

SENATE, No. 2098

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 21, 2010

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblywoman DENISE M. COYLE

District 16 (Morris and Somerset)

Assemblyman ROBERT SCHROEDER

District 39 (Bergen)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

SYNOPSIS

Renames the Division of Insurance Fraud Prevention as the Bureau of Fraud Deterrence in the Department of Banking and Insurance; modifies structure of Office of Insurance Fraud Prosecutor.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2010)

S2098 BATEMAN

2

1 AN ACT concerning insurance fraud, amending the title and body of
2 P.L.1983, c.320, and amending P.L.1998, c.21 and P.L.2005,
3 c.82.

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

7
8 1. The title of P.L.1983, c.320 is amended to read as follows:
9 AN ACT concerning insurance fraud, establishing a certain fund,
10 defining certain civil offenses, establishing a **[Division] Bureau**
11 of **[Insurance] Fraud [Prevention] Deterrence** in the Department
12 of Banking and Insurance and making an appropriation therefor.
13 (cf: P.L.1983, c.320, Title)

14
15 2. Section 3 of P.L.1983, c.320 (C.17:33A-3) is amended to
16 read as follows:

17 3. As used in this act:

18 "Attorney General" means the Attorney General of New Jersey
19 or his designated representatives.

20 "Bureau" means the Bureau of Fraud Deterrence established by
21 section 8 of P.L.1983, c.320 (C.17:33A-8).

22 "Commissioner" means the Commissioner of Banking and
23 Insurance.

24 **["Director"** means the Director of the Division of Insurance
25 Fraud Prevention in the Department of Banking and Insurance.

26 "Division means the Division of Insurance Fraud Prevention
27 established by this act. **]**

28 "Hospital" means any general hospital, mental hospital,
29 convalescent home, nursing home or any other institution, whether
30 operated for profit or not, which maintains or operates facilities for
31 health care.

32 "Insurance company" means:

33 a. Any corporation, association, partnership, reciprocal
34 exchange, interinsurer, Lloyd's insurer, fraternal benefit society or
35 other person engaged in the business of insurance pursuant to
36 Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 et seq.), or
37 Subtitle 3 of Title 17B of the New Jersey Statutes (C.17B:17-1 et
38 seq.);

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

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

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

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.

- 1 e. Any dental service corporation operating pursuant to
2 P.L.1968, c.305 (C.17:48C-1 et seq.);
- 3 f. Any dental plan organization operating pursuant to
4 P.L.1979, c.478 (C.17:48D-1 et seq.);
- 5 g. Any insurance plan operating pursuant to P.L.1970, c.215
6 (C.17:29D-1);
- 7 h. The New Jersey Insurance Underwriting Association
8 operating pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.); and
- 9 i. **【The New Jersey Automobile Full Insurance Underwriting**
10 **Association operating pursuant to P.L.1983, c.65 (C.17:30E-1 et**
11 **seq.) and the Market Transition Facility operating pursuant to**
12 **section 88 of P.L.1990, c.8 (C.17:33B-11); and】** (Deleted by
13 amendment, P.L. , c.)
- 14 j. Any risk retention group or purchasing group operating
15 pursuant to the "Liability Risk Retention Act of 1986," 15
16 U.S.C.3901 et seq.
- 17 "Pattern" means five or more related violations of P.L.1983,
18 c.320 (C.17:33A-1 et seq.). Violations are related if they involve
19 either the same victim, or same or similar actions on the part of the
20 person or practitioner charged with violating P.L.1983, c.320
21 (C.17:33A-1 et seq.).
- 22 "Person" means a person as defined in R.S.1:1-2, and shall
23 include, unless the context otherwise requires, a practitioner.
- 24 "Principal residence" means that residence at which a person
25 spends the majority of his time. Principal residence may be an
26 abode separate and distinct from a person's domicile. Mere
27 seasonal or weekend residence within this State does not constitute
28 principal residence within this State.
- 29 "Practitioner" means a licensee of this State authorized to
30 practice medicine and surgery, psychology, chiropractic, or law or
31 any other licensee of this State whose services are compensated,
32 directly or indirectly, by insurance proceeds, or a licensee similarly
33 licensed in other states and nations or the practitioner of any
34 nonmedical treatment rendered in accordance with a recognized
35 religious method of healing.
- 36 "Producer" means an insurance producer as defined in section
37 **【2】 3 of 【P.L.1987, c.293 (C.17:22A-2)】** P.L.2001, c.210
38 (C.17:22A-28), licensed to transact the business of insurance in this
39 State pursuant to the provisions of the "New Jersey Insurance
40 Producer Licensing Act of 2001," **【P.L.1987, c.293 (C.17:22A-1 et**
41 **seq.)】** P.L.2001, c.210 (C.17:22A-26 et seq.).
- 42 "Statement" includes, but is not limited to, any application,
43 writing, notice, expression, statement, proof of loss, bill of lading,
44 receipt, invoice, account, estimate of property damage, bill for
45 services, diagnosis, prescription, hospital or physician record, X-
46 ray, test result or other evidence of loss, injury or expense.
47 (cf: P.L.1997, c.151, s.2)

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

3 8. a. (1) There is established in the Department of Banking and
4 Insurance the [Division of Insurance Fraud Prevention] Bureau of
5 Fraud Deterrence. The [division] bureau shall assist the
6 commissioner in administratively investigating allegations of
7 insurance fraud [and in developing] in consultation with the Office
8 of the Insurance Fraud Prosecutor in accordance with subsection a.
9 of section 9 of P.L.1983, c.320 (C.17:33A-9), and implementing
10 programs to prevent insurance fraud and abuse. [The division shall
11 promptly notify the Attorney General of any insurance application
12 or claim which involves criminal activity.] When so required by the
13 commissioner and the Attorney General, the [division] bureau shall
14 cooperate with the Attorney General in the investigation and
15 prosecution of criminal violations.

16 (2) In order to achieve administrative efficiencies, and
17 notwithstanding the provisions of section 33 of P.L.1998, c.21
18 (C.17:33A-17), all civil investigators in the Office of the Insurance
19 Fraud Prosecutor, other than those assigned to the Case Screening,
20 Litigation and Analytical Support Unit, and those additional
21 administrative and clerical support personnel as may be mutually
22 agreed to by the commissioner and the Attorney General, shall be
23 transferred to the Bureau of Fraud Deterrence in the Department of
24 Banking and Insurance. Personnel transferred from the Office of the
25 Insurance Fraud Prosecutor in the Department of Law and Public
26 Safety to the Department of Banking and Insurance pursuant to this
27 paragraph shall be transferred with all tenure rights and any rights
28 or protections provided by Title 11A of the New Jersey Statutes or
29 other applicable statute, and any pension law or retirement system,
30 as provided in the "State Agency Transfer Act," P.L.1971, c.375
31 (C.52:14D-1 et seq.).

32 b. The commissioner shall appoint the full-time supervisory
33 and investigative personnel of the [division] bureau, including the
34 [director] assistant commissioner, who, except as provided in
35 subsections a. and d. of this section, shall hold their employment at
36 the pleasure of the commissioner without regard to the provisions of
37 Title 11A of the New Jersey Statutes and shall receive such salaries
38 as the commissioner from time to time designates, and who shall be
39 qualified by training and experience to perform the duties of their
40 position.

41 c. When so requested by the commissioner, the Attorney
42 General may assign one or more deputy attorneys general to assist
43 the [division] bureau in the performance of its duties.

44 d. The commissioner shall also appoint the clerical and other
45 staff necessary for the [division] bureau to fulfill its
46 responsibilities under this act. The personnel shall be employed

1 subject to the provisions of Title 11A of the New Jersey Statutes,
2 and other applicable statutes.

3 e. The commissioner shall appoint an insurance fraud advisory
4 board consisting of eight representatives from insurers doing
5 business in this State. The members of the board shall serve for two
6 year terms and until their successors are appointed and qualified.
7 The members of the board shall receive no compensation. The
8 board shall advise the commissioner with respect to the
9 implementation of this act, when so requested by the commissioner.

10 f. The Director of the Division of Budget and Accounting in
11 the Department of the Treasury shall, on or before September 1 in
12 each year, ascertain and certify to the commissioner the total
13 amount of expenses incurred by the State in connection with the
14 administration of this act during the preceding fiscal year, which
15 expenses shall include, in addition to the direct cost of personal
16 service, the cost of maintenance and operation, the cost of
17 retirement contributions made and the workers' compensation paid
18 for and on account of personnel, rentals for space occupied in State
19 owned or State leased buildings and all other direct and indirect
20 costs of the administration thereof.

21 g. The commissioner shall, on or before October 15 in each
22 year, apportion the amount so certified to him among all of the
23 companies writing the class or classes of insurance described in
24 Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 et seq.),
25 and Subtitle 3 of Title 17B of the New Jersey Statutes (C.17B:17-1
26 et seq.), within this State in the proportion that the net premiums
27 received by each of them for such insurance written or renewed on
28 risks within this State during the calendar year immediately
29 preceding, as reported to him, bears to the sum total of all such net
30 premiums received by all companies writing that insurance within
31 the State during the year, as reported, except that no one company
32 shall be assessed for more than 5% of the amount apportioned. The
33 commissioner shall certify the sum apportioned to each company on
34 or before November 15 next ensuing [, and to the Division of
35 Taxation in the Department of the Treasury]. Each company shall
36 pay the amount so certified as apportioned to it to the [said
37 Division of Taxation] Department of Banking and Insurance on or
38 before December 31 next ensuing, and the sum paid shall be paid
39 into the State Treasury in reimbursement to the State for the
40 expenses paid.

41 "Net premiums received" means gross premiums written, less
42 return premiums thereon and dividends credited or paid to
43 policyholders.

44 h. [The total appropriations recoverable under this section for
45 the operation of the division shall not exceed \$500,000.00 during its

1 first full fiscal year of operation.】 (Deleted by amendment, P.L. ,
2 c.)
3 (cf: P.L.1991, c.331, s.5)
4

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

7 9. a. (1) Any person who believes that a violation of this act
8 has been or is being made shall notify the **【division】** bureau and the
9 Office of the Insurance Fraud Prosecutor immediately after
10 discovery of the alleged violation of this act and shall send to the
11 **【division】** bureau and office, on a form and in a manner jointly
12 prescribed by the commissioner and the Insurance Fraud
13 Prosecutor, the information requested and such additional
14 information relative to the alleged violation as the **【division】**
15 bureau or office may require. The **【division】** bureau and the office
16 shall jointly review the reports and select those alleged violations as
17 may require further investigation by the office for possible criminal
18 prosecution, and those that may warrant investigation and possible
19 civil action or enforcement proceeding by the bureau in lieu of or in
20 addition to criminal prosecution. The Insurance Fraud Prosecutor
21 and the assistant commissioner shall meet monthly to ensure that
22 reports are handled in an expedited fashion. 【It shall then cause an
23 independent examination or evaluation of the facts surrounding the
24 alleged violation to be made to determine the extent, if any, to
25 which fraud, deceit, or intentional misrepresentation of any kind
26 exists.】

27 (2) Whenever the Bureau of Fraud Deterrence or any employee
28 of the bureau obtains information or evidence of a reasonable
29 possibility of criminal wrongdoing not previously known or
30 disclosed to the Office of the Insurance Fraud Prosecutor, the
31 bureau shall immediately refer that information or evidence to that
32 office. In determining whether a referral to the office is appropriate,
33 the bureau shall utilize appropriate levels of internal review, which
34 shall include but not be limited to approval at the assistant
35 commissioner level. Upon referral, the bureau shall provide the
36 office with all documents related to the referral consistent with
37 section 39 of P.L.1998, c.21 (C.17:33A-23).

38 b. No person shall be subject to civil liability for libel,
39 violation of privacy or otherwise by virtue of the filing of reports or
40 furnishing of other information, in good faith and without malice,
41 required by this section or required by the **【division】** bureau or the
42 Office of the Insurance Fraud Prosecutor as a result of the authority
43 conferred upon it by law.

44 c. The commissioner may, by regulation, require insurance
45 companies licensed to do business in this State to keep such records
46 and other information as he deems necessary for the effective

1 enforcement of this act.
2 (cf: P.L.1991, c.331, s.6)

3
4 5. Section 10 of P.L.1983, c.320 (C.17:33A-10) is amended to
5 read as follows.

6 10. a. If the **【division】 bureau** has reason to believe that a
7 person has engaged in, or is engaging in, an act or practice which
8 violates this act, or any other relevant statute or regulation, the
9 commissioner or his designee, after consulting with the Insurance
10 Fraud Prosecutor or his designee, may administer oaths and
11 affirmations, request or compel the attendance of witnesses or the
12 production of documents. The commissioner, after consulting with
13 the Insurance Fraud Prosecutor or his designee, may issue, or
14 designate another to issue, subpoenas to compel the attendance of
15 witnesses and the production of books, records, accounts, papers
16 and documents. Witnesses who are not licensees of the Department
17 of Banking and Insurance shall be entitled to receive the same fees
18 and mileage as persons summoned to testify in the courts of the
19 State.

20 If a person subpoenaed pursuant to this section shall neglect or
21 refuse to obey the command of the subpoena, a judge of the Superior
22 Court may, on proof by affidavit of service of the subpoena, of
23 payment or tender of the fees required and of refusal or neglect by
24 the person to obey the command of the subpoena, issue a warrant for
25 the arrest of said person to bring him before the judge, who is
26 authorized to proceed against the person as for a contempt of court.

27 b. If matter that the **【division】 bureau or Office of the**
28 Insurance Fraud Prosecutor seeks to obtain by request is located
29 outside the State, the person so required may make it available to
30 the **【division】 bureau or office, as the case may be,** or its
31 representative to examine the matter at the place where it is located.
32 The **【division】 bureau or office** may designate representatives,
33 including officials of the state in which the matter is located, to
34 inspect the matter on its behalf, and it may respond to similar
35 requests from officials of other states.

36 c. If (1) a practitioner, (2) an owner, administrator or employee
37 of any hospital, (3) an insurance company, agent, broker, solicitor
38 or adjuster, or (4) any other person licensed by a licensing authority
39 of this State, or an agent, representative or employee of any of them
40 is found to have violated any provision of this act, the
41 commissioner or the Attorney General shall notify the appropriate
42 licensing authority of the violation so that the licensing authority
43 may take appropriate administrative action. The licensing authority
44 shall report quarterly to the commissioner through the **【Division of**
45 **Insurance Fraud Prevention】 Bureau of Fraud Deterrence** about the
46 status of all pending referrals.

47 (cf: P.L.1997, c.151, s.6)

1 6. Section 46 of P.L.1998, c.21 (C.17:33A-30) is amended to
2 read as follows:

3 46. The Attorney General shall annually, on or before October 1,
4 certify to the **【State Treasurer】** Commissioner of Banking and
5 Insurance an amount allocable to the expenses of the Office of the
6 Insurance Fraud Prosecutor for the preceding fiscal year, which
7 amount shall be transferred to the Department of Law and Public
8 Safety by the **【State Treasurer】** Commissioner of Banking and
9 Insurance from the amounts assessed and collected **【for the**
10 operation of the Division of Insurance Fraud Prevention in the
11 Department of Banking and Insurance**】** pursuant to section 8 of
12 P.L.1983, c.320 (C.17:33A-8).
13 (cf: P.L.1998, c.21, s.46)

14

15 7. Section 1 of P.L.2005, c.82 (C.45:11-24.10) is amended to
16 read as follows:

17 1. a. The New Jersey Board of Nursing shall establish an
18 Alternative to Discipline Program for board licensees who are
19 suffering from a chemical dependency or other impairment.

20 The program shall permit these licensees to disclose their
21 dependency or impairment status to an intervention program
22 designated by the board, which shall provide confidential oversight
23 of the licensee during the period that the licensee seeks treatment
24 for, and follows a plan for recovery from, the dependency or
25 impairment.

26 b. The board shall designate at least one intervention program
27 to provide services under this act and shall delineate, in a formal
28 agreement, the responsibilities of the intervention program and its
29 relationship to the board.

30 c. The board shall establish a five-member Alternative to
31 Discipline Committee to review matters involving licensees
32 suffering from chemical dependencies or other impairments.

33 (1) The committee shall be comprised of two members of the
34 board who are appointed by the president of the board, at least one
35 of whom is a registered professional nurse; two registered
36 professional nurses with expertise in addiction recommended by the
37 New Jersey State Nurses Association who represent a designated
38 intervention program; and one individual designated by the
39 Commissioner of Health and Senior Services.

40 (2) The committee shall meet on a regular basis. The executive
41 director of the board and the director of the designated intervention
42 program shall serve as staff to the committee and shall be available
43 to assist the committee at its meetings.

44 (3) The committee shall perform the following duties, as well as
45 such others as the board may require:

46 (a) accept from licensees, and from other members of the
47 public, reports, which include the individual's identity, concerning

- 1 licensees who may be suffering from chemical dependencies or
2 other impairments;
- 3 (b) accept referrals, which include the individual's identity, from
4 the board;
- 5 (c) accept coded summary reports from the designated
6 intervention program, without any information from which the
7 licensee's identity can be discerned;
- 8 (d) promptly review each referral to determine if participation in
9 the program is appropriate, giving due consideration to factors for
10 participation, as specified by regulation of the board;
- 11 (e) accept confidential reports from the intervention program
12 regarding participating licensees and ensure that the identity of the
13 licensee is maintained in a limited-access file of the committee with
14 disclosure provided only to those persons whom the committee
15 determines have a need to know the licensee's identity;
- 16 (f) require the program to conduct such supplemental inquiry
17 concerning a licensee as may be directed by the committee, and
18 authorize the program to request, through the committee, that
19 further investigation be conducted by committee staff, investigative
20 personnel or the Attorney General, as appropriate;
- 21 (g) require the program to immediately disclose to the
22 committee the identity of a participating licensee in the event of
23 noncompliance by the licensee with the conditions for participation
24 or any other change in circumstances that may render the licensee
25 inappropriate for participation in the program, as specified by
26 regulation of the board; and
- 27 (h) transmit such reports as required by the board.
- 28 d. The executive director of the board shall advise the
29 committee of any information concerning a concurrent investigation
30 or consumer complaints, as may be necessary to enable the
31 committee to assess whether participation of a licensee in the
32 program is appropriate.
- 33 e. Upon receipt of disclosure of the identity of a participating
34 licensee pursuant to subparagraph (g) of paragraph (3) of subsection
35 c. of this section, the committee shall notify the board of the
36 identity of the licensee.
- 37 f. Any information concerning the conduct of a licensee
38 provided to the board pursuant to this act, is confidential and shall
39 not be considered a public or government record under P.L.1963,
40 c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.),
41 pending final disposition of the inquiry or investigation by the
42 board, except for information required to be shared with the
43 **【Division】 Bureau of 【Insurance】 Fraud 【Prevention】 Deterrence**
44 **in the Department of Banking and Insurance and the Office of the**
45 **Insurance Fraud Prosecutor in the Department of Law and Public**
46 **Safety** to comply with the provisions of section 9 of P.L.1983, c.320
47 (C.17:33A-9) or with any other law enforcement agency.

1 If the result of the inquiry or investigation is a finding of no
2 basis for disciplinary action by the board, the information shall
3 remain confidential and shall not be considered a public or
4 government record under P.L.1963, c.73 (C.47:1A-1 et seq.) and
5 P.L.2001, c.404 (C.47:1A-5 et al.), except that the board may
6 release the information to a government agency, for good cause
7 shown, upon an order of the Superior Court after notice to the
8 licensee who is the subject of the information and an opportunity to
9 be heard. The application for the court order shall be placed under
10 seal.

11 g. A licensee who files a report with the committee pursuant to
12 subparagraph (a) of paragraph (3) of subsection c. of this section,
13 shall be deemed to have discharged his duty to report an impairment
14 to the board or division pursuant to regulation or law.

15 h. As used in this section:

16 "Chemical dependency" means a condition involving the
17 continued misuse of chemical substances.

18 "Chemical substances" is to be construed to include alcohol,
19 drugs or medications, including those taken pursuant to a valid
20 prescription for legitimate medical purposes and in accordance with
21 the prescriber's direction, as well as those used illegally.

22 "Impairment" means an inability to function at an acceptable
23 level of competency, or an incapacity to continue to practice with
24 the requisite skill, safety and judgment, as a result of alcohol or
25 chemical dependency, a psychiatric or emotional disorder, senility
26 or a disabling physical disorder.

27 "Licensee" means a registered professional nurse, licensed
28 practical nurse or other professional subject to regulation by the
29 board.

30 (cf: P.L.2005, c.82, s.1)

31

32 8. This act shall take effect immediately. General
33 implementation shall be completed no later than 45 days following
34 enactment.

35

36

37

STATEMENT

38

39 The Governor's proposed FY 2011 budget recommends the
40 enactment of legislation, consistent with a recommendation
41 included in the Department of Banking and Insurance Transition
42 Report, to modify the structure of the Office of Insurance Fraud
43 Prosecutor in order to enhance the effectiveness, responsiveness,
44 and cost-efficiency of that office. This bill is consistent with the
45 administration's goal of enhancing the State's response to fraud
46 committed against the public at large, including fraud involving
47 public resources.

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1 Under the bill, a new Bureau of Fraud Deterrence in the
2 Department of Banking and Insurance will be responsible for
3 enforcing civil violations of the "New Jersey Insurance Fraud
4 Prevention Act," which violations are punishable by the imposition
5 of significant penalties. The bill creates the bureau by renaming the
6 Division of Insurance Fraud Prevention, which was assigned to the
7 Department of Banking and Insurance when it was established by
8 statute, but had been transferred to the Department of Law and
9 Public Safety by Reorganization Plan No. 007-1998. The bureau
10 will work closely with the Department of Law and Public Safety to
11 coordinate civil and criminal investigations and prosecutions.