

(b) Within 10 working days of a determination to deny automobile insurance in the voluntary market (from either a written application or from the date that an oral request is made for a written determination), an insurer or agent shall notify an applicant, in writing, of each specific reason for the denial. The reasons provided by an insurer or insurance agent shall be comprehensive and written in plain language. The reasons shall identify the specific basis for which the applicant fails to qualify as an "eligible person."

(c) An insurer or agent who has issued a written denial shall notify an applicant of his or her right to appeal the denial to the Department, pursuant to the provisions of this subchapter. That insurer or agent shall also advise the applicant of his or her obligation to obtain insurance coverage as a condition of operation of the vehicle. As part of this notification, an insurer or agent shall provide an applicant with the letter and appeal form which comprise Appendices A and B to this subchapter set forth and incorporated as part of this rule. For nonrenewals, the insurer shall provide the notice set forth in N.J.A.C. 11:3-8.3 together with the letter and appeal form when nonrenewing an applicant pursuant to N.J.A.C. 11:3-8.4.

11:3-33.5 Procedure for filing an appeal

(a) Appeals from a denial of automobile insurance in the voluntary market shall be submitted to the Department, on a form prescribed by the Department (Appendix B to this subchapter, which is incorporated herein by reference as part of this rule), within 90 days of the date of a written denial from an insurer or insurance agent. Notwithstanding an insurer's or agent's obligation to provide a person with this form upon a denial of initial coverage (see N.J.A.C. 11:3-33.4(c)), copies can also be obtained by contacting the Department by telephone (609) 984-2426 or by mail at the address below:

Department of Banking and Insurance
Division of Enforcement and Consumer Protection
Attn: Auto Insurance Denial
20 West State Street
PO Box 329
Trenton, New Jersey 08625-0329

(b) The form prescribed by the Department shall be completed and submitted to the address above and shall include, at a minimum, the following information:

1. A copy of the written denial obtained from the insurer or agent pursuant to N.J.S.A. 17:33B-16 and N.J.A.C. 11:3-33.4. When an applicant receives an oral denial, he or she shall request a written denial as provided by N.J.A.C. 11:3-33.4; and
2. A statement from the applicant who has received a denial of coverage, including supporting documentation, if any, indicating the reasons why the denial is improper.

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

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

11:3-33.6 Processing appeals

(a) Upon receipt of an appeal submitted in accordance with N.J.A.C. 11:3-33.5, the Department shall send to the insurer or insurance agent (the "respondent") who provided the written denial, a copy of all pertinent documents which have been submitted by applicant (the "appellant"), and shall require a final written reply from the respondent within 30 days of the receipt of these documents.

(b) Upon the Department's receipt of the respondent's reply to the appeal, and upon a review of the papers, the Department shall render its decision on the appeal. The decision shall be in writing and shall set forth the reasons why the denial was appropriate or inappropriate under law. Copies of the Department's decision shall be mailed by certified mail to the appellant and the respondent. The Department's decision shall also include a written notice explaining the procedures to appeal the decision pursuant to N.J.A.C. 11:3-33.7.

(c) A respondent's failure to timely reply pursuant to (a) above shall result in a decision by the Department based solely upon the papers submitted by the appellant, together with any other information available to the Department at that time, pursuant to this subchapter. A respondent's failure to timely reply pursuant to (a) above shall be deemed a violation of this subchapter and may result in the assessment of penalties provided in N.J.A.C. 11:3-33.8.

(d) Upon a determination by the Department that a denial was improper, the insurer shall be required to offer the applicant the requested coverage effective as of the date of the declination. The Department may, however, determine to require the insurer to offer coverage effective on a later date upon a finding that the applicant failed to maintain insurance on an automobile as required by N.J.S.A. 39:6B-1.

11:3-33.7 Contested case hearings; pleadings

(a) An appeal from a decision of the Department made pursuant to N.J.A.C. 11:3-33.6 shall be heard as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The procedure for filing an appeal from the Department's decision pursuant to N.J.A.C. 11:3-33.6(c) shall be as follows:

1. Upon receipt of the Department's decision, the insurer or agent denying coverage or the applicant denied automobile insurance coverage shall, within 20 calendar days of receipt of the decision, file with the Department a written request that the matter be heard as a contested case. Failure to file an appeal within the time required by this section shall result in the Department's decision becoming the final agency action. The written request

for a hearing as a contested case shall contain the following information.

- i. The name and address of the appellant;
- ii. The Department's case or file number;

iii. If the appellant is the person denied insurance, the name and address of the insurance company and/or insurance agent which issued the denial of automobile insurance. If the appellant is the insurance company, the name and address of the insurance agent who issued the denial of coverage, if any, and the name and address of the person to whom automobile insurance was denied;

iv. A detailed statement explaining the reasons why the Department's determination is improper together with supporting documentation, if any; and

v. A statement as to whether the appellant is represented by legal counsel, or another person pursuant to N.J.A.C. 1:1-5.1, and the name, address and telephone number of said person.

(c) Upon the Department's timely receipt of the items set forth in (b) above, it shall simultaneously send a copy of the documents to the opposing party and shall transmit the matter to the Office of Administrative Law for hearing as a contested case.

11:3-33.8 Penalties

Any insurer or insurance producer who violates any provision of this subchapter shall be subject to the penalties provided by law, including, but not limited to, the suspension or revocation of a certificate of authority or licensure and 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, pursuant to N.J.S.A. 17:33B-15 and 21.

11:3-33.9 Compliance

(a) Pursuant to N.J.S.A. 39:6A-3 and 17:33B-15, compliance with the provisions of this subchapter shall be effected in the following manner:

1. Appeals from denials concerning new policies on or after April 1, 1992 may be filed in the manner prescribed by this subchapter; and
2. Appeals from denials concerning policy renewals which take effect on or after April 1, 1992, may be filed in the manner prescribed by this subchapter.

APPENDIX A

Dear Applicant,

The "Fair Automobile Insurance Reform Act of 1990" (Act) provides that on or after April 1, 1992, every insurer, either by one or more separate rating plans, shall provide automobile insurance for eligible persons.

Therefore, an insurer may deny coverage only to those applicants who are not eligible. New Jersey law provides that any person who owns or has registered an automobile in New Jersey or a person who has a valid New Jersey drivers license is eligible except a person:

1. Who, in the last three years, has been convicted of driving under the influence or refusing a chemical test in New Jersey or elsewhere;
2. Who, in the last three years, has been convicted of a crime involving an automobile;
3. Whose driving license is suspended or revoked by a court;
4. Who, in the last five years, has been convicted of fraud or intent to defraud involving an insurance claim or application;
5. Who, in the last five years, has been denied payment of an insurance claim in excess of \$1,000, if there was evidence of fraud or intent to defraud;
6. Whose automobile insurance policy, in the last two years, was cancelled because of nonpayment of premium or financed premium (unless the entire annual premium for the new coverage is paid in full before issuance or renewal);
7. Who fails to maintain membership in a club, group or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance;
8. Whose driving record, for the last three years, has an accumulation of nine or more eligibility points. (Eligibility points are accumulated as a result of convictions, suspensions, revocations and determination of responsibility for civil infractions in accordance with schedules adopted by the New Jersey Department of Banking and Insurance. For example, one at-fault accident has been assigned five eligibility points.)

NOTE: The above description is a simplification of the statutory definition. For a more extensive description, see the New Jersey Administrative Code at N.J.A.C. 11:3-34.4.

The Commissioner of Banking and Insurance has established an appeal process for persons who have been denied automobile insurance. The procedure for filing a written appeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:3-33. Most New Jersey public libraries have this material.

To begin the appeal process, you must complete the attached form and mail it, with the necessary documentation, to the address indicated.

WARNING: You must have automobile insurance if you plan to operate and/or register a vehicle during the appeal process. Filing an appeal does not provide you with insurance.

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

APPENDIX B

NOTE: YOU HAVE 90 DAYS FROM THE DATE ON WHICH A WRITTEN DENIAL OF AUTOMOBILE INSURANCE IS MADE TO FILE THIS APPEAL.

NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE AUTOMOBILE DECLINATION APPEAL

Your Name: _____

Your Address: _____

Your Telephone Number: (____) _____

Insurance Company and/or Insurance Producer (agent or broker) that declined your application for automobile insurance coverage in the voluntary market (if producer, please provide the name and address):

Company _____

Producer _____

YOU MUST ATTACH A COPY OF THE DECLINATION (If you have not received a written declination from the insurance company or producer, you must request one within 90 days from the date you first applied for insurance.)

BASIS FOR YOUR APPEAL (Please indicate with an "X" those statements or reasons that apply and attach a copy of pertinent documentation supporting your appeal. Such documentation should include a certified motor vehicle driver "abstract", where appropriate, available from the Division of Motor Vehicles, 120 South Stockton Street, PO Box 142, Trenton, New Jersey 08666-0142. There is a \$5.00 fee for each copy of the DMV abstract.)

- ☐ I have not been convicted of Driving Under the Influence (N.J.S.A. 39:4-50) or of refusing to submit to a chemical test (N.J.S.A. 39:4-50.4(a)), or for a similar offense in another jurisdiction, or of a crime involving an automobile or theft of a motor vehicle.
- ☐ My driver's license is not suspended or revoked, nor has it been for any 12-month period in the preceding three years.
- ☐ I have not been convicted of insurance fraud or intent to defraud, or have not had an insurance claim (in excess of \$1,000) denied because of evidence of fraud within the five-year period immediately preceding application or renewal.
- ☐ My auto insurance has not been cancelled for nonpayment of premium within the last two years and I provide proof of payment OR I have had my policy cancelled for nonpayment AND I am able to pay the full annual premium for this policy.
- ☐ I am qualified as a member of a group or organization in which membership is required in order to obtain this insurance policy.

- ☐ I have fewer eligibility points accumulated than alleged in the declination letter as evidenced by the attached copy of my driving record.
- ☐ The accident record indicated in the declination letter is wrong as evidenced by the attached.
- ☐ No other person who is a member of the same household and who will drive the subject vehicle for 10 percent or more of the time is an ineligible person.
- ☐ Other (Specify and provide proof, if appropriate).

CERTIFICATION OF APPEAL

The information contained in this appeal is true and complete to the best of my knowledge and belief.

I UNDERSTAND THAT FILING THIS APPEAL DOES NOT PROVIDE ME WITH AUTOMOBILE INSURANCE. IF MY AUTO IS REGISTERED IN NEW JERSEY OR IS BEING DRIVEN, I HAVE OBTAINED OTHER AUTO INSURANCE.

Your Signature _____ Date _____

MAIL THIS COMPLETED FORM AND NECESSARY DOCUMENTATION TO:

New Jersey Department of Banking and Insurance
Division of Enforcement and Consumer Protection
PO Box 329
Trenton, New Jersey 08625-0329
Attn.: Auto Insurance Denial

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

SUBCHAPTER 34. ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

11:3-34.1 Purpose

The purpose of this subchapter is to set forth the requirements for determining who can qualify as an "eligible person," and to provide the schedule for "automobile insurance eligibility points" pursuant to N.J.S.A. 17:33B-13 and 14.

Amended by R.1996 d.58, effective February 5, 1996.
See: 27 N.J.R. 3682(a), 28 N.J.R. 855(a).

11:3-34.2 Scope

The provisions of this subchapter apply to all insurers which write personal private passenger automobile insurance and all persons who are required to procure automobile insurance coverage in this State.

11:3-34.3 Definitions

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

“At-fault accident” is any accident involving a driver insured under the policy:

1. Where a driver is proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33⅓ percent responsible for an accident involving three drivers, etc.; and
2. Which results in a total payment by the insurer of at least \$500.00 for an accident occurring before June 9, 2003; or at least \$1,000 for an accident occurring on or after June 9, 2003. The \$1,000 dollar amount may be adjusted in \$100.00 or \$250.00 increments by Order of the Commissioner not more frequently than every 36 months. The Order shall reflect the cumulative increases or decreases in the components of the Consumer Price Index, All Urban Consumers (CPI-U) for the Northeast Region, and the adjusted amount shall apply to automobile accidents occurring at least 120 days after the effective date of the adjustment. The adjustment shall be reflected in this definition through a notice of administrative change published in the New Jersey Register.

An at-fault accident shall not include the following:

1. Involvement in an accident in which the motor vehicle owned or operated by the insured or other driver insured under the policy was lawfully parked;
2. Involvement in an accident in which the motor vehicle was struck by a hit and run driver, if such accident was reported to the proper authorities within 24 hours;
3. Involvement in an accident in connection with which neither the named insured nor any other driver insured under the policy was convicted of a moving traffic violation and the owner or operator of another vehicle involved in such accident was so convicted;
4. For physical damage losses other than collision;
5. For an accident in which the motor vehicle was struck in the rear by another vehicle and a driver insured under the policy has not been convicted of a moving violation in connection with the accident; or
6. For an accident occurring as a result of operation of any motor vehicle in response to an emergency if the operator at the time of the accident was responding to the call to duty as a paid or volunteer member of any police or fire department, first aid squad or any law enforcement agency.

“Automobile” means an automobile as defined in N.J.S.A. 39:6A-2.

“Automobile insurance” means insurance for an automobile including any or all of the following coverages: bodily injury liability, and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

“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

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.