

17:23C-1 to 17:23C-13

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1999 **CHAPTER:** 183

NJSA: 17:23C-1 to 17:23C-13 (Life and health insurers—compliance review)

BILL NO: S1771 (Substituted for A2176)

SPONSOR(S): Kavanaugh

DATE INTRODUCED: March 18, 1999

COMMITTEE: **ASSEMBLY:** ---

SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 10, 1999

SENATE: May 24, 1999

DATE OF APPROVAL: August 16, 1999

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Senate Committee Substitute
(Amendments during passage denoted by superscript numbers)

S1771

SPONSORS STATEMENT: (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A2176

SPONSORS STATEMENT: (Begins on page 4 of original bill) [Yes](#)
Bill and statement identical to S1771

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENTS: [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: [Yes](#)

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

Title 17.
Chapter 23C. (New)
Voluntary
Compliance
Reviews.
§§ 1 - 13
C. 17:23C-1
To 17:23C-13

P.L. 1999, CHAPTER 183, *approved August 16, 1999*
Senate Committee Substitute for
Senate, No. 1771

1 **AN ACT** concerning compliance reviews of insurance carriers and
2 supplementing Title 17 of the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. The Legislature finds and declares that it is in the public
8 interest for insurance carriers in this State to conduct voluntary
9 internal reviews and audits of their operations, practices and
10 procedures for the purpose of discovering and correcting any
11 operations, practices or procedures which do not comply with
12 applicable law or regulation or which do not comply with recognized
13 industry standards or with the insurance carrier's own standards and
14 for the purpose of preventing continuing and more serious violations.
15 However, if studies and reports beyond those legally required are
16 available to third parties other than regulators and potentially can
17 result in the insurance carrier's liability to such third parties, the
18 insurance carrier may be discouraged from making these additional
19 efforts and from sharing these results with regulators. A legal
20 structure that promotes self-policing programs can achieve improved
21 compliance effectively at less cost to the State and to the insurance
22 carriers. Voluntary compliance review, when properly conducted and
23 implemented, results not only in improved compliance with law, but in
24 the adoption of procedures and policies by the insurance carriers that
25 exceed minimum legal requirements, and that save money by benefiting
26 customers, lowering costs and reducing potential liabilities.

27 b. The Legislature therefore determines that it is the public policy
28 of the State to encourage insurance carriers to undertake voluntary
29 compliance reviews and corrective action programs by protecting the
30 results of voluntary compliance reviews from third parties other than
31 regulators. Voluntary compliance reviews shall be privileged and shall
32 not be considered public records or public documents subject to
33 inspection or examination under any statutory or common-law right to
34 know request. This privilege is intended to apply only to protect
35 reports created for the express purpose of testing and monitoring
36 compliance, which otherwise might not be undertaken because they are
37 not legally required. Information required to be maintained pursuant
38 to any federal or State law or regulation will not become privileged

1 just because it is utilized or incorporated in a voluntary compliance
2 review report.

3

4 2. As used in this act:

5 "Department" means the Department of Banking and Insurance.

6 "Enforcement action" means a criminal investigation or
7 prosecution, or an administrative proceeding, civil action or order by
8 a governmental unit, agency or authority which is intended to ensure
9 the safe and sound operation of an insurance carrier.

10 "Insurance carrier" means:

11 (1) Any corporation, association, partnership, reciprocal exchange,
12 interinsurer, Lloyd's insurer, fraternal benefit society or other person
13 engaged in the business of insurance pursuant to Subtitle 3 of Title 17
14 of the Revised Statutes (R.S.17:17-1 et seq.), or Subtitle 3 of Title
15 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.);

16 (2) Any medical service corporation operating pursuant to
17 P.L.1940, c.74 (C.17:48A-1 et seq.);

18 (3) Any hospital service corporation operating pursuant to
19 P.L.1938, c.366 (C.17:48-1 et seq.);

20 (4) Any health service corporation operating pursuant to P.L.1985,
21 c.236 (C.17:48E-1 et seq.);

22 (5) Any dental service corporation operating pursuant to P.L.1968,
23 c.305 (C.17:48C-1 et seq.);

24 (6) Any dental plan organization operating pursuant to P.L.1979,
25 c.478 (C.17:48D-1 et seq.);

26 (7) Any insurance plan operating pursuant to P.L.1970, c.215
27 (C.17:29D-1 et seq.);

28 (8) The New Jersey Insurance Underwriting Association operating
29 pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);

30 (9) Any risk retention group or purchasing group operating
31 pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C.
32 sections 3901 et seq.;

33 (10) Any health maintenance organization operating pursuant to
34 P.L.1973, c.337 (C.26:2J-1 et seq.); and

35 (11) Any joint insurance fund operating pursuant to P.L.1983,
36 c.108 (C.18A:18B-1 et seq.), P.L.1983, c.372 (C.40A:10-36-1 et
37 seq.), P.L.1985, c.204 (C.18A:64A-25.33 et seq.) or P.L.1987, c.431
38 (C.17:49A-1 et seq.).

39 "Timely discloses" or "timely disclosure" means the voluntary
40 disclosure of the findings of a voluntary compliance review to the
41 department within 90 days of the completion of a voluntary
42 compliance review report or the delivery of or access to a voluntary
43 compliance review report within 20 days of a request by the
44 department.

45 "Voluntary compliance review" means review, project, testing
46 program, assessment, audit or evaluation instituted by an insurance

1 carrier to collect information or prepare analyses, not required by
2 statute, regulation, bulletin or order and which would otherwise not be
3 collected, maintained or prepared, for the purposes of identifying and
4 correcting problems of compliance with applicable laws and
5 regulations.

6 "Voluntary compliance review report" means any document or
7 documents prepared or assembled by any person or group of persons,
8 committee or entity conducting a voluntary compliance review,
9 including without limitation, supporting information and documents
10 such as notes, records of observations, findings, conclusions, drafts,
11 memoranda, drawings, photographs, electronic or computerized mail,
12 audio or video recordings or transcriptions or depictions of any type,
13 stored computer data, including floppy or other disks, hard drives,
14 printer memory, software or other data compilations from which
15 information can be obtained, charts, graphs and surveys, provided,
16 however, that the documents and supporting information are
17 developed for the purpose of and in the course of a voluntary
18 compliance review.

19

20 3. A voluntary compliance review report shall be privileged and
21 neither it nor its existence shall be discoverable or admissible as
22 evidence in any legal action or administrative proceeding of any nature
23 involving the insurance carrier, except as provided in section 5 of this
24 act.

25

26 4. Persons involved in the preparation of a voluntary compliance
27 review report shall not be required to give answers to any questions or
28 provide testimony regarding the existence, contents or conclusions of
29 any voluntary compliance review report, except as provided in section
30 5 of this act.

31

32 5. a. The provisions of sections 3 and 4 of this act shall not apply
33 if:

34 (1) an enforcement action is taken, that enforcement action is
35 contested, and an administrative law judge or a court of competent
36 jurisdiction determines that a voluntary compliance review report is
37 relevant to that enforcement action; provided however, that disclosure
38 of a voluntary compliance review report shall be made under seal, with
39 no disclosure beyond the department, the administrative law judge or
40 court of competent jurisdiction, and resulting in no waiver of the
41 privilege to any other individuals or entities seeking disclosure; or

42 (2) there is a statutory requirement that the violation identified or
43 discovered as a result of the voluntary compliance review be reported;
44 provided however, that a court may order disclosure only in
45 accordance with the terms of this act.

46 b. The disclosure authorized under paragraphs (1) and (2) of

1 subsection a. of this section shall apply only to those sections and
2 portions of the voluntary compliance review report that pertain to the
3 specific violation which is the subject of the enforcement action. All
4 other sections and portions of the voluntary compliance review report
5 shall remain privileged.

6 c. If there is a dispute concerning the sections or portions of the
7 voluntary compliance review report subject to disclosure, an
8 administrative law judge or a court of competent jurisdiction, upon
9 petition of either party, shall conduct an in camera review of those
10 sections or portions subject to dispute.

11

12 6. At the conclusion of an enforcement action in which a court or
13 administrative law judge determines that an insurance carrier has
14 committed no statutory or regulatory violation, all voluntary
15 compliance review reports contained within the case file of the
16 proceeding shall be placed under seal and the department shall treat
17 that material as confidential, as if no enforcement action had been
18 taken.

19

20 7. The following materials described in this section shall not
21 become privileged pursuant to the provisions of sections 3 and 4 of
22 this act because they are utilized or incorporated in a voluntary
23 compliance review report:

24 (1) documents, communications, data, reports or other information
25 required to be collected, developed, maintained, reported or made
26 available to a regulatory agency pursuant to any federal or State law,
27 regulation, permit, bulletin or order or in the normal processing of
28 customer transactions;

29 (2) information obtained by observation, sampling, examining,
30 auditing or monitoring by any regulatory agency;

31 (3) information obtained from a source independent of the
32 voluntary compliance review; and

33 (4) information exchanged by and among the department and other
34 appropriate regulators pursuant to an agreement between or among
35 the regulatory agencies; provided, however, that notwithstanding this
36 permitted exchange of information by the regulatory agencies, sections
37 3 and 4 of this act shall continue to apply with respect to a person who
38 is not a regulatory agency.

39

40 8. No person shall use any information privileged pursuant to this
41 act to discover any other information and any information so
42 discovered shall be inadmissible in any action or proceeding. If an
43 administrative law judge or a court of competent jurisdiction
44 determines that any information is not privileged, it shall, by the entry
45 of appropriate protective orders, ensure that information is disclosed
46 only to the extent required for the proper conduct of the subject action

1 or proceeding.

2

3 9. Nothing in this act shall limit, waive or abrogate the scope or
4 nature of any statutory or common law privilege, including, without
5 limitation, the work product doctrine and the attorney-client privilege.

6

7 10. No regulatory agency shall adopt a rule for the purpose of
8 circumventing the privilege established in this act by requiring
9 disclosure of a voluntary compliance review report.

10

11 11. a. If an insurance carrier timely discloses information it
12 obtained from a voluntary compliance review to the department or to
13 another appropriate regulatory agency, that information and the
14 voluntary compliance review which resulted in the information shall
15 remain subject to sections 3 and 4 of this act, except that the agency
16 receiving the information may use it with respect to an enforcement
17 action.

18 b. The regulatory agency, in deciding on the appropriate penalty or
19 sanction, if any, for a violation shall consider the timely disclosure as
20 a mitigating factor if the violation is disclosed and the insurance carrier
21 responsible for the violation demonstrates, and the regulator
22 determines, that the violation is not the result of knowing, purposeful,
23 reckless or criminally negligent conduct, that reasonable corrective
24 action has been or is being taken to rectify and eliminate any detected
25 violation and that the insurance carrier has made or is making a
26 good-faith effort to prevent similar violations.

27

28 12. Nothing in this act shall be construed to permit any third party
29 access to any voluntary compliance review report subject to the
30 provisions of this act. For the purpose of this section, "third party"
31 means a person other than a federal, State or local governmental
32 agency; however, those agencies shall only be provided access to
33 voluntary compliance review reports if they agree in writing to be
34 bound by the terms of this act.

35

36 13. a. The department may require production of any document
37 from an insurance carrier through timely disclosure or pursuant to
38 compulsion of law, for its review. This production shall not constitute
39 a waiver of the privilege established by this act.

40 b. The privilege provided by this act shall not be waived if the
41 department or an employee of the department discloses a document
42 provided to the department to a third-party. For the purpose of this
43 section, "third party" means a person other than a federal, State or
44 local governmental agency; however, those agencies shall only be
45 provided access to voluntary compliance reports if they agree in
46 writing to be bound by the terms of this act.

1 c. Any person who is found to have intentionally or recklessly
2 disclosed any document to a third party in violation of this act shall be
3 guilty of a crime of the third degree.

4

5 14. This act shall take effect immediately and shall apply to all
6 voluntary compliance reviews and reports.

7

8

9

10

11 Concerns certain voluntary compliance reviews by insurance carriers.

SENATE, No. 1771

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 18, 1999

Sponsored by:

Senator WALTER J. KAVANAUGH

District 16 (Morris and Somerset)

Co-Sponsored by:

Senator Furnari

SYNOPSIS

Establishes evidentiary privilege for compliance reviews of life and health insurers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/1999)

S1771 KAVANAUGH

2

1 AN ACT concerning compliance reviews of life and health insurers and
2 supplementing Title 17B of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in this act:

8 "Compliance review committee" or "committee" means the
9 individuals, designated either specifically or in their job descriptions,
10 by an insurer to monitor, evaluate, review, audit, assess or investigate
11 the operations of the insurer for the purpose of identifying or
12 preventing violations of law, marketplace practices that could result
13 in violations of law, or noncompliance with industry or professional
14 market conduct standards, and to report their findings to the
15 appropriate officers of the insurer.

16 "Division" means the Division of Insurance within the Department
17 of Banking and Insurance.

18 "Document" means all or any portion of any written memorandum,
19 letter, note, record, report, instrument, or other information printed on
20 paper or in computerized electronic media, or contained in audio or
21 video recordings, created by one or more members of a compliance
22 review committee, an employee of the insurer that designated members
23 of the committee, or an independent contractor engaged by the insurer
24 to assist the committee in performing its duties, to facilitate or
25 memorialize the process of monitoring, evaluating, reviewing,
26 auditing, assessing, or investigating the operations of an insurer for the
27 purpose of identifying or preventing violations of law, marketplace
28 practices that could result in violations of law, or noncompliance with
29 industry or professional market conduct standards.

30 "Insurer" means an insurer admitted to transact the business of
31 insurance in this State pursuant to Title 17B of the New Jersey
32 Statutes.

33

34 2. A document shall be privileged and neither it nor its existence
35 shall be discoverable or admissible as evidence in any legal action or
36 administrative proceeding of any nature involving the insurer or an
37 affiliate of the insurer.

38

39 3. Members of a compliance review committee, an employee of the
40 insurer that designated the members of a compliance review
41 committee, or an independent contractor engaged by the insurer to
42 assist a compliance review committee in performing its duties, shall
43 not be required to give answers to any questions or provide testimony
44 regarding the existence, contents or conclusions of any document,
45 finding, recommendation, evaluation, opinion or other action of the
46 committee or member thereof.

1 4. a. All or any portion of any written memorandum, letter, note
2 record, report, instrument, or other information printed on paper or in
3 computerized electronic media, or contained in audio or video
4 recordings, otherwise available from an original source, is not to be
5 construed as unavailable for discovery or for use in any civil action or
6 administrative proceeding because it was presented to a compliance
7 review committee.

8 b. An individual who communicated with a compliance review
9 committee or who is a member of a compliance review committee shall
10 not be prevented from testifying as to matters within his knowledge
11 but shall not be asked about or testify about his communications with
12 the committee or his opinions formed because of his work with the
13 committee.

14
15 5. a. No person shall use any information privileged pursuant to
16 this act to discover any other information and any information so
17 discovered shall be inadmissible in any civil action or administrative
18 proceeding. If a court or an administrative law judge determines that
19 any information is not privileged, it shall by the entry of an appropriate
20 protective order ensure that information is disclosed only to the extent
21 required for the proper conduct of the subject action or proceeding.

22 b. No regulatory agency shall adopt a rule for the purpose of
23 circumventing the privilege established in this act by requiring
24 disclosure of a document.

25
26 6. a. The division may require production of any document from an
27 insurer through voluntary cooperation or pursuant to compulsion of
28 law, for its review. This production shall not waive the privileges
29 established by this act.

30 b. The privilege provided by this act shall not be waived if the
31 division or an employee of the division discloses a document provided
32 to the division to a third-party. For the purpose of this section, "third-
33 party" means a person other than a State or local enforcing agency.

34 c. An employee of the division who makes an unauthorized
35 disclosure of a document to a third-party shall be guilty of a civil
36 offense:

37 (1) The offense shall be enforced by summons and complaint as if
38 it were a disorderly persons action and which shall be subject to a fine
39 of up to \$1,000, which fine shall be collectible by any court of
40 competent jurisdiction; and

41 (2) The employee shall be disqualified from acting as an officer or
42 employee or in any capacity under appointment or employment by the
43 division; and

44 (3) The employee shall be personally liable to the insurer for all
45 costs incurred by the insurer in defending the privilege violated by the
46 disclosure.

1 7. Nothing in this act shall limit, waive or abrogate the scope or
2 nature of any statutory or common law privilege, including, without
3 limitation, the work product doctrine and the attorney-client privilege.
4

5 8. This act shall take effect immediately and shall apply to all
6 document requests initiated on or after the effective date.
7
8

9 STATEMENT
10

11 This bill establishes an evidentiary privilege for compliance reviews
12 of life and health insurers. Insurers often voluntarily create
13 compliance review committees to monitor, evaluate, review, audit,
14 assess or investigate the operations of the insurer for the purpose of
15 identifying or preventing violations of law, marketplace practices that
16 could result in violations of law, or noncompliance with industry or
17 professional market conduct standards.

18 This bill recognizes and encourages life and health insurers to
19 initiate voluntary compliance reviews to identify and correct problems
20 by providing that the compliance review committee and the documents
21 associated with that committee are privileged and not evidential in
22 legal and administrative proceedings. The bill also provides for
23 penalties if an employee of the Division of Insurance improperly
24 discloses a privileged document resulting from a voluntary compliance
25 review.

26 Insurers are subject to many legal and regulatory provisions and are
27 responsible for insuring millions of individuals in this State. Self-
28 examinations are critical in recognizing the cause of past problems and
29 the elimination of future problems. Failure to create and preserve this
30 evidentiary privilege will act as a disincentive to insurers to conduct
31 frank, productive self-examinations and will lead to increased
32 regulatory costs and expenses.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1771**

STATE OF NEW JERSEY

DATED: MAY 6, 1999

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 1771.

The provisions of this bill, a Senate Committee Substitute for Senate, No.1771, apply to property-casualty, life and health insurance carriers.

Under the provisions of the bill, voluntary compliance review reports of insurance carriers are privileged and are not public records or public documents subject to inspection or examination under any statutory or common-law right to know request, except as provided in the bill. The exceptions include situations of administrative civil actions or criminal actions in which a court may order disclosure.

The bill provides that the privilege afforded voluntary compliance reviews applies only to reports created for the express purpose of testing and monitoring compliance, which otherwise might not be undertaken because they are not legally required. Information required to be maintained pursuant to any federal or State law or regulation will not become privileged just because it is utilized or incorporated in a voluntary compliance review report. The bill further provides that information exchanged by and among the Department of Banking and Insurance and other appropriate regulators pursuant to an agreement between or among the regulatory agencies does not become subject to the compliance privilege, but that the compliance privilege shall continue to apply with respect to entities that are not regulatory agencies.

Furthermore, the bill provides that if an insurance carrier timely discloses information it obtains from a voluntary compliance review to the department or to another appropriate regulatory agency, that information and the voluntary compliance review remains privileged. However, the regulatory agency may use the information with respect to an enforcement action. In deciding an appropriate penalty or sanction, however, the regulatory agency shall consider that the information was voluntarily disclosed as a mitigating factor.

The bill provides that the privilege is not waived if the department or an employee of the department discloses a document provided to the department to a third-party. "Third party" is defined as a person

other than a federal, State or local governmental agency. Under the bill, any person who is found to have intentionally or recklessly disclosed any document to a third party in violation of the provisions of the bill shall be guilty of a crime of the third degree.

The provisions of the bill apply to all voluntary compliance reviews and reports.

The bill will encourage insurance carriers to undertake voluntary compliance reviews and corrective action programs by protecting the results of voluntary compliance reviews from third parties other than regulators.

ASSEMBLY, No. 2176

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JUNE 11, 1998

Sponsored by:

Assemblyman JOHN V. KELLY

District 36 (Bergen, Essex and Passaic)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

SYNOPSIS

Establishes evidentiary privilege for compliance reviews of life and health insurers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/24/1998)

1 AN ACT concerning compliance reviews of life and health insurers and
2 supplementing Title 17B of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 "Compliance review committee" or "committee" means the
9 individuals, designated either specifically or in their job descriptions,
10 by an insurer to monitor, evaluate, review, audit, assess or investigate
11 the operations of the insurer for the purpose of identifying or
12 preventing violations of law, marketplace practices that could result
13 in violations of law, or noncompliance with industry or professional
14 market conduct standards, and to report their findings to the
15 appropriate officers of the insurer.

16 "Division" means the Division of Insurance within the Department
17 of Banking and Insurance.

18 "Document" means all or any portion of any written memorandum,
19 letter, note, record, report, instrument, or other information printed on
20 paper or in computerized electronic media, or contained in audio or
21 video recordings, created by one or more members of a compliance
22 review committee, an employee of the insurer that designated members
23 of the committee, or an independent contractor engaged by the insurer
24 to assist the committee in performing its duties, to facilitate or
25 memorialize the process of monitoring, evaluating, reviewing,
26 auditing, assessing, or investigating the operations of an insurer for the
27 purpose of identifying or preventing violations of law, marketplace
28 practices that could result in violations of law, or noncompliance with
29 industry or professional market conduct standards.

30 "Insurer" means an insurer admitted to transact the business of
31 insurance in this State pursuant to Title 17B of the New Jersey
32 Statutes.

33
34 2. A document shall be privileged and neither it nor its existence
35 shall be discoverable or admissible as evidence in any legal action or
36 administrative proceeding of any nature involving the insurer or an
37 affiliate of the insurer.

38
39 3. Members of a compliance review committee, an employee of the
40 insurer that designated the members of a compliance review
41 committee, or an independent contractor engaged by the insurer to
42 assist a compliance review committee in performing its duties, shall
43 not be required to give answers to any questions or provide testimony
44 regarding the existence, contents or conclusions of any document,
45 finding, recommendation, evaluation, opinion or other action of the
46 committee or member thereof.

1 4. a. All or any portion of any written memorandum, letter, note
2 record, report, instrument, or other information printed on paper or in
3 computerized electronic media, or contained in audio or video
4 recordings, otherwise available from an original source, is not to be
5 construed as unavailable for discovery or for use in any civil action or
6 administrative proceeding because it was presented to a compliance
7 review committee.

8 b. An individual who communicated with a compliance review
9 committee or who is a member of a compliance review committee shall
10 not be prevented from testifying as to matters within his knowledge
11 but shall not be asked about or testify about his communications with
12 the committee or his opinions formed because of his work with the
13 committee.

14

15 5. a. No person shall use any information privileged pursuant to
16 this act to discover any other information and any information so
17 discovered shall be inadmissible in any civil action or administrative
18 proceeding. If a court or an administrative law judge determines that
19 any information is not privileged, it shall by the entry of an appropriate
20 protective order ensure that information is disclosed only to the extent
21 required for the proper conduct of the subject action or proceeding.

22 b. No regulatory agency shall adopt a rule for the purpose of
23 circumventing the privilege established in this act by requiring
24 disclosure of a document.

25

26 6. a. The division may require production of any document from
27 an insurer through voluntary cooperation or pursuant to compulsion
28 of law, for its review. This production shall not waive the privileges
29 established by this act.

30 b. The privilege provided by this act shall not be waived if the
31 division or an employee of the division discloses a document provided
32 to the division to a third-party. For the purpose of this section, "third-
33 party" means a person other than a State or local enforcing agency.

34 c. An employee of the division who makes an unauthorized
35 disclosure of a document to a third-party shall be guilty of a civil
36 offense:

37 (1) The offense shall be enforced by summons and complaint as if
38 it were a disorderly persons action and which shall be subject to a fine
39 of up to \$1,000, which fine shall be collectible by any court of
40 competent jurisdiction; and

41 (2) The employee shall be disqualified from acting as an officer or
42 employee or in any capacity under appointment or employment by the
43 division; and

44 (3) The employee shall be personally liable to the insurer for all
45 costs incurred by the insurer in defending the privilege violated by the
46 disclosure.

1 7. Nothing in this act shall limit, waive or abrogate the scope or
2 nature of any statutory or common law privilege, including, without
3 limitation, the work product doctrine and the attorney-client privilege.

4
5 8. This act shall take effect immediately and shall apply to all
6 document requests initiated on or after the effective date.

7
8
9 STATEMENT

10
11 This bill establishes an evidentiary privilege for compliance reviews
12 of life and health insurers. Insurers often voluntarily create
13 compliance review committees to monitor, evaluate, review, audit,
14 assess or investigate the operations of the insurer for the purpose of
15 identifying or preventing violations of law, marketplace practices that
16 could result in violations of law, or noncompliance with industry or
17 professional market conduct standards.

18 This bill recognizes and encourages life and health insurers to
19 initiate voluntary compliance reviews to identify and correct problems
20 by providing that the compliance review committee and the documents
21 associated with that committee are privileged and not evidential in
22 legal and administrative proceedings. The bill also provides for
23 penalties if an employee of the Division of Insurance improperly
24 discloses a privileged document resulting from a voluntary compliance
25 review.

26 Insurers are subject to many legal and regulatory provisions and are
27 responsible for insuring millions of individuals in this State. Self-
28 examinations are critical in recognizing the cause of past problems and
29 the elimination of future problems. Failure to create and preserve this
30 evidentiary privilege will act as a disincentive to insurers to conduct
31 frank, productive self-examinations and will lead to increased
32 regulatory costs and expenses.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2176

STATE OF NEW JERSEY

DATED: MARCH 18, 1999

The Assembly Banking and Insurance Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 2176.

Insurers are subject to many legal and regulatory provisions and are responsible for insuring millions of individuals in this State. Insurers often voluntarily create compliance review committees to monitor, evaluate, review, audit, assess or investigate the operations of the insurer for the purpose of identifying or preventing violations of law, marketplace practices that could result in violations of law, or noncompliance with industry or professional market conduct standards. This bill an Assembly Committee Substitute for Assembly Bill No. 2176, encourages insurance carriers to undertake voluntary compliance reviews and corrective action programs by protecting the results of voluntary compliance reviews from third parties other than regulators.

Under the provisions of the bill, voluntary compliance reviews are privileged and are not public records or public documents subject to inspection or examination under any statutory or common-law right to know request, except as provided in the bill. The exceptions include situations of administrative civil actions or criminal actions in which a court may order disclosure. The evidentiary privilege applies only to documents, data, communications, reports or other information disclosed through the self-review process which are not otherwise available or discoverable. Failure to create and preserve this evidentiary privilege will act as a disincentive to insurers to conduct self-examinations and will lead to increased regulatory costs and expenses.

The bill clarifies that the privilege afforded voluntary compliance reviews applies only to reports created for the express purpose of testing and monitoring compliance, which otherwise might not be undertaken because they are not legally required. Information required to be maintained pursuant to any federal or State law or regulation will not become privileged just because it is utilized or incorporated in a voluntary compliance review report. The bill further provides that information exchanged by and among the Department

of Banking and Insurance and other appropriate regulators pursuant to an agreement between or among the regulatory agencies does not become subject to the compliance privilege, but that the compliance privilege shall continue to apply with respect to entities that are not regulatory agencies.

Furthermore the bill provides that if an insurance carrier timely discloses information it obtains from a voluntary compliance review to the department or to another appropriate regulatory agency, that information and the voluntary compliance review remains privileged. However, the regulatory agency may use the information with respect to an enforcement action. In deciding an appropriate penalty or sanction, however, the regulatory agency shall consider that the information was voluntarily disclosed as a mitigating factor.

Finally, the bill provides that the privilege is not waived if the department or an employee of the department discloses a document provided to the department to a third-party. "Third party" is defined as a person other than a federal, State or local governmental agency. Under the bill, any person who is found to have intentionally or recklessly disclosed any document to a third party in violation of the provisions of the bill shall be guilty of a crime of the third degree.

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2176

with Assembly Floor Amendments
(Sponsored By Assemblyman KELLY)

ADOPTED: MAY 10, 1999

This amendment provides that the bill is applicable to all voluntary compliance reviews and reports and not just to those reviews and reports completed on or after the effective date of the bill.

Office of the Governor
NEWS RELEASE

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RELEASE: August 16, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

S-827, sponsored by Senator Louis F. Kosco (R-Bergen) and Assembly Members Gerald J. Luongo (R-Camden/Gloucester), and Kenneth C. LeFevre (R-Atlantic), prohibits the obstruction of special parking spaces designed to benefit handicapped individuals. The bill provides that a person who owns or controls a parking area which contains special parking spaces for the handicapped shall be responsible for assuring that access to those spaces and to curb cuts are not obstructed. If the obstruction is ice or snow, the bill requires that the ice or snow be removed from the special parking spaces or curb cuts within 48 hours after the weather condition causing the ice or snow ceases. The bill provides for a penalty of not less than \$200 or more than \$500 for a violation of the act.

SJR-10, sponsored by Senator Anthony R. Bucco (R-Morris) and Assembly Members Marion Crecco (R-Essex/Passaic) and Guy F. Talarico (R-Bergen), designates December 7th of each year as Pearl Harbor Remembrance Day in New Jersey. The resolution calls for the Governor to annually issue a proclamation calling on citizens to observe the day with appropriate ceremonies and activities. The resolution urges state and local governments, as well as interested organizations, groups and individuals to fly the flags of the United States and the State of New Jersey at half-staff on December 7th in honor of the individuals who died in the Pearl Harbor attack.

S-1771, sponsored by Senator Walter J. Kavanaugh (R- Morris/Somerset) and Assembly Members Joseph V. Doria, Jr. (D- Hudson) and John V. Kelly (R-Bergen), encourages insurance carriers to employ internal compliance reviews by protecting the results of those reviews from disclosure to third parties, other than state and federal regulators. Insurers often voluntarily create compliance review committees to monitor, evaluate, review, audit, assess or investigate the operations of the insurer for the purpose of identifying or preventing violations of law, marketplace practices that could result in violations of law, or noncompliance with industry or professional market standards. The bill provides for incentives for life and health insurers to initiate voluntary compliance reviews to identify and correct problems by providing that the deliberations and discussions of the compliance review committee and the documents associated with that committee are privileged and not evidential in legal and administrative proceedings involving the insurance carrier.