

19. Providing information to and receiving and recording information from an applicant for ticket insurance for processing by a licensee where the unlicensed person is an employee of the licensee.

**Example:** An unlicensed counter person in a car rental agency may receive and record an applicant's request for personal effects coverage. The car rental company must be a licensee and the counter person must provide the customer with written information about the coverage.

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

**"Completed written application"** means a signed application that contains the minimum information necessary as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person, to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration for the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

**"Declination," "denied" or "denial"** means:

1. Refusal by an insurance producer to submit an application on behalf of an applicant to any of the insurers represented by the producer;
2. Refusal by an insurer to issue an automobile insurance policy to an applicant upon receipt of an application for automobile insurance;
3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by a person, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer, or the offer to insure at a rate applicable to other than an eligible person;
4. The refusal by an insurer or producer to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage;
5. The refusal by an insurer to renew a policy of automobile insurance based on the eligible person status, unless either a member of the insured's household is not an eligible person and that person accounts for 10 percent or more of the use of the subject vehicle pursuant to N.J.A.C. 11:3-8.4(a)2 or that the eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5;
6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium; or
7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, or if

requested to notify the applicant whether coverage will be provided or denied, within five business days from the date a completed written application is received that includes the information in N.J.A.C. 11:3-44.3(a). When an application is transmitted to an insurer by first class mail, there is a rebuttable presumption that the application was received by the insurer two calendar days after mailing when the destination is in New Jersey or within a 300 mile radius of the place of mailing, or three calendar days when the destination is outside a 300 mile radius of the place of mailing, as evidenced by a proof of mailing or postmark.

**"Department"** means the Department of Banking and Insurance.

**"Eligible person"** means an eligible person as defined at N.J.A.C. 11:3-34.4.

**"Financial institution"** means any State or Federal banking institution, bank holding company, credit union, savings and loan association, finance company, mortgage loan company, or any other institution, association, partnership, company corporation, individual or individuals whose principal business is the lending of money or the extension of credit.

**"Inducement"** means money or any favor, advantage, object, valuable consideration or anything other than money which has a cost of or a redeemable value greater than \$25.00.

**"Insurance contract"** means a contract, policy, application, binder or commitment, where applicable, of life insurance, health insurance, indemnity, property and casualty, fidelity, surety, guaranty, title insurance, a commitment for title insurance or an annuity.

**"Insurance producer"** means any person required to be licensed under the laws of this State to sell, solicit or negotiate insurance.

**"Insurer"** means any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined at N.J.S.A. 17:44B-1 et seq., risk retention groups and purchasing groups as defined at 15 U.S.C. § 3901 and N.J.S.A. 17:47A-1 et seq., limited assignment distribution (LAD) carriers as defined at N.J.A.C. 11:3-2.2 and organizations and/or groups formed under N.J.A.C. 11:2-36.

**"Negotiate" or "negotiation"** means the act of conferring directly with, or offering advice directly to a purchaser or prospective purchaser of a particular contract or policy of insurance concerning any of the substantive benefits, terms or conditions of the contract or policy, provided the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers, but does not include clerical duties carried out under the supervision and control of an insurer or licensed insurance producer, or procedures

relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

“Person” means any individual, corporation, partnership or legal entity.

“Personal private passenger automobile insurance” or “automobile insurance” means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

“Professional employer organization (PEO)” means a sole proprietorship, partnership, corporation or other business entity, which would constitute a PEO or employee leasing company as defined in N.J.S.A. 34:8-67.

“Rebate” means the return or promise to return of any monetary sum, or discount, abatement, credit or reduction in premium other than that plainly expressed in the insurance contract.

“Solicit” or “solicitation” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer, but does not include clerical duties carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

“Transmission” means any form of mailing including, but not limited to, third class mail, certified mail, any overnight delivery or express delivery, hand delivery and any wire transmission including, but not limited to, facsimile transmission or computer modem.

Amended by R.1992 d.192, effective April 20, 1992.  
See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

Definitions added for automobile, declination, eligible person and personal private passenger automobile insurance.  
Emergency Amendment R.1993 d.135, effective March 1, 1993 (operative March 8, 1993) (expired April 30, 1993).  
See: 25 N.J.R. 1290(a).

Definition for completed written application added; item 7 added to definition of declination; definition for transmission added.  
Amended by R.1993 d.199, effective May 3, 1993.  
See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Added definition of clerical duties, and exceptions of such duties to definitions of effectuate, negotiate and solicit; definition of insurance contract and insurer amended.

Adopted Concurrent Proposal, R.1993 d.238, effective April 30, 1993.

See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

Petition for Rulemaking.

See: 25 N.J.R. 4523(b).

Amended by R.1994 d.598, effective December 5, 1994.

See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

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

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

Substituted a reference to this chapter for a reference to this subchapter in the introductory paragraph; and inserted “Department”, “Financial institution”, “Inducement” and “Rebate”.

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 “Declination,” “denied” or “denial”, substituted “producer” for “agent” throughout; deleted “Effectuate” or “effectuation” and “Limited insurance representative”; rewrote “Insurance producer”, “Negotiate” or “negotiation” and “Solicit” or “solicitation”.

Amended by R.2004 d.14, effective January 5, 2004.

See: 35 N.J.R. 4169(a), 36 N.J.R. 195(b).

In “Clerical duties”, amended 8 and added 19.

Amended by R.2004 d.184, effective May 3, 2004.

See: 35 N.J.R. 4170(a), 36 N.J.R. 2198(a).

Added “Professional employer organization (PEO)”.

Amended by R.2005 d.237, effective July 18, 2005.

See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

Substituted “Commissioner” for “Commission”; in “Inducement, substituted “a cost of” for “an intrinsic value” and “\$25.00” for “\$20.00”; rewrote “Insurer”.

### 11:17A-1.3 Who must be licensed; exceptions

(a) Except as provided in N.J.A.C. 11:17B-2.1(b) or (e), no person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer, without first obtaining a license from the Commissioner granting authority for the kind of insurance transacted.

(b) Unless otherwise specifically provided by N.J.S.A. 17:22A-26 et seq., any person who solicits, negotiates or sells contracts of insurance in New Jersey shall be considered to be transacting the business of insurance in New Jersey so as to require licensure as an insurance producer.

(c) Engaging in a single act or transaction of the business of an insurance producer, or holding oneself out to the public or an insurance producer as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer as to require licensure pursuant to N.J.S.A. 17:22A-26 et seq.

(d) No licensed insurance producer shall permit or allow any unlicensed person to transact the business of an insurance producer.

(e) Officers or employees of insurers authorized to do business in this State and officers or employees of licensed insurance producers, who solicit, negotiate or sell insurance by communicating directly with the public whether in person or by mail, fax, computer or telephone, in the name of and on behalf of the insurer or the licensed insurance producer, for compensation of any type, shall be licensed as an insurance producer. The requirements of this subsection shall not apply to officers or employees whose participation in the solicitation, negotiation or sale of insurance contracts is in a manner not requiring a license as an insurance producer as described in N.J.S.A. 17:22A-30(b).

Amended by R.1991 d.52, effective February 4, 1991.  
See: 22 N.J.R. 3444(a), 23 N.J.R. 310(a).

In (e): revised date to "January 1, 1992."

Amended by R.1992 d.44, effective January 21, 1992.  
See: 23 N.J.R. 1912(a), 24 N.J.R. 287(c).

Application of (e) specified.

Amended by R.1993 d.49, effective January 19, 1993.  
See: 24 N.J.R. 3220(a), 25 N.J.R. 313(a).

Licensure or registration required by (c) to be secured by May 1, 1993.

Amended by R.1993 d.199, effective May 3, 1993.  
See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Text at (e) amended to include officers and employees of insurance producers; and to clarify that direct contact with the public requires license.

Amended by R.1995 d.60, effective February 6, 1995.  
See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

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 (a), inserted "Except as provided in N.J.A.C. 11:17B-2.1(b) or (e)," preceding "No person shall act"; in (b) and (c), amended the N.J.S.A. references and substituted "sells" for "effects" preceding "contracts of insurance" in (b); rewrote (e).

#### Case Notes

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

#### 11:17A-1.4 Selling, soliciting or negotiating an insurance contract

(a) No person shall solicit, negotiate or sell an insurance contract in New Jersey unless he or she is a licensed insurance producer.

(b) Selling, soliciting or negotiating an insurance contract includes, but is not limited to, the following activities:

1. Discussing the effect of age, health or other risk-related conditions of the prospective policyholder;
2. Urging or advising any prospective purchaser to buy any particular policy or to insure with any particular company;
3. Initiating sales over the telephone or otherwise;
4. Completing or signing applications for insurance if the person is other than the applicant's authorized representative;
5. Collecting premiums in person at other than a recorded place of business;
6. Making or proposing to make an insurance contract;
7. Disseminating information as to coverages in general or for any particular policy, except that this shall not prohibit the dissemination of buyer's guides or applications for coverage in response to requests from prospective policyholders;
8. Disseminating information as to rates in general or for any particular policy where the rate cannot be secured by referring to a published or printed list of standard rates;

9. Initiating an inquiry as to the terms of existing coverage, except exclusively in the course of clerical duties;

10. Discussing or describing the coverages or terms of a proposed contract of insurance with a prospective policyholder, including counseling as to which coverages to buy;

Example: If an insured or prospective insured requests advice in any communication with an unlicensed employee, the response must be made by a licensed producer.

11. Recommending or independently initiating additions or deletions to an insured's policy;

12. Signing binders, endorsements and insurance policies;

13. Authorizing the issuance or delivery of certificates of insurance, endorsements, binders or insurance policies or insurance identification cards; and

14. Responding to a policyholder's request for advice or counsel regarding policy provisions or coverage.

Example: In the course of requesting an application form or a change to an existing policy, if a policyholder or prospective policyholder, while speaking to an unlicensed person, requests an opinion about the terms of the proposed insurance contract or the proposed change to the existing contract, the response must be made by a licensed producer.

(c) No insurance producer shall negotiate or solicit in New Jersey any insurance contract which has not first been filed in New Jersey where such contract is required to be filed.

(d) Except as provided in (d)1 below, no professional employer organization or its employees, principals and/or agents shall engage in any activities listed in (b) above at any time, including while negotiating and/or conducting business with any client company or prospective client company, unless the activity is conducted or performed by a properly licensed insurance producer.

1. Professional employer organizations whose only insurance related activity when enrolling new members is either providing information on the single insurance plan available through the PEO, distributing literature on multiple insurance plans available or performing only those functions described in N.J.S.A. 17:22A-30b(2) shall not be deemed to be engaged in activity requiring licensure pursuant to (b)7, 8 or 10 above.

Amended by R.1993 d.199, effective May 3, 1993.  
See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Text at (b) amended to define activities further and to add examples.

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 (a), substituted "sell" for "effect" and deleted "or a registered limited insurance representative" following "insurance producer"; in (b), substituted "Selling, soliciting or negotiating" for "Solicitation, negotiation and effectuation of" in the introductory paragraph and rewrote 9; in (c), deleted "or limited insurance representative" following "insurance producer".

Amended by R.2004 d.184, effective May 3, 2004.

See: 35 N.J.R. 4170(a), 36 N.J.R. 2198(a).

Added (d).

5. Where no written application has been made prior to declination, the agent or broker shall, if so requested by the applicant within 90 days from the date of denial, provide the applicant with a written explanation of the declination within 10 working days of the request. Such communication shall, when applicable, include the reasons why the coverage offered is with less favorable terms or conditions than those requested; and

6. Not bind coverage for automobile physical damage perils prior to inspection of the automobile by the insurer when the insurer requires such inspection pursuant to the provisions of N.J.A.C. 11:3-36.

(b) For the purpose of this section, the Commissioner may impose 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 and any other penalty provided by law.

New Rule, R.1992 d.189, effective April 20, 1992.

See: 23 N.J.R. 3199(a), 24 N.J.R. 1510(a).

Section was "Penalties."

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).

Binder requirements added to (a)3.

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.1994 d.598, effective December 5, 1994.

See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

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

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

#### 11:17A-1.8 Penalties

(a) The Commissioner shall impose penalties for violations of this subchapter in accordance with the provisions of N.J.S.A. 17:22A-26 et seq. and any other applicable law.

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

Recodified from 1.7 by R.1992 d.192, effective April 20, 1992.

See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

Section was "Severability."

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 (a), amended the N.J.S.A. reference.

#### Case Notes

Licensee responsible for any submission of false applications by employee. *Fortunato v. Benner*, 92 N.J.A.R.2d (INS) 73.

Insurance producer license revoked for consumer fraud and other misconduct. *Fortunato v. Conte*, 92 N.J.A.R.2d (INS) 17.

#### 11:17A-1.9 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such pro-

vision to other persons or circumstances shall not be affected thereby.

Recodified from 1.8 by R.1992 d.192, effective April 20, 1992.

See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

### SUBCHAPTER 2. UNFAIR TRADE PRACTICES

#### 11:17A-2.1 Purpose; scope

(a) This subchapter implements the provisions of N.J.S.A. 17:29A-15, 17:29B-4 and 17B:30-13 and 15 by prohibiting insurance producers from engaging in certain practices in connection with the business of insurance.

(b) This subchapter applies to all insurance producers.

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).

Deleted references to limited insurance representatives throughout.

#### 11:17A-2.2 (Reserved)

Amended by R.2000 d.17, effective January 3, 2000.

See: 31 N.J.R. 2859(a), 32 N.J.R. 60(b).

In "Inducement", substituted a reference to \$20.00 for a reference to \$10.00.

Repealed by R.2000 d.44, February 7, 2000.

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

Section was "Definitions".

#### 11:17A-2.3 Rebates and inducements; prohibited practices

(a) No insurance producer shall offer, make or give, or permit to be offered, made or given, to any person directly or indirectly, an inducement to purchase insurance other than that plainly expressed in the insurance contract.

(b) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, any rebate of premiums payable on a contract of insurance, other than that plainly expressed in the contract or provided for in ratings systems filed by or on behalf of the insurer writing the contract and approved by the Commissioner.

(c) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, anything of value in return for that person's agreement not to purchase insurance from another insurance producer or insurer.

(d) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, anything of value as compensation for being unable to offer a comparable or better insurance program at less cost.

(e) The provisions of this section shall apply whether or not a contract of insurance is ultimately effected.

(f) An offer by an insurer or insurance producer to make a contribution to a charity that is a qualified organization under the guidelines of the Internal Revenue Service, a non-profit corporation, or to the State of New Jersey or any political subdivision thereof, or to any state government or political subdivision thereof, upon a consumer, other than the charity, non-profit corporation, or governmental entity itself, agreeing to purchase an insurance product shall not be deemed to be an inducement or a rebate prohibited by this section, provided that:

- 1. No pecuniary benefit is obtained by the insurer or producer, other than the income tax benefit of such contribution;
- 2. No income tax benefits are passed through to the consumer by the insurer or producer making the contribution, and the consumer does not receive the contribution and has no direct or indirect interest in the recipient of the contribution;
- 3. The amount of premium or commission to be charged is not altered as a result of the contribution; and
- 4. Records of all such offers and contributions made are maintained for at least five years in a manner set forth in N.J.A.C. 11:17C-2.6, and are available to the Department for review and inspection upon request.

Amended by R.2008 d.195, effective July 21, 2008.  
See: 40 N.J.R. 1063(a), 40 N.J.R. 4327(c).  
Added (f).

**11:17A-2.4 Rebates and inducements; determination of value**

(a) For the purpose of determining the value of any item pursuant to N.J.A.C. 11:17A-2.3, an insurance producer shall retain the original invoice for such item for five years beyond the later of the date the offer is discontinued or the date the last item is given.

(b) The value of any favor, advantage, valuable consideration or any other item or service shall be determined by the Commissioner or his or her designee.

Amended by R.2005 d.237, effective July 18, 2005.  
See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

In (b), substituted "Commissioner" for "Commission" preceding "or his or her designee".

**11:17A-2.5 Tie-ins; coercion**

(a) No financial institution licensed as an insurance producer shall, as a condition precedent, concurrent or subsequent to the lending of money or the extension of credit, or the renewal of the loan or extension of credit, require that the borrower acquire, finance or negotiate a policy or contract of insurance through any particular insurer or insurance producer, or cancel insurance with another insurance producer or insurer.

1. A financial institution licensed as an insurance producer shall accept the insurance policy provided by a borrower unless a reasonable basis exists to disapprove the insurance policy. For the purpose of this paragraph, disapproval shall be deemed unreasonable if it is not based solely on reasonable standards as determined by the Commissioner, uniformly applied, relating to the extent of coverage required and the financial soundness and services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required. If a financial institution rejects the insurance furnished by the borrower, it shall provide the borrower with a clear and complete written statement of reasons for the rejection.

2. Pursuant to and consistent with (a) and (a)1 above, all financial institutions licensed as insurance producers shall issue a written disclosure to prospective insureds which shall inform them of their right to acquire insurance coverage from and through sources independent of the financial institution and its subsidiaries when such insurance coverage is required to secure a loan, credit or mortgage, or any renewal thereof. The written disclosure required by this paragraph shall be worded as follows, and printed in a type size not less than 10 point type, and shall be maintained by the insurance producer for at least five years. A copy of this disclosure shall be given to the borrower at the time the issue of insurance first arises.

**DISCLOSURE NOTICE**

The Insurance Laws of New Jersey provide that the lender may not require the borrower to take insurance through any particular insurer or insurance producer (for example, agent or broker).

The borrower has the right to have the insurance placed with or through an insurance producer and insurer of his or her choice, provided that they meet the reasonable requirements of the lender. Subject to the rules adopted by the Commissioner, the lender has the right to designate reasonable requirements as to the insurer and the insurance producer and as to the adequacy of the coverage. The lender cannot require the borrower to cancel insurance with another insurance producer and insurer unless the continuation of such coverage and relationship would be unreasonable within the meaning of this notice and N.J.A.C. 11:17A-2.5.

I have read the foregoing statement and understand my rights and privileges and those of the lender relative to the placing of insurance.

I have selected \_\_\_\_\_ (insert name) as the Insurance Company/Agency/Insurance Producer to provide the required \_\_\_\_\_ (insert type) insurance.

\_\_\_\_\_  
Name of Borrower

\_\_\_\_\_  
Name of Borrower

\_\_\_\_\_  
Date