6. Making or proposing to make an insurance contract;

7. Disseminating information as to coverages in general or for any particular policy, except that this shall not prohibit the dissemination of buyer's guides or applications for coverage in response to requests from prospective policyholders;

8. Disseminating information as to rates in general or for any particular policy where the rate cannot be secured by referring to a published or printed list of standard rates;

9. Initiating an inquiry as to the terms of existing coverage, except as described at N.J.A.C. 11:17A–1.5(a)5;

10. Discussing or describing the coverages or terms of a proposed contract of insurance with a prospective policyholder, including counseling as to which coverages to buy;

Example: If an insured or prospective insured requests advice in any communication with an unlicensed employee, the response must be made by a licensed producer.

11. Recommending or independently initiating additions or deletions to an insured's policy;

12. Signing binders, endorsements and insurance policies;

13. Authorizing the issuance or delivery of certificates of insurance, endorsements, binders or insurance policies or insurance identification cards; and

14. Responding to a policyholder's request for advice or counsel regarding policy provisions or coverage.

Example: In the course of requesting an application form or a change to an existing policy, if a policyholder or prospective policyholder, while speaking to an unlicensed person, requests an opinion about the terms of the proposed insurance contract or the proposed change to the existing contract, the response must be made by a licensed producer.

(c) No insurance producer or limited insurance representative shall negotiate or solicit in New Jersey any insurance contract which has not first been filed in New Jersey where such contract is required to be filed.

Amended by R.1993 d.199, effective May 3, 1993.
See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).
Text at (b) amended to define activities further and to add examples.

11:17A–1.5 Activities for which licensure not required

Office employees who perform strictly clerical duties under the supervision and control of an insurer or licensed producer shall not be required to be licensed as an insurance producer.

Amended by R.1993 d.199, effective May 3, 1993.
See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).
Activities defined further; examples added; (a)15 through 17 added.
Administrative Correction.
See: 25 N.J.R. 4179(b).

11:17A–1.6 Duty to have insurance producer at each place of business

(a) Each place of business maintained by an insurance producer for the purpose of transacting the business of insurance shall be under the direct supervision of an insurance producer.

(b) Any insurance producer who has established one or more places of business for the purpose of transacting the business of insurance shall assign at least one separate insurance producer to each location and shall register as a branch office in accordance with N.J.A.C. 11:17–2.8.

(c) Licensed officers shall be held responsible for all insurance related conduct of the organization licensee, its other licensed officers or partners, and its employees.

11:17A–1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

1. Not attempt to channel an eligible person away from an insurer or insurance coverage so as to avoid the agent's or broker's obligation to submit an application or an insurer's obligation to accept an eligible person;

2. Provide each applicant seeking automobile insurance with premium quotations for the forms or types of coverage requested by the applicant, which are offered by all insurers represented by the agent or broker for personal private passenger automobile insurance or with which the agent or broker places personal private passenger automobile risks. If the request for a quotation was made orally, the agent or broker may provide the applicant with an oral quotation; but shall provide the applicant at minimum with information about rate levels in the territory;

3. Upon request, submit an application of an eligible person for automobile insurance to the insurer selected by the applicant.

i. Where a producer who, pursuant to the authority granted by an insurer, has the authority to immediately bind an application for private passenger automobile insurance, determines that the applicant is an eligible person, the producer shall bind the coverage, or if requested shall notify the applicant whether coverage will be provided or denied, and shall transmit the application to the insurer within five business days of receipt of the completed written application. Nothing in this section shall be construed to compel an insurer to provide a producer with the authority to bind cover-

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age immediately except as provided at N.J.A.C. 11:3–44.4.

ii. Where a producer who, pursuant to his or her agreement with an insurer, does not have authority to bind coverage immediately, receives a completed written application, the producer shall promptly transmit the application to the insurer. Nothing in this section shall be construed to permit an insurer to rescind any binding authority previously granted to its producers.

iii. Producers that transmit applications to insurers for underwriting review shall retain proof of such transmissions in order to memorialize the date upon which transmission occurred. Such proof may be in the form of:

(1) An official receipt of mailing which includes the applicant's name thereon;

(2) A copy of a facsimile transmission which contains the applicant's name and the date of transmission; or

(3) Any other manner from which proof and date of mailing can be verified;

4. Within 10 working days after receiving a declination (see N.J.A.C. 11:3–33) from an insurer to which a written application has been submitted, so advise the applicant in writing, unless the written declination was sent by the insurer to the applicant or the insured;

5. Where no written application has been made prior to declination, the agent or broker shall, if so requested by the applicant within 90 days from the date of denial, provide the applicant with a written explanation of the declination within 10 working days of the request. Such communication shall, when applicable, include the reasons why the coverage offered is with less favorable terms or conditions than those requested; and

6. Not bind coverage for automobile physical damage perils prior to inspection of the automobile by the insurer when the insurer requires such inspection pursuant to the provisions of N.J.A.C. 11:3–36.

(b) For the purpose of this section the Commissioner of Insurance may impose a civil penalty in an amount of up to $2,000 for the first violation and up to $5,000 for the second and each subsequent violation and any other penalty provided by law.

New Rule, R.1992 d.189, effective April 20, 1992.
See: 23 N.J.R. 3199(a), 24 N.J.R. 1510(a).
Section was "Penalties."
Emergency Amendment R.1993 d.135, effective March 1, 1993. (operative March 8, 1993) (expires April 30, 1993.)
See: 25 N.J.R. 1290(a).
Binder requirements added to (a)3.
Adopted Concurrent Proposal, R.1993 d.238, effective April 30, 1993.
See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).
Amended by R.1994 d.598, effective December 5, 1994.
See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

11:17A–1.8 Penalties

(a) The Commissioner shall impose penalties for violations of this subchapter in accordance with the provisions of N.J.S.A. 17:22A–1 et seq. and any other applicable law.

(b) For the purpose of determining the existence of a violation and assessing a penalty under this subchapter, a separate violation shall be deemed to exist, and a separate penalty therefor shall be assessed, for each violation of the provisions of this subchapter.

Recodified from 1.7 by R.1992 d.192, effective April 20, 1992.
See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).
Section was "Severability."

Case Notes

Licensee responsible for any submission of false applications by employee. Fortunato v. Benner, 92 N.J.A.R.2d (INS) 73.

Insurance producer license revoked for consumer fraud and other misconduct. Fortunato v. Conte, 92 N.J.A.R.2d (INS) 17.

11:17A–1.9 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from 1.8 by R.1992 d.192, effective April 20, 1992.
See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

SUBCHAPTER 2. UNFAIR TRADE PRACTICES

11:17A–2.1 Purpose; scope

(a) This subchapter implements the provisions of N.J.S.A. 17:29A–15, 17:29B–4 and 17B:30–13 and 15 by prohibiting insurance producers and limited insurance representatives from engaging in certain practices in connection with the business of insurance.

(b) This subchapter applies to all insurance producers or limited insurance representatives.

11:17A–2.2 Definitions

The following words and terms as used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey.

"Effectuation of an insurance contract" or "effectuate" is defined at N.J.A.C. 11:17A–1.2.

"Financial institution" means any State or Federal banking institution, bank holding company, credit union, savings and loan association, finance company, mortgage loan company, or any other institution, association, partnership, company, corporation, individual or individuals whose principal business is the lending of money or the extension of credit.

"Inducement" means money or any favor, advantage, object, valuable consideration or anything other than money which has an intrinsic value or a redeemable value greater than $10.00.

"Insurance producer" means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A–2.

"Limited insurance representative" means a person who is authorized to solicit, negotiate or effect contracts for a particular line of insurance as an agent for an insurance company authorized to write that line in this State which by the nature of the line of business and the manner by which it is marketed to the public does not require the professional competency demanded for an insurance producer license.

"Negotiation of an insurance contract" or "negotiate" is defined at N.J.A.C. 11:17A–1.2.

"Person" means any individual, corporation, partnership or other legal entity.

"Rebate" means the return or promise to return of any monetary sum, or discount, abatement, credit or reduction in premium other than that plainly expressed in the insurance contract.

"Solicitation of an insurance contract" or "solicit" is defined at N.J.A.C. 11:17A–1.2.

11:17A–2.3 Rebates and inducements; prohibited practices

(a) No insurance producer shall offer, make or give, or permit to be offered, made or given, to any person directly or indirectly, an inducement to purchase insurance other than that plainly expressed in the insurance contract.

(b) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, any rebate of premiums payable on a contract of insurance, other than that plainly expressed in the contract or provided for in ratings systems filed by or on behalf of the insurer writing the contract and approved by the Commissioner.

(c) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, anything of value in return for that person's agreement not to purchase insurance from another insurance producer or insurer.

(d) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, anything of value as compensation for being unable to offer a comparable or better insurance program at less cost.

(e) The provisions of this section shall apply whether or not a contract of insurance is ultimately effected.

11:17A–2.4 Rebates and inducements; determination of value

(a) For the purpose of determining the value of any item pursuant to N.J.A.C. 11:17A–2.3, an insurance producer shall retain the original invoice for such item for five years beyond the later of the date the offer is discontinued or the date the last item is given.

(b) The value of any favor, advantage, valuable consideration or any other item or service shall be determined by the Commission or his or her designee.

11:17A–2.5 Tie-ins; coercion

(a) No financial institution licensed as an insurance producer or registered as a limited insurance representative shall, as a condition precedent, concurrent or subsequent to the lending of money or the extension of credit, or the renewal of the loan or extension of credit, require that the borrower acquire, finance or negotiate a policy or contract of insurance through any particular insurer, insurance producer, or limited insurance representative, or cancel insurance with another insurance producer, limited insurance representative or insurer.

1. A financial institution licensed as an insurance producer or registered as a limited insurance representative shall accept the insurance policy provided by a borrower unless a reasonable basis exists to disapprove the insurance policy. For the purpose of this paragraph, disapproval shall be deemed unreasonable if it is not based solely on reasonable standards as determined by the Commissioner, uniformly applied, relating to the extent of coverage required and the financial soundness and services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required. If a financial institution rejects the insurance furnished by the borrower, it shall provide the borrower with a clear and complete written statement of reasons for the rejection.

2. Pursuant to and consistent with (a) and (a)1 above, all financial institutions licensed as insurance producers or registered as limited insurance representatives shall issue a written disclosure to prospective insureds which shall inform them of their right to acquire insurance coverage from and through sources independent of the financial institution and its subsidiaries when such insurance coverage is required to secure a loan, credit or mortgage, or

any renewal thereof. The written disclosure required by this paragraph shall be worded as follows, and printed in a type size not less than 10 point type, and shall be maintained by the insurance producer or limited insurance representative for at least five years. A copy of this disclosure shall be given to the borrower at the time the issue of insurance first arises.

DISCLOSURE NOTICE

The Insurance Laws of New Jersey provide that the lender may not require the borrower to take insurance through any particular insurer, insurance producer (e.g., agent or broker) or limited insurance representative.

The borrower has the right to have the insurance placed with or through an insurance producer, limited insurance representative and insurer of his choice, provided that they meet the reasonable requirements of the lender. Subject to the rules adopted by the Commissioner of Insurance, the lender has the right to designate reasonable requirements as to the insurer, the insurance producer and limited insurance representative, and as to the adequacy of the coverage. The lender cannot require the borrower to cancel insurance with another insurance producer, limited insurance representative and insurer unless the continuation of such coverage and relationship would be unreasonable within the meaning of this notice and N.J.A.C. 11:17A–2.5.

I have read the foregoing statement and understand my rights and privileges and those of the lender relative to the placing of insurance.

I have selected _____ (insert name) as the Insurance Company/Agency/Insurance Producer or Limited Insurance Representative to provide the required ____ (insert type) insurance.

_____
Name of Borrower

_____
Name of Borrower

_____
Date

(b) No financial institution licensed as an insurance producer or registered as a limited insurance representative shall require, directly or indirectly, that any borrower, mortgagor, purchaser, insurer or other insurance producer or limited insurance representative pay a separate charge in connection with the handling of any insurance policy required as security for a loan or the extension of credit, or pay a separate charge to substitute the insurance policy of one insurer for that of another.

(c) No financial institution licensed as an insurance producer or registered as a limited insurance representative shall require any procedure or condition of an insurer, insurance producer or limited insurance representative not customarily required of insurers insurance producer or limited insurance representative that are affiliated or connected with the financial institution.

(d) No insurance producer or limited insurance representative shall engage in any conduct which reasonably could result in or results in:

1. Leading a person to believe that his or her creditworthiness, or that the extension of credit, is conditioned upon the purchase of insurance through a particular insurance producer, limited insurance representative or insurer; or

2. An unlicensed financial institution either soliciting, negotiating, or effecting insurance business acting on behalf of the insurance producer, or limited insurance representative.

(e) No insurance producer or limited insurance representative shall require an applicant or policyholder, or a member of the applicant's or policyholder's family, to purchase from him or her a collateral policy of insurance as a condition precedent to securing or renewing a policy of insurance. Nothing in this subsection shall prevent an insurance producer or limited insurance representative from requiring the purchase of a collateral insurance policy from a source other than the insurance producer or limited insurance representative, including a person or entity with whom he or she is associated, if such a condition precedent is based upon appropriate underwriting guidelines of the insurer.

(f) No insurance producer or limited insurance representative engaged in a business other than the business of insurance shall engage in any conduct which reasonably could result in or which results in coercing an applicant or policyholder into purchasing insurance as a condition precedent, concurrent or subsequent to securing any other good or service.

(g) No insurance producer or limited insurance representative shall restrict the sale or issuance of an insurance policy, or participate in the restriction of the sale or issuance of an insurance policy, to persons who enter into, or agree to enter into, premium financing agreements with any particular premium finance service company.

(h) No insurance producer acting as a motor club representative or who receives any compensation, directly or indirectly, for or on account of the sale of a motor club service contract, shall require the purchase of a motor club contract as a condition to securing an insurance contract and/or premium finance agreement.

11:17A–2.6 Identification of insurance producer

(a) An insurance producer who solicits insurance shall be required to identify the following information to the person he or she is soliciting prior to commencing his or her solicitation:

1. His or her name as it appears on his or her insurance producer license;