

CHAPTER 17E

PERSONS EMPLOYED IN THE BUSINESS
OF INSURANCE

Authority

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

Source and Effective Date

R.2001 d.459, effective December 3, 2001.
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Chapter Expiration Date

Chapter 17E, Persons Employed in the Business of Insurance, expires on December 3, 2006.

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SUBCHAPTER 1. CONVICTED PERSONS;
WAIVERS

11:17E-1.1 Purpose and scope

(a) The purpose of this chapter is to implement 18 U.S.C. § 1033, a Federal statute which provides 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.

(b) This subchapter shall apply to any person employed in any capacity in the business of insurance.

(c) This subchapter applies to all insurers doing business in this State pursuant to Title 17, 17B, or 26 of the New Jersey Statutes, or 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.

11:17E-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Breach of trust" means any criminal act that includes, in any degree, an element of:

1. Theft, misuse, conversion, misapplication, embezzlement, misappropriation of property of another;
2. Defalcation as trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant; or
3. Abuse of any position, title or office held in, or the property of any public, private or charitable entity.

"Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary or incidental to such writing of insurance or reinsurance, and the activities of any person who acts as, or is, an officer, director, agent, or employee of an insurer, producer, limited insurance representative, or any other person authorized to act on behalf of such persons, including independent contractors of insurers.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance or his or her designee.

"Conviction" means a finding of guilty or a plea of guilty, *non vult, nolo contendere* or no contest in a criminal court of the United States of America or in any state, commonwealth or possession. Deferred adjudication and conditional discharges are not convictions.

"Department" means the New Jersey Department of Banking and Insurance.

"Dishonesty" means any act, omission or commission, which involves or in any way constitutes the offense of theft, larceny, robbery, wrongful appropriation, criminal conversion, tax evasion, perjury, bribery, forgery, defalcation, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or other artifices to deceive or defraud, material misrepresentation and/or the failure to disclose material facts which are part of a criminal enterprise.

"Felony" means the following:

1. Any Federal crime for which the maximum authorized punishment exceeds one year of imprisonment;
2. Any crime identified as an offense of the first, second, third or fourth degree pursuant to N.J.S.A. 2C:1-4 and 43-1;

3. Any crime identified as a high misdemeanor or misdemeanor by Title 2A of the New Jersey Statutes for which the maximum authorized punishment exceeds one year incarceration; or

4. Any crime in any other state, commonwealth, territory or possession that is identified as a felony in that state, commonwealth, territory or possession, or, if not identified as a felony in said other jurisdiction, any offense for which the maximum authorized punishment exceeds one year incarceration.

“Insurer” means:

1. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (N.J.S.A. 17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.A. 17B:17-1 et seq.);

2. Any medical service corporation operating pursuant to P.L. 1940, c.75 (N.J.S.A. 17:48A-1 et seq.);

3. Any hospital service corporation operating pursuant to P.L. 1938, c.366 (N.J.S.A. 17:48-1 et seq.);

4. Any health service corporation operating pursuant to P.L. 1985, c.236 (N.J.S.A. 17:48E-1 et seq.);

5. Any dental service corporation operating pursuant to P.L. 1968, c.305 (N.J.S.A. 17:48C-1 et seq.);

6. Any dental service organization operating pursuant to P.L. 1979, c.478 (N.J.S.A.17:48D-1 et seq.);

7. Any insurance plan operating pursuant to P.L. 1970, c.215 (N.J.S.A. 17:29D-1);

8. The New Jersey Insurance Underwriting Association operating pursuant to P.L. 1968, c.129 (N.J.S.A. 17:37A-1 et seq.); and

9. Any risk retention group or purchasing group operating pursuant to the “Liability Risk Retention Act of 1986,” 15 U.S.C. §§ 3901 et seq.

“Insurance producer” means any person, persons or corporation licensed in the business of an insurance agent, insurance broker or insurance consultant.

“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.

“Prohibited person” is any person convicted of a felony involving dishonesty or breach of trust who is prohibited from being employed by an insurer in the business of insurance pursuant to 18 U.S.C. § 1033.

“Waiver” means a written order signed by the Commissioner or his or her designee that permits an otherwise prohibited person to be employed by a specific employer in a specified title, job or position in the business of insurance issued in accordance with 18 U.S.C. § 1033(e)(2).

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

(a) No person having been convicted of a felony involving breach of trust or dishonesty or having been convicted under 18 U.S.C. § 1033 shall be employed in the business of insurance in this State in any capacity without having first obtained a waiver from the Commissioner or his or her designee in accordance with the provisions of 18 U.S.C. § 1033(e)(2) and this subchapter.

(b) No insurer, producer, limited insurance representative, or any other person or independent contractor involved in the business of insurance in this State shall employ any prohibited person in any capacity without having first ensured that said prohibited person has obtained a waiver in accordance with 18 U.S.C. § 1033(e)(2) and this subchapter.

(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) This State shall be deemed to be the appropriate state from which an applicant shall obtain a waiver where:

1. The applicant will be employed in the business of insurance in this State;

2. The applicant would be required to obtain a producer’s license or limited insurance representative registration to do business in this State; or

3. The applicant is or will be an officer, director or employee of a domestic insurer, reinsurer, producer, third-party administrator or independent contractor performing substantial insurance related activities for a domestic insurer, producer or limited insurance representative.

11:17E-1.4 Applications, general provisions and maintenance of records

(a) Except as provided in (b) below, all prohibited persons who are, or seek to be, employed in the business of insurance in any capacity in this State shall complete and file an application for waiver using the “Short Form,” set forth as Exhibit A in the Appendix to this chapter.

(b) The following prohibited persons when seeking a waiver shall complete and file the "Comprehensive Form," set forth as Exhibit B in the Appendix to this subchapter:

1. Persons in possession of any license to engage in the business of insurance as a producer or limited insurance representative in this State;
2. Persons seeking to obtain or renew an insurance producer's license in this State; or
3. Persons who are engaged in the business of insurance, whose scope of employment includes any of the following duties or powers:
 - i. Corporate officer, director or manager;
 - ii. Direct involvement in the handling of customer funds; or
 - iii. Direct involvement in selling policies to the public.

(c) Upon review of the completed "Short Form" application for waiver, the Department may request the applicant to complete and file the "Comprehensive Form."

(d) No prohibited person shall be granted a license, or renewal of a license, as a producer or as a limited insurance representative unless such person has first been granted a waiver by the Commissioner or his or her designee pursuant to this chapter.

(e) The Department shall not accept any application for waiver if the Department finds that any of the following conditions exist:

1. The applicant is not a prohibited person within the meaning of N.J.A.C. 11:17E-1.2;
2. New Jersey is not the appropriate State to grant a waiver in accordance with N.J.A.C. 11:17E-1.3(d); or
3. The application is not complete or is not properly executed.

(f) If an application is not accepted in accordance with (e) above, it shall be returned to the applicant with an explanation of the reasons for non-acceptance.

(g) If the application is accepted, the Department shall act on the application after investigation, which shall include:

1. Obtaining a State and Federal criminal records check based on the applicant's name, address, date of birth, social security number and fingerprints;
2. Sending e-mail notification to all other states pertaining to the application for waiver;
3. Verifying the contents of the applications; and
4. Inquiry into any and all other matters deemed necessary.

(h) Upon completion of the investigation and receipt of any additional records and documentation deemed necessary by the Department, the application shall be reviewed in accordance with the standards set forth in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., as set forth in (i) below.

(i) In determining whether to approve an application for waiver, the following factors shall be considered:

1. The nature and duties of the work, occupation, trade, vocation, profession, business or license or certificate for which the person is applying;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the person at the time the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions that may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision;
9. Evidence of a pardon or of the expungement of a criminal conviction, pursuant to N.J.S.A. 2A:164-28, or of a certificate of the Federal or State Parole Board, or of the Chief Probation Officer of a United States District Court or a county who has supervised the applicant's probation, that the applicant achieved a sufficient degree of rehabilitation to indicate that his or her proposed employment would not be incompatible with the welfare of society;
10. The full payment or continuing payment of restitution and such other fines and penalties as the court may have imposed; and
11. Such other factors as the Commissioner or his or her designee may deem appropriate.

(j) The Department shall maintain records of all applications, investigative reports and results in accordance with N.J.A.C. 11:17E-1.6.

11:17E-1.5 Commissioner's action, order and scope of waiver

(a) After consideration and review, the Commissioner or his or her designee may:

1. Grant the application for waiver;
2. Deny the application for waiver; and/or
3. Require such other conditions as are deemed appropriate.

(b) The scope of any waiver shall be specifically limited to the employer identified in the application, the job description and title for which the waiver was granted.

(c) The Department shall provide a copy of the Order to the applicant, prospective employer and the NAIC database described in N.J.A.C. 11:17E-1.6.

(d) The Order of the Commissioner or his or her designee shall constitute a final agency decision in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

11:17E-1.6 Confidential records and information

All information and materials in the possession of the Department concerning waivers and applications for waiver are confidential, and not subject to public inspection or copying under the "Right to Know" Law, N.J.S.A. 47:1A-1 et seq. However, the Department may share information and materials with other states and agencies, in accordance with procedures established by the NAIC's National Special Activities Database (SAD) for the sharing of information pertaining to applications for waiver.

11:17E-1.7 Penalties

Failure to comply with the provisions of this chapter shall result in the imposition of penalties as authorized by law.