

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Appeals from Denial of Automobile Insurance

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

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

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

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

Proposal Number: PRN 2004-72

Submit comments by April 30, 2004 to:

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Legislative and Regulatory Affairs  
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The agency proposal follows:

**Summary**

The Department of Banking and Insurance (Department) is amending N.J.A.C. 11:3-33, Appendix A and Appendix B, as a result of Governor James McGreevey's auto insurance reform package, P.L. 2003, c. 89 (the "Act"). The Act provides a well-balanced approach to addressing the immediate automobile insurance availability crisis facing New Jersey consumers, insurers and regulators. The Act includes many provisions intended to put downward pressure on rates by reducing fraud, providing additional consumer education and protection, as well as by helping to ensure that good drivers do not subsidize bad drivers.

The Department's proposed amendments make two changes to Appendix A and two changes to Appendix B. These changes conform the Appendices to the amendments to N.J.A.C. 11:3-34.4, proposed July 21, 2003 at 35 N.J.R. 3260(a) and adopted effective December 1, 2003 at 35 N.J.R. 5423(a).

The proposed amendments to Appendix A track the reduction in the number of accumulated eligibility points that trigger an exclusion from the definition of "eligible person," as provided in N.J.A.C. 11:3-34.4 as recently amended. That amendment lowered the number of points from nine to seven. Appendix A is also amended to track the new exclusion from the definition of "eligible person" mandated by N.J.S.A. 17:33B-13. This new exclusion applies to anyone who, during the three-year period immediately prior to initially applying for coverage, or applying for the renewal of coverage, has knowingly provided materially false or misleading information in an application for insurance or in a claim for insurance benefits.

The proposed amendment to Appendix B creates a new basis for an automobile declination appeal. This new category reflects the exclusion for knowingly providing materially false or misleading information as described above.

Two proposed amendments to Appendix B refer to the new basis for an automobile declination appeal related to the foregoing. The new categories reflect the exclusions for having seven or more eligibility points and for knowingly providing materially false or misleading information as described above. A third proposed amendment to Appendix B revises the reference therein to a fee charged by the New Jersey Motor Vehicle Commission from \$5.00 to \$10.00. As set forth in N.J.A.C. 13:18-11.4, \$10.00 is the fee currently charged by the New Jersey Motor Vehicle Commission for a copy of a driving record abstract. The final amendment

to Appendix B updates the address to which requests for driver record abstracts are to be sent and includes instructions on how to obtain a copy of an abstract.

The Department's rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, 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 will have a positive effect on insureds and will put downward pressure on rates for drivers. Honest drivers will benefit from the proposal to combat fraud by penalizing those who provide false or misleading information on an insurance application or a claim for insurance benefits. The enactment of these amendments will help ensure that good drivers do not subsidize the cost of insuring bad drivers. Specifically, good drivers will pay rates reflective of the actual cost of insuring the vehicles they drive, and bad drivers, that is, those with more eligibility points, will pay rates reflective of the actual cost of insuring the vehicles they drive. Insurers would no longer be required to offer voluntary market rates for drivers who have accumulated seven or more points – approximately one percent of New Jersey drivers – which should put downward pressure on the rates of drivers with six or fewer points.

The proposed amendments will have a positive effect on insurers in that they reflect the reduced number of automobile insurance eligibility points needed in order for someone to be considered an eligible person from nine to seven, and the recent revision to N.J.A.C. 11:3-34.4 intended to help reduce insurers claims exposure by reducing fraud.

### **Economic Impact**

The proposed amendments will have a positive economic impact on insureds by putting downward pressure on rates. The proposed amendments conform these Appendices to N.J.A.C. 11:3-34.4 as recently amended, which may decrease premiums for good drivers, while possibly increasing premiums for those insureds whose driving records indicate that they are higher risks based on the number of automobile eligibility points accumulated within the preceding three years.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

### **Jobs Impact**

Although the Department does not anticipate that the amendments alone will result in the generation or loss of jobs, it believes that the package of statutory and regulatory amendments of which it is a part, taken as a whole, will contribute to the attractiveness and competitiveness of the New Jersey automobile insurance market, and help preserve and expand employment in the automobile insurance industry, in insurance agencies and in brokerage firms. The Department invites interested persons to submit any data or studies about the jobs impact of these proposed rules with their written comments.

### **Agriculture Industry Impact**

The proposed amendments will have no agriculture industry impact.

### **Regulatory Flexibility Analysis**

Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a “small business” means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees. Some insurers affected by these amendments meet this definition.

In accordance with P.L. 2003, c.89, this proposal conforms the rules to the amended statute. The description of “eligible person” in Appendix A is amended to exclude any person who, during the three-year period prior to initially applying for coverage, or applying for the renewal of coverage, has knowingly provided materially false or misleading information in an application for insurance, renewal of insurance or in a claim for insurance benefits.

The Department has determined that the proposed amendments are reasonable and necessary for the purposes expressed herein. The proposed amendments do not impose any new recordkeeping or reporting obligations, but merely implement the recently enacted section 63 of P.L. 2003, c.89, which imposes a regulatory requirement that is consistently applied without regard to business size. Additionally, the Department does not believe that these amendments will impose any undue burden on small businesses. In order to provide for uniform and consistent applicability of these rules in the automobile insurance market, no differential treatment is afforded small businesses. These amendments will not require small businesses to use any other kinds of professional services to comply.

The proposed amendments to Appendix B provide updated information with respect to obtaining an abstract of a driving record from the New Jersey Motor Vehicle Commission. As currently written, Appendix B indicates that the documentation to be submitted in support of an insurance denial appeal “should include a certified motor vehicle driver abstract where

appropriate”. However, the text of Appendix B currently reflects erroneous information with regard to the fee (herein corrected and revised) charged to obtain such an abstract and the address to which requests for abstracts are to be sent. Thus, no new compliance requirements are imposed by the proposed amendments to Appendix B, and no additional costs are imposed upon small businesses by the amendment correcting the reference to the fee amount charged by the New Jersey Motor Vehicle Commission to obtain a driving record abstract.

### **Smart Growth Impact**

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

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

SUBCHAPTER 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 drivers 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 or 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 [nine] **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.**

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 [, 120 South Stockton Street, P.O. Box 142, Trenton, New Jersey 08666-0142] . 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 [\$5.00] \$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 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