

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF CONSUMER PROTECTION SERVICES

Insurance Producer Standards of Conduct: Commissions and Fees

Proposed Amendments: N.J.A.C. 11:17B-1.2, 1.3, 2.1, 3.1, and 3.2

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-38

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

Proposal Number: PRN 2006-221

Submit written comments by September 15, 2006 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:17B sets forth the requirements and standards applicable to commissions and fees charged by insurance producers. The Department of Banking and Insurance (Department) is proposing various amendments discussed below to clarify the application of the rules, and in particular, to address the collection of fees by surplus lines producers to reflect the provisions in N.J.S.A. 17:22A-38. This statute provides that no surplus lines producer shall charge any fee to an originating broker, in connection with the negotiation or procurement of any contract of surplus lines insurance, that shall exceed \$50.00 plus the actual cost incurred for any services

performed by a person not associated with the surplus lines producer, such as inspection services. A summary of the proposed amendments follows.

N.J.A.C. 11:17B-1.2(a)3 is proposed to be amended to provide that one of the purposes of the chapter is to require “appropriate” rather than “full” disclosure of fees, and to refer to fees received as well as charged in connection with insurance policies, to reflect more fully the purpose of the rules in the chapter.

N.J.A.C. 11:17B-1.3 is proposed to be amended to provide definitions of “affiliate” and “control” as those terms are used in the chapter. These definitions reflect the definitions in the New Jersey Insurance Holding Systems Act, N.J.S.A. 17:27A-1 et seq. In addition, the definition of “commission” is proposed to be amended to include payment from an insurance producer, as well as payment from an insurer, to reflect that commissions may be shared among producers. In addition, the word “total” before “premiums” is proposed to be deleted from the first sentence in that definition as a matter of form.

N.J.A.C. 11:17B-2.1 is proposed to be amended to include a new subsection (f) to provide that in the case of surplus lines insurance, the originating broker shall disclose to an insured the fact that it may receive a portion of the commission from a surplus lines producer for placing the policy. This reflects the manner by which surplus lines insurance is placed. An insured will contact an originating broker, who in turn contacts a surplus lines producer, when insurance is required from a surplus lines insurer. The surplus lines producer will share a portion of the commission he or she receives from the insurer with the originating producer. The proposed amendment merely requires disclosure of this compensation arrangement to the insured.

N.J.A.C. 11:17B-3.1(a) and (b) are proposed to be amended to reflect N.J.S.A. 17:22A-38 regarding fees that may be charged by surplus lines producers. Specifically, subsection (a) is proposed to be amended to provide that fees charged by surplus lines producers shall also comply with N.J.S.A. 17:22A-38 when the producer is acting in the capacity of a surplus lines producer. Subsection (b) is proposed to be amended to provide that the requirements in that subsection do not apply to fees charged by surplus lines producers pursuant to N.J.S.A. 17:22A-38 in so far as the statute authorizes those fees to be charged without the requirement of a written agreement between the producer and insured. In addition, N.J.A.C. 11:17B-3.1(b)3 is proposed to change the word “will” to “may” as a matter of form.

N.J.A.C. 11:17B-3.2(a) is proposed to be amended to delete a reference to “personal lines surplus lines” insurance to reflect that the particular limitations set forth therein do not apply to fees charged in accordance with N.J.S.A. 17:22A-38. In addition, a new subsection (b) is proposed to reflect the ability of surplus lines producers to charge fees in accordance with N.J.S.A. 17:22A-38b, as well as to provide that where the surplus lines producer is also the originating broker, the fees charged by the producer acting in the capacity of originating producer shall be subject to the requirements of N.J.A.C. 11:17B-3.1, in the case of commercial lines, and N.J.A.C. 11:17B-3.2, in the case of personal lines. Existing subsections (b) and (c) are proposed to be recodified as subsections (c) and (d).

A 60-day comment period is provided for this 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

As noted in the Summary above, the proposed amendments are intended to clarify the application of the existing rules governing the charging of commissions and fees by surplus lines producers to reflect the fees that surplus lines producers may charge pursuant to N.J.S.A. 17:22A-38b. The Department believes that the proposed amendments will help minimize confusion among producers, insurers, and insureds regarding the fees that may be charged by surplus lines producers acting in that capacity. The proposed amendments continue to require that surplus lines producers, when acting in the capacity of originating producer, comply with the existing rules governing fees for services charged when the producer is acting as an originating producer. The proposed amendments also will help ensure that insureds are made aware of the long-standing practice that originating producers may share in the commission paid to the surplus lines producer.

Economic Impact

The Department anticipates that little or no economic impact should result from the proposed amendments. As noted above, the proposed amendments merely reflect the ability of surplus lines producers to charge an originating broker a \$50.00 service fee, as well as actual fees incurred for services rendered by an entity not associated with the surplus lines producer. While there may be an economic impact to the extent that these fees may exceed the maximums currently set forth in the rules, any economic impact is a result of the controlling statute, rather than the proposed amendments. The Department does not believe that any new professional services should be required in order to comply with the proposed amendments.

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

The Department does not anticipate that any jobs should be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments may impose reporting, recordkeeping or other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed amendments apply to small businesses, they will apply to New Jersey resident insurance producers. As noted in the Economic Impact above, little, if any, impact is directly imposed on small businesses. Surplus lines producers will be required to comply with the requirements set forth in N.J.S.A. 17:22A-38 with respect to the collection of fees and will continue to be required to comply with existing requirements in the rules when acting as an originating producer. In addition, originating

producers will be required to provide notice to insureds that they may receive a portion of their commission from the surplus lines producer. Little or no cost is associated with compliance with these requirements and the Department does not believe that any new professional services will be required.

The proposed amendments provide no differentiation in compliance requirements based on business size. As noted above, the proposed amendments are intended to clarify the existing rules to reflect the requirements set forth in N.J.S.A. 17:22A-38 with respect to surplus lines producer fees. The requirements in the statute, as well as the existing rules, provide no differentiation in compliance requirements based on business size. Accordingly, the proposed amendments provide for no differentiation in compliance requirements based on business size.

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 1. GENERAL REQUIREMENTS

11:17B-1.2 Purpose

(a) The purposes of this chapter are:

1. - 2. (No change.)

3. To require [full] **appropriate** disclosure of fees charged **or received** in connection with insurance policies;

4. - 5. (No change.)

11:17B-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Affiliate” means a person that controls, is controlled by, or is under common control with the producer.

...

“Commission” means any payment from an insurer **or insurance producer** that is contingent upon the sale of a policy, contract, or certificate of insurance, or is based on the [total] premiums produced by the producer or written by the insurer. “Commission” shall not be deemed to include any discount charge or fee charged by a credit card company, bank, or similar entity pursuant to a written agreement between such entity or entities and an insurer or insurance producer, by which the insurer or insurance producer accepts payment for insurance premiums by credit card, debit card, or direct account deductions in accordance with N.J.A.C. 11:1-24.

...

“Control” is as defined in N.J.S.A. 17:27A-1c.

...

11:17B-2.1 Commissions

(a) – (e) (No change.)

(f) In the case of surplus lines insurance, with the notice required pursuant to N.J.A.C. 11:1-33.3(a)3 at the time of quotation, an insurance producer acting in the capacity of an originating broker shall disclose in writing to an insured the fact that for placing a policy through a surplus lines producer the originating broker will receive a portion of the commission paid to the surplus lines producer by the insurer.

11:17B-3.1 Fees

(a) Insurance producers acting as agents for an insurance company shall not charge or receive any fee on a policy to or from a policyholder or insured for services rendered as an insurance producer except for reimbursement of actual out-of-pocket expenses incurred obtaining documents and other materials related to the underwriting process for new automobile applications and subject to the limitations of N.J.A.C. 11:17B-3.2(a)9. **Fees charged by surplus lines producers shall also comply with the provisions of N.J.S.A. 17:22A-38 when the producer is acting in the capacity of a surplus lines producer.**

(b) [Any] **Except for fees charged by surplus lines producers pursuant to N.J.S.A. 17:22A-38, any** insurance producer charging a fee to an insured or prospective insured shall first obtain from the insured or prospective insured a written agreement, which shall be separate and apart from all other agreements and applications, and shall contain the following provisions and no other provisions:

1. – 2. (No change.)

3. A clear statement as to whether a commission [will] **may** be received from the purchase of insurance; and

4. (No change.)

(c) – (g) (No change.)

11:17B-3.2 Service fees

(a) An insurance producer may charge a fee for services rendered in the sale or service of personal lines property/casualty [or personal lines surplus lines] insurance subject to the following conditions:

1. – 9. (No change.)

(b) Pursuant to N.J.S.A. 17:22A-38b, no surplus lines producer shall charge any fee to an originating broker in connection with the negotiation or procurement of any contract of surplus lines insurance that shall exceed \$50.00 plus the actual costs incurred for any services performed by a person that does not control the surplus lines producer, such as inspection fees. If the surplus lines producer is also acting as the originating broker, the fees charged by the producer in the capacity of originating broker shall be subject to the requirements of N.J.A.C. 11:17B-3.1, in the case of commercial lines, and this section, in the case of personal lines.

Recodify existing (b) – (c) as **(c) – (d)** (No change in text.)