tration statement filed pursuant to section 3b. if such information  
59 is not material for the purposes of this section. Unless the com-  
60 missioner by rule, regulation or order provides otherwise, sales,  
61 purchases, exchanges, loans or extensions of credit, or investments,  
62 involving  $\frac{1}{2}$  of 1% or less of an insurer's admitted assets as of  
63 December 31 next preceding shall not be deemed material for pur-  
64 poses of this section.

65 d. Amendments to registration statements. Each registered in-  
66 surer shall keep current the information required to be disclosed  
67 in its registration statement by reporting all material changes or  
68 additions on amendment forms provided by the commissioner  
69 within 15 days after the end of the month in which it learns of each  
70 such change or addition, provided, however, that subject to sub-  
71 section c. of section 4, each registered insurer shall so report all  
72 such dividends and other distributions to shareholders within 2  
73 business days following the declaration thereof.

74 e. Termination of registration. The commissioner shall termi-  
75 nate the registration of any insurer which demonstrates that it no  
76 longer is a member of an insurance holding company system.

77 f. Consolidated filing. The commissioner may require or allow  
78 2 or more affiliated insurers subject to registration hereunder to  
79 file a consolidated registration statement or consolidated reports  
80 amending their consolidated registration statement or their indi-  
81 vidual registration statements.

82 g. Alternative registration. The commissioner may allow an  
83 insurer which is authorized to do business in this State and which  
84 is part of an insurance holding company system to register on be-  
85 half of any affiliated insurer which is required to register under  
86 subsection a. and to file all information and material required to be  
87 filed under this section.

88 h. Exemptions. The provisions of this section shall not apply  
89 to any insurer, information or transaction if and to the extent that  
90 the commissioner by rule, regulation, or order shall exempt the  
91 same from the provisions of this section.

92 i. Disclaimer. Any person may file with the commissioner a  
93 disclaimer of affiliation with any authorized insurer or such a dis-  
94 claimer may be filed by such insurer or any member of an insurance  
95 holding company system. The disclaimer shall fully disclose all  
96 material relationships and bases for affiliation between such person  
97 and such insurer as well as the basis for disclaiming such affiliation.  
98 After a disclaimer has been filed, the insurer shall be relieved of  
99 any duty to register or report under this section which may arise  
100 out of the insurer's relationship with such person unless and until

101 the commissioner disallows such a disclaimer. The commissioner  
102 shall disallow such a disclaimer only after furnishing all parties  
103 in interest with notice and opportunity to be heard and after  
104 making specific findings of fact to support such disallowance.

105 j. Violations. The failure to file a registration statement or  
106 any amendment thereto required by this section within the time  
107 specified for such filing shall be a violation of this section.

1 4. Standards.

2 a. Transactions with affiliates. Material transactions by regis-  
3 tered insurers with their affiliates shall be subject to the following  
4 standards:

5 (1) The terms shall be fair and reasonable;

6 (2) The books, accounts and records of each party shall be so  
7 maintained as to clearly and accurately disclose the precise nature  
8 and details of the transactions; and

9 (3) The insurer's surplus as regards policyholders following  
10 any dividends or distributions to shareholder affiliates shall be  
11 reasonable in relation to the insurer's outstanding liabilities and  
12 adequate to its financial needs.

13 b. Adequacy of surplus. For purposes of this chapter, in deter-  
14 mining whether an insurer's surplus as regards policyholders is  
15 reasonable in relation to the insurer's outstanding liabilities and  
16 adequate to its financial needs, the following factors, among others,  
17 shall be considered:

18 (1) The size of the insurer as measured by its assets, capital and  
19 surplus, reserves, premium writings, insurance in force and other  
20 appropriate criteria;

21 (2) The extent to which the insurer's business is diversified  
22 among the several lines of insurance;

23 (3) The number and size of risks insured in each line of busi-  
24 ness;

25 (4) The extent of the geographical dispersion of the insurer's  
26 insured risks;

27 (5) The nature and extent of the insurer's reinsurance program;

28 (6) The quality, diversification, and liquidity of the insurer's  
29 investment portfolio;

30 (7) The recent past and projected future trend in the size of the  
31 insurer's surplus as regards policyholders;

32 (8) The surplus as regards policyholders maintained by other  
33 comparable insurers;

34 (9) The adequacy of the insurer's reserves; and

35 (10) The quality and liquidity of investments in subsidiaries.  
36 The commissioner may treat any such investment as a disallowed

37 asset for purposes of determining the adequacy of surplus as re-  
38 gards policyholders whenever in his judgment such investment so  
39 warrants.

40 c. Dividends and other distributions. No domestic insurer sub-  
41 ject to registration under section 3 shall pay any extraordinary  
42 dividend or make any other extraordinary distribution to its share-  
43 holders until (1) 30 days after the commissioner has received notice  
44 of the declaration thereof and has not within such period dis-  
45 approved such payment, or (2) the commissioner shall have ap-  
46 proved such payment within such 30-day period.

47 For purposes of this section, an extraordinary dividend or dis-  
48 tribution includes any dividend or distribution of cash or other  
49 property, whose fair market value together with that of other  
50 dividends or distributions made within the preceding 12 months  
51 exceeds the greater of (1) 10% of such insurer's surplus as regards  
52 policyholders as of December 31 next preceding, or (2) the net  
53 gain from operations of such insurer, if such insurer is a life in-  
54 surer, or the net investment income, if such insurer is not a life  
55 insurer, for the 12 month period ending December 31 next preced-  
56 ing, but shall not include pro rata distributions of any class of the  
57 insurer's own securities.

58 Notwithstanding any other provision of law, a domestic insurer  
59 may declare an extraordinary dividend or distribution which is  
60 conditional upon the commissioner's approval thereof, and such a  
61 declaration shall confer no rights upon policyholders until (i) 30  
62 days after the commissioner has received notice of the declaration  
63 thereof and has not within such period disapproved such payment,  
64 or (ii) the commissioner shall have approved such payment within  
65 such 30-day period.

1 5. Examination.

2 a. Power of commissioner. Subject to the limitation contained  
3 in this section and in addition to the powers which the commissioner  
4 has under other sections of this Title relating to the examination of  
5 insurers, the commissioner shall also have the power to order any  
6 insurer registered under section 3 to produce such records, books,  
7 or other information papers in the possession of the insurer or its  
8 affiliates as shall be necessary to ascertain the financial condition  
9 or legality of conduct of such insurer. In the event such insurer  
10 fails to comply with such order, the commissioner shall have the  
11 power to examine such affiliates to obtain such information.

12 b. Purpose and limitation of examination. The commissioner  
13 shall exercise his power under subsection a. above only if the exam-  
14 ination of the insurer under other sections of this Title is inade-

15 quate or the interests of the policyholders of such insurer may be  
16 adversely affected.

17 c. Use of consultants. The commissioner may retain at the  
18 registered insurer's expense such attorneys, actuaries, account-  
19 ants and other experts not otherwise a part of the commissioner's  
20 staff as shall be reasonably necessary to assist in the conduct of the  
21 examination under subsection a. above. Any persons so retained  
22 shall be under the direction and control of the commissioner and  
23 shall act in a purely advisory capacity.

24 d. Expenses. The reasonable expenses of the examination pursu-  
25 ant to subsection a. above shall be fixed and determined by the com-  
26 missioner, and he shall collect them from the insurer examined,  
27 which shall pay them on presentation of a detailed account of the  
28 expenses.

1 6. Confidential treatment.

2 All information, documents and copies thereof obtained by or  
3 disclosed to the commissioner or any other person in the course of  
4 an examination or investigation made pursuant to section 5 and all  
5 information reported pursuant to section 3 shall be given confi-  
6 dential treatment and shall not be subject to subpoena and shall not  
7 be made public by the commissioner or any other person, except to  
8 insurance departments of other states, without the prior written  
9 consent of the insurer to which it pertains unless the commissioner,  
10 after giving the insurer and its affiliates who would be affected  
11 thereby, notice and opportunity to be heard, determines that the  
12 interests of policyholders, shareholders or the public will be served  
13 by the publication thereof, in which event he may publish all or any  
14 part thereof in such manner as he may deem appropriate.

1 7. Rules and regulations.

2 The commissioner may, upon notice and opportunity for all in-  
3 terested persons to be heard, issue such rules, regulations, and  
4 orders as shall be necessary to carry out the provisions of this  
5 chapter.

1 8. Injunctions; prohibitions against voting securities; sequestra-  
2 tion of voting securities.

3 a. Injunctions. Whenever it appears to the commissioner that  
4 any person or any director, officer, employee or agent thereof has  
5 committed or is about to commit a violation of this chapter or of  
6 any rule, regulation, or order issued by the commissioner here-  
7 under, the commissioner may apply to the Superior Court for an  
8 order enjoining such person or such director, officer, employee or  
9 agent thereof from violating or continuing to violate this chapter  
10 or any such rule, regulation or order, and for such other equitable

11 relief as the nature of the case and the interests of the insurer's  
12 policyholders, creditors and shareholders or the public may require.

13 b. Voting of securities; when prohibited. No security which is  
14 the subject of any agreement or arrangement regarding acquisition,  
15 or which is acquired or to be acquired, in contravention of the pro-  
16 visions of this chapter or of any rule, regulation or order issued  
17 by the commissioner hereunder may be voted at any shareholders'  
18 meeting, or may be counted for quorum purposes, and any action  
19 of shareholders requiring the affirmative vote of a percentage of  
20 shares may be taken as though such securities were not issued and  
21 outstanding; but no action taken at any such meeting shall be in-  
22 validated by the voting of such securities, unless the action would  
23 materially affect control of the insurer or unless the courts of this  
24 State have so ordered. If an insurer or the commissioner has  
25 reason to believe that any security of the insurer has been or is  
26 about to be acquired in contravention of the provisions of this  
27 chapter or of any rule, regulation or order issued by the commis-  
28 sioner hereunder the insurer or the commissioner may apply to the  
29 Superior Court to enjoin any offer, request, invitation, agreement  
30 or acquisition made in contravention of section 4 or any rule,  
31 regulation, or order issued by the commissioner thereunder to en-  
32 join the voting of any security so acquired, to void any vote of such  
33 security already cast at any meeting of shareholders, and for such  
34 other equitable relief as the nature of the case and the interests of  
35 the insurer's policyholders, creditors and shareholders or the  
36 public may require.

37 c. Sequestration of voting securities. In any case where a per-  
38 son has acquired or is proposing to acquire any voting securities  
39 in violation of this chapter or any rule, regulation or order issued  
40 by the commissioner hereunder, the Superior Court may, on such  
41 notice as the court deems appropriate, upon the application of the  
42 insurer or the commissioner seize or sequester any voting securities  
43 of the insurer owned directly or indirectly by such person, and  
44 issue such orders with respect thereto as may be appropriate to  
45 effectuate the provisions of this chapter. Notwithstanding any  
46 other provisions of law, for the purposes of this chapter the situs  
47 of the ownership of the securities of domestic insurers shall be  
48 deemed to be in this State.

1 9. Criminal proceedings.

2 Whenever it appears to the commissioner that any person or any  
3 director, officer, employee or agent thereof has committed a willful  
4 violation of this chapter, the commissioner may cause criminal  
5 proceedings to be instituted in the Superior Court against such

6 person or the responsible director, officer, employee or agent  
7 thereof. Any person willfully violating this chapter may be fined  
8 not more than \$1,000.00. Any individual who willfully violates  
9 this chapter may, if such willful violation involves the deliberate  
10 perpetration of a fraud upon the commissioner, be imprisoned not  
11 more than 2 years.

1 10. Receivership.

2 Whenever it appears to the commissioner that any person has  
3 committed a violation of this chapter which so impairs the financial  
4 condition of a domestic insurer as to threaten insolvency or make  
5 the further transaction of business by it hazardous to its policy-  
6 holders, creditors, shareholders or the public, then the commis-  
7 sioner may proceed as provided in chapter 30 of this Title to take  
8 possession of the property of such domestic insurer and to conduct  
9 the business thereof.

1 11. Revocation, suspension, or nonrenewal of insurer's license.

2 Whenever it appears to the commissioner that any person has  
3 committed a violation of this chapter which makes the continued  
4 operation of an insurer contrary to the interests of policyholders  
5 or the public, the commissioner may, after giving notice and an  
6 opportunity to be heard, determine to suspend, revoke or refuse  
7 to renew such insurer's license or authority to do business in this  
8 State for such period as he finds is required for the protection of  
9 policyholders or the public. Any such determination shall be ac-  
10 companied by specific findings of fact and conclusions of law.

1 12. Judicial review; order in lieu of prerogative writ.

2 a. Any person aggrieved by any act, determination, rule, regula-  
3 tion, or order or any other action of the commissioner pursuant to  
4 this chapter may appeal therefrom to the Superior Court. The  
5 court shall conduct its review without a jury and by trial de novo,  
6 except that if all parties, including the commissioner, so stipulate,  
7 the review shall be confined to the record. Portions of the record  
8 may be introduced by stipulation into evidence in a trial de novo  
9 as to those parties so stipulating.

10 b. The filing of an appeal pursuant to this section shall stay  
11 the application of any such rule, regulation, order or other action  
12 of the commissioner to the appealing party unless the court, after  
13 giving such party notice and an opportunity to be heard, determines  
14 that such a stay would be detrimental to the interests of policy-  
15 holders, shareholders, creditors or to the public.

16 c. Any person aggrieved by any failure of the commissioner to  
17 act or to make determination required by this chapter may com-  
18 mence an action in the Superior Court for an order in lieu of a



SENATE COMMITTEE AMENDMENTS TO  
SENATE, No. 504

STATE OF NEW JERSEY

ADOPTED MARCH 9, 1970

Amend page 1, section 1, line 10, delete "Banking and".

Amend page 6, section 2, line 183, delete "(2)" insert "a."