

SENATE, No. 1101

STATE OF NEW JERSEY

INTRODUCED MAY 9, 1996

By Senators LaROSSA and KENNY

1 AN ACT concerning the availability of homeowners insurance.

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

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6 1. As used in this act:

7 "Homeowners insurance" means the type of personal lines insurance
8 provided against loss to real and personal property as defined in the
9 standard fire policy and extended coverage endorsement thereon, a
10 dwelling policy, the homeowner's multiple peril policy, insurance
11 against the perils of vandalism, malicious mischief, burglary, or theft,
12 or liability insurance, or any combination thereof, delivered or issued
13 for delivery in this State, including such insurance coverage for
14 residential condominiums, renters and tenants;

15 "Commissioner" means the Commissioner of Insurance;

16 "Declination" means:

17 (1) Refusal by an insurance producer to submit an application
18 on behalf of an applicant to any of the insurers represented by the
19 producer;

20 (2) Refusal by an insurer to issue a homeowners insurance
21 policy to an eligible person upon receipt of an application for
22 homeowners insurance;

23 (3) The offer of homeowners insurance coverage with less
24 favorable terms or conditions than those requested by an eligible
25 person; or

26 (4) The refusal by an insurer or producer to provide, upon the
27 request of an eligible person, an application form or other means of
28 making an application or request for homeowners insurance coverage;

29 "Eligible person" means a person who is an owner, tenant or renter
30 of the real or personal property, or both, for which the homeowners
31 insurance coverage is intended, but does not include any person:

32 (1) Who is a moral hazard;

33 (2) Whose policy of homeowners insurance has been canceled
34 because of nonpayment of premium or financed premium within the
35 immediately preceding two-year period, unless the premium due on a
36 policy for which application has been made is paid in full before
37 issuance or renewal of the policy;

1 (3) Who has been convicted, within the five-year period
2 immediately preceding application for or renewal of a policy of
3 homeowners insurance, of fraud or intent to defraud involving an
4 insurance claim or an application for insurance; or who has been
5 successfully denied, within the immediately preceding five years,
6 payment by an insurer of a claim in excess of \$1,000 under an
7 insurance policy, if there was evidence of fraud or intent to defraud
8 involving the insurance claim or application;

9 (4) Who has made a material misrepresentation or
10 nondisclosure to the insurer of a material fact at the time of acceptance
11 of the risk;

12 (5) Whose property is subject to increased hazard or material
13 change in the risk assumed at the time of issuance or previous renewal
14 of the policy;

15 (6) Who substantially breaks his contractual duties, conditions
16 or warranties that materially affect the nature or insurability of the
17 risk;

18 (7) Who does not cooperate on loss control materially
19 affecting the insurability of the risk;

20 (8) Who commits fraudulent acts against the insurer that
21 materially affect the nature of the risk insured;

22 (9) Who fails to comply with any federal, State or local fire,
23 health, safety, building or construction regulation, law or ordinance
24 with respect to an insured risk which substantially increases any hazard
25 insured against within 60 days of written notification of a violation of
26 any such law, regulation or ordinance;

27 (10) Who fails to provide reasonable and necessary
28 underwriting information to the insurer upon written request therefor
29 and a reasonable opportunity to respond;

30 (11) Who fails to obtain or maintain membership or
31 qualification for membership in a club, group, or organization, if
32 membership is a uniform requirement of the insurer as a condition of
33 providing insurance, and if the dues or charges, if any, or other
34 conditions for membership or qualifications for membership, are
35 applied uniformly throughout this State, are not expressed as a
36 percentage of the insurance premium, and do not vary with respect to
37 the rating classification of the member or potential member.
38 Membership fees, if applicable, may vary in accordance with the
39 amount or type of coverage if the purchase of additional coverage,
40 either as to type or amount, is not a condition for reduction of dues or
41 fees; or

42 (12) Who possesses such other risk factors as determined to
43 be relevant by rule or regulation of the commissioner;

44 "Insurance producer" or "producer" means an insurance agent as
45 defined by subsection f. of section 2 of P.L.1987, c.293 (C.17:22A-2)
46 and shall also include an insurance broker as defined by subsection g.

1 of section 2 of P.L.1987, c.293 (C.17:22A-2) who has a brokerage
2 relationship with an insurer;

3 "Insurer" means any insurer authorized or admitted to write
4 homeowners insurance in this State, but does not include the New
5 Jersey Insurance Underwriting Association established pursuant to
6 P.L. 1968, c. 129 (C. 17:37A-1 et seq.);

7 "Moral hazard" means (1) the risk, danger or probability that the
8 insured will destroy, or permit to be destroyed, the insured property
9 for the purpose of collecting the insurance proceeds, and any change
10 in the circumstances of an insured that will increase the probability of
11 such a destruction may be considered a "moral hazard;" or (2) the
12 substantial risk, danger or probability that the character, circumstances
13 or personal habits of the insured may increase the possibility of loss or
14 liability for which an insurer will be held responsible, and any change
15 in the character, circumstances or personal habits of the insured that
16 will increase the probability of such a loss or liability may be
17 considered a "moral hazard."
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19 2. a. On or after the 90th day following the effective date of this
20 act, every insurer shall, or through one or more affiliated insurers
21 shall, provide homeowners insurance coverage for eligible persons.

22 b. No insurer or affiliate, as the case may be, shall refuse to insure,
23 refuse to renew, or limit coverage available for homeowners insurance
24 to an eligible person who meets its underwriting rules. The
25 commissioner may suspend, revoke or otherwise terminate the
26 certificate of authority to transact homeowners insurance business in
27 this State of any insurer who violates the provisions of this section.
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29 3. An insurer or producer, upon making a declination of
30 homeowners insurance, shall inform the applicant of each specific
31 reason for the declination and shall include a statement as to whether
32 the applicant may qualify for homeowners insurance from an affiliate
33 of the insurer. If the application or request for coverage was made in
34 writing, the insurer or producer shall provide the explanation of
35 reasons in writing. If the application or request for coverage was
36 made orally, the insurer or producer may provide the applicant with an
37 oral explanation instead of a written explanation, and shall offer to
38 provide a written explanation within 90 days if the applicant requests
39 a written explanation.
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41 4. a. The commissioner shall establish procedures for resolving
42 complaints of persons who believe that they have been improperly
43 denied homeowners insurance, including procedures for a written
44 appeal to the commissioner.

45 b. If either the insurer or the person disagrees with a determination
46 of the commissioner under this section, the commissioner, if requested

1 to do so by either party, shall proceed to hear the matter as a
2 contested case.

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4 5. a. An insurance producer shall, as a condition of licensure:

5 (1) Provide each eligible person seeking homeowners
6 insurance premium quotations for the forms or types of homeowners
7 insurance coverages which are offered by all insurers represented by
8 the agent or with which the agent places risks;

9 (2) Not attempt to channel an eligible person away from an
10 insurer or insurance coverage with the purpose or effect of avoiding
11 a producer's obligation to submit an application or an insurer's
12 obligation to accept an eligible person; and

13 (3) Upon request, submit an application of the eligible person
14 for homeowners insurance to the insurer selected by the eligible
15 person.

16 b. With respect to homeowners insurance, an insurer shall not
17 penalize a producer by paying less than normal commissions or normal
18 compensation or salary because of the expected or actual experience
19 produced by the producer's homeowners insurance business or because
20 of the geographic location of homeowners insurance business written
21 by the agent.

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23 6. a. The commissioner shall suspend, after hearing, an insurer's
24 obligation to issue policies in compliance with the provisions of
25 section 2 of this act if the insurer is in an unsafe or unsound financial
26 condition.

27 b. If an insurer requests suspension and avers that there is an
28 immediate need to cease issuance of policies in compliance with
29 section 2 of this act because compliance would result in the insurer
30 being in an unsafe or unsound financial condition, the insurer's
31 obligation to issue policies in compliance with section 2 of this act
32 shall be suspended beginning on the 10th business day after the insurer
33 has filed the request and supporting documentation with the
34 commissioner, unless within that time, the commissioner finds that
35 continued compliance with section 2 of this act will not result in the
36 insurer being in an unsafe or unsound financial condition.

37 c. Any suspension pursuant to subsection a. or b. of this section
38 shall continue until the commissioner, upon the commissioner's own
39 motion or upon request by the insurer or any other interested party,
40 after providing opportunity for a hearing, orders its revocation.

41 d. For the purposes of this section, an insurer shall be deemed to
42 be in an unsafe or unsound financial condition if the commissioner
43 finds the insurer to have a ratio of annual net premiums written to

1 surplus as to policyholders that threatens the financial health of the
2 insurer.

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4 7. The commissioner may suspend an insurer's obligation to issue
5 policies pursuant to section 2 of this act if the commissioner, in his
6 discretion, determines that compliance with section 2 of this act will
7 result in an insurer's financial condition becoming unsafe or unsound.
8 In making this determination, the commissioner shall consider the
9 following factors:

10 a. The insurer's ratio of annual net premiums written to surplus as
11 to policyholders; and

12 b. Whether the insurer, in issuing policies in compliance with
13 section 2 of this act, would experience:

14 (1) an adverse change in its rating by A.M. Best and Company,
15 Dun and Bradstreet, Moody's or Standard and Poor's;

16 (2) financial ratios outside the acceptable ranges as established
17 by the National Association of Insurance Commissioners or the chief
18 financial officer of the Department of Insurance of this State; or

19 (3) a net reduction to the insurer's surplus as to policyholders
20 greater than 25% during a period of two years or less.

21 Any suspension pursuant to this section shall continue until the
22 commissioner, upon the commissioner's own motion or upon request
23 by the insurer or any other interested party, after providing
24 opportunity for a hearing, orders its revocation.

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26 8. If the commissioner determines that any person has violated any
27 provision of this act, he may impose a civil penalty in an amount of up
28 to \$2,000 for the first violation and up to \$5,000 for the second and
29 each subsequent violation, collectible in an action brought in the name
30 of the commissioner pursuant to the provisions of "the penalty
31 enforcement law," N.J.S.2A:58-1 et seq. For the purposes of this
32 section, each declination shall be deemed to constitute a separate
33 violation.

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35 9. Those persons who do not qualify as eligible persons but who
36 are in good faith entitled to, but are unable to procure, homeowners
37 insurance coverage, shall be provided essential property insurance
38 coverage pursuant to P.L. 1968, c. 129 (C. 17:37A-1 et seq.).

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40 10.. This act shall take effect immediately.

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STATEMENT

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45 This bill requires property-casualty insurers that sell homeowners
46 insurance to sell it to any person who is an eligible person under the

1 bill. The bill provides express criteria defining an eligible person for
2 coverage in the voluntary market. The bill requires that any insurer or
3 insurance producer who declines an application for homeowners
4 insurance inform the applicant of the reasons for refusal and provide
5 information on whether the applicant may be qualified for coverage
6 with an affiliate insurer. This notice must be provided in writing if the
7 application itself was made in writing. A person who made an oral
8 application may, however, request a written explanation within 90
9 days. The bill requires the Commissioner of Insurance to establish a
10 procedure for resolving the complaints of persons who believe they
11 have been improperly denied homeowners insurance, with an ultimate
12 right to have a matter heard as a contested case.

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17 Requires insurers to sell homeowners insurance to eligible persons.