

ASSEMBLY, No. 2669

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1997

By Assemblyman STEELE

1 AN ACT concerning the termination of insurance agents and amending
2 P.L.1970, c.217.

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

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7 1. Section 1 of P.L.1970, c.217 (C.17:22-6.14a) is amended to
8 read as follows:

9 1. a. In the event that a policy is canceled by the insurer, either at
10 its own behest or at the behest of the agent or broker of record, the
11 unearned premium, including the unearned commission, shall be
12 returned to the policyholder.

13 b. In the event that a policy of insurance, issued by the automobile
14 insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1)
15 or any successor thereto, is canceled by reason of nonpayment of
16 premium to the insurer issuing the policy or nonpayment of an
17 installment payment due pursuant to an insurance premium finance
18 agreement, the broker of record for that policy may retain the full
19 annual commission due thereon and, if a premium finance agreement
20 is not involved, the effective date of cancellation of the policy shall be
21 no earlier than 10 days prior to the last full day for which the premium
22 paid by the insured, net of the broker's full annual commission, would
23 pay for coverage on a pro rata basis in accordance with rules
24 established by the commissioner.

25 c. Contracts between insurance companies and agents for the
26 appointment of the agent as the representative of the company shall set
27 forth the rate of commission to be paid to the agent for each class of
28 insurance within the scope of such appointment written on all risks or
29 operations in this State, except:

- 30 (1) Reinsurance.
31 (2) Life insurance.
32 (3) Annuities.
33 (4) Accident and health insurance.
34 (5) Title insurance.

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

Matter underlined thus is new matter.

1 (6) Mortgage guaranty insurance.

2 (7) Hospital service, medical service, health service, or dental
3 service corporations, investment companies, mutual benefit
4 associations, or fraternal beneficiary associations.

5 Said rates of commission shall continue in force and effect unless
6 changed by mutual written consent or until termination of said contract
7 as hereinafter provided. Failure to achieve such mutual consent shall
8 require that the agent's contract be terminated as hereinbelow
9 provided. The rate of commission being paid on each class of
10 insurance on the date of enactment hereof shall be deemed to be
11 pursuant to the existing contract between agent and company.

12 d. Termination of any such contract for any reason other than one
13 excluded herein shall become effective after not less than 90 days'
14 notice in writing given by the company to the agent and the
15 Commissioner of Banking and Insurance. No new business or changes
16 in liability on renewal or in force business, except as provided in
17 subsection l. of this section, shall be written by the agent for the
18 company after notice of termination without prior written approval of
19 the company. However, during the term of the agency contract,
20 including the said 90-day period, the company shall not refuse to
21 renew such business from the agent as would be in accordance with
22 said company's current underwriting standards. The company shall,
23 during a period of 12 months from the effective date of such
24 termination, provided the former agent has not been replaced as the
25 broker of record by the insured, and upon request in writing of the
26 terminated agent, renew all contracts of insurance for such agent for
27 said company as may be in accordance with said company's then
28 current underwriting standards and pay to the terminated agent a
29 commission in accordance with the agency contract in effect at the
30 time notice of termination was issued. Said commission can be paid
31 only to the holder of a valid New Jersey insurance producer's license.
32 In the event any risk shall not meet the then current underwriting
33 standards of said company, that company may decline its renewal,
34 provided that the company shall give the terminated agent and the
35 insured not less than 60 days' notice of its intention not to renew said
36 contract of insurance.

37 e. The agency termination provisions of this act shall not apply to
38 those contracts in which the agent is paid on a salary basis without
39 commission or where he agrees to represent exclusively one company
40 or to the termination of an agent's contract for insolvency,
41 abandonment, gross and willful misconduct, or failure to pay over to
42 the company moneys due to the company after his receipt of a written
43 demand therefor, or after revocation of the agent's license by the
44 Commissioner of Banking and Insurance; and in any such case the
45 company shall, upon request of the insured, provided he meets the
46 then current underwriting standards of the company, renew any

1 contract of insurance formerly processed by the terminated agent,
2 through an active agent, or directly pursuant to such rules and
3 regulations as may be promulgated by the Commissioner of Banking
4 and Insurance.

5 f. The Commissioner of Banking and Insurance, on the written
6 complaint of any person stating that there has been a violation of this
7 act, or when he deems it necessary without a complaint, may inquire
8 and otherwise investigate to determine whether there has been any
9 violation of this act.

10 g. All existing contracts between agent and company in effect in
11 the State of New Jersey on the effective date of this act are subject to
12 all provisions of this act.

13 h. The Commissioner of Banking and Insurance may, if he
14 determines that a company is in unsatisfactory financial condition,
15 exclude such company from the provisions of this act.

16 i. Whenever under this act it is required that the company shall
17 renew a contract of insurance, the renewal shall be for a time period
18 equal to one additional term of the term specified in the original
19 contract, but in no event to be less than one year.

20 j. The provisions of subsection b. of this section shall not apply to
21 policies written by the New Jersey Automobile Full Insurance
22 Underwriting Association established pursuant to sections 13 through
23 34 of P.L.1983, c.65 (C.17:30E-1 et seq.).

24 k. The New Jersey Automobile Full Insurance Underwriting
25 Association established pursuant to sections 13 through 34 of
26 P.L.1983, c.65 (C.17:30E-1 et seq.), shall not be liable to pay any
27 commission required by subsection b. of this section on any policies
28 written by the association prior to January 1, 1986.

29 l. A company which terminates its contractual relationship with an
30 agent subject to the provisions of subsection d. of this section shall, at
31 the time of the agent's termination, with respect to insurance covering
32 an automobile as defined in subsection a. of section 2 of P.L.1972,
33 c.70 (C.39:6A-2), notify each named insured whose policy is serviced
34 by the terminated agent in writing of the following: (1) that the
35 agent's contractual relationship with the company is being terminated
36 and the effective date of that termination; and (2) that the named
37 insured may (a) continue to renew and obtain service through the
38 terminated agent; or (b) renew the policy and obtain service through
39 another agent of the company.

40 Notwithstanding any provision of this section to the contrary, no
41 insurance company which has terminated its contractual relationship
42 with an agent subject to subsection d. of this section shall, upon the
43 expiration of any automobile insurance policy renewed pursuant to
44 subsection d. of this section which is required to be renewed pursuant
45 to section 3 of P.L.1972, c.70 (C.39:6A-3), refuse to renew, accept
46 additional or replacement vehicles, refuse to provide changes in the

1 limits of liability or refuse to service a policyholder in any other
2 manner which is in accordance with the company's current
3 underwriting standards, upon the written request of the agent or as
4 otherwise provided in this section, provided the agent maintains a valid
5 New Jersey insurance producer's license and has not been replaced as
6 the broker of record by the insured. However, nothing in this section
7 shall be deemed to prevent nonrenewal of an automobile insurance
8 policy pursuant to the provisions of section 26 of P.L.1988, c.119
9 (C.17:29C-7.1).

10 The company shall pay a terminated agent who continues to service
11 policies pursuant to the provisions of this subsection a commission in
12 an amount not less than that provided for under the agency contract
13 in effect at the time the notice of termination was issued. A terminated
14 agent who continues to service automobile insurance policies pursuant
15 to this subsection shall be deemed to be an insurance broker as defined
16 in section 2 of P.L.1987, c.293 (C.17:22A-2), and not an agent of the
17 company, except that the terminated agent shall have the authority to
18 bind coverage for renewals, additional or replacement vehicles, and for
19 changed limits of liability as provided in this subsection to the same
20 extent as an active agent for the company. The company shall provide
21 the terminated agent with a written copy of its current underwriting
22 guidelines during the time the agent continues to service policies
23 pursuant to this subsection.

24 If a terminated agent who is continuing to service policies pursuant
25 to the provisions of this subsection violates the written underwriting
26 guidelines of the company in such a manner or with such frequency as
27 to substantially affect the company's ability to underwrite or provide
28 coverage, the company may discontinue accepting renewal and service
29 requests from, and paying commissions to, the terminated agent;
30 provided, however, that the company provides the terminated agent
31 with at least 45 days' written notice which shall include a detailed
32 explanation of the reasons for discontinuance. A copy of this notice,
33 along with supporting documentation providing evidence that the
34 terminated agent received proper notice of discontinuance pursuant to
35 this subsection and evidence in support of the company's action, shall
36 be sent by the company to the Division of Enforcement and Consumer
37 Protection in the Department of Banking and Insurance.

38 The provisions of this subsection shall not apply to any policy
39 issued by the New Jersey Automobile Full Insurance Underwriting
40 Association created pursuant to the provisions of P.L.1983, c.65
41 (C.17:30E-1 et seq.).

42 m. (1) No insurer shall terminate its contractual relationship with
43 an agent by reason of the expected or actual experience produced by
44 that agent's private passenger automobile insurance business, the
45 geographical location of the private passenger automobile insurance

1 business written by that agent or the volume of private passenger
2 automobile insurance written by that agent.

3 (2) In addition to all other penalties allowable by law, an insurer
4 which violates the provisions of this subsection shall be subject to a
5 fine of at least \$10,000 for a first violation and to a fine of at least
6 \$50,000 for any subsequent violation, to be collected in a summary
7 manner pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et
8 seq.

9 (cf: P.L.1989, c.129, s.1)

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11 2. This act shall take effect immediately.

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STATEMENT

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16 This bill prohibits an automobile insurer from terminating an agent
17 because of the expected or actual experience produced by that agent's
18 private passenger automobile insurance business, the geographical
19 location of the private passenger automobile insurance business
20 written by that agent or the volume of private passenger automobile
21 insurance written by that agent. An insurer which violates this
22 prohibition would be subject to a fine of at least \$10,000 for a first
23 violation and at least \$50,000 for any subsequent violation.

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28 Prohibits auto insurer from terminating agent under certain
29 circumstances.