

**INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE**

**Insurance Producer Standards of Conduct: Marketing Activities For Which a Person Must be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative  
Definition of Clerical Duties**

**Adopted Amendment: N.J.A.C. 11:17A-1.2**

Proposed: September 15, 2003 at 35 N.J.R. 4169(a)

Adopted : December 10, 2003 by Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Filed: December 10, 2003 as R. 2004 d.14 with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1 and 15e and 17:22A-26 et seq.

Effective Date: January 5, 2004

Expiration Date: December 30, 2004

**Summary of Public Comments and Agency Responses:**

The Department received timely comments from Drinker Biddle & Reath LLP, and Rubin, Fiorella & Friedman LLP.

**COMMENT:** Both commenters suggested changes to the language of the proposal and its Summary based on the position that "collision damage waivers," or "CDWs," are not a form of insurance. One commenter stated that the CDWs are not viewed as insurance by New Jersey and many other states because there is no transfer of risk from the rental car company to the customer. Another comment stated that the Department of the Treasury has determined that CDW is not insurance and that, unlike charges related to insurance products, CDW charges are subject to sales tax.

**RESPONSE:** The Department agrees with the commenters that collision damage waivers are not insurance, and will correct the erroneous reference in the example included in the amendments as proposed by replacing it with a reference to personal effects coverage, a type of ticket insurance offered by car rental agencies.

**COMMENT:** One commenter suggested changing the word "insured" to "customer" in the example for car rental agencies.

**RESPONSE:** The Department agrees that the use of "insured" in the example in paragraph 19 is inconsistent with the use of "insured" throughout the definition of "clerical duties" and will amend the language to "applicant" upon adoption.

**COMMENT:** One commenter suggested that language in the Summary be revised to reflect the fact that, previously, car rental companies never had to be licensed as insurance producers in New Jersey, and that car rental companies have until January 1, 2004 to come into compliance with the New Jersey Insurance Producers Act of 2001.

**RESPONSE:** The language to which the commenter objected, "[t]he proposed amendment does not change the requirement that car rental companies themselves be licensed as insurance producers," is correct as written. Prior to the enactment of the Producer Licensing Act of 2001, car rental companies were required to register as limited lines insurance representatives. The Act now requires licensure as limited lines insurance producers. As is the case with all limited lines representatives, formerly registered rental car companies have until December 31, 2003 to obtain their limited lines insurance producer license. The proposed amendment and the adoption do not change these requirements.

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendment is not subject to any Federal standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### 11:17A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Clerical duties" means the administrative and underwriting tasks accomplished in the office and under the supervision of the insurer or licensed producer that are necessary to produce the insurance contract in accordance with the insurer's or producer's normal procedures and systems, including, but not limited to, the following:

1. - 18. (No change from proposal.)

19. Providing information to and receiving and recording information from an applicant for ticket insurance for processing by a licensee where the unlicensed person is an employee of the licensee.

Example: An unlicensed counter person in a car rental agency may receive and record an \*[insured's]\* **applicant's** request for \*[a collision damage waiver]\* **personal effects coverage**\*. The car rental company must be a licensee and the counter person must provide the customer with written information about the coverage.

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