

May 13, 2019

SENATE BILL NO. 2475
(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2475 (Second Reprint) with my recommendations for reconsideration.

My administration is firmly committed to strong consumer protections, particularly in light of the current federal administration's attempted rollback of a number of pro-consumer rules and regulations. For instance, last month, the Bureau of Securities within the Division of Consumer Affairs published a rule proposal that would apply the common law fiduciary duty to broker-dealers, agents, investment advisers, and investment adviser representatives. In previous years, the U.S. Department of Labor had tried to craft a similar rule at the federal level but was deemed not to have jurisdiction to address the issue, and the Securities and Exchange Commission under the current federal administration responded by establishing a less consumer-protective standard. The Bureau of Securities stepped up to fill the void when it announced its proposal in September 2018, separately from the legislation now on my desk. This is just one example of how my administration is standing up for New Jersey residents in the face of a hostile federal administration.

Senate Bill No. 2475 (Second Reprint) would run counter to these efforts. The first section of the bill prohibits a cause of action against an insurance producer arising from transactions involving property and casualty insurance or a health benefits plan where the cause of action is based on a fiduciary duty, unless the cause of action involves the wrongful retention or misappropriation of money received as a premium deposit or as

payment of a claim. In effect, by eliminating the potential for a civil cause of action in many circumstances, this provision would limit the enforcement of a fiduciary duty on insurance producers.

Nonetheless, the bill was amended to include language stating that the provisions of that section shall not limit the ability of the Commissioner of Banking and Insurance to find, impose, or enforce a fiduciary duty if imposed pursuant to the New Jersey Insurance Producer Licensing Act of 2001, Department of Banking and Insurance rules and regulations, or federal law. This language may have been included in recognition of the fact that the Department of Banking and Insurance has already promulgated a regulation that states, "[a]n insurance producer acts in a fiduciary capacity in the conduct of his or her insurance business." N.J.A.C. 11:17A-4.10. I appreciate the efforts by the sponsors to include the amendment and accommodate the potential concerns regarding the existence of this regulation. However, I am advised that it remains unclear how the imposition of a fiduciary duty by regulation would interact with the statutory prohibition against causes of action based on a fiduciary duty, and the uncertainty surrounding this issue would not benefit any affected entities.

I do agree with the underlying principle of the included language that statutory limits should not be placed on the ability of regulators to protect consumers. As mentioned above, the Bureau of Securities has recently deemed it appropriate to begin the process of imposing a fiduciary duty for broker-dealers, agents, investment advisers, and investment adviser representatives, with the understanding that the complex nature of these transactions places consumers in a vulnerable position. In order to clearly

preserve the ability of regulators to impose a fiduciary duty on insurance producers if necessary, I am recommending the removal of the bill's first section.

The third section of the bill addresses the section of law that currently requires insurance producers selling, soliciting, or negotiating health insurance policies or contracts to notify the purchaser of the amount of any commission, service fee, brokerage, or other valuable consideration that the insurance producer will receive as a result of the transaction. The bill dilutes this requirement by merely requiring the insurance producer to notify the purchaser of the availability of information concerning the insurance producer's compensation. Insurance producers would only have to include information about compensation if the compensation is based on a percentage of the premium. To guard against the possibility of self-dealing, purchasers should know exactly how much an insurance producer stands to make on a transaction that it is helping to facilitate. I cannot support a provision that would prevent purchasers from having access to this information, and am thus recommending the removal of this section as well.

With regard to the section of the bill addressing the requirements for an affidavit of merit in causes of action against insurance producers, I recognize the need to ensure that individuals providing such affidavits are appropriately credentialed. However, I am concerned that limiting the class of individuals eligible to provide such affidavits to those licensed in New Jersey is unduly burdensome. In fact, the general New Jersey affidavit of merit statute states that affidavits shall come from individuals "licensed in this or any other state." I am

recommending that affidavits of merit in causes of action against insurance producers continue to be permitted from licensees both within New Jersey and outside the State. Additionally, I am recommending that the requirement of a professional certification or five years of experience in the relevant area or specialty mirror what currently exists in the general affidavit of merit statute.

Lastly, the language added by the bill imposing an affidavit of merit requirement "regardless of the damages sought" could be read to expand the affidavit of merit requirement to all causes of action against an insurance producer - even if they did not arise from the insurance producer's professional conduct. This would be contrary to the purpose of the affidavit of merit requirement, and I am thus recommending that this language not be adopted.

Accordingly, I herewith return Senate Bill No. 2475 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Lines 1-2:</u>	Delete ", supplementing P.L.2001, c.210 (C.17:22A-26 et seq.)"
<u>Page 2, Title, Lines 2-3:</u>	Delete "and P.L.2008, c.38"
<u>Page 2, Section 1, Lines 8-43:</u>	Delete in their entirety
<u>Page 3, Section 2, Line 1:</u>	Delete "2." and insert "1."
<u>Page 3, Section 2, Line 29:</u>	Delete "regardless of damages sought,"
<u>Page 3, Section 2, Line 30:</u>	Delete "State" and insert "or any other state"
<u>Page 3, Section 2, Line 33:</u>	Delete "and" and insert "or"
<u>Page 3, Section 2, Lines 35-36:</u>	Delete "during the five years immediately preceding the date of the occurrence that is the basis for the claim or action" and insert "for a period of at least five years"
<u>Page 3, Section 3, Lines 42-48:</u>	Delete in their entirety
<u>Page 4, Section 3, Lines 1-22:</u>	Delete in their entirety

Page 4, Section 4, Line 24:

Delete "4." and insert "2."

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor