

LEGISLATIVE HISTORY CHECKLIST
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(Administrative supervision of
insurers--financial instability)

NJSA: 17:51A-1 to 17:51A-10

LAWS OF: 1993 **CHAPTER:** 245

BILL NO: A86

SPONSOR(S) Zecker and others

DATE INTRODUCED: February 1, 1993

COMMITTEE: **ASSEMBLY:** Insurance
SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** May 13, 1993
SENATE: June 18, 1993

DATE OF APPROVAL: August 9, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:
"Governor signs stricter scrutiny for insurance companies in state,"
8-10-93, Star Ledger.

Attached:
Administrative Supervision Model Act as promulgated by National Commission.

KBG:pp

P.L.1993, CHAPTER 245, approved August 9, 1993
1993 Assembly No. 86

1 AN ACT concerning the administrative supervision of insurers
2 and other entities.

3

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

6 1. For the purposes of this act:

7 "Commissioner" means the Commissioner of Insurance.

8 "Department" means the Department of Insurance.

9 "Insurer" means every person engaged as indemnitor, surety or
10 contractor in the business of entering into contracts of insurance
11 or of annuities, and authorized to do business in this State
12 pursuant to Title 17 of the Revised Statutes or Title 17B of the
13 New Jersey Statutes. Insurer shall also include any other entity
14 subject to rehabilitation, liquidation, reorganization or
15 conservation by the commissioner under the laws of this State.

16 "Exceeded its powers" means any of the following conditions:

17 a. The insurer has refused to permit examination of its books,
18 papers, accounts or affairs by the commissioner, his deputies,
19 employees or duly commissioned examiners;

20 b. A domestic insurer has unlawfully or willfully removed from
21 this State books, papers, accounts or records necessary for an
22 examination of the insurer;

23 c. The insurer has failed to promptly comply with the
24 applicable financial reporting statutes or rules and departmental
25 requests relating thereto;

26 d. The insurer has failed to comply with an order of the
27 commissioner to remedy a prohibited deficiency in its capital,
28 capital stock or surplus;

29 e. The insurer is continuing to transact insurance or write
30 business after its license has been revoked or suspended by the
31 commissioner;

32 f. The insurer, by contract or otherwise, has unlawfully:

33 (1) Totally reinsured its entire outstanding business, or

34 (2) Merged or consolidated substantially its entire property or
35 business with another insurer;

36 g. The insurer engaged in any transaction in which it is not
37 authorized to engage under the laws of this State; or

38 h. The insurer has refused to comply with an order of the
39 commissioner.

40 2. The provisions of this act shall apply to: all domestic
41 insurers; any other insurer doing business in this State whose
42 state of domicile has asked the commissioner to apply the
43 provisions of this act in regards to such insurer; and any other
44 entity subject to rehabilitation, liquidation, reorganization or

1 conservation by the commissioner under the laws of this State.

2 3. a. An insurer may be subject to administrative supervision
3 by the commissioner if upon examination or at any other time it
4 appears in the commissioner's discretion that:

5 (1) The insurer's condition renders the continuance of its
6 business hazardous to the public or to its insureds;

7 (2) The insurer has or appears to have exceeded its powers;

8 (3) The insurer has failed to comply with the applicable
9 provisions of the insurance statutes of this State, any
10 administrative rules promulgated thereunder or any order of the
11 commissioner;

12 (4) The business of the insurer is being conducted fraudulently;
13 or

14 (5) The insurer has consented to administrative supervision.

15 b. If the commissioner determines that any of the conditions
16 set forth in subsection a. of this section exist, the commissioner
17 shall:

18 (1) Notify the insurer of his determination;

19 (2) Furnish to the insurer a written list of actions to be taken
20 by the insurer to abate the conditions giving rise to the
21 determination; and

22 (3) Notify the insurer that it is under the supervision of the
23 commissioner and that the commissioner is applying and
24 effectuating the provisions of this act.

25 c. If placed under administrative supervision, the insurer shall
26 have 80 days, or another period of time as designated by the
27 commissioner, to comply with the requirements imposed by the
28 commissioner.

29 d. If the conditions giving rise to the supervision still exist at
30 the end of the supervision period specified in subsection c. of this
31 section, the commissioner may, after notice and opportunity to
32 be heard, extend such period.

33 e. If the commissioner determines that the conditions giving
34 rise to the supervision have been sufficiently remedied, the
35 commissioner shall release the insurer from supervision.

36 4. a. Proceedings, hearings, notices, correspondence, reports,
37 records and other information in the possession of the
38 commissioner or the department relating to the supervision of
39 any insurer are confidential except as provided by this section.

40 b. The personnel of the department shall have access to these
41 proceedings, hearings, notices, correspondence, reports, records
42 or information as permitted by the commissioner.

43 c. The commissioner may open the proceedings or hearings or
44 disclose the notices, correspondence, reports, records or
45 information to a department, agency or instrumentality of this or
46 another state of the United States if the commissioner
47 determines that the disclosure is necessary or proper for the
48 enforcement of the laws of this or another state of the United
49 States.

50 d. The commissioner may open the proceedings or hearings or
51 make public the notices, correspondence, reports, records or
52 other information to the public if the commissioner deems that it
53 is in the best interest of the public or in the best interest of the
54 insurer, its insureds or creditors.

1 e. This section does not apply to hearings, notices,
2 correspondence, reports, records or other information obtained
3 upon the appointment of a receiver for the insurer by a court of
4 competent jurisdiction.

5 5. During the period of supervision, the commissioner or his
6 designated appointee shall serve as the administrative
7 supervisor. The commissioner may prohibit the insurer from
8 doing any of the following during the period of supervision,
9 without the prior approval of the administrative supervisor:

10 a. Dispose of, convey or encumber any of its assets or its
11 business in force;

12 b. Withdraw any of its bank accounts;

13 c. Lend any of its funds;

14 d. Invest any of its funds;

15 e. Transfer any of its property;

16 f. Incur any debt, obligation or liability;

17 g. Merge or consolidate with another company;

18 h. Approve new premiums or renew any policies;

19 i. Enter into any reinsurance contract or treaty;

20 j. Terminate, surrender, forfeit, convert or lapse any insurance
21 policy, certificate or contract, except for nonpayment of
22 premiums;

23 k. Release, pay or refund premium deposits, accrued cash or
24 loan values, unearned premiums, or other reserves on any
25 insurance policy, certificate or contract;

26 l. Make any material change in management;

27 m. Increase salaries and benefits of officers, directors, or
28 employees, or the payment of bonuses, dividends or other
29 payments; or

30 n. Such other acts as the commissioner deems necessary to
31 protect the interests of the insurer's policyholders and the public.

32 6. During the period of supervision the insurer may contest an
33 action taken or proposed to be taken by the administrative
34 supervisor specifying the manner wherein the action being
35 complained of would not result in improving the condition of the
36 insurer.

37 7. Nothing contained in this act shall preclude the
38 commissioner from initiating judicial proceedings to place an
39 insurer in conservation, rehabilitation or liquidation, or other
40 delinquency proceedings, however designated under the laws of
41 this State, regardless of whether the commissioner has previously
42 initiated administrative supervision proceedings under this act
43 against the insurer.

44 8. The commissioner may, pursuant to the provisions of the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), promulgate rules and regulations as are necessary to
47 effectuate the purposes of this act.

48 9. Notwithstanding any other provision of law to the contrary,
49 the commissioner may meet with a supervisor appointed under
50 this act and with the attorney or other representative of the
51 supervisor, without the presence of any other person, at the time
52 of any proceeding or during the pendency of any proceeding held
53 under authority of this act to carry out the commissioner's duties
54 under this act or for the supervisor to carry out his duties under
55 this act.

1 10. There shall be no liability on the part of, and no cause of
 2 action of any nature shall arise against, the commissioner, the
 3 department or its employees or agents for any action taken by
 4 them in the performance of their powers and duties under this act.

5 11. This act shall take effect immediately.
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STATEMENT

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10 This bill, based on a model law of the National Association of
 11 Insurance Commissioners, provides for the administrative
 12 supervision of insurers and other entities. The bill provides that
 13 an insurer or other entity may be placed under administrative
 14 supervision if the Commissioner of Insurance determines that the
 15 insurer is in a hazardous financial condition, has exceeded its
 16 power, has failed to comply with applicable laws, or has
 17 conducted its business in a fraudulent manner. The insurer may
 18 also give its consent to administrative supervision.

19 If an insurer is placed under administrative supervision, the
 20 commissioner may order the insurer to take such actions as he
 21 deems necessary to eliminate those conditions giving rise to the
 22 administrative supervision. The bill also provides that the
 23 commissioner may prohibit an insurer under administrative
 24 supervision from performing specified acts during the period of
 25 supervision, including, but not limited to, the disposal of its
 26 assets, the lending or investment of its funds, and the transfer of
 27 its property. The bill additionally provides that records and
 28 documents relating to an administrative supervision are
 29 confidential, except when the commissioner determines that
 30 disclosure is necessary. Finally, the bill limits the liability of the
 31 commissioner and the Department of Insurance employees
 32 for actions taken under the act.
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Provides for administrative supervision of insurers.

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Provides for administrative supervision of insurers.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 86

STATE OF NEW JERSEY

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably Assembly Bill No. 86.

This bill, based on a model law of the National Association of Insurance Commissioners, provides for the administrative supervision of insurers and other entities. The bill provides that an insurer or other entity may be placed under administrative supervision if the Commissioner of Insurance determines that the insurer is in a hazardous financial condition, has exceeded its power, has failed to comply with applicable laws, or has conducted its business in a fraudulent manner. The insurer may also give its consent to administrative supervision.

If an insurer is placed under administrative supervision, the commissioner may order the insurer to take such actions as he deems necessary to eliminate those conditions giving rise to the administrative supervision. The bill also provides that the commissioner may prohibit an insurer under administrative supervision from performing specified acts during the period of supervision, including, but not limited to, the disposal of its assets, the lending or investment of its funds, and the transfer of its property. The bill additionally provides that records and documents relating to an administrative supervision are confidential, except when the commissioner determines that disclosure is necessary. Finally, the bill limits the liability of the commissioner and the Department of Insurance employees for actions taken under the act.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 86

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly Bill No. 86.

This bill, based on a model law of the National Association of Insurance Commissioners, provides for the administrative supervision of insurers and other entities. The bill provides that an insurer or other entity may be placed under administrative supervision if the Commissioner of Insurance determines that the insurer is in a hazardous financial condition, has exceeded its power, has failed to comply with applicable laws, or has conducted its business in a fraudulent manner. The insurer may also give its consent to administrative supervision.

If an insurer is placed under administrative supervision, the commissioner may order the insurer to take such actions as he deems necessary to eliminate those conditions giving rise to the administrative supervision. The bill also provides that the commissioner may prohibit an insurer under administrative supervision from performing specified acts during the period of supervision, including, but not limited to, the disposal of its assets, the lending or investment of its funds, and the transfer of its property. The bill additionally provides that records and documents relating to an administrative supervision are confidential, except when the commissioner determines that disclosure is necessary. Finally, the bill limits the liability of the commissioner and the Department of Insurance employees for actions taken under the act.

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OFFICE OF THE GOVERNOR NEWS RELEASE

GN-001

TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

CONTACT: Jon Shure
(609) 777-2600

Peter Cammarano
(609) 633-3955

GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

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ADMINISTRATIVE SUPERVISION MODEL ACT

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- Section 8. Rules
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- Section 10. Immunity

Section 1. Definitions

As used in this Act:

- A. "Insurer" means and includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuities as limited to:
 - (1) Any insurer who is doing an insurer business, or has transacted insurance in this State, and against whom claims arising from that transaction may exist now or in the future;
 - (2) Any fraternal benefit society which is subject to the provisions of [insert applicable statute];
 - (3) [List any other specialty type insurer not covered by the general law which should be covered by this Act].
- B. "Exceeded its Powers" means the following conditions:
 - (1) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the Commissioner, his or her deputies, employees or duly commissioned examiners;
 - (2) A domestic insurer has unlawfully removed from this State books, papers, accounts or records necessary for an examination of the insurer;
 - (3) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;
 - (4) The insurer has neglected or refused to observe an order of the Commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;
 - (5) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the Commissioner;
 - (6) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the Commissioner or has without first having obtained written approval of the Commissioner if approval is required by law:

- (a) Totally reinsured its entire outstanding business, or
- (b) Merged or consolidated substantially its entire property or business with another insurer.
- (7) The insurer engaged in any transaction in which it is not authorized to engage under the laws of this State;
- (8) The insurer refused to comply with a lawful order of the Commissioner.
- C. "Consent" means agreement to administrative supervision by the insurer.
- D. [The terms "Commissioner" and "Department" may need definitions].

Drafting Note: States may wish to compare these definitions with other definitions in their statutes and resolve any conflict.

Section 2. Applicability

The provisions of this Act shall apply to:

- A. All domestic insurers, and
- B. Any other insurer doing business in this State whose state of domicile has asked the Commissioner to apply the provisions of this Act as regards such insurer.

Section 3. Notice to Comply with Written Requirements of Commissioner; Noncompliance; Administrative Supervision

- A. An insurer may be subject to administrative supervision by the Commissioner if upon examination or at any other time it appears in the Commissioner's discretion that:
 - (1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds;
 - (2) The insurer ["has" or "appears to have"] exceeded its powers granted under its certificate of authority and applicable law;
 - (3) The insurer has failed to comply with the applicable provisions of the insurance code;
 - (4) The business of the insurer is being conducted fraudulently; or
 - (5) The insurer gives its consent.
- B. If the Commissioner determines that the conditions set forth in Subsection A of this section exist, the Commissioner shall:
 - (1) Notify the insurer of his or her determination;
 - (2) Furnish to the insurer a written list of the requirements to abate this determination; and
 - (3) Notify the insurer that it is under the supervision of the Commissioner and that the Commissioner is applying and effectuating the provisions of the Act. Such action by the Commissioner shall be subject to review pursuant to applicable State administrative procedures under [insert state's appropriate administrative appeals procedure statute].

- G. Merge or consolidate with another company;
- H. Approve new premiums or renew any policies;
- I. Enter into any new reinsurance contract or treaty;
- J. Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;
- K. Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;
- L. Make any material change in management; or
- M. Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends or other payments deemed preferential.

Section 6. Review and Stay of Action

During the period of supervision the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under [insert state's appropriate administrative appeals procedure statute].

Section 7. Administrative Election of Proceedings

Nothing contained in this Act shall preclude the Commissioner from initiating judicial proceedings to place an insurer in conservation, rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this State, regardless of whether the Commissioner has previously initiated administrative supervision proceedings under this Act against the insurer.

Section 8. Rules

The Commissioner is empowered to adopt reasonable rules necessary for the implementation of this Act.

Section 9. Other Laws; Conflicts; Meetings Between the Commissioner and the Supervisor

Notwithstanding any other provision of law, the Commissioner may meet with a supervisor appointed under this Act and with the attorney or other representative of the supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this Act to carry out the Commissioner's duties under this Act or for the supervisor to carry out his or her duties under this Act.

Section 10. Immunity

There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Insurance Commissioner or the Department or its employees or agents for any action taken by them in the performance of their powers and duties under this Act.

Legislative History (all references are to the Proceedings of the NAIC).

1990 Proc. 1 6, 26, 173, 175-178 (adopted).

- C. If placed under administrative supervision, the insurer shall have sixty (60) days, or another period of time as designated by the Commissioner, to comply with the requirements of the Commissioner subject to the provisions of this Act.
- D. If it is determined after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period specified above, the Commissioner may extend such period.
- E. If it is determined that none of the conditions giving rise to the supervision exist, the Commissioner shall release the insurer from supervision.

Section 4. Confidentiality of Certain Proceedings and Records

- A. Notwithstanding any other provision of law and except as set forth in this section; proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the Commissioner or the Department relating to the supervision of any insurer are confidential except as provided by this section.
- B. The personnel of the Department shall have access to these proceedings, hearings, notices, correspondence, reports, records or information as permitted by the Commissioner.
- C. The Commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records or information to a department, agency or instrumentality of this or another State or the United States if the Commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another State of the United States.
- D. The Commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records or other information if the Commissioner deems that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors or the general public.
- E. This section does not apply to hearings, notices, correspondence, reports, records or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

Drafting Note: States may want to consider changing this section to require proceedings and records to be public record unless the Commissioner deems otherwise. Confidentiality of orders is not included in this section. Some states may want to protect orders from disclosure by including them in this section.

Section 5. Prohibited Acts During Period of Supervision

During the period of supervision, the Commissioner or his designated appointee shall serve as the administrative supervisor. The Commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the Commissioner or his appointed supervisor:

- A. Dispose of, convey or encumber any of its assets or its business in force;
- B. Withdraw any of its bank accounts;
- C. Lend any of its funds;
- D. Invest any of its funds;
- E. Transfer any of its property;
- F. Incur any debt, obligation or liability;