

17:29A-5.6 to 17:29A-5.16

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:29A-5.6 to 17:29A-5.16 (Automobile insurance-- excess profits)

LAWS OF: 1988

CHAPTER: 118

BILL NO: S124

SPONSOR(S): Russo

Date Introduced: Pre-filed

Committee: Assembly: -----

Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments denoted by asterisks according to Governor's recommendations.

Date of Passage: Assembly: July 14, 1988 Re-enacted 9-1-88

Senate: June 20, 1988 Re-enacted 8-8-88

Date of Approval: September 8, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. Senate Labor, Industry and Professions Committee  
A939 Public hearing on S-124 . . . held 6-15-88 Trenton, 1988.  
1988a

See newspaper clipping-- attached:

"Small companies cited for excessive auto insurance rates" 10-10-88 Trenton Times.

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STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator RUSSO

1 AN ACT concerning financial disclosure and excess profits by  
automobile insurers, supplementing P.L. 1944, c. 27 (C.  
3 17:29A-1 et seq.) and repealing P.L. 1983, c. 357.

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

7 1. As used in this act:

a. "Actual investment income" means that portion of income  
9 generated by investment of policyholder-supplied funds.

b. "Actuarial gain" means the remainder obtained by  
11 subtracting the allowance for profit and contingencies from  
underwriting income <sup>1</sup>, which remainder may be positive or  
13 negative<sup>1</sup>.

c. "AIRE charges" and "AIRE compensation" mean  
15 <sup>1</sup>,respectively,<sup>1</sup> amounts paid to or received from the New  
Jersey Automobile Insurance Risk Exchange pursuant to section  
17 16 of P.L. 1983, c. 362 (C. 39:6A-22).

d. "Anticipated investment income" means the amount  
19 obtained by multiplying earned premium by the percentage of  
premium representing investment income and used in the  
21 insurer's <sup>1</sup>approved<sup>1</sup> rate filings <sup>1</sup>or filings made pursuant to  
section 26 of P.L.     , c.      (C.     )(now pending before the  
23 Legislature as Senate Bill No. 2637 of 1988), during the period of  
the three calendar-accident years being calculated,<sup>1</sup> to calculate  
25 the allowance for profit and contingencies.

e. "Calendar-accident year" means the period from January 1  
27 to December 31, during which, in the appropriate context:

- (1) premium or investment income was earned;  
29 (2) expenses were incurred; or  
(3) accidents occurred which resulted in losses, loss  
31 adjustment expenses or AIRE compensation.

f. "Car year" means the unit of exposure equivalent to the

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SLI committee amendments adopted June 16, 1988.

1 insuring of one automobile for 12 months, two automobiles for six  
2 months each, three automobiles for four months each, and so  
3 forth.

g. "Commissioner" means the Commissioner of Insurance.

5 h. "Development adjustment," for a given calendar-accident  
year, means the difference obtained by subtracting:

7 (1) The sum of

(a) Losses and loss adjustment expenses for that  
9 calendar-accident year, developed to an ultimate basis and  
evaluated as of March 31 of the year preceding the year in which  
11 the profits report required by section 2 of this act is due; plus

(b) AIRE compensation for that calendar-accident year,  
13 developed to an ultimate basis and evaluated as of March 31 of  
the year in which the profits report is due;

15 from

(2) The sum of

(a) Losses and loss adjustment expenses for that  
17 calendar-accident year, developed to an ultimate basis and  
evaluated as of March 31 of the year in which the profits report  
19 is due; plus

(b) AIRE compensation for that calendar-accident year,  
21 developed to an ultimate basis and evaluated as of March 31 of  
the year preceding the year in which the profits report is due.  
23

i. "Excess investment income" means the remainder obtained  
25 by subtracting the anticipated investment income from the actual  
investment income earned by the insurer <sup>1</sup>, which remainder may  
27 be positive or negative<sup>1</sup>.

j. "Insurer" means an entity authorized or admitted to  
29 transact private passenger automobile insurance business in New  
Jersey, but does not include the New Jersey Automobile Full  
31 Insurance Underwriting Association created pursuant to P.L.  
1983, c. 65 (C. 17:30E-1 et seq.).

33 k. <sup>1</sup>["Market share" means the proportion that an insurer's  
written premiums for New Jersey private passenger automobile  
35 insurance business in the voluntary market during the three  
calendar years immediately preceding the date the profits report  
37 required by section 2 of this act is due bear to the total written  
premiums of all insurers in that market during those three  
39 calendar years.

1       1.]<sup>1</sup> "Private passenger automobile insurance business" means  
2       direct insurance on private passenger automobiles as defined in  
3       subsection a. of section 2 of P.L. 1972, c. 70 (C. 39:6A-2),  
4       excluding personal excess liability insurance and insurance on  
5       commercial vehicles.

6       1[m.] l.<sup>1</sup> "Total actuarial gain" means the sum of the actuarial  
7       gains for the three calendar-accident years immediately  
8       preceding the due date of the profits report required by section 2  
9       of this act, less the development adjustments for the  
10       calendar-accident years beginning with the seventh  
11       calendar-accident year immediately preceding the due date of  
12       the profits report and ending with the fourth calendar-accident  
13       year immediately preceding the due date of the profits report.

14       1[n.] m.<sup>1</sup> "Underwriting income" means the remainder  
15       obtained by subtracting the sum of losses developed to an  
16       ultimate basis, loss adjustment expenses developed to an ultimate  
17       basis, and other expenses exclusive of UCJF assessments, from  
18       the sum of premiums earned and AIRE compensation developed to  
19       an ultimate basis <sup>1</sup>, which remainder may be positive or  
20       negative<sup>1</sup>.

21       1[o.] n.<sup>1</sup> "UCJF assessments" means amounts paid by insurers  
22       to the Unsatisfied Claim and Judgment Fund pursuant to section  
23       3 of P.L. 1952, c. 174 (C. 39:6-63).

24       1[p.] o.<sup>1</sup> "UCJF reimbursements" means amounts received by  
25       an insurer from the Unsatisfied Claim and Judgment Fund as a  
26       result of excess medical expense benefit payments by the insurer  
27       pursuant to section 2 of P.L. 1977, c. 310 (C. 39:6-73.1).

28       2. a. Each insurer, except those exempt from filing pursuant to  
29       section 1[4] 6<sup>1</sup> of this act, shall annually file with the  
30       commissioner, on or before July 1 of each year, a profits report  
31       containing the information and calculations required by this  
32       section. The information shall be provided with respect to the  
33       insurer's New Jersey private passenger automobile insurance  
34       business separately for each of the following coverages and for  
35       all these coverages combined:

- 36       (1) Personal injury protection, including all options;
- 37       (2) Bodily injury liability, reported at total limits;
- 38       (3) Other liability, consisting of property damage liability  
39       and uninsured and underinsured motorist coverages, all reported  
40       at total limits;

1 (4) Physical damage, consisting of comprehensive and  
collision coverages, including all deductibles.

3 A separate profits report shall be filed for each insurer <sup>1</sup>and each  
insurer<sup>1</sup> in an insurance holding company system. <sup>1</sup>[Data and  
5 information in a profits report shall not be combined for more  
than one insurer] Each insurance holding company system shall  
7 file a separate combined profits report for all insurers in its  
8 system. The excess profits computation for an insurance holding  
9 company system shall be performed on its combined profits  
10 report, except that the commissioner may order an adjustment in  
11 the combined profits report if in his judgment, upon examining  
12 each insurer's profits report in the insurance holding company  
13 system, one or more of the insurers in that system are  
14 excessively subsidizing other insurers in that system<sup>1</sup>.

15 b. The profits report shall contain the following information for  
each of the seven most recent calendar-accident years, with an  
17 evaluation date as of March 31 of the year in which the profits  
report is due:

- 19 (1) <sup>1</sup>[Loses] Losses<sup>1</sup> paid;  
20 (2) <sup>1</sup>[Loses] Losses<sup>1</sup> developed to an ultimate basis;  
21 (3) Loss adjustment expenses paid;  
22 (4) Loss adjustment expenses developed to an ultimate basis;  
23 (5) AIRE compensation received; and  
24 (6) AIRE compensation developed to an ultimate basis.

25 c. The profits report shall contain the following information for  
the calendar-accident year ending December 31 immediately  
27 preceding the date the profits report is due:

- (1) Premiums written;  
29 (2) Premiums earned;  
30 (3) Other expenses, itemized separately as follows:  
31 (a) Commissions and brokerage fees;  
32 (b) Taxes, licenses and fees;  
33 (c) AIRE charges;  
34 (d) UCJF assessment;  
35 (e) Other acquisition costs and general expenses;  
36 (f) Policyholder dividends, including any excess profits  
37 refunded or credited to policyholders;  
38 (4) Allowance for profit and contingencies, calculated by  
39 multiplying the premiums earned by the profit and contingency

- 1 factors authorized for use with the insurer's approved rate filings;
- 2 (5) Anticipated investment income;
- 3 (6) Actual investment income; and
- 4 (7) UCJF reimbursements received.

5 d. The profits report shall include a clear and explicit calculation of each of the following items;

7 (1) Underwriting income for each of the three calendar-accident years immediately preceding the date of the profits report;

9 (2) Actuarial gain for each of the three calendar-accident years immediately preceding the date of the profits report;

11 (3) Excess investment income for each of the three calendar-accident years immediately preceding the date of the profits report;

13 (4) Development adjustment for each of the four calendar-accident years specified in subsection <sup>1</sup>[m.] 1.<sup>1</sup> of section 1 of this act;

15 (5) Total actuarial gain; <sup>1</sup>and<sup>1</sup>

17 (6) Excess profits <sup>1</sup>]; and

19 (7) Market share expressed as a percentage<sup>1</sup>.

21 3. Excess profits shall exist if for the three calendar-accident years immediately preceding the date the profits report is due, the sum of an insurer's total actuarial gain and excess investment income for all private passenger automobile coverages combined exceeds <sup>1</sup>[the following percentages] 2.5 percent<sup>1</sup> of earned premiums<sup>1</sup>:

23 a. For insurers having a market share  
of 1% or more.....2.5%

25 b. For insurers having a market share  
greater than or equal to 0.50% but  
less than 1.00%.....5.0%

27 c. For insurers having a market share  
greater than or equal to 0.25% but  
less than 0.50%.....7.5%

29 d. For insurers having a market share  
less than 0.25%.....10%], except that the

31 effect of a negative excess investment income shall be limited in  
33 the computation of excess profits, at the discretion of the  
35 commissioner, which discretion shall be exercised pursuant to

1 a standard on the investment of policyholder-supplied funds  
2 pursuant to regulations promulgated by the commissioner not  
3 later than April 1 of the year in which excess profits reports are  
4 filed.<sup>1</sup>

5 <sup>14.</sup> The due date for the first profits report required by  
6 subsection a. of section 2 of this act is July 1, 1988. For the first  
7 report required by this act:

8 a. The seven most recent calendar-accident years referred to  
9 in subsection b. of section 2 of this act are 1981 through 1987,  
10 inclusive.

11 b. The three calendar-accident years immediately preceding  
12 the due date referred to in subsection l. of section 1, subsection  
13 d. of section 2, section 3 and section 6 of this act are 1985, 1986,  
14 and 1987.

15 c. The seventh calendar-accident year immediately preceding  
16 the due date referred to in subsection l. of section 1 of this act is  
17 1981.

18 d. The fourth calendar-accident year immediately preceding  
19 the date the profits report is due referred to in subsection l. of  
20 section 1 of this act is 1984.

21 e. The calendar-accident year immediately preceding the date  
22 the profits report is due referred to in subsection c. of section 2  
23 of this act is 1987.

24 f. All remaining references to specific calendar years,  
25 calendar-accident years, and evaluation dates shall be consistent  
26 with the provisions of this section.

27 5. In the event an excess profit is returned by an insurer in  
28 accordance with section 7 of this act and subsequent development  
29 demonstrates that an excess profit did not exist or was  
30 overstated, an "excess profit carry forward" in the amount of the  
31 excess profit refunded or the amount overstated, whichever is  
32 less, shall be established. This "excess profit carry forward"  
33 shall be applied by such insurer as a credit against future  
34 determinations of excess profits until such credit is exhausted or  
35 the expiration of a 15-year period from the date such carry  
36 forward was established, whichever occurs first.<sup>1</sup>

37 <sup>1[4.] 6.<sup>1</sup></sup> An insurer having fewer than 150 car years of  
38 exposure in New Jersey during the three calendar-accident years  
39 immediately preceding the date the profits report is due shall file

1 a certification to that effect, in lieu of all other requirements of  
this act.

3 <sup>1</sup>[5.] 7.<sup>1</sup> If the commissioner finds that an insurer has excess  
profits, the insurer shall establish, subject to the approval of the  
5 commissioner, a fair, practicable, and nondiscriminatory plan for  
the refund or credit to policyholders of the excess profits.

7 <sup>1</sup>[6.] 8.<sup>1</sup> An insurer shall file the profits report, including all  
incidental calculations, in the formats and media to be prescribed  
9 by the commissioner.

<sup>1</sup>[7.] 9.<sup>1</sup> If, after examination thereof, the commissioner finds  
11 that any information or calculation contained in a profits report  
filed by an insurer contains, results in or is based upon aberrant,  
13 unusual or irregular data, utilization of data, judgments or  
assumptions, the commissioner shall issue an order to the insurer,  
15 directing that the information or calculation be altered in a  
manner necessary to eliminate the effect of the aberrant, unusual  
17 or irregular data, utilization of data, judgments, or assumptions.

<sup>1</sup>[8.] 10.<sup>1</sup> Notwithstanding any other provision of this act, the  
19 commissioner may require the submission of any other data and  
information he deems relevant or appropriate for evaluating the  
21 profits of an insurer.

<sup>1</sup>[9.] 11.<sup>1</sup> The commissioner shall promulgate rules and  
23 regulations in accordance with the "Administrative Procedure  
Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), that he deems  
25 necessary to implement the provisions of this act.

<sup>1</sup>[10.] 12.<sup>1</sup> P.L. 1983, c. 357 (C. 17:29A-5.2 through  
27 17:29A-5.5) is repealed.

<sup>1</sup>[11.] 13.<sup>1</sup> This act shall take effect immediately.

29

31

## INSURANCE

### Insurance - Automobile

33

Enacts new excess profits law for auto insurers.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

**SENATE, No. 124**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 16, 1988

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate, No. 124.

This bill, as amended, makes a number of procedural and substantive changes to the excess profits law for private passenger automobile insurers by repealing the current excess profits law and enacting a new one.

Some of the more important procedural changes include requiring one report each year instead of two; establishing procedures to account for the transfer of funds to and from insurers by the New Jersey Automobile Insurance Risk Exchange and the Unsatisfied Claim and Judgment Fund for medical expense benefits; and combining the reporting data of similar lines of coverage to reduce the reporting categories from six under the old law to four. The committee amended the bill to provide that the computation of excess profits for insurers in an insurance holding company system shall be on the combined profits reports of these insurers, but the committee retained the provision that each insurer in an insurance holding company system must file a separate profits report.

The following major substantive changes are made in determining excess profits under the bill. First, the bill makes it explicit that the actual investment income of the insurer from automobile policyholder-supplied funds would be used in the calculation of excess profits. The bill also would require an insurer to add the difference, whether positive or negative, between its actual investment income results and anticipated investment income (which was included in the insurer's rate filing) to underwriting income in determining whether excess profits have been received by the insurer.

Second, the original bill established a sliding scale for determining excess profits that was based on the relative size of the insurer's automobile insurance business in the voluntary market in this State. The committee amended the bill to delete that provision and to provide that all insurers would be required to return unanticipated profits which exceed 2.5% of premium.

The current excess profits law provides for a standard of 5% of premium. Under the bill the excess profits formula is not applied to insurers which have less than 150 car years of exposure in New Jersey during the three calendar-accident years immediately preceding the date of the profits report.

Lastly, the treatment of losses and loss adjustment expenses is modified. The exact amount of losses and loss adjustment expenses for any one year are never known until all the claims for that period are completely settled, which may be a number of years in the future. Because losses and loss adjustment expenses are subject to being overestimated or underestimated, the bill provides for the adjustment of the losses and loss adjustment expenses to compensate for these overestimates or underestimates during the three years preceding the profits report, as is currently done, and also for the four years preceding that period, which is not currently done.

1       8. Notwithstanding any other provision of this act, the  
2       commissioner may require the submission of any other data and  
3       information he deems relevant or appropriate for evaluating the  
4       profits of an insurer.

5       9. The commissioner shall promulgate rules and regulations in  
6       accordance with the "Administrative Procedure Act," P.L. 1968,  
7       c. 410 (C. 52:14B-1 et seq.), that he deems necessary to  
8       implement the provisions of this act.

9       10. P.L. 1983, c. 357 (C. 17:29A-5.2 through 17:29A-5.5) is  
10       repealed.

11       11. This act shall take effect immediately.

13

#### STATEMENT

15

16       This bill makes several substantive changes and a number of  
17       procedural and administrative changes to the excess profits law  
18       for private passenger automobile insurers by repealing the  
19       current excess profits law and enacting a new excess profits law.

20       The changes establish a sliding scale for determining excess  
21       profits, based on the relative size of an automobile insurer's New  
22       Jersey business; modify the treatment of losses and loss  
23       adjustment expenses; and require the reporting of updated loss  
24       information for each of the seven years preceding the date of the  
25       filing.

27

#### INSURANCE

29

##### Insurance - Automobile

31       Enacts new excess profits law for auto insurers.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

August 4, 1988

SENATE BILL NO. 124

(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Bill No. 124 (First Reprint) with my objections for reconsideration.

I have consistently been in strong support of a tough automobile insurance excess profits law. It is for that reason that I conditionally vetoed Senate Bill No. 3090 of 1987 last year. I am extremely pleased that the Legislature has adopted Senate Bill No. 124 (First Reprint), without a dissenting vote, in a form virtually identical to my Conditional Veto of Senate Bill No. 3090 of 1987.

However, there is a technical problem with the bill in that the first reporting date in the bill is July 1, 1988 which cannot be met since I did not receive the bill until July 15, 1988. As noted above, these changes are merely technical and, in no way, indicate any dissatisfaction with the intent or the scope of this important legislation.

Therefore, I herewith return Senate Bill No. 124 (First Reprint) and recommend that it be amended as follows:

- Page 6, Section 4, Line 6: Delete "1988" insert "1989"
- Page 6, Section 4, Line 9: Delete "1981 through 1987" insert  
"1982 through 1988"
- Page 6, Section 4, Lines 13-14: Delete "1985, 1986, and 1987"  
insert "1986, 1987, and 1988"
- Page 6, Section 4, Line 17: Delete "1981" insert "1982"
- Page 6, Section 4, Line 20: Delete "1984" insert "1985"
- Page 6, Section 4, Line 22: Delete "1987" insert "1988"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR



OFFICE OF THE GOVERNOR  
**NEWS RELEASE**

Governor Thomas H. Kean  
TRENTON, N.J. 08625  
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CN-001  
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THURS., SEPT. 8, 1988

Governor Thomas H. Kean today signed two auto insurance reform bills which were the subjects of conditional vetoes concurred in by the Legislature.

The two bills are S-2637, sponsored by Senator Raymond Lesniak, D-Union, makes numerous changes in the insurance system, and S-124, sponsored by Senator John Russo, D-Ocean, which makes changes in reporting dates in the excess profits law affecting auto insurance companies.

"The reform bill which I have signed today represents a first step toward implementing changes in a system which has penalized New Jersey drivers and driven insurance costs beyond the reach of many motorists," Kean said.

"More remains to be done, including favorable action on the bills currently pending before the Assembly to restructure the Joint Underwriting Association," the Governor said.

"I remain convinced, however, that the auto insurance system in New Jersey will not be subjected to significant, long term and long lasting cost savings unless and until a mandatory verbal threshold is enacted," Kean said.

"In the absence of a verbal threshold, a major damper on rising auto insurance costs will remain out of reach," he said.