

[First Reprint]

**SENATE, No. 2475**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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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.

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on January 17, 2019, with amendments.



**(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:

7  
8 1. (New section) a. Notwithstanding any law, rule, or  
9 regulation to the contrary, an insurance producer shall exercise  
10 ordinary <sup>1</sup>and reasonable<sup>1</sup> care and skill in renewing, procuring,  
11 binding, or placing <sup>1</sup>property and casualty<sup>1</sup> insurance coverage <sup>1</sup>and  
12 health benefits plans<sup>1</sup> requested by an insured or prospective  
13 insured person or entity.

14 b. A cause of action brought by any person or entity against an  
15 insurance producer concerning the sale, placement, procurement,  
16 renewal, binding or cancellation of, or the failure to procure, a  
17 policy of <sup>1</sup>property and casualty<sup>1</sup> insurance <sup>1</sup>or a health benefits  
18 plan<sup>1</sup>, shall not subject the insurance producer to civil liability  
19 under standards governing the conduct of a fiduciary or a fiduciary  
20 relationship <sup>1</sup>, except when the conduct upon which the cause of  
21 action is based involves the wrongful retention or misappropriation  
22 of any money that was received by the insurance producer, as a  
23 premium deposit or as payment of a claim<sup>1</sup>.

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

27 d. The provisions of this section shall not limit or exempt an  
28 insurance producer from liability for negligence concerning the  
29 sale, placement, procurement, renewal, binding, or cancellation of,  
30 or the failure to procure, <sup>1</sup>**[an]** a property and casualty<sup>1</sup> insurance  
31 policy <sup>1</sup>or a health benefits plan<sup>1</sup>; or limit or prevent an insurance  
32 producer from asserting any defenses available at common law.

33 <sup>1</sup>e. For the purposes of this section, “health benefits plan” shall  
34 mean the same as that term is defined in section 1 of P.L.1992,  
35 c.161 (C.17B:27A-2).<sup>1</sup>

36  
37 2. Section 2 of P.L.1995, c.139 (C.2A:53A-27) is amended to  
38 read as follows:

39 2. a. In any action for damages for personal injuries, wrongful  
40 death or property damage resulting from an alleged act of  
41 malpractice or negligence by a licensed person in his profession or  
42 occupation, the plaintiff shall, within 60 days following the date of  
43 filing of the answer to the complaint by the defendant, provide each  
44 defendant with an affidavit of an appropriate licensed person that

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted January 17, 2019.

1 there exists a reasonable probability that the care, skill or  
2 knowledge exercised or exhibited in the treatment, practice or work  
3 that is the subject of the complaint, fell outside acceptable  
4 professional or occupational standards or treatment practices. The  
5 court may grant no more than one additional period, not to exceed  
6 60 days, to file the affidavit pursuant to this section, upon a finding  
7 of good cause.

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

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

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

33  
34 3. Section 25 of P.L.2008, c.38 (C.17:22A-41.1) is amended to  
35 read as follows:

36 25. a. An insurance producer licensed pursuant to P.L.2001,  
37 c.210 (C.17:22A-26 et al.) who sells, solicits, or negotiates  
38 'individual health benefits plans as defined in section 1 of  
39 P.L.1992, c.161 (C.17B:27A-2), or<sup>1</sup> health [insurance policies or  
40 contracts] benefits plans <sup>1</sup>as defined in section 1 of P.L.1992, c.162  
41 (C.17B:27A-17)<sup>1</sup> to <sup>1</sup>[residents of this State] small employers as  
42 defined in section 1 of P.L.1992, c.162 (C.17B:27A-17),<sup>1</sup> shall  
43 notify the purchaser of the [insurance] health benefits plan, in  
44 writing, of the availability of information concerning the amount of  
45 any commission, service fee, brokerage, or other valuable  
46 consideration that the producer will receive as a result of the sale,  
47 solicitation or negotiation of the health [insurance policy or

1 contract] benefits plan <sup>1</sup>[, which information shall be provided  
2 upon request]<sup>1</sup>. [If the commission, fee, brokerage, or other  
3 valuable consideration is based on a percentage of premium, the  
4 insurance producer shall include that information in the notification  
5 to the purchaser.] <sup>1</sup>If the commission, fee, brokerage, or other  
6 valuable consideration is based on a percentage of premium, the  
7 insurance producer shall include that information in the notification  
8 to the purchaser.<sup>1</sup>

9 b. The commissioner may [specify, by regulation, the  
10 information that shall be provided by an insurance producer in the  
11 notification to a purchaser of health insurance and the procedure for  
12 providing the notification] adopt, pursuant to the “Administrative  
13 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or  
14 regulations necessary to implement this section.  
15 (cf: P.L.2008, c.38, s.25)

16

17 4. This act shall take effect immediately.