

SENATE, No. 2016

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Senator CARDINALE

1 AN ACT concerning certain fines which may be imposed by the
2 Commissioner of Insurance and amending P.L.1987, c.293.

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

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

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

14 (1) Willfully violated any provision of the insurance laws of this
15 State;

16 (2) Intentionally withheld material information or made a material
17 misstatement in an application for a license;

18 (3) Obtained or attempted to obtain a license by fraud or
19 misrepresentation;

20 (4) Committed any fraudulent act;

21 (5) Misappropriated or converted to his own use, or has illegally
22 withheld, moneys which were received in the conduct of business and
23 belonged to insurers, policyholders or others;

24 (6) Used the license not for the purpose of engaging in the
25 insurance business with the general public, but primarily for the
26 purpose of soliciting or negotiating insurance contracts or policies
27 covering himself, members of his family, members or employees of any
28 organization of which he is an officer, or officers or employees of an
29 organization in which the licensee or members of his immediate family
30 own a controlling interest, or the property or interests of those
31 persons. A license shall be deemed to have been used principally for
32 this purpose if the commissioner finds that during any 12-month period
33 the aggregate commissions or other compensation accruing or to
34 accrue from that business have exceeded or will exceed the aggregate

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 commissions or other compensation accruing or to accrue on other
2 business written by the applicant or licensee during the same period;
- 3 (7) Materially misrepresented the terms or conditions of insurance
4 contracts or policies to any policyholder, insurance company,
5 insurance producer or member of the general public;
- 6 (8) Paid a rebate to any person or paid a commission, brokerage
7 fee or other compensation to a person who is not licensed as an
8 insurance producer in this State, or any state other than this State, for
9 services rendered as an insurance producer;
- 10 (9) Aided, abetted or assisted another person in violating any of the
11 insurance laws of this State;
- 12 (10) Has been convicted of a crime involving moral turpitude or any
13 crime reflecting on the insurance producer's fitness for licensure;
- 14 (11) Failed to file or maintain with the commissioner a complete
15 and accurate business and home mailing address or to immediately
16 notify the commissioner of any change in the business or home mailing
17 address;
- 18 (12) Failed to file and maintain with the commissioner the name or
19 names of licensed employers or employees or to immediately notify the
20 commissioner of a change of employer or of licensed employees in a
21 manner prescribed by rule or regulation of the commissioner;
- 22 (13) Failed to pay any fine imposed or restitution ordered by the
23 commissioner;
- 24 (14) Failed to appear in response to any subpoena issued by the
25 commissioner or his authorized designee; failed to produce any
26 documents or other material requested in such a subpoena; or refused
27 or failed to cooperate with an investigation by the commissioner of the
28 activities of the person or any other licensee;
- 29 (15) Failed to keep, maintain or make available for inspection by
30 the commissioner those records that the commissioner shall require to
31 be kept and maintained by rule or regulation;
- 32 (16) Failed to notify the commissioner within 30 days of his
33 conviction for any crime, indictment or the filing of any formal
34 criminal charges, or the suspension or revocation of any insurance
35 license or authority by a state, other than this State, or the initiation of
36 formal disciplinary proceedings in a state, other than this State,
37 affecting the producer's insurance license; or failed to supply any
38 documentation that the commissioner may request in connection
39 therewith;
- 40 (17) Failed at any time to possess cash and accounts receivable for
41 insurance premiums in an amount equal to or in excess of the accounts
42 payable by the licensee for insurance premiums. Those accounts
43 receivable shall not include insurance premiums owing the licensee
44 more than 120 days after the last day of the month during which the
45 insurance coverage became effective. As used in this section,
46 "insurance premiums" include unearned premiums or premiums to be

1 refunded to policyholders and both written and earned premiums
2 whether actually collected from policyholders or not. The filing,
3 within the preceding 10 years, of a petition in bankruptcy, a deed of
4 assignment for the benefit of creditors pursuant to N.J.S. 2A:19-1 et
5 seq., or any similar filing acknowledging at the time of that filing that
6 the licensed insurance producer owed to one or more insurance
7 companies, insurance producers, policyholders, premium finance
8 companies or other persons any insurance premiums, including any
9 unearned or return premiums due policyholders in an aggregate
10 amount of \$5,000.00 or more, shall create a presumption that there
11 has been a violation of this subsection;

12 (18) Collected from an insured or prospective insured any fee or
13 other compensation other than a commission deductible from an
14 insurance premium, except when acting as an insurance broker or
15 insurance consultant and:

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

19 (b) The amount of the fee or other compensation bears a
20 reasonable relationship to the services rendered and is not
21 discriminatory.

22 (19) Failed willfully or repeatedly to comply with standards and
23 practices established pursuant to the plan of operation of any statutory
24 mechanism for providing insurance coverage in this State, including,
25 but not limited to, any automobile insurance plan operating pursuant
26 to P.L.1970, c.215 (C.17:29D-1), the New Jersey Automobile Full
27 Insurance Underwriting Association operating pursuant to P.L.1983,
28 c.65 (C.17:30E-1 et seq.) and the New Jersey Insurance Underwriting
29 Association operating pursuant to P.L.1968, c.129 (C.17:37A-1 et
30 seq.);

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

34 b. In addition or as an alternative to any other penalty, the
35 commissioner may impose a fine of up to \$5,000.00 for the first
36 violation of any provision of this act, and not exceeding \$10,000.00
37 for each subsequent violation, and in appropriate circumstances may
38 order restitution of moneys owed any person and reimbursement of the
39 costs of investigation and prosecution. Whenever a violation involves
40 the sale of insurance without a proper license, the commissioner may
41 impose, in addition to or as an alternative to any other penalty, a fine
42 equal to the amount of any commission or fee received in connection
43 with the sale by the person lacking a proper license and may order
44 reimbursement of the costs of investigation and prosecution.

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

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

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

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5 2. This act shall take effect immediately.

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8 STATEMENT

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10 This bill implements one of the recommendations made by the State
11 Commission of Investigation in its report entitled "Insurance Interests
12 and Licensure of Former Insurance Commissioner Andrew J.
13 Karpinski", issued in October, 1996. The bill provides that in the case
14 of a violation of the insurance laws which involves the sale of
15 insurance without a proper license, the commissioner may impose, in
16 addition to or as an alternative to any other penalty, a fine equal to the
17 amount of any commission or fee received in connection with the sale
18 by the person lacking a proper license and may order reimbursement
19 of the costs of investigation and prosecution. At present, the
20 commissioner may penalize licensees who violate the insurance laws
21 by refusing to issue or renew a license, revoking or suspending a
22 license, imposing fines (up to \$5,000 for a first violation; not more
23 than \$10,000 for each subsequent violation), or ordering restitution
24 and the payment of costs.

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29 Allows Commissioner of Insurance to impose additional fine for
30 violations involving sale of insurance without proper license.