

SUBCHAPTER 2. COMMISSIONS

11:17B-2.1 Commissions

(a) No insurance producer shall pay any commission to any unlicensed individual or organization for services rendered in this State as an insurance producer except for services rendered while licensed.

(b) Payment or receipt of renewal or other deferred commissions to or by any individual or organization who has ceased to hold a license under N.J.S.A. 17:22A-26 et seq. shall be permitted only for business produced by that individual or organization while an insurance producer.

(c) No commission or renewal, deferred or otherwise, or any other compensation shall be paid to any individual or organization whose license has been revoked or suspended, except for services rendered while licensed. Nothing in this subsection shall prohibit a person from selling its book of business for compensation contingent upon the persistency of the business. Nothing in this subsection shall prohibit any person from asserting a right of setoff against an insurance producer whose license is revoked.

(d) No insurance producer shall pay or return, or offer to pay or return to any policyholder, certificateholder, or prospective policyholder or certificateholder, all or any portion of the commission received or which will be received in connection with the sale of insurance.

(e) An insurer or insurance producer may pay or assign commissions, service or brokerage fees or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this State, unless the payment would violate the laws of this State.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (b), amended the N.J.S.A. reference; added (e); deleted "or limited insurance representative" and "or unregistered", "or registered" and "or registration" following "unlicensed", "licensed" and "license" respectively throughout.

SUBCHAPTER 3. FEES

11:17B-3.1 Fees

(a) Insurance producers may charge a fee for services rendered in the sale of personal lines property/casualty or personal lines surplus lines insurance, subject to N.J.A.C. 11:17B-3.2. Insurance producers acting as agents for an insurance company for personal lines insurance shall not charge or receive any fee on a policy to or from a policyholder or insured for services rendered as an insurance producer except for reimbursement of actual out-of-pocket expenses incurred obtaining documents and other materials related to the underwriting process for new automobile appli-

cations and subject to the limitations of N.J.A.C. 11:17B-3.2(a)9. Subject to (b) through (g) below, insurance producers selling, soliciting or negotiating commercial lines insurance may charge and receive fees for services rendered to an insured or prospective insured.

(b) Any insurance producer charging a fee to an insured or prospective insured shall first obtain from the insured or prospective insured a written agreement, which shall be separate and apart from all other agreements and applications, and shall contain the following provisions and no other provisions:

1. A clear statement of the amount of the fee to be charged and the nature of the service to be provided therefor;

2. A statement that such fees are not a part of the premium charged by the insurance company and that such fees can be charged only if the insured or prospective insured so consents in writing;

3. A clear statement as to whether a commission will be received from the purchase of insurance; and

4. The signature of the insured or prospective insured and the licensed insurance producer and the date of execution of the agreement.

(c) Any fee charged by an insurance producer shall bear a reasonable relationship to the services provided and shall not be discriminatory.

(d) A new written agreement shall be entered into for each fee charged and each time a fee is charged. An initial agreement shall not be used as the sole basis to charge a fee for a renewal policy.

(e) No insurance producer may pay or return, or offer to pay or return, all or part of a fee charged as an inducement to purchase a specific policy, or coverage within a policy, or coverage from a particular insurer.

(f) No insurance producer may charge a fee for services not actually performed.

(g) No insurance producer, except a duly authorized producer employed by and acting on behalf of his or her employer, may execute a written fee agreement on behalf of any other insurance producer or premium finance company.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (b), deleted references to limited insurance representatives throughout.

Amended by R.2004 d.213, effective June 7, 2004.

See: 35 N.J.R. 5478(a), 36 N.J.R. 2923(a).

Rewrote the section.

Amended by R.2009 d.109, effective April 6, 2009.

See: 40 N.J.R. 6735(a), 41 N.J.R. 1489(b).

In (a), inserted the first and last sentences, and inserted "for personal lines insurance".

Case Notes

Revocation of insurance producer licenses was proper where respondents, an individual and her company, charged and collected improper fees of \$100 from twelve insurance consumers when only \$20 was allowed; additionally, the fee agreements did not provide a clear statement advising that the \$100 was not a part of the premium, did not advise that respondents were not receiving a commission from the purchase of the insurance, failed to include the signature of respondent as the insurance producer, and failed to state that the fees could only be charged if the prospective insured consented in writing (modifying 2008 N.J. AGEN LEXIS 758). *Goldman v. Montesinos*, OAL Dkt. No. BKI 12544-07, 2008 N.J. AGEN LEXIS 1022, Final Decision (September 19, 2008).

Submitting documentation to create false impression as to writing of service fee agreements was dishonesty warranting revocation of license as insurance producer. *Fortunato v. Watley*, 95 N.J.A.R.2d (INS) 23.

License revoked; unlicensed persons allowed to solicit coverage. *Fortunato v. EVA Insurance & Accounting, Inc.*, 93 N.J.A.R.2d (INS) 27.

11:17B-3.2 Service fees

(a) An insurance producer may charge a fee for services rendered in the sale or service of personal lines property/casualty or, where the producer is the originating or retail producer, in the sale or service of personal lines surplus lines insurance subject to the following conditions:

1. No service fee for any one policy shall exceed \$20.00.

2. No insurance producer may charge a fee for completing accident or claim report forms, nor shall a fee be charged for providing forms required by an insurer for servicing a policy.

3. An inspection fee may only be charged on a surplus lines policy and shall not exceed two percent of the premium or \$10.00, whichever is greater; except that the insured may be charged the actual amount paid to an unrelated firm or person for the service if said firm or person is not an insurance agent or insurance broker.

4. No charge may be made for services not actually performed.

5. A maximum service fee of \$15.00 may be charged by an insurance producer acting as an insurance broker or an insurance consultant upon placement of a renewal, except that an inspection fee may be charged in accordance with (a)3 above if no inspection of the property has occurred during the three years prior to issuance of the renewal policy.

6. Only one service fee per policy per year shall be charged, regardless of whether the policy term is for less than one year.

7. A motor club membership sold in connection with a policy shall not be considered separate coverage for the purpose of charging a service fee.

8. A motor club claim arising from the same loss as a claim under a private passenger automobile coverage pol-

icy shall not be considered a separate claim for purposes of charging a fee.

9. Insurance producers may charge a service fee for new automobile insurance applications, subject to the \$20.00 per policy limit and the other conditions referenced in (a)1 through 8 above, as reimbursement for out-of-pocket costs in obtaining documents or other materials related to the underwriting process, if:

i. The producer retains verifiable proof of the costs incurred;

ii. The producer provides copies of all such documents or other materials to the applicant, regardless of whether the costs incurred by the producer in procuring the documents or materials exceeded the \$20.00 limit; and

iii. The applicant does not provide the producer with a copy of the underwriting document dated within the previous 90 days.

(b) In addition to charging the actual cost incurred for any services performed by a person that is not associated with the surplus lines producer, such as inspection services, for purposes of N.J.S.A. 17:22A-38b, a surplus lines producer may charge a fee to an originating producer in connection with the negotiation or procurement of any contract of surplus insurance in amounts as follows:

1. For personal lines, a fee not to exceed \$50.00; and

2. For commercial lines, a fee equal to the greater of two percent of the premium for the applicable policy period or \$100.00, but in no event in excess of \$250.00.

(c) No insurance producer may charge a service fee for services rendered in the sale or service of life or health insurance.

(d) Bail bond agencies shall not charge the following fees:

1. Fugitive fees (fees charged for the apprehension of a defendant who fails to appear for a court date and administrative fees associated with creating a fugitive file). Surety companies may, however, charge fugitive fees as set forth in N.J.A.C. 11:1-40;

2. Banking fees (fees charged for returned checks/stop payments);

3. Service-related fees, such as travel fees and after-hour service fees.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Added (c).

Amended by R.2004 d.213, effective June 7, 2004.

See: 35 N.J.R. 5478(a), 36 N.J.R. 2923(a).

In (a), deleted "acting as an insurance broker or insurance agent" following "insurance producer" in the introductory paragraph and 2, inserted "charged by an insurance producer acting as an insurance broker or an insurance consultant" preceding "upon placement of a renewal" in 5, and added 9.

Amended by R.2005 d.247, effective August 1, 2005.

See: 37 N.J.R. 198(a), 37 N.J.R. 2882(b).

In (c)1, added "Surety companies may, however, charge fugitive fees as set forth in N.J.A.C. 11:1-40;"

Amended by R.2011 d.276, effective November 7, 2011.

See: 43 N.J.R. 1811(a), 43 N.J.R. 3027(a).

In the introductory paragraph of (a), inserted ", where the producer is the originating or retail producer, in the sale or service of"; added new (b); and recodified former (b) and (c) as (c) and (d).

Case Notes

Revocation of insurance producer licenses was proper where respondents, an individual and her company, charged and collected improper fees of \$100 from twelve insurance consumers when only \$20 was allowed; additionally, the fee agreements did not provide a clear statement advising that the \$100 was not a part of the premium, did not advise that respondents were not receiving a commission from the purchase of the insurance, failed to include the signature of respondent as the insurance producer, and failed to state that the fees could only be charged if the prospective insured consented in writing (modifying 2008 N.J. AGEN LEXIS 758). *Goldman v. Montesinos*, OAL Dkt. No. BKI 12544-07, 2008 N.J. AGEN LEXIS 1022, Final Decision (September 19, 2008).

11:17B-3.3 Motor club fees

(a) Any insurance producer who acts as a motor club representative or receives any compensation, directly or indirectly, or on account of the sale of a motor club service contract purchased in connection with the negotiation or sale of an automobile insurance policy or contract shall:

1. Obtain at the time of the initial application for the motor club service contract a dated written agreement, separate and apart from any other agreements, signed by both the insurance producer and the insured or prospective insured, stating the following information:

- i. That the motor club service contract is not an insurance contract;

- ii. That the motor club service contract is optional and is not required to be purchased by the insured or prospective insured as a condition of obtaining automobile insurance coverage;

- iii. That the motor club membership fee is not related to or included in the automobile insurance premium charge, and cannot lawfully be included in a premium finance agreement entered into by the insured or prospective insured;

- iv. The amount of the motor club fee and the automobile insurance premium charge;

- v. The identification of the person(s) and/or vehicle(s) covered by the motor club service contract and the term of the contract; and

- vi. The name and location of the motor club and the benefits and/or services provided by the motor club service contract.

2. Furnish the insured or prospective insured with a copy of the written agreement, identified at (a)1 above, at the time of execution thereof. The insurance producer shall also maintain a copy of the written agreement in the file of the insured or prospective insured.

(b) No insurance producer acting as a motor club representative shall:

1. Make the availability of automobile insurance dependent upon the purchase of a motor club membership;

2. Induce an insured or prospective insured to finance automobile insurance premiums which would not otherwise be necessary if not for the motor club costs; or

3. Sell more than one motor club agreement per automobile insurance policy.