

[First Reprint]
SENATE, No. 1351

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Senators MATHEUSSEN, CARDINALE and Sinagra

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

3

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.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted October 28, 1996.

- 1 (3) Annuities.
- 2 (4) Accident and health insurance.
- 3 (5) Title insurance.
- 4 (6) Mortgage guaranty insurance.
- 5 (7) Hospital service, medical service, health service, or dental
- 6 service corporations, investment companies, mutual benefit
- 7 associations, or fraternal beneficiary associations.

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

15 d. Termination of any such contract for any reason other than one
16 excluded herein shall become effective after not less than 90 days'
17 notice in writing given by the company to the agent and the
18 Commissioner of Banking and¹ Insurance. No new business or
19 changes in liability on renewal or in force business, except as provided
20 in subsection l. of this section, shall be written by the agent for the
21 company after notice of termination without prior written approval of
22 the company. However, during the term of the agency contract,
23 including the said 90-day period, the company shall not refuse to
24 renew such business from the agent as would be in accordance with
25 said company's current underwriting standards. The company shall,
26 during a period of 12 months from the effective date of such
27 termination, provided the former agent has not been replaced as the
28 broker of record by the insured, and upon request in writing of the
29 terminated agent, renew all contracts of insurance for such agent for
30 said company as may be in accordance with said company's then
31 current underwriting standards and pay to the terminated agent a
32 commission in accordance with the agency contract in effect at the
33 time notice of termination was issued. Said commission can be paid
34 only to the holder of a valid New Jersey insurance producer's license.
35 In the event any risk shall not meet the then current underwriting
36 standards of said company, that company may decline its renewal,
37 provided that the company shall give the terminated agent and the
38 insured not less than 60 days' notice of its intention not to renew said
39 contract of insurance.

40 e. The agency termination provisions of this act shall not apply to
41 those contracts in which the agent is paid on a salary basis without
42 commission or where he agrees to represent exclusively one company
43 or to the termination of an agent's contract for insolvency,
44 abandonment, gross and willful misconduct, or failure to pay over to
45 the company moneys due to the company after his receipt of a written
46 demand therefor, or after revocation of the agent's license by the

1 Commissioner of ¹Banking and¹ Insurance; and in any such case the
2 company shall, upon request of the insured, provided he meets the
3 then current underwriting standards of the company, renew any
4 contract of insurance formerly processed by the terminated agent,
5 through an active agent, or directly pursuant to such rules and
6 regulations as may be promulgated by the Commissioner of ¹Banking
7 and¹ Insurance.

8 f. The Commissioner of ¹Banking and¹ Insurance, on the written
9 complaint of any person stating that there has been a violation of this
10 act, or when he deems it necessary without a complaint, may inquire
11 and otherwise investigate to determine whether there has been any
12 violation of this act.

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

16 h. The Commissioner of ¹Banking and¹ Insurance may, if he
17 determines that a company is in unsatisfactory financial condition,
18 exclude such company from the provisions of this act.

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

23 j. The provisions of subsection b. of this section shall not apply to
24 policies written by the New Jersey Automobile Full Insurance
25 Underwriting Association established pursuant to sections 13 through
26 34 of P.L.1983, c.65 (C.17:30E-1 et seq.).

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

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

43 Notwithstanding any provision of this section to the contrary, no
44 insurance company which has terminated its contractual relationship
45 with an agent subject to subsection d. of this section shall, upon the
46 expiration of any automobile insurance policy renewed pursuant to

1 subsection d. of this section which is required to be renewed pursuant
2 to section 3 of P.L.1972, c.70 (C.39:6A-3), refuse to renew, accept
3 additional or replacement vehicles, refuse to provide changes in the
4 limits of liability or refuse to service a policyholder in any other
5 manner which is in accordance with the company's current
6 underwriting standards, upon the written request of the agent or as
7 otherwise provided in this section, provided the agent maintains a valid
8 New Jersey insurance producer's license and has not been replaced as
9 the broker of record by the insured. However, nothing in this section
10 shall be deemed to prevent nonrenewal of an automobile insurance
11 policy pursuant to the provisions of section 26 of P.L.1988, c.119
12 (C.17:29C-7.1).

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

27 If a terminated agent who is continuing to service policies pursuant
28 to the provisions of this subsection violates the written underwriting
29 guidelines of the company in such a manner or with such frequency as
30 to substantially affect the company's ability to underwrite or provide
31 coverage, the company may discontinue accepting renewal and service
32 requests from, and paying commissions to, the terminated agent;
33 provided, however, that the company provides the terminated agent
34 with at least 45 days' written notice which shall include a detailed
35 explanation of the reasons for discontinuance. A copy of this notice,
36 along with supporting documentation providing evidence that the
37 terminated agent received proper notice of discontinuance pursuant to
38 this subsection and evidence in support of the company's action, shall
39 be sent by the company to the Division of Enforcement and Consumer
40 Protection in the Department of ¹Banking and¹ Insurance.

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

45 m. (1) No insurer shall terminate its contractual relationship with
46 an agent by reason of ¹the expected or actual experience produced by

1 that agent's private passenger automobile insurance business, the
2 geographical location of the private passenger automobile insurance
3 business written by that agent or¹ the volume of private passenger
4 automobile insurance written by that agent.

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

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

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13 2. This act shall take effect immediately.

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18 Prohibits auto insurer from terminating agent under certain
19 circumstances.