

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF CONSUMER PROTECTION SERVICES

Insurance Producers Standards of Conduct: Commissions and Fees
Fees

Proposed Amendment: N.J.A.C. 11:17B-3.1

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

Authority: N.J.A.C. 17:1-8.1, 17:1-15e, and 17:22A-26 et seq.

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

Proposal Number: PRN 2008-400

Submit comments by January 30, 2009 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:17B-3 sets forth requirements with respect to fees charged by insurance producers. N.J.A.C. 11:17B-3.1(a) provides that 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 in 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.

After almost 20 years' experience with it, the Department of Banking and Insurance (Department) has determined that it is appropriate to amend the current rule to limit its application solely to personal lines insurance. The distinction between an insurance agent, who represents an insurer, and an insurance broker, who represents the insured, has been blurred in recent years, particularly in the commercial lines context. The substance of modern agency agreements is limiting and restrains the producer in a number of ways. Significantly, producers acting as agents in commercial lines transactions frequently lack the ability to bind coverage on behalf of the principal/insurer without submitting an application to the insurer's underwriters and obtaining advance approval. In personal lines, however, traditional insurance agency relationships continue to exist.

In the commercial marketplace, many insurance producers offer an array of services to their commercial clients in addition to the sale of insurance on a commission basis. This provides the client with additional services over and above those that are required to sell, solicit or negotiate insurance, in exchange for the payment of a fee. Clients are willing to pay for additional services because they may be engaged in a high-risk business and need the extra attention, or they may simply believe it is in their commercial interest to maximize their insurance relationship. Examples of these services include: analysis of a client's risk profile and development of a comprehensive insurance program; preparation of annual coverage review analysis; enhanced customer service standards and claims services; appraisal and inspection of client properties for insurance coverage purposes; and loss control consulting and education. The current rule prohibits producers from providing and charging for these additional services in transactions involving commercial lines policies, notwithstanding that the insured agreed to pay for such services, where the producer is operating in the capacity of an agent. This is true even if

the fees are charged and accepted pursuant to a separate written agreement between the insured and producer.

The Department has determined that, in the case of commercial lines insurance where the products and issues involved in the provision of such coverage are more complex, a producer should not be prohibited from providing additional services and charging appropriate fees for such services, provided that the insured agrees to such additional fees and such fees otherwise comply with N.J.A.C. 11:17B-3.1(b) through (g). Accordingly, the proposed amendments will provide additional flexibility to commercial line producers to enter into fee arrangements with their clientele.

This proposed amendments are not intended to modify the restrictions on fees charged in personal lines transactions, nor the restrictions applicable to fees charged in surplus lines transactions set forth at N.J.S.A. 17:22A-38.

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

The proposed amendments will eliminate the restriction on insurance producers who are acting as agents for an insurance company in transactions involving commercial lines policies from charging or receiving any fee for services rendered as an insurance producer. As set forth in the Summary above, the proposed amendments will enable producers and insureds in the commercial lines market to enter into agreements whereby producers may provide certain services and charge and collect reasonable fees for such services agreed to by the insured. This

should have a positive social impact by providing additional options to commercial policy insureds to receive additional services that may be provided by producers.

Economic Impact

No additional costs to insurers, producers or insureds will be imposed by the proposed amendments. The proposed amendments eliminate a restriction on producers charging fees for the provision of additional services to current or prospective commercial lines insureds with the agreement of the insured. No additional professional services will be required in order to comply with the proposed amendments. To the extent that producers in commercial lines policy transactions provide additional services, they now will be able to charge reasonable fees for such services as agreed to by the insureds. Moreover, the proposed amendments will afford commercial lines insureds additional options with respect to their receipt of additional services to be provided by the producer for which they agree to pay a reasonable fee. The opportunity of producers and commercial lines insureds to mutually agree upon such arrangements that the proposed amendments will provide will have a positive economic impact on both parties to such arrangements.

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 will be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed amendments 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 Statement

The proposed amendments will not impose any new 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. The proposed amendments eliminate the current restriction on charging fees for services provided by insurance producers in commercial lines insurance.

Smart Growth Impact

The proposed amendments will not have any impact on the achievement of Smart Growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments will not have any impact on housing affordability in this State in that they apply to insurance producer standards of conduct.

Smart Growth Development Impact

The proposed amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that they apply to insurance producer standards of conduct.

Full text of the proposal follows (addition indicated in boldface **thus**):

SUBCHAPTER 3. FEES

11:17B-3.1 Fees

(a) **Insurance producers may charge a fee for services rendered in the sale of personal lines property/casualty or personal lines surplus lines insurance, subject to N.J.A.C. 11:17B-3.2.** Insurance producers acting as agents for an insurance company **for personal lines insurance** 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. **Subject to (b) through (g) below, insurance producers selling, soliciting or negotiating commercial lines insurance may charge and receive fees for services rendered from an insured or prospective insured.**

(b) – (g) (No change.)