

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Persons Employed in the Business of Insurance
Convicted Persons; Waiver

Proposed Readoption: N.J.A.C. 11:17E

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22A-26 et seq., 2A:168A-1 et seq., and 18 U.S.C. §§1033 and 1034.

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

Proposal Number: PRN 2007 – 12

Submit comments by March 17, 2007 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt without amendment N.J.A.C. 11:17E-1, which is scheduled to expire on June 1, 2007 pursuant to N.J.S.A. 52:14B-5.1c. The Department has reviewed Chapter 17E and has determined that the rules set forth therein are necessary, reasonable and proper for the purpose for which they were originally promulgated.

Pursuant to N.J.S.A. 17:22A-26 et seq., the Commissioner of the Department of Banking and Insurance (Commissioner) is charged with the responsibility of regulating the business of insurance in this State, including the licensing of insurance producers and

insurance brokers. Moreover, the Commissioner is the official in this State who is authorized to grant or deny written consent to engage in the business of insurance to persons otherwise prohibited from employment in the business of insurance in accordance with 18 U.S.C.

§1033(a)(2) (the “Act”).

Chapter 17E, Persons Employed in the Business of Insurance, implements 18 U.S.C. §1033 and §1034, Federal statutes that provide that no person having been convicted of a felony involving dishonesty or breach of trust or an offense under 18 U.S.C. §1033 shall engage in the business of insurance without having first obtained the written consent of the Commissioner or his or her designee. This Chapter applies to all insurers doing business in this State pursuant to Title 17, 17B or 26 of the New Jersey Statutes, or any risk retention group or purchasing group operating pursuant to the Liability Risk Retention Act of 1986, 18 U.S.C. §3901 et seq., or other similar risk retention organization organized pursuant to State law.

18 U.S.C. §1033 also prohibits any person from employing a prohibited person in the business of insurance in any capacity without first obtaining a waiver. Both the prohibited person and the employer risk Federal criminal charges for a violation of these provisions.

The Department is proposing the readoption of these rules in furtherance of the obligations imposed by the Act. The Act and its implementation were originally the subject of intense study and consideration by the National Association of Insurance Commissioners (NAIC) as well as the Department, and the result of that review was the implementation of the following procedures:

1. State enforcement of 18 U.S.C. §§1033 and 1034;
2. Ensure that only the appropriate state acts upon waiver requests;
3. Provide for exchange of information by states regarding applications for waivers to avoid forum shopping by prohibited persons; and

4. Allow each state the opportunity to implement its own public policy and laws regarding the reintroduction of rehabilitated convicted persons into employment in the business of insurance.

“The Rehabilitated Convicted Offenders Act” (RCOA), N.J.S.A. 2A:168A-1 et seq., supports the opportunity for the reintroduction of rehabilitated convicted offenders into licensed professions and gainful employment once certain facts are established and conditions are fulfilled. The Department has applied the principles set forth in the RCOA to judge the merits of a request for a waiver under the Act. The Department has also participated in the exchange of data with other states in furtherance of the NAIC guidelines regarding waiver applicants, under the established National Special Activities Database (NSAD).

In June 2006, the Department proposed amendments to N.J.A.C. 11:17E-1.1 see 38 N.J.R. 4394(a), 4395, which: refer the public to the Department website for easy access to the 1033 Waiver Application Exhibit Forms in the Appendix to N.J.A.C. 11:17E, and online with instructions; clarify the procedure for waiver application denials and administrative appeals of such denials; and modify Appendix Exhibits A and B of N.J.A.C. 11:17E-1. The comment period for these proposed amendments expired on December 15, 2006, and this readoption of Chapter 17E will incorporate these amendments if adopted by the Department.

N.J.A.C. 11:17E-1.1 sets forth the purpose and scope of the convicted persons waiver approval process. N.J.A.C. 11:17E-1.2 supplies the definitions of key terms used within the chapter. N.J.A.C. 11:17E-1.3 defines the prohibited activities that compel a convicted person to obtain a waiver and the final determination of the appropriate state from which an applicant shall obtain a waiver. N.J.A.C. 11:17E-1.4 addresses the application process and those applicants who qualify for use of either the “short form” or “comprehensive form” waiver application. N.J.A.C. 11:17E-1.5 sets forth the scope of actions available to the

Commissioner following the consideration and review of a waiver application. N.J.A.C. 11:17E-1.6 involves the maintenance of the confidentiality of the information submitted to the Department by waiver applicants and N.J.A.C. 11:17E-1.7 refers to the available penalties imposed by law for the failure to comply with the requirements of the subchapter. The proposed readoption makes no changes in the previously established purpose, scope and definitions of the convicted persons waivers process; and there are no changes in the established prohibited activities or the maintenance of records.

The Appendix contains E and Exhibit A, the Initial Application for written consent to Engage In The Business Of Insurance, Pursuant to 18 U.S.C. §§1033 and 1034 and Exhibit B, the Comprehensive Application for Written Consent to Engage in the Business of Insurance, Pursuant to 18 U.S.C. §§1033 and 1034.

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 notice is not subject to the provisions of N.J.A.C.1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption will continue to address the obligation established under the Act to review and grant or deny applications for waivers submitted by prohibited persons seeking to be employed in the business of insurance in this State. This chapter and the Act implement the policy determination of the United States Congress that prohibited persons should not be engaged in the interstate business of insurance without having first obtained a waiver from the appropriate state official. The Commissioner is charged with this responsibility to review and determine whether prohibited persons under 18 U.S.C. §§1033 and 1034 should be granted waivers to engage in the business of insurance.

Since the social policy found in the RCOA provides that rehabilitated ex-offenders shall be permitted, in appropriate cases, to obtain licenses that might otherwise be unavailable because of the person's conviction, the Department permits previously convicted persons the opportunity to be employed in the insurance business in positions that require a license.

The social impact of this chapter is to provide for a complete and thorough review of applications for waivers and allows the Commissioner to grant waivers where the evidence of rehabilitation indicates that the applicant is unlikely to commit additional criminal offenses. The utilization of the waiver process affords previously convicted individuals the opportunity to acquire gainful employment and become productive, contributing members of society.

Economic Impact

The Department will continue to expend resources in maintaining systems to distribute, receive, investigate and determine applications for waivers as authorized by these rules. Companies engaged in the business of insurance, insurers, producers and others will continue to maintain systems that ensure that they are not employing prohibited persons in the business of insurance. Persons convicted of crimes involving dishonesty or breaches of trust continue to be prohibited from being employed in the business of insurance unless they first obtain a waiver of the prohibition pursuant to the Act. There are filing and other costs associated with the application for a waiver that will be paid by the applicant. Thus, the waiver application and issuance process will continue to have a favorable economic impact by affording such persons the opportunity to secure gainful employment in the insurance industry.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. A Federal standards analysis is not required in this instance because the rules proposed for readoption continue the State's compliance with the requirements of 18 U.S.C. §1033 as implemented by N.J.A.C. 11:17E. Thus, no Federal standards or requirements are exceeded.

Jobs Impact

The Department does not believe that the rules proposed for readoption will cause any jobs to be generated or lost. The Department invites interested parties to submit any data or studies concerning the jobs impact of the proposal together with their written comments on other aspects of the proposal.

Agriculture Industry Impact

The Department does not expect any impact upon the State agricultural industry by the rules proposed for readoption.

Regulatory Flexibility Analysis

Future annual costs of compliance with these rules are not expected to differ from current annual costs as discussed in the Economic Impact above. No professional services will need to be employed to comply with these rules. In order to ensure that only persons who have established that they qualify for the issuance of a waiver pursuant to 18 U.S.C.

§§1033 and 1034 will be permitted to engage in the business of insurance, these rules make no distinction in the application of the obligations imposed by the Act based upon the size of the business for which a successful waiver applicant will become affiliated.

The Department is unaware of any provisions of the rules proposed for readoption that are excessively onerous 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 these rules will apply to small businesses, small businesses will be required to incur some costs necessary for continuing administration consistent with this chapter. Namely, there should be some effort to determine if a prospective employee is a prohibited person. Since the underlying legislation enacted by Congress does not allow for any exception for small businesses, all employers, regardless of size, are required to comply with these requirements. Additionally, all employers, large and small, are subject to criminal liability for intentionally employing a prohibited person in the business of insurance. Thus, the Department believes that all employers, regardless of size, should be required to comply. The rules proposed for readoption will impose recordkeeping, reporting and compliance requirements, as discussed in the Summary above.

Smart Growth Impact

The rules proposed for readoption will not have an impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:17E.