

“Automobile insurance eligibility points” means points calculated under the schedule promulgated by the Commissioner pursuant to this subchapter.

“Commissioner” means the Commissioner of Banking and Insurance of the State of New Jersey.

“Department” means the Department of Banking and Insurance of the State of New Jersey.

“State” means the State of New Jersey.

Public Notice: Receipt of petition for rulemaking and action on petition. See: 28 N.J.R. 1565(b).

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Amended by R.2003 d.469, effective December 1, 2003.

See: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

Rewrote “At-fault accident”.

Case Notes

Because the New Jersey Insurance Commissioner reasonably construed the term “at-fault accident” as used in N.J.A.C. 11:3-34.3 to include a one-car, weather-related accident in which the driver was not negligent, an insurer properly assessed its insured five eligibility points for such an accident under N.J.S.A. 17:33B-14. *Reilly v. AAA Mid-Atlantic Ins. Co.*, 390 N.J.Super. 496, 915 A.2d 1105, 2007 N.J. Super. LEXIS 47 (App.Div. 2007).

As the New Jersey Department of Banking and Insurance’s past construction of the term “at-fault accident” as used in N.J.A.C. 11:3-34.3 had been inconsistent, and N.J.A.C. 11:3-34.3 did not give the insurance industry or consumers fair notice as to the types of accidents that would result in assessment of points for insurability purposes, the Department was ordered to amend N.J.A.C. 11:3-34.3 to define “at-fault” and its application to one-car accidents. *Reilly v. AAA Mid-Atlantic Ins. Co.*, 390 N.J.Super. 496, 915 A.2d 1105, 2007 N.J. Super. LEXIS 47 (App.Div. 2007).

Commissioner adopted the Initial Decision (2006 N.J. AGEN LEXIS 788), which concluded that the testimony of the insurer’s appraiser was sufficiently detailed and reliable and supported by competent evidence to permit a finding that the damage exceeded the threshold number, where the appraiser did not appraise insured’s vehicle personally, but the existence of damage was not denied, and the appraiser, who had nothing to gain by fabricating the appraisal, testified as an expert in appraisals. Insured was thus found to be involved in two at-fault accidents and was liable for the assessment of two five-point insurance eligibility point assessments; consequently, insured did not meet the definition of an “eligible person” under N.J.S.A. 17:33B-13(d), (f) and N.J.A.C. 11:3-34.4(a)8, and insurer had the legal right to refuse to renew insured’s coverage. *Cagnacci v. New Jersey Manufacturers Ins. Co.*, OAL Dkt. No. BKI 00075-06S, 2006 N.J. AGEN LEXIS 942, Final Decision (October 23, 2006).

For the purposes of applying the definition of “at-fault accident” as set forth in N.J.A.C. 11:3-34.3, “proportionate responsibility” is inapplicable to an accident that involves no collision with another vehicle. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BKI 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 2006).

While incidents involving impacts with animals or flying objects that result in payments by insurers under the comprehensive coverage provisions of an auto insurance policy are not considered accidents, collisions that do not fall under a policy’s comprehensive coverage provisions will, if the criteria contained in the definition of “at-fault accident” set forth in N.J.A.C. 11:3-34.3 are met and none of the exclusions listed therein apply, be considered an at-fault accident. In the case of one-vehicle accidents, these determinations are made without regard to the moral culpability or “fault” of the single driver involved, but rather it is in the context of insurance rating considerations that the

determination is made whether the accident is “chargeable” to the driver of the vehicle. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BKI 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 2006).

Consistent with prior decisions and with N.J.A.C. 11:3-34.3, an accident involving the insured’s vehicle striking a roadway curb was an at-fault accident, and consequently the insurer correctly determined that insured was not an eligible person at the time it issued the notice of non-renewal; historical interpretation of N.J.A.C. 11:3-34.3 as set forth in several prior Final Decisions in similar cases compelled this determination. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BKI 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 2006).

Insurer proved by a preponderance of credible evidence that the insured’s son accumulated an excess amount of automobile insurance eligibility points due to his having been convicted of a moving violation and his involvement in an at-fault accident; on that basis and in accordance with N.J.A.C. 11:3-34.4(a), insurer correctly determined that insured’s son was not an “eligible person” as set forth in that rule. *Scarfi v. First Trenton Indem. Co.*, OAL Dkt. No. BKI 07769-04, 2005 N.J. AGEN LEXIS 1157, Final Decision (December 8, 2005).

Insurer could not refuse renewal of automobile policy based upon eligibility points accumulated in “collision” where insured’s automobile was damaged by falling object. *Geist v. Selective Insurance Company*, 96 N.J.A.R.2d (INS) 75.

Driver’s automobile insurance application properly denied for two at-fault accidents. *Belmonte v. Department of Insurance*, 96 N.J.A.R.2d (INS) 51.

Insurer erred in finding insured more than 50 percent at fault for three-car accident where another driver was convicted of careless driving in connection with that collision. *Hoke v. National Consumer Insurance Company*, 96 N.J.A.R.2d (INS) 22.

Insurer could decline renewal of automobile policy based upon insured’s two at-fault accidents. *DiFrancesco v. Continental Casualty Company*, 96 N.J.A.R.2d (INS) 17.

Charge to which insured pleaded guilty in New York, operating a motor vehicle while under the influence, was substantially similar in nature to an offense in New Jersey and justified nonrenewal of automobile policy. *Chillemi v. Selective Insurance*, 95 N.J.A.R.2d (INS) 89.

At fault accident in which insured was involved was an event under automobile policy giving insurer right to decline renewal. *Wenzler v. ITT Hartford*, 95 N.J.A.R.2d (INS) 47.

Police report established five-point at fault accident which, when combined with six-point speeding violations, justified insurer in declining to renew automobile policy. *Fichera v. Liberty Mutual*, 95 N.J.A.R.2d (INS) 41.

Insured at-fault for automobile accident; insured could decline to renew insurance. *AMICA Mutual Insurance Co. v. Farley*, 93 N.J.A.R.2d (INS) 51.

11:3-34.4 Eligible person qualifications

(a) An “eligible person” is a person who is an owner or registrant of an automobile registered and principally garaged in this State or who is a resident and holds a valid New Jersey driver’s license to operate an automobile, but does not include any person:

1. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a or for an offense of a substantially similar nature committed in another jurisdiction;

2. Who has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle; or has been convicted of theft of a motor vehicle;

3. Whose driver's license to operate an automobile is under suspension or revocation;

4. Who has been convicted, within the five-year period immediately preceding application for or renewal of a policy of automobile insurance, of fraud or intent to defraud involving an insurance claim or an application for insurance;

5. Who has been successfully denied, with the immediately preceding five years' payment by an insurer of a claim in excess of \$1,000 under an automobile insurance policy, if there was evidence of fraud or intent to defraud involving the automobile insurance claim or application. For the purpose of this section:

i. If the claim has been subject to litigation between the insurer and the insured in which the insurer defended against payment of the claim in whole or in part on grounds of fraud, it shall be conclusively presumed that the claim was successfully denied if judgment was entered for the insurer in the litigation; and conclusively presumed that the claim was not successfully denied if judgment was entered for the insured;

ii. If the claim has not been subject to litigation between the insurer and the insured, but the insurer denied the claim without payment by reason of fraud, it shall be presumed that the claim was successfully denied. This presumption may be overcome in an administrative proceeding pursuant to N.J.A.C. 11:3-33;

iii. If the incident was not reported to the New Jersey Office of Insurance Fraud Prosecutor pursuant to N.J.S.A. 17:33A-9 it shall be presumed that there was no evidence of fraud or intent to defraud;

6. Whose automobile insurance policy has been cancelled for nonpayment of premiums or financed premium with a lapse of coverage of at least 30 days, within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, "paid in full" shall not include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premium;

7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the

rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees;

8. Whose driving record for the three year period immediately preceding the application for or renewal of a policy of automobile insurance has an accumulation of seven or more automobile insurance eligibility points as determined in N.J.A.C. 11:3-34.5;

9. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy, has knowingly provided materially false or misleading information in connection with an application for insurance, renewal of insurance or claim for benefits under an insurance policy; or

10. Who is a named insured or who is insured under the same policy as a person whose driver's license is suspended or revoked and either:

i. The suspended or revoked driver has been convicted of a violation of N.J.S.A. 39:6B-2 within the previous three years; or

ii. With the exception of a conviction for violating N.J.S.A. 39:3-40i, other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension or revocation.

(b) An "eligible person" includes a person who is an owner or registrant of an automobile registered in this State or who holds a valid New Jersey driver's license to operate an automobile and is domiciled in this State who is temporarily residing out-of-State and whose car may be principally garaged in another state while the person either is a full time student or is in the military service and is stationed out-of-State.

Emergency Amendment, R.1992 d.380, effective September 4, 1992 (expires November 3, 1992).

See: 24 N.J.R. 3420(a).

Text added to (a)6 to specify a lapse of at least 30 days.

Adopted Concurrent Proposal, R.1992 d.481, effective November 2, 1992.

See: 24 N.J.R. 3420(a), 24 N.J.R. 4396(a).

Provisions of Emergency Amendment R.1992 d.380 readopted with changes effective December 7, 1992.

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).

Definition of eligible person added at (b).

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.1996 d.246, effective June 3, 1996.

See: 27 N.J.R. 2048(a), 28 N.J.R. 3002(b).

Added (a)9.

Amended by R.2001 d.44, effective February 5, 2001.

See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Amended by R.2003 d.469, effective December 1, 2003.

See: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

In (a), substituted "seven" for "nine" following "accumulation of" in 8, added a new 9 and recodified former 9 as 10.

Amended by R.2007 d.373, effective December 3, 2007.
See: 38 N.J.R. 4624(a), 39 N.J.R. 5086(a).

In (a)10ii, substituted "With the exception of a conviction for violating N.J.S.A. 39:3-40i, other" for "Other", and inserted "or revocation" at the end.

Case Notes

Commissioner adopted the Initial Decision (2006 N.J. AGEN LEXIS 788), which concluded that the testimony of the insurer's appraiser was sufficiently detailed and reliable and supported by competent evidence to permit a finding that the damage exceeded the threshold number, where the appraiser did not appraise insured's vehicle personally, but the existence of damage was not denied, and the appraiser, who had nothing to gain by fabricating the appraisal, testified as an expert in appraisals. Insured was thus found to be involved in two at-fault accidents and was liable for the assessment of two five-point insurance eligibility point assessments; consequently, insured did not meet the definition of an "eligible person" under N.J.S.A. 17:33B-13(d), (f) and N.J.A.C. 11:3-34.4(a)8, and insurer had the legal right to refuse to renew insured's coverage. *Cagnacci v. New Jersey Manufacturers Ins. Co.*, OAL Dkt. No. BKI 00075-06S, 2006 N.J. AGEN LEXIS 942, Final Decision (October 23, 2006).

Insurer proved by a preponderance of credible evidence that the insured's son accumulated an excess amount of automobile insurance eligibility points due to his having been convicted of a moving violation and his involvement in an at-fault accident; on that basis and in accordance with N.J.A.C. 11:3-34.4(a), insurer correctly determined that insured's son was not an "eligible person" as set forth in that rule. *Scarfi v. First Trenton Indem. Co.*, OAL Dkt. No. BKI 07769-04, 2005 N.J. AGEN LEXIS 1157, Final Decision (December 8, 2005).

Insured's nine ineligibility points justifies insured's nonrenewal of automobile policy. *Lawrence v. USAA Casualty Insurance Company*, 97 N.J.A.R.2d (INS) 3.

Nonrenewal of automobile insurance policy was upheld where insured motorist exceeded maximum number of automobile insurance eligibility points. *Woo v. State Farm Insurance Company*, 96 N.J.A.R.2d (INS) 99.

Insurer's nonrenewal of automobile policy justified when insured accumulates 10 eligibility points from two accidents for which insured is at fault. *Premi v. New Jersey Manufacturers Ins. Co.*, 96 N.J.A.R.2d (INS) 9.

Renewal of automobile policy for one period despite accumulation of points did not preclude nonrenewal in next period for same points. *Liberty Mutual v. Lee*, 95 N.J.A.R.2d (INS) 38.

Accident in which insured was at fault, when combined with two other accidents in period of coverage, justified nonrenewal for accumulation of too many points. *New Jersey Manufacturers v. Sandor*, 95 N.J.A.R.2d (INS) 36.

Accumulation of nine or more points by member of insured's household justified nonrenewal of auto policy. *Pandola v. State Farm*, 95 N.J.A.R.2d (INS) 32.

Insured who was otherwise eligible for automobile insurance in voluntary market could obtain coverage for vehicles registered to her notwithstanding her husband's license suspension. *Kwok v. First Trenton*, 95 N.J.A.R.2d (INS) 29.

Decision not to renew automobile insurance policy was improper. *Capasso v. State Farm Indemnity Company*, 94 N.J.A.R.2d (INS) 59.

Eligibility points for accident prior to effective date of regulation not ex post facto violation. *Selective Insurance Company v. Diana*, 93 N.J.A.R.2d (INS) 58.

11:3-34.5 Automobile insurance eligibility points

(a) Automobile insurance eligibility points shall be accumulated as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions in accordance with the schedule set forth in the Appendix to this subchapter herein incorporated by reference.

(b) Automobile eligibility points are cumulative and accrue for all violations and occurrences set forth on Schedules 1 and 2. Automobile insurance eligibility points shall be deemed to accrue as follows:

1. Points for an at-fault accident shall accrue on the date that total payment by the insurer equals or exceeds \$1,000 or such other amount as may be prescribed by Order of the Commissioner issued pursuant to N.J.S.A. 17:33B-14. The amount under such Order shall be reflected in this paragraph through a notice of administrative change published in the New Jersey Register. An insurer may, at its option, use the date of the accident or date of first payment provided, however, that the insurer shall not underwrite or rate any policy based on the accident until total payment by the insurer equals or exceeds \$1,000, and further provided that the insurer shall use the optional date consistently in all cases.

2. Points for conviction of motor vehicle violations and other events that are set forth on an abstract of drivers license records available from the New Jersey Motor Vehicle Commission, or a comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.

3. When an eligible person is involved in an at-fault accident and has not accrued any eligibility points during the three-year period immediately preceding the date of that accident, no eligibility points for a two- or three-point violation, as set forth in Schedule 2 of the Appendix, shall accrue along with the points assessed in accordance with Schedule 1 for the at-fault accident, when the violation arises out of the same incident which results in the assessment of points for the at-fault accident. However, violations that arise out of the same incident may be considered by insurers for purposes of tier placement pursuant to N.J.A.C. 11:3-19A.

4. Points for each full year of court-imposed driver's license suspension within the preceding three years and points for each full year within the immediately preceding three years that a person has not held a driver's license shall accrue on the date of application for insurance. However, in accordance with Schedule 1, eligibility points assessed for failure to hold a drivers' license in the previous three years are not cumulative to points assessed for the suspension of a drivers license.

(c) Automobile insurance eligibility points set forth on Schedule 2 of the Appendix represent motor vehicle points established by the New Jersey Motor Vehicle Commission by rule, N.J.A.C. 13:19-10.1, which is hereby incorporated by reference. Any additions, deletions or modifications to N.J.A.C. 13:19-10.1 shall likewise be incorporated as of the effective date of amendment. Schedule 2 is included in the Appendix for convenience.

(d) The reference in Appendix Schedule 1 and Schedule 2 to provisions of the New Jersey Statutes Annotated is meant for convenience to assist in the quick identification of the nature of the event. If the event takes place in a state or province other than New Jersey, Schedule 1 and 2 should be consulted for identification of the specific misconduct committed and the assessment of the appropriate number of insurance eligibility points to be assessed.

(e) In addition to the motor vehicle violation and insurance eligibility points specifically enumerated on Schedule 2 of the Appendix pertaining to the New Jersey Turnpike, Atlantic City Expressway, and the Garden State Parkway, for any other motor vehicle violations that occur on the New Jersey Turnpike (N.J.A.C. 19:9), the Atlantic City Expressway (N.J.A.C. 19:2-2.1), the Garden State Parkway (N.J.A.C. 19:8) or for any other moving violation at any location, Schedules 1 and 2 shall be consulted for identification of the specific misconduct committed and the determination of the appropriate number of insurance eligibility points to be assessed.

Amended by R.2001 d.44, effective February 5, 2001.
See: 32 N.J.R. 3891(a), 33 N.J.R. 573(a).

Added (e).

Amended by R.2002 d.330, effective October 7, 2002.
See: 34 N.J.R. 368(a), 34 N.J.R. 3525(a).

Added (f).

Amended by R.2003 d.469, effective December 1, 2003.
See: 35 N.J.R. 3260(a), 35 N.J.R. 5423(a).

Rewrote (b); deleted (c) and recodified former (d) through (f) as (c) through (e).

Amended by R.2006 d.243, effective July 3, 2006.
See: 37 N.J.R. 4162(a), 38 N.J.R. 2828(c).

In (b)2 and (c), substituted "Motor Vehicle Commission" for "Division of Motor Vehicles".

Amended by R.2007 d.373, effective December 3, 2007.
See: 38 N.J.R. 4624(a), 39 N.J.R. 5086(a).

In (b)2, substituted "Motor Vehicle Commission, or a" for "Division of Motor Vehicles or"; in (b)3, substituted, "is involved in an at-fault accident and has not accrued any eligibility points during the three-year period immediately preceding the date of that accident" for "has not accrued eligibility points during the preceding three-year period, and is subsequently involved in an at-fault accident".

Case Notes

Commissioner adopted the Initial Decision (2006 N.J. AGEN LEXIS 788), which concluded that the testimony of the insurer's appraiser was sufficiently detailed and reliable and supported by competent evidence to permit a finding that the damage exceeded the threshold number, where the appraiser did not appraise insured's vehicle personally, but the existence of damage was not denied, and the appraiser, who had nothing

to gain by fabricating the appraisal, testified as an expert in appraisals. Insured was thus found to be involved in two at-fault accidents and was liable for the assessment of two five-point insurance eligibility point assessments; consequently, insured did not meet the definition of an "eligible person" under N.J.S.A. 17:33B-13(d), (f) and N.J.A.C. 11:3-34.4(a)8, and insurer had the legal right to refuse to renew insured's coverage. *Cagnacci v. New Jersey Manufacturers Ins. Co.*, OAL Dkt. No. BKI 00075-06S, 2006 N.J. AGEN LEXIS 942, Final Decision (October 23, 2006).

While incidents involving impacts with animals or flying objects that result in payments by insurers under the comprehensive coverage provisions of an auto insurance policy are not considered accidents, collisions that do not fall under a policy's comprehensive coverage provisions will, if the criteria contained in the definition of "at-fault accident" set forth in N.J.A.C. 11:3-34.3 are met and none of the exclusions listed therein apply, be considered an at-fault accident. In the case of one-vehicle accidents, these determinations are made without regard to the moral culpability or "fault" of the single driver involved, but rather it is in the context of insurance rating considerations that the determination is made whether the accident is "chargeable" to the driver of the vehicle. *Aprea v. Selective Ins. Co.*, OAL Dkt. No. BKI 563-04, 2006 N.J. AGEN LEXIS 93, Final Decision (February 1, 2006).

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Police report established five-point at fault accident which, when combined with six-point speeding violations, justified insurer in declining to renew automobile policy. *Fichera v. Liberty Mutual*, 95 N.J.A.R.2d (INS) 41.

Renewal of automobile policy for one period despite accumulation of points did not preclude nonrenewal in next period for same points. *Liberty Mutual v. Lee*, 95 N.J.A.R.2d (INS) 38.

Accident in which insured was at fault, when combined with two other accidents in period of coverage, justified nonrenewal for accumulation of too many points. *New Jersey Manufacturers v. Sandor*, 95 N.J.A.R.2d (INS) 36.

Accumulation of nine or more points by member of insured's household justified nonrenewal of auto policy, *Pandola v. State Farm*, 95 N.J.A.R.2d (INS) 32.

Accident resulting in payment of \$500 or more not recouped from another tort-feasor and not specifically excepted, and driver not excused under proportionate responsibility standard, was "at-fault accident" warranting eligibility points. *Amica Mutual Insurance Co. v. Kern*, 93 N.J.A.R.2d (INS) 55.

Insured at-fault for automobile accident; insured could decline to renew insurance. *AMICA Mutual Insurance Co. v. Farley*, 93 N.J.A.R.2d (INS) 51.