

CHAPTER 17B

INSURANCE PRODUCER AND LIMITED INSURANCE REPRESENTATIVE STANDARDS OF CONDUCT: COMMISSIONS AND FEES

Authority

N.J.S.A. 17:1-8.1, 17:1-15e, 17:22A-1 et seq.,
17:29B-7 and 17B:30-13 and 15.

Source and Effective Date

R.2000 d.44, effective December 30, 1999.
See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Executive Order No. 66(1978) Expiration Date

Chapter 17B, Insurance Producer and Limited Insurance Representative Standards of Conduct: Commissions and Fees, expires on December 30, 2004.

Chapter Historical Note

Chapter 17B, Insurance Producer and Limited Insurance Representative Standards of Conduct: Commission and Fees, was adopted as R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Pursuant to Executive Order No. 66(1978), Chapter 17B, Insurance Producer and Limited Insurance Representative Standards of Conduct: Commission and Fees, was readopted as R.1995 d.60, effective December 30, 1994. See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Pursuant to Executive Order No. 66(1978), Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Commissions and Fees, was readopted as R.2000 d.44, effective December 30, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL REQUIREMENTS

11:17B-1.1 Scope

This chapter applies to all insurance producers and limited insurance representatives selling commercial and/or per-

sonal lines insurance, including private passenger automobile and any other policies written through residual markets pursuant to N.J.S.A. 17:29D-1, life, health, title, property, or casualty insurance, except as may be otherwise provided in this chapter.

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Substituted "and any other policies written through residual markets pursuant to N.J.S.A. 17:29D-1" for "policies written through the NJAF-IUA" following "automobile".

11:17B-1.2 Purpose

(a) The purposes of this chapter are:

1. To clarify those circumstances under which fees can be charged in connection with insurance transactions;
2. To clarify to whom commissions may be paid;
3. To require full disclosure of fees charged in connection with insurance policies;
4. To prohibit the commingling of certain non-insurance fees with charges for insurance premiums; and
5. To prohibit certain abuses which could arise out of the sale of insurance by an insurance producer or limited insurance representative acting as a motor club representative.

11:17B-1.3 Definitions

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

"Brokerage fee" means any money or other consideration, except commissions, charged or received by any person for services rendered as an insurance broker.

"Claim or accident reporting fees" means fees for preparation of proof of loss.

"Commission" means any payment from an insurer that is contingent upon the sale of a policy, contract, or certificate of insurance, or is based on the total premiums produced by the producer or written by the insurer. "Commission" shall not be deemed to include any discount charge or fee charged by a credit card company, bank, or similar entity pursuant to a written agreement between such entity or entities and an insurer, insurance producer or limited insurance representative, by which the insurer, insurance producer or limited insurance representative accepts payment for insurance premiums by credit card, debit card, or direct account deductions in accordance with N.J.A.C. 11:1-24.

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

“Consultant fee” means any charge to a client for services rendered as an insurance consultant as defined at N.J.S.A. 17:22A-2.

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

“Fee” means any money or other consideration, except commissions, paid to or received from any person for service or advice in connection with a policy, contract or certificate of insurance, including, but not limited to, any service fee, motor club fee, consultant fee, brokerage fee or other charge by an insurance producer acting as an insurance broker or an insurance consultant.

“Insurance agent” means an insurance producer acting as an insurance agent as defined at N.J.S.A. 17:22A-2.

“Insurance broker” means an insurance producer acting as an insurance broker as defined at N.J.S.A. 17:22A-2.

“Insurance consultant” means an insurance producer acting as an insurance consultant as defined at N.J.S.A. 17:22A-2.

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

“Limited insurance representative” means a person acting as a limited insurance representative as defined at N.J.S.A. 17:22A-2.

“Motor club” means any person, firm, association, partnership, corporation or other legal entity, whether or not residing, domiciled, or incorporated in this State, engaged in selling, furnishing or procuring, for a consideration, motor club services. Such services may include, but are not limited to, community traffic safety service, travel and touring service, emergency road service, theft or reward service, map service, towing service, bail bond service, legal fee reimbursement service in the defense of traffic offenses and the participation in an accident and sickness or death insurance benefit program. Motor club services shall not include towing and labor costs or other services included in or added by endorsement to an automobile insurance policy.

“Motor club fee” means any fee charged for a motor club service contract.

“Motor club representative” means a person who solicits the purchase of, or transmits a contract or application for, or aids in any manner in the negotiation, sale, renewal or continuance of, a motor club service contract.

“Motor club service contract” means any agreement whereby a motor club, for a consideration, promises to render, furnish or procure for any person a motor club service.

“Policy” means any contract of insurance and includes, but is not limited to, all policies, contracts, certificates, riders and endorsements which provide insurance coverage.

“Service fee” means a fee charged an insured or prospective insured by an insurance broker or insurance consultant for the placement of insurance or financing, credit reporting, obtaining auto operator’s driving records, claim or accident reporting, adjustment of claims, inspection fees, and referral fees.

Amended by R.1998 d.276, effective June 1, 1998.

See: 29 N.J.R. 3588(a), 30 N.J.R. 2003(a).

Rewrote “Commission” definition.

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Inserted “Commissioner” and “Department”.

11:17B-1.4 Penalties

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

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

11:17B-1.5 Severability

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

SUBCHAPTER 2. COMMISSIONS

11:17B-2.1 Commissions

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

(b) Payment or receipt of renewal or other deferred commissions to or by any individual or organization who has ceased to hold a license or registration under N.J.S.A. 17:22A-1 et seq. shall be permitted only for business produced by that individual or organization while an insurance producer or limited insurance representative.

(c) No commission or renewal, deferred or otherwise, or any other compensation shall be paid to any individual or organization whose license or registration has been revoked or suspended, except for services rendered while licensed or registered. 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 or limited insurance representative whose license or registration is revoked.

(d) No insurance producer or limited insurance representative 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.

SUBCHAPTER 3. FEES

11:17B-3.1 Fees

(a) Only an insurance producer acting as an insurance broker or insurance consultant may charge a fee to a policyholder or insured for services rendered as an insurance producer.

(b) Insurance producers acting as agents for an insurance company, and limited insurance representatives, shall not charge or receive any fee on a policy to or from a policyholder or insured for services rendered as an insurance producer or as a limited insurance representative.

(c) Any insurance producer acting as an insurance broker or insurance consultant charging a fee to an insured shall first obtain from the 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 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 and the licensed insurance broker or insurance consultant and the date of execution of the agreement.

(d) Any fee charged by an insurance producer acting as an insurance broker or insurance consultant shall bear a reasonable relationship to the services provided and shall not be discriminatory.

(e) 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.

(f) No insurance producer acting as an insurance broker or insurance consultant 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.

(g) No insurance producer acting as an insurance broker or insurance consultant may charge a fee for services not actually performed.

(h) No insurance producer acting as an insurance broker or insurance consultant, except a duly authorized employed producer on behalf of his or her employer, may execute a written fee agreement on behalf of any other insurance producer or premium finance company.

Case Notes

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 acting as an insurance broker or insurance consultant may charge a fee for services rendered in the sale or service of personal lines property/casualty or 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 acting as an insurance broker or insurance consultant 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 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 policy shall not be considered a separate claim for purposes of charging a fee.

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

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.