

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Persons Employed in the Business of Insurance
Convicted Persons; Waivers

Proposed Amendments: N.J.A.C. 11:17E-1.4 and 1.5 and 11:17E Appendix Exhibits A and B.

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-26 et seq. and 18 U.S.C. §§ 1033 and 1034

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006 – 338

Submit comments by December 15 , 2006 to:

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The agency proposal follows:

Summary

Persons having been convicted of a felony involving dishonesty or breach of trust or an offense under Federal statute, 18 U.S.C. §1033, are prevented from engaging in the business of insurance unless they have first obtained the written consent of the Commissioner of the Department of Banking and Insurance (Commissioner) or his or her designee within the Division of Insurance (Department). The purpose of N.J.A.C. 11:17E is to implement 18 U.S.C. §1033. The Department now proposes to amend N.J.A.C. 11:17E-1.4(a) and (b) for the purpose of directing 1033 waiver applicants to the Department's web site for access to the 1033 Waiver

Application Forms and to add to the title of the “Initial Application” the term “Short Form,” as set forth in the amended title of Exhibit A below. The Department also proposes amendments in the text of the “Criminal History” and “Attachments” sections of Appendix Exhibits A and B of N.J.A.C. 11:17E-App.

N.J.A.C 11:17E, Persons Employed in the Business of Insurance, implements 18 U.S.C. §§ 1033 and 1034, the Federal statutes which provide that no person having been convicted of a felony involving dishonesty or breach of trust or an offense under 18 U.S.C. §1033 shall engage in the business of insurance without having first obtained the written consent of the Commissioner or his or her designee.

N.J.A.C. 11:17E-1.1 applies to any person employed in any capacity in the business of insurance and to all insurers doing business in this State pursuant to Title 17, 17B or 26 of the New Jersey Statutes, or any risk retention group or purchasing group operating pursuant to the Liability Risk Retention Act of 1986, 18 U.S.C. §3901 et seq., or other similar risk retention organization organized pursuant to State law.

The Department seeks to amend N.J.A.C. 11:17E-1.5 to provide that, in addition to issuing an order reciting a decision on a waiver application, a letter of denial will be initially issued to applicants who have failed to qualify for a waiver. In such a letter, the Commissioner or his or her designee will state the legal basis for the denial and address the factors pertinent to the assessment of the applicant’s rehabilitation. The letter will further advise the applicant that the initial denial may be administratively appealed to the Office of Administrative Law (OAL) within 20 days; however, if no administrative appeal is taken, the denial letter will become the final agency decision. Proposed new N.J.A.C. 11:17E-1.5(c) provides for the administrative appeal of such a denial letter to be referred to the OAL as a contested case. Current subsections

(c) and (d) are being recodified as subsection (d) and (e) and amended to also include references to such denial letters.

The Department seeks to revise Appendix Exhibits A and B of N.J.A.C. 11:17E as referenced in N.J.A.C. 11:17E-1.4(a) and (b). In Exhibit A, the Initial Application For Written Consent to Engage in the Business of Insurance, Section II - Criminal History, Item 2, is amended to require applicants to describe the factual circumstances under which each offense occurred. New text is added to Section IV-Attachments to require the submission of letters from probation, parole, substance abuse and counseling professionals that evidence the applicant's completion or participation in such programs.

In N.J.A.C. 11:17E Appendix Exhibit B, Comprehensive Application for Written Consent to Engage in the Business of Insurance form, the text in Section IV - Criminal History, Item 1, is amended to require a description of the circumstances under which each offense occurred and the applicant's age at the time of the commission of each offense, and in Section VIII - Attachments, new Items 10, 11 and 12 are added requiring letters from probation, parole, substance abuse and counseling professionals which evidence the extent of the applicant's successful participation in such programs.

Specifically, the new rule text in Appendix Exhibits A and B in the "Attachments" sections requires:

1. A letter from the applicant's probation or parole officer indicating the applicant's status and extent of compliance or a copy of an order or certificate by the applicant indicating the successful completion of his/her probation or parole;
2. A letter from the provider of any substance abuse and/or other type of counseling or therapy program; and

3. A letter indicating any social conditions that may have contributed to the applicant's commission of the offenses and a description of any conduct evidencing rehabilitation.

In Exhibit B, Section IV - Criminal History, new text is inserted to obtain a description in detail of the criminal conviction or convictions which are the subject of the waiver application, including the circumstances under which each offense occurred, and the age of the applicant at the time each offense was committed.

Exhibit B, Section VIII Attachments, is expanded to reflect the identical text added to the Attachments section of Exhibit A, as discussed above. In Exhibit B, these new paragraphs are added to Section VIII to enable the applicant to submit evidence of rehabilitation for the Commissioner's consideration and are numbered 10 through 12.

A 60-day comment period is provided for the notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments to the rules will provide a refined review and on-line submission process for 1033 waiver applications, thus assuring that an applicant's complete criminal record and information essential to the evaluation of an applicant's rehabilitation is obtained for review and consideration by the Commissioner. These amendments should have a positive impact upon applicants seeking a waiver, as they will better assure that complete information pertinent to an applicant's waiver application is provided when it is initially

submitted. The application process will also be expedited and made more efficient by the availability of the exhibit forms and instructions on the Department's website.

Economic Impact

The proposed amendments make no changes in the previously established purpose, scope and definitions of the convicted persons waiver process; neither do they change the established prohibited activities or the maintenance of records. The amendments merely expand the application forms to capture pertinent conviction and rehabilitation data which heretofore required follow-up inquiries by investigators for clarification of details or for additional probation, parole or rehabilitation facts. These amendments are intended to make the 1033 waiver application submission and review process more efficient for both applicants and the Department, thereby extending Departmental resources and expediting the issuance of decisions on waiver applications. This, in turn, will enable certain applicants who qualify to receive a waiver to commence working in a position in the insurance business sooner.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c.65 require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. A Federal standards analysis is not required in this instance because the amendments proposed enhance the State's compliance with the requirements of 18 U.S.C. §1033 as implemented by N.J.A.C. 11:17E; thus, no Federal standards or requirements are exceeded.

Jobs Impact

The Department does not believe that these amendments will cause any jobs to be generated or lost. The Department invites interested parties to submit any data or studies concerning the jobs impact of the amendments together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The Department does not expect any impact upon the State agricultural industry by these proposed amendments.

Regulatory Flexibility Analysis

There are no provisions of these proposed amendments rules that are excessively onerous to "small businesses" as that term is defined in N.J.S.A. 52:14B-17. These amendments will impose no new recordkeeping or other compliance requirements, but will require applicants for waivers to report additional information as part of the application process. Future annual costs of compliance with these rules are not expected to differ from current annual costs and may be reduced with the implementation of on-line access to the Waiver Application Forms. These new rules have no differing standards for small businesses because information pertinent to an applicant's rehabilitation and the qualifications for waiver must be provided and considered on all waiver applications, regardless of the size of an applicant's business.

Smart Growth Impact

The proposed amendments will not have an impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follow (additions indicated boldface **thus**; deletions indicated in brackets [thus]):

11:17E-1.4 Applications, general provisions and maintenance of records

(a) Except as provided in (b) below, all prohibited persons who are, or seek to be, employed in the business of insurance in any capacity in this State shall complete and file an application for waiver using the [“Short Form”] **Initial Application (Short Form)**, set forth as Exhibit A in the Appendix to this chapter **and available on the Department website at <http://www.state.nj.us/dobi/inclis.htm>**.

(b) The following prohibited persons when seeking a waiver shall complete and file the “Comprehensive Form,” set forth as Exhibit B in the Appendix to this subchapter **and available on the Department website at <http://www.state.nj.us/dobi.inslic.htm>**

: 1-3 - (No change.)

(c) - (j) (No change.)

11:17E-1.5 Commissioner’s action, order and scope of waiver

(a) – (b) (No change.)

(c) Where a determination is made that the applicant does not qualify for a waiver, the Commissioner or his or her designee shall issue to the applicant a letter initially denying the waiver application. The letter shall:

1. State the legal basis upon which the application is being denied and address the factors pertinent to the assessment of the applicant's rehabilitation;

2. Advise the applicant that the initial denial of the waiver application may be administratively appealed to the Office of Administrative of Law for a contested case proceeding pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.;

3. Advise the applicant that an administrative appeal must be initiated within 20 days of the date of receipt of the denial letter by sending a request for a hearing to: Legislative & Regulatory Affairs, New Jersey Department of Banking and Insurance, PO Box 325, Trenton, New Jersey 08625-0325, ATTN: Waiver Denial Hearing Request, or faxed to (609) 292-0896; and

4. Advise the applicant that if no administrative appeal is taken, the letter initially denying the application will constitute a final agency decision.

[(c)](d) The Department shall provide a copy of [the] **any Order issued on the application and of any letter granting or initially denying the application** to the applicant, prospective employer and the NAIC database described in N.J.A.C. 11:17E-1.6.

[(d) The] (e) **Any Order of the Commissioner or his or her designee issued on an application and any letter initially denying an application that was not appealed** shall constitute a final agency decision in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

APPENDIX

Exhibit A

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

INITIAL APPLICATION
(SHORT FORM)
FOR WRITTEN CONSENT
TO ENGAGE IN
THE BUSINESS OF INSURANCE
PURSUANT TO
18 U.S.C. §§ 1033 AND 1034

SECTION II – CRIMINAL HISTORY

1. (No change.)
2. Provide details of [the]**each** conviction for which you are seeking written consent [and], **including the circumstances under which each offense occurred, and your age at the time each offense was committed. In addition, specify** the final disposition of these matter(s), including sentence; dates of incarceration; dates of probation/parole (if you are currently under probation/parole, include the name and phone number of person supervising your parole or probation); restitution paid; fines/costs ordered; fines/costs paid; and pardons granted. Include information as to whether or not your civil and political rights have been restored. Attach additional pages if needed.

SECTION IV – ATTACHMENTS

Attach the following documents to this Application for written consent. Applications without attachments, or applications with incomplete attachments, will be returned to the applicant.

1. – 5. (No change.)
6. **If applicable, a letter from your probation or parole officer indicating your current status and the extent to which you have complied with the terms and conditions of your supervision program, or a copy of the order or certificate confirming your successful completion of probation or parole.**
7. **A letter from the provider of any substance abuse and/or other type of counseling or therapy program you have completed or in which you are presently participating, reflecting the dates of your participation and the extent to which you either successfully completed the**

program or are actively participating in it. If you are or have been attending Alcoholics Anonymous and/or Narcotics Anonymous meetings, a letter from your sponsor(s) in the organization(s) containing the information set forth above may be supplied.

- 8. A letter indicating any social conditions that may have contributed to your commission of the offense(s) and describing any conduct evidencing your rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had you under their supervision. The submission of documentation or letters from third parties verifying such indications of rehabilitation is strongly encouraged.**

Exhibit B

STATE of NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

COMPREHENSIVE APPLICATION
FOR WRITTEN CONSENT
TO ENGAGE IN THE
BUSINESSS OF INSURANCE
PURSUANT TO 18 U.S.C.§§ 1033 AND 1034

SECTION IV – CRIMINAL HISTORY

1. Provide a narrative statement describing the circumstances leading to **ALL** criminal charge(s) filed_against you (including foreign jurisdictions); the date of charge(s); place of charge(s); trial court(s); date of disposition; convicted charge(s); sentence(s); date(s) of incarceration; date(s)of probation/parole; date(s)of release from probation/parole; restitution ordered; restitution paid; fines/costs ordered; fines/costs paid. Include details of negotiated pleas agreements and pleas of **nolo contendere** to an information or indictment. Describe in detail the criminal conviction or convictions which are the subject of this Application, **including the circumstances under which each offense occurred and your age at the time each offense was committed.**

Attach additional pages if needed.

2. (No change.)

SECTION VIII – ATTACHMENTS

Attach the following documents to this Application for Written Consent. Applications without attachments, or Applications with incomplete attachments, will be returned to the applicant. However, if you have previously completed and submitted the Short Form Application for Written Consent to Engage in the Business of Insurance, you do not need to provide duplicate photos or attachments.

1. – 9. (No change.)

10. If applicable, a letter from your probation or parole officer indicating your current status and the extent to which you have complied with the terms and conditions of your supervision program, or a copy of the order or certificate confirming your successful completion of probation or parole.

11. A letter from the provider of any substance abuse and/or other type of counseling or therapy program you have completed or in which you are presently participating, reflecting the dates of your participation and the extent to which you either successfully completed the program or are actively participating in it. If you are or have been attending Alcoholics Anonymous and/or Narcotics Anonymous meetings, a letter from your sponsor(s) in the organization(s) containing the information set forth about may be supplied.

12. A letter indicating any social conditions that may have contributed to your commission of the offense(s) and describing any conduct evidencing your rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had you under their supervision. The submission of documentation or letters from third parties verifying such indications of rehabilitation is strongly encouraged.

The Applicant may include the following evidence of rehabilitation for the Commissioner's consideration.

1. – 4. No change.