

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:33A-5 (Insurance Fraud Prevention, Division Of-- Increase Funding Penalties)

LAWS OF: 1987 **CHAPTER:** 358

Bill No: A3921

Sponsor(s): Loveys and others

Date Introduced: May 18, 1987

Committee: **Assembly:** Insurance
Senate: Revenue, Finance and Appropriations

Amended during passage: Yes Amendments during passage denoted by passage.

Date of Passage: **Assembly:** November 23, 1987
Senate: December 21, 1987

Date of Approval: January 5, 1988

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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ASSEMBLY, No. 3921**STATE OF NEW JERSEY**

INTRODUCED MAY 18, 1987

By Assemblymen LOVEYS, RAFFERTY, Zecker, Kelly and Colburn

AN ACT concerning the Division of Insurance Fraud Prevention
and amending P. L. 1983, c. 320.

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

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

3 5. a. If a person or practitioner is found by a court of competent
4 jurisdiction, pursuant to a claim initiated by the commissioner, to
5 have violated any provision of this act, the person or practitioner
6 shall be subject to a civil penalty not to exceed **[\$2,500.00]** *\$5,000.00*
7 for the first violation, **[\$5,000.00]** *\$10,000.00* for the second viola-
8 tion and **[\$10,000.00]** *\$15,000.00* for each subsequent violation. The
9 penalty shall be paid to the commissioner to be used in accordance
10 with subsection b. of this section. The court may also award court
11 costs and reasonable attorney fees to the commissioner.

12 Nothing in this subsection shall be construed to prohibit, in the
13 case of a first offense, the commissioner and the person or prac-
14 titioner alleged to be guilty of a violation of this act from entering
15 into a written agreement in which the person or practitioner does
16 not admit or deny the charges but consents to payment of the civil
17 penalty. A consent agreement may not be used in a subsequent
18 civil or criminal proceeding relating to any violation of this act,
19 nor shall notification thereof be made to a licensing authority as
20 required pursuant to subsection c. of section 10 of this act.

21 b. The New Jersey Automobile Full Insurance Underwriting
22 Association Auxiliary Fund (hereinafter referred to as the

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendment adopted June 22, 1987.

23 “fund”) is established as a nonlapsing, revolving fund into which
24 shall be deposited all revenues from the civil penalties imposed pur-
25 suant to this section. Interest received on moneys in the fund shall
26 be credited to the fund. The fund shall be administered by the Com-
27 missioner of Insurance and shall be used to help defray the operat-
28 ing expenses of the New Jersey Automobile Full Insurance Under-
29 writing Association created pursuant to P. L. 1983, c. 65 (C.
30 17:30E-1 et seq.).

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

3 8. a. There is established in the Department of Insurance the
4 Division of Insurance Fraud Prevention. The division shall assist
5 the commissioner in administratively investigating allegations of
6 insurance fraud and in developing and implementing programs
7 to prevent insurance fraud and abuse. The division shall promptly
8 notify the Attorney General of any claim which involves criminal
9 activity. When so required by the commissioner and the Attorney
10 General, the division shall cooperate with the Attorney General in
11 the investigation and prosecution of criminal violations.

12 b. The commissioner shall appoint the full-time supervisory and
13 investigative personnel of the division, including the director, who
14 shall hold their employment at the pleasure of the commissioner
15 without regard to the provisions of Title ~~11~~ 11A of the ~~Revised~~
16 ~~Statutes~~ *New Jersey Statutes* and shall receive such salaries as
17 the commissioner from time to time designates, and who shall be
18 qualified by training and experience to perform the duties of their
19 position.

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

23 d. The commissioner shall also appoint the clerical and other
24 staff necessary for the division to fulfill its responsibilities under
25 this act. The personnel shall be employed subject to the provisions
26 of Title ~~11~~ 11A of the ~~Revised Statutes~~ *New Jersey Statutes*,
27 and other applicable statutes.

28 e. The commissioner shall appoint an insurance fraud advisory
29 board consisting of eight representatives from insurers doing busi-
30 ness in this State. The members of the board shall serve for two
31 year terms and until their successors are appointed and qualified.
32 The members of the board shall receive no compensation. The
33 board shall advise the commissioner with respect to the implemen-
34 tation of this act, when so requested by the commissioner.

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

46 g. The commissioner shall, on or before October 15 in each
 47 year, apportion the amount so certified to him among all of the
 48 companies writing the class or classes of insurance described in
 49 **[R. S. 17:17-1]** *Subtitle 3 of Title 17 of the Revised Statutes (C.*
 50 *17:17-1 et seq.), and Subtitle 2 of Title 17B of the New Jersey*
 51 *Statutes (C. 17B:17-1 et seq.),* within this State in the proportion
 52 that the net premiums received by each of them for such insurance
 53 written or renewed on risks within this State during the calendar
 54 year immediately preceding, as reported to him, bears to the sum
 55 total of all such net premiums received by all companies writing
 56 that insurance within the State during the year, as reported, except
 57 that no one company shall be assessed for more than 5% of the
 58 amount apportioned. The commissioner shall certify the sum ap-
 59 portioned to each company on or before November 15 next ensuing,
 60 and to the Division of Taxation in the Department of the Treasury.
 61 Each company shall pay the amount so certified as apportioned to
 62 it to the said Division of Taxation on or before December 31 next
 63 ensuing, and the sum paid shall be paid into the State Treasury in
 64 reimbursement to the State for the expenses paid.

65 "Net premiums received" means gross premiums written, less
 66 return premiums thereon and dividends credited or paid to policy-
 67 holders.

68 h. The total appropriations recoverable under this section
 69 for the operation of the division shall not exceed \$500,000.00
 70 during its first full fiscal year of operation. **[During subsequent**
 71 **fiscal years, the appropriations subject to recovery under this sec-**
 72 **tion shall not increase by more than the amount by which State**
 73 **expenditures shall increase for that fiscal year, expressed as a**
 74 **percent per annum.]**

1 ***[3. Section 9 of P. L. 1983, c. 320 (C. 17:33A-9) is amended to**
 2 **read as follows:**

3 9. a. Any insurance company or producer who believes that
4 a violation of this act has been or is being made shall, within
5 30 days after discovery of the alleged violation of this act send
6 to the division, on a form prescribed by the commissioner, the
7 information requested and such additional information relative to
8 the claim and the parties claiming loss or damages as the division
9 may require. The division shall review the reports and select those
10 claims as may require further investigation. It shall then cause
11 an independent examination or evaluation of the facts surround-
12 ing the claim to be made to determine the extent, if any, to which
13 fraud, deceit, or intentional misrepresentation of any kind exists
14 in the submission or processing of the claim.

15 b. No person shall be subject to civil liability for libel, viola-
16 tion of privacy or otherwise by virtue of the filing of reports or
17 furnishing of other information, in good faith and without malice,
18 required by this section or required by the division as a result of
19 the authority conferred upon it by law.

20 c. The commissioner may, by regulation, require insurance
21 companies licensed to do business in this State to keep such records
22 and other information as he deems necessary for the effective en-
23 forcement of this act.

24 *d. The provisions of subsections a. and b. of this section shall*
25 *apply to:*

26 *(1) Any corporation, association, partnership, reciprocal ex-*
27 *change, interinsurer, Lloyd's insurer, fraternal benefit society or*
28 *other person engaged in the business of insurance pursuant to Sub-*
29 *title 3 of Title 17 of the Revised Statutes (C. 17:17-1 et seq.), or*
30 *Subtitle 3 of Title 17B of the New Jersey Statutes (C. 17B:17-1*
31 *et seq.);*

32 *(2) Any medical service corporation operating pursuant to P. L.*
33 *1940, c. 74 (C. 17:48A-1 et seq.);*

34 *(3) Any hospital service corporation operating pursuant to P. L.*
35 *1938, c. 336 (C. 17:48-1 et seq.);*

36 *(4) Any health service corporation operating pursuant to P. L.*
37 *1985, c. 236 (C. 17:48E-1 et seq.);*

38 *(5) Any dental service corporation operating pursuant to P. L.*
39 *1968, c. 305 (C. 17:48C-1 et seq.);*

40 *(6) Any dental plan organization operating pursuant to P. L.*
41 *1979, c. 478 (C. 17:48D-1 et seq.);*

42 *(7) Any automobile insurance plan operating pursuant to P. L.*
43 *1970, c. 215 (C. 17:29D-1);*

44 *(8) The New Jersey Insurance Underwriting Association oper-*
45 *ating pursuant to P. L. 1968, c. 129 (C. 17:37A-1 et seq.);*

46 (9) *The New Jersey Automobile Full Insurance Underwriting*
 47 *Association operating pursuant to P. L. 1983, c. 65 (C. 17:30E-1*
 48 *et seq.)*; and

49 (10) *Any risk retention group or purchasing group operating*
 50 *pursuant to the "Liability Risk Retention Act of 1986," 15 U. S. C.*
 51 *§ 3901 et seq.】**

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

3 3. As used in this act:

4 【a.】 "Attorney General" means the Attorney General of New
 5 Jersey or his designated representatives.

6 【b.】 "Commissioner" means the Commissioner of Insurance.

7 【c.】 "Director" means the Director of the Division of Insurance
 8 Fraud Prevention in the Department of Insurance.

9 【d.】 "Division" means the Division of Insurance Fraud Preven-
 10 tion established by this act.

11 【e.】 "Hospital" means any general hospital, mental hospital,
 12 convalescent home, nursing home or any other institution, whether
 13 operated for profit or not, which maintains or operates facilities
 14 for health care.

15 "Insurance company" means:

16 a. *Any corporation, association, partnership, reciprocal ex-*
 17 *change, interinsurer, Lloyd's insurer, fraternal benefit society or*
 18 *other person engaged in the business of insurance pursuant to*
 19 *Subtitle 3 of Title 17 of the Revised Statutes (C. 17:17-1 et seq.),*
 20 *or Subtitle 3 of Title 17B of the New Jersey Statutes (C. 17B:17-1*
 21 *et seq.)*;

22 b. *Any medical service corporation operating pursuant to P. L.*
 23 *1940, c. 74 (C. 17:48A-1 et seq.)*;

24 c. *Any hospital service corporation operating pursuant to P. L.*
 25 *1938, c. 366 (C. 17:48-1 et seq.)*;

26 d. *Any health service corporation operating pursuant to P. L.*
 27 *1985, c. 236 (C. 17:48E-1 et seq.)*;

28 e. *Any dental service corporation operating pursuant to P. L.*
 29 *1968, c. 305 (C. 17:48C-1 et seq.)*;

30 f. *Any dental plan organization operating pursuant to P. L.*
 31 *1979, c. 478 (C. 17:48D-1 et seq.)*;

32 g. *Any automobile insurance plan operating pursuant to P. L.*
 33 *1970, c. 215 (C. 17:29D-1)*;

34 h. *The New Jersey Insurance Underwriting Association operat-*
 35 *ing pursuant to P. L. 1968, c. 129 (C. 17:37A-1 et seq.)*;

36 i. *The New Jersey Automobile Full Insurance Underwriting*

37 *Association operating pursuant to P. L. 1983, c. 65 (C. 17:30E-1*
 38 *et seq.); and*

39 *j. Any risk retention group or purchasing group operating pur-*
 40 *suant to the "Liability Risk Retention Act of 1986," 15 U. S. C.*
 41 *§ 3901 et seq.*

42 **[f.]** "Person" means a person as defined in R. S. 1:1-2, and
 43 shall include, unless the context otherwise requires, a practitioner.

44 **[g.]** "Practitioner" means a licensee of this State authorized to
 45 practice medicine and surgery, psychology, chiropractic, or law or
 46 any other licensee of this State whose services are compensated,
 47 directly or indirectly, by insurance proceeds, or a licensee similarly
 48 licensed in other states and nations or the practitioner of any non-
 49 medical treatment rendered in accordance with a recognized re-
 50 ligious method of healing.

51 **[h.]** "Producer" means an agent, broker, or solicitor licensed to
 52 transact the business of insurance in this State.

53 **[i.]** "Statement" includes, but it not limited to, any writing,
 54 notice, expression, statement, proof of loss, bill of lading, receipt,
 55 invoice, account, estimate of property damage, bill for services,
 56 diagnosis, prescription, hospital or physician record, X-ray, test
 57 result or other evidence of loss, injury or expense.*

1 4. This act shall take effect immediately.

INSURANCE—GENERAL

Increases funding and penalties of the Division of Insurance Fraud
 Prevention.

49 (10) Any risk retention group or purchasing group operating
50 pursuant to the "Liability Risk Retention Act of 1986," 15 U. S. C.
51 § 3901 et seq.

1 4. This act shall take effect immediately.

STATEMENT

The Division of Insurance Fraud Prevention was established in the Insurance Department in 1983. Charged with investigating allegations of insurance fraud and developing and implementing programs to prevent insurance fraud and abuse, the division is funded through a special assessment imposed annually on all property and casualty insurers. The amount assessed on each insurer is based upon its share of the total net premiums in each market during the preceding calendar year and is subject to a restriction that no single insurer can be assessed more than 5% of the total annual assessment. Furthermore, any increase in each subsequent annual assessment is linked to the State budget in such a way that appropriations for the division cannot exceed the percentage increase in fiscal year State expenditures.

Under current funding procedures, no consideration is given to the amount of insurance fraud occurring or being alleged. Experience has shown the need to increase the funding for the division. Removing the current restriction imposed by the linkage between the State budget and the division's appropriations would enable the division to be funded more adequately and in a manner more responsive to the degree of insurance fraud being confronted. This bill would also broaden the funding base for the division by extending its assessments to include life and health insurers. Nevertheless, this proposal would retain the current 5% cap on such an annual assessment against any single insurer.

Other provisions in this bill clarify the entities that are required to report alleged violations of the Insurance Fraud Prevention Act and increase the fines for violations under the act.

INSURANCE—GENERAL

Increases funding and penalties of the Division of Insurance Fraud Prevention.

A3921

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ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3921

with Assembly committee amendment

STATE OF NEW JERSEY

DATED: JUNE 22, 1987

This bill, amending the law which created the Division of Insurance Fraud Prevention in the Department of Insurance, would increase the funding for the division by assessing life and health insurance companies as well as property and casualty companies. In addition, the bill deletes the present provision of law which limits the total amount of the assessment of all companies; as the law now stands, the total assessments made to companies under the act may not increase by more than the amount by which State expenditures increase for that fiscal year. The removal of this restriction would allow the assessments to be larger than at present, although the existing 5% cap on assessments to individual companies would remain.

Penalties for violation of the act would be increased to \$5,000.00 for the first violation (increased from \$2,500.00), \$10,000.00 for the second violation (increased from \$5,000.00), and \$15,000.00 for each subsequent violation (increased from \$10,000.00).

The primary purpose of this legislation is to increase funding for the Division of Insurance Fraud Prevention, because the Department of Insurance believes that the present funding level is inadequate. Funds are raised by assessments on insurers in proportion to the insurers' market shares; in the case of property and casualty insurers, at least, the assessments are eventually passed back to insureds through the ratemaking process, as they become part of the insurers' general expenses. Penalties assessed under the act are placed in the New Jersey Automobile Full Insurance Underwriting Association Auxiliary Fund, and are used to defray operating expenses of the joint underwriting association.

The Assembly Insurance Committee has made a technical amendment to the bill.

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SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3921

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STATE OF NEW JERSEY

DATED: DECEMBER 17, 1987

The Senate Revenue, Finance and Appropriations Committee reported Assembly Bill No. 3921 OCR favorably.

Assembly Bill No. 3921 OCR makes various changes regarding the "New Jersey Insurance Fraud Prevention Act." The Division of Insurance Fraud Prevention in the Department of Insurance is financed by assessing property and casualty companies in the subsequent fiscal year for the division's operating costs; costs are apportioned based on companies market share, but no one company may be apportioned more than 5% of the total cost. The bill allows for increased funding for the division by deleting the provision of current law which provides that the total assessment made to companies to finance the program may not increase by more than the amount by which State expenditures increase for that fiscal year. The bill also provides for assessment of life and health insurance companies, in addition to property and casualty companies, for the division's expenses. Life and health insurance companies are also brought under the reporting requirements of the act.

The bill also increases penalties for violation of insurance fraud provisions; the penalty for the first violation increases from \$2,500.00 to \$5,000.00, the penalty for the second violation increases from \$5,000.00 to \$10,000.00, and the penalty for the third and subsequent violations increases from \$10,000.00 to \$15,000.00. Penalties assessed under the act are placed in the New Jersey Automobile Full Insurance Underwriting Association Auxiliary Fund, and are use to defray operating expenses of the joint underwriting association.

Assembly Bill No. 3921 is identical to Senate Bill No. 3181 OCR.

FISCAL IMPACT:

This bill will allow for an increase in funding for the Division of Insurance Fraud Prevention, which is provided by assessments against insurance companies. In fiscal year 1986, \$477,253.00 was deposited in the insurance assessment fraud prevention account, to fund division operations for the prior fiscal year.

The bill will also result in an undetermined increase in insurance fraud penalty collections, which are placed in the New Jersey Automobile Full Insurance Underwriting Association Auxiliary Fund.