

SENATE, No. 885

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1996

By Senator SINAGRA

1 AN ACT concerning financial institutions and certain insurance
2 producers and amending P.L.1987, c.293, P.L.1985, c.179 and
3 P.L.1947, c.379.

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

7
8 1. Section 2 of P.L.1987, c.293 (C.17:22A-2) is amended to read
9 as follows:

10 2. As used in this act:

11 a. "Applicant" means a person who has applied for, or who intends
12 to apply for, a license in accordance with this act.

13 b. "Commissioner" means the Commissioner of Insurance.

14 c. "Days" means calendar days.

15 d. "Department" means the Department of Insurance.

16 e. "Insurance," "insurance policy" or "insurance contract" includes
17 contracts or policies of life insurance, health insurance, annuities,
18 indemnity, property and casualty, fidelity, surety, guaranty and title
19 insurance.

20 f. "Insurance agent" means a person authorized, in writing, by any
21 insurance company to act as its agent to solicit, negotiate or effect
22 insurance contracts on its behalf or to collect insurance premiums and
23 who may be authorized to countersign insurance policies on its behalf.

24 g. "Insurance broker" means a person who, for a commission,
25 brokerage fee, or other consideration, acts or aids in any manner
26 concerning negotiation, solicitation or effectuation of insurance
27 contracts as the representative of an insured or prospective insured; or
28 a person who places insurance in an insurance company that he does
29 not represent as an agent.

30 h. "Insurance consultant" means a person who, for a fee,
31 commission or other consideration, acts or holds himself out to the
32 public or any licensee as offering any advice, counsel, opinion or
33 service with respect to the benefits, advantages or disadvantages under
34 any insurance policy or contract that is or could be issued in this State,

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

Matter underlined thus is new matter.

1 but shall not include bank trust officers, attorneys-at-law and certified
2 public accountants who negotiate contracts on behalf of others or
3 provide general financial counsel if no commission or brokerage fee is
4 paid for those services.

5 i. "Insurance company" includes any company that underwrites or
6 issues an insurance policy or contract including fraternal benefit
7 societies as defined in P.L.1959, c. 167 (C. 17:44A-1 et seq.) and risk
8 retention groups and purchasing groups as defined in 15 U.S.C. §
9 3901.

10 j. "Insurance producer" means any person engaged in the business
11 of an insurance agent, insurance broker or insurance consultant.

12 k. "License" means any license issued pursuant to the provisions of
13 this act or any act which is superseded by this act.

14 l. "Licensee" means any person holding an insurance producer
15 license issued pursuant to this act.

16 m. "Limited insurance representative" means a person who is
17 authorized to solicit, negotiate or effect contracts for a particular line
18 of insurance as an agent for an insurance company authorized to write
19 that line in this State which by the nature of the line of business and
20 the manner by which it is marketed to the public does not require the
21 professional competency demanded for an insurance producer license.

22 n. "Organization" means any corporation, partnership or other legal
23 entity.

24 o. "Person" means any individual, corporation, partnership or other
25 legal entity.

26 p. "State, other than this State," includes any other state, the
27 District of Columbia, the Commonwealth of Puerto Rico, any territory
28 of the United States and the Provinces of Canada.

29 q. "Customer information" means any and all information a
30 financial institution holds on its customers as a result of its lending and
31 other banking activities.

32 r. "Financial institution" means any state or federal banking
33 institution, bank holding company, credit union, savings and loan
34 association, finance company, mortgage loan company or any other
35 institution, association, partnership, company, corporation, individual
36 or individuals whose principal business is the lending of money or the
37 extension of credit.

38 (cf: P.L.1987, c.293, s.2)

39

40 2. Section 17 of P.L.1987, c.293 (C.17:22A-17) is amended to
41 read as follows:

42 17. a. The commissioner may refuse to issue or renew a license,
43 or may revoke or suspend a license if he finds after notice and an
44 opportunity for hearing in accordance with the "Administrative
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules
46 or regulations adopted thereunder, that the person has:

- 1 (1) Willfully violated any provision of the insurance laws of this
2 State;
- 3 (2) Intentionally withheld material information or made a material
4 misstatement in an application for a license;
- 5 (3) Obtained or attempted to obtain a license by fraud or
6 misrepresentation;
- 7 (4) Committed any fraudulent act;
- 8 (5) Misappropriated or converted to his own use, or has illegally
9 withheld, moneys which were received in the conduct of business and
10 belonged to insurers, policyholders or others;
- 11 (6) Used the license not for the purpose of engaging in the
12 insurance business with the general public, but primarily for the
13 purpose of soliciting or negotiating insurance contracts or policies
14 covering himself, members of his family, members or employees of any
15 organization of which he is an officer, or officers or employees of an
16 organization in which the licensee or members of his immediate family
17 own a controlling interest, or the property or interests of those
18 persons. A license shall be deemed to have been used principally for
19 this purpose if the commissioner finds that during any 12-month period
20 the aggregate commissions or other compensation accruing or to
21 accrue from that business have exceeded or will exceed the aggregate
22 commissions or other compensation accruing or to accrue on other
23 business written by the applicant or licensee during the same period;
- 24 (7) Materially misrepresented the terms or conditions of insurance
25 contracts or policies to any policyholder, insurance company,
26 insurance producer or member of the general public;
- 27 (8) Paid a rebate to any person or paid a commission, brokerage
28 fee or other compensation to a person who is not licensed as an
29 insurance producer in this State, or any state other than this State, for
30 services rendered as an insurance producer;
- 31 (9) Aided, abetted or assisted another person in violating any of the
32 insurance laws of this State;
- 33 (10) Has been convicted of a crime involving moral turpitude or any
34 crime reflecting on the insurance producer's fitness for licensure;
- 35 (11) Failed to file or maintain with the commissioner a complete
36 and accurate business and home mailing address or to immediately
37 notify the commissioner of any change in the business or home mailing
38 address;
- 39 (12) Failed to file and maintain with the commissioner the name or
40 names of licensed employers or employees or to immediately notify the
41 commissioner of a change of employer or of licensed employees in a
42 manner prescribed by rule or regulation of the commissioner;
- 43 (13) Failed to pay any fine imposed or restitution ordered by the
44 commissioner;
- 45 (14) Failed to appear in response to any subpoena issued by the
46 commissioner or his authorized designee; failed to produce any

1 documents or other material requested in such a subpoena; or refused
2 or failed to cooperate with an investigation by the commissioner of the
3 activities of the person or any other licensee;

4 (15) Failed to keep, maintain or make available for inspection by the
5 commissioner those records that the commissioner shall require to be
6 kept and maintained by rule or regulation;

7 (16) Failed to notify the commissioner within 30 days of his
8 conviction for any crime, indictment or the filing of any formal
9 criminal charges, or the suspension or revocation of any insurance
10 license or authority by a state, other than this State, or the initiation of
11 formal disciplinary proceedings in a state, other than this State,
12 affecting the producer's insurance license; or failed to supply any
13 documentation that the commissioner may request in connection
14 therewith;

15 (17) Failed at any time to possess cash and accounts receivable for
16 insurance premiums in an amount equal to or in excess of the accounts
17 payable by the licensee for insurance premiums. Those accounts
18 receivable shall not include insurance premiums owing the licensee
19 more than 120 days after the last day of the month during which the
20 insurance coverage became effective. As used in this section,
21 "insurance premiums" include unearned premiums or premiums to be
22 refunded to policyholders and both written and earned premiums
23 whether actually collected from policyholders or not. The filing,
24 within the preceding 10 years, of a petition in bankruptcy, a deed of
25 assignment for the benefit of creditors pursuant to N.J.S.2A:19-1 et
26 seq., or any similar filing acknowledging at the time of that filing that
27 the licensed insurance producer owed to one or more insurance
28 companies, insurance producers, policyholders, premium finance
29 companies or other persons any insurance premiums, including any
30 unearned or return premiums due policyholders in an aggregate
31 amount of \$5,000.00 or more, shall create a presumption that there
32 has been a violation of this subsection;

33 (18) Collected from an insured or prospective insured any fee or
34 other compensation other than a commission deductible from an
35 insurance premium, except when acting as an insurance broker or
36 insurance consultant and:

37 (a) The fee or other compensation is based upon a written
38 memorandum signed by the party to be charged, which memorandum
39 specifies or defines the amount of compensation; and

40 (b) The amount of the fee or other compensation bears a
41 reasonable relationship to the services rendered and is not
42 discriminatory.

43 (19) Failed willfully or repeatedly to comply with standards and
44 practices established pursuant to the plan of operation of any statutory
45 mechanism for providing insurance coverage in this State, including,
46 but not limited to, any automobile insurance plan operating pursuant

1 to P.L.1970, c.215 (C.17:29D-1) [, the New Jersey Automobile Full
2 Insurance Underwriting Association operating pursuant to P.L.1983,
3 c. 65 (C. 17:30E-1 et seq.)] and the New Jersey Insurance
4 Underwriting Association operating pursuant to P.L.1968, c.129
5 (C.17:37A-1 et seq.);

6 (20) Demonstrated unworthiness, lack of integrity, bad faith,
7 dishonesty, financial irresponsibility or incompetency to transact
8 business as an insurance producer.

9 (21) Solicited, negotiated or effected any policy of insurance
10 covering real or personal property when:

11 (a) Acting as:

12 (i) A financial institution licensed as an insurance producer or
13 registered as a limited insurance representative, or

14 (ii) A licensed insurance producer or limited insurance
15 representative employed, owned or controlled, directly or indirectly,
16 by a financial institution, and

17 (b) The real or personal property covered by the policy of insurance
18 was the subject matter of or security for, a loan or extension of credit
19 made by the financial institution or by any other financial institution
20 which was owned or controlled, directly or indirectly, by such financial
21 institution.

22 (22) Leased space or acquired customer information from a
23 financial institution, except when:

24 (a) The amount of rent payable to the financial institution was on
25 a square footage basis; and

26 (b) The rental space was separated from the financial institution's
27 retail area by a wall or other permanent partition having its own entry
28 and establishing separation and privacy from all other activities of the
29 financial institution; and

30 (c) The customer information consists only of the customer's name
31 and address and the customer has consented in writing to its release by
32 the financial institution.

33 b. In addition or as an alternative to any other penalty, the
34 commissioner may impose a fine of up to \$5,000.00 for the first
35 violation of any provision of this act, and not exceeding \$10,000.00
36 for each subsequent violation, and in appropriate circumstances may
37 order restitution of moneys owed any person and reimbursement of the
38 costs of investigation and prosecution.

39 No person whose license has been revoked shall be issued a license
40 unless the costs assessed pursuant to this subsection are paid.

41 c. The commissioner may promulgate rules or regulations
42 necessary to implement the provisions of this section.

43 (cf: P.L.1987, c.293, s.17)

44

45 3. Section 2 of P.L.1985, c.179 (C.17:23A-2) is amended to read
46 as follows:

- 1 2. Definitions. As used in this act:
- 2 a. "Adverse underwriting decision" means:
- 3 (1) Any of the following actions with respect to insurance
- 4 transactions involving insurance coverage which is individually
- 5 underwritten for an individual:
- 6 (a) A declination of insurance coverage,
- 7 (b) A termination of insurance coverage,
- 8 (c) Failure of an agent to apply for insurance coverage with a
- 9 specific insurance institution which the agent represents and which is
- 10 requested by an applicant,
- 11 (d) In the case of a property or casualty insurance coverage:
- 12 (i) Placement by an insurance institution or agent of a risk with a
- 13 residual market mechanism or an unauthorized insurer, or
- 14 (ii) The charging of a higher rate on the basis of information which
- 15 differs from that which the applicant or policyholder furnished,
- 16 (e) In the case of a life, health or disability insurance coverage, an
- 17 offer to insure at a higher rate than the insurance institution's table of
- 18 premium rates applicable to the age and class of risk of each person to
- 19 be covered under that coverage and to the type and amount of
- 20 insurance provided.
- 21 (2) Notwithstanding paragraph (1) above, the following actions, if
- 22 permitted by law, shall not be considered adverse underwriting
- 23 decisions but the insurance institution or agent responsible for their
- 24 occurrence shall nevertheless provide the applicant or policyholder
- 25 with the specific reason or reasons for their occurrence:
- 26 (a) The termination of an individual policy form on a class or
- 27 Statewide basis,
- 28 (b) A declination of insurance coverage solely because such
- 29 coverage is not available on a class or Statewide basis, or
- 30 (c) The rescission of a policy.
- 31 b. "Affiliate" or "affiliated" means a person that directly, or
- 32 indirectly through one or more intermediaries, controls, is controlled
- 33 by or is under common control with another person.
- 34 c. "Agent" means any person defined in [chapter 22 of Title 17 of
- 35 the Revised Statutes, chapter 22 of Title 17B of the New Jersey
- 36 Statutes] subsection f. of section 2 of P.L.1987, c.293 (C.17:22A-2)
- 37 and in R.S.17:35-23.
- 38 d. "Applicant" means a person who seeks to contract for insurance
- 39 coverage other than a person seeking group insurance that is not
- 40 individually underwritten.
- 41 e. "Commissioner" means the Commissioner of Insurance.
- 42 f. "Consumer report" means any written, oral or other
- 43 communication of information bearing on a natural person's
- 44 creditworthiness, credit standing, credit capacity, character, general
- 45 reputation, personal characteristics or mode of living which is used or
- 46 expected to be used in connection with an insurance transaction.

- 1 g. "Consumer reporting agency" means any person who:
- 2 (1) Regularly engages, in whole or in part, in the practice of
- 3 assembling or preparing consumer reports, for a monetary fee, and
- 4 (2) Obtains information primarily from sources other than
- 5 insurance institutions, and
- 6 (3) Furnishes consumer reports to other persons.
- 7 h. "Control," including the terms "controlled by" or "under
- 8 common control with," means the possession, direct or indirect, of the
- 9 power to direct or cause the direction of the management and policies
- 10 of a person, whether through the ownership of voting securities, by
- 11 contract other than a commercial contract of goods or nonmanagement
- 12 services, or otherwise, unless the power is the result of an official
- 13 position with or corporate office held by the person.
- 14 i. "Declination of insurance coverage" means a denial, in whole or
- 15 in part, by an insurance institution or agent of requested insurance
- 16 coverage.
- 17 j. "Individual" means any natural person who:
- 18 (1) In the case of property or casualty insurance, is a past, present
- 19 or proposed named insured or certificateholder;
- 20 (2) In the case of life, health or disability insurance, is a past,
- 21 present or proposed principal insured or certificateholder;
- 22 (3) Is a past, present or proposed policyowner;
- 23 (4) Is a past or present applicant; or
- 24 (5) Is a past or present claimant; or
- 25 (6) Derived, derives or is proposed to derive insurance coverage
- 26 under an insurance policy or certificate subject to this act.
- 27 k. "Institutional source" means any person or governmental entity
- 28 that provides information about an individual to an agent, insurance
- 29 institution or insurance support organization, other than:
- 30 (1) An agent,
- 31 (2) The individual who is the subject of the information, or
- 32 (3) A natural person acting in a personal capacity rather than in a
- 33 business or professional capacity.
- 34 l. "Insurance institution" means any corporation, association,
- 35 partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal
- 36 benefit society or other person engaged in the business of insurance,
- 37 including health maintenance organizations, medical service
- 38 corporations, hospital service corporations, health service
- 39 corporations, dental service corporations [,] and automobile insurance
- 40 plans [and the New Jersey Automobile Full Insurance Underwriting
- 41 Association] as defined in section 2 of P.L.1973, c.337 (C.26:2J-2),
- 42 section 1 of P.L.1940, c.74 (C.17:48A-1), [section 1 of P.L.1960, c.1
- 43 (C.17:48B-1)] section 1 of P.L.1938, c.366 (C.17:48-1), section 1 of
- 44 P.L.1985, c.236 (C.17:48E-1), section 2 of P.L.1968, c.305
- 45 (C.17:48C-2) [,] and P.L.1970, c.215 (C.17:29D-1 [et seq.]) [and
- 46 P.L.1983, c.65 (C.17:29A-33 et al.)], respectively. "Insurance

1 institution" shall not include agents or insurance-support
2 organizations.

3 m. "Insurance-support organization" means:

4 (1) Any person who regularly engages, in whole or in part, in the
5 practice of assembling or collecting information about natural persons
6 for the primary purpose of providing the information to an insurance
7 institution or agent for insurance transactions, including:

8 (a) The furnishing of consumer reports or investigative consumer
9 reports to an insurance institution or agent for use in connection with
10 an insurance transaction, or

11 (b) The collection of personal information from insurance
12 institutions, agents or other insurance-support organizations for the
13 purpose of detecting or preventing fraud, material misrepresentation
14 or material nondisclosure in connection with insurance underwriting
15 or insurance claim activity.

16 (2) Notwithstanding paragraph (1) of this subsection, the following
17 persons shall not be considered "insurance-support organizations" for
18 the purposes of this act: agents, government institutions, insurance
19 institutions, medical-care institutions, medical professionals and rating
20 organizations as defined in section 1 of P.L.1944, c.27 (C.17:29A-1).

21 n. "Insurance transaction" means any transaction involving
22 insurance primarily for personal, family or household needs rather than
23 business or professional needs which entails:

24 (1) The determination of an individual's eligibility for an insurance
25 coverage, benefit or payment, or

26 (2) The servicing of an insurance application, policy, contract or
27 certificate.

28 o. "Investigative consumer report" means a consumer report or
29 portion thereof in which information about a natural person's
30 character, general reputation, personal characteristics or mode of
31 living is obtained through personal interviews with the person's
32 neighbors, friends, associates, acquaintances or others who may have
33 knowledge concerning those items of information.

34 p. "Medical-care institution" means a facility or institution that is
35 licensed to provide health care services to natural persons, including
36 but not limited to hospitals, skilled nursing facilities, nursing facilities,
37 home-health agencies, medical clinics, rehabilitation agencies, public
38 health agencies or health maintenance organizations.

39 q. "Medical professional" means any person providing health care
40 services to natural persons, including but not limited to a physician,
41 podiatrist, dentist, nurse, optometrist, chiropractor, physical therapist,
42 occupational therapist, pharmacist, psychologist, dietitian, psychiatric
43 social worker or speech therapist.

44 r. "Medical-record information" means personal information which:

45 (1) Relates to an individual's physical or mental condition, medical
46 history or medical treatment, and

1 (2) Is obtained from a medical professional or medical-care
2 institution, from the individual, or from the individual's spouse, parent
3 or legal guardian.

4 s. "Person" means any natural person, corporation, association,
5 partnership or other legal entity.

6 t. "Personal information" means any individually identifiable
7 information gathered in connection with an insurance transaction from
8 which judgments can be made about an individual's character, habits,
9 avocations, finances, occupation, general reputation, credit, health or
10 any other personal characteristics. "Personal information" includes an
11 individual's name and address and medical-record information but does
12 not include privileged information.

13 u. "Policyholder" means any person who:

14 (1) In the case of individual property or casualty insurance, is a
15 present named insured;

16 (2) In the case of individual life, health or disability insurance, is a
17 present policyowner; or

18 (3) In the case of group insurance which is individually
19 underwritten, is a present group certificateholder.

20 v. "Pretext interview" means an interview whereby a person, in an
21 attempt to obtain information about a natural person, performs one or
22 more of the following acts:

23 (1) Pretends to be someone he is not,

24 (2) Pretends to represent a person he is not in fact representing,

25 (3) Misrepresents the true purpose of the interview, or

26 (4) Refuses to identify himself upon request.

27 w. "Privileged information" means any individually identifiable
28 information that:

29 (1) Relates to a claim for insurance benefits or a civil or criminal
30 proceeding involving an individual, and

31 (2) Is collected in connection with or in reasonable anticipation of
32 a claim for insurance benefits or civil or criminal proceeding involving
33 an individual; except that information otherwise meeting the
34 requirements of this subsection shall nevertheless be considered
35 personal information under this act if it is disclosed in violation of
36 section 13 of this act.

37 x. "Residual market mechanism" means any insurance pooling
38 mechanism, joint underwriting association, or reinsurance facility
39 created pursuant to law or regulation which provides insurance
40 coverage for any risk that is not insurable in the voluntary market.

41 y. "Termination of insurance coverage" or "termination of an
42 insurance policy" means either a cancellation or nonrenewal of an
43 insurance policy, in whole or in part, for any reason other than the
44 failure to pay a premium as required by the policy.

45 z. "Unauthorized insurer" means an insurance institution that has
46 not been granted a certificate of authority by the commissioner to

1 transact the business of insurance in this State.

2 aa. "Customer information" means any and all information a
3 financial institution holds on its customers as a result of its lending and
4 other banking activities.

5 bb. "Financial institution" means any state or federal banking
6 institution, bank holding company, credit union, savings and loan
7 association, finance company, mortgage loan company, individual or
8 individuals whose principal business is the lending of money or the
9 extension of credit.

10 (cf: P.L.1985, c.179, s.2)

11

12 4. Section 13 of P.L.1985, c.179 (C.17:23A-13) is amended to
13 read as follows:

14 13. Disclosure limitations and conditions. An insurance institution,
15 agent or insurance-support organization shall not disclose any personal
16 [or] , privileged or customer information about an individual collected
17 or received in connection with an insurance transaction unless the
18 disclosure is:

19 a. With the written authorization of the individual, provided:

20 (1) If the authorization is submitted by another insurance
21 institution, agent or insurance-support organization, the authorization
22 meets the requirements of section 6 of this act, or

23 (2) If the authorization is submitted by a person other than an
24 insurance institution, agent or insurance-support organization, the
25 authorization is:

26 (a) Dated,

27 (b) Signed by the individual, and

28 (c) Obtained one year or less prior to the date a disclosure is
29 sought pursuant to this subsection, or

30 (3) If the authorization is for the disclosure of customer
31 information, it is:

32 (a) Only for the customer's name and address, and

33 (b) Submitted only by the individual himself;

34 b. To a person other than an insurance institution, agent or
35 insurance-support organization, provided the disclosure is reasonably
36 necessary:

37 (1) To enable the person to perform a business, professional or
38 insurance function for the disclosing insurance institution, agent or
39 insurance-support organization, and the person agrees not to disclose
40 the information further without the individual's written authorization
41 unless the further disclosure:

42 (a) Would otherwise be permitted by this section if made by an
43 insurance institution, agent or insurance-support organization, or

44 (b) Is reasonably necessary for the person to perform its function
45 for the disclosing insurance institution, agent or insurance-support
46 organization; or

- 1 (2) To enable the person to provide information to the disclosing
2 insurance institution, agent or insurance-support organization for the
3 purpose of:
- 4 (a) Determining an individual's eligibility for an insurance benefit
5 or payment, or
- 6 (b) Detecting or preventing criminal activity, fraud, material
7 misrepresentation or material nondisclosure in connection with an
8 insurance transaction;
- 9 c. To an insurance institution, agent, insurance-support
10 organization or self-insurer, if the information disclosed is limited to
11 that which is reasonably necessary:
- 12 (1) To detect or prevent criminal activity, fraud, material
13 misrepresentation or material nondisclosure in connection with
14 insurance transactions, or
- 15 (2) For either the disclosing or receiving insurance institution,
16 agent or insurance-support organization to perform its functions in
17 connection with an insurance transaction involving the individual and
18 neither the disclosing or receiving insurance institution, agent or
19 insurance-support organization is a financial institution or employed,
20 owned or controlled, directly or indirectly, by a financial institution;
- 21 d. To a medical-care institution or medical professional for the
22 purpose of:
- 23 (1) Verifying insurance coverage or benefits;
- 24 (2) Informing an individual of a medical problem of which the
25 individual may not be aware; or
- 26 (3) Conducting an operations or services audit, provided only that
27 information is disclosed as is reasonably necessary to accomplish the
28 foregoing purposes; or
- 29 e. To an insurance regulatory authority; or
- 30 f. To a law enforcement or other governmental authority:
- 31 (1) To protect the interests of the insurance institution, agent or
32 insurance-support organization in preventing or prosecuting the
33 perpetration of fraud upon it, or
- 34 (2) If the insurance institution, agent or insurance-support
35 organization reasonably believes that illegal activities have been
36 conducted by the individual;
- 37 g. Otherwise permitted or required by law;
- 38 h. In response to a facially valid administrative or judicial order,
39 including a search warrant or subpoena;
- 40 i. Made for the purpose of conducting actuarial or research studies,
41 provided:
- 42 (1) No individual may be identified in any actuarial or research
43 report,
- 44 (2) Materials allowing the individual to be identified are returned
45 or destroyed as soon as they are no longer needed, and
- 46 (3) The actuarial or research organization agrees not to disclose

1 the information unless the disclosure would otherwise be permitted by
2 this section if made by an insurance institution, agent or
3 insurance-support organization;

4 j. To a party or a representative of a party to a proposed or
5 consummated sale, transfer, merger or consolidation of all or part of
6 the business of the insurance institution, agent or insurance-support
7 organization, except that:

8 (1) Prior to the consummation of the sale, transfer, merger or
9 consolidation only such information is disclosed as is reasonably
10 necessary to enable the recipient to make business decisions about the
11 purchase, transfer, merger or consolidation, and

12 (2) The recipient agrees not to disclose the information unless the
13 disclosure would otherwise be permitted by this section if made by an
14 insurance institution, agent or insurance-support organization;

15 k. To a person whose only use of such information will be in
16 connection with the marketing of a product or service, if:

17 (1) No medical-record information, privileged information, or
18 personal information relating to an individual's character, personal
19 habits, mode of living or general reputation is disclosed, and no
20 classification derived from that information is disclosed,

21 (2) The individual has been given an opportunity to indicate that
22 he does not want personal or customer information disclosed for
23 marketing purposes and has given no indication that he does not want
24 the information disclosed, and in the case of customer information has
25 consented in writing and the customer information consists of only the
26 customer's name and address, and

27 (3) The person receiving the information agrees not to use it
28 except in connection with the marketing of a product or service;

29 l. To an affiliate whose only use of the information will be in
30 connection with an audit of the insurance institution or agent or the
31 marketing of an insurance product or service, if [the] :

32 (1) The affiliate agrees not to disclose the information for any
33 other purpose or to unaffiliated persons, and

34 (2) Neither the affiliate nor the insurance institution, agent or
35 insurance-support organization is a financial institution or employed,
36 owned or controlled, directly or indirectly, by a financial institution;

37 m. By a consumer reporting agency, if the disclosure is to a person
38 other than an insurance institution or agent;

39 n. To a group policyholder for the purpose of reporting claims
40 experience or conducting an audit of the insurance institution's or
41 agent's operations or services, if the information disclosed is
42 reasonably necessary for the recipient to conduct the review or audit;

43 o. To a professional peer review organization for the purpose of
44 reviewing the services or conduct of a medical-care institution or
45 medical professional;

46 p. To a governmental authority for the purpose of determining the

1 individual's eligibility for health benefits for which the governmental
2 authority may be liable;

3 q. To a certificateholder or policyholder for the purpose of
4 providing information regarding the status of an insurance transaction;
5 or

6 r. To a lienholder, mortgagee, assignee, lessor or other person
7 shown on the records of an insurance institution or agent as having a
8 legal or beneficial interest in a policy of insurance, provided:

9 (1) No medical-record information is disclosed unless the
10 disclosure would otherwise be permitted by this section of this act; and

11 (2) The information disclosed is limited to that reasonably
12 necessary to permit the person to protect its interests in the policy; and

13 (3) The information disclosed is not used by the lienholder,
14 mortgagee or assignee or by any insurance producer or limited
15 insurance representative as defined in subsections j. and m. of section
16 2 of P.L.1987, c.293 (C.17:22A-2) employed, owned or controlled,
17 directly or indirectly, by the lienholder, mortgagee or assignee to
18 solicit negotiate or effect any policy of insurance covering real or
19 personal property which is the subject matter of the lien or mortgage.
20 (cf: P.L.1985, c.179, s.13)

21

22 5. Section 2 of P.L.1947, c.379 (C.17:29B-2) is amended to read
23 as follows:

24 2. Definitions. When used in this act:

25 (a) "Person" shall mean any individual, corporation, association,
26 partnership, reciprocal exchange, inter-insurer, Lloyds insurer,
27 fraternal benefit society, and any other legal entity engaged in the
28 business of insurance, including agents, brokers and adjusters.

29 (b) "Commissioner" shall mean the Commissioner of [Banking and]
30 Insurance of this State.

31 (c) "Customer information" means any and all information a
32 financial institution holds on its customers as a result of its lending and
33 other banking activities.

34 (d) "Financial institution" means any state or federal banking
35 institution, bank holding company, credit union, savings and loan
36 association, finance company, mortgage loan company or any other
37 institution, association, partnership, company, corporation, individual
38 or individuals whose principal business is the lending of money or the
39 extension of credit.

40 (cf: P.L.1947, c.379, s.2)

41

42 6. Section 4 of P.L.1947, c.379 (C.17:29B-4) is amended to read
43 as follows:

44 4. The following are hereby defined as unfair methods of
45 competition and unfair and deceptive acts or practices in the business
46 of insurance:

1 (1) Misrepresentations and false advertising of policy contracts.
2 Making, issuing, circulating, or causing to be made, issued or
3 circulated, any estimate, illustration, circular or statement
4 misrepresenting the terms of any policy issued or to be issued or the
5 benefits or advantages promised thereby or the dividends or share of
6 the surplus to be received thereon, or making any false or misleading
7 statement as to the dividends or share of surplus previously paid on
8 similar policies, or making any misleading representation or any
9 misrepresentation as to the financial condition of any insurer, or as to
10 the legal reserve system upon which any life insurer operates, or using
11 any name or title of any policy or class of policies misrepresenting the
12 true nature thereof, or making any misrepresentation to any
13 policyholder insured in any company for the purpose of inducing or
14 tending to induce such policyholder to lapse, forfeit, or surrender his
15 insurance.

16 (2) False information and advertising generally. Making,
17 publishing, disseminating, circulating, or placing before the public, or
18 causing, directly or indirectly, to be made, published, disseminated,
19 circulated, or placed before the public, in a newspaper, magazine or
20 other publication, or in the form of a notice, circular, pamphlet, letter
21 or poster, or over any radio station, or in any other way, an
22 advertisement, announcement or statement containing any assertion,
23 representation or statement with respect to the business of insurance
24 or with respect to any person in the conduct of his insurance business,
25 which is untrue, deceptive or misleading.

26 (3) Defamation. Making, publishing, disseminating, or circulating,
27 directly or indirectly, or aiding, abetting or encouraging the making,
28 publishing, disseminating or circulating of any oral or written
29 statement or any pamphlet, circular, article or literature which is false,
30 or maliciously critical of or derogatory to the financial condition of an
31 insurer, and which is calculated to injure any person engaged in the
32 business of insurance.

33 (4) Boycott, coercion and intimidation. Entering into any
34 agreement to commit, or by any concerted action committing, any act
35 of boycott, coercion or intimidation resulting in or tending to result in
36 unreasonable restraint of, or monopoly in, the business of insurance.

37 (5) False financial statements. Filing with any supervisory or other
38 public official, or making, publishing, disseminating, circulating or
39 delivering to any person, or placing before the public, or causing
40 directly or indirectly, to be made, published, disseminated, circulated,
41 delivered to any person, or placed before the public, any false
42 statement of financial condition of an insurer with intent to deceive.

43 Making any false entry in any book, report or statement of any
44 insurer with intent to deceive any agent or examiner lawfully appointed
45 to examine into its condition or into any of its affairs, or any public
46 official to whom such insurer is required by law to report, or who was

1 authority by law to examine into its condition or into any of its affairs,
2 or, with like intent, willfully omitting to make a true entry of any
3 material fact pertaining to the business of such insurer in any book,
4 report or statement of such insurer.

5 (6) Stock operations and advisory board contracts. Issuing or
6 delivering or permitting agents, officers, or employees to issue or
7 deliver, agency company stock or other capital stock, or benefit
8 certificates or shares in any common-law corporation, or securities or
9 any special or advisory board contracts or other contracts of any kind
10 promising returns and profits as an inducement to insurance.

11 (7) Unfair discrimination. (a) Making or permitting any unfair
12 discrimination between individuals of the same class and equal
13 expectation of life in the rates charged for any contract of life
14 insurance or of life annuity or in the dividends or other benefits
15 payable thereon, or in any other of the terms and conditions of such
16 contract.

17 (b) Making or permitting any unfair discrimination between
18 individuals of the same class and of essentially the same hazard in the
19 amount of premium, policy fees, or rates charged for any policy or
20 contract of accident or health insurance or in the benefits payable
21 thereunder, or in any of the terms or conditions of such contract, or in
22 any other manner whatever.

23 (c) Making or permitting any discrimination against any person or
24 group of persons because of race, creed, color, national origin or
25 ancestry of such person or group of persons in the issuance,
26 withholding, extension or renewal of any policy of insurance, or in the
27 fixing of the rates, terms or conditions therefor, or in the issuance or
28 acceptance of any application therefor.

29 (d) Making or permitting discrimination in the use of any form of
30 policy of insurance which expresses, directly or indirectly, any
31 limitation or discrimination as to race, creed, color, national origin or
32 ancestry or any intent to make any such limitation or discrimination.

33 (e) Making or permitting any unfair discrimination solely because
34 of age in the issuance, withholding, extension or renewal of any policy
35 or contract of automobile liability insurance or in the fixing of the
36 rates, terms or conditions therefor, or in the issuance or acceptance of
37 any application therefor, provided, that nothing herein shall be
38 construed to interfere with the application of any applicable rate
39 classification filed with and approved by the commissioner pursuant to
40 P.L.1944, c.27 (C.17:29A-1 to 17:29A-28), or any amendment or
41 supplement thereof, which is in effect with respect to such policy or
42 contract of insurance.

43 (8) Rebates. (a) Except as otherwise expressly provided by law,
44 knowingly permitting or offering to make or making any contract of
45 life insurance, life annuity or accident and health insurance, or
46 agreement as to such contract other than as plainly expressed in the

1 contract issued thereon, or paying or allowing, or giving or offering to
2 pay, allow, or give, directly or indirectly, as inducement to such
3 insurance, or annuity, any rebate of premiums payable on the contract,
4 or any special favor or advantage in the dividends or other benefits
5 thereon, or any valuable consideration or inducement whatever not
6 specified in the contract; or giving, or selling, or purchasing or
7 offering to give, sell, or purchase as inducement to such insurance or
8 annuity or in connection therewith, any stocks, bonds, or other
9 securities of any insurance company or other corporation, association,
10 or partnership, or any dividends or profits accrued thereon, or
11 anything of value whatsoever not specified in the contract.

12 (b) Nothing in clause 7 or paragraph (a) of this clause 8 shall be
13 construed as including within the definition of discrimination or
14 rebates any of the following practices (i) in the case of any contract of
15 life insurance or life annuity, paying bonuses to policyholders or
16 otherwise abating their premiums in whole or in part out of surplus
17 accumulated from nonparticipating insurance; provided, that any such
18 bonuses or abatement of premiums shall be fair and equitable to
19 policyholders and for the best interests of the company and its
20 policyholders; (ii) in the case of life insurance policies issued on the
21 industrial debit plan, making allowance to policyholders who have
22 continuously for a specified period made premium payments directly
23 to an office of the insurer in an amount which fairly represents the
24 saving in collection expense; (iii) readjustment of the rate of premium
25 for a group policy based on the loss or expense experience thereunder,
26 at the end of the first or any subsequent policy year of insurance
27 thereunder, which may be made retroactive only for such policy year.

28 (9) Unfair claim settlement practices. Committing or performing
29 with such frequency as to indicate a general business practice any of
30 the following:

31 (a) Misrepresenting pertinent facts or insurance policy provisions
32 relating to coverages at issue;

33 (b) Failing to acknowledge and act reasonably promptly upon
34 communications with respect to claims arising under insurance
35 policies;

36 (c) Failing to adopt and implement reasonable standards for the
37 prompt investigation of claims arising under insurance policies;

38 (d) Refusing to pay claims without conducting a reasonable
39 investigation based upon all available information;

40 (e) Failing to affirm or deny coverage of claims within a reasonable
41 time after proof of loss statements have been completed;

42 (f) Not attempting in good faith to effectuate prompt, fair and
43 equitable settlements of claims in which liability has become
44 reasonably clear;

45 (g) Compelling insureds to institute litigation to recover amounts
46 due under an insurance policy by offering substantially less than the

1 amounts ultimately recovered in actions brought by such insureds;

2 (h) Attempting to settle a claim for less than the amount to which
3 a reasonable man would have believed he was entitled by reference to
4 written or printed advertising material accompanying or made part of
5 an application;

6 (i) Attempting to settle claims on the basis of an application which
7 was altered without notice to, or knowledge or consent of the insured;

8 (j) Making claims payments to insureds or beneficiaries not
9 accompanied by a statement setting forth the coverage under which the
10 payments are being made;

11 (k) Making known to insureds or claimants a policy of appealing
12 from arbitration awards in favor of insureds or claimants for the
13 purpose of compelling them to accept settlements or compromises less
14 than the amount awarded in arbitration;

15 (l) Delaying the investigation or payment of claims by requiring an
16 insured, claimant or the physician of either to submit a preliminary
17 claim report and then requiring the subsequent submission of formal
18 proof of loss forms, both of which submissions contain substantially
19 the same information.

20 (m) Failing to promptly settle claims, where liability has become
21 reasonably clear, under one portion of the insurance policy coverage
22 in order to influence settlements under other portions of the insurance
23 policy coverage;

24 (n) Failing to promptly provide a reasonable explanation of the
25 basis in the insurance policy in relation to the facts or applicable law
26 for denial of a claim or for the offer of a compromise settlement.

27 (10) Failure to maintain complaint handling procedures. Failure of
28 any person to maintain a complete record of all the complaints which
29 it has received since the date of its last examination. This record shall
30 indicate the total number of complaints, their classification by line of
31 insurance, the nature of each complaint, the disposition of these
32 complaints, and the time it took to process each complaint. For
33 purposes of this subsection, "complaint" shall mean any written
34 communication primarily expressing a grievance.

35 (11) Financial institution coercion. Committing or performing any
36 of the following:

37 (a) Soliciting, negotiating or effecting any policy of insurance
38 covering real or personal property when:

39 (i) Acting as a financial institution licensed as an insurance producer
40 or registered as a limited insurance representative as defined in
41 subsections j. and m. of section 2 of P.L.1987, c.293 (C.17:22A-2), or
42 as a licensed insurance producer or limited insurance representative
43 employed, owned or controlled, directly or indirectly, by a financial
44 institution, and

45 (ii) The real or personal property covered by the policy of insurance
46 is the subject matter of or security for, a loan or extension of credit

1 made by the financial institution or by any other financial institution
2 which is owned or controlled, directly or indirectly, by such financial
3 institution;

4 (b) Leasing space or acquiring customer information from a
5 financial institution, except when:

6 (i) The amount of rent payable to the financial institution is on a
7 square footage basis; and

8 (ii) The rental space is separated from the financial institution's
9 retail area by a wall or other permanent partition having its own entry
10 and establishing separation and privacy from all other activities of the
11 financial institution; and

12 The customer information consists only of the customer's name and
13 address and the customer has consented in writing to its release by the
14 financial institution.

15 The enumeration of this act of specific unfair methods of
16 competition and unfair or deceptive acts and practices in the business
17 of insurance is not exclusive or restrictive or intended to limit the
18 powers of the commissioner or any court of review under the
19 provisions of section 9 of this act.

20 (cf: P.L.1975, c.100, s.1)

21

22 7. This act shall take effect immediately .

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STATEMENT

26

27 This bill would restrict certain activities of a financial institution
28 licensed as an insurance producer or registered as a limited insurance
29 representative, or a licensed insurance producer or limited insurance
30 representative employed, owned or controlled, directly or indirectly,
31 by a financial institution. The bill defines "financial institution" as any
32 state or federal banking institution, bank holding company, credit
33 union, savings and loan association, finance company, mortgage loan
34 company or any other institution, association, partnership, company,
35 corporation, individual or individuals whose principal business is the
36 lending of money or the extension of credit.

37 The bill provides that a financial institution licensed as an insurance
38 producer may be subject to suspension or revocation of its license if
39 it is found by the Commissioner of Insurance to have solicited,
40 negotiated or effected any policy of insurance covering real or
41 personal property when acting as a financial institution and the real or
42 personal property covered by the policy of insurance was the subject
43 matter of, or security for, a loan or extension of credit made by the
44 financial institution or by any other financial institution which was
45 owned or controlled, directly or indirectly, by such financial
46 institution.

1 The bill also prohibits an insurance producer from leasing space or
2 acquiring customer information from a financial institution except
3 when the amount of rent payable to the financial institution is on a
4 square footage basis; and the rental space is separated from the
5 financial institution's retail area by a wall or other permanent partition
6 having its own entry and establishing separation and privacy from all
7 other activities of the financial institution; and the customer
8 information consists only of the customer's name and address and the
9 customer has consented in writing to its release by the financial
10 institution.

11 The bill restricts the use of customer information, as defined in the
12 bill, collected and held by a financial institution on its customers as a
13 result of its lending and other banking activities. A financial institution
14 may not disclose customer information collected or received in
15 connection with an insurance transaction unless the disclosure consists
16 only of the customer's name and address and is authorized by the
17 customer himself. The bill would also prohibit disclosure of customer
18 information, in connection with an insurance transaction, between
19 financial institutions or entities employed, owned or controlled,
20 directly or indirectly, by a financial institution.

21 Finally, under the provisions of the bill, it would be an unfair trade
22 practice for a financial institution to engage in many of the activities
23 enumerated above.

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28 Limits insurance sales activities of financial institutions and certain
29 insurance producers.