

ASSEMBLY, No. 1592

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1996

By Assemblyman DALTON

1 AN ACT concerning the protection of insurance consumers,  
2 establishing the Office of Insurance Consumer Advocate, amending  
3 P.L.1944, c.27, P.L.1988, c.156 and P.L.1994, c.58, supplementing  
4 Title 17 of the Revised Statutes and providing an appropriation  
5 therefor.

6

7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9

10 1. (New section) The Legislature hereby finds that since the  
11 abolition of the Department of the Public Advocate and the position  
12 of Public Advocate in 1994, consumers in this State have not had an  
13 advocate on their behalf with regard to rate increases sought by  
14 insurance companies doing business in this State or the availability of  
15 affordable insurance coverages; that recent attempts by insurers to  
16 raise their rates in the area of Medicare supplemental (Medigap)  
17 insurance would adversely affect the senior citizens of the State; that  
18 New Jersey once again leads the nation in the cost of automobile  
19 insurance; that the availability and cost of homeowner's insurance in  
20 the urban and coastal areas of the State continues to be a problem not  
21 sufficiently addressed by the Department of Insurance; and that lack  
22 of availability of automobile insurance in the inner cities and urban  
23 areas of the State due to the failure of insurers to recruit aggressively  
24 insureds in those markets results in many uninsured drivers on New  
25 Jersey's roads and highways.

26 The Legislature, therefore, declares that it is the public policy of  
27 this State to secure adequate representation for the insurance-buying  
28 consumer; and to this end there should be established as an agency of  
29 State Government the Office of Insurance Consumer Advocate, to  
30 receive, investigate and resolve complaints concerning insurance  
31 industry practices which directly impact the consumers of this State  
32 and to represent and protect insurance buying consumers in  
33 proceedings before and appeals from the Department of Insurance,  
34 which is charged with the regulation of the insurance industry.

**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       2. (New section) There is hereby established in the Executive  
2 Branch of the State Government the Office of the Insurance Consumer  
3 Advocate. For the purposes of complying with the provisions of  
4 Article V, Section IV, paragraph 1 of the New Jersey Constitution, the  
5 Office of the Insurance Consumer Advocate is allocated to the  
6 Division of Consumer Affairs in the Department of Law and Public  
7 Safety, but, notwithstanding this allocation, the office shall be  
8 independent of any supervision or control by the division or the  
9 department or by any board or officer thereof.

10  
11       3. (New section) The administrator and chief executive officer of  
12 the office shall be the Insurance Consumer Advocate or advocate, who  
13 shall be a person qualified by training and experience to perform the  
14 duties of the office. The advocate shall be appointed by the Governor,  
15 with the advice and consent of the Senate, and shall serve at the  
16 pleasure of the Governor during the Governor's term of office and  
17 until the appointment and qualification of the advocate's successor.  
18 The advocate shall devote his entire time to the duties of the position  
19 and shall receive a salary as shall be provided by law. Any vacancy  
20 occurring in the position of advocate shall be filled in the same manner  
21 as the original appointment; provided, however, that whenever the  
22 advocate resigns, becomes ineligible to serve for any reason, or is  
23 removed from office, the Governor shall appoint an acting advocate  
24 who shall serve until the appointment and qualification of the  
25 advocate's successor, but in no event longer than six months from the  
26 occurrence of the vacancy, and who shall exercise during that period  
27 all the powers and duties of the advocate pursuant to the provisions of  
28 this act.

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30       4. (New section) The advocate, as administrator and chief  
31 executive officer of the office, shall:

32       a. Administer and organize the work of the office and establish  
33 therein such administrative subdivisions as may be necessary, proper  
34 and expedient. The advocate may formulate and adopt rules and  
35 regulations and prescribe duties for the efficient conduct of the  
36 business, work and general administration of the office;

37       b. Appoint and remove officers, investigators, stenographic and  
38 clerical assistants and other personnel as may be required for the  
39 conduct of the office, subject to the provisions of Title 11A (Civil  
40 Service) of the New Jersey Statutes, and other applicable statutes, and  
41 within the limits of funds appropriated or otherwise made available  
42 therefor;

43       c. Prepare schedules of rates to be paid for services rendered other  
44 than by staff, taking into account the nature of the services, the time  
45 involved, the skill and experience required and other pertinent factors;

46       d. Institute or cause to be instituted legal proceedings or processes

1 consistent with the Rules Governing the Courts of the State of New  
2 Jersey and the practice of law therein as may be necessary properly to  
3 enforce and give effect to any of the advocate's powers or duties;

4 e. Have authority to promulgate and adopt, pursuant to the  
5 "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et  
6 seq.), rules and regulations as necessary to carry out the purposes of  
7 this act.

8  
9 5. (New section) a. The advocate shall represent and protect the  
10 insurance consumers of this State in proceedings before and appeals  
11 from decisions of the Department of Insurance, which is charged with  
12 the regulation of the insurance industry, including the fixing of  
13 insurance rates. The advocate may initiate any such proceedings when  
14 the advocate determines that a discontinuance or change in a rate is in  
15 the public interest of the insurance consumers of this State. For  
16 purposes of this act, "public interest" means an interest or right arising  
17 from the Constitution, decisions of court, common law or other laws  
18 of the United States or of this State inhering in the citizens of this  
19 State or in a broad class of citizens.

20 b. Whenever the advocate represents the public interest, in a  
21 proceeding initiated by an insurance company or nonprofit service plan  
22 subject to Title 17 of the Revised Statutes or Title 17B of the New  
23 Jersey Statutes, for authority to increase or change the charges for  
24 insurance, the advocate shall send each insurer, nonprofit service plan  
25 or rating organization involved in that proceeding a statement of the  
26 compensation and expenses of counsel, experts and assistants  
27 employed by the office in the proceeding, together with an appropriate  
28 allocation to that insurance company, nonprofit service plan or rating  
29 organization of its fair share thereof.

30  
31 6. Section 14 of P.L.1944, c.27 (C.17:29A-14) is amended to read  
32 as follows:

33 14. a. With regard to all property and casualty lines, a filer may,  
34 from time to time, alter, supplement, or amend its rates, rating  
35 systems, or any part thereof, by filing with the commissioner copies of  
36 such alterations, supplements, or amendments, together with a  
37 statement of the reason or reasons for such alteration, supplement, or  
38 amendment, in a manner and with such information as may be required  
39 by the commissioner. If such alteration, supplement, or amendment  
40 shall have the effect of increasing or decreasing rates, the  
41 commissioner shall determine whether the rates as altered thereby are  
42 reasonable, adequate, and not unfairly discriminatory. If the  
43 commissioner shall determine that the rates as so altered are not  
44 unreasonably high, or inadequate, or unfairly discriminatory, he shall  
45 make an order approving them. If he shall find that the rates as altered  
46 are unreasonable, inadequate, or unfairly discriminatory, he shall issue

- 1 an order disapproving such alteration, supplement or amendment.
- 2 b. (Deleted by amendment, P.L.1984, c.1.)
- 3 c. If an insurer or rating organization files a proposed alteration,  
4 supplement or amendment to its rating system, or any part thereof,  
5 which would result in a change in rates, the commissioner may, or  
6 upon the request of the filer or the [appropriate division or office in  
7 the Department of Insurance] Office of the Insurance Consumer  
8 Advocate, established by P.L. , c. (C. ) (now before the  
9 Legislature as this bill) shall, certify the matter for a hearing. The  
10 hearing shall, at the commissioner's discretion, be conducted by  
11 himself, by a person appointed by the commissioner pursuant to  
12 section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of  
13 Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.),  
14 as a contested case. The following requirements shall apply to the  
15 hearing:
- 16 (1) The hearing shall commence within 30 days of the date of the  
17 request or decision that a hearing is to be held. The hearing shall be  
18 held on consecutive working days, except that the commissioner may,  
19 for good cause, waive the consecutive working day requirement. If  
20 the hearing is conducted by an administrative law judge, the  
21 administrative law judge shall submit his findings and  
22 recommendations to the commissioner within 30 days of the close of  
23 the hearing. The commissioner may, for good cause, extend the time  
24 within which the administrative law judge shall submit his findings and  
25 recommendations by not more than 30 days. A decision shall be  
26 rendered by the commissioner not later than 60 days, or, if he has  
27 granted a 30 day extension, not later than 90 days, from the close of  
28 the hearing. A filing shall be deemed to be approved unless rejected  
29 or modified by the commissioner within the time period provided  
30 herein.
- 31 (2) The commissioner, or the Director of the Office of  
32 Administrative Law, as appropriate, shall notify all interested parties,  
33 including the [appropriate division or office in the Department of  
34 Insurance] Office of the Insurance Consumer Advocate on behalf of  
35 insurance consumers, of the date set for commencement of the  
36 hearing, on the date of the filing of the request for a hearing, or within  
37 10 days of the decision that a hearing is to be held.
- 38 (3) The insurer or rating organization making a filing on which a  
39 hearing is held shall bear the costs of the hearing.
- 40 (4) The commissioner may promulgate rules and regulations (a) to  
41 establish standards for the submission of proposed filings,  
42 amendments, additions, deletions and alterations to the rating system  
43 of filers, which may include forms to be submitted by each filer; and  
44 (b) making such other provisions as he deems necessary for effective  
45 implementation of this act.
- 46 d. (Deleted by amendment, P.L.1984, c.1.)

1 e. In order to meet, as closely as possible, the deadlines in section  
2 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of  
3 available optional automobile insurance coverages pursuant to section  
4 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70  
5 (C.39:6A-8), and to implement these coverages, the commissioner may  
6 require the use of rates, fixed by him in advance of any hearing, for  
7 deductible, exclusion, setoff and tort limitation options, on an interim  
8 basis, subject to a hearing and to a provision for subsequent  
9 adjustment of the rates, by means of a debit, credit or refund  
10 retroactive to the effective date of the interim rates. The public hearing  
11 on initial rates applicable to the coverages available under section 13  
12 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70  
13 (C.39:6A-8) shall not be limited by the provisions of subsection c. of  
14 this section governing changes in previously approved rates or rating  
15 systems.

16 (cf: P.L. 1994, c.58, s.43)

17

18 7. Section 5 of P.L. 1988, c.156 (C.17:29A-44) is amended to read  
19 as follows:

20 5. a. A filer may charge rates for private passenger automobile  
21 insurance in the voluntary or residual market which are not in excess  
22 of the following:

23 (1) For private passenger automobile personal injury protection  
24 coverage, residual bodily injury and property damage insurance, the  
25 maximum permissible annual rate increase applicable to each rate level  
26 utilized by an insurer in the voluntary market pursuant to section 6 of  
27 P.L.1988, c.156 (C.17:29A-45) or by any plan established pursuant to  
28 section 1 of P.L.1970, c.215 (C.17:29D-1) to provide insurance for  
29 automobiles, as defined in section 2 of P.L.1972, c.70 (C.39:6A-2),  
30 shall be a Statewide average rate change of not more than the last  
31 published increase in the medical care services components of the  
32 national Consumer Price Index, all urban consumers, U.S. city  
33 average, plus three percentage points.

34 (2) For private passenger automobile physical damage coverage,  
35 the maximum permissible annual rate increase applicable to each rate  
36 level utilized by an insurer in the voluntary market pursuant to section  
37 6 of P.L.1988, c.156 (C.17:29A-45) or by any plan established  
38 pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1) to provide  
39 insurance for automobiles, as defined in section 2 of P.L.1972, c.70  
40 (C.39:6A-2), shall be a Statewide average rate change of not more  
41 than the last published increase in the automobile maintenance and  
42 repair components of the national Consumer Price Index, U.S. city  
43 average, plus three percentage points.

44 b. For the purposes of this section, "Statewide average rate  
45 change" means the total Statewide premium for all coverages

1 combined at the rates in effect at the time of the filing for each rate  
2 level.

3 c. Any change in excess of the rate changes permitted by  
4 paragraphs (1) and (2) of subsection a. shall be subject to the  
5 provisions of P.L.1944, c.27 (C.17:29A-1 et seq.).

6 d. If, at any time, the commissioner believes that an increase in  
7 either or both of the published indices will produce rate levels which  
8 are excessive, he may modify the Statewide average rate change which  
9 may be used pursuant to this section.

10 e. A filer may implement a change in rate level, pursuant to  
11 subsection a. of this section, in whole or in part, in a single or in  
12 multiple filings by making an informational filing with the  
13 commissioner in a manner and form approved by the commissioner.  
14 The filing shall include a statement of the reason or reasons for the  
15 change in rate level, including, but not limited to, the claim and  
16 expense experience of the individual filer.

17 f. Other than filings made pursuant to subsection c. of this section,  
18 the provisions of subsection c. of section 14 of P.L.1944, c.27  
19 (C.17:29A-14) shall not apply to any filing made pursuant to this  
20 section. However, the commissioner shall provide a copy of any filing  
21 made or other information provided by a filer pursuant to the  
22 provisions of this section to the [appropriate division or office in the  
23 Department of Insurance] Office of the Insurance Consumer Advocate,  
24 established by P.L. , c. (C. ) (now before the Legislature as  
25 this bill). The [appropriate division or office in the Department of  
26 Insurance] insurance consumer advocate may challenge a rate change  
27 implemented pursuant to subsection a. of this section after the  
28 effective date of the rate change by filing such challenge in writing  
29 with the commissioner within 30 days of the effective date of the rate  
30 change. The commissioner shall hear the matter on an expedited basis  
31 and shall render a final determination within six months of the date of  
32 filing. The commissioner may, for good cause, extend this six-month  
33 period up to an additional three months. If [that division or office in  
34 the Department of Insurance] the insurance consumer advocate  
35 prevails, the commissioner shall reduce or rescind the rate change as  
36 appropriate. If the commissioner reduces or rescinds a rate change as  
37 a result of a challenge by the [appropriate division or office in the  
38 Department of Insurance] insurance consumer advocate filed pursuant  
39 to the provisions of this subsection, the filer shall bear the cost of the  
40 reasonable expenses incurred by [that division or office in the  
41 Department of Insurance] the insurance consumer advocate in  
42 maintaining the challenge.

43 g. (Deleted by amendment, P.L.1995, c.151.)  
44 (cf: P.L. 1995, c.151, s.2)

1       8. Section 13 of P.L. 1994, c.58 (C.52:27E-60) is amended to read  
2 as follows:

3       13. [a.] Those functions of the [Division of Rate Counsel in the  
4 Department of the Public Advocate] Department of Insurance related  
5 to matters pending before the Commissioner of Insurance, including  
6 representation in any pending insurance rate cases and the power to  
7 levy assessments solely for the costs of experts to analyze rate  
8 applications and to appear as witnesses at hearings, are transferred to  
9 and assumed by the [Department of Insurance, which shall be  
10 represented in any rate litigation by the Attorney General] Office of  
11 the Insurance Consumer Advocate, established by P.L. \_\_\_\_\_, c.  
12 (C. \_\_\_\_\_) (now before the Legislature as this bill.

13       b. Whenever, in any law, rule, regulation, order, reorganization  
14 plan, contract, document, judicial or administrative proceeding or  
15 otherwise, reference is made to the Division of Rate Counsel in the  
16 Department of the Public Advocate or the officers thereof, with  
17 respect to insurance rate cases, the same shall mean and refer to the  
18 [Department of Insurance] Office of the Insurance Consumer  
19 Advocate.

20 (cf: P.L.1994, c.58, s.13)

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22       9. There is appropriated to the Office of Insurance Consumer  
23 Advocate the sum of \$200,000.

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25       10. This act shall take effect immediately.

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#### STATEMENT

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30       This bill establishes the Office of Insurance Consumer Advocate to  
31 protect the public interest of the insurance consumers of this State  
32 with regard to the availability and cost of insurance and reestablishes  
33 certain functions which had previously been performed on behalf of the  
34 public by the Public Advocate. The Department of the Public  
35 Advocate was abolished in 1994.

36       In response to the perceived need for an independent advocate to  
37 act on behalf of insurance consumers, this bill provides for the  
38 appointment of an insurance consumer advocate. The advocate would  
39 be responsible for representing and protecting the insurance consumers  
40 of this State in proceedings before and appeals from the Department  
41 of Insurance, which is charged with the regulation of the insurance  
42 industry, including the fixing of insurance rates. In addition, the bill  
43 provides that costs be borne by the insurer whenever the advocate  
44 represents the public interest in a proceeding initiated by an insurance  
45 company or nonprofit service plan subject to Title 17 of the Revised  
46 Statutes or Title 17B of the New Jersey Statutes for authority to

1 increase or change their insurance rates.

2 The bill includes an appropriation of \$200,000 for the establishment  
3 of the Office of Insurance Consumer Advocate.

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8 Establishes Office of Insurance Consumer Advocate; appropriates  
9 \$200,000.