

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Persons Employed in the Business of Insurance

Convicted Persons; Waiver

Proposed Readoption with Amendment: N.J.A.C. 11:17E

Authorized By: Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17:22A-26 et seq., 2A:168A-1 et seq., and 18 U.S.C. §§ 1033 and 1034.

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

Proposal Number: PRN 2014-048.

Submit comments by June 20, 2014, to:

Robert J. Melillo, Chief
Legislative and Regulatory Affairs
Department of Banking and Insurance
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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt with amendment N.J.A.C. 11:17E-1, which is scheduled to expire on April 3, 2014, pursuant to N.J.S.A. 52:14B-5.1.b. In accordance with N.J.S.A. 52:14B-5.1.c(2), the submission of this notice to the Office of Administrative Law extended the expiration date 180 days to September 30, 2014. The Department has reviewed Chapter 17E and has determined that the rules set forth therein are necessary, reasonable, and proper for the purpose for which they were originally promulgated.

Pursuant to N.J.S.A. 17:22A-26 et seq., the Commissioner of the Department of Banking and Insurance (Commissioner) is charged with the responsibility of regulating the business of insurance in this State, including the licensing of insurance producers. Moreover, the Commissioner is the official in this State who is authorized to grant or deny written consent or waiver to engage in the business of insurance to persons otherwise prohibited from employment in the business of insurance in accordance with 18 U.S.C. § 1033(a)(2) (“the Act”).

Chapter 17E implements 18 U.S.C. §§ 1033 and 1034, Federal statutes that 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. This chapter applies to all insurers doing business in this State pursuant to Titles 17, 17B, or 26 of the New Jersey Statutes, and 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 Act also prohibits any person from employing a prohibited person in the business of insurance in any capacity without first having obtained the Commissioner’s written

consent. Both the prohibited person and the employer risk Federal criminal charges for a violation of these provisions.

The Department is proposing the readoption of these rules in furtherance of the obligations imposed by the Act. The Act and its implementation were originally the subject of intense study and consideration by the National Association of Insurance Commissioners (NAIC) as well as the Department, and the result of that review was the implementation of the following procedures:

1. State enforcement of 18 U.S.C. §§ 1033 and 1034;
2. Ensuring that only the appropriate state acts upon consent requests;
3. Providing for the exchange of information by states regarding applications for written consent to avoid forum shopping by prohibited persons; and
4. Allowing each state the opportunity to implement its own public policy and laws regarding the reintroduction of rehabilitated convicted persons into employment in the business of insurance.

The Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168A-1 et seq., supports the opportunity for the reintroduction of rehabilitated convicted offenders into licensed professions and gainful employment once certain facts are established and conditions are fulfilled. The Department has applied the principles set forth in the RCOA to judge the merits of a request for written consent under the Act. The Department has also participated in the exchange of data with other states in furtherance of the NAIC guidelines regarding waiver applicants, under the established National Special Activities Database (NSAD). A summary of the rules set forth in the chapter follows:

N.J.A.C. 11:17E-1.1 sets forth the purpose and scope of the convicted persons waiver approval process.

N.J.A.C. 11:17E-1.2 supplies the definitions of key terms used within the chapter.

N.J.A.C. 11:17E-1.3 defines the prohibited activities that compel a convicted person to obtain written consent and the final determination of the appropriate state from which an applicant shall obtain a waiver.

N.J.A.C. 11:17E-1.4 addresses the application process and those applicants who qualify for use of either the “short form” or “comprehensive form” waiver application.

N.J.A.C. 11:17E-1.5 sets forth the scope of actions available to the Commissioner following the consideration and review of a waiver application.

N.J.A.C. 11:17E-1.6 involves the maintenance of the confidentiality of the information submitted to the Department by waiver applicants.

N.J.A.C. 11:17E-1.7 refers to the available penalties imposed by law for the failure to comply with the requirements of the subchapter.

The Appendix contains Exhibit A, the Initial Application for Written Consent to Engage In The Business Of Insurance, Pursuant to 18 U.S.C. §§ 1033 and 1034, and Exhibit B, the Comprehensive Application for Written Consent to Engage in the Business of Insurance, Pursuant to 18 U.S.C. §§ 1033 and 1034.

The Department proposes to amend N.J.A.C. 11:17E-1.3(c) to delete the requirement that the applicants submit a processing fee of \$59.00. Most 1033 waiver applicants are also applicants for producer or other insurance licenses or credentials and the review of the consent application overlaps with the review of their license application, on which they pay an application fee.

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 notice is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendment will continue to address the obligation established under the Act to review and grant or deny applications for waivers submitted by prohibited persons seeking to be employed in the business of insurance in this State. This chapter and the Act implement the policy determination of the United States Congress that prohibited persons should not be engaged in the interstate business of insurance without having first obtained written consent from the appropriate state official. The Commissioner is charged with this responsibility to review and determine whether prohibited persons under 18 U.S.C. §§ 1033 and 1034 should be granted waivers to engage in the business of insurance.

Since the social policy found in the RCOA provides that rehabilitated ex-offenders shall be permitted, in appropriate cases, to obtain licenses that might otherwise be unavailable because of the person's conviction, the Department permits previously convicted prohibited persons the opportunity to be employed in the insurance business upon demonstrating that they have achieved a sufficient level of rehabilitation in accordance with the standards specified in the RCOA and N.J.A.C. 11:17E-1.4(i).

The readoption of this chapter will continue to provide for a complete and thorough review of applications for written consent and allow the Commissioner to continue to grant waivers where the evidence of rehabilitation indicates that the applicant is unlikely to commit additional criminal offenses. The utilization of the waiver process affords previously convicted individuals the opportunity to acquire gainful employment and become productive, contributing members of society.

Economic Impact

The Department will continue to expend resources in maintaining systems to distribute, receive, investigate, and determine applications for waivers as authorized by these

rules. Companies engaged in the business of insurance, insurers, producers and others will continue to maintain systems that ensure that they are not employing prohibited persons in the business of insurance. Persons convicted of crimes involving dishonesty or breach of trust continue to be prohibited from being employed in the business of insurance unless they first obtain the Commissioner's written consent pursuant to the Act. The waiver application and issuance process will continue to have a favorable economic impact by affording such persons the opportunity to secure gainful employment in the insurance industry. Convicted persons may incur some expense in securing the documentation necessary to support their application and establish their rehabilitation, including copies of court documents. Prospective employers may incur some minimal costs in ascertaining whether the issuance of a waiver is necessary before a person can be employed in the business of insurance. The amount of any such expenses will vary on a case-by-case basis.

The proposed amendment deletes the written consent application fee. The benefits of assisting insurers and individuals to remain in compliance with the Act and of ensuring that only qualified persons are authorized to engage in the business of insurance in New Jersey outweigh the minimal costs attendant upon making application for written consent.

Federal Standards Statement

A Federal standards analysis is not required in this instance because the rules proposed for re adoption and the proposed amendment continue 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 the rules proposed for readoption and the proposed amendment 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 proposal together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The rules proposed for readoption and the proposed amendment will not have any impact upon the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendment will apply to “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 rules proposed for readoption apply to small business, they will apply to insurers, producers, and other entities to which the rules apply, which seek to employ persons required to seek a waiver pursuant to the Act. The costs of compliance are set forth in the Economic Impact above. Future annual costs of compliance with these rules are not expected to differ from current annual costs as discussed in the Economic Impact above. No professional services will need to be employed to comply with these rules. In order to ensure that only persons who have established that they qualify for the issuance of a waiver as required by the Act will be permitted to engage in the business of insurance, these rules make no distinction in the application of the obligations imposed by the Act based upon the size of the business by which a successful waiver applicant will be employed.

The Department is unaware of any provisions of the rules proposed for readoption that are excessively onerous to “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 these rules will apply to small

businesses, small businesses will be required to incur some costs necessary to determine if a prospective employee is a prohibited person. Since the underlying legislation enacted by Congress does not allow for any exception for small businesses, all employers, regardless of size, are required to comply with these requirements. Additionally, all employers, large and small, are subject to criminal liability for intentionally employing a prohibited person in the business of insurance. Thus, pursuant to the Act, all employers, regardless of size, will continue to be required to comply. The rules proposed for re-adoption will impose compliance requirements, as discussed in the Summary above. The proposed amendment eliminates reference to the processing fee which is proposed to be deleted for the reasons set forth in the proposal Summary.

Housing Affordability Impact Analysis

The rules proposed for re-adoption with amendment will have no impact on housing affordability in this State in the rules proposed for re-adoption with amendment relate to persons seeking waivers under the Act.

Smart Growth Development Impact Analysis

The rules proposed for re-adoption with amendment will not have an impact on smart growth in this State and there is 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 the rules proposed for re-adoption with amendment relate to persons seeking waivers under the Act.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:17E.

Full text of the proposed amendment follows (deletion indicated in brackets [thus]):

11:17E-1.3 Prohibited activities; requirement to obtain waiver; determination of appropriate state

(a) – (b) (No change.)

(c) All prohibited persons seeking to obtain a waiver in accordance with (a) above shall complete and file “Application for Waiver Short Form” or “Application for Waiver Comprehensive Form,” set forth in Exhibits A and B respectively in the Appendix to this chapter and incorporated herein by reference[, together with the processing fee of \$59.00] to:

New Jersey Department of Banking and Insurance

1033 Compliance

PO Box 324

Trenton, NJ 08625-0324

(d) (No change.)