

## CHAPTER 210

AN ACT concerning the licensure of insurance producers, amending P.L.1960, c.32, supplementing Title 17 of the Revised Statutes and repealing parts of the statutory law.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.17:22A-26 Short title.

1. This act shall be known and may be cited as the "New Jersey Insurance Producer Licensing Act of 2001."

C.17:22A:27 Purpose of act.

2. This act governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes the statutory law to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance producer licenses.

C.17:22A-28 Definitions relative to licensure of insurance producers.

3. As used in this act:

"Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his principal place of residence or principal place of business and is licensed to act as an insurance producer.

"Insurance" means any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes and includes contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, surety, guaranty and title insurance.

"Insurance consultant" means a person, who for a commission, brokerage fee, or other consideration, acts or holds himself out to the public or any licensee as offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any insurance policy or contract that is or could be issued in this State, but shall not include bank trust officers, attorneys-at-law and certified public accountants who negotiate contracts on behalf of others or provide general financial counsel if no commission or brokerage fee is paid for those services.

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

"Insurer" means a business entity authorized to transact the business of insurance in this State pursuant to subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes.

"License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurer.

"Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

"Limited line credit insurance producer" means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master corporate, group or individual contract or policy.

"Limited lines insurance" means those lines of insurance established pursuant to section 14 of this act or any other line of insurance that the commissioner determines is necessary to recognize for the purposes of complying with subsection e. of section 9 of this act.

"Limited lines insurance producer" means a person who is authorized by the commissioner

to sell, solicit or negotiate limited lines insurance or to engage in the business of an insurance consultant.

"NAIC" means the National Association of Insurance Commissioners, its affiliates or subsidiaries, or any agency or committee thereof.

"Negotiate" 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 that the person engaged in that act either: sells insurance or obtains insurance from insurers for purchasers.

"Person" means an individual or a business entity.

"Sell" means to exchange a contract or policy of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

"Surplus lines insurance producer" means a person who is authorized to sell, solicit or negotiate contracts or policies of insurance coverage on behalf of unauthorized insurers pursuant to "the surplus lines law," P.L.1960, c.32 (C.17:22-6.40 et seq.); and "surplus lines" shall have the same meaning as generally accorded to it by that act.

"Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

"Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

"Uniform application" means the current version of the NAIC uniform application for resident and nonresident insurance producer licensing.

#### C.17:22A-29 Licensure required.

4. A person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for that line of authority in accordance with this act.

#### C.17:22A-30 Construction of act; license not required.

5. a. Nothing in this act shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

b. A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on contracts or policies written or sold to insure risks residing, located or to be performed in this State and:

(a) The officer's, director's or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(b) The officer's, director's or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract or policy of insurance; or

(c) The officer, director or employee is acting in the capacity of a special agency or agency supervisor assisting insurance producers and those activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under insurance plans, issuing certificates under insurance plans or otherwise assisting in administering insurance plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors or trustees

are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the insurer issuing the contracts or policies;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of this State, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this State;

(6) A person who is not a resident of this State who sells, solicits or negotiates a contract or policy of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract or policy, so long as that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state in which the insured maintains its principal place of business and the contract or policy of insurance insures risks located in that state; or

(7) A salaried full-time employee who counsels or advises his employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer if the employee does not sell or solicit insurance or receive a commission.

C.17:22A-31 Written examination fee.

6. a. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 10 of this act. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this State. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

b. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 19 of this act.

c. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the commissioner as set forth in section 19 of this act.

d. An individual who fails to appear for the examination as scheduled or fails to pass the examination, may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.

C.17:22A-32 Application, approval.

7. a. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(1) Is at least 18 years of age;

(2) Has not committed any act that is a ground for denial, suspension or revocation set forth in section 15 of this act;

(3) Has completed a prelicensing course of study for the lines of authority for which the individual has applied as prescribed by the commissioner by regulation;

(4) Has paid the fees set forth in section 19 of this act; and

(5) Has successfully passed the examinations for the lines of authority for which the individual has applied.

b. A business entity acting as an insurance producer shall obtain an insurance producer

license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the fees set forth in section 19 of this act; and
  - (2) The business entity has designated a licensed insurance producer or producers responsible for the business entity's compliance with the insurance laws, rules and regulations of this State.
- c. The commissioner may require any documents reasonably necessary to verify the information contained in an application.
- d. Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that is approved by the commissioner.

C.17:22A-33 Issuance of resident insurance producer license.

8. a. Unless denied licensure pursuant to section 15 of this act, persons who have met the requirements of sections 6 and 7 of this act shall be issued a resident insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

- (1) Life-insurance coverage on human lives, including benefits of endowment and annuities, and which may include benefits in the event of death or dismemberment by accident and benefits for disability income;
- (2) Accident and health or sickness-insurance coverage for sickness, bodily injury or accidental death, and which may include benefits for disability income;
- (3) Property-insurance coverage for the direct or consequential loss or damage to property of every kind;
- (4) Casualty-insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property;
- (5) Variable life and variable annuity products-insurance coverage provided under variable life insurance contracts, variable annuities or any other life insurance or annuity product that reflects the investment experience of a separate account;
- (6) Credit-limited line credit insurance;
- (7) Personal lines - property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
- (8) Any other line of insurance permitted under any law or regulation of this State.

b. An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in section 19 of this act is timely paid and in the case of resident individual insurance producers, education requirements are timely satisfied.

c. An individual insurance producer who allows his license to lapse may, within 12 months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in an amount not to exceed double the unpaid renewal fee shall be required for any renewal fee received after the due date.

d. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, such as long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

e. The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the commissioner deems necessary.

f. Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within 30 days of the change.

C.17:22A-34 Nonresident insurance producer license.

9. a. Unless denied licensure pursuant to section 15 of this act, a nonresident person shall receive a nonresident insurance producer license if:

- (1) The person is currently licensed as a resident insurance producer in good standing in his home state;

(2) The person has submitted the proper request for licensure and has paid the fees required by section 19 of this act;

(3) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to his home state, or in lieu of the same, a completed uniform application; and

(4) The person's home state awards nonresident insurance producer licenses to residents of this State on the same basis.

b. The commissioner may verify the nonresident insurance producer's licensing status through the Producer Database maintained by the NAIC.

c. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this State to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence. No fee or license application shall be required.

d. Subject to section 13 of this act, a person licensed as a surplus lines insurance producer in his home state shall receive a nonresident surplus lines insurance producer license pursuant to subsection a. of this section.

e. Subject to section 14 of this act, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in his home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection a. of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

f. Each licensed nonresident insurance producer shall, by application for and issuance of, a license be deemed to have appointed the commissioner as agent to receive service of original legal process in this State in any cause of action or legal proceedings arising within this State out of transactions under the license. Service upon the commissioner shall be of the same force and effect as if served on the nonresident insurance producer. This appointment shall be irrevocable for as long as there can be any cause of action against the nonresident insurance producer arising out of insurance transactions for which a nonresident insurance producer license is required. Duplicate copies of the legal process shall be served upon the commissioner. At the time of service the commissioner shall be paid a fee established pursuant to section 19 of this act payable as costs in the action. Upon receiving service, the commissioner shall send one of the copies by registered or certified mail, return receipt requested, to the named nonresident insurance producer at his last known business or residence address.

g. The commissioner shall be immune from all civil actions resulting from the licensee's failure to receive service of process if the commissioner, pursuant to subsection f. of this section, forwards the service to the last business or residence address filed by the licensee as his address. Immunity under this subsection is in no way intended to diminish or otherwise affect the immunity available to the commissioner pursuant to the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

#### C.17:22A-35 Exemptions from prelicensing education examination.

10. a. An individual who applies for an insurance producer license in this State who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within 90 days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's Producer Database records, maintained by the NAIC, indicate that the producer is or was licensed in good standing for the lines of authority requested.

b. A person licensed as an insurance producer in another state who moves to this State shall make application within 90 days of establishing legal residence to become a resident licensee pursuant to section 7 of this act. No prelicensing education or examination shall be required of that person to obtain any lines of authority previously held in the prior state except in cases in which the commissioner determines otherwise by regulation.

#### C.17:22A-36 Notification of assumed name.

11. An insurance producer doing business under any name other than the producer's legal name shall notify the commissioner prior to using the assumed name.

C.17:22A-37 Temporary license.

12. a. The commissioner may issue a temporary insurance producer license for a period not to exceed 180 days without requiring an examination if the commissioner determines that the temporary license is necessary for the servicing of an insurance business in the following cases:

(1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer, upon the death or disability of that producer, to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business;

(2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license as responsible for the business entity's compliance with the insurance laws, rules and regulations of this State;

(3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or

(4) In any other circumstance in which the commissioner determines that the public interest will best be served by the issuance of a temporary insurance producer license.

b. The commissioner may, by order, limit the authority of any temporary licensee in any way necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license shall not continue after the owner or the personal representative disposes of the insurance producer's business.

C.17:22A-38 Requirements for license granting, surplus lines authority.

13. a. No license granting surplus lines authority shall be issued or renewed unless the applicant holds or will hold property and casualty authorities.

b. 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 plus the actual costs incurred for any services performed by a person that is not associated with the surplus lines producer, such as inspection services.

C.17:22A-39 Insurance marketed through limited lines insurance producers.

14. The commissioner shall establish, by rule or regulation, the line or lines of insurance that may be marketed through a limited lines insurance producer.

C.17:22A-40 Causes for probation, suspension, revocation, refusal to renew.

15. a. The commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with subsection c. of section 20 of this act or any combination of actions, for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance regulator;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract, policy or application for insurance;

- (6) Having been convicted of a felony or crime of the fourth degree or higher;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere;
- (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Improperly using notes or any other reference material to complete an examination for an insurance producer license;
- (12) Knowingly accepting insurance business from an unlicensed insurance producer;
- (13) Failing to comply with an administrative or court order imposing a child support obligation;
- (14) Failing to pay income tax or comply with any administrative or court order directing payment of income tax pursuant to Title 54A of the New Jersey Statutes;
- (15) Intentionally withholding material information or making a material misstatement in an application for a license;
- (16) Committing any fraudulent act;
- (17) Knowingly facilitating or assisting another person in violating any insurance laws; or
- (18) Failing to notify the commissioner within 30 days of his conviction of any crime, indictment or the filing of any formal criminal charges, or the suspension or revocation of any insurance license or authority by a state, other than this State, or the initiation of formal disciplinary proceedings in a state, other than this State, affecting the producer's insurance license; or failing to obtain the written consent pursuant to 18 U.S.C. sections 1033 and 1034; or failing to supply any documentation that the commissioner may request in connection therewith.

b. If the action by the commissioner is to nonrenew or to deny an application for an insurance producer license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the license. The applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner, or his designee, to determine the reasonableness of the commissioner's action. The hearing shall be held pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. The insurance producer license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.

d. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of this act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law.

C.17:22A-41 Licensure required for receipt of commission.

16. a. An insurer or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this State if that person is required to be licensed under this act and is not so licensed.

b. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this State if that person is required to be licensed under this act and is not so licensed.

c. Renewal or other deferred commissions may be paid to a person for selling, soliciting or

negotiating insurance in this State if the person was required to be licensed under this act at the time of the sale, solicitation or negotiation and was so licensed at that time.

d. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this State, unless the payment would violate section 15 of P.L.1944, c.27 (C.17:29A-15), section 14 of P.L.1982, c.114 (C.17:29AA-14), section 4 of P.L.1947, c.379 (C.17:29B-4), section 5 of P.L.1968, c.248 (C.17:46A-5), section 34 or 35 of P.L.1975, c.106 (C.17:46B-34 or 17:46B-35) or N.J.S.17B:30-13 or any other provision of law.

#### C.17:22A-42 Appointment of agents.

17. a. Any insurer authorized to transact business in this State may, by written contract, appoint as its agent, a person that holds a valid insurance producer license issued in accordance with the provisions of this act. The contract shall authorize the insurance producer to act as an agent for the appointing insurer for all lines of insurance for which the insurer is authorized in this State and the agent holds authority in this State, unless specifically limited. The contract shall contain the duties, responsibilities and limitations of authority between the agent and the appointing insurer, and the agent shall abide by its terms. While the agent is properly licensed, an agency appointment shall continue in effect until termination in accordance with this act. Both the appointing insurer and the appointed agent shall maintain a copy of the agency contract in their office, and shall make the contract available for inspection by the commissioner upon request. Nothing contained in this subsection shall be construed as granting the commissioner the authority to determine contractual disputes between an appointing insurer and an appointed agent.

b. Upon the cancellation of an agency contract in accordance with section 1 of P.L.1970, c.217 (C.17:22-6.14a), the insurer shall within 15 days file written notice of cancellation with the commissioner. Notice of cancellation shall be on a form prescribed by the commissioner and shall indicate the date of cancellation and the reason therefor. Agency appointment shall not terminate until the notice of cancellation has been filed with the commissioner. The requirements of this subsection shall not affect any notice or filing requirements otherwise established by law.

c. Any insurer appointing an agent pursuant to this section shall file with the commissioner, on a form prescribed by the commissioner, a notice of appointment providing the names and business addresses of its agents, including notice of any limitations on the agent's authority. The filing of a single notice of appointment by each insurer represented by a licensed business entity shall cover all of its licensed producers.

d. The filing of a notice of appointment pursuant to subsection c. of this section shall constitute notice that the named insurance producer has been appointed an agent for any subsidiary or affiliate company of the insurer if certified copies of any resolution duly adopted by the board of directors of each insurer requesting that authority are filed with the commissioner. The resolution shall also designate the primary insurer for which all of the insurer's agents shall be appointed.

#### C.17:22A-43 Immunity from civil liability.

18. a. (1) In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to section 17 of this act or this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection b. of section 17 of this act was reported to the commissioner, provided that the propriety of any termination for cause is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.



(2) In any action brought against a person that has immunity under paragraph (1) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.

(3) Paragraph (1) or (2) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

b. (1) Any documents, materials or other information in the control or possession of the department furnished by an insurer, insurance producer or an employee or agent thereof acting on behalf of the insurer or insurance producer, or obtained by the commissioner in an investigation pursuant to this section, shall be confidential by law and privileged, shall not be subject to any State or federal freedom of information law, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(2) Neither the commissioner, nor any person who received documents, materials or other information while acting under the authority of the commissioner, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (1) of this subsection.

(3) In order to assist in the performance of the commissioner's duties under this act, the commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (1) of this subsection, with other state, federal, and international regulatory agencies, with the NAIC, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information pursuant to this section;

(b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(c) May enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (3) of this subsection.

(5) Nothing in this act shall prohibit the commissioner from releasing final, adjudicated actions including terminations for cause that are open to public inspection pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) to a database or other clearinghouse service maintained by the NAIC.

c. An insurer, the authorized representative of the insurer, or an insurance producer that fails to report as required under the provisions of this section or that is found by a court of competent jurisdiction to have reported with actual malice may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with section 20 of this act.

#### C.17:22A-44 Fees.

19. a. The commissioner shall, by regulation, set reasonable, necessary and appropriate fees to be charged for licensing insurance producers, filing agency appointments, filing limited insurance producer registrations, filing fictitious, trade or firm names, issuing certification of license status and processing any document required to be submitted pursuant to this act, except that the total annual revenue generated from these fees shall not be less than the total annual revenue generated from equivalent fees for the preceding fiscal year.

b. Applicants may be charged a fee for any licensing examination conducted pursuant to this

act in an amount designated or approved by the commissioner.

c. All fees payable to the commissioner pursuant to this section are nonrefundable.

d. The commissioner may, by rule or regulation, provide for the waiving of fees for disabled war veterans of the United States military service.

C.17:22A-45 Powers of commissioner.

20. a. The commissioner shall have the power to conduct investigations, to administer oaths, to interrogate licensees and others, and to issue subpoenas to any licensee or any other person in connection with any investigation, hearing or other proceeding pursuant to this act, without fee.

b. Subpoenas shall be issued in the name of the commissioner, the deputy commissioner or other employee designated by the commissioner, but no subpoena shall be issued except for good cause. Any person failing or refusing to comply with a subpoena may be ordered by a judge of the Superior Court, on application made by the commissioner or by the person at whose instance the subpoena was issued, to comply with the terms of the subpoena or be punished by the court for contempt. The court may proceed in a summary manner.

c. Any person violating any provision of this act shall be liable to a penalty not exceeding \$5,000 for the first offense and not exceeding \$10,000 for each subsequent offense to be recovered in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition, the commissioner or the court, as the case may be, may order restitution of moneys owed any person and reimbursement of the costs of investigation and prosecution, as appropriate.

d. In any formal proceeding, if the commissioner finds that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order, he may enter an appropriate order to be effective pending completion of the hearing and entry of a final order. These orders may be entered on ex parte proofs if the proofs indicate that the commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest. Orders issued pursuant to this section shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered. In the alternative, or in addition, the commissioner is authorized to institute a proceeding in the Superior Court, to be conducted in a summary manner, for an injunction against specified acts or conduct in aid of the proceedings pending before him, including temporary injunctions and interim restraints.

C.17:22A-46 Fees, requirements for nonresident insurance producers, reciprocity.

21. a. The commissioner shall not assess a greater fee for an insurance producer license or related service to a person not residing in this State based solely on the fact that the person does not reside in this State.

b. The commissioner shall waive any license application requirements for a nonresident insurance producer license applicant with a valid license from his home state, except the requirements imposed by section 9 of this act, if the applicant's home state awards nonresident insurance producer licenses to licensees of this State on the same basis.

c. A nonresident insurance producer's satisfaction of his home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this State's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this State on the same basis.

C.17:22A-47 Reports to commissioner.

22. a. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

b. Within 30 days of the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report

shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

23. Section 8 of P.L.1960, c.32 (C.17:22-6.42) is amended to read as follows:

C.17:22-6.42 Procurement of surplus line coverages; conditions.

8. If certain insurance coverages of subjects resident, located, or to be performed in this State cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(a) The insurance must be eligible for export under section 9 of P.L.1960, c.32 (C.17:22-6.43);

(b) The insurer must be an eligible surplus lines insurer under section 11 of P.L.1960, c.32 (C.17:22-6.45);

(c) The insurance must be so placed through a licensed New Jersey surplus lines agent; and

(d) Other applicable provisions of this surplus lines law must be complied with.

(e) No surplus lines agent shall exercise binding authority in this State on behalf of any insurer unless the agent has first filed with the commissioner for informational purposes and not for the purpose of approval or disapproval the written agreement between the agent and the insurer setting forth the terms, conditions and limitations governing the exercise of the binding authority by the agent. A copy of any amendments to the agreement and of any notice of cancellation or termination of the agreement shall be filed by the agent with the commissioner no later than 10 days after adoption thereof.

The agreement filed pursuant to this section shall be considered and treated as a confidential document, and shall not be available for inspection by the public.

The agreement shall include the following items:

(1) A description of the classes of insurance for which the agent holds binding authority;

(2) The geographical limits upon the exercise of binding authority by the agent;

(3) The maximum dollar limitation on the binding authority of the agent for any one risk for each class of insurance written by the agent;

(4) The maximum policy period for which the agent may bind a risk;

(5) If the binding authority is delegable by the agent, a prohibition against the delegation without the prior written approval of the insurer.

If an agent who is qualified in accordance with this section to exercise binding authority on behalf of an insurer delegates the binding authority to any other agent, the agent to whom the authority is delegated shall not exercise the same until a copy of the instrument delegating the binding authority shall first have been filed with the commissioner for informational purposes and not for the purpose of approval or disapproval. The instrument delegating the binding authority shall include an identification of the binding authority agreement between the delegating agent and the insurer.

24. Section 23 of P.L.1960, c.32 (C.17:22-6.57) is amended to read as follows:

C.17:22-6.57 Record of surplus lines contracts procured.

23. Each surplus lines agent shall keep in his office a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

(a) Amount of the insurance and perils insured against;

(b) Brief general description of property insured and where located;

(c) Gross premium charged;

(d) Return premium paid, if any;

(e) Rate of premium charged upon the several items of property;

(f) Effective date of the contract, and the terms thereof;

(g) Name and post-office address of the insured;

(h) Name and home office address of the insurer;

(i) Amount collected from the insured; and

(j) Other information as may be required by the commissioner.

The record shall at all times be open to examination by the commissioner without notice, and shall be so kept available and open to the commissioner for five years next following expiration or cancellation of the contract.

25. Section 27 of P.L.1960, c.32 (C.17:22-6.61) is amended to read as follows:

C.17:22-6.61 Suspension, revocation, refusal to renew license of surplus lines agents.

27. The commissioner may suspend, revoke, or refuse to renew the license of a surplus lines agent and all other licenses and permits held by the licensee under this Title, upon any one or more of the following grounds:

(a) (Deleted by amendment, P.L.2001, c.210);

(b) Removal of the accounts and records of his surplus lines business during the period when such accounts and records are required to be maintained under section 23 of P.L.1960, c.32 (C.17:22-6.57);

(c) Closure of the licensee's office for a period of more than 30 consecutive days, unless granted permission by the commissioner upon showing circumstances warranting such closure for a longer period;

(d) Failure to make and file his quarterly reports when due as required by section 24 of P.L.1960, c.32 (C.17:22-6.58);

(e) Failure to pay the tax on surplus lines premiums, as provided for in this surplus lines law;

(f) (Deleted by amendment, P.L.2001, c.210);

(g) Suspension, revocation or refusal to renew any other license issued by the commissioner;

(h) Lack of qualifications as for an original surplus lines agent's license;

(i) Violation of any provision of this surplus lines law;

(j) For any other cause for which a license could be denied, revoked, suspended or renewal refused under section 15 of P.L.2001, c.210 (C.17:22A-40).

In addition to the foregoing penalties set forth in this section, any person, persons or corporation violating any of the provisions of this act shall be liable to a penalty not exceeding \$2,500 for the first offense and not exceeding \$5,000 for each succeeding offense to be recovered in a summary proceeding as provided in R.S.17:33-2.

C.17:22A-48 Rules, regulations.

26. a. The commissioner may, in accordance with "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) promulgate rules and regulations necessary to effectuate the purposes of this act.

b. The commissioner may provide for the orderly transition of producer license types and authorities by promulgating rules and regulations that are reasonable, necessary, appropriate and consistent with this act.

Repealer.

27. P.L.1987, c.293 (C.17:22A-1 et seq.); section 13 of P.L.1996, c.69 (C.17:22A-14.1); and P.L.1997, c.429 (C.17:22A-16.1) are repealed.

28. This act shall take effect immediately, but sections 1 through 25 and 27 shall remain inoperative until the adoption of regulations effectuating their purposes pursuant to section 26 of this act, provided however, that no provision of this act shall remain inoperative on or after November 12, 2002

Approved August 15, 2001.