

ASSEMBLY, No. 1133

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

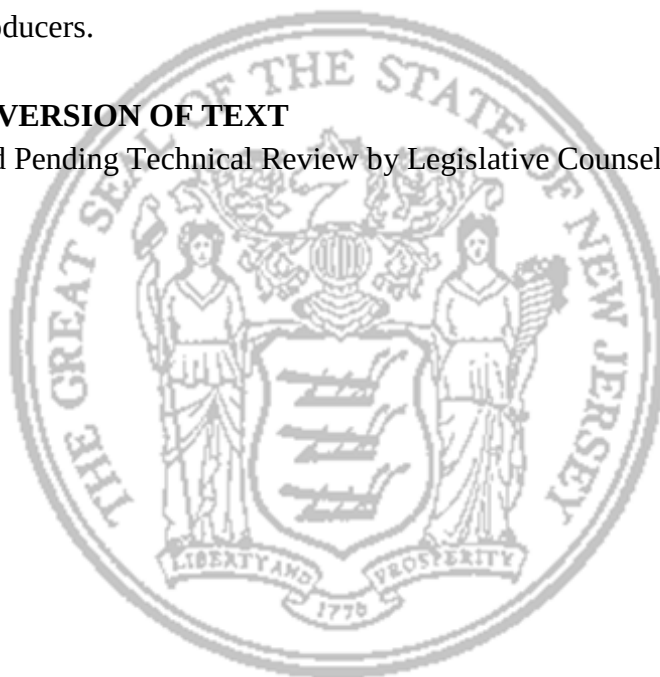
Assemblyman Danielsen

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

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/24/2020)

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 and reasonable care and skill in renewing, procuring,
11 binding, or placing property and casualty insurance coverage and
12 health benefits plans requested by an insured or prospective insured
13 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 property and casualty insurance or a health benefits plan,
18 shall not subject the insurance producer to civil liability under
19 standards governing the conduct of a fiduciary or a fiduciary
20 relationship, 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.

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, a property and casualty insurance policy or
31 a health benefits plan; or limit or prevent an insurance producer
32 from asserting any defenses available at common law.

33 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).

36 f. The provisions of this section shall not limit or prohibit the
37 Commissioner of the Department of Banking and Insurance from
38 finding, imposing or enforcing a fiduciary duty upon an insurance
39 producer where that duty is imposed pursuant to: (1) the “New
40 Jersey Insurance Producer Licensing Act of 2001,” P.L.2001, c.210
41 (C.17:22A-26 et seq.); (2) any rule or regulation of the Department
42 of Banking and Insurance; (3) any order of the commissioner; or (4)
43 any applicable federal law.

44
45 2. Section 2 of P.L.1995, c.139 (C.2A:53A-27) is amended to
46 read as follows:

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 2. a. In any action for damages for personal injuries, wrongful
2 death or property damage resulting from an alleged act of
3 malpractice or negligence by a licensed person in his profession or
4 occupation, the plaintiff shall, within 60 days following the date of
5 filing of the answer to the complaint by the defendant, provide each
6 defendant with an affidavit of an appropriate licensed person that
7 there exists a reasonable probability that the care, skill or
8 knowledge exercised or exhibited in the treatment, practice or work
9 that is the subject of the complaint, fell outside acceptable
10 professional or occupational standards or treatment practices. The
11 court may grant no more than one additional period, not to exceed
12 60 days, to file the affidavit pursuant to this section, upon a finding
13 of good cause.

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

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

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

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

42 25. a. An insurance producer licensed pursuant to P.L.2001,
43 c.210 (C.17:22A-26 et al.) who sells, solicits, or negotiates
44 individual health benefits plans as defined in section 1 of P.L.1992,
45 c.161 (C.17B:27A-2), or health **【insurance policies or contracts】**
46 benefits plans as defined in section 1 of P.L.1992, c.162 (17B:27A-
47 17) to **【residents of this State】** small employers as defined in
48 section 1 of P.L.1992, c.162 (17B:27A-17), shall notify the

1 purchaser of the **【insurance】** health benefits plan, in writing, of the
2 availability of information concerning the amount of any
3 commission, service fee, brokerage, or other valuable consideration
4 that the producer will receive as a result of the sale, solicitation or
5 negotiation of the health **【insurance policy or contract】** benefits
6 plan. If the commission, fee, brokerage, or other valuable
7 consideration is based on a percentage of premium, the insurance
8 producer shall include that information in the notification to the
9 purchaser.

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

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18 4. This act shall take effect immediately.

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21 STATEMENT

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23 This bill expands the requirements for insurance producers to
24 exercise ordinary and reasonable care and skill that the bill already
25 applies to placing property and casualty policies, to include health
26 benefits plans.

27 The bill also prohibits any cause of action by any person or entity
28 against an insurance producer concerning the sale, placement,
29 procurement, renewal, binding or cancellation of, or the failure to
30 procure, a health benefits plan, from subjecting the insurance producer
31 to civil liability under standards governing the conduct of a fiduciary
32 or a fiduciary relationship, except when the conduct upon which the
33 cause of action is based involves the wrongful retention or
34 misappropriation of any money that was received by the insurance
35 producer, as a premium deposit or as payment of a claim. Thus, the bill
36 expand this prohibition on causes of action that the bill already applies
37 to property and casualty plans, to include health benefits plans.

38 The bill also modifies an insurance producer’s duty under current
39 law, to provide notification of the amount of any commission, service
40 fee, brokerage, or other valuable consideration, to specify that the
41 notification is required to be provided to purchasers of individual
42 health benefits plans issued through the New Jersey Individual Health
43 Coverage Program and small employer health benefits plans issued
44 through the New Jersey Small Employer Health Benefits Program.

45 The bill also specifies the qualifications of a person providing an
46 affidavit of merit in the case of an action against a licensed insurance
47 producer, regardless of damages sought.

A1133 COUGHLIN, MCKEON

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1 The bill provides that the Commissioner of the Department of
2 Banking and Insurance is not limited or prohibited from finding,
3 imposing, or enforcing a fiduciary duty upon an insurance producer
4 where that duty is imposed pursuant to: (1) the “New Jersey
5 Insurance Producer Licensing Act of 2001; (2) any rule or
6 regulation of the Department of Banking and Insurance; (3) any
7 order of the commissioner; or (4) any applicable law.