

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

Insurance Producer Standards of Conduct: Marketing

**Activities for Which a Person Must Be Licensed as an Insurance Producer or
Registered as a Limited Insurance Representative**

Definition of Clerical Duties

Proposed Amendment: N.J.A.C. 11:17A-1.2

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

Authority: N.J.S.A. 17:1-8.1 and 15e and 17:22A-26 et seq.

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

Proposal Number: PRN 2003-388

Submit comments by November 14, 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, P.L. 2001, c.210 (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 issuance and renewal of producer licenses. Rules pursuant to the Act were proposed on July 1, 2002 and adopted on November 4, 2002. Those rules eliminated registration of "limited insurance representatives" after June 30, 2003 and required all those currently registered as limited insurance representatives to apply and qualify as limited line producers by January 1, 2004.

The Department of Banking and Insurance (the "Department") has received requests from representatives of the rental car industry asking the Department for clarification of the licensing requirements for their counter personnel who provide customers with the opportunity to purchase collision damage waivers, a form of ticket insurance. In response to these concerns, a proposal regarding the registration of branch offices for certain limited lines authorities was published on May 19, 2003 (see 35 N.J.R. 2159(a)). The Department is now proposing an amendment to the definition of "clerical duties" for which licensure is not required to clarify the status of car rental agency counter personnel.

The proposed amendment adds paragraph 19 to the definition of clerical duties, and includes an example which clarifies that the counter person in a car rental agency performs a clerical duty when giving a customer written information about purchasing the collision damage waiver and processing the customer's request for the waiver as part of the car rental transaction.

The proposed amendment does not change the requirement that car rental companies themselves be licensed as insurance producers.

The Department has also received requests for clarification of the status of sales representatives in automobile dealerships. These sales representatives describe financing options to prospective purchasers and collect information from the purchaser. The dealership employs another person who completes the transaction with the purchaser, which may include credit insurance. The proposed amendment also adds an example to paragraph 8, which clarifies that the sales representative does not have to be licensed to render such services, provided that there is a licensee in the dealership who can complete a credit insurance sale using the information gathered by the sales representative.

This rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, 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 will impact car rental companies and car dealerships. These companies will be positively impacted by the clarification that counter employees and sales representatives perform a clerical function in the decision of a customer to buy a limited lines insurance product. In addition, this amendment makes the treatment of this type of insurance sales consistent with that used in other states. The public should not experience any difference in the car rental or purchase transactions.

Economic Impact

The proposed amendment will have a positive economic impact on car rental agencies and car dealerships. These entities will not have to bear the expense of licensing counter personnel or sales representatives.

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 car rental agencies or car dealerships. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments and new rules 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 Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose any reporting, recordkeeping or other compliance requirements on

small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment clarifies that car rental agency counter personnel and car dealership sales representatives only perform clerical duties in the sale of ticket or credit insurance, and thus are not subject to the compliance requirement of licensure as insurance producers.

Smart Growth Impact

The proposed amendment will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

11:17A-1.2 Definitions

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

. . .

"Clerical duties" means the administrative and underwriting tasks accomplished in the office and under the supervision of the insurer or licensed producer that are necessary to produce the insurance contract in accordance with the insurer's or producer's normal procedures and systems, including, but not limited to, the following:

1. - 7. (No change.)
8. Receiving and recording information from a policyholder or prospective policyholder to give to an insurance producer for his or her response, or transmitting information to a

policyholder or prospective policyholder under the supervision of an insurance producer;

Example: An unlicensed sales representative in a car dealership collects information from a car buyer that is given to a licensee to complete a credit insurance transaction.

9. - 16. (No change.)

17. Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates;

Example: An unlicensed person may respond to a specific request for the cost of a specific coverage from a rate manual published in print or in an electronic format. However, an unlicensed person may not provide advice or suggestions concerning the benefits or drawbacks of a particular coverage, deductible, limit, etc., in the course of disseminating this information.

[and]

18. As an underwriter employed by an insurer or by a licensed insurance producer, upon receipt of an application submitted by a licensed producer, requesting and reviewing information under paragraph 15 above, requesting and reviewing the results of a physical examination of a prospective insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a determination that the applicant meets the insurer's underwriting criteria, and mailing the policy to the policyholder or the producer.

Example: An unlicensed full-time salaried underwriter not compensated based on

sales receives a non-bound life insurance application from a licensed producer. The underwriter requests that the applicant take a physical examination. Pursuant to authorizations in the application, the underwriter requests medical records from the applicant's physicians. The underwriter reviews the application, results of the physical examination and the medical records, and decides to issue the life insurance policy applied for. The underwriter mails the policy with a printed explanatory brochure to the applicant. All of these activities are permissible activities for the unlicensed underwriter.

and

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 insured's request for a collision damage waiver. The car rental company must be a licensee and the counter person must provide the customer with written information about the coverage.

. . . .

inoregs/car rental rule