

17:33A-3

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 17:33A-3 (Insurance fraud prevention act—amendments)

LAWS OF: 1991 CHAPTER: 331

Bill No: A4915

Sponsor(s): Martin & others

Date Introduced: May 23, 1991

Committee: Assembly: Insurance

Senate: Labor & Industry

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: August 22, 1991

Senate: December 16, 1991

Date of Approval: January 1, 1992

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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[FIRST REPRINT]
ASSEMBLY, No. 4915

STATE OF NEW JERSEY

INTRODUCED MAY 23, 1991

By Assemblymen MARTIN, GILL, Aduato, Haytaian,
Doria and Zecker

1 AN ACT concerning the prevention of certain types of insurance
2 fraud and amending P.L.1983, c.320.

3

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

6 1. Section 3 of P.L.1983, c.320 (C.17:33A-3) is amended to
7 read as follows:

8 3. As used in this act:

9 "Attorney General" means the Attorney General of New Jersey
10 or his designated representatives.

11 "Commissioner" means the Commissioner of Insurance.

12 "Director" means the Director of the Division of Insurance
13 Fraud Prevention in the Department of Insurance.

14 "Division" means the Division of Insurance Fraud Prevention
15 established by this act.

16 "Hospital" means any general hospital, mental hospital,
17 convalescent home, nursing home or any other institution,
18 whether operated for profit or not, which maintains or operates
19 facilities for health care.

20 "Insurance company" means:

21 a. Any corporation, association, partnership, reciprocal
22 exchange, interinsurer, Lloyd's insurer, fraternal benefit society
23 or other person engaged in the business of insurance pursuant to
24 Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 et seq.),
25 or Subtitle 3 of Title 17B of the New Jersey Statutes (C.17B:17-1
26 et seq.);

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

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

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

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

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

37 g. Any ¹[automobile]¹ insurance plan operating pursuant to
38 P.L.1970, c.215 (C.17:29D-1);

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Assembly AIN committee amendments adopted June 24, 1991.

1 h. The New Jersey Insurance Underwriting Association
2 operating pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);
3 ¹[and]¹

4 i. The New Jersey Automobile Full Insurance Underwriting
5 Association operating pursuant to P.L.1983, c.65 (C.17:30E-1 et
6 seq.) and the Market Transition Facility operating pursuant to
7 section 88 of P.L.1990, c.8 (C.17:33B-11); and

8 j. Any risk retention group or purchasing group operating
9 pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C.
10 §3901 et seq.

11 "Person" means a person as defined in R.S.1:1-2, and shall
12 include, unless the context otherwise requires, a practitioner.

13 "Practitioner" means a licensee of this State authorized to
14 practice medicine and surgery, psychology, chiropractic, or law
15 or any other licensee of this State whose services are
16 compensated, directly or indirectly, by insurance proceeds, or a
17 licensee similarly licensed in other states and nations or the
18 practitioner of any nonmedical treatment rendered in accordance
19 with a recognized religious method of healing.

20 "Producer" means an [agent, broker, or solicitor] insurance
21 producer as defined in section 2 of P.L.1987, c.293 (C.17:22A-2),
22 licensed to transact the business of insurance in this State
23 pursuant to the provisions of the "New Jersey Insurance Producer
24 Licensing Act," P.L.1987, c.293 (C.17:22A-1 et seq.).

25 "Statement" includes, but is not limited to, any application,
26 writing, notice, expression, statement, proof of loss, bill of
27 lading, receipt, invoice, account, estimate of property damage,
28 bill for services, diagnosis, prescription, hospital or physician
29 record, X-ray, test result or other evidence of loss, injury or
30 expense.

31 (cf: P.L.1987, c.358, s.3)

32 2. Section 4 of P.L.1983, c.320 (C.17:33A-4) is amended to
33 read as follows:

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

35 (1) Presents or causes to be presented any written or oral
36 statement as part of, or in support of or opposition to, a claim for
37 payment or other benefit pursuant to an insurance policy,
38 knowing that the statement contains any false or misleading
39 information concerning any fact or thing material to the claim;
40 or

41 (2) Prepares or makes any written or oral statement that is
42 intended to be presented to any insurance company or any
43 insurance claimant in connection with, or in support of or
44 opposition to any claim for payment or other benefit pursuant to
45 an insurance policy, knowing that the statement contains any
46 false or misleading information concerning any fact or thing
47 material to the claim; or

48 (3) Conceals or knowingly fails to disclose the occurrence of
49 an event which affects any person's initial or continued right or

1 entitlement to (a) any insurance benefit or payment or (b) the
2 amount of any benefit or payment to which the person is entitled;
3 or

4 (4) Prepares or makes any written or oral statement, intended
5 to be presented to any insurance company or producer for the
6 purpose of obtaining a ¹[private passenger automobile] motor
7 vehicle¹ insurance policy, that the person to be the insured ¹[is a
8 resident of] resides or is domiciled in¹ this State when, in fact,
9 that person ¹[is a resident of] resides or is domiciled in¹ a state
10 other than this State.

11 b. A person or practitioner violates this act if he knowingly
12 assists, conspires with, or urges any person or practitioner to
13 violate any of the provisions of this act.

14 c. A person or practitioner violates this act if, due to the
15 assistance, conspiracy or urging of any person or practitioner, he
16 knowingly benefits, directly or indirectly, from the proceeds
17 derived from a violation of this act.

18 d. A person or practitioner who is the owner, administrator or
19 employee of any hospital violates this act if he knowingly allows
20 the use of the facilities of the hospital by any person in
21 furtherance of a scheme or conspiracy to violate any of the
22 provisions of this act.

23 e. A person or practitioner violates this act if, for pecuniary
24 gain, for himself or another, he directly or indirectly solicits any
25 person or practitioner to engage, employ or retain either himself
26 or any other person to manage, adjust or prosecute any claim or
27 cause of action, against any person, for damages for negligence,
28 or, for pecuniary gain, for himself or another, directly or
29 indirectly solicits other persons to bring causes of action to
30 recover damages for personal injuries or death, or for pecuniary
31 gain, for himself or another, directly or indirectly solicits other
32 persons to make a claim for personal injury protection benefits
33 pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.); provided,
34 however, that this subsection shall not apply to any conduct
35 otherwise permitted by law or by rule of the Supreme Court.

36 (cf: P.L.1983, c.320, s.4)

37 3. Section 5 of P.L.1983, c.320 (C.17:33A-5) is amended to
38 read as follows:

39 5. a. If a person or practitioner is found by a court of
40 competent jurisdiction, pursuant to a claim initiated by the
41 commissioner, to have violated any provision of this act, the
42 person or practitioner shall be subject to a civil penalty not to
43 exceed \$5,000.00 for the first violation, \$10,000.00 for the second
44 violation and \$15,000.00 for each subsequent violation. The
45 penalty shall be paid to the commissioner to be used in
46 accordance with subsection b. of this section. The court may also
47 award court costs and reasonable attorney fees to the
48 commissioner.

49 Nothing in this subsection shall be construed to prohibit [, in

1 the case of a first offense,] the commissioner and the person or
2 practitioner alleged to be guilty of a violation of this act from
3 entering into a written agreement in which the person or
4 practitioner does not admit or deny the charges but consents to
5 payment of the civil penalty. A consent agreement may not be
6 used in a subsequent civil or criminal proceeding relating to any
7 violation of this act, [nor shall] but notification thereof shall be
8 made to a licensing authority in the same manner as required
9 pursuant to subsection c. of section 10 of [this act] P.L.1983,
10 c.320 (C.17:33A-10).

11 b. The New Jersey Automobile Full Insurance Underwriting
12 Association Auxiliary Fund (hereinafter referred to as the "fund")
13 is established as a nonlapsing, revolving fund into which shall be
14 deposited all revenues from the civil penalties imposed pursuant
15 to this section. Interest received on moneys in the fund shall be
16 credited to the fund. The fund shall be administered by the
17 Commissioner of Insurance and shall be used to help defray the
18 operating expenses of the New Jersey Automobile Full Insurance
19 Underwriting Association created pursuant to P.L.1983, c.65
20 (C.17:30E-1 et seq.).

21 (cf: P.L.1987, c.358, s.1)

22 4. Section 6 of P.L.1983, c.320 (C.17:33A-6) is amended to
23 read as follows:

24 6. a. Insurance claim forms shall contain a statement in a
25 form approved by the commissioner that clearly states in
26 substance the following: "Any person who knowingly files a
27 statement of claim containing any false or misleading
28 information is subject to criminal and civil penalties."

29 b. (Deleted by amendment, P.L.1987, c.342.)

30 c. Insurance application forms for ¹[private passenger
31 automobile] motor vehicle¹ policies shall contain a statement in a
32 form approved by the commissioner that clearly states in
33 substance the following: "Any person who knowingly makes an
34 application for ¹[private passenger automobile] motor vehicle¹
35 insurance coverage containing any statement that the applicant
36 ¹[is a resident of] resides or is domiciled in¹ this State when, in
37 fact that applicant ¹[is a resident of] resides or is domiciled in¹ a
38 state other than this State, is subject to criminal and civil
39 penalties."

40 (cf: P.L.1987, c.342, s.1)

41 5. Section 8 of P.L.1983, c.320 (C.17:33A-8) is amended to
42 read as follows:

43 8. a. There is established in the Department of Insurance the
44 Division of Insurance Fraud Prevention. The division shall assist
45 the commissioner in administratively investigating allegations of
46 insurance fraud and in developing and implementing programs to
47 prevent insurance fraud and abuse. The division shall promptly
48 notify the Attorney General of any insurance application or claim
49 which involves criminal activity. When so required by the

1 commissioner and the Attorney General, the division shall
2 cooperate with the Attorney General in the investigation and
3 prosecution of criminal violations.

4 b. The commissioner shall appoint the full-time supervisory
5 and investigative personnel of the division, including the director,
6 who shall hold their employment at the pleasure of the
7 commissioner without regard to the provisions of Title 11A of the
8 New Jersey Statutes and shall receive such salaries as the
9 commissioner from time to time designates, and who shall be
10 qualified by training and experience to perform the duties of
11 their position.

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

15 d. The commissioner shall also appoint the clerical and other
16 staff necessary for the division to fulfill its responsibilities under
17 this act. The personnel shall be employed subject to the
18 provisions of Title 11A of the New Jersey Statutes, and other
19 applicable statutes.

20 e. The commissioner shall appoint an insurance fraud advisory
21 board consisting of eight representatives from insurers doing
22 business in this State. The members of the board shall serve for
23 two year terms and until their successors are appointed and
24 qualified. The members of the board shall receive no
25 compensation. The board shall advise the commissioner with
26 respect to the implementation of this act, when so requested by
27 the commissioner.

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

39 g. The commissioner shall, on or before October 15 in each
40 year, apportion the amount so certified to him among all of the
41 companies writing the class or classes of insurance described in
42 Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 et seq.),
43 and Subtitle 3 of Title 17B of the New Jersey Statutes
44 (C.17B:17-1 et seq.), within this State in the proportion that the
45 net premiums received by each of them for such insurance
46 written or renewed on risks within this State during the calendar
47 year immediately preceding, as reported to him, bears to the sum
48 total of all such net premiums received by all companies writing
49 that insurance within the State during the year, as reported,

1 except that no one company shall be assessed for more than 5%
2 of the amount apportioned. The commissioner shall certify the
3 sum apportioned to each company on or before November 15 next
4 ensuing, and to the Division of Taxation in the Department of the
5 Treasury. Each company shall pay the amount so certified as
6 apportioned to it to the said Division of Taxation on or before
7 December 31 next ensuing, and the sum paid shall be paid into the
8 State Treasury in reimbursement to the State for the expenses
9 paid.

10 "Net premiums received" means gross premiums written, less
11 return premiums thereon and dividends credited or paid to
12 policyholders.

13 h. The total appropriations recoverable under this section for
14 the operation of the division shall not exceed \$500,000.00 during
15 its first full fiscal year of operation.

16 (cf: P.L.1987, c.358, s.2)

17 6. Section 9 of P.L.1983, c.320 (C.17:33A-9) is amended to
18 read as follows:

19 9. a. Any [insurance company or producer] person who
20 believes that a violation of this act has been or is being made
21 shall [, within 30 days] notify the division immediately after
22 discovery of the alleged violation of this act and shall send to the
23 division, on a form and in a manner prescribed by the
24 commissioner, the information requested and such additional
25 information relative to the [claim and the parties claiming loss or
26 damages] alleged violation as the division may require. The
27 division shall review the reports and select those [claims] alleged
28 violations as may require further investigation. It shall then
29 cause an independent examination or evaluation of the facts
30 surrounding the [claim] alleged violation to be made to determine
31 the extent, if any, to which fraud, deceit, or intentional
32 misrepresentation of any kind exists [in the submission or
33 processing of the claim].

34 b. No person shall be subject to civil liability for libel,
35 violation of privacy or otherwise by virtue of the filing of reports
36 or furnishing of other information, in good faith and without
37 malice, required by this section or required by the division as a
38 result of the authority conferred upon it by law.

39 c. The commissioner may, by regulation, require insurance
40 companies licensed to do business in this State to keep such
41 records and other information as he deems necessary for the
42 effective enforcement of this act.

43 (cf: P.L.1983, c.320, s.9)

44 7. This act shall take effect immediately.

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INSURANCE

48

49 Amends "New Jersey Insurance Fraud Prevention Act" to include
50 certain fraudulent statements regarding residence.

STATEMENT

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This bill amends the "New Jersey Insurance Fraud Prevention Act," P.L.1983, c.320 (C.17:33A-1) to make it a violation to state, for the purpose of obtaining a private passenger automobile insurance policy, that the person to be insured is a resident of this State when, in fact, that person is a resident of a state other than this State. The same strong penalties which currently apply to other violations of the act would apply to this new offense as well.

INSURANCE

Amends "New Jersey Insurance Fraud Prevention Act" to include certain fraudulent statements regarding residence.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4915

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 1991

The Assembly Insurance Committee reports favorably and with committee amendments Assembly Bill No. 4915.

As amended by the committee, this bill amends the "New Jersey Insurance Fraud Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.), to make it a violation to state, for the purpose of obtaining a motor vehicle insurance policy, that the person to be the named insured under that policy resides or is domiciled in this State when, in fact, that person resides or is domiciled in a state other than this State. The same strong penalties which currently apply to other violations of the act would apply to this new offense as well. Civil penalties not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation may be imposed.

Application forms for motor vehicle insurance would be required to contain a statement that a person who knowingly makes application for coverage which contains a statement that the applicant resides or is domiciled in this State when, in fact, the applicant resides or is domiciled in another state, is subject to criminal and civil penalties.

COMMITTEE AMENDMENTS

The committee amendments to the bill make the new violation added by the bill applicable to all motor vehicle insurance policy applications, not just private passenger automobile insurance, because the same practice of misrepresenting residence or domicile to obtain a more favorable premium rate is prevalent in the commercial motor vehicle insurance market as well as the private passenger automobile insurance market.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 4915

STATE OF NEW JERSEY

DATED: DECEMBER 5, 1991

The Senate Labor, Industry and Professions Committee reports favorably Assembly Bill No. 4915 (1R).

This bill amends the "New Jersey Insurance Fraud Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.), to make it a violation to state, for the purpose of obtaining a motor vehicle insurance policy, that the person to be the named insured under that policy resides or is domiciled in this State when, in fact, that person resides or is domiciled in a state other than this State. Application forms for motor vehicle insurance would be required to contain a statement that a person who knowingly makes application for coverage which contains a statement that the applicant resides or is domiciled in this State when, in fact, the applicant resides or is domiciled in another state, is subject to criminal and civil penalties.

The bill further amends the fraud law to provide that any person, in addition to an insurer or producer, who is aware of a violation of the fraud law must notify the fraud division immediately after the discovery of the alleged violation of the act.