

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

**Insurance Producer Standards of Conduct: Management of Funds
Trust Account**

Proposed Amendments: N.J.A.C. 11:17C-2.3

Authorized by: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15(e) and 17:22A-48

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2003-318

Submit comments by October 3, 2003 to:

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The agency proposal follows:

Summary

On August 15, 2001 the New Jersey Legislature enacted the New Jersey Insurance Producer Licensing Act of 2001 (the "Act"). The Act's stated purpose is to govern the qualifications and procedures for the licensing of insurance producers, simplify and organize the statutory law to improve efficiency, permit the use of new

technology and reduce costs associated with the issuing and renewing of producer licenses. Rules pursuant to the Act were proposed on July 1, 2002 and adopted on November 4, 2002. See 34 N.J.R. 2286(a) and 3839(a). Concurrent with that proposal and adoption, changes were made to Chapters 17A through 17E to bring certain language into accord with the new Act. As a result, one commenter to that proposal requested a change to N.J.A.C. 11:17C-2.3(e) removing the restriction that producer trust accounts be placed in banks "located within the State." The Department acknowledged that the suggestion was under review but constituted a substantive change that required further notice and could not be made at the time of adoption.

The Department is now proposing to amend N.J.A.C. 11:17C-2.3(e) to allow New Jersey resident producers to establish and maintain their trust accounts in out-of-State financial institutions under certain conditions. This will allow New Jersey producers more choice in selecting the provider of their banking services. Further, the proposed amendment recognizes that in today's electronic environment, local physical branch offices of banks are no longer a necessity. The new amendment will also foster reciprocity for New Jersey banks that wish to expand beyond the boundaries of this State. Finally, the amendment will allow licensed producers headquartered elsewhere to retain existing banking relationships when expanding into New Jersey.

However, financial institutions that transact trust business within this State, as defined in N.J.S.A. 17:9A-316D(2) as opposed to financial institutions that only maintain trust accounts as defined in N.J.S.A. 17:16I-2, are required to have a certificate of authority in accordance with N.J.S.A. 17:9A-316.

This rule proposal provides for a comment period of 60 days. Therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, it is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendment affects all persons selling, soliciting or negotiating insurance in New Jersey and financial institutions in and out of this State. Allowing out-of-State financial institutions to maintain trust accounts for New Jersey producers serves to increase the choices and flexibility available to producers. The amendment acknowledges the trends toward distance and internet banking, and allows users to utilize those institutions which most precisely cater to their particular needs regardless of where those institutions are located.

Economic Impact

While the proposed amendment regarding producer trust accounts could possibly have an adverse economic impact on in-State financial institutions, the Department believes that any possible adverse impact will be more than offset by the flexibility afforded to licensed producers in being able to choose the financial institution which best serves their individual needs.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment is not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that the proposed amendment will result in the generation or loss of jobs with respect to financial institutions. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendment together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact as a result of the proposed amendment.

Regulatory Flexibility Analysis

Most persons selling, soliciting or negotiating insurance in New Jersey and some engaged in the business of providing insurance education in New Jersey are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. In addition, while out-of-State financial institutions are not small business as defined in the Regulatory Flexibility Act, the compliance requirement proposed (see Summary above) is necessary for the safeguarding of public funds which are placed in trust accounts by producers. This purpose also does not allow for different requirements based on business size.

It is not anticipated that there will be any costs to persons selling, soliciting or negotiating insurance in New Jersey as a result of these amendments. This amendment merely increases the choice of banks available to producers in which they

maintain their trust accounts. The amendments do not add any additional costs nor require the use of any professional services.

For the foregoing reasons, the proposed amendment includes no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed amendment has no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

11:17C-2.3 Trust account

(a) – (d) (No change)

(e) Any insurance producer who is required to maintain a trust account pursuant to (a) above shall establish and maintain a trust account in a financial institution as defined in this chapter. Any resident insurance producer required to maintain a trust account shall maintain such trust account in one or more financial institutions [located]

either:

1. Located within this State and subject to the jurisdiction of the New Jersey courts; **or**

2. Located outside this State, if the financial institution confirms, in a format approved by the Commissioner, that it will consent to the jurisdiction of New Jersey courts and the Department, including

complying with and abiding by subpoenas and orders issued by the Department, to the same extent that New Jersey courts and the Department have jurisdictional oversight of insurance agency deposit accounts held in financial institutions located within this State, and provided that the financial institution is not transacting trust business as defined by N.J.S.A. 17:9A-316D(2) within this State without a certificate of authority in accordance with N.J.S.A. 17:9A-316.

(f) – (i) (No change)

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