

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF CONSUMER PROTECTION SERVICES**

**Insurance Producer Standards of Conduct: Commissions and Fees**

**Service Fees**

**Proposed Amendment: N.J.A.C. 11:17B-3.2**

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-38b.

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

Proposal Number: PRN 2011-170.

Submit comments by September 30, 2011 to:

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The agency proposal follows:

**Summary**

N.J.S.A. 17:22A-38b previously provided that no surplus lines producer shall charge any fee to an originating broker in connection with the negotiation or procurement of any contract of surplus lines insurance that shall exceed \$50.00, plus the actual cost incurred for any services performed by a person that is not associated with the surplus lines producer, such as inspection services. This statute was amended by P.L. 2010 c. 42, enacted July 6, 2010 and effective October 1, 2010, to delete the \$50.00 maximum fee and to provide that the maximum amount shall be set forth by the Commissioner of Banking and Insurance (Commissioner) by regulation.

In order to implement this statute, the Department of Banking and Insurance (Department) is proposing an amendment at N.J.A.C. 11:17B-3.2(b) to provide that, for surplus lines insurance, and the purposes of N.J.S.A. 17:22A-38b, in addition to charging a fee for the actual cost incurred for any services performed by a person that is not associated with the surplus lines producer such as inspection services, a surplus lines producer may charge a fee to an originating broker in connection with the negotiation or procurement of any contract of surplus lines insurance in the following amounts:

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

The proposed amendment retains the existing fee limit currently applicable with respect to personal lines surplus lines insurance, and increases the amount permitted for commercial lines surplus lines insurance. The proposed fee amounts are based on discussions the Department has had with surplus lines producers, trade associations and representatives. Typically, such fees are passed through to the insured by the originating producer.

The Department is also proposing to amend N.J.A.C. 11:17B-3.2(a) to clarify that the applicability of the provisions on fees in that subsection to personal lines surplus lines insurance is limited to the originating or retail producer, and does not extend to the surplus lines producer. The fees that surplus lines producers may charge are governed by N.J.S.A. 17:22A-38b and by N.J.A.C. 11:17B-3.2(b) as proposed for amendment.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal 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 amendments implement N.J.S.A. 17:22A-38(b) by setting forth maximum fee amounts that may be charged to originating brokers by surplus lines producers in connection with the negotiation or procurement of any contract of surplus lines insurance. The proposed amendments retain the existing fee amounts that are applicable to personal lines insurance, and provide a modest increase for commercial lines insurance. These amounts are based on discussions with surplus lines producers, trade associations and representatives and reflect amounts that those groups and the Department believe better reflect costs associated with the negotiation or procurement of commercial surplus lines insurance.

### **Economic Impact**

Surplus lines producers will be permitted to increase the fee they can charge to an originating producer in connection with commercial lines surplus lines insurance to an amount equal to the greater of two percent of the applicable policy premium for the period or \$100.00,

up to a maximum of \$250.00. Personal lines surplus lines insureds will experience no economic impact from this proposal, as the existing \$50.00 maximum fee for personal lines insurance is retained. Commercial lines surplus lines insureds will see a modest increase in the fees that they pay based on the applicable policy premium, up to the stated maximum. The Department notes that commercial lines surplus lines insureds are usually larger, sophisticated entities. The Department also notes that the fee maximums are tied to the premium amount, which is indicative of the size of the insured and the complexity of the transaction or insurance program. The proposed amendments will have the benefit of better tying the fee that may be charged by producers who procure surplus lines coverage to the amount of work and level of expertise involved in writing the policy, while limiting the ultimate cost to surplus lines insureds so as to avoid excessive fees. The capped increase in fees chargeable on typically more complex commercial surplus lines placements will foster competition amongst surplus lines producers and, by providing greater incentives for them to accept requests for assistance on the making of such placements, make such coverage more easily available for prospective insureds. Consequently, the benefits to be realized by the proposed amendments will outweigh the limited additional costs they will allow surplus lines producers to impose in commercial lines transactions. No additional professional services will be required to be retained or maintained in connection with the proposed amendment.

### **Federal Standards Statement**

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

### **Jobs Impact**

The Department does not anticipate any jobs will be generated or lost as a result of the proposed amendment.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed amendment together with their comments on other aspects of the proposal.

### **Agriculture Industry Impact**

The proposed amendment will not have any impact on the agriculture industry in New Jersey

### **Regulatory Flexibility Analysis**

The proposed amendment will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed amendment applies to small businesses, it will apply to New Jersey resident producers and commercial surplus lines insureds domiciled in New Jersey. The costs of compliance with the proposed amendment are set forth in the Economic Impact above. No additional professional services will be required to be retained or maintained in connection with the proposed amendment. As noted above, the proposed amendment implements N.J.S.A. 17:22A-38(b) by setting forth the fees that surplus lines producers may charge originating brokers in connection with the negotiation or procurement of surplus lines insurance. The proposed fee amounts for commercial lines surplus lines insurance, with a floor of \$100.00 and a maximum of \$250.00, are tied to premium volume for the applicable policy period, which is indicative of the insured’s

size. However, setting permissible fees based on the size of the surplus lines producer's business would not be feasible or appropriate in furthering the goals as outlined above for implementing the statute. Accordingly, no differentiation in compliance requirements is expressly provided based on business size.

### **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.

### **Housing Affordability Impact Analysis**

The proposed amendment will not have an impact on housing affordability in this State in that the proposed amendment relates to surplus lines producer fees.

### **Smart Growth Development Impact Analysis**

The proposed amendment will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the proposed amendment relates to surplus lines producer fees.

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

## 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. – 9. (No change.)

(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.**

Recodify existing (b) and (c) as (c) **and** (d). (No change in text.)