

SENATE, No. 1965

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Senator ZANE

1 AN ACT concerning unfair insurance claim settlement practices and
2 amending P.L.1947, c.379.

3

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

6

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

9 4. The following are hereby defined as unfair methods of
10 competition and unfair and deceptive acts or practices in the business
11 of insurance:

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

27 (2) False information and advertising generally. Making,
28 publishing, disseminating, circulating, or placing before the public, or
29 causing, directly or indirectly, to be made, published, disseminated,
30 circulated, or placed before the public, in a newspaper, magazine or
31 other publication, or in the form of a notice, circular, pamphlet, letter
32 or poster, or over any radio station, or in any other way, an
33 advertisement, announcement or statement containing any assertion,
34 representation or statement with respect to the business of insurance

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 or with respect to any person in the conduct of his insurance business,
2 which is untrue, deceptive or misleading.

3 (3) Defamation. Making, publishing, disseminating, or circulating,
4 directly or indirectly, or aiding, abetting or encouraging the making,
5 publishing, disseminating or circulating of any oral or written
6 statement or any pamphlet, circular, article or literature which is false,
7 or maliciously critical of or derogatory to the financial condition of an
8 insurer, and which is calculated to injure any person engaged in the
9 business of insurance.

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

14 (5) False financial statements. Filing with any supervisory or other
15 public official, or making, publishing, disseminating, circulating or
16 delivering to any person, or placing before the public, or causing
17 directly or indirectly, to be made, published, disseminated, circulated,
18 delivered to any person, or placed before the public, any false
19 statement of financial condition of an insurer with intent to deceive.

20 Making any false entry in any book, report or statement of any
21 insurer with intent to deceive any agent or examiner lawfully appointed
22 to examine into its condition or into any of its affairs, or any public
23 official to whom such insurer is required by law to report, or who was
24 authorized by law to examine into its condition or into any of its
25 affairs, or, with like intent, willfully omitting to make a true entry of
26 any material fact pertaining to the business of such insurer in any
27 book, report or statement of such insurer.

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

34 (7) Unfair discrimination. (a) Making or permitting any unfair
35 discrimination between individuals of the same class and equal
36 expectation of life in the rates charged for any contract of life
37 insurance or of life annuity or in the dividends or other benefits
38 payable thereon, or in any other of the terms and conditions of such
39 contract.

40 (b) Making or permitting any unfair discrimination between
41 individuals of the same class and of essentially the same hazard in the
42 amount of premium, policy fees, or rates charged for any policy or
43 contract of accident or health insurance or in the benefits payable
44 thereunder, or in any of the terms or conditions of such contract, or in
45 any other manner whatever.

46 (c) Making or permitting any discrimination against any person or

1 group of persons because of race, creed, color, national origin or
2 ancestry of such person or group of persons in the issuance,
3 withholding, extension or renewal of any policy of insurance, or in the
4 fixing of the rates, terms or conditions therefor, or in the issuance or
5 acceptance of any application therefor.

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

10 (e) Making or permitting any unfair discrimination solely because
11 of age in the issuance, withholding, extension or renewal of any policy
12 or contract of automobile liability insurance or in the fixing of the
13 rates, terms or conditions therefor, or in the issuance or acceptance of
14 any application therefor, provided, that nothing herein shall be
15 construed to interfere with the application of any applicable rate
16 classification filed with and approved by the commissioner pursuant to
17 P.L.1944, c.27 (C.17:29A-1 to 17:29A-28), or any amendment or
18 supplement thereof, which is in effect with respect to such policy or
19 contract of insurance.

20 (8) Rebates. (a) Except as otherwise expressly provided by law,
21 knowingly permitting or offering to make or making any contract of
22 life insurance, life annuity or accident and health insurance, or
23 agreement as to such contract other than as plainly expressed in the
24 contract issued thereon, or paying or allowing, or giving or offering to
25 pay, allow, or give, directly or indirectly, as inducement to such
26 insurance, or annuity, any rebate of premiums payable on the contract,
27 or any special favor or advantage in the dividends or other benefits
28 thereon, or any valuable consideration or inducement whatever not
29 specified in the contract; or giving, or selling, or purchasing or
30 offering to give, sell, or purchase as inducement to such insurance or
31 annuity or in connection therewith, any stocks, bonds, or other
32 securities of any insurance company or other corporation, association,
33 or partnership, or any dividends or profits accrued thereon, or
34 anything of value whatsoever not specified in the contract.

35 (b) Nothing in clause 7 or paragraph (a) of this clause 8 shall be
36 construed as including within the definition of discrimination or
37 rebates any of the following practices (i) in the case of any contract of
38 life insurance or life annuity, paying bonuses to policyholders or
39 otherwise abating their premiums in whole or in part out of surplus
40 accumulated from nonparticipating insurance; provided, that any such
41 bonuses or abatement of premiums shall be fair and equitable to
42 policyholders and for the best interests of the company and its
43 policyholders; (ii) in the case of life insurance policies issued on the
44 industrial debit plan, making allowance to policyholders who have
45 continuously for a specified period made premium payments directly
46 to an office of the insurer in an amount which fairly represents the

- 1 saving in collection expense; (iii) readjustment of the rate of premium
2 for a group policy based on the loss or expense experience thereunder,
3 at the end of the first or any subsequent policy year of insurance
4 thereunder, which may be made retroactive only for such policy year.
- 5 (9) Unfair claim settlement practices. Committing or performing
6 with such frequency as to indicate a general business practice any of
7 the following:
- 8 (a) Misrepresenting pertinent facts or insurance policy provisions
9 relating to coverages at issue;
- 10 (b) Failing to acknowledge and act reasonably promptly upon
11 communications with respect to claims arising under insurance
12 policies;
- 13 (c) Failing to adopt and implement reasonable standards for the
14 prompt investigation of claims arising under insurance policies;
- 15 (d) Refusing to pay claims without conducting a reasonable
16 investigation based upon all available information;
- 17 (e) Failing to affirm or deny coverage of claims within a reasonable
18 time after proof of loss statements have been completed;
- 19 (f) Not attempting in good faith to effectuate prompt, fair and
20 equitable settlements of claims in which liability has become
21 reasonably clear;
- 22 (g) Compelling insureds to institute litigation to recover amounts
23 due under an insurance policy by offering substantially less than the
24 amounts ultimately recovered in actions brought by such insureds;
- 25 (h) Attempting to settle a claim for less than the amount to which
26 a reasonable man would have believed he was entitled by reference to
27 written or printed advertising material accompanying or made part of
28 an application;
- 29 (i) Attempting to settle claims on the basis of an application which
30 was altered without notice to, or knowledge or consent of the insured;
- 31 (j) Making claims payments to insureds or beneficiaries not
32 accompanied by statement setting forth the coverage under which the
33 payments are being made;
- 34 (k) Making known to insureds or claimants a policy of appealing
35 from arbitration awards in favor of insureds or claimants for the
36 purpose of compelling them to accept settlements or compromises less
37 than the amount awarded in arbitration;
- 38 (l) Delaying the investigation or payment of claims by requiring an
39 insured, claimant or the physician of either to submit a preliminary
40 claim report and then requiring the subsequent submission of formal
41 proof of loss forms, both of which submissions contain substantially
42 the same information.
- 43 (m) Failing to promptly settle claims, where liability has become
44 reasonably clear, under one portion of the insurance policy coverage
45 in order to influence settlements under other portions of the insurance
46 policy coverage;

1 (n) Failing to promptly provide a reasonable explanation of the
2 basis in the insurance policy in relation to the facts or applicable law
3 for denial of a claim or for the offer of a compromise settlement;

4 (o) Requiring insureds or claimants to institute or prosecute
5 complaints regarding motor vehicle violations in the municipal court
6 as a condition of paying private passenger automobile insurance
7 claims.

8 (10) Failure to maintain complaint handling procedures. Failure of
9 any person to maintain a complete record of all the complaints which
10 it has received since the date of its last examination. This record shall
11 indicate the total number of complaints, their classification by line of
12 insurance, the nature of each complaint, the disposition of these
13 complaints, and the time it took to process each complaint. For
14 purposes of this subsection, "complaint" shall mean any written
15 communication primarily expressing a grievance.

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

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

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23 2. This act shall take effect on the 90th day after the date of
24 enactment.

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27 STATEMENT

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29 This bill makes it an unfair claim practice for an insurance company
30 to require insureds to file or prosecute complaints regarding motor
31 vehicle violations in municipal court as a condition of payment of
32 private passenger automobile insurance claims.

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35 _____
36
37 Prohibits insurers from requiring filing of municipal court complaint as
38 precondition to payment of certain claims.