

SENATE, No. 2475

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED APRIL 12, 2018

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Prohibits application of fiduciary standard to insurance producers; specifies qualifications of persons providing affidavit of merit in lawsuits against insurance producers; and revises notification requirement with respect to certain producer compensation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/16/2019)

1 AN ACT concerning insurance producers, supplementing P.L.2001,
2 c.210 (C.17:22A-26 et seq.) and amending P.L.1995, c.139 and
3 P.L.2008, c.38.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. (New section) a. Notwithstanding any law, rule, or
9 regulation to the contrary, an insurance producer shall exercise
10 ordinary care and skill in renewing, procuring, binding, or placing
11 insurance coverage requested by an insured or prospective insured
12 person or entity.

13 b. A cause of action brought by any person or entity against an
14 insurance producer concerning the sale, placement, procurement,
15 renewal, binding or cancellation of, or the failure to procure, a
16 policy of insurance, shall not subject the insurance producer to civil
17 liability under standards governing the conduct of a fiduciary or a
18 fiduciary relationship.

19 c. The provisions of this section shall not impair or invalidate
20 any of the terms or conditions of a contractual agreement between
21 an insurance producer and an insurer.

22 d. The provisions of this section shall not limit or exempt an
23 insurance producer from liability for negligence concerning the
24 sale, placement, procurement, renewal, binding, or cancellation of,
25 or the failure to procure, an insurance policy; or limit or prevent an
26 insurance producer from asserting any defenses available at
27 common law.

28
29 2. Section 2 of P.L.1995, c.139 (C.2A:53A-27) is amended to
30 read as follows:

31 2. a. In any action for damages for personal injuries, wrongful
32 death or property damage resulting from an alleged act of
33 malpractice or negligence by a licensed person in his profession or
34 occupation, the plaintiff shall, within 60 days following the date of
35 filing of the answer to the complaint by the defendant, provide each
36 defendant with an affidavit of an appropriate licensed person that
37 there exists a reasonable probability that the care, skill or
38 knowledge exercised or exhibited in the treatment, practice or work
39 that is the subject of the complaint, fell outside acceptable
40 professional or occupational standards or treatment practices. The
41 court may grant no more than one additional period, not to exceed
42 60 days, to file the affidavit pursuant to this section, upon a finding
43 of good cause.

44 b. In the case of an action for medical malpractice, the person
45 executing the affidavit shall meet the requirements of a person who

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 provides expert testimony or executes an affidavit as set forth in
2 section 7 of P.L.2004, c.17 (C.2A:53A-41). In all other cases, the
3 person executing the affidavit shall be licensed in this or any other
4 state; have particular expertise in the general area or specialty
5 involved in the action, as evidenced by board certification or by
6 devotion of the person's practice substantially to the general area or
7 specialty involved in the action for a period of at least five years.
8 The person shall have no financial interest in the outcome of the
9 case under review, but this prohibition shall not exclude the person
10 from being an expert witness in the case.

11 c. In the case of an action against a licensed insurance
12 producer, regardless of damages sought, the person executing the
13 affidavit pursuant to this section shall be licensed in this State; and
14 have particular expertise in the general area or specialty involved in
15 the action, as evidenced by a professional designation in the general
16 area or specialty involved in the action and by devotion of the
17 person's practice substantially to the general area or specialty
18 involved in the action during the five years immediately preceding
19 the date of the occurrence that is the basis for the claim or action.
20 The person shall have no financial interest in the outcome of the
21 case under review, but this prohibition shall not exclude the person
22 from being an expert witness in the case.

23 (cf: P.L.2004, c.17, s.8)

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25 3. Section 25 of P.L.2008, c.38 (C.17:22A-41.1) is amended to
26 read as follows:

27 25. a. An insurance producer licensed pursuant to P.L.2001,
28 c.210 (C.17:22A-26 et al.) who sells, solicits, or negotiates health
29 **【insurance policies or contracts】** benefits plans to residents of this
30 State shall notify the purchaser of the **【insurance】** health benefits
31 plan, in writing, of the availability of information concerning the
32 amount of any commission, service fee, brokerage, or other
33 valuable consideration that the producer will receive as a result of
34 the sale, solicitation or negotiation of the health 【insurance policy
35 or contract】 benefits plan, which information shall be provided
36 upon request. **【If the commission, fee, brokerage, or other valuable**
37 **consideration is based on a percentage of premium, the insurance**
38 **producer shall include that information in the notification to the**
39 **purchaser.】**

40 b. The commissioner may **【specify, by regulation, the**
41 **information that shall be provided by an insurance producer in the**
42 **notification to a purchaser of health insurance and the procedure for**
43 **providing the notification】** adopt, pursuant to the “Administrative
44 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or
45 regulations necessary to implement this section.

46 (cf: P.L.2008, c.38, s.25)

1 4. This act shall take effect immediately.

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STATEMENT

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6 This bill requires insurance producers to exercise ordinary care
7 and skill in issuing insurance policies.

8 The bill also prohibits any cause of action by any person or
9 entity against an insurance producer concerning the sale, placement,
10 procurement, renewal, binding or cancellation of, or the failure to
11 procure insurance, from subjecting the insurance producer to civil
12 liability under standards governing the conduct of a fiduciary or a
13 fiduciary relationship.

14 The bill specifies that its provisions do not exempt an insurance
15 producer from liability for negligence concerning the sale,
16 placement, procurement, renewal, binding, or cancellation of, or the
17 failure to procure, any insurance policy or limit or prevent a
18 producer from asserting any defenses available at common law.
19 The bill provides that its provisions do not invalidate any agreement
20 between an insurance producer and an insurer.

21 This bill also specifies the qualifications of a person providing an
22 affidavit of merit in the case of an action against a licensed
23 insurance producer, regardless of what damages may be sought.
24 The person must be licensed in this State; have particular expertise
25 in the general area or specialty involved in the action, as evidenced
26 by a professional designation in the general area or specialty
27 involved in the action and by devotion of the person's practice
28 substantially to the general area or specialty involved in the action
29 during the five years immediately preceding the date of the
30 occurrence that is the basis for the claim or action. The person must
31 have no financial interest in the outcome of the case under review,
32 but this prohibition would not exclude the person from being an
33 expert witness in the case.

34 Finally, under current law, an insurance producer is required to
35 notify the purchaser of health insurance, in writing, of the amount
36 of any commission that the producer will receive as a result of the
37 transaction. Instead, this bill requires an insurance producer to
38 notify a purchaser of a health benefits plan as to the availability of
39 information concerning fees and commissions, which shall be
40 provided upon request.