

**SENATE, No. 1165**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED FEBRUARY 14, 2008

**Sponsored by:**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Senator ROBERT W. SINGER**

**District 30 (Burlington, Mercer, Monmouth and Ocean)**

**SYNOPSIS**

Regulates certain credentialing and trade practices of insurance producers, and provides private cause of action for insurance producer violations.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning insurance producers, and amending and  
2 supplementing P.L.2001, c.210.

3

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

6

7 1. Section 7 of P.L.2001, c.210 (C.17:22A-32) is amended to  
8 read as follows:

9 7. a. An individual applying for a resident insurance producer  
10 license or license renewal shall make application to the  
11 commissioner on the uniform application and declare under penalty  
12 of refusal, suspension or revocation of the license that the  
13 statements made in the application are true, correct and complete to  
14 the best of the individual's knowledge and belief. Before approving  
15 the application, the commissioner shall find that the individual:

16 (1) Is at least 18 years of age;

17 (2) Has not committed any act that is a ground for denial,  
18 suspension or revocation set forth in section 15 of this act;

19 (3) Has completed a department approved prelicensing course of  
20 study for the lines of authority for which the individual has applied,  
21 or in the case of license retention or renewal, a department  
22 approved course of voluntary or mandatory supplemental education  
23 or mandatory continuing education, as prescribed by the  
24 commissioner by regulation;

25 (4) Has paid the fees set forth in section 19 of this act; and

26 (5) Has successfully passed the examinations for the lines of  
27 authority for which the individual has applied.

28 b. A business entity acting as an insurance producer shall  
29 obtain an insurance producer license. Application shall be made  
30 using the uniform business entity application. Before approving the  
31 application, the commissioner shall find that:

32 (1) The business entity has paid the fees set forth in section 19  
33 of this act; and

34 (2) The business entity has designated a licensed insurance  
35 producer or producers responsible for the business entity's  
36 compliance with the insurance laws, rules and regulations of this  
37 State.

38 c. The commissioner may require any documents reasonably  
39 necessary to verify the information contained in an application.

40 d. Each insurer that sells, solicits or negotiates any form of  
41 limited line credit insurance shall provide to each individual whose  
42 duties will include selling, soliciting or negotiating limited line  
43 credit insurance a program of instruction that is approved by the  
44 commissioner.

**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 e. Any applicant for a license pursuant to this section and any  
2 officer, director, partner or owner of a controlling interest of a  
3 corporation or partnership filing for licensure pursuant to this  
4 section shall submit to the commissioner the applicant's name,  
5 address, fingerprints and written consent for a criminal history  
6 record background check to be performed. The commissioner is  
7 hereby authorized to exchange fingerprint data with and receive  
8 criminal history record information from the State Bureau of  
9 Identification in the Division of State Police and the Federal Bureau  
10 of Investigation consistent with applicable State and federal laws,  
11 rules and regulations, for the purposes of facilitating determinations  
12 concerning licensure eligibility. The applicant shall bear the cost  
13 for the criminal history record background check, including all  
14 costs of administering and processing the check. The Division of  
15 State Police shall promptly notify the commissioner in the event a  
16 current holder of a license or prospective applicant, who was the  
17 subject of a criminal history record background check pursuant to  
18 this section, is arrested for a crime or offense in this State after the  
19 date the background check was performed.

20 (cf: P.L.2003, c.199, s.12)

21

22 2. Section 8 of P.L.2001, c.210 (C.17:22A-33) is amended to  
23 read as follows:

24 8. a. Unless denied licensure pursuant to section 15 of this act,  
25 persons who have met the requirements of sections 6 and 7 of this  
26 act shall be issued a resident insurance producer license. An  
27 insurance producer ~~may~~ shall only receive qualification for a  
28 license, continuing education credits associated with a license  
29 renewal, or other voluntary or mandatory supplemental education  
30 credits in a manner approved by the commissioner, in one or more  
31 of the following lines of authority:

32 (1) Life-insurance coverage on human lives, including benefits  
33 of endowment and annuities, and which may include benefits in the  
34 event of death or dismemberment by accident and benefits for  
35 disability income;

36 (2) Accident and health or sickness-insurance coverage for  
37 sickness, bodily injury or accidental death, and which may include  
38 benefits for disability income;

39 (3) Property-insurance coverage for the direct or consequential  
40 loss or damage to property of every kind;

41 (4) Casualty-insurance coverage against legal liability, including  
42 that for death, injury or disability or damage to real or personal  
43 property;

44 (5) Variable life and variable annuity products-insurance  
45 coverage provided under variable life insurance contracts, variable  
46 annuities or any other life insurance or annuity product that reflects  
47 the investment experience of a separate account;

48 (6) Credit-limited line credit insurance;

1 (7) Personal lines - property and casualty insurance coverage  
2 sold to individuals and families for primarily noncommercial  
3 purposes~~]; or~~

4 (8) Any other line of insurance permitted under any law or  
5 regulation of this State.

6 b. An insurance producer license shall remain in effect unless  
7 revoked or suspended as long as the fee set forth in section 19 of  
8 this act is timely paid and in the case of resident individual  
9 insurance producers, education requirements are timely satisfied.

10 c. An individual insurance producer who allows his license to  
11 lapse may, within 12 months from the due date of the renewal fee,  
12 reinstate the same license without the necessity of passing a written  
13 examination. However, a penalty in an amount not to exceed  
14 double the unpaid renewal fee shall be required for any renewal fee  
15 received after the due date.

16 d. A licensed insurance producer who is unable to comply with  
17 license renewal procedures due to military service or some other  
18 extenuating circumstance, such as long-term medical disability,  
19 may request a waiver of those procedures. The producer may also  
20 request a waiver of any examination requirement or any other fine  
21 or sanction imposed for failure to comply with renewal procedures.

22 e. The license shall contain the licensee's name, address,  
23 personal identification number, and the date of issuance, the lines of  
24 authority, the expiration date and any other information the  
25 commissioner deems necessary.

26 f. Licensees shall inform the commissioner by any means  
27 acceptable to the commissioner of a change of address within 30  
28 days of the change.

29 (cf: P.L.2001, c.210, s.8)

30

31 3. Section 15 of P.L.2001, c.210 (C.17:22A-40) is amended to  
32 read as follows:

33 15. a. The commissioner may place on probation, suspend,  
34 revoke or refuse to issue or renew an insurance producer's license or  
35 may levy a civil penalty in accordance with subsection c. of section  
36 20 of this act or any combination of actions, for any one or more of  
37 the following causes:

38 (1) Providing incorrect, misleading, incomplete or materially  
39 untrue information in the license application;

40 (2) Violating any insurance laws, or violating any regulation,  
41 subpoena or order of the commissioner or of another state's  
42 insurance regulator;

43 (3) Obtaining or attempting to obtain a license through  
44 misrepresentation or fraud;

45 (4) Improperly withholding, misappropriating or converting any  
46 monies or properties received in the course of doing insurance  
47 business;

- 1 (5) Intentionally misrepresenting the terms of an actual or  
2 proposed insurance contract, policy or application for insurance;
- 3 (6) Having been convicted of a felony or crime of the fourth  
4 degree or higher;
- 5 (7) Having admitted or been found to have committed any  
6 insurance unfair trade practice or fraud;
- 7 (8) Using fraudulent, coercive or dishonest practices, or  
8 demonstrating incompetence, untrustworthiness or financial  
9 irresponsibility in the conduct of insurance business in this State or  
10 elsewhere;
- 11 (9) Having an insurance producer license, or its equivalent,  
12 denied, suspended or revoked in any other state, province, district  
13 or territory;
- 14 (10) Forging another's name to an application for insurance or to  
15 any document related to an insurance transaction;
- 16 (11) Improperly using notes or any other reference material to  
17 complete an examination for an insurance producer license;
- 18 (12) Knowingly accepting insurance business from an unlicensed  
19 insurance producer;
- 20 (13) Failing to comply with an administrative or court order  
21 imposing a child support obligation;
- 22 (14) Failing to pay income tax or comply with any administrative  
23 or court order directing payment of income tax pursuant to Title  
24 54A of the New Jersey Statutes;
- 25 (15) Intentionally withholding material information or making a  
26 material misstatement in an application for a license;
- 27 (16) Committing any fraudulent act;
- 28 (17) Knowingly facilitating or assisting another person in  
29 violating any insurance laws; **[or]**
- 30 (18) Failing to notify the commissioner within 30 days of his  
31 conviction of any crime, indictment or the filing of any formal  
32 criminal charges, or the suspension or revocation of any insurance  
33 license or authority by a state, other than this State, or the initiation  
34 of formal disciplinary proceedings in a state, other than this State,  
35 affecting the producer's insurance license; or failing to obtain the  
36 written consent pursuant to **[18 U.S.C.]** sections 1033 and 1034 of  
37 title 18, United States Code (18 U.S.C. ss.1033 and 1034); or failing  
38 to supply any documentation that the commissioner may request in  
39 connection therewith;
- 40 (19) Using a business title or designation in any marketing  
41 advertisement, announcement, or statement, including, but not  
42 limited to, a business card, notice, circular, pamphlet, letter, or  
43 poster, or over any radio or television station, or broadcast in any  
44 other way, that indicates or tends to indicate that the insurance  
45 producer:
  - 46 (a) completed any prelicensing, continuing, or other voluntary or  
47 mandatory supplemental education course of study;

1       (b) is qualified for a particular line of authority not associated  
2 with the insurance producer's license;

3       (c) is certified or licensed to practice any other profession, or  
4 engage in any other occupation, governed or regulated pursuant to  
5 State law, including, but not limited to, the provisions of Title 45 of  
6 the Revised Statutes, unless that insurance producer holds a current  
7 State issued or recognized certification or license for that other  
8 practice or profession; or

9       (d) is affiliated with, or endorsed by, any federal, State, or local  
10 government entity or subdivision thereof, any business entity, or  
11 any person, unless that insurance producer is employed, contracted,  
12 or otherwise actually affiliated with or endorsed by, as evidenced  
13 through verifiable documentation, the government entity or  
14 subdivision, business entity, or person; or

15       (20) Failing, whenever selling or recommending the purchase of  
16 an annuity subject to the provisions of N.J.S.17B:25-1 et seq.:

17       (a) to establish reasonable grounds, as documented by the  
18 insurance producer on a form prescribed by the commissioner, to  
19 demonstrate that the annuity is suitable for the prospective or actual  
20 purchaser on the basis of facts disclosed by the purchaser through  
21 reasonable inquiries, which information shall include, but not be  
22 limited to:

23       (i) the purchaser's financial status;

24       (ii) the purchaser's tax status;

25       (iii) the purchaser's investment objectives, generally and with  
26 respect to the specific annuity contract sold or recommended for  
27 purchase; and

28       (iv) any other information as required by the commissioner; and

29       (b) to provide the actual purchaser with a 10-day right to cancel  
30 the annuity contract.

31       b. If the action by the commissioner is to nonrenew or to deny  
32 an application for an insurance producer license, the commissioner  
33 shall notify the applicant or licensee and advise, in writing, the  
34 applicant or licensee of the reason for the denial or nonrenewal of  
35 the license. The applicant or licensee may make written demand  
36 upon the commissioner for a hearing before the commissioner, or  
37 his designee, to determine the reasonableness of the commissioner's  
38 action. The hearing shall be held pursuant to the "Administrative  
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40       c. The insurance producer license of a business entity may be  
41 suspended, revoked or refused if the commissioner finds, after  
42 hearing, that an individual licensee's violation was known or should  
43 have been known by one or more of the partners, officers or  
44 managers acting on behalf of the business entity and the violation  
45 was neither reported to the commissioner nor corrective action  
46 taken.

47       d. The commissioner shall retain the authority to enforce the  
48 provisions of and impose any penalty or remedy authorized by this

1 act and Title 17 of the Revised Statutes or Title 17B of the New  
2 Jersey Statutes against any person who is under investigation for or  
3 charged with a violation of this act or Title 17 of the Revised  
4 Statutes or Title 17B of the New Jersey Statutes even if the person's  
5 license or registration has been surrendered or has lapsed by  
6 operation of law.  
7 (cf: P.L.2001, c.210, s.15)

8  
9 4. (New section) An insurance producer and the insurer, as  
10 provided by any applicable statutory or common law fiduciary duty,  
11 whose insurance is sold, solicited or negotiated by that insurance  
12 producer, shall be liable to any aggrieved person for damages,  
13 reasonable attorney's fees, and costs of suit in a civil cause of  
14 action brought in the Superior Court or other court of competent  
15 jurisdiction for any violation of the provisions of the "New Jersey  
16 Insurance Producer Licensing Act of 2001," P.L.2001, c.210  
17 (C.17:22A-26 et seq.). The insurance producer and insurer, in any  
18 cause of action provided by this section, may additionally be liable  
19 to the aggrieved person for punitive damages.

20  
21 5. This act shall take effect on the first day of the fourth month  
22 next following enactment.

23  
24  
25 STATEMENT

26  
27 This bill amends and supplements the "New Jersey Insurance  
28 Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et  
29 seq.), to regulate certain credentialing and trade practices of  
30 insurance producers.

31 Specifically, the bill requires all prospective and current resident  
32 licensees to receive initial educational qualifications and any  
33 subsequent, supplemental or continuing education credits from only  
34 courses of study approved by the Commissioner of Banking and  
35 Insurance. In connection with this greater regulation of educational  
36 studies and to prevent deceptive marketing with respect to an  
37 insurance producer's educational achievements, the bill specifies  
38 licensing violations associated with an insurance producer's use of  
39 any business title or designation, in any marketing advertisement,  
40 announcement, or statement, that indicates or tends to indicate that  
41 the producer: completed any prelicensing, supplemental, or  
42 continuing education course of study; is licensed for a particular  
43 line of authority not associated with the producer's license; or is  
44 certified or licensed to practice any other profession, or engage in  
45 any other occupation, governed or regulated pursuant to State law,  
46 unless that insurance producer holds a current State issued or  
47 recognized certification or license for that other practice or  
48 profession.

1 Under the bill, another new licensing violation associated with  
2 insurance producer marketing is based on the use of any  
3 advertisement, announcement, or statement that indicates or tends  
4 to indicate that the producer is affiliated with, or endorsed by, any  
5 federal, State, or local government entity or subdivision thereof, any  
6 business entity, or any person, unless that insurance producer is  
7 employed, contracted, or otherwise actually affiliated with or  
8 endorsed by, as evidenced through verifiable documentation, the  
9 government entity or subdivision, business entity, or person.

10 Additionally, with respect to individual annuity products, the bill  
11 specifically sets forth a duty of good faith and fair dealing for  
12 insurance producers regarding prospective and actual purchasers of  
13 such products. An insurance producer is required to establish  
14 reasonable grounds to demonstrate that an annuity product  
15 recommended for purchase, or actually sold, is suitable for the  
16 prospective or actual purchaser based on facts disclosed by the  
17 purchaser through reasonable inquiries. The information  
18 establishing such reasonable grounds of suitability shall be  
19 documented on a form prescribed by the Commissioner of Banking  
20 and Insurance and shall include, but not be limited to, the  
21 purchaser's financial status, tax status, investment objectives  
22 (generally and with respect to the specific annuity contract sold),  
23 and any other information as required by the commissioner.  
24 Further, the insurance producer shall provide an actual purchaser of  
25 an annuity contract a 10-day right to cancel the contract. This  
26 additional regulation of insurance producer annuity product  
27 transactions is grounded in the growing complexity and variety of  
28 such products, as well as the heightened targeting of such products  
29 to senior citizens who may be more vulnerable to aggressive  
30 marketing and sales efforts.

31 Finally, the bill establishes, with respect to violations of the  
32 bill's provisions, as well as any violation of the "New Jersey  
33 Insurance Producer Licensing Act of 2001," a civil cause of action  
34 for any person aggrieved by the wrongful actions of an insurance  
35 producer and the insurer, as provided by any applicable statutory or  
36 common law fiduciary duty, whose insurance is sold, solicited or  
37 negotiated by that insurance producer in relation to the violation. In  
38 addition to damages, reasonable attorney's fees, and costs of suit,  
39 the insurance producer and insurer may be liable to the aggrieved  
40 person for punitive damages. The bill's express inclusion of insurer  
41 liability for the violations of insurance producers intends to deter  
42 insurance carriers from the improper supervision over the offering  
43 and sales of their insurance products.