17:30E-14

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

		(Market Transition Facility- "depopulation")	
NJSA:	17:30E-14		
LAWS OF:	1991	CHAPTER:	462
BILL NO:	S3577		
SPONSOR(S):	Foy and others		
DATE INTRODUCED:	June 17, 1991		
COMMITTEE:	ASSEMBLY:	___	
	SENATE:	Labor Industry and Professions	
AMENDED DURING PASSAGE:	Yes	Amendments during passage denoted by asterisks	
DATE OF PASSAGE:	ASSEMBLY:	January 13, 1992	
	SENATE:	January 9, 1992	
DATE OF APPROVAL:	January 18, 1992		

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT:		Yes
COMMITTEE STATEMENT:	ASSEMBLY:	No
	SENATE:	Yes
FISCAL NOTE:		No
VETO MESSAGE:		No
MESSAGE ON SIGNING:		No

FOLLOWING WERE PRINTED:

REPORTS:	No
HEARINGS:	No

KBG/pp

[SECOND REPRINT]

SENATE, No. 3577

STATE OF NEW JERSEY

INTRODUCED JUNE 17, 1991

By Senators FOY, CARDINALE, O'CONNOR, DiFRANCESCO, RICE, BUBBA and CONTILLO

AN ACT concerning certain producers of record and amending P.L.1983, c.65 and P.L.1990, c.8.

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

1. Section 26 of P.L.1983, c.65 (C.17:30E-14) is amended to read as follows:

26. a. Within 45 days of the effective date of [this 1988 amendatory and supplementary act] P.L.1988, c.119 (C.17:28-1.4 et al), the commissioner shall, in the plan of operation, establish procedures to govern the voluntary writing of applicants and association insureds without the utilization of the association. These procedures shall include criteria identifying drivers who should be eligible for coverage in the voluntary market. Applicants and association insureds meeting these criteria shall be subject to assignment by the association to member companies, pursuant to an equitable apportionment procedure established in the plan of operation. The procedure shall give due consideration to the increase or decrease in the volume of private passenger automobile non-fleet exposures voluntarily written by member companies in this State since January 1, 1984.

b. (1) Pursuant to the procedures established in the plan of operation under subsection a. of this section, the commissioner shall establish a voluntary market quota, which shall not be less than 60% of the aggregate number of private passenger automobile non-fleet exposures written in the total private passenger automobile insurance market in this State on the effective date of [this 1988 amendatory and supplementary act] P.L.1988, c.119 (C.17:28-1.4 et al). The quota shall prescribe the number of voluntary market exposures which shall be written by member companies during the 12-month period beginning 60 days after the effective date of [this 1988 amendatory and supplementary act] P.L.1988, c.119 (C.17:28-1.4 et al).

(2) Within 30 days of the effective date of P.L.1990, c.8 (C.17:33B-1 et al), the commissioner shall prescribe a second quota, which shall take effect immediately upon adoption by the commissioner and which shall not be less than 68% of the aggregate number of private passenger automobile non-fleet exposures written in the total private passenger automobile

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:
[1] Senate SLI committee amendments adopted December 5, 1991.
[2] Senate floor amendments adopted December 16, 1991.

insurance market in this State on or before October 1, 1990. The quota shall prescribe the number of voluntary market exposures which shall be written by member companies during the period described in this paragraph.

(3) (Deleted by amendment, P.L.1990, c.8.)

(4) (Deleted by amendment, P.L.1990, c.8.)

c. In the event that any of the quotas established by the commissioner pursuant to subsection b. of this section have not been met by the end of any applicable period, the commissioner shall direct the association to assign the balance of the exposures needed to meet the applicable quota to member companies in a manner consistent with the apportionment procedure established pursuant to subsection a. of this section. A member company which exceeded its apportionment share for the 12-month period prescribed pursuant to paragraph (1) of subsection b. of this section shall receive credit for the excess against the quota imposed pursuant to paragraph (2) of subsection b. of this section.

d. (Deleted by amendment, P.L.1990, c.8.)

e. For the purposes of this section, any exposure written in the voluntary market by an affiliate of the insurer to which an apportioned share has been assigned shall be credited against that share.

f. The total number of exposures written in the voluntary market, net of exposures cancelled or nonrenewed, by a member company at the end of the applicable period shall be utilized in determining whether the member company has written its apportionment share in the voluntary market for purposes of complying with any quotas established by the commissioner pursuant to this section.

g. The commissioner may excuse a member company from meeting any of its obligations under this section that he determines would result in the member company being in an unsafe or unsound condition.

h. Any member company that does not write its apportionment share of any quota established by the commissioner pursuant to subsection b. or c. of this section within the applicable time period shall be precluded from nonrenewing automobile insurance policies pursuant to section 26 of P.L.1988, c.119 (C.17:29C-7.1) during the immediately following 12-month period.

i. In addition to the requirements of subsection a. of this section, the procedures governing the increase in voluntary market volume shall:

(1) establish guidelines and criteria for determining whether a person is a qualified applicant as defined in section 15 of P.L.1983, c.65 (C.17:30E-3), and procedures for the issuance of automobile insurance through the voluntary market to persons found not to be qualified applicants for association coverage, and for the referral of persons determined not to be eligible for association coverage to alternative residual market mechanisms;

(2) include provisions ensuring that servicing carriers do not obtain any unfair advantage over other member companies in the selection of qualified applicants and association insureds to be written as voluntary business;

(3) [neither prohibit nor require member companies to write association business through association producers of record, provided, however, that where a member company elects not to service such business through the association producer of record, the procedures shall address the manner in which the association shall transfer the business to the member company, and shall establish reasonable compensation in an amount sufficient to offset the actual expenses incurred by the association producer in conjunction with the transfer which shall be paid by the association upon transfer of the business to the member company] [1][provide that exposures assigned to member companies in accordance with subsection c. of this section as a result of the failure of the member company to meet an applicable quota shall be written through the association producer of record, notwithstanding the fact that the association producer of record is not a voluntary market producer of the member company assigned that exposure. In such case, the association producer of record shall retain complete control, possession and ownership of all records and renewals regarding the exposures written pursuant to this paragraph (3). The member company shall not use any such records, nor information it obtains in the normal course of business, to solicit direct renewal of the exposures, other insurance or any other products. The association producer of record shall be paid a commission by the member company on the exposures written by the member company through the association producer of record, and on all renewals thereof, at the same rate and on the same terms as the member company pays commissions for similar coverage to its voluntary market producers. If a member company provides its voluntary market producers with support services or other benefits in addition to a commission, and such support services or other benefits are not provided to the association producer of record, the commission paid to the association producer of record shall be increased to make it equivalent to the value of the combination of commission and support services or other benefits paid or provided by the member company to its voluntary market producers. If the member company uses more than one commission schedule, rate or formula or provides different types of support services or other benefits to its voluntary market producers, it shall negotiate in good faith with the association producer of record so that the commission and support services and other benefits, if any, provided to the association producer of record are equivalent to that provided by the member company to its voluntary market producers for similar coverage. If a member company engages in the direct writing of exposures and neither it nor any affiliate has

a commission schedule, rate or formula for the voluntary market, it shall pay the association producer of record a commission equivalent to the portion of the premium charged by the member company for voluntary market coverage that relates to its expenses for direct marketing, acquisition, servicing and related support staff, provided, however, that the commission shall be at least substantially equivalent to that paid by member companies that use commission schedules, rates or formulas. Notwithstanding any provision of this paragraph (3) to the contrary, if the member company uses premium rates of the Market Transition Facility for voluntary market exposures written through the association producer of record, the commission paid to the association producer of record shall be no less than that provided by the Market Transition Facility for such coverage] neither prohibit nor require member companies to write association business through association producers of record, [2][provided, however, that when association business is allocated, the procedures in this paragraph shall be observed] except as provided for in this paragraph[2].

(a) When an exposure assigned to a member company in accordance with subsection c. of this section, as a result of the failure of the member company to meet an applicable quota, is written by the member company assigned the exposure, the association producer of record shall have the right to service that business, which shall include all renewals thereof, and shall be entitled to a commission for that service in accordance with subparagraph (c) of this paragraph.

(b) The association producer of record shall retain [2]complete[2] control [2][and] ,[2] possession [2]and ownership[2] of all records and [2][the right and entitlement to][2] renewals regarding exposures assigned pursuant to subsection c. of this section, provided, however, that the member company may maintain such records as are provided to it under the procedure established by subsection a. of this section. A member company that acquires access to records pursuant to this subparagraph shall not share any such records with any other producer or use any such records to solicit direct renewal of the business, a change in producer of record, other insurance products or any other products.

(c) The association producer of record shall be paid a commission by the member company on the business serviced by the association producer of record pursuant to this paragraph. That commission shall be paid at a percentage rate no less than that being paid by the Market Transition Facility on July 1, 1991.

(d) A copy of every notice, other than bills, and including renewal declarations, change endorsements, cancellations and reinstatements, and the corresponding payment schedules included therein, correspondence, claims checks and acknowledgements, sent to an insured by a member company with respect to business covered by this paragraph, shall be sent to the association producer of record.

(e) This paragraph shall be applicable only to exposures assigned to member companies in accordance with subsection c. of this section as a result of the failure by the member company to meet an applicable quota [2][and shall not apply beyond three years after the enactment date of this 1991 amendatory act][2]. This paragraph shall not constitute the grant of an agency contract by the member company to the association producer of record authorizing the association producer of record to write new business through the member company; provided, however, that the association producer of record shall have the authority to provide the usual and customary servicing of the business subject to this paragraph, including adding new and replacement vehicles and adding or changing coverages on the business.

(f) Nothing in this paragraph shall deprive an insured of the right to designate a producer of record other than the association producer of record. Upon that designation, the rights of the association producer of record under this paragraph shall terminate. Notwithstanding any provision in this paragraph, the rights of the association producer of record under this paragraph shall terminate in the event of the producer's insolvency, gross and willful misconduct, fraud or license revocation[1]; and

(4) provide for financial disincentives to applicants who, without good cause, reapply for coverage in the association after being placed in the voluntary market.

(cf: P.L.1990, c.8, s.20)

2. Section 88 of P.L.1990, c.8 (C.17:33B-11) is amended to read as follows:

88. a. There is created a Market Transition Facility to be operated by the Commissioner of Insurance pursuant to the provisions of this section. Every insurer authorized to transact automobile insurance in this State shall be a member of the facility and shall share in its profits and losses as provided by the commissioner pursuant to the provisions of subsection d. of this section.

b. The commissioner shall, within 30 days of the effective date of [this 1990 amendatory and supplementary act] P.L.1990, c.8 (C.17:33B-1 et al), appoint a Market Transition Facility Advisory Board which shall be comprised of six members, one of whom shall represent member companies organized on a mutual basis, one of whom shall represent member companies organized on a stock basis, one of whom shall represent servicing carriers, one of whom shall represent insurance producers, one of whom shall be a qualified actuary and one of whom shall represent the public. Advisory board members shall serve for the duration of the facility or until such time as their successor is appointed. Advisory board members shall not be compensated for their services but shall be reimbursed by the facility for any necessary and reasonable expenses incurred in performance of their duties as members of the advisory board.

c. The facility shall arrange for the issuance and renewal of automobile insurance policies for the period commencing October 1, 1990 and ending September 30, 1992 pursuant to a plan of operation promulgated by the commissioner in consultation with the advisory board. The facility shall not issue or renew any policies of automobile insurance on or after October 1, 1992. The plan shall provide:

(1) The applicable levels of coverage available through the facility;

(2) That the premiums payable on policies issued by the facility shall be based on rates applicable to persons insured by the New Jersey Automobile Full Insurance Underwriting Association on September 30, 1990 but shall not incorporate the rates applicable under section 25 of P.L.1983, c.65 (C.17:30E-13) and section 22 of P.L.1988, c.119 (C.17:30E-13.1). However, the applicable rates for those insureds who do not qualify as eligible persons as provided in section 25 of [this 1990 amendatory and supplementary act] <u>P.L.1990, c.8 (C.17:33B-13)</u> shall be those set by the plan for the provision of automobile insurance established pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1);

(3) Procedures for the filing and approval of changes in rates applicable to policies issued or renewed by the facility;

(4) For the issuance and renewal of automobile insurance through servicing carriers under contract with the New Jersey Automobile Full Insurance Underwriting Association pursuant to the provisions of section 24 of P.L.1983, c.65 (C.17:30E-12), utilizing, at the discretion of the commissioner, the staff of the association;

(5) Procedures for the depopulation of the facility which shall provide that: on or after April 1, 1991 no more than 29% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility and the New Jersey Automobile Full Insurance Underwriting Association created by P.L.1983, c.65 (C.17:30E-1 et seq.); on or after October 1, 1991 no more than 20% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility; on or after April 1, 1992 no more than 10% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility; and on or after October 1, 1992, 0% of the aggregate number of private passenger non-fleet exposures written in this State shall be written by the facility. In establishing the quotas set forth above, the plan shall prescribe the number of voluntary market exposures which shall be written during each six-month period set forth in this paragraph in a manner consistent with the apportionment procedure established pursuant to subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14). In the event that any of the quotas established pursuant to this paragraph have not

been met by the end of the applicable period, the commissioner shall direct the facility to assign the balance of the exposures needed to meet the applicable quota to member companies pursuant to the apportionment procedure. A member company which exceeds its apportionment share for any six-month period set forth in this paragraph shall receive credit for the excess against the following period's obligation. The commissioner may excuse a member company from meeting its obligations under the depopulation procedures if he determines that the company would be placed in an unsafe or unsound condition. [1][Exposures assigned to member companies in accordance with this paragraph (5) as a result of the failure of the member company to meet an applicable quota shall be written through the Market Transition Facility producer of record, notwithstanding the fact that the facility producer of record is not a voluntary market producer of the member company assigned that exposure. In such case, the facility producer of record shall retain complete control, possession and ownership of all records and renewals regarding the exposures written pursuant to this paragraph (5). The member company shall not use any such records, nor information it obtains in the normal course of business, to solicit direct renewal of the exposures, other insurance or any other products. The facility producer of record shall be paid a commission by the member company on the exposures written by the member company through the facility producer of record, and on all renewals thereof, at the same rate and on the same terms as the member company pays commissions on similar coverage to its voluntary market producers. If a member company provides its voluntary market producers with support services or other benefits in addition to a commission, and such support services or other benefits are not provided to the facility producer of record, the commission paid to the facility producer of record shall be increased to make it equivalent to the value of the combination of commission and support services or other benefits paid or provided by the member company to its voluntary market producers. If the member company uses more than one commission schedule, rate or formula or provides different types of support services or other benefits to its voluntary market producers, it shall negotiate in good faith with the facility producer of record so that the commission and support services and other benefits, if any, provided to the facility producer of record are equivalent to that provided by the member company to its voluntary market producers for similar coverage. If a member company engages in the direct writing of exposures and neither it nor any affiliate has a commission schedule, rate or formula for the voluntary market, it shall pay the facility producer of record a commission equivalent to the portion of the premium charged by the member company on voluntary market coverage that relates to its expenses for direct marketing, acquisition, servicing and related support staff, provided, however, that the commission shall be at least substantially equivalent to that paid by member companies that use commission schedules, rates or formulas. Notwithstanding any provision of this paragraph (5) to the contrary, if the member company uses premium rates of the Market Transition Facility for voluntary market exposures written through the facility producer of record, the commission paid to the facility producer of record shall be no less than that provided by the Market Transition Facility for such coverage] When an exposure is assigned to a member company under this paragraph as a result of the failure of the member company to meet an applicable quota, but only in such circumstances, the following shall apply:

(a) When an assigned exposure is written by the member company assigned the exposure, the facility producer of record shall have the right to service that business, which shall include all renewals thereof, and shall be entitled to a commission for that service in accordance with subparagraph (c) of this paragraph;

(b) The facility producer of record shall retain [2]complete[2] control [2][and] ,[2] possession [2]and ownership[2] of all records and [2][the right and entitlement to][2] renewals regarding exposures assigned pursuant to this paragraph, provided, however, that the member company may maintain such records as are provided to it under the procedure established by subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14). A member company that acquires access to records pursuant to that subsection shall not share any such records with any other producer or use any such records to solicit direct renewal of the business, a change in producer of record, other insurance products or any other products;

(c) The facility producer of record shall be paid a commission by the member company on the business serviced by the facility producer of record pursuant to this paragraph. That commission shall be paid at a percentage rate no less than that being paid by the Market Transition Facility on July 1, 1991;

(d) A copy of every notice, other than bills, and including renewal declarations, change endorsements, cancellations and reinstatements, and the corresponding payment schedules included therein, correspondence, claims checks and acknowledgements, sent to an insured by a member company with respect to business covered by this paragraph, shall be sent to the facility producer of record;

(e) The procedure established in subparagraphs (a), (b), (c), (d), (e) and (f) of this paragraph shall be applicable only to exposures assigned to member companies in accordance with this paragraph as a result of the failure by the member company to meet an applicable quota [2][and shall not apply beyond three years after the enactment date of this 1991 amendatory act][2]. This paragraph shall not constitute the grant of an agency contract by

<u>the member company to the facility producer of record authorizing the facility producer of record to write new business through the member company; provided, however, that the facility producer of record shall have the authority to provide the usual and customary servicing of the business subject to this paragraph, including adding new and replacement vehicles and adding or changing coverages on the business; and</u>

<u>(f) Nothing in the paragraph shall deprive an insured of the right to designate a producer of record other than the facility producer of record. Upon that designation, the rights of the facility producer of record under this paragraph shall terminate. Notwithstanding any provision in this paragraph, the rights of the facility producer of record under this paragraph shall terminate in the event of the producer's insolvency, gross and willful misconduct, fraud or license revocation</u>[1];

(6) A schedule for the payment of premiums on an installment basis. Any installment payment schedule for policies issued for a one year period shall provide for installment payments during a period of not less than nine months;

(7) That no policy issued by the facility may be cancelled for nonpayment of premium unless written notice is provided at least 15 days prior to the effective date of cancellation accompanied by the reason for cancellation. Notice shall be provided to the named insured and the producer of record at their last known addresses;

(8) Provide for notification of the named insured and the producer of record at their last known addresses no later than 15 days after the nonrenewal of a facility policy of such nonrenewal; and

(9) Such other provisions as are deemed necessary for the operation of the facility.

d. The commissioner shall apportion any profits or losses of the facility among member companies based on each company's apportionment share as determined for purposes of depopulation pursuant to subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14).

e. The facility shall be subject to the provisions of P.L.1945, c.132 (C.54:18A-1 et seq.).

(cf: P.L.1990, c.8, s.88)

3. This act shall take effect immediately and shall be retroactive to March 12, 1990.

INSURANCE

Provides that producers of record must be used for automobile insurance coverage assigned to voluntary market insurers under depopulation plans.

shall be at least substantially equivalent to that paid by member companies that use commission schedules, rates or formulas. Notwithstanding any provision of this paragraph (5) to the contrary, if the member company uses premium rates of the Market Transition Facility for voluntary market exposures written through the facility producer of record, the commission paid to the facility producer of record shall be no less than that provided by the Market Transition Facility for such coverage;

(6) A schedule for the payment of premiums on an installment basis. Any installment payment schedule for policies issued for a one year period shall provide for installment payments during a period of not less than nine months;

(7) That no policy issued by the facility may be cancelled for nonpayment of premium unless written notice is provided at least 15 days prior to the effective date of cancellation accompanied by the reason for cancellation. Notice shall be provided to the named insured and the producer of record at their last known addresses;

(8) Provide for notification of the named insured and the producer of record at their last known addresses no later than 15 days after the nonrenewal of a facility policy of such nonrenewal; and

(9) Such other provisions as are deemed necessary for the operation of the facility.

d. The commissioner shall apportion any profits or losses of the facility among member companies based on each company's apportionment share as determined for purposes of depopulation pursuant to subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14).

e. The facility shall be subject to the provisions of P.L.1945, c.132 (C.54:18A-1 et seq.).

(cf: P.L.1990, c.8, s.88)

3. This act shall take effect immediately and shall be retroactive to March 12, 1990.

STATEMENT

This bill provides that the insurance for automobiles that are assigned pursuant to an order of the Commissioner of Insurance from the New Jersey Automobile Full Insurance Underwriting Association (JUA) and the Market Transition Facility to automobile insurers which failed to meet their depopulation quotas shall continue to be serviced by the producers of record and those producers shall be paid the commissions established by the bill. The provisions of the bill are retroactive to March 12, 1990, the effective date of the "Fair Automobile Insurance Reform Act of 1990."

INSURANCE

Provides that producers of record must be used for automobile insurance coverage assigned to voluntary market insurers under depopulation plans.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3577

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 1991

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate Bill No. 3577.

This bill concerns the implementation of the depopulation plans of the New Jersey Automobile Full Insurance Underwriting Association (JUA) and the Market Transition Facility (MTF). It provides that any automobile insurer which is assigned exposures as a result of the insurer's failure to meet an applicable quota under either depopulation plan must write those assigned exposures through the producer of record of the JUA or MTF, as applicable.

The bill provides that the producer of record is to retain control and possession of all records and the right and entitlement to renewals of such exposures and prohibits the insurer from sharing any such records that it obtains through the JUA or MTF with any other producer or using any such records to solicit direct renewal of the exposures, a change in producer of record, other insurance or any other products.

The producer of record is to be paid a commission by the insurer on all policies and renewals at a rate not less than that being paid by the Market Transition Facility on July 1, 1991. The insurer is required to send to the producer of record a copy of every notice, other than bills, sent to an insured by the insurer.

The requirements of this bill do not constitute the grant of any agency contract by the insurer. However, the producer of record shall have the authority to provide the usual and customary servicing of business subject to this bill including adding new and replacement vehicles and adding or changing coverages on the business.

The bill provides that an insured may designate a producer of record other than the association or facility producer of record.

The provisions of the bill are to be retroactive to March 12, 1990, the effective date of the "Fair Automobile Insurance Reform Act of 1990," and shall not apply beyond three years following the enactment date of the bill.