

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Appeals from Denial of Automobile Insurance

Adopted Amendments: N.J.A.C. 11:3-33, Appendix A and Appendix B

Proposed: March 1, 2004 at 36 N.J.R. 1171(a)

Adopted: September 8, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: September 8, 2004 as R. 2004 D.372, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1 and 17:33B-13, and section 63 of P.L. 2003, c. 89

Effective Date: October 4, 2004

Expiration Date: January 4, 2006

Summary of Public Comments And Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from:

Insurance Council of New Jersey

New Jersey Auto Agents Alliance

Lewis Bivona, Jr., CPA

Independent Insurance Agents of New Jersey

COMMENT: One commenter expressed support for the proposal.

RESPONSE: The Department thanks the commenter for its support.

COMMENT: One commenter inquired whether the Department has considered the overall effect of reducing the point levels for exclusion from the definition of "eligible person" and its impact on insurance availability in general.

RESPONSE: The point level reductions are legislatively mandated as part of Governor James McGreevey's auto insurance reform package. The Department's proposal implements the statutory requirements.

COMMENT: One commenter suggested that the eligible persons exception found at N.J.A.C. 11:3-34.4(a)9 be included in Appendices A and B.

RESPONSE: The commenter is correct with regard to the eligible person exception, which had been codified as N.J.A.C. 11:3-34.4(a)9 prior to the amendment of that provision effective on December 1, 2003 (35 N.J.R. 5423(a)). That exception, now codified as N.J.A.C. 11:3-34.4(a)10, reads as follows:

Who is a named insured or who is insured under the same policy as a person whose driver's license is suspended or revoked and either:

- i. The suspended or revoked driver has been convicted of a violation of N.J.S.A. 39:6B-2 within the previous three years; or
- ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension.

Through an oversight, this provision was not included in Appendices A and B of N.J.A.C. 11:3-33, both of which are intended to list all of the grounds on the basis of which a person shall not be deemed eligible for purposes of N.J.S.A. 17:33B-13.

The Department is amending Appendices A and B upon adoption to include this exception. Because the substantive rule establishing the exceptions, N.J.A.C. 11:3-34.4(a), currently refers to this exception, conforming Appendices A and B of N.J.A.C. 11:3-33 to include all of the exceptions listed in N.J.A.C. 11:3-34.4(a) is not a substantive change requiring reproposal. Appendices A and B are merely forms to be sent, respectively, to and from persons wishing to appeal to the Department a determination by an insurer that he or she is not an eligible person under N.J.S.A. 17:33B-13.

COMMENT: One commenter urged that, consistent with the statutory language, the provision in Appendix B relating to supplying false or misleading information on an application should not be limited only to automobile insurance policies.

RESPONSE: The Department disagrees with the commenter. The statutory language added by the Legislature as part of Governor McGreevey's auto insurance reform package, (P.L. 2003, c. 89), states that this exception applies with respect to an application for, or renewal of, an auto insurance policy. Any change seeking to expand the scope of this provision so as to have it apply to other lines of insurance is beyond the scope of this proposal, which was limited to conforming the text of Appendices A and B to the text of N.J.A.C. 11:3-34.4(a).

COMMENT: One commenter sought clarification whether the language in Appendix A #9 applies to the entire application process, or only to a completed application.

RESPONSE: The language applies only to a completed application. Knowingly providing materially false or misleading information on a completed application, renewal or claim serves as a basis for denial of coverage.

Federal Standards Statement

A federal standards analysis is not required because these adopted amendments are not subject to any Federal standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***)

(Agency Note: In Appendix B below, in the paragraph following the “Producer” line, the current Code text “received a written declination” was erroneously reproduced in the proposal text as “written a declination.” The correct current rule text appears in the adopted text below.)

SUBCHAPER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

APPENDIX A

Dear Applicant,

The “Fair Automobile Insurance Reform Act of 1990” (Act) provides that on or after April 1, 1992, every insurer, either by one or more separate rating plans, shall provide automobile insurance for eligible persons.

Therefore, an insurer may deny coverage only to those applicants who are not eligible. New Jersey law provides that any person who owns or has registered an automobile in New Jersey or a person who has a valid New Jersey driver’s license is eligible except a person:

1. Who, in the last three years, has been convicted of driving under the influence or refusing a chemical test in New Jersey or elsewhere;
2. Who, in the last three years, has been convicted of a crime involving an automobile;
3. Whose driving license is suspended or revoked by a court;
4. Who, in the last five years, has been convicted of fraud or intent to defraud involving an insurance claim or application;
5. Who, in the last five years, has been denied payment of an insurance claim in excess of \$1,000, if there was evidence of fraud or intent to defraud;
6. Whose automobile insurance policy, in the last two years, was cancelled because of nonpayment of premium or financed

premium (unless the entire annual premium for the new coverage is paid in full before issuance or renewal);

7. Who fails to maintain membership in a club, group or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance;
8. Whose driving record, for the last three years, has an accumulation of seven or more eligibility points. (Eligibility points are accumulated as a result of convictions, suspensions, revocations and determination of responsibility for civil infractions in accordance with schedules adopted by the New Jersey Department of Banking and Insurance. For example, one at-fault accident has been assigned five eligibility points.); *[or]*
9. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy, has knowingly provided materially false or misleading information in connection with an application for insurance, or renewal of insurance or claim for benefits under an insurance policy;*[.]* **or**
- 10. Who is a named insured or who is insured under the same policy as a person whose driver's license is suspended or revoked and either:**
 - i. The suspended or revoked driver has been convicted of a violation of N.J.S.A. 39:6B-2 within the previous three years;****or**

ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension. *

NOTE: The above description is a simplification of the statutory definition. For a more extensive description, see the New Jersey Administrative Code at N.J.A.C. 11:3-34.4.

The Commissioner of Banking and Insurance has established an appeal process for persons who have been denied automobile insurance. The procedure for filing a written appeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:3-33. Most New Jersey public libraries have this material.

To begin the appeal process, you must complete the attached form and mail it, with the necessary documentation, to the address indicated.

WARNING: You must have automobile insurance if you plan to operate and/or register a vehicle during the appeal process. Filing an appeal does not provide you with insurance.

APPENDIX B

NOTE: YOU HAVE 90 DAYS FROM THE DATE ON WHICH A WRITTEN DENIAL OF AUTOMOBILE INSURANCE IS MADE TO FILE THIS APPEAL.

NEW JERSEY DEPARTMENT OF
BANKING AND INSURANCE

AUTOMOBILE DECLINATION APPEAL

Your Name: _____

Your Address: _____

Your Telephone Number: () _____

Insurance Company and/or Insurance Producer (agent or broker) that declined your application for automobile insurance coverage in the voluntary market (if producer, please provide the name and address):

Company: _____

Producer: _____

YOU MUST ATTACH A COPY OF THE DECLINATION (If you have not received a written declination from the insurance company or producer, you must request one within 90 days from the date you first applied for insurance.)

BASIS FOR YOUR APPEAL (Please indicate with an “X” those statements or reasons that apply and attach a copy of pertinent documentation supporting your appeal. Such documentation should include a certified motor vehicle driver “abstract,” where appropriate, available from the *[Division of Motor Vehicles]* *Motor Vehicle Commission. To obtain a certified copy of your driving record:

1. Visit a Regional Center or call 888-486-3339 (toll free in New Jersey) or 609-292-6500 and request the Driver History Abstract form.

2. Provide your full name, address, date of birth, driver license number (when available), and reason for making the request.

3. Mail the application, a copy of your driver's license (or other form of acceptable ID) and a check or money order for \$10.00 payable to the New Jersey Motor Vehicle Commission to:

Motor Vehicle Commission

Abstract Unit

225 East State Street

P.O. Box 142

Trenton, New Jersey 08666-0142

There is a \$10.00 fee for each copy of the DMV abstract.)

- I have not been convicted of Driving Under the Influence (N.J.S.A. 39:4-50) or of refusing to submit to a chemical test (N.J.S.A. 39:4-50.4(a)), or for a similar offense in another jurisdiction, or of a crime involving an automobile or theft of a motor vehicle.
- My driver's license is not suspended or revoked, nor has it been for any 12-month period in the preceding three years.
- I have not been convicted of insurance fraud or intent to defraud, or have not had an insurance claim (in excess of \$1,000) denied because of evidence of fraud within the five-year period immediately preceding application or renewal.

- My auto insurance has not been cancelled for nonpayment of premium within the last two years and I provide proof of payment OR I have had my policy cancelled for nonpayment AND I am able to pay the full annual premium for this policy.
- My auto insurance has not been cancelled for knowingly providing materially false or misleading information in connection with an application for insurance, renewal of insurance, or claim for benefits under an insurance policy during the three-year period immediately preceding the declined application being appealed.

*** I am not a named insured or insured under the same policy as a person whose driver's license is suspended or revoked and either:**

- i. The suspended or revoked driver has been convicted of a violation of N.J.S.A. 39:6B-2 within the previous three years; or**
 - ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension. ***
- I am qualified as a member of a group or organization in which membership is required in order to obtain this insurance policy.
 - I have fewer eligibility points accumulated than alleged in the declination letter as evidenced by the attached copy of my driving record.
 - The accident record indicated in the declination letter is wrong as evidenced by the attached.
 - No other person who is a member of the same household and who will drive the subject vehicle for 10 percent or more of the time is an ineligible person.
 - Other (Specify and provide proof, if appropriate).

CERTIFICATION OF APPEAL

The information contained in this appeal is true and complete to the best of my knowledge and belief.

I UNDERSTAND THAT FILING THIS APPEAL DOES NOT PROVIDE ME WITH AUTOMOBILE INSURANCE. IF MY AUTO IS REGISTERED IN NEW JERSEY OR IS BEING DRIVEN, I HAVE OBTAINED OTHER AUTO INSURANCE.

Your Signature: _____ Date: _____

MAIL THIS COMPLETED FORM AND NECESSARY DOCUMENTATION TO:

New Jersey Department of Banking and Insurance
Division of Enforcement and Consumer Protection
PO Box 329
Trenton, New Jersey 08625-0329
Attn: Auto Insurance Denial

