

17:33B-1 et al

LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 1990 CHAPTER: 8
NJSA: 17:33B-1 et al ("Fair Automobile Insurance Reform Act")
BILL NO: A1 (Substituted for S2295-1R)

SPONSOR(S): Doria and others

DATE INTRODUCED: February 5, 1990

COMMITTEE: ASSEMBLY: Appropriations
SENATE: —

AMENDED DURING PASSAGE: Yes (1R approved)

DATE OF PASSAGE: ASSEMBLY: March 5, 1990
SENATE: March 8, 1990

DATE OF APPROVAL: March 12, 1990

FOLLOWING ARE ATTACHED IF AVAILABLE:

SPONSORS' STATEMENT:	Yes	
COMMITTEE STATEMENT:	ASSEMBLY: Yes	Includes a Minority Statement (p.9)
	SENATE: No	
FISCAL NOTE:	Yes	
MESSAGE ON SIGNING:	No	

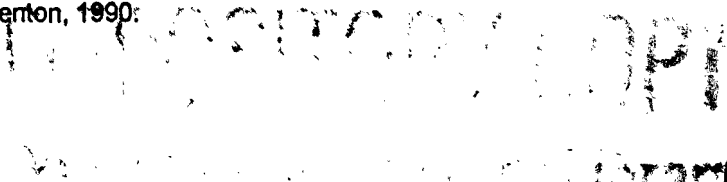
FOLLOWING WERE PRINTED:

REPORTS:	Yes	
HEARINGS:	No	February 1990 hearings not transcribed

Governor's Insurance reform plan outlined in:
974.901 New Jersey. Office of the Governor.
G52 [Messages...James Florio] Remarks of Governor Jim Florio; Joint Session of the Legislature; Re: Car Insurance...January 22, 1990. (copy enclosed)

For report on existing law see:
974.90 New Jersey. Automobile Insurance Reform Study Commission.
A939 Report...January 8, 1990. Trenton, 1990.
1990

[continued]



974.90
A939
1992

New Jersey Dept. of Insurance
New Jersey's mandatory motor vehicle liability
insurance system: report February, 1992. Trenton, 1992

Newspaper clippings enclosed:

"Hearings open on car insurance plan," 2-8-90, The Press [Atlantic City].

"Florio insurance plan blasted at public hearing," 2-14-90, Courier-Post [Camden].

"Florio insurance plan gains," 2-27-90, The Record [Bergen County].

"Auto insurance bill given some polish," 2-27-90, Asbury Park Press.

"Auto insurance reform bill likely to pass despite foes," 2-27-90, The Press [Atlantic City].

"Insurance reform takes big step in legislature," 2-27-90, Star-Ledger [Newark].

"Florio signs insurance bill," 3-13-90, Home News [New Brunswick].

"Florio's auto insurance plan in effect," 3-13-90, Asbury Park Press.

"N.J. gets new law on insurance," 3-13-90, Philadelphia Inquirer.

P.L.1990. CHAPTER 8. *approved March 12, 1990*
1990 Assembly No. 1 (*First Reprint*)

1 AN ACT to reform the motor vehicle insurance system in this
2 State, providing for the financial integrity of that system
3 through the raising of certain revenues and the creation of
4 certain funding mechanisms ¹, providing a dedicated source of
5 revenues to partially fund the operations of the Department of
6 Insurance¹ and revising parts of statutory law.

7
8 BE IT ENACTED *by the Senate and General Assembly of the*
9 *State of New Jersey:*

10 C.17:33B-1

11 1. (New section) This act shall be known and may be cited as
12 the "Fair Automobile Insurance Reform Act of 1990."

13 C.17:33B-2

14 2. (New section) The Legislature finds and declares that:

15 a. For almost two decades the system of motor vehicle
16 insurance in this State has been the subject of examination,
17 reform, review and revision in all three branches of government.

18 b. The common public purpose throughout this period has been
19 to provide to the motorists of this State a comprehensive
20 program of indemnification from the injuries and damages that
21 may arise out of the ownership or operation of motor vehicles
22 that is equitable, efficient and economical.

23 c. As various legislative or executive initiatives were taken in
24 pursuit of this public purpose, the insurance industry itself, and
25 the businesses and professions that provide goods and services to
26 those involved in motor vehicle accidents, were at the same time
27 altering the way in which they conducted their businesses to
28 respond to a changing business and regulatory climate to ensure
29 that they continued to benefit.

30 d. It has become increasingly obvious to the Legislature and
31 the public that, as a result, one of the principal goals of this
32 common purpose has not been attained: economy. Not only has
33 the cost of the insurance product itself escalated, but the
34 subsidies that most drivers contribute to support the
35 financially-troubled New Jersey Automobile Full Insurance

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 Assembly AAP committee amendments adopted March 1, 1990.

1 Underwriting Association have made the system a burden, rather
2 than a benefit, to the citizens of the State.

3 e. The current law developed through legislative initiative,
4 executive administration and judicial interpretation for: (1) the
5 underwriting and rating of motor vehicle insurance; (2) the
6 apportionment of drivers between a voluntary and residual
7 market based on their characterization as "good" or "bad"
8 drivers; (3) the provision of health care services and motor
9 vehicle repair; (4) the payment of claims and protection of the
10 rights and remedies of those injured or damaged; and (5) the
11 regulation and financing of this system, and its many aspects, is
12 cumbersome, complex, and confusing and allows for and
13 encourages inefficiency, waste, mismanagement and the potential
14 for misuse of public and private moneys.

15 f. As a result of this experience, the Legislature finds that it
16 is necessary to address the myriad aspects and issues of this
17 complicated and interrelated system, not through piecemeal
18 adjustment of various statutory or regulatory provisions, but
19 through a logical, comprehensive and complete revision of the
20 various laws and regulatory schemes that impact, in whatever
21 fashion, on the system and its participants.

22 g. ¹To provide a healthy and competitive automobile insurance
23 system in this State, automobile insurers are entitled to earn an
24 adequate rate of return through the ratemaking process.

25 h.¹ To that end, the Legislature declares that it is in the
26 public interest to:

27 (1) revise the basic options and coverages available under
28 automobile insurance policies, including the option to make one's
29 health insurance the primary source for payment of medical and
30 hospital expenses;

31 (2) eliminate, over time, the current residual market
32 mechanism, the New Jersey Automobile Full Insurance
33 Underwriting Association, and certain of the market subsidies
34 currently funding its losses;

35 (3) provide, through the appointment of an insolvency trustee,
36 for the orderly evaluation, prioritization and satisfaction of
37 obligations payable on behalf of the association;

38 (4) provide, through assessments on property-casualty insurers,
39 a surtax on the premium taxes of automobile insurers, temporary
40 assessments for the privilege of practicing certain professions
41 and occupations, temporary and minimal increases in certain
42 motor vehicle registration fees, as well as continuation of merit
43 rating surcharges, for the funding of the debts and obligations of
44 the association;

45 (5) create a new residual market mechanism in which insurers
46 will share directly in the risk of insuring the "bad driver;"

47 (6) guarantee that "good drivers" secure motor vehicle
48 insurance coverage in the voluntary market and control the
49 apportionment of drivers in the residual market;

1 (7) eliminate anti-competitive aspects of the current rating
2 laws as they apply to automobile insurers and completely
3 eliminate combinations among automobile insurers for
4 rate-making purposes;

5 (8) promote the efficient handling of claims and the
6 elimination of fraud and other deceptive practices; and

7 (9) promote the participation of the insurance consumer in
8 reducing losses through the installation and use of anti-theft
9 devices, the successful completion of defensive driving courses,
10 and similar activities.

11 3. Section 3 of P.L.1972, c.70 (C.39:6A-3) is amended to read
12 as follows:

13 3. Compulsory automobile insurance coverage; limits. Every
14 owner or registered owner of an automobile registered or
15 principally garaged in this State shall maintain automobile
16 liability insurance coverage, under provisions approved by the
17 Commissioner of Insurance, insuring against loss resulting from
18 liability imposed by law for bodily injury, death and property
19 damage sustained by any person arising out of the ownership,
20 maintenance, operation or use of an automobile wherein such
21 coverage shall be at least in:

22 a. an amount or limit of \$15,000.00, exclusive of interest and
23 costs, on account of injury to, or death of, one person, in any one
24 accident; and

25 b. an amount or limit, subject to such limit for any one person
26 so injured or killed, of \$30,000.00, exclusive of interest and costs,
27 on account of injury to or death of, more than one person, in any
28 one accident; and

29 c. an amount or limit of \$5,000.00, exclusive of interest and
30 costs, for damage to property in any one accident.

31 No licensed insurance carrier shall refuse to renew the required
32 coverage stipulated by this act of an eligible person as defined in
33 section 25 of P.L. , c. (C.)(now pending in the
34 Legislature as this bill) except in accordance with the provisions
35 of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with the
36 consent of the Commissioner of Insurance.

37 (cf: P.L.1988, c.119, s.9)

38 4. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended to read
39 as follows:

40 4. Personal injury protection coverage, regardless of fault.

41 Every automobile liability insurance policy, issued or renewed
42 on or after January 1, 1991, insuring an automobile as defined in
43 [this act] section 2 of P.L.1972, c.70 (C.39:6A-2) against loss
44 resulting from liability imposed by law for bodily injury, death
45 and property damage sustained by any person arising out of
46 ownership, operation, maintenance or use of an automobile shall
47 provide personal injury protection coverage, as defined
48 hereinbelow, under provisions approved by the Commissioner of
49 Insurance, for the payment of benefits without regard to

1 negligence, liability or fault of any kind, to the named insured
 2 and members of his family residing in his household who sustained
 3 bodily injury as a result of an accident while occupying, entering
 4 into, alighting from or using an automobile, or as a pedestrian,
 5 caused by an automobile or by an object propelled by or from an
 6 automobile, to other persons sustaining bodily injury while
 7 occupying, entering into, alighting from or using the automobile
 8 of the named insured, with the permission of the named insured,
 9 and to pedestrians, sustaining bodily injury caused by the named
 10 insured's automobile or struck by an object propelled by or from
 11 such automobile.

12 "Personal injury protection coverage" means and includes:

13 a. Medical expense benefits. Payment of [all reasonable]
 14 ¹reasonable¹ medical expenses [incurred as a result of personal
 15 injury sustained in an automobile accident. In the event of death,
 16 payments shall be made to the estate of the decedent. In the
 17 event benefits paid by an insurer pursuant to this subsection are
 18 in excess of \$75,000.00 on account of personal injury to any one
 19 person in any one accident, such excess shall be paid by the
 20 insurer in consultation with the Unsatisfied Claim and Judgment
 21 Fund Board and shall be reimbursable to the insurer from the
 22 Unsatisfied Claim and Judgment Fund pursuant to section 2 of
 23 P.L.1977, c.310 (C.39:6-73.1)] in an amount not to exceed
 24 1[\$75,000] \$250,000¹ per person per accident. ¹In the event
 25 benefits paid by an insurer pursuant to this subsection are in
 26 excess of \$75,000 on account of personal injury to any one person
 27 in any one accident, such excess shall be paid by the insurer in
 28 consultation with the Unsatisfied Claim and Judgment Fund
 29 Board and shall be reimbursable to the insurer from the
 30 Unsatisfied Claim and Judgment Fund pursuant to section 2 of
 31 P.L.1977, c.310 (C.39:6-73.1).¹

32 b. Income continuation benefits. The payment of the loss of
 33 income of an income producer as a result of bodily injury
 34 disability, subject to a maximum weekly payment of \$100.00.
 35 Such sum shall be payable during the life of the injured person
 36 and shall be subject to an amount or limit of \$5,200.00, on
 37 account of injury to any one person in any one accident, except
 38 that in no case shall income continuation benefits exceed the net
 39 income normally earned during the period in which the benefits
 40 are payable.

41 c. Essential services benefits. Payment of essential services
 42 benefits to an injured person shall be made in reimbursement of
 43 necessary and reasonable expenses incurred for such substitute
 44 essential services ordinarily performed by the injured person for
 45 himself, his family and members of the family residing in the
 46 household, subject to an amount or limit of \$12.00 per day. Such
 47 benefits shall be payable during the life of the injured person and
 48 shall be subject to an amount or limit of \$4,380.00, on account of
 49 injury to any one person in any one accident.

1 d. Death benefits. In the event of the death of an income
2 producer as a result of injuries sustained in an accident entitling
3 such person to benefits under this section, the maximum amount
4 of benefits which could have been paid to the income producer,
5 but for his death, under subsection b. of this section shall be paid
6 to the surviving spouse, or in the event there is no surviving
7 spouse, then to the surviving children, and in the event there are
8 no surviving spouse or surviving children, then to the estate of
9 the income producer.

10 In the event of the death of one performing essential services
11 as a result of injuries sustained in an accident entitling such
12 person to benefits under subsection c. of this section, the
13 maximum amount of benefits which could have been paid such
14 person, under subsection c., shall be paid to the person incurring
15 the expense of providing such essential services.

16 e. Funeral expenses benefits. All reasonable funeral, burial
17 and cremation expenses, subject to a maximum benefit of
18 \$1,000.00, on account of the death [to] of any one person in any
19 one accident shall be payable to decedent's estate.

20 Benefits payable under this section shall:

21 (1) Be subject to any [deductibles or exclusions] option elected
22 by the policyholder pursuant to section 13 of P.L.1983, c.362
23 (C.39:6A-4.3);

24 (2) Not be assignable, except to a provider of service benefits
25 under this section, nor subject to levy, execution, attachment or
26 other process for satisfaction of debts.

27 Medical expense benefit payments shall be subject to a
28 deductible of \$250.00 on account of injury in any one accident
29 and a copayment of 20% of any benefits payable between \$250.00
30 and \$5,000.00.

31 No insurer or health provider providing benefits to an insured
32 shall have a right of subrogation for the amount of benefits paid
33 pursuant to any deductible or copayment under this section.

34 (cf: P.L.1988, c.119, s.3)

35 5. Section 12 of P.L.1983, c.362 (C.39:6A-4.2) is amended to
36 read as follows:

37 12. Primacy of coverages. [The] Except as provided in
38 subsection d. of section 13 of P.L.1983, c.362 (C.39:6A-4.3), the
39 personal injury protection coverage of the named insured shall be
40 the primary coverage for the named insured and any resident
41 relative in the named insured's household who is not a named
42 insured under an automobile insurance policy of his own. No
43 person shall recover personal injury protection benefits under
44 more than one automobile insurance policy for injuries sustained
45 in any one accident.

46 (cf: P.L.1983, c.362, s.12)

47 6. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to
48 read as follows:

49 13. Personal injury protection coverage [deductibles and

1 exclusions] options. With respect to personal injury protection
2 coverage provided on an automobile in accordance with section 4
3 ¹[or 10]¹ of P.L.1972, c.70 (C.39:6A-4 ¹[or 39:6A-10]¹), the
4 automobile insurer shall [, at appropriately reduced premiums.]
5 provide the following coverage options:

6 a. Medical expense benefit deductibles in amounts of \$500.00,
7 \$1,000.00 and \$2,500.00 for any one accident;

8 b. The option to exclude all benefits offered under subsections
9 b., c., d., and e. of section 4;

10 c. (Deleted by amendment, P.L.1988, c.119.)

11 d. For policies issued or renewed on or after January 1, 1991,
12 the option that other health insurance coverage or benefits of the
13 insured, including ¹health care services provided by a health
14 maintenance organization and¹ any coverage or benefits provided
15 under any federal or State program, are the primary coverage in
16 regard to medical expense benefits pursuant to section 4 ¹[or
17 10]¹ of P.L.1972, c.70 (C.39:6A-4 ¹[or 39:6A-10]¹). ¹If health
18 insurance coverage or benefits are primary, an automobile insurer
19 providing medical expense benefits under personal injury
20 protection coverage shall be liable for reasonable medical
21 expenses not covered by the health insurance coverage or
22 benefits up to the limit of the medical expense benefit coverage.
23 The principles of coordination of benefits shall apply to personal
24 injury protection medical expense benefits coverage pursuant to
25 this subsection.¹

26 Insurers shall offer the options provided by subsections a. and
27 b. of this section at appropriately reduced premiums. For
28 policies issued or renewed prior to January 1, 1992, insurers shall
29 offer the option provided by subsection d. of this section at a
30 discount of not less than 25% from the base rate applicable to the
31 first ¹[\$75,000] ¹\$250,000¹ of medical expense benefit coverage,
32 and for policies issued or renewed on or after January 1, 1992,
33 insurers shall offer the option at an appropriate discount from the
34 base rate for the amount of medical expense benefit coverage
35 taken.

36 Any named insured who chooses the option provided by
37 subsection d. of this section shall provide proof that he and
38 members of his family residing in his household are covered by
39 health insurance coverage or benefits in a manner and to an
40 extent approved by the commissioner. ¹Nothing in this section
41 shall be construed to require a health insurer, health maintenance
42 organization or governmental agency to cover individuals or
43 treatment which is not normally covered under the applicable
44 benefit contract or plan.¹ If it is determined that an insured who
45 selected or is otherwise covered by the option provided in
46 subsection d. of this section did not have such health
47 ¹[insurance]¹ coverage in effect at the time of an accident,
48 medical expense benefits shall be payable by the person's
49 automobile insurer and shall be subject to ¹[a deductible in an

1 amount of \$750 for any one accident and) any deductible required
2 by law or otherwise selected as an option pursuant to subsection
3 a. of this section,¹ any copayment required by law ¹and an
4 additional deductible in the amount of \$750¹.

5 [A deductible or exclusion] An option elected by the named
6 insured in accordance with this section shall apply only to the
7 named insured and any resident relative in the named insured's
8 household who is not a named insured under another automobile
9 insurance policy, and not to any other person eligible for personal
10 injury protection benefits [required to be provided] ¹required to
11 be provided¹ in accordance with section 4 ¹[or 10]¹ of P.L.1972,
12 c.70 (C.39:6A-4 ¹[or 39:6A-10]¹).

13 In the case of a medical expense benefit deductible, the
14 deductible elected by the named insured shall be satisfied for any
15 one accident, whether the medical expense benefits are paid or
16 provided, in the amount of the deductible, to the named insured
17 or to one or more resident relatives in the named insured's
18 household who are not named insureds under another insurance
19 policy, or to any combination thereof.

20 Medical expense benefits payable in any amount between the
21 deductible selected pursuant to subsection a. of this section and
22 \$5,000.00 shall be subject to a copayment of 20%.

23 No insurer or health provider providing benefits to an insured
24 who has elected a deductible pursuant to subsection a. of this
25 section shall have a right of subrogation for the amount of
26 benefits paid pursuant to a deductible elected thereunder or any
27 applicable copayment.

28 The Commissioner of Insurance shall adopt rules and
29 regulations to effectuate the purposes of this section ¹and may
30 promulgate standards applicable to the coordination of personal
31 injury protection medical expense benefits coverage.¹

32 (cf: P.L.1988, c.119, s.38)

33 7. Section 10 of P.L.1988, c.119 (C.39:6A-4.6) is amended to
34 read as follows:

35 10. The Commissioner of Insurance shall, within 90 days after
36 the effective date of [this 1988 amendatory and supplementary
37 act] P.L. c. (C.) [now pending in the Legislature as
38 this bill], promulgate medical fee schedules on a regional basis
39 for the reimbursement of health care providers providing services
40 or equipment for medical expense benefits for which payment is
41 [required] to be made by an automobile insurer under ¹[the]¹
42 personal injury protection coverage ¹[provided for in [section]
43 sections 4 and 10 of] pursuant to¹ P.L.1972, c.70 ¹[(C.39:6A-4
44 and 39:6A-10)] (C.39:6A-1 et seq.)¹. These fee schedules shall be
45 promulgated on the basis of the type of service provided, and
46 shall incorporate the reasonable and prevailing fees of 75% of the
47 practitioners within the region. If, in the case of a specialist
48 provider, there are fewer than 50 specialists within a region, the
49 fee schedule shall incorporate the reasonable and prevailing fees

1 of the specialist providers on a Statewide basis. These schedules
2 shall be reviewed biannually by the commissioner.

3 No health care provider may demand or request any payment
4 from any person in excess of those permitted by the medical fee
5 schedules established pursuant to this section, nor shall any
6 person be liable to any health care provider for any amount of
7 money which results from the charging of fees in excess of those
8 permitted by the medical fee schedules established pursuant to
9 this section.

10 (cf: P.L.1988, c.156, s.4)

11 8. Section 5 of P.L.1972, c.70 (C.39:6A-5) is amended to read
12 as follows:

13 5. Payment of personal injury protection coverage benefits.

14 a. An insurer may require written notice to be given as soon as
15 practicable after an accident involving an automobile with
16 respect to which the policy affords personal injury protection
17 coverage benefits [required by] pursuant to this act.

18 b. Personal injury protection coverage benefits shall be
19 overdue if not paid within [30] 60 days after the insurer is
20 furnished written notice of the fact of a covered loss and of the
21 amount of same. If such written notice is not furnished to the
22 insurer as to the entire claim, any partial amount supported by
23 written notice is overdue if not paid within [30] 60 days after
24 such written notice is furnished to the insurer. Any part or all of
25 the remainder of the claim that is subsequently supported by
26 written notice is overdue if not paid within [30] 60 days after
27 such written notice is furnished to the insurer; provided, however,
28 that any payment shall not be deemed overdue where, within [30]
29 60 days of receipt of notice of the claim, the insurer notifies the
30 claimant or his representative in writing of the denial of the
31 claim or the need for additional time, not to exceed 45 days, to
32 investigate the claim, and states the reasons therefor. The
33 written notice stating the need for additional time to investigate
34 the claim shall set forth the number of the insurance policy
35 against which the claim is made, the claim number, the address
36 of the office handling the claim and a telephone number, which is
37 toll free or can be called collect, or is within the claimant's area
38 code. For the purpose of determining interest charges in the
39 event the injured party prevails in a subsequent proceeding where
40 an insurer has elected a 45 day extension pursuant to this
41 subsection, payment shall be considered overdue at the expiration
42 of the 45 day period or, if the injured person was required to
43 provide additional information to the insurer, within 10 business
44 days following receipt by the insurer of all the information
45 requested by it, whichever is later.

46 For the purpose of calculating the extent to which any benefits
47 are overdue, payment shall be treated as being made on the date
48 a draft or other valid instrument which is equivalent to payment
49 was placed in the United States mail in a properly addressed,

1 postpaid envelope or, if not so posted, on the date of delivery.

2 c. All overdue payments shall bear interest at the percentage
3 of interest prescribed in the Rules Governing the Courts of the
4 State of New Jersey for judgments, awards and orders for the
5 payment of money. All automobile insurers shall provide any
6 claimant with the option of submitting a dispute under this
7 section to binding arbitration. Arbitration proceedings shall be
8 administered and subject to procedures established by the
9 American Arbitration Association. If the claimant prevails in the
10 arbitration proceedings, the insurer shall pay all the costs of the
11 proceedings, including reasonable attorney's fees, to be
12 determined in accordance with a schedule of hourly rates for
13 services performed, to be prescribed by the Supreme Court of
14 New Jersey.

15 (cf: P.L.1983, c.362, s.8)

16 9. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read
17 as follows:

18 8. Tort exemption; limitation on the right to noneconomic loss.

19 One of the following two tort options shall be elected, in
20 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by
21 any named insured required to maintain personal injury protection
22 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4):

23 a. Every owner, registrant, operator or occupant of an
24 automobile to which section 4 ¹[or 10]¹ of P.L.1972, c.70
25 (C.39:6A-4 ¹[or 39:6A-10]¹), personal injury protection coverage,
26 regardless of fault, applies, and every person or organization
27 legally responsible for his acts or omissions, is hereby exempted
28 from tort liability for noneconomic loss to a person who is subject
29 to this subsection and who is either a person who is required to
30 maintain the coverage mandated by this act, or is a person who
31 has a right to receive benefits under section 4 ¹[or 10]¹ of
32 P.L.1972, c.70 (C.39:6A-4 ¹[or 39:6A-10]¹), as a result of bodily
33 injury, arising out of the ownership, operation, maintenance or
34 use of such automobile in this State, unless that person has
35 sustained a personal injury which results in death;
36 dismemberment; significant disfigurement; a fracture; loss of a
37 fetus; permanent loss of use of a body organ, member, function or
38 system; permanent consequential limitation of use of a body
39 organ or member; significant limitation of use of a body function
40 or system; or a medically determined injury or impairment of a
41 non-permanent nature which prevents the injured person from
42 performing substantially all of the material acts which constitute
43 that person's usual and customary daily activities for not less
44 than 90 days during the 180 days immediately following the
45 occurrence of the injury or impairment; or

46 b. As an alternative to the basic tort option specified in
47 subsection a. of this section, every owner, registrant, operator, or
48 occupant of an automobile to which section 4 ¹[or 10]¹ of
49 P.L.1972, c.70 (C.39:6A-4 ¹[or 39:6A-10]¹) applies, and every

1 person or organization legally responsible for his acts or
2 omissions, shall be liable for noneconomic loss to a person who is
3 subject to this subsection and who is either a person who is
4 required to maintain the coverage mandated by P.L.1972, c.70
5 (C.39:6A-1 et seq.) or is a person who has a right to receive
6 benefits under section 4 ¹[or 10]² of that act (C.39:6A-4 ¹[or
7 39:6A-10]¹), as a result of bodily injury, arising out of the
8 ownership, operation, maintenance or use of such automobile in
9 this State.

10 The tort option provisions of subsection [a.] b. of this section
11 shall also apply to the right to recover for noneconomic loss of
12 any person eligible for benefits pursuant to section 4 ¹[or 10]¹ of
13 P.L.1972, c.70 (C.39:6A-4 ¹[or 39:6A-10]¹) but who is not
14 required to maintain personal injury protection coverage and is
15 not an immediate family member, as defined in section 14.1 of
16 P.L.1983, c.362 (C.39:6A-8.1), under an automobile insurance
17 policy.

18 The tort option provisions of subsection a. of this section shall
19 also apply to any person subject to section 14 of P.L.1985, c.520
20 (C.39:6A-4.5).

21 The tort option provisions of subsections a. and b. of this
22 section as provided in this 1988 amendatory and supplementary
23 act shall apply to automobile insurance policies issued or renewed
24 on or after January 1, 1989 and as otherwise provided by law.
25 (cf: P.L.1988, c.119, s.6)

26 10. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to
27 read as follows:

28 20. An insurer ¹, health maintenance organization¹ or
29 governmental agency paying benefits pursuant to subsection a., b.
30 or d. of section 13 of P.L.1983, c.362 (C.39:6A-4.3) or personal
31 injury protection benefits in accordance with section 4 or section
32 10 of P.L.1972, c.70 (C.39:6A-4 or C.39:6A-10), as a result of an
33 accident occurring within this State, shall, within two years of
34 the filing of the claim, have the right to recover the amount of
35 payments from any tortfeasor who was not, at the time of the
36 accident, required to maintain personal injury protection or
37 medical expense benefits coverage, other than for pedestrians,
38 under the laws of this State, including personal injury protection
39 coverage required to be provided in accordance with section 18 of
40 P.L.1985, c.520 (C.17:28-1.4), or although required did not
41 maintain personal injury protection or medical expense benefits
42 coverage at the time of the accident. In the case of an accident
43 occurring in this State involving an insured tortfeasor, the
44 determination as to whether an insurer ¹, health maintenance
45 organization¹ or governmental agency is legally entitled to
46 recover the amount of payments and the amount of recovery,
47 including the costs of processing benefit claims and enforcing
48 rights granted under this section, shall be made against the
49 insurer of the tortfeasor, and shall be by agreement of the

1 involved [insurers] parties or, upon failing to agree, by arbitration.
2 (cf: P.L.1985, c.520, s.17)

3 11. Section 10 of P.L.1972, c.70 (C.39:6A-10) is amended to
4 read as follows:

5 10. Additional personal injury protection coverage. Insurers
6 shall make available to the named insured covered under section
7 4 of P.L.1972, c.70 (C.39:6A-4), and, at his option, to resident
8 relatives in the household of the named insured, suitable
9 additional first party coverage for income continuation benefits,
10 essential services benefits, death benefits and funeral expense
11 benefits, but the income continuation and essential services
12 benefits shall cease upon the death of the claimant, and shall not
13 operate to increase the amount of any death benefits payable
14 under section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional
15 first party coverage shall be payable only to the extent that the
16 claimant establishes that the amount of loss sustained exceeds
17 the coverage specified in section 4 of P.L.1972, c.70
18 (C.39:6A-4). Insurers ¹[shall] may¹ also make available to named
19 insureds covered under section 4 of P.L.1972, c.70 (C.39:6A-4),
20 and, at ¹[his] their¹ option, to resident relatives in the household
21 of the named insured or to other persons provided medical
22 expense coverage pursuant to section 4 of P.L.1972, c.70
23 (C.39:6A-4), or both, additional first party medical expense
24 benefit coverage. ¹[The additional medical expense benefits
25 coverage required to be offered by insurers pursuant to this
26 section shall be offered in accordance with increments of
27 additional medical expense benefit coverage determined by the
28 commissioner, which shall include an option which provides for
29 the payment of all reasonable medical expenses incurred as a
30 result of personal injury sustained in an automobile accident.]¹
31 The additional coverage shall be offered by the insurer at least
32 annually [on a form prescribed by the Commissioner of Insurance,
33 which shall be attached to or accompany all applications, initial
34 policies and renewal policies or renewal notices] as part of the
35 coverage selection form required by section 17 of P.L.1983, c.362
36 (C.39:6A-23). Income continuation in excess of that provided for
37 in section 4 must be provided as an option by insurers for
38 disabilities, as long as the disability persists, up to an income
39 level of \$35,000.00 per year, provided that a. the excess between
40 \$5,200.00 and the amount of coverage contracted for shall be
41 written on the basis of 75% of said difference, and b. regardless
42 of the duration of the disability, the benefits payable shall not
43 exceed the total maximum amount of income continuation
44 benefits contracted for. Death benefits provided pursuant to this
45 section shall be payable without regard to the period of time
46 elapsing between the date of the accident and the date of death,
47 if death occurs within two years of the accident and results from
48 bodily injury from that accident to which coverage under this
49 section applies. The Commissioner of Insurance is hereby

1 authorized and empowered to establish, by rule or regulation, the
2 amounts and terms of income continuation insurance to be
3 provided pursuant to this section.

4 (cf: P.L.1985, c.520, s.16)

5 12. Section 12 of P.L.1972, c.70 (C.39:6A-12) is amended to
6 read as follows:

7 12. Inadmissibility of evidence of losses collectible under
8 personal injury protection coverage. Except as may be required
9 in an action brought pursuant to section 20 of P.L.1983, c.362
10 (C.39:6A-9.1), evidence of the amounts collectible or paid
11 pursuant to sections 4 and 10 of P.L.1972, c.70
12 (C.39:6A-4 and 39:6A-10), to an injured person, including the
13 amounts of any deductibles, copayments or exclusions, including
14 exclusions pursuant to subsection d. of section 13 of P.L.1983,
15 c.362 (C.39:6A-4.3), otherwise compensated is inadmissible in a
16 civil action for recovery of damages for bodily injury by such
17 injured person.

18 The court shall instruct the jury that, in arriving at a verdict as
19 to the amount of the damages for noneconomic loss to be
20 recovered by the injured person, the jury shall not speculate as to
21 the amount of the medical expense benefits paid or payable by an
22 automobile insurer under ¹[section 4 or 10 of P.L.1972, c.70
23 (C.39:6A-4 or 39:6A-10)] personal injury protection coverage¹ to
24 the injured person, nor shall they speculate as to the amount of
25 benefits paid or payable by a health insurer ¹, health maintenance
26 organization¹ or governmental agency under subsection d. of
27 section 13 of P.L.1983, c.362 (C.39:6A-4.3).

28 Nothing in this section shall be construed to limit the right of
29 recovery, against the tortfeasor, of uncompensated economic loss
30 sustained by the injured party.

31 (cf: P.L.1988, c.119, s.44)

32 13. Section 17 of P.L.1983, c.362 (C.39:6A-23) is amended to
33 read as follows:

34 17. Written notice - buyer's guide and coverage selection
35 form.

36 a. No new automobile insurance policy shall be issued on or
37 after the 180th day following the effective date of P.L.1985,
38 c.520, unless the application for the policy is accompanied by a
39 written notice identifying and containing a buyer's guide and
40 coverage selection form. The buyer's guide shall contain a brief
41 description of all available policy coverages and benefit limits,
42 and shall identify which coverages are mandatory and which are
43 optional under State law, as well as all options offered by the
44 insurer.

45 The buyer's guide shall also contain a statement on the
46 possible coordination of other health benefit coverages with the
47 personal injury protection coverage options, the form and
48 contents of which shall be prescribed by the Commissioner of
49 Insurance.

1 The coverage selection form shall identify the range of
2 premium rate credit or dollar savings, or both, and shall provide
3 any other information required by the commissioner by regulation.

4 The applicant shall indicate the options elected on the
5 coverage selection form which shall be signed and returned to the
6 insurer.

7 b. (Deleted by amendment, P.L.1985, c.520.)

8 c. Any notice of renewal of an automobile insurance policy
9 with an effective date subsequent to July 1, 1984, shall be
10 accompanied by a written notice of all policy coverage
11 information required to be provided under subsection a. of this
12 section.

13 The Commissioner of Insurance shall, within 45 days following
14 the effective date of this act, promulgate standards for the
15 written notice and buyer's guide required to be provided under
16 this section.

17 d. Written notices provided by any insurer writing at least 2%
18 of the New Jersey private passenger automobile market,
19 including the New Jersey Automobile Full Insurance Underwriting
20 Association established pursuant to section 16 of P.L.1983, c.65
21 (C.17:30E-4), shall also contain a statement advising that if the
22 insured or applicant has any questions concerning his automobile
23 insurance policy, including questions as to coverage or premiums,
24 he may contact his producer, or the company directly, by using a
25 toll free number which shall be set forth in the notice. Written
26 notice shall be given to all insureds of any change in the toll free
27 number.

28 e. A properly completed and executed coverage selection form
29 shall be prima facie evidence of the named insured's knowing
30 election or rejection of any option.

31 f. Each named insured of an automobile insurance policy shall,
32 at least annually or as otherwise ordered by the commissioner,
33 receive a buyer's guide and coverage selection form.

34 1g. On and after January 1, 1991, each buyer's guide and
35 coverage selection form shall be written in plain language.¹

36 (cf. P.L.1988, c.119, s.35)

37 14. Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended to
38 read as follows:

39 2. ¹[a.]¹ In the event medical expense benefits paid by an
40 insurer, in accordance with subsection a. of section 4[a.] of
41 P.L.1972, c.70 (C.39:6A-4), are in excess of \$75,000.00 on
42 account of personal injury to any one person in any one accident,
43 the Unsatisfied Claim and Judgment Fund shall assume such
44 excess ¹up to \$250,000¹ and reimburse the insurer therefor in
45 accordance with rules and regulations promulgated by the
46 commissioner; provided, however, that this provision is not
47 intended to broaden the coverage available to accidents involving
48 uninsured or hit-and-run automobiles, to provide extraterritorial
49 coverage, or to pay excess medical expenses.

1 ¹[b. Notwithstanding the provisions of subsection a. of this
2 section, the provisions of subsection a. of this section shall only
3 be applicable to medical expense benefits paid by an insurer
4 pursuant to an automobile insurance policy issued or renewed
5 prior to January 1, 1991.]¹

6 (cf: P.L.1985, c.148, s.9)

7 15. Section 15 of P.L.1983, c.65 (C.17:30E-3) is amended to
8 read as follows:

9 15. As used in sections 13 to 34 of this act:

10 a. "Association" means the New Jersey Automobile Full
11 Insurance Underwriting Association.

12 b. "Automobile" means a private passenger automobile of a
13 private passenger or station wagon type that is owned or hired,
14 and is neither used as a public or livery conveyance for
15 passengers nor rented to others with a driver; a motor vehicle
16 with a pickup body, a delivery sedan, a van, or a panel truck or a
17 camper type vehicle used for recreational purposes, owned by an
18 individual or by husband and wife who are residents of the same
19 household, not customarily used in the occupation, profession or
20 business of the insured other than farming or ranching; and, solely
21 for the purposes of this act, a motorcycle, as defined in
22 R.S.39:1-1. An automobile owned by a farm family copartnership
23 or corporation, which is principally garaged on a farm or ranch
24 and otherwise meets the definition contained in this section, shall
25 be considered a private passenger automobile owned by two or
26 more relatives resident in the same household.

27 c. "Automobile insurance" means direct insurance against
28 injury or damage, including the legal liability therefor, arising out
29 of the ownership, operation, maintenance or use of automobiles,
30 including, but not limited to, personal injury protection insurance,
31 bodily injury liability insurance, property damage liability
32 insurance, physical damage insurance and uninsured and
33 underinsured motorist insurance.

34 d. "Board" or "board of directors" means the board of
35 directors of the association.

36 e. "Company" or "member" means an insurer member of the
37 association.

38 f. "Commissioner" means the Commissioner of Insurance.

39 g. "Director" means a member of the board of directors of the
40 New Jersey Automobile Full Insurance Underwriting Association.

41 h. "Net direct car years of liability exposure" means direct
42 bodily injury liability car years of exposure, after deducting
43 returns for cancellations, but without adding reinsurance assumed
44 or deducting reinsurance ceded, as determined by the board and
45 approved by the commissioner.

46 i. "Net direct car years of physical damage exposure" means
47 direct physical damage car years of exposure, after deducting
48 returns for cancellations, but without adding reinsurance assumed
49 or deducting reinsurance ceded, as determined by the board and

1 approved by the commissioner.

2 j. "Person" means every natural person.

3 k. "Plan of operation" means the plan of operation of the
4 association created pursuant to section 18 of this act.

5 l. "Producer" means an agent or broker licensed to transact
6 the business of automobile insurance in this State.

7 m. "Qualified applicant" means a person domiciled in New
8 Jersey who is an owner of an automobile registered, or to be
9 registered within 60 days of application, and principally garaged
10 in this State, who has been refused coverage in the voluntary
11 market, and who cannot be or is not placed in the voluntary
12 market through the procedures established pursuant to subsection
13 a. of section 26 of P.L.1983, c.65 (C.17:30E-14). Qualified
14 applicant shall also include a member of the United States
15 military forces, if otherwise eligible for insurance coverage
16 issued by the association, with respect to an automobile if, at the
17 time the application is made, he is either (1) a nonresident who is
18 stationed in this State, whose automobile is registered in another
19 state and garaged in this State; or (2) a resident who is stationed
20 in another state, whose automobile is registered in this State and
21 garaged in another state. No person shall, however, be deemed a
22 qualified applicant, if the principal operator of the automobile to
23 be insured does not hold a driver's license which is valid in this
24 State; or if a regular operator of the automobile other than the
25 principal operator does not hold such a license; or if timely
26 payment of premium is not tendered; or if the applicant or
27 principal operator of the automobile does not furnish the
28 information necessary to effect insurance; or if such person is
29 engaged in the business of renting or leasing automobiles to
30 others or if such person uses automobiles for commercial
31 purposes.

32 n. "Underinsured motorist coverage" means insurance for
33 damages because of bodily injury and property damage caused by
34 accident and arising out of the ownership, maintenance or use of
35 an underinsured automobile. An automobile is underinsured when
36 the sum of the limits of liability under all bodily injury and
37 property damage liability bonds and insurance policies available
38 to a person against whom recovery is sought for bodily injury or
39 property damage is, at the time of the accident, less than the
40 applicable limits of liability afforded under the automobile
41 insurance policy held by the person seeking such recovery.

42 o. "Residual market equalization charge" means the amount
43 imposed pursuant to section 20 of P.L.1983, c.65 (C.17:30E-8)
44 which, when added to all other sources of association income, will
45 cause the association to operate on a no profit, no loss basis.

46 (cf. P.L.1988, c.119, s.40)

47 16. Section 19 of P.L.1983, c.65 (C.17:30E-7) is amended to
48 read as follows:

49 19. Pursuant to the plan of operation, the association shall

1 have the power and duty to:

2 a. Enter into contracts as are necessary or proper to carry out
3 the provisions and purposes of this act;

4 b. Sue or be sued in the name of the association, including
5 taking any legal actions necessary or proper for recovery of any
6 assessments for, on behalf of, or against members. A judgment
7 against the association shall not create any direct liability
8 against the servicing carrier, board of directors or the individual
9 members, or the individual participating members of the
10 association;

11 c. Indemnify its directors and employees for any and all
12 claims, suits, costs of investigations, costs of defense,
13 settlements or judgments against them on account of an act or
14 omission in the scope of a director's duties or employee's
15 employment. The association shall refuse to indemnify if it
16 determines that the act or failure to act was because of actual
17 fraud, willful misconduct or actual malice;

18 d. Take such action as is necessary to prevent and avoid the
19 payment of improper claims against the association or the
20 coverage provided by or through the association;

21 e. Arrange for the issuance of automobile insurance to any
22 qualified applicant through servicing carriers. Each servicing
23 carrier shall issue policies in the name of the servicing carrier, on
24 behalf of the association, to the extent the plan of operation
25 provides. Servicing carriers, as agents of the association, shall
26 have no individual liability for claims or policies written by the
27 association. However, notwithstanding the above, or any other
28 provision of law to the contrary, the association shall not arrange
29 for the issuance or renewal of any automobile insurance policy,
30 either through a servicing carrier or on its own behalf, on or after
31 October 1, 1990;

32 f. Appoint from among its members appropriate legal,
33 actuarial, claims, investment and other committees as necessary
34 to provide technical assistance in the operation of the
35 association, policy and other contract design, and any other
36 function within the authority of the association;

37 g. Establish standards for, and review operating practices of,
38 servicing carriers and producers to determine whether such
39 practices are adequate to properly service association business,
40 and to take appropriate action to eliminate inadequate operating
41 practices and develop adequate operating practices, and to
42 appoint an audit committee to review operating practices. The
43 audit committee shall be composed of servicing carriers,
44 producers, and member companies who are not servicing carriers;

45 h. Develop criteria and establish a monitoring system to
46 ensure that: (1) servicing carriers do not obtain an unfair
47 advantage, because of their servicing carrier relationship with
48 producers over other member companies which are not servicing
49 carriers; and (2) member companies do not obtain an unfair

1 advantage over producers of record without a contractual
2 relationship with a voluntary market company, as a result of an
offer of voluntary market coverage to an insured of the
4 association,

5 i. Order the reporting of such statistics by the members of the
6 association as it deems necessary;

7 j. Reimburse servicing carriers from association funds;

8 k. Adopt bylaws for the regulation of its internal affairs.

9 l. Employ a general manager, who shall serve at its pleasure
10 and be responsible for the conduct of the administrative affairs
11 of the association. The board may employ other necessary
12 personnel and may delegate to the general manager and other
13 personnel such authority as it deems necessary to assure proper
14 administration and operation of the association consistent with
15 the plan of operation. The board shall arrange and contract if
16 necessary for suitable quarters within the State of New Jersey
17 for operations of the association; for such equipment, goods and
18 services; and incur such expenses as it deems necessary to assure
19 efficient administration of the association consistent with the
20 plan of operation. If required by the plan of operation, the board
21 may establish service centers in underserved areas, which
22 service centers shall provide for the dissemination of full
23 information on the coverages available under this act and for
24 referrals to appropriate outlets for the acquisition of such
25 coverage;

26 m. Hear and determine complaints of any member or producer
27 concerning the operation of the association in accordance with
28 procedures prescribed in section 28 of this act;

29 n. Annually report to the commissioner on the operation of the
30 association;

31 o. Record and investigate complaints involving the conduct of
32 producers and to take appropriate corrective action or to
33 recommend to the commissioner appropriate disciplinary action,
34 including suspension or revocation of authority to write
35 association business;

36 p. Review servicing practices of servicing carriers to
37 determine whether such practices are adequate to properly
38 service the risks written by the association; and upon finding that
39 the practices of any servicing carrier are inadequate, establish a
40 program for that member which will assist the servicing carrier
41 in the performance of its duties and charge that servicing carrier
42 a reasonable fee for establishing and operating such a program;

43 q. Audit the operations of members for the purpose of
44 determining compliance with this act;

45 r. Develop methods and standards for the establishment of
46 adequate, actuarially sound reserves for unpaid losses and loss
47 adjustment expenses, including provision for incurred but not
48 reported losses; and

49 s. Take such other action as is necessary to effectuate the

1 purposes of this act.
2 (cf: P.L.1983, c.301, s.4)
3 C.17:33B-6

4 17. (New section) Notwithstanding any of the provisions of
5 sections 13 to 34 of P.L.1983, c.65 (C.17:30E-1 et seq.), section 1
6 of P.L.1984, c.1 (C.17:29A-37.1) or any other law, to the
7 contrary, no residual market equalization charges, or flat charges
8 (also referred to as flat capitation fees or policy constants) of
9 any kind, other than the flattened tax and expense fees
10 implemented pursuant to section 8 of P.L.1983, c.65
11 (C.17:29A-37), shall continue to be imposed or be imposed on or
12 after April 1, 1991 on a per car or per coverage basis on
13 automobile insurance policies or on policies insuring motor
14 vehicles other than automobiles.

15 18. Section 1 of P.L.1984, c.1 (C.17:29A-37.1) is amended to
16 read as follows:

17 1. a. All flat charges (also referred to as flat capitation fees
18 or policy constants, but not including premiums for uninsured
19 motorist or towing coverage, or flattened tax and expense fees
20 implemented pursuant to section 8 of P.L.1983, c.65
21 (C.17:29A-37)), authorized by the Commissioner of Insurance for
22 use by all filers, as defined in section 1 of P.L.1944, c.27
23 (C.17:29A-1), writing private passenger automobile insurance in
24 the voluntary and residual markets, which are [collected] imposed
25 on a per car and per coverage basis on automobile insurance
26 policies issued or renewed in the voluntary or residual market [,
27 with an effective date of January 1, 1984 or thereafter,] prior to
28 April 1, 1991 shall be paid to the New Jersey Automobile Full
29 Insurance Underwriting Association for use for association
30 purposes. All moneys collected from the flat charges shall be
31 certified to by the filers, including servicing carriers of the
32 association, and transferred, net of a pro rata portion of any
33 producer commissions and all premium taxes payable thereon, to
34 the association in accordance with the provisions of this
35 subsection and the association's plan of operation. No other
36 expenses shall be payable to or deductible from the flat charges
37 transferable to the association.

38 Flat charges collected under this subsection shall be
39 transferred to the association within 10 days of the close of the
40 month of receipt by the insurer or servicing carrier. In the case
41 of policy premiums paid in accordance with a payment plan or
42 other installment basis, the insurer shall, within 10 days of the
43 close of the month of receipt of payment, transfer to the
44 association a proportionate share of the total flat charges on the
45 policy, based on the payment schedule or amount of payment
46 received.

47 b. [Flat charges collected on any automobile insurance policy
48 written in the voluntary or residual market with an effective date
49 prior to January 1, 1984, the policy term of which, however,
50 extends into 1984, shall be retained by the insurer or filer; except

1 that if a policy subject to this subsection has been canceled for
2 reasons other than nonpayment of premium, the insurer or filer
3 shall retain only that portion of the flat charges earned on the
4 policy up to the date of cancellation and shall return any
5 unearned remainder to the policyholder in the same manner as
6 other unearned premiums.]

7 Flat charges shall not be deemed to include any moneys
8 collected from any residual market equalization charge levied
9 pursuant to section 20 of P.L.1983, c.65 (C.17:30E-8).

10 Flat charges collected in accordance with subsection a. of this
11 section shall be considered in determining taxable premiums in
12 accordance with P.L.1945, c.132 (C.54:18A-1 et seq.), but shall
13 not be considered in determining excess profits in accordance
14 with section [2 of P.L.1983, c.357 (C.17:29A-5.3)] section 3 of
15 P.L.1988, c.118 (C.17:29A-5.8).

16 c. The flat charges authorized by the Commissioner of
17 Insurance for private passenger automobile insurance in the
18 voluntary and residual markets may be imposed prior to April 1,
19 1991 upon all insured motor vehicles other than private passenger
20 automobiles, including motor vehicles insured by the automobile
21 insurance plan established pursuant to P.L.1970, c.215
22 (C.17:29D-1), and motor vehicles of a type, as is determined by
23 the Commissioner of Insurance, which are registered with the
24 Division of Motor Vehicles as self-insured vehicles pursuant to
25 section 30 of P.L.1952, c.173 (C.39:6-52), in accordance with
26 rules and regulations established by the commissioner. In the
27 case of motor vehicles other than private passenger automobiles
28 which are insured by an insurer in the voluntary market or in any
29 insurance plan established pursuant to P.L.1970, c.215
30 (C.17:29D-1), the insurer shall forward the flat charge, net of a
31 pro rata portion of the producer's commission, to the New Jersey
32 Automobile Full Insurance Underwriting Association. In the case
33 of a self-insurer required to pay a flat charge, the self-insurer
34 shall forward the full amount of the flat charge to the
35 association. The Division of Motor Vehicles shall not issue a
36 certificate of self-insurance unless the association has certified
37 that the flat charge has been paid. Failure to pay the flat charge
38 shall constitute a reasonable ground for cancellation of a
39 certificate of self-insurance pursuant to section 30 of P.L.1952,
40 c.173 (C.39:6-52). Any self-insurer which fails to pay the flat
41 charge to the association for any self-insured vehicle shall be
42 liable to pay a fine in the amount of \$100.00 per vehicle for the
43 first offense and \$200.00 for the second and each subsequent
44 offense.

45 Notwithstanding any other provision of this section, flat
46 charges shall be imposed on such motor vehicles prior to April 1,
47 1991 as are determined by the Commissioner of Insurance, which
48 vehicles have been registered with the Division of Motor Vehicles
49 in accordance with Title 39 of the Revised Statutes as

1 commercial motor vehicles and have been issued commercial
2 license plates or farmers' license plates, and on motor vehicles,
3 of a type determined by the Commissioner of Insurance, which
4 are registered with the Division of Motor Vehicles as self-insured
5 vehicles pursuant to section 30 of P.L.1952, c.173 (C.39:6-52).
6 (cf: P.L.1987, c.344, s.1)

7 19. Section 20 of P.L.1983, c.65 (C.17:30E-8) is amended to
8 read as follows:

9 20. a. The association shall derive income from the following
10 sources for the payment of expenses, losses, and the provision of
11 adequate, actuarially sound reserves for unpaid losses and loss
12 adjustment expenses, including incurred but not reported losses,
13 in connection with association business: (1) net premiums earned;
14 (2) income generated from any association accident surcharge
15 system permitted or required by law; (3) that percentage of
16 surcharges collected by the Division of Motor Vehicles prior to
17 October 1, 1991 and deposited with the association pursuant to
18 subsection b. of section 6 of the "New Jersey Automobile
19 Insurance Reform Act of 1982" [(P.L.1983, c.65; C.17:29A-35)]
20 P.L.1983, c.65 (C.17:29A-35); (4) income collected by members of
21 the association and by the association from the residual market
22 equalization charge imposed prior to April 1, 1991, or flat
23 charges (also referred to as capitation fees or policy constants,
24 but not including premiums for uninsured motorist or towing
25 coverage, or flattened tax and expense fees implemented
26 pursuant to section 8 of P.L.1983, c.65 (C.17:29A-37)) imposed
27 prior to April 1, 1991, levied on a per car and per coverage basis;
28 [and] (5) income from investment of moneys collected pursuant to
29 paragraphs (1), (2), (3) [and] (4) and (6) of this subsection; and (6)
30 income collected by the Director of the Division of Motor
31 Vehicles prior to October 1, 1991, pursuant to section 63 of
32 P.L. c. , (C.) (now pending in the Legislature as this bill).
33 Residual market equalization charges collected on behalf of the
34 association shall on a monthly basis be certified to by the carrier
35 and shall be transferred to the association in accordance with the
36 plan of operation. No producer commissions or premium taxes
37 shall be paid on, or company expenses or servicing carrier
38 compensation deducted from, the residual market equalization
39 charge. No servicing carrier compensation or commissions shall
40 be paid by the association on violation surcharges deposited by
41 the Division of Motor Vehicles with the association. All
42 premiums received by servicing carriers on behalf of the
43 association shall on a monthly basis be certified to by the carrier
44 and shall be transferred to the association in accordance with the
45 plan of operation. Premiums shall be transferred to the
46 association net of commissions paid, all premium taxes, and
47 servicing carrier compensation, except as otherwise required by
48 law.

49 All claims and claim expense payments paid on association

1 business shall be disbursed by the servicing carriers or the
2 association through drafts drawn on association funds in
3 accordance with the plan of operation. Servicing carriers, as
4 agents of the association, shall have no individual liability on
5 claims or policies written by the association.

6 b. At least annually, the board shall file its experience with
7 the commissioner, which experience shall include the projected
8 income, expenses, losses and reserve requirements of the
9 association for the ensuing year, any adjustment in previously
10 established reserves for unpaid losses and loss adjustment
11 expenses necessary to make such reserves adequate and
12 actuarially sound, and the initial filing shall include the
13 experience of the automobile insurance plan established pursuant
14 to P.L.1970, c.215 (C.17:29D-1). Except in the case of the initial
15 or other filing applicable to the first year of operation of the
16 association, the board shall include in its filing with the
17 commissioner, for his approval, a computation of the residual
18 market equalization charge per insured vehicle to be collected by
19 each member from its voluntary insureds, exclusive of principal
20 operators 65 years of age or older, and by each servicing carrier
21 from association insureds 1or insureds covered by the Market
22 Transition Facility created pursuant to section 88 of P.L. , c.
23 (C.) (now pending in the Legislature as this bill)¹, exclusive of
24 principal operators 65 years of age or older, to offset the
25 anticipated losses of the association.

26 At the end of the first 12 months of the operation of the
27 association and at least annually thereafter, the board shall also
28 include in its filing with the commissioner a review of the
29 previous year's experience, setting forth the income, losses, and
30 reserve requirements, including any adjustment in previously
31 established reserves for unpaid losses and loss adjustment
32 expenses necessary to make such reserves adequate and
33 actuarially sound, and expenses of the association during the
34 previous year. [If a profit is found by the commissioner to have
35 been realized, such amount shall reduce the residual market
36 equalization charge levied on policyholders pursuant to subsection
37 d. of this section. If a loss is found by the commissioner to have
38 occurred, such amount shall increase the charge levied on
39 policyholders pursuant to subsection d. of this section.] The filing
40 shall be accompanied by such statistics and other information as
41 the commissioner may deem necessary. The commissioner shall,
42 within 60 days of such filing, approve or disapprove the filing,
43 except that the commissioner may, for good cause, extend by not
44 more than 60 days the period for approving or disapproving the
45 filing. Failure to act within the period allowed for the
46 commissioner's review of the filing shall be deemed approval of
47 the filing, except that the running of the period shall be tolled by
48 a request for additional information by the commissioner or until
49 the association notifies the commissioner that it will not provide

1 such additional information, together with the reason for not
2 supplying the information. Failure to comply with a reasonable
3 request for information may be a ground for disapproving all or
4 part of the filing. If the commissioner disapproves all or part of
5 the filing, he shall state the reasons for such disapproval, and
6 indicate such portion of the filing he approves. Such disapproval
7 shall be subject to review by the Appellate Division of the
8 Superior Court.

9 c. The residual market equalization charge last approved by
10 the commissioner shall continue to apply while the application for
11 the revised charge is being processed by the commissioner
12 pursuant to this section.

13 d. The residual market equalization charge per insured vehicle
14 shall be collected following the effective date of such approval,
15 by the insurer from its policyholders, exclusive of principal
16 operators 65 years of age or older, on a uniform net direct car
17 year of liability exposure basis and a net direct car year of
18 physical damage exposure basis. The insurer or rating
19 organization making a residual market equalization charge
20 pursuant to this subsection shall, 15 days prior to the date of the
21 implementation of the proposed rate adjustment, make an
22 informational filing with the commissioner, documenting
23 compliance with the established method of distributing such
24 residual market equalization charge.

25 e. Any insurer licensed to transact automobile insurance after
26 the effective date of this act shall become a member of the
27 association upon receiving such license and the determination of
28 any such insurer's participation in the association shall be made
29 as of the date of such membership in the same manner as for all
30 other members of the association.

31 f. For purposes of this section and any other applicable
32 provision of law, the residual market equalization charge shall
33 not be considered insurance premium unless otherwise
34 specifically provided therein.

35 (cf: P.L.1985, c.520, s.3)

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

38 26. a. Within 45 days of the effective date of this 1988
39 amendatory and supplementary act, the commissioner shall, in
40 the plan of operation, establish procedures to govern the
41 voluntary writing of applicants and association insureds without
42 the utilization of the association. These procedures shall include
43 criteria identifying drivers who should be eligible for coverage in
44 the voluntary market. Applicants and association insureds
45 meeting these criteria shall be subject to assignment by the
46 association to member companies, pursuant to an equitable
47 apportionment procedure established in the plan of operation.
48 The procedure shall give due consideration to the increase or
49 decrease in the volume of private passenger automobile non-fleet

1 exposures voluntarily written by member companies in this State
2 since January 1, 1984.

3 b. (1) Pursuant to the procedures established in the plan of
4 operation under subsection a. of this section, the commissioner
5 shall establish a voluntary market quota, which shall not be less
6 than 60% of the aggregate number of private passenger
7 automobile non-fleet exposures written in the total private
8 passenger automobile insurance market in this State on the
9 effective date of this 1988 amendatory and supplementary act.
10 The quota shall prescribe the number of voluntary market
11 exposures which shall be written by member companies during the
12 12 month period beginning 60 days after the effective date of this
13 1988 amendatory and supplementary act.

14 (2) [At the end of the first 12 month period following the
15 effective date of this 1988 amendatory and supplementary act]
16 Within 30 days of the effective date of P.L. , c.
17 (C.)(now pending in the Legislature as this bill), the
18 commissioner shall prescribe a second quota, which shall take
19 effect [no later than 60 days following the end of that period]
20 immediately upon adoption by the commissioner and which shall
21 not be less than [70%] 68% of the aggregate number of private
22 passenger automobile non-fleet exposures written in the total
23 private passenger automobile insurance market in this State [at
24 the end of the first 12 month period following the effective date
25 of this 1988 amendatory and supplementary act] on or before
26 October 1, 1990. The quota shall prescribe the number of
27 voluntary market exposures which shall be written by member
28 companies during the [12 month] period described in this
29 paragraph.

30 (3) [At the end of the second 12 month period following the
31 effective date of this 1988 amendatory and supplementary act,
32 the commissioner shall prescribe a third quota, which shall take
33 effect no later than 60 days following the end of that period and
34 which shall not be less than 75% of the aggregate number of
35 private passenger automobile non-fleet exposures written in the
36 total private passenger automobile insurance market in this State
37 at the end of the second 12 month period following the effective
38 date of this 1988 amendatory and supplementary act. The quota
39 shall prescribe the number of voluntary market exposures which
40 shall be written by member companies during the 12 month period
41 described in this paragraph.] (Deleted by amendment, P.L. ,
42 c.)(now pending before the Legislature as this bill)

43 (4) [No later than 60 days following the end of the third 12
44 month period following the effective date of this 1988
45 amendatory and supplementary act, the commissioner shall
46 prescribe such a quota that will result, at the end of the fourth 12
47 month period following the effective date of this 1988
48 amendatory and supplementary act, in the volume of exposures
49 written in the voluntary market equaling no less than 80% of the

1 aggregate number of private passenger automobile non fleet
2 exposures being written in the total private passenger automobile
3 insurance market in this State, or such volume of exposures in
4 excess of 80% that the commissioner determines should be
5 considered eligible for coverage in the voluntary market. The
6 quota shall prescribe the number of voluntary market exposures
7 which shall be written by member companies during the 12 month
8 period described in this paragraph. After the period established
9 in this paragraph, the association shall not write any risk for a
10 period longer than three years, unless, at the end of that time,
11 the insured has presented evidence that he has been rejected by
12 at least two insurers in the voluntary market.] (Deleted by
13 amendment, P.L. , c. .)(now pending before the Legislature
14 as this bill)

15 c. In the event that any of the quotas established by the
16 commissioner pursuant to subsection b. of this section have not
17 been met by the end of any [12 month] applicable period, the
18 commissioner shall direct the association to assign the balance of
19 the exposures needed to meet the applicable quota to member
20 companies in a manner consistent with the apportionment
21 procedure established pursuant to subsection a. of this section. A
22 member company which [exceeds] exceeded its apportionment
23 share for [any] the 12 month period prescribed pursuant to
24 paragraph (1) of subsection b. of this section shall receive credit
25 for the excess against the [following year's obligation] quota
26 imposed pursuant to paragraph (2) of subsection a. of this section.

27 d. [If, at any time after the period established in paragraph (4)
28 of subsection b. of this section, the volume of exposures written
29 in the voluntary market equals less than 80% of the aggregate
30 number of private passenger automobile non-fleet exposures
31 being written in the total private passenger automobile insurance
32 market in this State or such volume of exposures in excess of 80%
33 that the commissioner determines should be eligible for coverage
34 in the voluntary market, the commissioner shall direct the
35 association to assign eligible applicants and association insureds
36 to member companies on an equitable basis.] (Deleted by
37 amendment, P.L. , c. .)(now pending before the Legislature
38 as this bill)

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

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

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

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

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

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

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

26 (3) neither prohibit nor require member companies to write
27 association business through association producers of record,
28 provided, however, that where a member company elects not to
29 service such business through the association producer of record,
30 the procedures shall address the manner in which the association
31 shall transfer the business to the member company, and shall
32 establish reasonable compensation in an amount sufficient to
33 offset the actual expenses incurred by the association producer in
34 conjunction with the transfer which shall be paid by the
35 association upon transfer of the business to the member company;
36 and

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

40 (cf: P.L.1988, c.119, s.25)

41 C.17:33B-3

42 21. (New section) a. The Legislature finds that the New
43 Jersey Automobile Full Insurance Underwriting Association,
44 created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), is
45 currently operating in a substantially impaired financial state
46 with an operating deficit which the association has estimated to
47 be in excess of \$3 billion and that, based upon the results of a
48 recent claim and underwriting review and financial audit, the
49 Commissioner of Insurance stated that mismanagement by the
50 insurance companies acting as servicing carriers cost the

1 association \$908 million between its inception in 1984 and 1988.
2 The Legislature further finds that the association is not earning
3 new premium income or collecting subsidies in an amount
4 sufficient to pay its claims and expenses. The Legislature further
5 finds that under the above enumerated circumstances the
6 association, if it were a licensed insurer, would likely be declared
7 financially impaired or insolvent pursuant to the provisions of
8 P.L.1975, c.113 (C.17:30C-1).

9 b. Therefore,

10 (1) Within 90 days of the effective date of this 1990
11 amendatory and supplementary act, the commissioner shall
12 appoint a trustee, who shall be a person experienced in insolvency
13 or bankruptcy, who shall not, during his tenure as trustee be
14 affiliated with or employed by an insurer. The trustee shall serve
15 at the pleasure of the commissioner and shall be paid from funds
16 available to the New Jersey Automobile Insurance Guaranty Fund
17 created pursuant to section 23 of this act, in an amount and
18 manner as determined by the commissioner. The trustee shall
19 carry out his obligations as provided in this act and the plan of
20 operation promulgated pursuant to paragraph (2) of this
21 subsection.

22 (2) The trustee shall, as soon as possible upon appointment,
23 promulgate a plan of operation to be approved by the
24 commissioner. Pursuant to the plan of operation, the trustee
25 shall have the authority to disburse funds made available from
26 the New Jersey Automobile Insurance Guaranty Fund pursuant to
27 section 23 of this act and such other monies as may be
28 appropriated to or otherwise made available to the fund or the
29 association, including those monies collected by the association
30 pursuant to section 20 of P.L.1983, c.65 (C.17:30E-8), on behalf
31 of the association for the payment of claims and other financial
32 obligations of the association ¹, including the contracts with the
33 servicing carriers,¹. The plan shall provide for the payment of
34 covered losses on behalf of the association. Among other things
35 necessary to the orderly evaluation, prioritization and
36 disbursement of monies payable on behalf of the association, the
37 plan shall contain a schedule for the prioritization of claims
38 payments by the type of claim for which payment is due. The
39 schedule may provide for the deferral of the payment of residual
40 bodily injury losses over a period not to exceed four years. The
41 schedule may also provide for the deferral of other payments only
42 upon certification by the commissioner that the fund cannot by
43 any other available means secure the monies necessary to pay
44 those losses. However, the plan shall not provide for the deferral
45 of payment of damages which are due and payable for present
46 economic loss under any circumstance.

47 (3) The trustee shall report to the commissioner biannually, or
48 more frequently if ordered by the commissioner, on the financial
49 condition of the association and the disbursement of funds

1 pursuant to the plan of operation. The commissioner shall make
2 an annual report on the activities of the trustee to the
3 Legislature and the Governor. The report shall contain an
4 accounting of the immediately preceding annual period, including
5 a report of the financial obligations attributable to the
6 association; the income available to and the disbursements made
7 by the trustee during that period; and a projection of the
8 financial obligations, anticipated income and expected
9 disbursements for the immediately succeeding annual period.

10 (4) In fulfilling his duties pursuant to this subsection, the
11 trustee shall avail himself of the services of association staff and
12 shall utilize association procedures, equipment and supplies to the
13 extent such use facilitates fulfillment of the trustee's duties.

14 ¹The trustee shall have the authority to continue any audit being
15 conducted with regard to the operations of the association and to
16 conduct such audits.¹

17 C.17:33B-4

18 22. (New section) Notwithstanding any provision of law to the
19 contrary, no insured or other person covered under an association
20 policy shall be held liable for payment of any claim attributable
21 to damages subject to a deferred payment plan implemented
22 pursuant to paragraph (2) of subsection b. of section 21 of this
23 1990 amendatory and supplementary act until payment is made to
24 the covered person pursuant to the deferred payment plan.

25 C.17:33B-5

26 23. (New section) a. There is hereby created within the
27 General Treasury a special nonlapsing fund to be known as the
28 New Jersey Automobile Insurance Guaranty Fund. The State
29 Treasurer shall credit to the fund, in addition to any sums
30 appropriated thereto, all monies designated in subsection b. of
31 this section and collected pursuant to this act on and after the
32 effective date of this 1990 amendatory and supplementary act.
33 Monies credited to the New Jersey Automobile Insurance
34 Guaranty Fund may be invested in the same manner as assets of
35 the General Fund and any investment earnings on the fund shall
36 accrue to the fund and shall be available subject to the same
37 terms and conditions as other monies in the fund. The State
38 Treasurer may determine the amount of earnings to be credited
39 to the New Jersey Automobile Insurance Guaranty Fund to
40 reflect the average rate of return on the State of New Jersey
41 Cash Management Fund.

42 b. Monies from the following sources shall be credited by the
43 State Treasurer to the New Jersey Automobile Insurance
44 Guaranty Fund: the revenues attributable to the surtax imposed
45 under section 76 of this 1990 amendatory and supplementary act
46 (C.); the revenues attributable to the tax imposed on
47 premiums earned by the New Jersey Automobile Full Insurance
48 Underwriting Association pursuant to section 34 of P.L.1983, c.65
49 (C.17:30E-22); that percentage of surcharges collected by the
50 Division of Motor Vehicles on or after October 1, 1991, pursuant
51 to subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35);

1 monies collected by the Division of Motor Vehicles on or after
2 October 1, 1991, pursuant to section 68 of this 1990 amendatory
3 and supplementary act (C.); monies collected by the State
4 Board of Medical Examiners pursuant to section 63 of this 1990
5 amendatory and supplementary act (C.); monies collected by
6 the State Board of Chiropractic Examiners pursuant to section 64
7 of this 1990 amendatory and supplementary act (C.); monies
8 collected by the State Board of Physical Therapy pursuant to
9 section 65 of this 1990 amendatory and supplementary act (C.);
10 monies collected by the Division of Motor Vehicles pursuant to
11 section 66 of this 1990 amendatory and supplementary act (C.);
12 monies collected by the ¹[Supreme Court of New Jersey] State
13 Treasurer¹ pursuant to section 67 of this 1990 amendatory and
14 supplementary act (C.); loans made to the fund as provided
15 in subsection c. of this section; and such other income as may be
16 deposited with or otherwise made available to the New Jersey
17 Automobile Full Insurance Underwriting Association on or after
18 October 1, 1991, including monies deposited in the New Jersey
19 Automobile Full Insurance Underwriting Association Auxiliary
20 Fund pursuant to section 5 of P.L.1983, c.320 (C.17:33A-5).

21 c. (1) The fund shall borrow such monies as are made available
22 by the New Jersey Property-Liability Insurance Guaranty
23 Association pursuant to paragraph (10) of subsection a. of section
24 8 of P.L.1974, c.17 (C.17:30A-8).

25 (2) The fund may, upon the approval of the Commissioner of
26 Insurance and pursuant to terms and conditions established by
27 him, borrow monies from any other available source.

28 d. The monies in the New Jersey Automobile Insurance
29 Guaranty Fund, including interest earnings thereon, are
30 specifically dedicated and shall be utilized exclusively for the
31 costs of the purposes of satisfying the financial obligations of the
32 New Jersey Automobile Full Insurance Underwriting Association,
33 as provided in this 1990 amendatory and supplementary act.
34 Those monies are hereby appropriated for those purposes;
35 provided, however, that those monies shall be disbursed by the
36 State Treasurer as provided in subsection e. of this section.

37 e. The trustee appointed pursuant to section 21 of this 1990
38 amendatory and supplementary act shall prepare a written
39 application for any disbursement of monies from the New Jersey
40 Automobile Insurance Guaranty Fund, specifying the amount of
41 the disbursement, the intended expenditures, and the manner in
42 which such expenditures serve the purposes of the trustee's
43 function and this act. The application shall be submitted to the
44 Commissioner of Insurance for approval. Upon approval by the
45 commissioner, the application shall be forwarded to the State
46 Treasurer for approval. Upon approval by the State Treasurer, he
47 shall disburse monies from the New Jersey Automobile Insurance
48 Guaranty Fund to the trustee for disbursement as provided in the
49 approved application.

1 C.17:33B-22

2 24. (New section) Those persons who do not qualify as
3 "eligible persons" as defined in section 25 of this 1990
4 amendatory and supplementary act but who are in good faith
5 entitled to, but are unable to procure automobile insurance
6 coverage, shall be provided automobile insurance coverage
7 pursuant to the provisions of section 1 of P.L.1970, c.215
8 (C.17:29D-1).

9 C.17:33B-13

10 25. (New section) As used in sections 25 through 33 of this
11 1990 amendatory and supplementary act:

12 "Automobile" means an automobile as defined in section 2 of
13 P.L.1972, c.70 (C.39:6A-2).

14 "Automobile insurance" means insurance for an automobile
15 including coverage for bodily injury liability and property damage
16 liability, comprehensive and collision coverages, uninsured and
17 underinsured motorist coverage, personal injury protection
18 coverage, additional personal injury protection coverage and any
19 other automobile insurance required by law.

20 "Commissioner" means the Commissioner of Insurance.

21 "Declination" means:

22 a. Refusal by an insurance agent to submit an application on
23 behalf of an applicant to any of the insurers represented by the
24 agent;

25 b. Refusal by an insurer to issue an automobile insurance
26 policy to an eligible person upon receipt of an application for
27 automobile insurance;

28 c. ¹[The offer of automobile insurance at higher rates with a
29 different insurer than that requested by an eligible person;

30 d.]¹ The offer of automobile insurance coverage with less
31 favorable terms or conditions than those requested by an eligible
32 person; or

33 ¹[e.] d.¹ The refusal by an insurer or agent to provide, upon
34 the request of an eligible person, an application form or other
35 means of making an application or request for automobile
36 insurance coverage.

37 "Automobile insurance eligibility points" means points
38 calculated under the schedule promulgated by the commissioner
39 pursuant to section 26 of this act.

40 "Eligible person" means a person who is an owner or registrant
41 of an automobile registered in this State or who holds a valid New
42 Jersey driver's license to operate an automobile, but does not
43 include any person:

44 a. Who, during the three-year period immediately preceding
45 application for, or renewal of, an automobile insurance policy has
46 been convicted pursuant to R.S.39:4-50 or section 2 of P.L.1981,
47 c.512 (C.39:4-50.4a), or for an offense of a substantially similar
48 nature committed in another jurisdiction; has been convicted of
49 a crime of the first, second or third degree resulting from the use
50 of a motor vehicle; or has been convicted of theft of a motor
51 vehicle;

1 b. Whose driver's license to operate an automobile is under
2 suspension or revocation;

3 c. Who has been convicted, within the five-year period
4 immediately preceding application for or renewal of a policy of
5 automobile insurance, of fraud or intent to defraud involving an
6 insurance claim or an application for insurance; or who has been
7 successfully denied, within the immediately preceding five years,
8 payment by an insurer of a claim in excess of \$1,000 under an
9 automobile insurance policy, if there was evidence of fraud or
10 intent to defraud involving the automobile insurance claim or
11 application;

12 d. Whose policy of automobile insurance has been canceled
13 because of nonpayment of premium or financed premium within
14 the immediately preceding two-year period, unless the premium
15 due on a policy for which application has been made is paid in full
16 before issuance or renewal of the policy;

17 e. Who fails to obtain or maintain membership ¹or
18 qualification for membership¹ in a club, group, or organization, if
19 membership is a uniform requirement of the insurer as a
20 condition of providing insurance, and if the dues ¹[,] ¹or ¹charges,
21 ¹if any,¹ or other conditions for membership ¹or qualifications
22 for membership are applied uniformly throughout this State,¹ are
23 not expressed as a percentage of the insurance premium, and do
24 not vary with respect to the rating classification of the member
25 ¹or potential member¹ except for the purpose of offering a
26 membership fee to family units. Membership fees ¹, if
27 applicable,¹ may vary in accordance with the amount or type of
28 coverage if the purchase of additional coverage, either ¹to type
29 or amount, is not a condition for reduction of dues or fees;

30 f. Whose driving record for the three year period immediately
31 preceding application for or renewal of a policy of automobile
32 insurance has an accumulation of automobile insurance eligibility
33 points as determined under the schedule promulgated by the
34 commissioner pursuant to section 26 of this act; or

35 g. Who possesses such other risk factors as determined to be
36 relevant by rule or regulation of the commissioner.

37 "Insurance agent" or "agent" means an insurance agent as
38 defined by subsection f. of section 2 of P.L.1987, c.293
39 (C.17:22A-2) and shall also include an insurance broker as defined
40 by subsection g. of section 2 of P.L.1987, c.293 (C.17:22A-2) who
41 has a brokerage relationship with an insurer.

42 "Insurer" means any insurer authorized or admitted to write
43 automobile insurance in this State, but does not include the New
44 Jersey Automobile Full Insurance Underwriting Association
45 created pursuant to sections 13 through 34 of P.L.1983, c.65
46 (C.17:30E-1 et seq.) or any residual market mechanism
47 implemented pursuant to section 1 of P.L.1970, c.215
48 (C.17:29D-1).

49 C.17:33B-14

50 26. (New section) The commissioner shall, within 90 days of

1 the effective date of this act, promulgate a schedule of
2 automobile insurance eligibility points by rule or regulation
3 adopted pursuant to the "Administrative Procedure Act,"
4 P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule shall assess a
5 point valuation to driving experience related violations and shall
6 include assessments for violations of lawful speed limits within
7 such increments as determined by the commissioner, other
8 moving violations, and at-fault accidents. For the purposes of
9 this subsection, an "at-fault accident" means an at-fault
10 accident which results in payment by the insurer of at least a
11 \$500 claim.

12 **C.17:33B-15**

13 27. (New section) 1a. On or after April 1, 1992, every insurer,
14 either by one or more separate rating plans filed in accordance
15 with the provisions of section 6 of P.L.1988, c.156 (C.17:29A-45)
16 or through one or more affiliated insurers, shall provide
17 automobile insurance coverage for eligible persons.

18 b.¹ No insurer shall refuse to insure, refuse to renew, or limit
19 coverage available ¹[to an eligible person]¹ for automobile
20 insurance ¹to an eligible person who meets its underwriting rules
21 as filed with and approved by the commissioner in accordance
22 with the provisions of section 7 of P.L.1988, c.156
23 (C.17:29A-46)¹. The commissioner may suspend, revoke or
24 otherwise terminate the certificate of authority to transact
25 automobile insurance business in this State of any insurer who
26 violates the provisions of this section.

27 **C.17:33B-16**

28 28. (New section) An insurer or agent, upon making a
29 declination of automobile insurance, shall inform the applicant of
30 each specific reason for the declination and shall include a
31 statement as to whether the applicant may qualify for insurance
32 from an affiliate of the insurer. If the application or request for
33 coverage was made in writing, the insurer or agent shall provide
34 the explanation of reasons in writing. If the application or
35 request for coverage was made orally, the insurer or agent may
36 provide the applicant with an oral explanation instead of a
37 written explanation, and shall offer to provide a written
38 explanation if the applicant requests a written explanation within
39 90 days.

40 **C.17:33B-17**

41 29. (New section) a. ¹[A person who has reason to believe
42 that an insurer has improperly denied him automobile insurance
43 or has been charged an incorrect premium for that insurance shall
44 be entitled to a private informal managerial-level conference
45 with the insurer and to a review before the commissioner, if the
46 conference fails to resolve the dispute.

47 b. Each insurer shall establish reasonable internal procedures
48 to provide a person with a private informal managerial-level
49 conference regarding the matters set forth in subsection a. of
50 this section. These procedures shall include, at a minimum:

51 (1) A method of providing the person, upon request and
52 payment of a reasonable copying charge, with information

1 pertinent to the denial of insurance or to the premium charged;
2 and

3 (2) A method for resolving the dispute promptly and
4 informally, while protecting the interests of both the person and
5 the insurer.

6 c. If the insurer fails to provide a conference and proposed
7 resolution within 30 days after a request by a person, or if the
8 person disagrees with the resolution proposed by the insurer upon
9 completion of the conference, the person shall be entitled to a
10 determination of the matter by the commissioner or his
11 designated representative.

12 d. The commissioner shall, by rule, establish a procedure for
13 the determination of matters under this section, which shall be
14 reasonably calculated to resolve these matters informally and as
15 rapidly as possible, while protecting the interests of both the
16 person and the insurer.] ¹The commissioner shall establish
17 procedures for resolving complaints of persons who believe that
18 they have been improperly denied automobile insurance, including
19 procedures for a written appeal to the commissioner.¹

20 If ¹ If either the insurer or the person disagrees with a
21 determination of the commissioner under this section, the
22 commissioner, if requested to do so by either party, shall proceed
23 to hear the matter as a contested case.

24 C.17:33B-18

25 30. (New section) a. A licensed insurance agent shall, as a
26 condition of licensure:

27 (1) Provide each eligible person seeking automobile insurance
28 ¹[the lowest available]¹ premium ¹[quotation] quotations¹ for the
29 forms or types of automobile insurance coverages which are
30 offered by ¹[the] all¹ insurers represented by the agent or with
31 which the agent places risks ¹[and which are sought by the
32 eligible person]¹;

33 (2) Not attempt to channel an eligible person away from an
34 insurer or insurance coverage with the purpose or effect of
35 avoiding an agent's obligation to submit an application or an
36 insurer's obligation to accept an eligible person; and

37 (3) Upon request, submit an application of the eligible person
38 for automobile insurance to the insurer selected by the eligible
39 person.

40 b. With respect to automobile insurance, an insurer shall not
41 penalize an agent by paying less than normal commissions or
42 normal compensation or salary because of the expected or actual
43 experience produced by the agent's automobile insurance
44 business or because of the geographic location of automobile
45 insurance business written by the agent.

46 C.17:33B-19

47 31. (New section) a. ¹[After providing an opportunity for a
48 hearing, the commissioner shall suspend an insurer's obligation to
49 comply with section 27 of this act, if:

50 (1) A condition exists for which the commissioner may
51 suspend, revoke, or limit the authority of the insurer and the

1 commissioner determines that suspension of all or a part of the
2 insurer's obligations would be in the best interest of the public,
3 the insurer, and the policyholders of the insurer; or

4 (2) The insurer requests suspension and the commissioner finds
5 that requiring the insurer to comply with section 27 of this act
6 would cause the insurer undue financial or administrative
7 hardship] The commissioner shall suspend, after hearing, an
8 insurer's obligation to issue policies in compliance with the
9 provisions of section 27 of this act if the insurer is in an unsafe or
10 unsound financial condition¹.

11 b. If an insurer requests suspension and avers that there is an
12 immediate need to cease ¹[its] issuance of policies in¹
13 compliance with section 27 of this act because ¹[of the imminent
14 threat of insolvency] compliance would result in the insurer being

15 in an unsafe or unsound financial condition¹, the insurer's
16 obligation to ¹[comply] issue policies in compliance¹ with section
17 27 of this act shall be suspended beginning on the 10th business
18 day after the insurer has filed the request and supporting
19 documentation with the commissioner, unless within that time,
20 the commissioner ¹[holds a hearing and]¹ finds that continued
21 compliance with section 27 of this act will not result in ¹[such
22 insolvency] the insurer being in an unsafe or unsound financial

23 condition¹.

24 c. Any suspension pursuant to subsection a. or b. of this
25 section shall continue until the commissioner, upon the
26 commissioner's own motion or upon request by the insurer or any
27 other interested party, after providing opportunity for a hearing,
28 orders its revocation.

29 ¹d. For the purposes of this section, an insurer shall be deemed
30 to be in an unsafe or unsound financial condition if the
31 commissioner finds the insurer to have a ratio of annual net
32 premiums written to surplus as to policyholders that threatens
33 the financial health of the insurer.¹

34 C.17:33B-20

35 32. (New section) ¹[An insurer may at any time file a request
36 with the commissioner for approval to suspend its acceptance of
37 all applications for new automobile insurance policies. The filing
38 shall specify the period of the suspension and the method by
39 which the insurer proposes to effect the suspension. The
40 commissioner shall, within 10 business days of the date of filing,
41 either approve or disapprove the request for suspension. The
42 commissioner may disapprove the request for suspension only if,
43 after a hearing, held within the 10 business day period, he finds
44 that the suspension does not have a legitimate business purpose
45 which is consistent with the purposes of this 1990 amendatory and
46 supplementary act or that the suspension would adversely affect
47 the maintenance of the automobile insurance market in this
48 State] The commissioner may suspend an insurer's obligation to
49 issue policies pursuant to section 27 of this act if the
50 commissioner, in his discretion, determines that compliance with

1 section 27 of this act will result in an insurer's financial
 2 condition becoming unsafe or unsound. In making this
 3 determination, the commissioner shall consider the following
 4 factors:

5 a. The insurer's ratio of annual net premiums written to
 6 surplus as to policyholders; and

7 b. Whether the insurer, in issuing policies in compliance with
 8 section 27 of this act, would experience:

9 (1) an adverse change in its rating by A.M. Best and Company,
 10 Dun and Bradstreet, Moody's or Standard and Poor's;

11 (2) financial ratios outside the acceptable ranges as
 12 established by the National Association of Insurance
 13 Commissioners or the chief financial officer of the Department
 14 of Insurance of this State; or

15 (3) a net reduction to the insurer's surplus as to policyholders
 16 greater than 25% during a period of two years or less.

17 Any suspension pursuant to this section shall continue until the
 18 commissioner, upon the commissioner's own motion or upon
 19 request by the insurer or any other interested party, after
 20 providing opportunity for a hearing, orders its revocation¹.

21 C.17:33B-21

22 33. (New section) If the commissioner determines that any
 23 person has violated any provision of sections 26 through ¹[32] 30¹
 24 of this 1990 amendatory and supplementary act, he may impose a
 25 civil penalty in an amount of up to \$2,000 for the first violation
 26 and up to \$5,000 for the second and each subsequent violation,
 27 collectible in an action brought in the name of the commissioner
 28 pursuant to the provisions of "the penalty enforcement law,"
 29 N.J.S.2A:58-1 et seq. For the purposes of this section, each
 30 declination shall be deemed to constitute a separate violation.

31 34. Section 1 of P.L.1970, c.215 (C.17:29D-1) is amended to
 32 read as follows:

33 1. The Commissioner of Insurance may adopt, issue and
 34 promulgate rules and regulations establishing a plan for the
 35 providing and apportionment of insurance coverage for applicants
 36 therefor who are in good faith entitled to, but are unable to
 37 procure the same, through ordinary methods. Every insurer
 38 admitted to transact and transacting any line, or lines, of
 39 insurance in the State of New Jersey shall participate in such
 40 plan and provide insurance coverage to the extent required in
 41 such rules and regulations.

42 Any plan established pursuant to this section to provide
 43 insurance for automobiles, as defined in section 2 of P.L.1972,
 44 c.70 (C.39:6A-2), shall provide:

45 a. That any automobile liability insurance coverage with limits
 46 in excess of \$50,000 per person and \$100,000 per accident for
 47 bodily injury or death and \$25,000 for property damage, or in lieu
 48 thereof, \$100,000 for a single limit of liability against claims for
 49 bodily injury or death and property damage, shall be experience
 50 rated with respect to the rate applicable to coverage in excess of

1 those limits;

2 b. That collision and comprehensive automobile insurance
 3 coverages on automobiles with a value of \$25,000 or more at the
 4 time those coverages are issued or renewed shall be experience
 5 rated and for automobiles with a value of more than \$15,000 but
 6 less than \$25,000 at the time those coverages are issued or
 7 renewed that part of the rate applicable to the value between
 8 \$15,000 and \$25,000 shall be experience rated;

9 c. For a limited assignment distribution system permitting
 10 insurers to enter into agreements with other mutually agreeable
 11 insurers or other qualified entities to transfer their applicants
 12 ¹and insureds¹ under such plan to such insurers or other entities;
 13 ¹[and]¹

14 d. That it shall not provide insurance coverage for more than
 15 10 percent of the aggregate number of private passenger
 16 automobile non-fleet exposures being written in the total private
 17 passenger automobile insurance market in this State. The plan
 18 shall provide for the cessation of the acceptance of applications
 19 or the issuance of new policies at any time it reaches 10 percent
 20 of marketshare, as certified by the commissioner, until such time
 21 that the commissioner certifies that the plan is insuring less than
 22 10 percent of the aggregate number of private passenger
 23 automobile non-fleet exposures being written in the total private
 24 passenger automobile insurance market in this State ¹;

25 e. That it shall not provide coverage to an eligible person as
 26 defined pursuant to section 25 of P.L. , c. (C.)(now
 27 pending in the Legislature as this bill); and

28 f. That insurers who write automobile risks in those urban
 29 territories designated by the commissioner shall receive one
 30 assigned risk credit for every two voluntary risks written in those
 31 designated territories¹ .

32 Prior to the adoption or amendment of such rule and
 33 regulations, the commissioner shall consult with such members of
 34 the insurance industry as he deems appropriate. Such
 35 consultation shall be in addition to any otherwise required public
 36 hearing or notice with regard to the adoption or amendment of
 37 rules and regulations.

38 (cf: P.L.1970, c.215, s.1)

39 35. Section 6 of P.L.1983, c.65 (C.17:29A-35) is amended to
 40 read as follows:

41 6. a. A merit rating accident surcharge system for private
 42 passenger automobiles may be used [both] in the voluntary market
 43 [and], by the New Jersey Automobile Full Insurance Underwriting
 44 Association created pursuant to section 16 of P.L.1983, c.65
 45 (C.17:30E-4) ¹, by the Market Transition Facility created
 46 pursuant to section 88 of P.L. , c. (C.)(now pending in
 47 the Legislature as this bill),¹ and by any insurance plan
 48 established to provide private passenger automobile insurance
 49 pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1). No

1 surcharges shall be imposed on or after the operative date of this
2 act, unless there is an at-fault accident within a three year
3 period immediately preceding the effective date of coverage
4 which results in payment by the insurer of at least a \$300.00
5 claim. All moneys collected under this subsection shall be
6 retained by the insurer assessing the surcharge. Accident
7 surcharges shall be imposed for a three year period and shall, for
8 each filer, be uniform on a Statewide basis without regard to
9 classification or territory.

10 b. There is created a New Jersey Merit Rating Plan which
11 shall apply to all drivers and shall include, but not be limited to,
12 the following provisions:

13 (1) (a) Plan surcharges shall be levied, beginning on or after
14 January 1, 1984, by the Division of Motor Vehicles on any driver
15 who has accumulated, within the immediately preceding three
16 year period, beginning on or after February 10, 1983, six or more
17 motor vehicle points, as provided in Title 39 of the Revised
18 Statutes, exclusive of any points for convictions for which
19 surcharges are levied under paragraph (2) of this subsection;
20 except that the allowance for a reduction of points in Title 39 of
21 the Revised Statutes shall not apply for the purpose of
22 determining surcharges under this paragraph. Surcharges shall be
23 levied for each year in which the driver possesses six or more
24 points. Surcharges assessed pursuant to this paragraph shall be
25 not less than \$100.00 for six points, and not less than \$25.00 for
26 each additional point. The commissioner may increase the
27 amount of surcharges as he deems necessary to effectuate the
28 purposes of [subsection d. of this section and] P.L.1983, c.65
29 (C.17:29A-33 et al.), and may, pursuant to regulation, permit the
30 deferral of all or part of any surcharges authorized by this
31 subsection until the end of the policy term of an automobile
32 insurance policy with an effective date prior to January 1, 1984,
33 upon presentation of appropriate evidence that an insured has
34 already paid an equivalent surcharge arising from the same motor
35 vehicle violation or conviction.

36 (b) (Deleted by amendment, P.L.1984, c.1.)

37 (2) Plan surcharges shall be levied for convictions (a) under
38 R.S.39:4-50 for violations occurring on or after February 10,
39 1983, and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or
40 for offenses committed in other jurisdictions of a substantially
41 similar nature to those under R.S.39:4-50 or section 2 of
42 P.L.1981, c.512 (C.39:4-50.4a), for violations occurring on or
43 after January 26, 1984. Surcharges under this paragraph shall be
44 levied annually for a three year period, and shall be not less than
45 \$1,000.00 per year for each of the first two convictions, and not
46 less than \$1,500.00 per year for the third conviction occurring
47 within a three year period. If a driver is convicted under both
48 R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for
49 offenses arising out of the same incident, the driver shall be

1 assessed only one surcharge for the two offenses. The
2 commissioner may increase the amount of surcharges as he deems
3 necessary to effectuate the purposes of [subsection d. of this
4 section and] P.L.1983, c.65 (C.17:29A-33 et al.), and may,
5 pursuant to regulation, permit the deferral of all or any part of
6 these surcharges as provided in paragraph (1) (a) of this
7 subsection.

8 If, upon written notification from the Division of Motor
9 Vehicles, mailed to the last address of record with the division, a
10 driver fails to pay a surcharge levied under this subsection, the
11 license of the driver shall be suspended forthwith until the
12 surcharge is paid to the Division of Motor Vehicles; except that
13 upon satisfactory showing of indigency, the Division of Motor
14 Vehicles may authorize payment of the surcharge on an
15 installment basis over a period not to exceed 10 months.

16 For the purposes of this subparagraph, "indigency" shall be
17 defined in rules and regulations promulgated by the Director of
18 the Division of Motor Vehicles.

19 All moneys collectible under this subsection shall be billed and
20 collected by the Division of Motor Vehicles. Of the moneys
21 collected [,: 10%, or the actual cost of administering the
22 collection of the surcharge, whichever is less, shall be retained by
23 the Division of Motor Vehicles [and turned over to the State
24 Treasury for deposit in a special account to be used by the
25 Division of Motor Vehicles, as may be necessary, to modernize its
26 operations and improve its effectiveness and efficiency in order
27 to discharge its statutory obligations and]; five percent, or the
28 actual cost of administering the cancellation notification system
29 established pursuant to section 50 of P.L. , c. (C.) (now
30 pending in the Legislature as this bill), whichever is less, shall be
31 retained by the Division of Motor Vehicles; and prior to
32 October 1, 1991, the remainder shall be remitted to the New
33 Jersey Automobile Full Insurance Underwriting Association and
34 on or after October 1, 1991, the remainder shall be remitted to
35 the New Jersey Automobile Insurance Guaranty Fund created
36 pursuant to section 23 of P.L. , c. (C.) (now pending in
37 the Legislature as this bill). From the date of certification by
38 the Commissioner of Insurance that the monies collectible under
39 this subsection are no longer needed to fund the association debt,
40 monies collectible under this subsection shall be remitted to the
41 New Jersey Property-Liability Guaranty Association created
42 pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used
43 for payment of any loans made by that association to the New
44 Jersey Automobile Insurance Guaranty Fund pursuant to
45 paragraph (10) of subsection a. of section 8 of P.L.1974, c.17
46 (C.17:30A-8). [Any moneys in the special account at the end of a
47 fiscal year shall be transferred to the General Fund for use for
48 general State purposes. Moneys shall be appropriated annually to
49 the special account.]

1 (3) In addition to any other authority provided in P.L.1983,
2 c.65 (C.17:29A-33 et al.) the commissioner, after consultation
3 with the Director of the Division of Motor Vehicles, is
4 specifically authorized (a) to increase the dollar amount of the
5 surcharges for motor vehicle violations or convictions, (b) to
6 impose, in accordance with paragraph (1) (a) of this subsection,
7 surcharges for motor vehicle violations or convictions for which
8 motor vehicle points are not assessed under Title 39 of the
9 Revised Statutes, or (c) to reduce the number of points for which
10 surcharges may be assessed below the level provided in paragraph
11 (1) (a) of this subsection, except that the dollar amount of all
12 surcharges levied under the New Jersey Merit Rating Plan shall
13 be uniform on a Statewide basis for each filer, without regard to
14 classification or territory. Surcharges adopted by the
15 commissioner on or after January 1, 1984 for motor vehicle
16 violations or convictions for which motor vehicle points are not
17 assessable under Title 39 of the Revised Statutes shall not be
18 retroactively applied but shall take effect on the date of the New
19 Jersey Register in which notice of adoption appears or the
20 effective date set forth in that notice, whichever is later.

21 c. No motor vehicle violation surcharges shall be levied on an
22 automobile insurance policy issued or renewed on or after
23 January 1, 1984, except in accordance with the New Jersey Merit
24 Rating Plan, and all surcharges levied thereunder shall be
25 assessed, collected and distributed in accordance with subsection
26 b. of this section.

27 d. [The dollar amount of all motor vehicle conviction
28 surcharges shall be at least equivalent to the differential between
29 the rates charged to insureds as promulgated by the rating bureau
30 which files rates for the greatest number of insurers in the
31 voluntary private passenger automobile insurance market in this
32 State and the Supplement I rates in use as of December 31, 1982
33 by the automobile insurance plan established pursuant to
34 P.L.1970, c.215 (C.17:29D-1), and the amount collectible under
35 the motor vehicle conviction surcharge system in use by the
36 automobile insurance plan established pursuant to P.L.1970, c.215
37 (C.17:29D-1) prior to the implementation of this act; except that
38 in the first year of operation of the New Jersey Automobile Full
39 Insurance Underwriting Association, the dollar amount of all
40 motor vehicle surcharges shall be sufficient to eliminate the need
41 for imposition of a residual market equalization charge
42 authorized under section 20 of P.L.1983, c.65 (C.17:30E-8).]
43 (Deleted by amendment, P.L. , c. (C.) (now pending in the
44 Legislature as this bill)

45 e. The Commissioner of Insurance and the Director of the
46 Division of Motor Vehicles as may be appropriate, shall adopt any
47 rules and regulations necessary or appropriate to effectuate the
48 purposes of this section.

49 (cf: P.L.1988, c.156, s.9)

1 36. Section 5 of P.L.1988, c.156 (C.17:29A-44) is amended to
2 read as follows:

3 5. a. Beginning July 1, 1989, a filer may charge rates for
4 private passenger automobile insurance in the voluntary market
5 which are not in excess of the following:

6 (1) For private passenger automobile personal injury protection
7 coverage, residual bodily injury and property damage insurance,
8 the maximum permissible annual rate increase applicable to each
9 rate level utilized by an insurer in the voluntary market pursuant
10 to section 6 of P.L.1988, c.156 (C.17:29A-45) shall be a Statewide
11 average rate change of not more than the last published increase
12 in the medical care services components of the national
13 Consumer Price Index, all urban consumers, U.S. city average,
14 plus three percentage points.

15 (2) For private passenger automobile physical damage
16 coverage, the maximum permissible annual rate increase
17 applicable to each rate level utilized by an insurer in the
18 voluntary market pursuant to section 6 of P.L.1988, c.156
19 (C.17:29A-45) shall be a Statewide average rate change of not
20 more than the last published increase in the automobile
21 maintenance and repair components of the national Consumer
22 Price Index, U.S. city average, plus three percentage points.

23 b. For the purposes of this section, "Statewide average rate
24 change" means the total Statewide premium for all coverages
25 combined at the rates in effect at the time of the filing for each
26 rate level.

27 c. Any change in excess of the rate changes permitted by
28 paragraphs (1) and (2) of subsection a. shall be subject to the
29 provisions of P.L.1944, c.27 (C.17:29A-1 et seq.)

30 d. If, at any time, the commissioner believes that an increase
31 in either or both of the published indices will produce rate levels
32 which are excessive, he may modify the Statewide average rate
33 change which may be used pursuant to this section.

34 e. A filer may implement a change in rate level, pursuant to
35 subsection a. of this section, in whole or in part, in a single or in
36 multiple filings by making an informational filing with the
37 commissioner in a manner and form approved by the
38 commissioner. The filing shall include a statement of the reason
39 or reasons for the change in rate level, including, but not limited
40 to, the claim and expense experience of the individual filer.

41 f. Other than filings made pursuant to subsection c. of this
42 section, neither the provisions of subsection c. of section 14 of
43 P.L.1944, c.27 (C.17:29A-14), nor the provisions of section 19 of
44 P.L.1974, c.27 (C.52:27E-18), shall apply to any filing made
45 pursuant to this section. However, the commissioner shall
46 provide a copy of any filing made or other information provided
47 by a filer pursuant to the provisions of this section to the
48 Department of the Public Advocate, Division of Rate Counsel.
49 ¹The Public Advocate may challenge a rate change implemented

1 pursuant to subsection a. of this section after the effective date
2 of the rate change by filing such challenge in writing with the
3 commissioner within 30 days of the effective date of the rate
4 change. The commissioner shall hear the matter on an expedited
5 basis and shall render a final determination within six months of
6 the date of filing. The commissioner may, for good cause, extend
7 this six-month period up to an additional three months. If the
8 Public Advocate prevails, the commissioner shall reduce or
9 rescind the rate change as appropriate. If the commissioner
10 reduces or rescinds a rate change as a result of a challenge by the
11 Public Advocate filed pursuant to the provisions of this
12 subsection, the filer shall bear the cost of the reasonable
13 expenses incurred by the Public Advocate in maintaining the
14 challenge.¹

15 g. The commissioner shall monitor the implementation and use
16 of flex rating pursuant to this section and shall report his findings
17 to the Senate Labor, Industry and Professions Committee and the
18 Assembly Insurance Committee, or their successors, including any
19 legislative proposals, no later than July 1, 1992. This report shall
20 provide an evaluation of the use of this rating mechanism and its
21 impact on the availability and affordability of private passenger
22 automobile insurance in this State and the depopulation of the
23 New Jersey Automobile Full Insurance Underwriting Association
24 and shall include any legislative proposals or other
25 recommendations of the commissioner.

26 (cf: P.L.1988, c.156, s.5)

27 37. Section 6 of P.L.1988, c.156 (C.17:29A-45) is amended to
28 read as follows:

29 6. a. Notwithstanding the provisions of P.L.1944, c.27
30 (C.17:29A-1 et seq.) to the contrary, every insurer transacting or
31 proposing to transact private passenger automobile insurance may
32 file rating plans in the voluntary market for standard risks, or
33 non-standard risks, or both. [A rating plan may include a good
34 driver discount plan.] Within 30 days following the effective date
35 of this 1988 amendatory and supplementary act, every insurer
36 writing private passenger automobile insurance in this State
37 which intends to write coverage in the voluntary market using
38 more than one rate level shall file with the commissioner the
39 rates and underwriting rules which are applicable to each rate
40 level.

41 b. An insurer which intends to use more than one rating plan
42 and which has a rating plan on file as of the effective date of this
43 1988 amendatory and supplementary act, may make an initial
44 filing for the additional rating plan in which the modification of
45 the plan on file is expressed as a percentage increase or decrease
46 of the existing rate level.

47 c. Notwithstanding any other law to the contrary, any rates
48 filed pursuant to subsection b. of this section shall be deemed to
49 be approved if not disapproved by the commissioner within 60

1 days. Any subsequent modification of any rate level other than
 2 that provided for in section 5 of this 1988 amendatory and
 3 supplementary act, or any initial rate level which is not expressed
 4 as a percentage increase or decrease of an existing rate level as
 5 provided for in this section, shall be subject to the provisions of
 6 P.L.1944, c.27 (C.17:29A-1 et seq.).

7 d. Any limitation on rates established by the provisions of
 8 section 7 of P.L.1983, c.65 (C.17:29A-36) shall apply separately
 9 to each rate level established pursuant to subsection a. of this
 10 section.

11 e. Every insurer shall maintain such data for each rate level as
 12 may be required by the commissioner by regulation for the
 13 purpose of determining excess profits pursuant to the provisions
 14 of P.L.1988, c.118 (C.17:29A-5.6 et seq.).

15 f. No more than 15 percent of the aggregate number of private
 16 passenger automobile non-fleet exposures being written in the
 17 total private passenger automobile insurance market in this State
 18 shall be provided through the non-standard voluntary market as
 19 defined by rule or regulation of the commissioner adopted
 20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
 21 (C.52:14B-1 et seq.). If the commissioner certifies that 15
 22 percent or more of the aggregate number of private passenger
 23 automobile non-fleet exposures being written in the total private
 24 passenger automobile insurance market in this State are insured
 25 in the non-standard voluntary market, no insurer ¹[shall accept
 26 applications or issue new policies in the non-standard market]
 27 transacting automobile insurance in this State shall refuse to
 28 issue or renew an automobile insurance policy in the voluntary
 29 market for an eligible person as defined in section 25 of P.L. 1988,
 30 c. (C.) (now pending in the Legislature as this bill)¹ until
 31 such time that the commissioner certifies that the non-standard
 32 market comprises less than 15 percent of the aggregate number
 33 of private passenger automobile non-fleet exposures being
 34 written in the total private passenger automobile insurance
 35 market in this State.

36 g. Notwithstanding any provision of this or any other section
 37 of law to the contrary, no insurer shall file, nor shall the
 38 commissioner approve, any rates filed for non-standard risks ¹in
 39 the voluntary market¹ in excess of 135 percent of the
 40 ¹[Statewide average base rate for standard risks in the] cost of¹
 41 private passenger automobile insurance ¹in the¹ voluntary market
 42 in this State ¹as determined by the commissioner¹.

43 h. The commissioner shall monitor and report to the
 44 Legislature, on March 1, 1992, and annually thereafter, the
 45 number of private passenger automobile non-fleet exposures
 46 insured in the standard market on December 31 of the preceding
 47 calendar year and the number of such exposures insured in the
 48 non-standard market on December 31 of the preceding calendar
 49 year.

50 (cf: P.L.1988, c.156, s.6)

1 38. Section 7 of P.L.1988, c.156 (C.17:29A-46) is amended to
2 read as follows:

3 7. a. Insurers shall put in writing all underwriting rules
4 applicable to each rate level utilized pursuant to section 6 of this
5 1988 amendatory and supplementary act. No underwriting rule
6 shall operate in such a manner as to assign a risk to a rating plan
7 on the basis of the territory in which the insured resides. An
8 insurer which knowingly fails to transact automobile insurance
9 consistently with its underwriting rules shall be subject to a fine
10 of not less than \$500.00 for each violation.

11 b. All underwriting rules applicable to each rate level as
12 provided for in section 6 of this 1988 amendatory and
13 supplementary act shall be filed with the commissioner and shall
14 be subject to his prior approval. All underwriting rules shall be
15 subject to public inspection. Insurers shall apply their
16 underwriting rules uniformly and without exception throughout
17 the State, so that every applicant or insured conforming with the
18 underwriting rules will be insured or renewed, and so that every
19 applicant ¹[or insured]¹ not conforming with the underwriting
20 rules will be refused insurance ¹[or be nonrenewed]¹.

21 c. ¹[Affiliated insurers shall not adopt underwriting rules for
22 automobile insurance contracts providing identical coverages
23 which would permit a person to be insured for automobile
24 insurance with more than one of the affiliated insurers.] (Deleted
25 by amendment, P.L. , c.).(now pending in the Legislature as
26 this bill)¹

27 d. [An insurer with more than one rating plan for automobile
28 insurance contracts providing identical coverages shall not adopt
29 underwriting rules which would permit a person to be insured
30 under more than one of the rating plans.] (Deleted by
31 amendment, P.L. , c.).(now pending in the Legislature as
32 this bill)

33 (cf: P.L.1988, c.156, s.7)

34 C.17:33B-25

35 39. (New section) Notwithstanding the provisions of section 27
36 of this 1990 amendatory and supplementary act, section 2 of
37 P.L.1968, c.158 (C.17:29C-7), section 26 of P.L.1988, c.119
38 (C.17:29C-7.1) or any other section of law to the contrary, if the
39 plan for automobile insurance established pursuant to section 1 of
40 P.L.1970, c.72, (C.17:29D-1), is not accepting new applications
41 for coverage pursuant to subsection d. of that section, no insurer
42 transacting automobile insurance in this State shall refuse to
43 issue or renew any private passenger automobile insurance policy
44 in this State.

45 C.17:33B-32

46 40. (New section) a. Notwithstanding any other provision of
47 law to the contrary, rates and premiums for private passenger
48 automobile insurance shall be determined by the application of
49 the following factors in decreasing order of importance:

50 (1) The insured's driving safety record, including motor
51 vehicle points as provided in Title 39 of the Revised Statutes,

1 at-fault accidents and convictions pursuant to R.S.39:4-50 or
2 section 2 of P.L.1981, c.512 (C.39:4-50.4a) or offenses of a
3 substantially similar nature committed in another jurisdiction;

4 (2) The number of miles the insured drives annually;

5 (3) The number of years of driving experience the insured has
6 had;

7 (4) The type of private passenger automobile driven; and

8 (5) Such other factors as the Commissioner of Insurance may
9 adopt by regulation which have a substantial relationship to the
10 risk of loss. The regulations shall also set forth the respective
11 weight to be given to each factor in determining automobile
12 insurance rates and premiums.

13 b. Notwithstanding any provision of subsection a. of this
14 section to the contrary, rates and premiums for private passenger
15 automobile insurance shall not be determined, in whole or in part,
16 directly or indirectly, upon the age, sex or marital status of the
17 persons insured.

18 1c. The commissioner shall, no later than January 1, 1992,
19 promulgate a plan providing for the implementation of the
20 provisions of subsections a. and b. of this section which shall take
21 effect no later than one year following the date of promulgation.¹

22 **C.17:33B-33**

23 41. (New section) a. The provisions of sections 41 through 48
24 shall be applicable to all automobile physical damage insurance
25 policies covering automobiles, as defined in section 2 of P.L.1972,
26 c.70 (C.39:6A-2), registered in this State.

27 b. As used in this section and section 42 of this act, "renewal"
28 means the issuance and delivery by an insurer, at the end of the
29 policy period, of a policy superseding a policy previously issued
30 and delivered by the same insurer, or the issuance and delivery of
31 a certificate or notice extending the term of a policy beyond its
32 policy period or term. Any policy with a policy period or term of
33 less than one year shall, for the purpose of determining each
34 renewal date pursuant to section 42 of this act, be considered as
35 if written for a policy period or term of one year commencing
36 with the annual anniversary date, and any policy written for a
37 period or term of more than one year or any policy with no fixed
38 expiration date shall, for the purpose of section 42 of this act, be
39 considered as if written for successive policy periods or terms of
40 one year commencing with the annual anniversary date.

41 c. No policy providing automobile physical damage insurance
42 shall be issued, delivered or renewed unless the provisions of
43 section 42 through section 48 are complied with.

44 **C.17:33B-34**

45 42. (New section) a. A newly issued policy shall not provide
46 coverage for automobile physical damage perils prior to an
47 inspection of the automobile by the insurer.

48 b. For a renewal of a policy referred to in subsection a. of this
49 section, an insurer may require, as a condition of renewal, that
50 the automobile be made available for inspection.

51 c. If an insurer requests an inspection pursuant to subsection b.

1 of this section, the insured shall make the automobile available
2 for inspection by the insurer, upon reasonable notice. If the
3 insured fails to make the automobile available for inspection, the
4 insurer may refuse to continue physical damage coverage.

5 C.17:33B-35

6 43. (New section) If an automobile is acquired by the insured
7 as a replacement for or in addition to an automobile insured for
8 physical damage coverage, and the insured requests physical
9 damage coverage for the replacement or additional automobile,
10 the coverage for physical damage shall not be effective before an
11 inspection is made. If, at the time of the request for the
12 coverage, the automobile is unavailable for inspection because of
13 conditions of purchase or other circumstances and is thereafter
14 made available for inspection, the insurer shall promptly inspect
15 the automobile and physical damage coverage shall not become
16 effective before the inspection has been made.

17 C.17:33B-36

18 44. (New section) If an automobile insured for physical
19 damage coverage by an insurer is damaged, the insurer may
20 request that the automobile be made available for inspection
21 regardless of whether the automobile is repaired. The results of
22 the inspection may form a basis for determining the value of the
23 automobile in the event of a subsequent loss. If the automobile is
24 repaired, the insurer shall request the repair invoice and shall
25 require the insured and the auto body repair facility or
26 automobile repairer to certify, under the penalties of perjury,
27 whether the applicable deductible has been paid to the auto body
28 repair facility or automobile repairer, whether any repairs have
29 been made and if any items allowed by the insurer were not
30 included in the repairs.

31 C.17:33B-37

32 45. (New section) a. Any inspection made pursuant to section
33 42, 43 or 44 of this act shall be conducted by the insurer or its
34 authorized representative and shall be recorded on a form
35 prescribed by the commissioner and by photographs of the
36 automobile if prescribed by the commissioner by regulation. The
37 form and photographs, if any, shall be retained by the insurer
38 with its policy records for the insured, and a copy of the form and
39 photographs, if any, shall be made available to the insured upon
40 request.

41 b. Any inspection made pursuant to section 42, 43 or 44 of this
42 act shall be made at locations and times reasonably convenient to
43 the insured. The results of any inspection may be considered in
44 determining the value of the automobile.

45 C.17:33B-38

46 46. (New section) Every insurer shall report to the Director of
47 the Division of Motor Vehicles any evidence of overcharges,
48 improper repairs or adjustments or other wrongdoing by auto body
49 repair facilities or automobile repairers.

50 C.17:33B-39

51 47. (New section) If the commissioner, after notice and
52 hearing, finds that any insurer or its authorized representative
53 has violated any provision of sections 42 through 46 or section 48
54 of this act, he shall order the payment of a penalty, to be

1 collected by the commissioner pursuant to "the penalty
2 enforcement law," N.J.S.2A:58-1 et seq, not to exceed \$500 for
3 each offense. Each issuance, procurement or negotiation of a
4 policy of insurance in violation shall be deemed a separate
5 offense.

6 C.17:33B-40

7 48. (New section) a. The Commissioner of Insurance, in
8 regulations implementing the provisions of sections 41 through 47
9 of this act, shall also require that insurers take appropriate
10 action to ensure that there is wide public dissemination of the
11 provisions of sections 41 through 47 of this act relating to the
12 rights and obligations of insured and insurers.

13 b. The inspections provided for in sections 42, 43 and 44 of this
14 act may be ¹[dispensed with] exempted¹ or deferred under
15 circumstances specified in regulations of the commissioner.
16 ¹[Such] The commissioner shall exempt new automobiles from
17 inspection under conditions he establishes by regulation. Other¹
18 circumstances ¹for exemption or deferral¹ may include but are
19 not limited to, ¹[the insuring of a new automobile,]¹ the insuring
20 of an automobile whose inspection would constitute a serious
21 hardship to the insurer, the insured or an applicant for insurance,
22 and the insuring of an automobile for a limited specified period of
23 time.

24 49. Section 2 of P.L.1972, c.197 (C.39:6B-2) is amended to
25 read as follows:

26 2. Any owner or registrant of a motor vehicle registered or
27 principally garaged in this State who operates or causes to be
28 operated a motor vehicle upon any public road or highway in this
29 State without motor vehicle liability insurance coverage required
30 by this act, and any operator who operates or causes a motor
31 vehicle to be operated and who knows or should know from the
32 attendant circumstances that the motor vehicle is without motor
33 vehicle liability insurance coverage required by this act shall be
34 subject, for the first offense, to a fine of \$300.00 and a period of
35 community service to be determined by the court, and shall
36 forthwith forfeit his right to operate a motor vehicle over the
37 highways of this State for a period of one year from the date of
38 conviction. Upon subsequent conviction, he shall be subject to a
39 fine of \$500.00 and shall be subject to imprisonment for a term of
40 14 days and shall be ordered by the court to perform community
41 service for a period of 30 days, which shall be of such form and
42 on such terms as the court shall deem appropriate under the
43 circumstances, and shall forfeit his right to operate a motor
44 vehicle for a period of two years from the date of his conviction,
45 and, after the expiration of said period, he may make application
46 to the Director of the Division of Motor Vehicles for a license to
47 operate a motor vehicle, which application may be granted at the
48 discretion of the director. The director's discretion shall be
49 based upon an assessment of the likelihood that the individual will
50 operate or cause a motor vehicle to be operated in the future

1 without the insurance coverage required by this act. A complaint
2 for violation of this act may be made to a municipal court at any
3 time within six months after the date of the alleged offense.

4 Failure to produce at the time of trial an insurance
5 identification card or an insurance policy which was in force for
6 the time of operation for which the offense is charged, creates a
7 rebuttable presumption that the person was uninsured when
8 charged with a violation of this section.

9 Notwithstanding any provision of P.L.1972, c.197 (C.39:6B-1 et
10 seq.), any person who violates the provisions of that act, from
11 October 1, 1990 through January 31, 1991, shall not be subject to
12 any of the penalties or sanctions provided for a first violation of
13 that act if that person produces at the time of trial an insurance
14 identification card or a motor vehicle liability insurance policy
15 which is in force at the time of the trial and the conviction for
16 that person's offense would be their first conviction for an
17 offense under that act. The Commissioner of Insurance shall
18 appropriately promote and advertise this limited time amnesty
19 program for first-time offenses under that act throughout the
20 State.

21 (cf: P.L.1988, c.156, s.15)

22 C.17:33B-41

23 50. (New section) a. Upon the termination of a policy of
24 motor vehicle liability insurance by cancellation ¹[or nonrenewal]
25 for nonpayment of premium pursuant to section 2 of P.L.1968,
26 c.158 (C.17:29C-7)¹, notice of that cancellation ¹[or
27 nonrenewal]¹ shall be filed by the insurer with the Division of
28 Motor Vehicles not later than 30 days following the effective
29 date of that cancellation ¹[or nonrenewal]¹.

30 b. The division shall notify the person whose policy was
31 cancelled ¹[or nonrenewed]¹ that, unless proof of motor vehicle
32 liability insurance is filed with the division within 30 days of the
33 notification or some other allowable circumstance exists and the
34 division is notified of that circumstance within 30 days of the
35 notification, the sanctions and penalties of this section shall
36 apply.

37 c. If the Director of the Division of Motor Vehicles has not
38 received proof of motor vehicle liability insurance or other
39 allowable circumstances within 30 days pursuant to subsection b.
40 of this section, he shall suspend the registration of such vehicle,
41 except that:

42 (1) Suspension shall not be made under this subsection upon the
43 basis of a cancellation ¹[or nonrenewal]¹ of motor vehicle
44 liability insurance if the registration certificate and registration
45 plates of the motor vehicle are surrendered prior to the time at
46 which the cancellation ¹[or termination]¹ of insurance becomes
47 effective. Such surrender shall be made to such officers of the
48 division as the director shall direct. For the purposes of this
49 paragraph, the expiration of a registration without renewal of
50 that registration shall be deemed to be a surrender of registration

1 as of the date of expiration;

2 (2) Suspension shall not be made under this subsection upon a
3 cancellation ¹[or nonrenewal]¹ of motor vehicle liability
4 insurance if the vehicle has been, or will be, prior to the date of
5 that cancellation ¹[or termination]¹, removed from the United
6 States in North America and the Dominion of Canada for the
7 purpose of international traffic, provided that the owner of the
8 vehicle, prior to the date of that cancellation ¹[or nonrenewal]¹,
9 has filed with the director a statement, in a form prescribed by
10 him, indicating that the vehicle has been, or will be, so removed,
11 and agreeing to notify the director immediately upon return of
12 the vehicle to the United States in North America or the
13 Dominion of Canada. Upon receipt of the statement the director
14 shall restrict the use of the registration to such international
15 traffic until new proof that motor vehicle liability insurance has
16 been secured for the vehicle;

17 (3) Suspension need not be made under this subsection upon the
18 basis of a cancellation ¹[or nonrenewal]¹ of motor vehicle
19 liability insurance if the period of time during which the motor
20 vehicle remained both registered and uninsured was not greater
21 than 15 days. The director shall promulgate regulations
22 governing the conditions under which suspension action may be
23 withheld pursuant to this paragraph.

24 d. Notwithstanding the provisions of subsection c. of this
25 section, an order of suspension may be rescinded if the registrant
26 pays to the commissioner a civil penalty in the amount of \$4 for
27 each day up to 90 days for which motor vehicle liability insurance
28 was not in effect. The provisions of this subsection shall apply
29 only once during any 36 month period and only if the registrant
30 surrenders the certificate of registration and registration plates
31 to the director not more than 90 days from the date of
32 cancellation ¹[or nonrenewal]¹ of motor vehicle liability
33 insurance coverage or submits to the director proof of motor
34 vehicle liability insurance which took effect not more than 90
35 days from the cancellation ¹[or nonrenewal]¹ of his previous
36 motor vehicle liability insurance.

37 e. Any motor vehicle, the registration for which has been
38 suspended pursuant to this section shall not be registered or
39 reregistered in the name of the same registrant, or in any other
40 name where the director has reasonable grounds to believe that
41 such registration or reregistration will have the effect of
42 defeating the purposes of this section, and no other motor vehicle
43 shall be registered in the name of such person during the period
44 of suspension.

45 f. No registration plates shall be returned to the registrant
46 until proof of motor vehicle liability insurance is submitted to the
47 director.

48 g. If a registrant has not surrendered his certificate of
49 registration and registration plates or obtained motor vehicle

1 liability insurance within 90 days from the date of cancellation
2 ¹[or nonrenewal]¹ of motor vehicle liability insurance, the
3 director shall suspend the driver's license of any such registrant.
4 The suspension shall take effect on the date specified in the order
5 and shall remain in effect until termination of the suspension of
6 the registrant's registration.

7 h. The Director of the Division of Motor Vehicles shall adopt
8 rules and regulations pursuant to the "Administrative Procedure
9 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
10 provisions of this section. ¹The director may, by regulation,
11 require that the provisions of this section shall be applicable to
12 the termination of policies of motor vehicle liability insurance
13 for reasons other than cancellation for nonpayment of premium,
14 including nonrenewals.¹

15 C.17:33B-42

16 51. (New section) The Commissioner of Insurance may order
17 insurers writing automobile insurance in this State to implement
18 any procedure or practice that he deems necessary to more
19 effectively control the cost of providing personal injury
20 protection coverage to insureds in this State, including
21 procedures or practices to increase the efficiency of the insurers
22 or to prevent fraudulent practices by the insured, insurers,
23 providers of services or equipment, or others.

24 C.17:33B-43

25 52. (New section) If an insurer, the New Jersey Automobile
26 Full Insurance Underwriting Association, the trustee appointed
27 pursuant to section 21 of this 1990 amendatory and
28 supplementary act ¹, the Market Transition Facility created
29 pursuant to section 88 of this act¹ or any insurer or other entity
30 insuring risks under a plan providing private passenger automobile
31 insurance pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1),
32 offers a lump sum settlement of more than \$10,000 to a claimant
33 covered for bodily injury liability under a private passenger
34 automobile liability insurance policy, the insurer, the association
35 ¹, the facility¹ or the other entity may, at the same time, offer a
36 structured settlement for that claim to the claimant or his
37 attorney. If the claimant's attorney receives an offer of
38 structured settlement pursuant to this section, he shall present it
39 to the claimant.

40 C.17:33B-44

41 53. (New section) The Commissioner of Insurance is
42 authorized to order reductions in the base rates of
43 comprehensive, collision, physical damage, or any combination of
44 these coverages, as appropriate, for private passenger
45 automobiles which are equipped with one or more anti-theft or
46 safety devices which are approved by the commissioner.

47 54. Section 5 of P.L.1982. c.43 (C.39:5-30.9) is amended to
48 read as follows:

49 5. Points recorded against a licensee shall be reduced at the
50 rate of three points for each 12 consecutive months in which the
51 licensee has not committed any violation either resulting in the
52 assessment of points or in the suspension of driving privileges.

1 Points recorded against a licensee shall also be reduced by three
2 points, where the licensee attends and satisfactorily completes an
3 approved license improvement course; provided, however, that no
4 licensee may receive point reduction credits for completion of
5 the same or a similar course within two years of having
6 completed the original course. Points recorded against a licensee
7 shall also be reduced by two points if the licensee attends and
8 satisfactorily completes an approved motor vehicle defensive
9 driving course pursuant to section 55 of P.L. , c. (C.
10)(now pending before the Legislature as this bill), except that no
11 licensee may receive point reduction credits for completion of an
12 approved motor vehicle defensive driving course within five years
13 of having completed a previous approved motor vehicle defensive
14 driving course. No point totals shall be reduced below zero.
15 Computation of the time periods used in granting point reduction
16 credits shall in all cases be based upon the respective dates of
17 commission of the offenses for which the licensee was convicted
18 and assessed points.

19 (cf: P.L.1982, c.43, s.5)

20 C.17:33B-45

21 55. (New section) a. An approved motor vehicle defensive
22 driving course shall include that number of hours of classroom or
23 field driving instruction, or both, as the Director of the Division
24 of Motor Vehicles may by regulation prescribe. The director may
25 adopt such other requirements concerning the subject matter and
26 contents of courses, and school and instructor qualifications, as
27 he may from time to time deem appropriate.

28 The director shall approve any motor vehicle defensive driving
29 course which meets or exceeds the standards of the National
30 Safety Council's defensive driving course.

31 b. The provisions of this section shall not apply to driver
32 training courses offered by driving schools pursuant to P.L.1951,
33 c.216 (C.39:12-1 et seq.), public, parochial or private school
34 driving education courses, or to a Division of Motor Vehicles
35 Driver Improvement Program required pursuant to P.L.1969,
36 c.261 (C.39:5-30.2 et seq.).

37 c. The Director of the Division of Motor Vehicles may
38 promulgate rules and regulations, pursuant to the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), that he
40 deems necessary to effectuate the purposes of this section.

41 C.17:33B-46

42 56. (New section) a. Every insurer writing private passenger
43 automobile insurance in this State shall, within 360 days of the
44 effective date of this act, file with the commissioner a plan for
45 the prevention of fraudulent insurance applications and claims
46 and for the prevention of automobile theft. The plan shall be
47 deemed approved by the commissioner if not affirmatively
48 approved or disapproved by the commissioner within 90 days of
49 the date of filing. The commissioner may call upon the expertise
50 of the Director of the Division of Insurance Fraud Prevention in
51 his review of plans filed pursuant to this subsection. During the

1 90 day approval period the commissioner may request such
2 amendments to the plan as he deems necessary. Any subsequent
3 amendments to a plan filed with and approved by the
4 commissioner shall be submitted for filing and deemed approved
5 if not affirmatively approved or disapproved within 90 days from
6 the date of filing.

7 b. The implementation of plans filed and approved pursuant to
8 subsection a. of this section shall be monitored by the Division of
9 Insurance Fraud Prevention in the Department of Insurance.
10 Each insurer writing private passenger automobile insurance in
11 this State shall report to the director on an annual basis,
12 beginning January 1, 1992, on their experience in implementing
13 their fraud and theft prevention plan.

14 c. Upon reasonable notice, the commissioner shall order a
15 reduction of up to 20 percent in the automobile physical damage
16 base rates of any insurer for failure to submit a plan, failure to
17 submit any amendments to an approved plan, failure to properly
18 implement an approved plan in a reasonable manner and within a
19 reasonable time period, failure to provide a report required
20 pursuant to subsection b. of this section or for any other violation
21 of the provisions of this section. The rate reduction shall
22 continue in effect until the insurer is in compliance with the
23 requirements of this section.

24 **C.17:33B-9**

25 57. (New section) a. The Commissioner of Insurance shall, on
26 or before October 1, 1990, compile a list of insurance brokers
27 licensed pursuant to the "New Jersey Insurance Producer
28 Licensing Act," P.L.1987, c.293 (C.17:22A-1 et seq.), who are
29 producers for the New Jersey Automobile Full Insurance
30 Underwriting Association pursuant to section 22 of P.L.1983, c.65
31 (C.17:30E-10). The list shall include the name of the broker and
32 any applicable fictitious, trade or firm name used by the broker;
33 the business address of the broker; and shall set forth the
34 authorities which the broker holds pursuant to section 10 of
35 P.L.1987, c.293 (C.17:22A-10). The list shall be made available
36 to all insurers licensed to transact automobile insurance in this
37 State.

38 b. The commissioner shall initiate a plan to encourage the
39 broadening of authorities held by those brokers who have been
40 active as association producers.

41 1c. The commissioner shall, on or before October 1, 1991,
42 establish a producer assignment program. The program shall be
43 available upon application to any licensed insurance producer
44 who: (1) is a producer for the association; (2) has no affiliation
45 with a voluntary market company for the purposes of placement
46 of private passenger automobile insurance; (3) had an affiliation
47 with an insurance company for the placement of automobile
48 insurance in the voluntary market which was terminated by the
49 insurer on or after December 31, 1980; (4) has demonstrated to
50 the commissioner his competency, efficiency and effectiveness in

1 servicing association and other insurance business as determined
2 by a review of the record of the producer for complaints,
3 violations of the licensing law and other factors deemed relevant
4 by the commissioner; and (5) is located and services insurance
5 in a geographic area which the commissioner has determined to
6 lack sufficient representation for the placement of automobile
7 insurance business in the voluntary market. The program shall
8 provide for the assignment of qualified producers on an equitable
9 basis to insurers writing private passenger automobile insurance
10 in the voluntary market.¹

11 C.17:33B-10

12 58. (New section) Any costs, including attorneys' fees,
13 incurred by the State in maintaining any action against servicing
14 carriers of the New Jersey Automobile Full Insurance
15 Underwriting Association, whether brought by the Commissioner
16 of Insurance, the Attorney General or any other person on behalf
17 of the State of New Jersey, whether or not ultimately
18 reimbursable as costs, shall be payable from monies available to
19 the association or the New Jersey Automobile Insurance Guaranty
20 Fund created pursuant to section 23 of this 1990 amendatory and
21 supplementary act.

22 T & E

23 59. (New section) The Commissioner of Insurance shall study
24 the feasibility of continuing the current system of mandatory
25 motor vehicle liability insurance coverage in this State and the
26 effect that discontinuance of mandatory liability insurance
27 coverage would have on the citizens of this State. In making this
28 study the commissioner shall consult with such representatives of
29 the automobile insurance industry, consumer and safety groups
30 and such other persons with expertise deemed relevant by the
31 commissioner. The commissioner shall report his findings,
32 including any legislative proposals, to the Governor and the
33 Legislature on or before February 1, 1992.

34 C.17:33B-47

35 60. (New section) The Commissioner of Insurance shall, within
36 180 days after the effective date of this 1990 amendatory and
37 supplementary act, promulgate towing and storage fee schedules
38 on a regional basis for the reimbursement of towing charges and
39 storage charges for private passenger automobiles that are
40 damaged in accidents or are recovered after being stolen.

41 No person shall be liable to any person who tows or stores a
42 private passenger automobile which was damaged in an accident
43 or recovered after being reported stolen for any amount of money
44 which results from the charging of fees in excess of those
45 permitted by the towing and storage fee schedules established
46 pursuant to this section.

47 C.17:33B-48

48 61. (New section) No insurer or rating organization shall
49 include any expense for storage of a private passenger automobile
50 for more than 30 days into the base for determining private
51 passenger automobile insurance rates used or to be used in this
52 State.

53 C.17:33B-29

54 62. (New section) a. The Commissioner of Insurance may

1 issue a temporary certificate of authority which authorizes an
2 insurer to issue private passenger automobile insurance policies
3 or make contracts of private passenger automobile insurance in
4 this State.

5 b. A temporary certificate of authority pursuant to subsection
6 a. of this section shall be issued to any applicant which:

7 (1) Is organized as a capital stock company or mutual company;

8 (2) Is currently authorized and licensed to issue private
9 passenger automobile insurance policies or make contracts of
10 private passenger automobile insurance in one or more states of
11 the United States;

12 (3) Meets the current capital or asset requirements of chapter
13 17 of Title 17 of the Revised Statutes for capital stock companies
14 or mutual companies, as the case may be, which insure private
15 passenger automobiles;

16 (4) Has complied with the deposit requirements pursuant to
17 chapter 20 of Title 17 of the Revised Statutes.

18 c. Notwithstanding any other provision of Subtitle 3 of Title 17
19 of the Revised Statutes, any application for a temporary
20 certificate of authority pursuant to this section shall be deemed
21 approved if not disapproved by the commissioner within 30 days
22 of the application filing date.

23 d. A temporary certificate of authority shall be effective for a
24 period of one year and may be renewed for only one additional
25 year with the approval of the Commissioner of Insurance. No
26 temporary certificate of authority shall be issued or renewed
27 pursuant to this section on or after January 1, 1993.

28 **C.17:33B-58**

29 63. (New section) The State Board of Medical Examiners shall
30 assess an annual fee in the amount of \$100 payable by:

31 a. Each physician licensed to practice medicine or surgery in
32 this State pursuant to the provisions of R.S.45:9-1 et seq., and
33 certified or registered pursuant to the provisions of section 1 of
34 P.L.1971, c.236 (C.45:9-6.1), except physicians holding a
35 certificate of registration as a retired physician pursuant to that
36 section. As used in this subsection "physician" includes both
37 doctors of medicine and doctors of osteopathy; and

38 b. Each person licensed in this State to practice podiatry
39 pursuant to the provisions of R.S.45:5-1 et seq. and registered
40 pursuant to the provisions of R.S.45:5-9.

41 Fees imposed pursuant to this section shall be payable on or
42 before July 1 of each calendar year from 1990 through 1996.
43 Payments are to be remitted to the board and credited by the
44 State Treasurer to the New Jersey Automobile Insurance
45 Guaranty Fund created by section 23 of this 1990 amendatory and
46 supplementary act.

47 **C.17:33B-59**

48 64. (New section) The State Board of Chiropractic Examiners
49 shall assess an annual fee in the amount of \$100, payable by each
50 person licensed in this State to practice chiropractic and
51 registered pursuant to the provisions of section 14 of P.L.1953,

1 c.233 (C.45:9-41.11), except persons registered as retired
2 practitioners pursuant to that section. Fees imposed pursuant to
3 this section shall be payable on or before July 1 of each calendar
4 year from 1990 through 1996. Payments are to be remitted to
5 the board and credited by the State Treasurer to the New Jersey
6 Automobile Insurance Guaranty Fund created by section 23 of
7 this 1990 amendatory and supplementary act.

8 C.17:33B-60

9 65. (New section) The State Board of Physical Therapy shall
10 assess an annual fee in the amount of \$100, payable by each
11 person licensed or registered in this State as a physical therapist
12 pursuant to the provisions of P.L.1983, c.296 (C.45:9-37.11 et
13 seq.). As used in this section "physical therapist" includes a
14 registered physical therapist as provided in section 22 of
15 P.L.1983, c.296 (C.45:9-37.32) but shall not include a licensed
16 physical therapist assistant as defined in subsection c. of section
17 3 of P.L.1983, c.296 (C.45:9-37.13). Fees imposed pursuant to
18 this section shall be payable on or before July 1 of each calendar
19 year from 1990 through 1996. Payments are to be remitted to
20 the board and credited by the State Treasurer to the New Jersey
21 Automobile Insurance Guaranty Fund created by section 23 of
22 this 1990 amendatory and supplementary act.

23 C.17:33B-61

24 66. (New section) The Director of the Division of Motor
25 Vehicles in the Department of Law and Public Safety shall assess
26 an annual fee in the amount of \$100, payable by each auto body
27 repair facility licensed pursuant to the provisions of P.L.1983,
28 c.360 (C.39:13-1 et seq.). Fees imposed pursuant to this section
29 shall be payable on or before July 1 of each calendar year from
30 1990 through 1996. Payments are to be remitted to the director
31 and credited by the State Treasurer to the New Jersey
32 Automobile Insurance Guaranty Fund created by section 23 of
33 this 1990 amendatory and supplementary act.

34 C.17:33B-62

35 67. (New section) The ¹[Supreme Court of New Jersey] State
36 Treasurer¹ shall assess an annual fee in the amount of \$100,
37 payable by each person licensed to practice law in this State who
38 has engaged in the practice of law for at least one year. Fees
39 imposed pursuant to this section shall be payable on or before
40 July 1 of each calendar year from 1990 through 1996. Payments
41 are to be remitted to the ¹[Court] treasurer¹ and credited ¹[by
42 the State Treasurer]¹ to the New Jersey Automobile Insurance
43 Guaranty Fund created by section 23 of this 1990 amendatory and
44 supplementary act.

45 C.17:33B-63

46 68. (New section) a. In addition to the registration fees
47 imposed pursuant to Article 2 of chapter 3 of Title 39 of the
48 Revised Statutes, the Director of the Division of Motor Vehicles
49 shall impose and collect additional registration fees as follows:

50 (1) For all motor vehicles, except commercial motor vehicles
51 as defined by R.S.39:1-1 ¹[, which are three or more years old:]
52 that were manufactured in any model year prior to the 1989
53 model year, the additional fee shall be¹ \$15;

1 (2) For all motor vehicles, except commercial motor vehicles
2 as defined by R.S.39:1-1, ¹[which are less than three years old
3 and had a purchase price of \$17,000 or less: \$30, until that
4 vehicle is three years old at which time the additional
5 registration fee shall be \$15] that were manufactured in model
6 year 1989 and thereafter, the additional fee shall be \$40 for the
7 first two years of registration or renewal and \$15 for each year
8 thereafter¹;

9 (3) ¹[For all motor vehicles, except commercial motor vehicles
10 as defined by R.S.39:1-1, which are less than three years old and
11 had a purchase price in excess of \$17,000: \$50, until that vehicle
12 is three years old at which time the additional registration fee
13 shall be \$30;

14 (4)]¹ For all commercial motor vehicles as defined in
15 R.S.39:1-1 ¹[:], the additional fee shall be¹ \$75 ¹;

16 (4) Notwithstanding the provisions of paragraphs (1) through (3)
17 of this subsection, the additional fee on motorcycle registrations
18 shall be \$15 and the additional registration fee on noncommercial
19 trucks registered pursuant to section 2 of P.L.1968, c.429
20 (C.39:3-8.1) shall be \$50;

21 (5) Notwithstanding the provisions of paragraphs (1) through (3)
22 of this subsection, there shall not be any additional fee imposed
23 on any vehicle registered pursuant to R.S.39:3-24¹.

24 b. Fees collected pursuant to subsection a. of this section shall
25 be collected on registrations issued and renewed on or after July
26 1, 1990 through December 31, 1996.

27 (1) Fees collected pursuant to subsection a. of this section
28 prior to October 1, 1991 shall be remitted to the New Jersey
29 Automobile Full Insurance Underwriting Association created by
30 section 16 of P.L.1983, c.65 (C.17:30E-4) and shall be income to
31 the association for purposes of section 20 of P.L.1983, c.65
32 (C.17:30E-8).

33 (2) Fees collected pursuant to subsection a. of this section on
34 or after October 1, 1991 shall be remitted to the New Jersey
35 Automobile Insurance Guaranty Fund created pursuant to section
36 23 of this 1990 amendatory and supplementary act.

37 c. Notwithstanding any provision of subsection a. of this
38 section to the contrary, no fees shall be imposed pursuant to this
39 section on a registration for which no fee is presently collected
40 pursuant to Article 2 of chapter 3 of Title 39 of the Revised
41 Statutes ¹or on a registration for a motor vehicle, except
42 commercial vehicles, if the registrant is eligible for
43 pharmaceutical assistance to the aged and disabled pursuant to
44 P.L.1975, c.194 (C.30:4D-20 et seq.)¹.

45 C.17:33B-31

46 69. (New section) Notwithstanding the provisions of Subtitle 3
47 of Title 17 of the Revised Statutes or any other provision of law
48 to the contrary, no rating organization or advisory organization
49 may be used by an insurer in rate-making for private passenger
50 automobile insurance except for the purposes of the collection,

1 compilation and dissemination of historical data for two or more
2 insurers. As used in this section, the "collection, compilation and
3 dissemination of historical data" shall not be deemed to include
4 the trending of loss data for claims.

5 70. Section 5 of P.L.1970, c.73 (C.56:9-5) is amended to read
6 as follows:

7 5. a. This act shall not forbid the existence of trade and
8 professional organizations created for the purpose of mutual help,
9 and not having capital stock, nor forbid or restrain members of
10 such organizations from lawfully carrying out the legitimate
11 objects thereof not otherwise in violation of this act; nor shall
12 those organizations or members per se be illegal combinations or
13 conspiracies in restraint of trade under the provisions of this act.

14 b. No provisions of this act shall be construed to make illegal:

15 (1) The activities of any labor organization or of individual
16 members thereof which are directed solely to labor objectives
17 which are legitimate under the laws of either the State of New
18 Jersey or the United States;

19 (2) The activities of any agricultural or horticultural
20 cooperative organization, whether incorporated or
21 unincorporated, or of individual members thereof, which are
22 directed solely to objectives of such cooperative organizations
23 which are legitimate under the laws of either the State of New
24 Jersey or the United States;

25 (3) The activities of any public utility, as defined in
26 R.S.48:2-13 to the extent that such activities are subject to the
27 jurisdiction of the Board of Public [Utility Commissioners]
28 Utilities, the Department of Transportation, the Federal Power
29 Commission, the Federal Communications Commission, the
30 Federal Department of Transportation or the Interstate
31 Commerce Commission;

32 (4) The activities, including, but not limited to, the making of
33 or participating in joint underwriting or joint reinsurance
34 arrangements, of any insurer, insurance agent, insurance broker,
35 independent insurance adjuster or rating organization to the
36 extent that such activities are subject to regulation by the
37 Commissioner of Insurance of this State under, or are permitted,
38 or are authorized by, the [Department of Banking and Insurance
39 Act of 1948 (C.17:1-1 et seq.), and the Department of Insurance
40 Act of 1970 (C.17:1C-1 et seq.)] "Department of Banking and
41 Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) and the
42 "Department of Insurance Act of 1970," P.L.1970, c.12
43 (C.17:17C-1 et seq.), provided, however, the provisions of this
44 paragraph (4) shall not apply to private passenger automobile
45 insurance business.

46 (5) The bona fide religious and charitable activities of any not
47 for profit corporation, trust or organization established
48 exclusively for religious or charitable purposes, or for both
49 purposes;

1 (6) The activities engaged in by securities dealers, issuers or
2 agents who are (i) licensed by the State of New Jersey under the
3 [Uniform Securities Law] Uniform Securities Law (1967),
4 P.L.1967, c.93, (C.49:3-47 et seq.), or (ii) members of the
5 National Association of Securities Dealers, or (iii) members of
6 any National Securities Exchange registered with the Securities
7 and Exchange Commission under the [Securities Exchange Act of
8 1934,] Securities Exchange Act of 1934, as amended, in the
9 course of their business of offering, selling, buying and selling, or
10 otherwise trading in or underwriting securities, as agent, broker,
11 or principal, and activities of any National Securities Exchange so
12 registered, including the establishment of commission rates and
13 schedules of charges;

14 (7) The activities of any State or national banking institution
15 to the extent that such activities are regulated or supervised by
16 officers of the State Government under the [Department of
17 Banking and Insurance Act of 1948 (C.17:1-1 et seq.)]
18 Department of Banking and Insurance Act of 1948, P.L.1948,
19 c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or
20 the Federal Government under the banking laws of the United
21 States;

22 (8) The activities of any state or federal savings and loan
23 association to the extent that such activities are regulated or
24 supervised by officers of the State Government under the
25 [Department of Banking and Insurance Act of 1948 (C.17:1-1 et
26 seq.)] Department of Banking and Insurance Act of 1948,
27 P.L.1948, c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et
28 seq.), or the Federal Government under the banking laws of the
29 United States;

30 (9) The activities of any bona fide not for profit professional
31 association, society or board, licensed and regulated by the courts
32 or any other agency of this State, in recommending schedules of
33 suggested fees, rates or commissions for use solely as guidelines
34 in determining charges for professional and technical services; or

35 (10) The activities permitted under the provisions of [the Fair
36 Sales Act (C.56:4-1 et seq.)] chapter 4 of Title 56 of the Revised
37 Statutes, [an act to regulate the retail sale of motor fuels,] "An
38 act to regulate the retail sale of motor fuels," P.L.1938, c.163
39 (C.56:6-1 et seq.), the [Unfair Motor Fuels Practices Act] "Unfair
40 Motor Fuels Practices Act," P.L.1953, c.413 (C.56:6-19 et seq.)
41 and the [Unfair Cigarette Sales Act of 1952] "Unfair Cigarette
42 Sales Act of 1952," P.L.1952, c.247 (C.56:7-18 et seq.).

43 c. This act shall not apply to any activity directed, authorized
44 or permitted by any law of this State that is in conflict or
45 inconsistent with the provisions of this act, and the enactment of
46 this act shall not be deemed to repeal, either expressly or by
47 implication, any such other law in effect on the date of its
48 enactment.

49 (cf: P.L.1970, c.73, s.5)

1 71. R.S.17:17-10 is amended to read as follows:

2 17:17-10. a. When satisfied that a company has complied with
3 all the requirements of this subtitle to entitle it to engage in
4 business and that the proposed methods of operation of the
5 company are not such as would render its operation hazardous to
6 the public or its policyholders, the commissioner shall issue to the
7 company a certificate authorizing it to commence business,
8 specifying in the certificate the particular kind or kinds of
9 insurance it is authorized to transact. The commissioner may
10 refuse to issue a certificate of authority if he finds that any of
11 the company's directors or officers has been convicted of a
12 crime involving fraud, dishonesty, or like moral turpitude or that
13 said persons are not persons of good character and integrity. No
14 company shall transact the business for which it is incorporated
15 until it has received the certificate from the commissioner. If
16 any company fails to obtain the certificate of authority within
17 one year from the date of the certificate of the Attorney General
18 to its certificate of incorporation, as provided in [section]
19 R.S.17:17-5 [of this Title], the company shall, ipso facto, be
20 dissolved and its certificate of incorporation be null and void.

21 b. No company licensed to transact insurance business in this
22 State pursuant to chapter 17 of Title 17 of the Revised Statutes
23 may surrender its certificate of authority or discontinue writing
24 or renewing any kind or kinds of insurance specified in the
25 certificate, except in accordance with a plan to be submitted by
26 the company and approved by the commissioner, which plan shall
27 provide for an orderly withdrawal from the market and for the
28 minimization of the impact of the surrender of the certificate or
29 the discontinuance of the writing or renewing of any kind or kinds
30 of insurance upon the public generally and upon the company's
31 policyholders in this State. No surrender or discontinuance shall
32 become effective until the approved plan has been complied
33 with. In reviewing a plan for withdrawal submitted by the
34 company, the commissioner shall consider, and may require as a
35 condition of approval, whether some or all other certificates of
36 authority issued pursuant to chapter 17 or 32 of Title 17 of the
37 Revised Statutes held by the company or by other companies
38 within the same holding company system as the company
39 submitting the plan shall be required to be surrendered. The
40 provisions of this subsection shall apply to any request for
41 withdrawal, surrender or discontinuance filed on or after January
42 25, 1990.

43 (cf: P.L.1958, c.67, s.1)

44 C.17:33B-30

45 72. (New section) An insurance company of another state or
46 foreign country authorized under chapter 32 of Title 17 of the
47 Revised Statutes to transact insurance business in this State may
48 surrender to the commissioner its certificate of authority and
49 thereafter cease to transact insurance in this State, or
50 discontinue the writing or renewal of one or more kinds of

1 insurance specified in the certificate of authority, only after the
2 submission of a plan which provides for an orderly withdrawal
3 from the market and a minimization of the impact of the
4 surrender or discontinuance on the public generally and on the
5 company's policyholders in this State. The plan shall be approved
6 by the commissioner before the withdrawal or discontinuance
7 takes effect. In reviewing a plan for withdrawal under this
8 section, the commissioner shall consider, and may require as a
9 condition of approval, whether some or all other certificates of
10 authority issued pursuant to chapter 17 or 32 of Title 17 of the
11 Revised Statutes held by the company or by other companies in
12 the same holding company as the company submitting the plan
13 should be surrendered. The certificate of authority of the
14 company shall be deemed to continue in effect until the
15 provisions of the approved plan have been carried out. The
16 provisions of this section shall apply to any request for
17 withdrawal, surrender or discontinuance filed on or after January
18 25, 1990.

19 73. Section 34 of P.L.1983, c.65 (C.17:30E-22) is amended to
20 read as follows:

21 34. Taxes required to be paid pursuant to P.L.1945, c.132
22 (C.54:18A-1 et seq.) on premiums earned by the association on or
23 after the effective date of P.L. , c. (C.) (now pending in
24 the Legislature as this bill) shall be paid by the association to the
25 [Director of the Division of Taxation] State Treasurer and shall
26 be credited to the New Jersey Automobile Insurance Guaranty
27 Fund created by section 23 of P.L. , c. (C.) (now pending
28 in the Legislature as this bill).

29 (cf: P.L.1983, c.65, s.34)

30 74. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to
31 read as follows:

32 8. a. The association shall:

33 (1) Be obligated to the extent of the covered claims against an
34 insolvent insurer incurred, in the case of private passenger
35 automobile insurance, prior to or after the determination of
36 insolvency, but before the policy expiration date or the date upon
37 which the insured replaces the policy or causes its cancellation,
38 or in the case of insurance other than private passenger
39 automobile insurance, covered claims against such insolvent
40 insurer incurred prior to or 90 days after the determination of
41 insolvency, or before the policy expiration date if less than 90
42 days after said determination, or before the insured replaces the
43 policy or causes its cancellation, if he does so within 90 days of
44 the determination, but such obligation shall include only that
45 amount of each covered claim which is less than \$300,000.00 and
46 subject to any applicable deductible contained in the policy,
47 except that the \$300,000.00 limitation shall not apply to a
48 covered claim arising out of insurance coverage mandated by
49 section 4 of P.L.1972, c.70 (C.39:6A-4). In the case of benefits

1 payable under subsection a. of section 4 of P.L.1972, c.70
2 (C.39:6A-4), the association shall be liable for payment of
3 benefits ¹, under policies issued or renewed prior to January 1,
4 1991,¹ in an amount not to exceed \$75,000.00. Benefits paid in
5 excess of such amount ¹under policies issued or renewed prior to
6 January 1, 1991,¹ shall be recoverable by the association from
7 the Unsatisfied Claim and Judgment Fund pursuant to the
8 provisions of section 2 of P.L.1977, c.310 (C.39:6-73.1). In no
9 event shall the association be obligated to a policyholder or
10 claimant in an amount in excess of the limits of liability stated in
11 the policy of the insolvent insurer from which the claim arises;

12 (2) Be deemed the insurer to the extent of its obligation on the
13 covered claims and to such extent shall have all rights, duties,
14 and obligations of the insolvent insurer as if the insurer had not
15 become insolvent;

16 (3) Assess member insurers in amounts necessary to pay:

17 (a) The obligation of the association under paragraph a. (1) of
18 this section;

19 (b) The expenses of handling covered claims;

20 (c) The cost of examinations under section 13; and

21 (d) Other expenses authorized by this act, excluding expenses
22 incurred by the association pursuant to paragraphs (9) and (10) of
23 this subsection.

24 The assessments of each member insurer shall be in the
25 proportion that the net direct written premiums of the member
26 insurer for the calendar year preceding the assessment bears to
27 the net direct written premiums of all member insurers for the
28 calendar year preceding the assessment.

29 Each member insurer shall be notified of the assessment not
30 later than 30 days before it is due. No member insurer may be
31 assessed pursuant to paragraph (3) of this subsection in any year
32 in an amount greater than 2% of that member insurer's net
33 direct written premiums for the calendar year preceding the
34 assessment.

35 The association may, subject to the approval of the
36 commissioner, exempt, abate or defer, in whole or in part the
37 assessment of any member insurer, if the assessment would cause
38 the member insurer's financial statement to reflect amounts of
39 capital or surplus less than the minimum amounts required for a
40 certificate of authority by any jurisdiction in which the member
41 insurer is authorized to transact insurance. In the event an
42 assessment against a member insurer is exempted, abated, or
43 deferred, in whole or in part, because of the limitations set forth
44 in this section, the amount by which such assessment is
45 exempted, abated, or deferred, shall be assessed against the other
46 member insurers in a manner consistent with the basis for
47 assessments set forth in this section. If the maximum
48 assessment, together with the other assets of the association,
49 does not provide in any one year an amount sufficient to carry

1 out the responsibilities of the association, the necessary
2 additional funds shall be assessed as soon thereafter as it is
3 permitted by this act. Each member insurer serving as a servicing
4 facility may set off against any assessment, authorized payments
5 made on covered claims and expenses incurred in the payment of
6 such claims by such member insurer;

7 (4) Investigate claims brought against the association and
8 adjust, compromise, settle, and pay covered claims to the extent
9 of the association's obligation and deny all other claims and may
10 review settlements, releases and judgments to which the
11 insolvent insurer or its insureds were parties to determine the
12 extent to which such settlements, releases and judgments may be
13 properly contested;

14 (5) Notify such persons as the commissioner directs under
15 section 10 b. (1);

16 (6) Handle claims through its employees or through one or
17 more insurers or other persons designated as servicing facilities.
18 Designation of a servicing facility is subject to the approval of
19 the commissioner, but such designation may be declined by a
20 member insurer;

21 (7) Reimburse each servicing facility for obligations of the
22 association paid by the facility and for expenses incurred by the
23 facility while handling claims on behalf of the association and
24 shall pay the other expenses of the association authorized by this
25 act;

26 (8) Make loans to the New Jersey Surplus Lines Insurance
27 Guaranty Fund in accordance with the provisions of the "New
28 Jersey Surplus Lines Insurance Guaranty Fund Act," P.L.1984,
29 c.101 (C.17:22-6.70 et seq.);

30 (9) Assess member insurers in amounts necessary to make
31 loans pursuant to paragraph (10) of this subsection. ¹[The]
32 Estimated¹ assessments of each member insurer shall be in the
33 proportion that the net direct written premiums of the member
34 insurer for the calendar year preceding the assessment bears to
35 the net direct written premiums of all member insurers for the
36 calendar year preceding the assessment ¹with actual assessments
37 adjusted in the succeeding year based on the proportion that the
38 insurer's net direct written premiums in the year of assessment
39 bears to the net direct written premiums of all member insurers
40 for that year¹. ¹[However, the association may, subject to the
41 approval of the commissioner, exempt, abate or defer, in whole
42 or in part the assessment of any member insurer, if the
43 assessment would cause the member insurer's financial
44 statement to reflect amounts of capital or surplus less than the
45 minimum amounts required for a certificate of authority by any
46 jurisdiction in which the member insurer is authorized to transact
47 insurance. In the event an assessment against a member insurer
48 is exempted, abated, or deferred, in whole or in part, because of
49 the limitations set forth in this paragraph, the amount by which

1 such assessment is exempted, abated, or deferred, shall be
2 assessed against the other member insurers in a manner
3 consistent with the basis for assessments set forth in this
4 paragraph.]¹;

5 (10) Make loans in the amount of \$160 million per calendar
6 year, beginning in calendar year 1990, to the New Jersey
7 Automobile Insurance Guaranty Fund created pursuant to section
8 23 of P.L. , c. (C.) (now pending in the Legislature as
9 this bill), except that no loan shall be made pursuant to this
10 paragraph after December 31, 1997.

11 b. The association may:

12 (1) Employ or retain such persons as are necessary to handle
13 claims and perform such other duties of the association;

14 (2) Borrow funds necessary to effectuate the purpose of this
15 act in accordance with the plan of operation;

16 (3) Sue or be sued;

17 (4) Negotiate and become a party to such contracts as are
18 necessary to carry out the purpose of this act;

19 (5) Perform such other acts as are necessary or proper to
20 effectuate the purpose of this act;

21 (6) Refund to the member insurers in proportion of the
22 contribution of each member insurer that amount by which the
23 assets exceed the liabilities if, at the end of any calendar year,
24 the board of directors finds that the assets of the association
25 exceed the liabilities, as estimated by the board of directors for
26 the coming year.

27 (cf: P.L.1984, c.207, s.9)

28 75. Section 16 of P.L.1974, c.17 (C.17:30A-16) is amended to
29 read as follows:

30 16. a. The commissioner shall adopt rules permitting member
31 insurers to recoup over a reasonable length of time, a sum
32 reasonably calculated to recoup assessments paid by the member
33 insurer [under this act] pursuant to paragraph (3) of subsection a.
34 of section 8 of P.L.1974, c.17 (C.17:30A-8) by way of a surcharge
35 on premiums charged for insurance policies to which this act
36 applies [; b. the] . The amount of any surcharge shall be
37 determined by the commissioner [; c. the] . The commissioner
38 may permit an insurer to omit collection of the surcharge from
39 its insureds when the expense of collecting the surcharge would
40 exceed the amount of the surcharge, provided that nothing in this
41 [section] subsection shall relieve the insurer of its obligation to
42 remit the amount of surcharge otherwise collectible.

43 b. No member insurer shall impose a surcharge on the
44 premiums of any policy to recoup assessments paid pursuant to
45 paragraph (9) of subsection a. of section 8 of P.L.1974, c.17
46 (C.17:30A-8).

47 (cf: P.L.1979, c.448, s.7)

48 C.17:33B-49

49 76. (New section) a. In addition to the tax on net premiums
50 paid pursuant to section 1 of P.L.1945, c.132 (C.54:18A-1), each

1 taxpayer under that section shall pay to the Director of the
2 Division of Taxation an annual surtax at a rate of 5%, or a rate
3 adjusted pursuant to section 77 of this 1990 amendatory and
4 supplementary act, on all taxable premiums collected in this
5 State, except premiums collected by the New Jersey Automobile
6 Full Insurance Underwriting Association ¹created pursuant to
7 section 16 of P.L.1983, c.65 (C.17:30E-4), and premiums
8 collected by the Market Transition Facility created pursuant to
9 section 88 of P.L. , c. (C.)(now pending in the
10 Legislature as this bill)¹, in calendar years 1990, 1991 and 1992
11 for contracts of automobile insurance, notwithstanding section 6
12 of P.L.1945, c.132 (C.54:18A-6). The surtax shall be
13 administered pursuant to the provisions of P.L.1945, c.132
14 (C.54:18A-1 et seq.), except that if any provision of that act is in
15 conflict with a specific provision of this 1990 amendatory and
16 supplementary act, the provision or provisions of this 1990
17 amendatory and supplementary act shall govern.

18 b. For the purposes of sections 76 through 78 of this 1990
19 amendatory and supplementary act:

20 "Automobile" means a private passenger automobile of a
21 private passenger or station wagon type that is owned or hired,
22 and is neither used as a public or livery conveyance for
23 passengers nor rented to others with a driver; a motor vehicle
24 with a pickup body, a delivery sedan, a van, or a panel truck or a
25 camper type vehicle used for recreational purposes, owned by an
26 individual or by husband and wife who are residents of the same
27 household, not customarily used in the occupation, profession or
28 business of the insured other than farming or ranching. An
29 automobile owned by a farm family copartnership or corporation,
30 which is principally garaged on a farm or ranch and otherwise
31 meets the definition contained in this section, shall be considered
32 a private passenger automobile owned by two or more relatives
33 resident in the same household; and

34 "Automobile insurance" means direct insurance against injury
35 or damage, including the legal liability therefor, arising out of
36 the ownership, operation, maintenance or use of an automobile,
37 including, but not limited to, personal injury protection insurance,
38 bodily injury liability insurance, property damage liability
39 insurance, physical damage insurance and uninsured and
40 underinsured motorist insurance.

41 c. Each taxpayer shall:

42 (1) on or before the first day of the third month following
43 enactment of this 1990 amendatory and supplementary act make
44 an installment payment of surtax due under subsection a. of this
45 section in an amount equal to one half of the surtax estimated to
46 be due for taxable premiums collected in this State in calendar
47 year 1990 if the surtax rate at the time of the payment was
48 imposed for the entire year; and

49 (2) on or before the first day of the sixth month following

1 enactment of this 1990 amendatory and supplementary act, make
2 an installment payment of surtax due under subsection a. of this
3 section in an amount equal to one half of the surtax estimated to
4 be due for taxable premiums collected in this State in calendar
5 year 1990 if the surtax rate at the time of the payment was
6 imposed for the entire year;

7 provided however, that no installment payment shall be due if the
8 payment date of such installment pursuant to this subsection falls
9 on or after February 1, 1991.

10 In the calculation of the tax due in accordance with subsection
11 a. of this section, a taxpayer shall be entitled to a credit in the
12 amount of the tax paid under this subsection as a partial payment
13 and shall be entitled to the return of any amount so paid which is
14 in excess of the total amount payable in accordance with this
15 section.

16 d. Failure to pay any installment payment required pursuant to
17 subsection c. of this section shall constitute a deficiency, and
18 there shall be added to the tax for the calendar year interest on
19 the amount of underpayment as provided in the State Tax
20 Uniform Procedure Law, R.S.54:48-1 et seq., for the period of
21 the underpayment.

22 The amount of underpayment shall be the excess of the amount
23 of the installment payment which would be required to be paid if
24 the installment payment were equal to 45% of the surtax which
25 would be shown on the return for the year if the surtax rate at
26 the time of the payment were imposed for the entire year, or if
27 no return was filed, 45% of the tax for that year, over the
28 amount, if any, of the installment payment paid on or before the
29 last date prescribed for payment.

30 For purposes of this subsection, the period of the underpayment
31 shall run from the date the installment payment was required to
32 be paid to the earlier of the date on which the surtax is due
33 pursuant to subsection a. of this section or, with respect to any
34 portion of the underpayment, the date on which that portion is
35 paid.

36 For purposes of this subsection, a payment of any installment
37 payment shall be considered a payment of any previous
38 underpayment only to the extent that such payment exceeds the
39 amount of the installment payment determined under this
40 subsection for that installment payment.

41 e. All revenues collected from the surtax imposed pursuant to
42 this section, less any refunds paid pursuant to subsection d. of
43 section 77 of this 1990 amendatory and supplementary act, shall
44 be credited by the State Treasurer to the New Jersey Automobile
45 Insurance Guaranty Fund, created pursuant to section 23 of this
46 1990 amendatory and supplementary act.

47 C.17:33B-50

48 77. (New section) a. The Director of the Division of Taxation
49 is hereby authorized to adjust the rate of the surtax imposed
50 pursuant to section 76 of this 1990 amendatory and

1 supplementary act, for any of the calendar years in which the
2 surtax is imposed, as provided in this section.

3 b. The Director of the Division of Taxation, in consultation
4 with the Commissioner of Insurance, shall, on or before the first
5 day of the second month following enactment of this 1990
6 amendatory and supplementary act, prepare an estimate of the
7 revenues anticipated to be collected from the surtax imposed
8 pursuant to section 76 of this 1990 amendatory and
9 supplementary act, at the rate established thereby, and credited
10 to the New Jersey Automobile Insurance Guaranty Fund, for each
11 of the three calendar years in which the surtax is imposed. These
12 estimates shall be reviewed and, if appropriate, revised, on or
13 before the first day of the month immediately preceding the due
14 date for the second installment payment for the first calendar
15 year in which the surtax is imposed and each subsequent
16 installment payment and each final payment required to be made
17 pursuant to section 76 of this 1990 amendatory and
18 supplementary act. Such review and revision shall be based upon
19 information available to the director and the commissioner,
20 including actual surtax collections as reflected in final payments.

21 c. At any time that the estimates prepared and revised
22 pursuant to subsection b. of this section reflect total estimated
23 surtax revenues in excess of, or significantly less than,
24 \$300,000,000 for the three calendar years in which the surtax is
25 imposed, the director shall provide that the surtax be imposed at
26 a different rate, such that the total estimated revenues are as
27 near as possible to, but do not exceed, \$300,000,000, provided,
28 however, that the rate shall not exceed 5%. That different
29 surtax rate shall be imposed on premiums collected in the first
30 calendar year for which final returns and final payments have not
31 yet been made and, subject to the director's determination, may
32 be reflected in installment payments which have not yet been
33 made.

34 d. On or before April 1, 1993, the director shall make a final
35 determination of the total amount of revenues collected under
36 the surtax imposed pursuant to section 76 of this 1990
37 amendatory and supplementary act for the three calendar years
38 in which the surtax is imposed. The director shall refund any
39 such revenues collected in excess of \$300,000,000 to taxpayers in
40 proportion to each taxpayer's share of total surtax payments
41 made for the three calendar years.

42 C.17:33B-51

43 78. (New section) The Commissioner of Insurance shall take
44 such action as is necessary to ensure that private passenger
45 automobile insurance policyholders shall not pay for the surtax
46 imposed pursuant to section 76 of this 1990 amendatory and
47 supplementary act.

48 79. Section 3 of P.L.1981, c.183 (C.54:18A-1a) is amended to
49 read as follows:

50 3. a. To ensure that no county or municipality will experience

1 a loss of revenue as a result of the repeal of the franchise tax on
2 domestic insurance companies, the State Treasurer, upon warrant
3 of the State Comptroller, shall, on or before August 1, 1982 and
4 on or before August 1 annually thereafter, pay to the collector of
5 the municipality and to the county treasurer of a county in which
6 a domestic insurance company's principal office was situated on
7 January 1, 1981, an amount determined by increasing the total
8 amount of franchise taxes received by the municipality or county
9 in the prior calendar year by the percentage rate of change of all
10 taxes paid by all insurance companies pursuant to P.L.1945, c.132
11 (C.54:18A-1 et seq.), but excluding any surtax payments made
12 pursuant to section 76 of P.L. , c. (C.) (now pending before
13 the Legislature as this bill) ¹and excluding any tax payments
14 made for the additional tax imposed to provide for Department of
15 Insurance administrative costs pursuant to R.S. 54:16-8 and
16 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3) as
17 amended by P.L. , c. (C.) (now pending before the
18 Legislature as this bill)¹ , for the current and the immediately
19 preceding tax years.

20 The payments shall continue to be made so long as the principal
21 office of the domestic insurance company remains at the location
22 established on January 1, 1981. No liability for payment under
23 this section shall arise by virtue of the relocation of the principal
24 office of a domestic insurance company to another municipality,
25 whether or not within the same county.

26 b. To ensure that no municipality will experience an abrupt
27 loss of revenue as a result of a domestic insurance company
28 relocating its principal office from the municipality wherein it
29 was established on January 1, 1981, the State Treasurer, upon
30 warrant of the State Comptroller, shall, on or before August 1 of
31 each year, pay to the collector of the municipality from which
32 the principal office was removed, an amount as hereinafter
33 provided:

34 (1) For the first year after relocation, an amount equal to 80%
35 of the amount the municipality received in the year in which the
36 relocation occurred;

37 (2) For the second year after relocation, an amount equal to
38 60% of the amount the municipality received in the year in which
39 the relocation occurred;

40 (3) For the third year after relocation, an amount equal to 40%
41 of the amount the municipality received in the year in which the
42 relocation occurred;

43 (4) For the fourth year after relocation, an amount equal to
44 30% of the amount the municipality received in the year in which
45 the relocation occurred; and

46 (5) For the fifth year after relocation, an amount equal to 15%
47 of the amount the municipality received in the year in which the
48 relocation occurred.

49 No municipality shall be entitled to any payment under this

1 subsection for any year following the fifth year after relocation.

2 c. To ensure that no county will experience an abrupt loss of
3 revenue as a result of a domestic insurance company relocating
4 its principal office from the county wherein it was established on
5 January 1, 1981, the State Treasurer, upon warrant of the State
6 Comptroller, shall, on or before August 1 of each year, pay to the
7 treasurer of the county from which the principal office was
8 removed, an amount as hereinafter provided:

9 (1) For the first year after relocation, an amount equal to 80%
10 of the amount the county received in the year in which the
11 relocation occurred;

12 (2) For the second year after relocation, an amount equal to
13 60% of the amount the county received in the year in which the
14 relocation occurred;

15 (3) For the third year after relocation, an amount equal to 40%
16 of the amount the county received in the year in which the
17 relocation occurred;

18 (4) For the fourth year after relocation, an amount equal to
19 30% of the amount the county received in the year in which the
20 relocation occurred; and

21 (5) For the fifth year after relocation, an amount equal to 15%
22 of the amount the county received in the year in which the
23 relocation occurred.

24 No county shall be entitled to any payment under this
25 subsection for any year following the fifth year after relocation.

26 (cf: P.L.1983, c.390, s.1)

27 180. R.S.54:16-8 is amended to read as follows:

28 54:16-8. Computation of tax. If the [commissioner of banking
29 and insurance] Commissioner of Insurance finds the report of the
30 insurer to be correct he shall ascertain the tax to be paid by the
31 insurer, in the following manner:

32 a. If the insurer has written marine insurances in this state for
33 three years the commissioner of banking and insurance shall:

34 (1) Ascertain the average annual underwriting profit derived
35 by the insurer from such marine insurances written within the
36 United States during the last preceding three calendar years;

37 (2) Ascertain the proportion which the average annual
38 premiums of the insurer from such marine insurance written by it
39 in this state during the last preceding three years bears to the
40 average total of such marine premiums of the insurer during the
41 same three years;

42 (3) Compute an amount of five per cent on this proportion of
43 the aforementioned average annual underwriting profit of the
44 insurer from such marine insurances, and compute an additional
45 amount of twenty-five one-hundredths on that proportion which
46 amount shall be dedicated to the Department of Insurance for
47 payment of administrative costs related to its statutory duties;
48 and

49 (4) Charge the amount of tax thus computed to such insurer as

1 a tax upon such marine insurances written by it in this state
2 during the current calendar year.

3 The commissioner of banking and insurance shall each year
4 compute the tax, according to the method described in this
5 section, upon the average annual underwriting profit of such
6 insurer from such marine insurances during the preceding three
7 years, including the current calendar year, namely, at the
8 expiration of each current calendar year, the profit or loss on
9 such marine insurances of that year is to be added or deducted,
10 and the profit or loss upon such marine insurances of the first
11 calendar year of the preceding three-year period is to be dropped
12 so that the computation of underwriting profit for purposes of
13 taxation under this section will always be on a three-year
14 average.

15 b. If the insurer has not been writing such marine insurances in
16 this state for three years the commissioner of banking and
17 insurance shall, until the insurer has transacted such business in
18 this state for that number of years, compute the tax upon the
19 basis of its annual underwriting profit on such marine insurances
20 written within the United States for the current calendar year,
21 subject, however, to an adjustment in the tax as soon as the
22 commissioner of banking and insurance, in accordance with the
23 provisions of this section, is enabled to compute the tax on the
24 aforementioned three-year basis.

25 In the case of mutual companies, the commissioner of [banking
26 and] insurance shall not include in underwriting profit when
27 computing the tax provided by this chapter, the amounts refunded
28 by such companies on account of premiums previously paid by
29 their policyholders.¹

30 (cf: R.S.54:16-8)

31 ¹81. R.S.54:17-4 is amended to read as follows:

32 54:17-4. All moneys received by the Director of the Division
33 of Taxation in the Department of the Treasury from insurance
34 companies of other States and countries [on account of the] in an
35 amount equivalent to a tax of 2% on premiums for fire insurance,
36 and all payments in lieu of that tax, required by law to be made
37 by such companies, shall be turned over monthly by the said
38 Director of the Division of Taxation to the State Treasurer to be
39 distributed by him as follows:

40 The State Treasurer shall from time to time in each year, out
41 of the moneys above referred to, pay over to the treasurer of the
42 board of managers of the New Jersey firemen's home such sums
43 as the managers, by resolution approved by the Governor, shall
44 demand and require for the proper conduct of the home.

45 After the demands and requirements of the home upon said
46 moneys in any year have been met and discharged or provided for,
47 the balance thereof remaining shall be paid by the State
48 Treasurer to the treasurer of the New Jersey State Firemen's
49 Association or to the treasurer of any local relief association

1 organized and existing under the provisions of chapter 17 of the
 2 Title, Pensions and Retirement and Unemployment Compensation
 3 (§ 43:17-1 et seq.), upon the duly authenticated order of the
 4 executive committee of the New Jersey State Firemen's
 5 Association in such amounts and at such time as may be required.¹
 6 (cf: P.L.1955, c.30, s.1)

7 ^{182.} Section 2 of P.L.1945, c.132 (C.54:18A-2) is amended to
 8 read as follows:

9 2. (a) The tax specified in subsection (a) of section 1 of this
 10 act, except as to life insurance companies and except as to
 11 marine insurance as described by chapter 16 of Title 54 of the
 12 Revised Statutes, shall, except as hereinafter provided, be 2%
 13 upon the taxable premiums collected by such company during the
 14 year ending December 31 next preceding on all business of the
 15 company in this State, less the amount of taxes on its property,
 16 exclusive of taxes on real estate and of taxes payable pursuant to
 17 this section, paid in this State by the company pursuant to any
 18 law of this State during the said year. Any taxes paid to the
 19 treasurer of any firemen's relief association of this State
 20 pursuant to R.S.54:18-1 shall be considered a part of the tax
 21 payable under this act. An additional tax of 0.1% upon such
 22 taxable premiums of such insurers shall also be paid, which
 23 amount shall be dedicated to the Department of Insurance for
 24 payment of administrative costs related to its statutory duties.

25 (b) Taxable premiums, collected after December 31, 1965 by
 26 an insurance company subject to the provisions of subsection (a)
 27 hereof under group accident and health insurance policies on
 28 residents of this State, and taxable premiums collected under
 29 legal insurance policies as defined in section 3 of P.L.1981, c.160
 30 (C.17:46C-3) on residents of this State, shall be subject to tax
 31 only at the following rates:

32 As to taxes payable in 1967	1 3/4 %
33 As to taxes payable in 1968	1 1/2 %
34 As to taxes payable in 1969	1 1/4 %
35 As to taxes payable in 1970 and thereafter	1%

36 An additional tax of 0.05% upon such taxable premiums of such
 37 insurers shall also be paid, which amount shall be dedicated to the
 38 Department of Insurance for payment of administrative costs
 39 related to its statutory duties.¹

40 (cf: P.L.1981, c.511, s.22)

41 ^{183.} Section 3 of P.L.1945, c.132 (C.54:18A-3) is amended to
 42 read as follows:

43 3. Amount of tax, life insurance companies; deductions (a)
 44 The tax specified in subsection (a) of section 1 of this act as to
 45 life insurance companies, shall, except as hereinafter provided,
 46 be 2% upon the taxable premiums collected by the company
 47 during the year ending December 31 next preceding under all
 48 policies or contracts of insurance on residents of this State, less
 49 the amount of taxes on its property, exclusive of taxes on real

1 estate and of taxes payable pursuant to this section, paid in this
 2 State by the company pursuant to any law of this State during the
 3 said year. An additional tax of 0.1% upon such taxable premiums
 4 of such insurers shall also be paid, which amount shall be
 5 dedicated to the Department of Insurance for payment of
 6 administrative costs related to its statutory duties.

7 (b) Taxable premiums, collected after December 31, 1965 by
 8 an insurance company subject to the provisions of subsection (a)
 9 hereof under group accident and health insurance policies on
 10 residents of this State, and taxable premiums collected under
 11 legal insurance policies as defined in section 3 of P.L.1981, c.160
 12 (C.17:46C-3) on residents of this State, shall be subject to tax
 13 only at the following rates:

14	As to taxes payable in 1967	1 3/4 %
15	As to taxes payable in 1968	1 1/2 %
16	As to taxes payable in 1969	1 1/4 %
17	As to taxes payable in 1970 and thereafter	1%

18 An additional tax of 0.05% upon such taxable premiums of such
 19 insurers shall also be paid, which amount shall be dedicated to the
 20 Department of Insurance for payment of administrative costs
 21 related to its statutory duties.¹

22 (cf: P.L.1981, c.511, s.23)

23 ^{184.} Section 4 of P.L.1970, c.12 (C.17:1C-4) is amended to
 24 read as follows:

25 4. (a) The commissioner may appoint [a] two deputy
 26 [commissioner] commissioners to serve at the pleasure of the
 27 commissioner [and] who shall be authorized to exercise the
 28 powers and duties of the commissioner in his absence or disability
 29 and shall perform such other duties as the commissioner shall
 30 prescribe.

31 (b) The commissioner shall have the authority to establish,
 32 organize and maintain in his offices an administrative division to
 33 perform all necessary personnel, budget and finance, facilities
 34 and equipment services for the department and to assign such
 35 personnel thereto as may be required.¹

36 (cf: P.L.1970, c.12, s.4)

37 ^{185.} Section 3 of P.L.1952, c.174, (C.39:6-63) is amended to
 38 read as follows:

39 3. For the purpose of creating and maintaining the fund:

40 (a) (Deleted by amendment, P.L.1968, c.323, s.3.)

41 (b) (Deleted by amendment, P.L.1968, c.323, s.3.)

42 (c) (Deleted by amendment, P.L.1968, c.323, s.3.)

43 (d) On December 30 in each year, the commissioner shall
 44 calculate the probable amount which will be needed to carry out
 45 the provisions of this act during the ensuing registration license
 46 year. In such calculation, he shall take into consideration the
 47 amount presently reserved for pending claims, anticipated
 48 payments from the fund during said year, anticipated payments
 49 from the fund for medical expenses to be made pursuant to

1 section 2 of P.L.1977, c.310 (C.39:6-73.1), during the two years
2 after said year, anticipated amounts to be reserved for claims
3 pending during said year, amounts transferred to the Division of
4 Motor Vehicles pursuant to section 28 of P.L.1952, c.174
5 (C.39:6-88) and the desirability of maintaining a surplus over and
6 above such anticipated payments and present and anticipated
7 reserves, such surplus not to exceed the amount actually paid
8 from the fund during the 12 full calendar months immediately
9 preceding the date of calculation. Such probable amount which
10 will be needed to carry out the provisions of this act shall be
11 assessed against insurers for such year's contributions to the
12 fund. Such probable amount needed shall be initially apportioned
13 on an estimated basis among such insurers in the proportion that
14 the net direct written premiums of each bear to the aggregate
15 net direct written premiums of all insurers, including the New
16 Jersey Automobile Full Insurance Underwriting Association,
17 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the
18 Market Transition Facility created pursuant to section 88 of
19 P.L. , c. (C.)(now pending in the Legislature as this bill),
20 during the preceding calendar year as shown by the records of the
21 commissioner as an estimate. Each insurer shall pay the sum so
22 assessed to the treasurer on or before March 31, next following.
23 Such estimated sum shall be subject to adjustment on March 31
24 next following payment based upon the proportion that the net
25 direct written premiums of each insurer bear to the aggregate
26 net direct written premiums of all insurers, including the New
27 Jersey Automobile Full Insurance Underwriting Association
28 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the
29 Market Transition Facility created pursuant to section 88 of
30 P.L. , c. (C.)(now pending in the Legislature as this bill),
31 during the year the estimated assessment was paid as shown by
32 the records of the commissioner.

33 (e) Whenever any of the provisions of this act concerning the
34 method and sources of assessments on insurers, including the New
35 Jersey Automobile Full Insurance Underwriting Association,
36 created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the
37 Market Transition Facility created pursuant to section 88 of
38 P.L. , c. (C.)(now pending in the Legislature as this bill),
39 the maximum amounts payable from the fund, eligibility or
40 qualifications of claimants, or amounts to be deducted from
41 payments made from the fund are amended by law, between
42 January 1 and April 30 in any year, the commissioner may, if he
43 deems it necessary, rescind any assessment on insurers, including
44 the New Jersey Automobile Full Insurance Underwriting
45 Association, created pursuant to P.L.1983, c.65 (C.17:30E-1 et
46 seq.) and the Market Transition Facility created pursuant to
47 section 88 of P.L. , c. (C.)(now pending in the
48 Legislature as this bill), made on December 30 of the preceding
49 year. He shall then, within 15 days of the adoption of such

1 amendment, recalculate the probable amount which will be
2 needed to carry out the provisions of this act during the ensuing
3 registration license year, in accordance with the provisions of
4 subsection (d) of this section. If, in his judgment, the estimated
5 balance of the fund at the beginning of the next registration
6 license year will be insufficient to meet such needs, he shall
7 determine the contributions of insurers, if any, in accordance
8 with the provisions of subsection (d) of this section. In the event
9 of a rescission and reassessment subsequent to March 1 in any
10 year, insurers shall pay the sum so assessed, if any, to the
11 treasurer within 90 days of the date of such assessment.¹

12 (cf: P.L.1988, c.119, s.2)

13 C.17:33B-7

14 ^{186.} (New section) Any plan for the payment of premiums
15 payable to the New Jersey Automobile Full Insurance
16 Underwriting Association on an installment basis for policies
17 issued for a one year period shall provide for installment
18 payments during a period of not less than 9 months.¹

19 C.17:33B-8

20 ^{187.} (New section) a. No New Jersey Automobile Full
21 Insurance Underwriting Association policy may be cancelled for
22 nonpayment of premium unless written notice is provided at least
23 15 days prior to the effective date of cancellation accompanied
24 by the reason for cancellation. Notice shall be provided to the
25 named insured and the producer of record at their last known
26 addresses.

27 b. The association shall notify the named insured and the
28 producer of record at their last known addresses no later than 15
29 days after the nonrenewal of an association policy of such
30 nonrenewal.¹

31 C.17:33B-11

32 ^{188.} (New section) a. There is created a Market Transition
33 Facility to be operated by the Commissioner of Insurance
34 pursuant to the provisions of this section. Every insurer
35 authorized to transact automobile insurance in this State shall be
36 a member of the facility and shall share in its profits and losses
37 as provided by the commissioner pursuant to the provisions of
38 subsection d. of this section.

39 b. The commissioner shall, within 30 days of the effective date
40 of this 1990 amendatory and supplementary act, appoint a Market
41 Transition Facility Advisory Board which shall be comprised of
42 six members, one of whom shall represent member companies
43 organized on a mutual basis, one of whom shall represent member
44 companies organized on a stock basis, one of whom shall
45 represent servicing carriers, one of whom shall represent
46 insurance producers, one of whom shall be a qualified actuary and
47 one of whom shall represent the public. Advisory board members
48 shall serve for the duration of the facility or until such time as
49 their successor is appointed. Advisory board members shall not
50 be compensated for their services but shall be reimbursed by the
51 facility for any necessary and reasonable expenses incurred in
52 performance of their duties as members of the advisory board.

1 c. The facility shall arrange for the issuance and renewal of
2 automobile insurance policies for the period commencing October
3 1, 1990 and ending September 30, 1992 pursuant to a plan of
4 operation promulgated by the commissioner in consultation with
5 the advisory board. The facility shall not issue or renew any
6 policies of automobile insurance on or after October 1, 1992. The
7 plan shall provide:

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

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

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

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

29 (5) Procedures for the depopulation of the facility which shall
30 provide that: on or after April 1, 1991 no more than 29% of the
31 aggregate number of private passenger non-fleet exposures
32 written in this State shall be written by the facility and the New
33 Jersey Automobile Full Insurance Underwriting Association
34 created by P.L.1983, c.65 (C.17:30E-1 et seq.); on or after
35 October 1, 1991 no more than 20% of the aggregate number of
36 private passenger non-fleet exposures written in this State shall
37 be written by the facility; on or after April 1, 1992 no more than
38 10% of the aggregate number of private passenger non-fleet
39 exposures written in this State shall be written by the facility;
40 and on or after October 1, 1992, 0% of the aggregate number of
41 private passenger non-fleet exposures written in this State shall
42 be written by the facility. In establishing the quotas set forth
43 above, the plan shall prescribe the number of voluntary market
44 exposures which shall be written during each six month period set
45 forth in this paragraph in a manner consistent with the
46 apportionment procedure established pursuant to subsection a. of
47 section 26 of P.L.1983, c.65 (C.17:30E-14). In the event that any
48 of the quotas established pursuant to this paragraph have not
49 been met by the end of the applicable period, the commissioner

1 shall direct the facility to assign the balance of the exposures
2 needed to meet the applicable quota to member companies
3 pursuant to the apportionment procedure. A member company
4 which exceeds its apportionment share for any six month period
5 set forth in this paragraph shall receive credit for the excess
6 against the following period's obligation. The commissioner may
7 excuse a member company from meeting its obligations under the
8 depopulation procedures if he determines that the company would
9 be placed in an unsafe or unsound condition;

10 (6) A schedule for the payment of premiums on an installment
11 basis. Any installment payment schedule for policies issued for a
12 one year period shall provide for installment payments during a
13 period of not less than 9 months;

14 (7) That no policy issued by the facility may be cancelled for
15 nonpayment of premium unless written notice is provided at least
16 15 days prior to the effective date of cancellation, accompanied
17 by the reason for cancellation. Notice shall be provided to the
18 named insured and the producer of record at their last known
19 addresses;

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

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

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

31 e. The facility shall be subject to the provisions of P.L.1945,
32 c.132 (C.54:18A-1 et seq.).¹
33 C.17:33B-12

34 ^{189.} (New section) Notwithstanding any provision of law to
35 the contrary, an insurer may charge premiums at the rate level
36 applicable to eligible persons insured by the facility as provided
37 in paragraph (2) of subsection c. of section 88 of this 1990
38 amendatory and supplementary act to an insured written in the
39 voluntary market under the depopulation plan established
40 pursuant to paragraph (5) of subsection c. of section 88 of this
41 act. However, no insured shall be subject to facility rates for a
42 total period in excess of three years, including the time during
43 which the insured is covered by the facility.¹

44 C.17:33B-26

45 ^{190.} (New section) Nothing contained in paragraph e. of the
46 definition of an eligible person as set forth in section 25 of this
47 1990 amendatory and supplementary act shall be deemed to
48 permit an insurer subject to the provisions of that paragraph e. to
49 refuse coverage to a person pursuant to the provisions of section
50 27 or section 39 of this act unless that insurer has complied with
51 its depopulation obligation, as determined by the commissioner

1 pursuant to the provisions of section 26 of P.L.1983, c.65
2 (C.17:30E-14) and paragraph (5) of subsection c. of section 88 of
3 this act, by October 1, 1992.¹

4 **C.17:33B-23**

5 191. (New section) a. The commissioner shall suspend, after
6 hearing, an insurer's obligation to provide insurance for
7 automobiles in compliance with the provisions of section 1 of
8 P.L.1970, c.215 (C.17:29D-1) if the insurer is in an unsafe or
9 unsound financial condition.

10 b. If an insurer requests suspension and avers that there is an
11 immediate need to cease providing insurance for automobiles in
12 compliance with section 1 of P.L.1970, c.215 (C.17:29D-1)
13 because compliance would result in the insurer being in an unsafe
14 or unsound financial condition, the insurer's obligation to provide
15 insurance for automobiles in compliance with section 1 of
16 P.L.1970, c.215 (C.17:29D-1) shall be suspended beginning on the
17 10th business day after the insurer has filed the request and
18 supporting documentation with the commissioner, unless within
19 that time, the commissioner finds that continued compliance with
20 the provisions of section 1 of P.L.1970, c.215 (C.17:29D-1) will
21 not result in the insurer being in an unsafe or unsound financial
22 condition.

23 c. Any suspension pursuant to subsection a. or b. of this
24 section shall continue until the commissioner, upon the
25 commissioner's own motion or upon request by the insurer or any
26 other interested party, after providing opportunity for a hearing,
27 orders its revocation.

28 d. For the purposes of this section, an insurer shall be deemed
29 to be in an unsafe or unsound financial condition if the
30 commissioner finds the insurer to have a ratio of annual net
31 premiums written to surplus as to policyholders that threatens
32 the financial health of the insurer.¹

33 **C.17:33B-24**

34 192. (New section) The commissioner may suspend an
35 insurer's obligation to provide insurance for automobiles in
36 compliance with the provisions of section 1 of P.L.1970, c.215
37 (C.17:29D-1) if the commissioner, in his discretion, determines
38 that compliance with section 1 of P.L.1970, c.215 (C.17:29D-1)
39 will result in an insurer's financial condition becoming unsafe or
40 unsound. In making this determination, the commissioner shall
41 consider the following factors:

42 a. The insurer's ratio of annual net premiums written to
43 surplus as to policyholders; and

44 b. Whether the insurer, in providing insurance for automobiles
45 in compliance with section 1 of P.L.1970, c.215 (C.17:29D-1),
46 would experience:

47 (1) an adverse change in its rating by A.M. Best and Company,
48 Dun and Bradstreet, Moody's or Standard and Poor's;

49 (2) financial ratios outside the acceptable ranges as
50 established by the National Association of Insurance
51 Commissioners or the chief financial officer of the Department

1 of Insurance of this State; or

2 (3) a net reduction to the insurer's surplus as to policyholders
3 greater than 25% during a period of two years or less.

4 Any suspension pursuant to this section shall continue until the
5 commissioner, upon the commissioner's own motion or upon
6 request by the insurer or any other interested party, after
7 providing opportunity for a hearing, orders its revocation.¹

8 C.17:33B-27

9 193. (New section) a. The commissioner shall suspend, after
10 hearing, an insurer's obligation to issue policies in compliance
11 with the provisions of section 39 of this act if the insurer is in an
12 unsafe or unsound financial condition.

13 b. If an insurer requests suspension and avers that there is an
14 immediate need to cease issuance of policies in compliance with
15 section 39 of this act because compliance would result in the
16 insurer being in an unsafe or unsound financial condition, the
17 insurer's obligation to issue policies in compliance with section
18 39 of this act shall be suspended beginning on the 10th business
19 day after the insurer has filed the request and supporting
20 documentation with the commissioner, unless within that time,
21 the commissioner finds that continued compliance with section 39
22 of this act will not result in the insurer being in an unsafe or
23 unsound financial condition.

24 c. Any suspension pursuant to subsection a. or b. of this
25 section shall continue until the commissioner, upon the
26 commissioner's own motion or upon request by the insurer or any
27 other interested party, after providing opportunity for a hearing,
28 orders its revocation.

29 d. For the purposes of this section, an insurer shall be deemed
30 to be in an unsafe or unsound financial condition if the
31 commissioner finds the insurer to have a ratio of annual net
32 premiums written to surplus as to policyholders that threatens
33 the financial health of the insurer.¹

34 C.17:33B-28

35 194. (New section) The commissioner may suspend an
36 insurer's obligation to issue policies pursuant to section 39 of this
37 1990 amendatory and supplementary act if the commissioner, in
38 his discretion, determines that compliance with section 39 of this
39 act will result in an insurer's financial condition becoming unsafe
40 or unsound. In making this determination, the commissioner shall
41 consider the following factors.

42 a. The insurer's ratio of annual net premiums written to
43 surplus as to policyholders; and

44 b. Whether the insurer, in issuing policies in compliance with
45 section 39 of this act, would experience:

46 (1) an adverse change in its rating by A.M. Best and Company,
47 Dun and Bradstreet, Moody's or Standard and Poor's;

48 (2) financial ratios outside the acceptable ranges as
49 established by the National Association of Insurance
50 Commissioners or the chief financial officer of the Department
51 of Insurance of this State; or

1 (3) a net reduction to the insurer's surplus as to policyholders
 2 greater than 25% during a period of two years or less.

3 Any suspension pursuant to this section shall continue until the
 4 commissioner, upon the commissioner's own motion or upon
 5 request by the insurer or any other interested party, after
 6 providing opportunity for a hearing, orders its revocation.¹

7 C.17:33B-55

8 ^{195. (New section) a. The commissioner shall, after hearing,}
 9 provide that the New Jersey Property-Liability Guaranty
 10 Association exempt, abate or defer, in whole or in part, the
 11 assessment on any member insurer imposed pursuant to paragraph
 12 (9) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8), if
 13 the insurer is in an unsafe or unsound financial condition.

14 b. If an insurer requests exemption, abatement or deferral and
 15 averts that there is an immediate need to exempt, abate or defer
 16 the payment of assessments pursuant to paragraph (9) of
 17 subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8), because
 18 payment would result in the insurer being in an unsafe or unsound
 19 financial condition, the insurer's obligation to pay such
 20 assessments shall be exempted, abated or deferred beginning on
 21 the 10th business day after the insurer has filed the request and
 22 supporting documentation with the commissioner, unless within
 23 that time, the commissioner finds that continued payment of
 24 assessments will not result in the insurer being in an unsafe or
 25 unsound financial condition.

26 c. Any exemption, abatement or deferral pursuant to
 27 subsection a. or b. of this section shall continue until the
 28 commissioner, upon the commissioner's own motion or upon
 29 request by the insurer or any other interested party, after
 30 providing opportunity for a hearing, orders its revocation.

31 d. For the purposes of this section, an insurer shall be deemed
 32 to be in an unsafe or unsound financial condition if the
 33 commissioner finds the insurer to have a ratio of annual net
 34 premiums written to surplus as to policyholders that threatens
 35 the financial health of the insurer.¹

36 C.17:33B-56

37 ^{196. (New section) The commissioner may provide that the}
 38 association exempt, abate or defer, in whole or in part, the
 39 assessment on any member insurer imposed pursuant to paragraph
 40 (9) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8), if
 41 the commissioner, in his discretion, determines that payment of
 42 the assessment will result in an insurer's financial condition
 43 becoming unsafe or unsound. In making this determination, the
 44 commissioner shall consider the following factors:

45 a. The insurer's ratio of annual net premiums written to
 46 surplus as to policyholders; and

47 b. Whether the insurer would experience:

48 (1) an adverse change in its rating by A.M. Best and Company,
 49 Dun and Bradstreet, Moody's or Standard and Poor's;

50 (2) financial ratios outside the acceptable ranges as
 51 established by the National Association of Insurance

1 Commissioners or the chief financial officer of the Department
2 of Insurance of this State; or

3 (3) a net reduction to the insurer's surplus as to policyholders
4 greater than 25% during a period of two years or less.

5 Any exemption, abatement or deferral pursuant to this section
6 shall continue until the commissioner, upon the commissioner's
7 own motion or upon request by the insurer or any other interested
8 party, after providing opportunity for a hearing, orders its
9 revocation.¹

10 C.17:33B-57

11 197. (New section) If an assessment against a member insurer
12 is exempted, abated or deferred pursuant to the provisions of
13 section 95 or 96 of this 1990 amendatory and supplementary act,
14 the amount by which such assessment is exempted, abated or
15 deferred shall be assessed against the other member insurers in a
16 manner consistent with the basis for assessment set forth in
17 paragraph (9) of subsection a. of section 8 of P.L.1974, c.17
18 (C.17:30A-8). After the exemption, abatement or deferral is
19 revoked in whole, the commissioner may order that the
20 association require the insurer to pay those obligations deferred
21 pursuant to the provisions of section 95 or 96 of this act.¹

22 C.17:33B-52

23 198. (New section) a. The commissioner shall, after hearing,
24 notify the director to exempt, abate or defer, in whole or in part,
25 the surtax imposed on an insurer pursuant to the provisions of
26 section 76 of this 1990 amendatory and supplementary act if the
27 insurer is in an unsafe or unsound financial condition.

28 b. If an insurer requests exemption, abatement or deferral and
29 averts that there is an immediate need to exempt, abate or defer
30 the surtax imposed pursuant to section 76 of this act because
31 payment would result in the insurer being in an unsafe or unsound
32 financial condition, the insurer's obligation to pay such surtax
33 shall be exempted, abated or deferred beginning on the 10th
34 business day after the insurer has filed the request and supporting
35 documentation with the commissioner, unless within that time,
36 the commissioner finds that continued payment of the surtax will
37 not result in the insurer being in an unsafe or unsound financial
38 condition.

39 c. Any exemption, abatement or deferral pursuant to
40 subsection a. or b. of this section shall continue until the
41 commissioner, upon the commissioner's own motion or upon
42 request by the insurer or any other interested party, after
43 providing opportunity for a hearing, orders its revocation.

44 d. For the purposes of this section, an insurer shall be deemed
45 to be in an unsafe or unsound financial condition if the
46 commissioner finds the insurer to have a ratio of annual net
47 premiums written to surplus as to policyholders that threatens
48 the financial health of the insurer.¹

49 C.17:33B-53

50 199. (New section) The commissioner may provide that the
51 director exempt, abate or defer, in whole or in part, the surtax
52 imposed on an insurer pursuant to section 76 of this 1990

1 amendatory and supplementary act if the commissioner, in his
2 discretion, determines that payment of the surtax will result in
3 an insurer's financial condition becoming unsafe or unsound. In
4 making this determination, the commissioner shall consider the
5 following factors:

6 a. The insurer's ratio of annual net premiums written to
7 surplus as to policyholders; and

8 b. Whether the insurer would experience:

9 (1) an adverse change in its rating by A.M. Best and Company,
10 Dun and Bradstreet, Moody's or Standard and Poor's;

11 (2) financial ratios outside the acceptable ranges as
12 established by the National Association of Insurance
13 Commissioners or the chief financial officer of the Department
14 of Insurance of this State; or

15 (3) a net reduction to the insurer's surplus as to policyholders
16 greater than 25% during a period of two years or less.

17 Any exemption, abatement or deferral pursuant to this section
18 shall continue until the commissioner, upon the commissioner's
19 own motion or upon request by the insurer or any other interested
20 party, after providing opportunity for a hearing, orders its
21 revocation.¹

22 C.17:33B-54

23 ¹100. (New section) After the exemption, abatement or
24 deferral of a surtax on an insurer pursuant to the provisions of
25 section 98 or 99 of this 1990 amendatory and supplementary act,
26 is revoked, the commissioner may order that the director require
27 the insurer to pay those obligations deferred pursuant to the
28 provisions of section 98 or 99 of this act.¹

29 ¹101. Section 7 of P.L.1972, c.198 (C.39:6-86.1) is amended to
30 read as follows:

31 7. When any person qualified to receive payments under the
32 provisions of the "Unsatisfied Claim and Judgment Fund Law"
33 suffers bodily injury or death as a pedestrian, as defined in
34 section 2 of P.L.1972, c.70 (C.39:6A-2), caused by a motor
35 vehicle, including an automobile as defined in section 2 of
36 P.L.1972, c.70 (C.39:6A-2), and a motorcycle, or by an object
37 propelled therefrom, or arising out of an accident while
38 occupying, entering into, alighting from, or using an automobile,
39 registered or principally garaged in this State for which personal
40 injury protection benefits under the "New Jersey Automobile
41 Repairation Reform Act," P.L.1972, c.70 (C.39:6A-1 et seq.), or
42 section 19 of P.L.1983, c.362 (C.17:28-1.3), would be payable to
43 such person if personal injury protection coverage were in force
44 and the damages resulting from such accident or death are not
45 satisfied due to the personal injury protection coverage not being
46 in effect with respect to such accident, then in such event the
47 Unsatisfied Claim and Judgment Fund shall provide, under the
48 following conditions, the following benefits:

49 a. Medical expense benefits. Payment of all reasonable
50 medical [expenses incurred as a result of personal injury sustained

1 in a motor vehicle accident] expense benefits in an amount not
2 exceeding \$250,000 per person per accident. In the event of
3 death, payment shall be made to the estate of the decedent.

4 Medical expense benefit payments shall be subject to a
5 deductible of \$250.00 on account of injury in any one accident
6 and a copayment of 20% of any benefits payable between \$250.00
7 and \$5,000.00.

8 b. Income continuation benefits. The payment of the loss of
9 income of an income producer as a result of bodily injury
10 disability, subject to a maximum weekly payment of \$100.00.
11 Such sums shall be payable during the life of the injured person
12 and shall be subject to an amount or limit of \$5,200.00, on
13 account of injury to any one person in any one accident, except
14 that in no case shall income continuation benefits exceed the net
15 income normally earned during the period in which the benefits
16 are payable.

17 c. Essential services benefits. Payment of essential services
18 benefits to an injured person shall be made in reimbursement of
19 necessary and reasonable expenses incurred for such substitute
20 essential services ordinarily performed by the injured person for
21 himself, his family and members of the family residing in the
22 household, subject to an amount or limit of \$12.00 per day. Such
23 benefits shall be payable during the life of the injured person and
24 shall be subject to an amount or limit of \$4,380.00, on account of
25 injury to any one person in any one accident.

26 d. Death benefits. In the event of the death of an income
27 producer as a result of injuries sustained in an accident entitling
28 such person to benefits under this section, the maximum amount
29 of benefits which could have been paid to the income producer,
30 but for his death, under subsection b. of this section shall be paid
31 to the surviving spouse, or in the event there is no surviving
32 spouse, then to the surviving children, and in the event there are
33 no surviving spouse or surviving children, then to the estate of
34 the income producer.

35 In the event of the death of one performing essential services
36 as a result of injuries sustained in an accident entitling such
37 person to benefits under subsection c. of this section, the
38 maximum amount of benefits which could have been paid such
39 person, under subsection c., shall be paid to the person incurring
40 the expense of providing such essential services.

41 e. Funeral expenses benefits. All reasonable funeral, burial
42 and cremation expenses, subject to a maximum benefit of
43 \$1,000.00, on account of the death to any one person in any one
44 accident shall be payable to decedent's estate.

45 Provided, however, that no benefits shall be paid under this
46 section unless the person applying for benefits has demonstrated
47 that he is not disqualified by reason of the provisions of
48 subsection (a), (c), (d) or (l) of section 10 of P.L.1952, c.174
49 (C.39:6-70), or any other provision of law.¹
50 (cf: P.L.1988, c.119, s.5)

1 Repealer

2 ¹[80.] 102.¹ Section 28 of P.L.1988, c.119 (C.17:29A-6.1) and
3 section 8 of P.L.1988, c.156 (C.17:29A-47) are repealed.

4 Effective date

5 ¹[81.] 103.¹ This act shall take effect immediately, but
6 subsections a. through g. of section 50 shall remain inoperative
7 until the Director of the Division of Motor Vehicles has adopted
8 implementing regulations pursuant to subsection h. of that
9 section; ¹[and]¹ sections 41 through 47 shall remain inoperative
10 until the Commissioner of Insurance has adopted implementing
11 regulations pursuant to section 48 of this act ¹; and sections 80
12 through 83 shall be retroactive to January 1, 1990¹.

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15 INSURANCE

16

17

The "Fair Automobile Insurance Reform Act of 1990."

1 its principal office from the county wherein it was established on
2 January 1, 1981, the State Treasurer, upon warrant of the State
3 Comptroller, shall, on or before August 1 of each year, pay to the
4 treasurer of the county from which the principal office was
5 removed, an amount as hereinafter provided:

6 (1) For the first year after relocation, an amount equal to 80%
7 of the amount the county received in the year in which the
8 relocation occurred;

9 (2) For the second year after relocation, an amount equal to
10 60% of the amount the county received in the year in which the
11 relocation occurred;

12 (3) For the third year after relocation, an amount equal to 40%
13 of the amount the county received in the year in which the
14 relocation occurred;

15 (4) For the fourth year after relocation, an amount equal to
16 30% of the amount the county received in the year in which the
17 relocation occurred; and

18 (5) For the fifth year after relocation, an amount equal to 15%
19 of the amount the county received in the year in which the
20 relocation occurred.

21 No county shall be entitled to any payment under this
22 subsection for any year following the fifth year after relocation.

23 (cf: P.L.1983, c.390, s.1)

24 80. Section 28 of P.L.1988, c.119 (C.17:29A-6.1) and section 8
25 of P.L.1988, c.156 (C.17:29A-47) are repealed.

26 81. This act shall take effect immediately, but subsections a.
27 through g. of section 50 shall remain inoperative until the
28 Director of the Division of Motor Vehicles has adopted
29 implementing regulations pursuant to subsection h. of that
30 section; and sections 41 through 47 shall remain inoperative until
31 the Commissioner of Insurance has adopted implementing
32 regulations pursuant to section 48 of this act.

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SPONSORS STATEMENT

This bill makes significant changes in the State's motor vehicle insurance laws.

The New Jersey Automobile Full Insurance Underwriting Association (JUA) is required to stop issuing and renewing automobile policies as of October 1, 1990. An insolvency trustee is to be appointed to manage the financially burdened JUA and the New Jersey Automobile Insurance Guaranty Fund is created to fund the debt of JUA by receiving monies from various sources, including assessments on property-casualty insurers, a surtax on automobile insurance premium taxes, increased fees on certain occupations and professions and increased registration fees on motor vehicles. The policy constant and residual market equalization charge (RMEC) are eliminated as of April 1, 1991.

1 Automobile insurers will be required to insure "good" drivers in
2 the voluntary market. Other drivers will be written in the
3 residual market pursuant to the implementation of an automobile
4 insurance plan. However, the bill provides that no more than 10%
5 of the private passenger automobiles may be written in the
6 residual market.

7 The required medical expense benefits coverage under the
8 no-fault law's personal injury protection coverage is changed to
9 \$75,000 per person per accident with mandatory offers by
10 insurers of additional coverage up to unlimited. Insurers must
11 also offer insureds the option of making their health insurance
12 primary.

13 The bill also introduces measures to decrease fraud and other
14 costs in the system, to increase safety and compliance with
15 certain motor vehicle insurance laws, and to apply the State's
16 anti-trust law to automobile insurers.

17
18
19 **INSURANCE**

20
21 The "Fair Automobile Insurance Reform Act of 1990."

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 1, 1990

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1 with committee amendments.

This bill, designated the "Fair Automobile Insurance Act of 1990," reforms various aspects of the motor vehicle insurance system in this State. Among its more significant provisions, the bill, as amended by the committee, addresses the following issues: the provision of medical expense benefits to persons injured in automobile accidents; guaranteeing persons who meet "good driver" criteria insurance coverage in the voluntary market; the phase-out of the New Jersey Automobile Full Insurance Underwriting Association (JUA) and its replacement with an assigned-risk plan; the creation of a Market Transition Facility to assure an orderly phase-out of the JUA; the retirement of the JUA debt; providing new criteria which automobile insurers must ultimately use in setting rates; ending the State anti-trust exemption for automobile insurers; decreasing fraud and other costs to the automobile insurance system; and providing a mechanism for heightened enforcement of the State's mandatory liability insurance system.

The bill contains several provisions concerning the provision of medical expense benefits to persons injured in automobile accidents. Under present law, unlimited medical expense benefits are provided under automobile insurance policies (subject to certain deductibles and copayments). Beginning January 1, 1991, the bill caps mandatory benefits at \$250,000 and provides that insurers may offer coverage in excess of \$250,000. As a result of this change, the Unsatisfied Claim and Judgment Fund will be utilized as a mechanism to provide pooling of losses between \$75,000 and \$250,000. The bill also provides that the medical fee schedules adopted by the Commissioner of Insurance applicable to medical expense benefits coverage provided by automobile insurers are to incorporate the reasonable and prevailing fees of 75% of practitioners in a region and prohibits billing in excess of the fees provided under the schedule. In addition, the bill contains an optional health insurance "wrap-around" provision under which insureds have the option, beginning January 1, 1991, to make their health insurance coverage or other health benefits primary for automobile related injuries. The wrap-around includes coverage under any health insurance policy or any other applicable health benefits, including health care services provided by health maintenance organizations and coverage or benefits under any applicable federal or State program. The bill

requires an appropriate reduction in rates applicable to medical expense benefits coverage for insureds who select the wrap-around option. This rate reduction is to be not less than 25% for policies issued or renewed prior to January 1, 1992, from which date an appropriate rate discount is to be given to insureds with wrap-around coverage.

The bill contains several provisions modeled after the Michigan Essential Insurance Act which require automobile insurers to provide insurance in the voluntary market to "good drivers" beginning April 1, 1992. The bill provides express criteria defining an eligible person for coverage in the voluntary market. To be deemed an eligible person under these standards, a person must be an owner or registrant of an automobile registered in this State or must hold a valid license to operate an automobile in New Jersey. "Eligible person" does not include any person: who during the three-year period immediately preceding renewal or application has been convicted for driving under the influence of alcohol or drugs in this or another state, has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle, or has been convicted of theft of a motor vehicle; whose license to operate an automobile is suspended or revoked; who during the immediately preceding five-year period has been convicted of fraud or intent to defraud involving an insurance application or claim, or has been successfully denied payment of an automobile insurance claim in excess of \$1,000 if there was evidence of fraud or intent to defraud involving the claim or application; whose automobile insurance policy was cancelled for nonpayment of premium during the immediately preceding two-year period, unless the person prepays in full any premium due on a new or renewal policy; who is not a member of a club, group or organization or qualified for such membership if membership, or qualification for membership, is a uniform requirement of the insurer to provide coverage; who within the preceding three-year period has accumulated experience-related insurance eligibility points as determined under a schedule promulgated by the commissioner; or who possesses such other risk factors as deemed relevant by rule or regulation of the commissioner. The bill requires that any insurer or insurance producer who declines an application for automobile insurance inform the applicant of the reasons for refusal and provide information on whether the applicant may be qualified for coverage with an affiliate insurer. This notice must be provided in writing if the application itself was made in writing. A person who made an oral application may however request a written explanation within 90 days. The bill requires the commissioner to establish a procedure for resolving the complaints of persons who believe they have been improperly denied automobile insurance, with an ultimate right to have a matter heard as a contested case.

The bill phases-out the JUA by prohibiting it from issuing or renewing policies on or after October 1, 1990. In its place, an assigned-risk plan will be created. Under the assigned-risk plan, each insurer would be responsible for its share of assigned-risk

business. Only those insureds who do not meet the eligible person criteria may be placed in the assigned-risk plan. The insurer may either write the risks assigned under the plan or contract with another insurer or other qualified entity to take on their assigned-risk book of business under a limited assignment distribution system. The bill requires that coverage provided under the plan in excess of \$50,000 per person and \$100,000 per accident for bodily injury or death and \$25,000 for property damage, or \$100,000 single limit be experience rated. It also requires that collision and comprehensive coverage be experience rated for automobiles insured under the plan with a value in excess of \$25,000. Similarly, the collision and comprehensive coverage under the plan for any automobile valued at more than \$15,000 but less than \$25,000 is to be experience rated on the rate applicable to the value between \$15,000 and \$25,000. Under the bill, the plan is prohibited from insuring more than 10% of the automobile insurance market in this State at any time. Therefore, 90% of the private passenger automobile insurance market in the State is to be insured in the voluntary market. In addition, the bill provides that those voluntary market companies operating as non-standard insurers may provide coverage to no more than 15% of the total automobile insurance market in the State. The bill prohibits non-standard insurers from charging rates in excess of 135% of the cost of insurance in the voluntary market in this State.

In order to assure an orderly transfer of insureds from the JUA during the phase-out period, the bill provides for the creation of a Market Transition Facility to provide automobile insurance between October 1, 1990 and September 30, 1992. The facility will be operated pursuant to a plan adopted by the commissioner in consultation with an advisory board comprised of representatives of insurers, producers, servicing carriers and the public as well as a qualified actuary. To provide administrative continuity, the facility will utilize the servicing carriers presently under contract with the JUA. However, all insurers writing private passenger automobile insurance in New Jersey will be members of the facility and share in its profits and losses. There will be a two-tier rating system for use in the facility utilizing rates applicable under the assigned-risk plan for insureds who are not eligible persons and ISO rates for all other facility insureds.

The bill provides a schedule for the mandatory depopulation of risks insured in the JUA and the facility as follows. By October 1, 1990, no more than 32% of all insureds are to be in the JUA; by April 1, 1991, no more than 29% of all insureds are to be in the JUA and the facility, combined; by October 1, 1991, the JUA will be totally depopulated and no more than 20% of all insureds are to be in the facility which is to decrease to 10% on April 1, 1992 and be totally depopulated by October 1, 1992. The bill provides for the mandatory assignment of risks by the commissioner if any of these depopulation quotas is not met.

The bill contains several other provisions addressing the impact of the JUA phase-out. It prohibits the imposition of the residual

market equalization charge (RMEC) and the policy constant on or after April 1, 1991, thereby ending the direct subsidies currently paid to the JUA by automobile insurance policyholders. The bill provides a mechanism under which information on brokers who served as JUA producers will be available to automobile insurers who may wish to use these brokers in writing future business and provides that the commissioner is to encourage the broadening of these brokers' authority to place other types of insurance. In addition, the bill mandates the establishment of a program under which certain urban brokers who lost their status as agents after December 31, 1980 are to be assigned on an equitable basis to represent voluntary market companies.

The bill establishes the New Jersey Automobile Insurance Guaranty Fund which is to be administered pursuant to a plan of operation approved by the commissioner. Direct responsibility for administration of the plan will be placed with an insolvency trustee appointed by the commissioner. The trustee is to be a person with experience in bankruptcy or insolvency who is not, during his tenure as trustee, to be affiliated with or employed by an insurer. Monies from the fund are to be used to pay claims and satisfy the other financial obligations of the JUA. In order to disburse monies from the fund, the trustee will prepare a written application for disbursement which is to be approved by the commissioner and forwarded to the State Treasurer for approval, at which time the requested monies are to be disbursed. The plan of operation is to provide for the payment of covered losses on behalf of the association and is to contain a schedule for the prioritization of claims payments by the type of claim for which payment is due. The schedule may provide for the deferral of residual bodily injury (generally, pain and suffering) losses over four years and the deferral of other payments only upon certification by the commissioner that the fund cannot otherwise obtain the monies necessary to pay those obligations. However, the bill precludes the plan from providing for the deferral of claims payments which are due and payable for present economic loss. The bill also provides that no person covered under a JUA policy may be held liable for payment of any claim which is being deferred pursuant to the deferral schedule until such time that the claim is actually paid.

In addition to monies appropriated or otherwise made available to the fund or the JUA, the fund will obtain income from various sources, including: loans made by the New Jersey Property-Liability Guaranty Association in an amount of \$160 million a year for each calendar year from 1990 through 1997, funds for these loans are to be raised through assessments on member insurers of the association; loans from other sources approved by the commissioner; revenues from a surtax imposed on private passenger automobile insurance premiums in this State, other than those collected by the JUA and the Market Transition Facility, in calendar years 1990 through 1992, the surtax rate is set at 5%, but the Director of Taxation, in consultation with the commissioner, is authorized to adjust the surtax rate so that total revenue over the three years approximately

equals \$300 million; revenues from the premium tax collected on JUA premiums; monies from the New Jersey Merit Rating Plan collected on or after October 1, 1991, less 15% or the actual administrative expenses incurred by the Division of Motor Vehicles, whichever is less, for collecting merit rating surcharges and administering the motor vehicle liability insurance cancellation notification system; monies from a \$100 annual fee placed on attorneys, medical doctors, doctors of osteopathy, chiropractors, podiatrists, physical therapists and auto body repair shops, these fees are to be collected by the appropriate licensing body for calendar years 1990 through 1996; and monies collected by the Division of Motor Vehicles, on or after October 1, 1991, on additional registration fees imposed on all motor vehicle registrations issued or renewed in this State from July 1, 1990 through December 31, 1996. These registration fees are to be imposed as follows: for all motor vehicles, other than commercial motor vehicles, which are three or more years old the fee is \$15; for all motor vehicles, except commercial vehicles, which are less than three years old the fee is \$40, until that vehicle is three years old at which time the fee is reduced to \$15; and for all commercial motor vehicles, the fee is \$75. However, the fee for motorcycles is \$15 and for trucks which are registered as noncommercial vehicles the fee is \$50. No additional fees are to be imposed on registrations for which no fee is presently collected, on registrations for certain farm vehicles or on registrations of persons who are eligible for pharmaceutical assistance for the aged and disabled (PAAD). Any additional registration fees collected prior to October 1, 1991 are to be remitted by the Division of Motor Vehicles directly to the JUA.

Member insurers of the New Jersey Property-Liability Guaranty Association are precluded from imposing a surcharge on the premiums of any policy to recoup the assessments imposed for the purposes of the loans made by the association. The bill also provides that, upon certification by the commissioner that monies collected under the New Jersey Merit Rating Plan are no longer necessary to fund the JUA debt, those monies be forwarded to the New Jersey Property-Liability Guaranty Fund to aid in payment of loans made by that fund to the New Jersey Automobile Insurance Guaranty Fund. In addition, the bill provides that the Commissioner of Insurance is to take such action as is necessary to ensure that private passenger automobile insurance policyholders do not pay for the surtax imposed on automobile insurers to help defray the JUA debt.

The bill provides for the suspension of an insurer's obligation to insure eligible persons under the essential insurance provision, to insure drivers who are not eligible persons as assigned-risks or to insure any driver in the voluntary market if the assigned risk plan reaches 10% of marketshare or for the exemption, abatement or deferral, in whole or in part, of any assessments payable by the insurer to the Property-Liability Guaranty Association for loans made to the Automobile Insurance Guaranty Fund and of the surtax payable on automobile insurance premiums, if the insurer is in an unsafe or unsound financial condition. An insurer is to be deemed to

be in an unsafe or unsound financial condition if the commissioner finds the insurer to have a ratio of annual net premiums to policyholder surplus that threatens the financial health of the insurer. In addition, the bill provides a mechanism under which the commissioner may suspend an insurer's obligation to provide insurance under any of the above provisions, or exempt abate or defer the payment of assessments or the surtax, if it is determined that compliance will result in an insurer's financial condition becoming unsafe or unsound. In making this determination the commissioner is to consider: the insurer's ratio of annual net premiums written to insurer's surplus and whether compliance with these provisions would adversely change the insurer's rating by A.M. Best and Company, Dun and Bradstreet, Moody's or Standard and Poor's, result in the insurer experiencing financial ratios outside the acceptable range as established by the National Association of Insurance Commissioners or the Department of Insurance or result in a net reduction to the insurer's surplus as to policyholders greater than 25% during a period of two years or less.

The bill contains several provisions concerning automobile insurance ratemaking. It provides new criteria on which private passenger automobile insurance rates may be based and specifically precludes the use of age, sex or marital status in setting automobile insurance rates. Automobile insurance rates and premiums are to be determined by the following factors, in decreasing order of importance: the insured's driving safety record, including motor vehicle points, at-fault accidents, and convictions for driving while under the influence of drugs or alcohol; the number of miles the insured drives annually; the number of years of driving experience the insured has had; the type of automobile driven; and such other factors as determined by the commissioner to have a substantial relationship to the risk of loss. The commissioner is to promulgate a plan providing for the implementation of the new ratemaking criteria no later than January 1, 1992, which is to take effect within one year of the date of promulgation.

The bill prohibits the use of rating organizations and advisory organizations by insurers in setting automobile insurance rates except for the purposes of the collection, compilation and dissemination of historical data for two or more insurers. However, rating organizations and advisory organizations are expressly prohibited from trending loss data for claims. In addition, the bill provides a mechanism for the Public Advocate to challenge a rate change made under flex-rating after such a rate change becomes effective. Finally, the bill removes automobile insurers from the exemption from the State's anti-trust law (N.J.S.A.56:9-1 et seq.).

The bill contains several provisions designed to locate and penalize uninsured drivers and cut down on fraud and other unnecessary costs to the automobile insurance system. Among these provisions are the establishment of a new program to be administered by the Department of Insurance under which vehicles, other than new vehicles and other vehicles exempted by the

commissioner, are to be inspected, either by photograph or otherwise, prior to the issuance of automobile physical damage insurance coverage; the establishment of a cancellation-notification program to be administered by the Division of Motor Vehicles providing for the suspension of motor vehicle registrations and the surrender of registration plates, and ultimately driver's licenses, when automobile insurance has been cancelled for nonpayment of premium and new coverage has not been obtained; establishment of a towing and storage fee schedule; the provision of rate discounts to insureds whose vehicles have approved anti-theft or safety devices; requiring insurers writing private passenger automobile insurance to create and file plans for the prevention of fraudulent insurance applications and claims and for the prevention of automobile theft; and granting the commissioner the authority to implement any procedure or practice he deems necessary to control the cost of providing personal injury protection coverage, to increase the efficiency of insurers or to prevent fraudulent practices. The bill also provides an amnesty period from October 1, 1990 through January 31, 1991, for uninsured drivers who would be first offenders under the mandatory automobile liability insurance law and provides for the reduction of two motor vehicle points, no more than once every five years, for persons who complete a defensive driving course approved by the Director of the Division of Motor Vehicles. The bill provides that no insurer may cease transacting any line of property-casualty insurance in this State, unless such cessation is accomplished pursuant to a plan of orderly withdrawal approved by the commissioner.

Finally, the bill also increases the premium tax currently imposed on all insurers, and dedicates the revenues from this increase to the Department of Insurance for payment of administrative costs related to its statutory duties. The general 2 percent tax is increased by the imposition of an additional 0.1 percent tax; the 1 percent tax on group accident and health policies is increased by the imposition of an additional 0.05 percent tax, and; the 5 percent tax on marine insurance is increased by the imposition of an additional 0.25 percent tax.

The committee made the following significant amendments to the bill:

Place a cap of \$250,000 on medical expense benefits available under automobile insurance personal injury protection (PIP) coverage with Unsatisfied Claim and Judgment Fund (UCJF) pooling losses between \$75,000 and \$250,000.

To assure orderly access to the voluntary market for 90% of all drivers:

- Create a Market Transition Facility which may provide insurance through existing servicing carriers during a two-year period beginning October 1, 1990. The automobile insurance industry will bear any losses incurred by the facility.

- Continue mandated depopulation utilizing six-month quotas.
- Begin "take-all-comers" on April 1, 1992.

Provide mechanisms to exempt financially troubled insurers from the "take-all-comers" and assigned-risk requirements and to exempt, abate or defer the payment by financially troubled insurers of certain Property-Liability Guaranty Association assessments and the automobile insurer premium surtax.

Dedicated minimal, proportional increase in insurance premium tax to fund the Department of Insurance.

Provide an assigned-risk credit for increased voluntary market writings in designated urban areas.

Program for the assignment of certain urban producers to voluntary market companies.

Prohibiting eligible persons ("good drivers") from being insured under assigned-risk plan.

Permitting Public Advocate to challenge flex-rate change after it becomes effective.

Exempt new cars from photo-inspection law; apply cancellation-notification program to cancellations for nonpayment of premium.

Additional registration fees to be imposed as follows:

- \$15 on all non-commercial vehicles that are three or more years old;
- \$40 on all non-commercial vehicles that less than three years old;
- \$75 on all commercial vehicles;
- \$15 on all motorcycles;
- \$50 on all trucks registered as noncommercial vehicles;
- No additional fee on certain farm vehicles or on registrants who are PAAD eligible.

FISCAL IMPACT:

Among the bill's provisions which will or may have a fiscal effect include: increases in existing fees and imposition of new ones, imposition of surtaxes and dedication of already collected funds to retire or liquidate the JUA debt; administrative costs to collect the new fees and surtaxes and to implement new programs to locate and penalize uninsured drivers; and changes in the medical expense benefits to the injured. The bill provides for a variety of revenues to enable the State to liquidate the estimated \$3.0 billion debt of the JUA. The major points include: a new assessment on property-casualty insurers; a surtax on automobile insurance premiums written during 1990 through 1992; dedication of the

current insurance premiums tax attributable to JUA policies to the Guaranty Fund instead of the General Fund; continuation of the existing Merit Rating Plan surcharges; additional \$100 license fees for physicians, podiatrists, etc. physical therapists, auto body repair facilities and attorneys for seven calendar years; and additional motor vehicle registration fees for six and one-half years, with the exception of PAAD recipients and certain farm vehicles.

MINORITY STATEMENT

Submitted by Assemblymen Frelinghuysen, Kamin
and Assemblywoman Farragher

There is general agreement that New Jersey's automobile insurance system needs to be changed, in order to reduce the excessive cost to motorists. However, this bill is an inadequate response to the problem, for the following reasons:

There is no ironclad guarantee against the insurance industry passing through the added taxes, assessments and other costs imposed by the bill, in the form of increased rates;

There is no real attempt to deal with the fundamental causes of high insurance costs. Limitations are needed on unnecessary and frivolous lawsuits, which overburden our legal system;

The mainstay of this legislation is cost shifting rather than cost savings. Any savings will be largely offset by higher vehicle registration fees and other increased costs to motorists;

The rising costs of health care and health insurance will be aggravated by the option to shift medical coverage from automobile insurance to health insurance. This change may also create a further drain on the Uncompensated Care Trust Fund;

Low risk drivers will subsidize high risk drivers under this bill. Within two years age, gender, and residence will be eliminated from rate-setting criteria. This is in conflict with sound actuarial data;

Senior citizens will not receive rate relief from removal of the residual market equalization charge (RMEC); they are already exempt from this charge. Most senior citizens will, in fact, face increases in their vehicle registration fees. Also, senior citizens on Medicare will not be able to use the option to shift medical coverage from automobile insurance to health insurance;

Shifting medical coverage from automobile insurance to health insurance may leave certain catastrophic costs, including rehabilitation, unpaid. Health insurance policies do not provide the same breadth or extent of coverage as automobile insurance, and only part of this gap may be covered by automobile insurance.

Solving New Jersey's automobile insurance problems requires careful study and deliberation. This bill has moved too rapidly through the legislative process for proper consideration of its implications.

LEGISLATIVE FISCAL ESTIMATE TO

Assembly, No. 1

STATE OF NEW JERSEY

Assembly Bill No. 1 of 1990, with proposed amendments, changes many aspects of the motor vehicle insurance system in New Jersey. It requires that the New Jersey Automobile Full Insurance Underwriting Association (JUA) stop issuing and renewing automobile policies as of October 1, 1990. It creates a Market Transition Facility to issue and renew automobile insurance policies between October 1, 1990 and September 30, 1992. An insolvency trustee would be appointed to manage the JUA. To fund the debt of the JUA, the bill creates the New Jersey Automobile Insurance Guaranty Fund. This fund will receive monies from various sources including: assessments on property-casualty insurers, a surtax on automobile insurance premiums, increased fees on certain occupations and professions, and increased registration fees on motor vehicles. The policy constant and residual market equalization charge (RMEC) would be eliminated as of April 1, 1991.

Automobile insurers would be required to insure "good" drivers in the voluntary market. Other drivers would be written in the residual market pursuant to the implementation of an automobile insurance plan. No more than 10 percent of the private passenger automobiles are to be written in the residual market. The required medical expense benefits coverage would be limited to \$250,000 per person per accident and insurers would be required to offer higher limits, up to unlimited coverage. The Unsatisfied Claim and Judgment Fund will continue to be used to pool losses in excess of \$75,000 up to \$250,000. Insureds would also have the option of making their health insurance coverage primary for personal injury.

The bill also introduces measures designed to decrease fraud and other costs in the system, to increase safety and compliance with certain motor vehicle insurance laws, and to apply the State's anti-trust law to automobile insurers.

Some of the proposed changes will have a fiscal impact on the State and, in some cases, on municipalities, counties and school boards. Certain changes will result in increased revenues while others may require increased expenditures.

The following departments and agencies of the Executive Branch were asked for a fiscal note: the departments of Education, Health, Insurance, Law and Public Safety, Public Advocate and Treasury along with the Divisions of Motor Vehicles and Consumer Affairs in the Department of Law and Public Safety and the Division of Taxation and the Office of Management and Budget in the Treasury Department. They have not yet responded. A few agencies did respond to informal inquiries from the Office of Legislative Services (OLS). Therefore, this Legislative Fiscal Estimate has been prepared by OLS based on analyses of available information and responses to informal inquiries of executive departments.

Among the bills' many provisions, those which have, or may have, a fiscal effect are the following:

- Increases in existing and imposition of new fees, imposition of surtaxes, and dedication of already collected funds for the purpose of retiring the New Jersey Automobile Full Insurance Underwriting Association's (JUA) debt of an estimated \$3.0 billion over a six and a half year period of 1990 through 1996. The proposals include the following:

- 1) an assessment on the premiums of all property casualty insurers to be paid into the New Jersey Automobile Guaranty Fund which in turn will loan \$160 million per year to the trustee to help liquidate the JUA debt; these loans are to be repaid from the surcharges of the Merit Rating Plan after the JUA debt has been eliminated;

- 2) a surtax on automobile insurance premiums (excluding JUA and Market Transition Facility premiums) written during calendar years 1990 through 1992, at a rate of up to 5 percent, so that total revenues from the surtax do not exceed \$300 million over the three years;

- 3) continuation of the existing Merit Rating Plan surcharges, with the funds, collected on or after October 1, 1991 in excess of the administrative costs of the Division of Motor Vehicles, going to help defray the JUA debt;

4) payment of an annual fee of \$100 for the years 1990 through 1996 by physicians, podiatrists, chiropractors, physical therapists, auto body repair facilities and attorneys, with at least one year of practice, with the monies going to the New Jersey Automobile Insurance Guaranty Fund, and

5) imposition of additional registration fees for six and one-half years of \$75 for commercial vehicles, \$50 for non-commercial trucks used as passenger vehicles, \$15 or \$40 for non-commercial vehicles, depending on age of the vehicle, and \$15 for motorcycles.

• Administrative costs to collect the new fees and surtaxes and to implement new programs to locate and penalize uninsured drivers and reduce fraud and other costs to the automobile insurance system including:

1) a program, administered by the Department of Insurance, under which vehicles are to be inspected, either by photograph or otherwise, prior to the issuance of automobile physical damage insurance coverage;

2) a cancellation-notification program to be administered by the Division of Motor Vehicles providing for the suspension of motor vehicle registrations, the surrender of registration plates and ultimately driver's licenses, when insurance has been cancelled.

• Changes in the medical expense benefits to persons injured in automobile accidents. The present provision for unlimited medical expense benefits would be eliminated. After January 1, 1991, mandatory benefits would be capped at \$250,000, although insureds may elect coverage in excess of \$250,000 with a resulting increase in premiums. As an alternative, the bill provides that insureds have the option, as of January 1, 1991, to make their health insurance coverage or other health benefits primary for automobile related injuries. These changes of capping medical benefits at \$250,000 and providing the option to permit insureds to have their health insurance coverage be primary might result in shifting costs from automobile insurance to health insurance with ramifications for some public employers in the State, the Department of Health's

uncompensated care program for the State's hospitals, and the State's Medicaid program in the Department of Human Services.

INCREASED AND DEDICATED REVENUES

The bill provides for a variety of revenues to enable the State to liquidate the estimated \$3.0 billion debt of the Joint Underwriting Association (JUA) over the period 1990 to 1996.

First, assessments on property-casualty insurers (Section 74 of the bill). The bill establishes a new assessment on property-casualty insurers in amounts necessary to loan \$160 million per calendar year, for seven years, beginning in 1990 and continuing through 1997, for a total of \$1.120 billion. The assessments will be paid into the New Jersey Property - Liability Guaranty Association which will loan the monies to the Guaranty Fund. About half of the assessment will fall on non-automobile lines of insurance, not including workers compensation, life and health insurers. In 1988, the total premiums were \$5.8 billion; thus, to generate \$160 million in revenue would have required an assessment rate of 2.75 percent. Assuming that total premiums increase due to inflation and new construction, among other factors, the assessment rate would decline slightly each year while the total raised would remain \$160 million under the terms of the bill. After the JUA debt is eliminated, the loan of this \$1.120 billion will be repaid to the association from the Merit Rating Plan surcharges which will continue to be imposed.

Second, automobile insurance premium surtax (Sections 76 through 79 of the bill). The bill imposes a surtax on automobile insurance premiums (excluding JUA and Market Transition Facility insurance premiums) written during calendar years 1990 through 1992, with the proceeds to be paid to the New Jersey Automobile Insurance Guaranty Fund. The rate of this surtax is set at 5 percent, but the Director of the Division of Taxation, in consultation with the Commissioner of Insurance, is authorized to adjust the tax rate so that total revenues over the three years do not exceed \$300 million. In addition, the bill provides that current premium taxes on the premiums of JUA policies and policies of the proposed Market Transition Facility be paid to the New Jersey Automobile Guaranty Fund, rather than the General Fund.

The surtax is structured so that it will generate \$300 million in revenues to the special fund over three years; because of the director's rate adjustment authority, and uncertainties about developments in the insurance market which will prompt these adjustments, it is not known how much revenue will be received each year.

Third. current premium tax (Section 73 of the bill).

Revenues attributable to current premium taxes on the premiums of JUA policies are estimated at approximately \$4 million for FY 1990; under the bill, these revenues will be dedicated to and deposited in the Guaranty Fund instead of the State's General Fund. Under the current law's JUA depopulation program, JUA premiums and premium tax revenues would decline over several years; under this bill, the JUA will write no new policies after October 1, 1990. In both cases, the voluntary market will absorb the insureds shifted out of the JUA. Therefore, there will be declining General Fund revenue losses from this provision in Fiscal Years 1991 and FY 1992 which will be partially offset by increased General Fund revenues from voluntary market premium taxes. In FY 1993 and thereafter, there will be no General Fund revenue loss. In terms of net revenues to the Guaranty Fund, this dedication should generate a total of approximately \$3 million in Fiscal Years 1991 and 1992.

Fourth. continuation of the existing Merit Rating Plan surcharges under the new assigned-risk plan (Section 35 of the bill).

The bill provides that the Division of Motor Vehicles may retain up to 15 percent of the funds it collects from motor vehicle violation surcharges and shall remit the remainder to the Guaranty Fund to defray the JUA debt. In FY 1991, an estimated \$112.4 million in surcharges will be collected after refunds. Therefore, \$95.6 million would be provided for the Guaranty Fund and up to \$16.8 million to DMV for administrative purposes (\$11.2 million for surcharge revenue collection and \$5.6 for the cancellation notification system). DMV is estimating an increase in surcharge revenue of 10 percent between FY 1990 and 1991. Whether this rate of increase will continue in future years is questionable. Nevertheless, assuming an 8 percent growth rate in receipts, OLS estimates the following amounts that would be provided to the JUA and retained by DMV for administrative purposes:

	[SMillion]		
<u>FY</u>	<u>Net Receipts</u>	<u>JUA</u>	<u>DMV*</u>
1991	\$112.4	\$95.6	\$16.8
1992	125.8	106.9	18.9
1993	135.9	115.5	20.4
1994	146.7	124.7	22.0
1995	158.5	134.7	23.8
1996	171.1	145.4	25.7
1997	184.8	157.1	27.7
Total	\$1,035.2	\$879.9	\$155.3

* 15 percent of net receipts;

Fifth, the payment of \$100 annual fees by physicians and podiatrists, chiropractors, physical therapists, auto body repair facilities and attorneys for seven calendar years of 1990 through 1996 (Sections 63 through 67). These fees are to be paid to the respective licensing boards in the Department of Law and Public Safety, Division of Consumer Affairs, and the Department of the Treasury and remitted to the New Jersey Automobile Insurance Guaranty Fund. The OLS estimates that approximately \$66.2 million will be generated over the seven years, as follows:

	<u>(\$Million)</u>		
	1990	1991	1992
	<u>1st Yr.</u>	<u>2nd Yr.</u>	<u>3rd Yr.</u>
Physicians	\$3.5	\$3.8	\$4.0
Chiropractors	.3	.3	.3
Physical Therapists	.5	.5	.5
Auto Body Repairs	.2	.2	.2
Attorneys	<u>3.2</u>	<u>3.4</u>	<u>3.7</u>
Total	\$7.7	\$8.2	\$8.7
	1993	1994	1995
	<u>4th Yr.</u>	<u>5th Yr.</u>	<u>6th Yr.</u>
Physicians	\$4.3	\$4.6	\$4.9
Chiropractors	.4	.4	.4
Physical Therapists	.6	.6	.7
Auto Body Repairs	.2	.2	.2
Attorneys	<u>3.9</u>	<u>4.2</u>	<u>4.5</u>
Total	\$9.4	\$10.0	\$10.7
	1996		Total
	<u>7th Yr.</u>		
Physicians	\$5.3		\$30.4
Chiropractors	.5		2.6
Physical Therapists	.7		4.1
Auto Body Repairs	.2		1.4
Attorneys	<u>4.8</u>		<u>27.7</u>
Total	\$11.5		\$66.2

Sixth, imposition of additional registration fees for six and one-half years (Section 68). The bill would increase the registration fees paid by motorists. The increased fees would be imposed from July 1, 1990 through December 31, 1996. To accomplish the various proposed fee changes, the bill requires a significant reorientation of the way in which New Jersey presently registers and operates the motor vehicles registration system, shifting from a passenger and nonpassenger format to a commercial and non-commercial use based format.

• Commercial Registrations. The fee increase for commercial vehicles would be \$75 levied at the time of a first registration or upon each annual renewal that occurs during the period July 1, 1990 to December 31, 1996. OLS estimates that this increase would produce \$28.8 million of additional revenue during the first full 12 months of operation. It is estimated that 385,000 commercial motor vehicles would pay the fee.

• Non-commercial Registrations. For the fee increase proposal affecting approximately 5.4 million vehicles, two large groups of non-commercial motor vehicles would be created based on model years. One group would be all vehicles designated by the manufacturers as model years 1988 and earlier and the fee would be \$15. The second grouping would be model years 1989 and forward and the fee would be \$40 until the vehicle is three years old, when the fee would drop to \$15. Also, additional registration fees would be imposed on motorcycles and on private passenger non-commercial trucks at \$15 and \$50, respectively. These additional registration fees will not be imposed on registrations for which no fee is presently collected or on registrations of persons who are eligible for pharmaceutical assistance for the aged and disabled (PAAD).

OLS estimates the proposed non-commercial fee increase would produce \$115.2 million in the first twelve months it is actually collected. The estimate is qualified because there is no way of knowing at this time how soon the Division of Motor Vehicles could reprogram its computer systems to implement the proposed increases or the number of months the State could count in the fiscal year starting July 1, 1990.

Altogether, OLS estimates that the proposed registration fee increases for both commercial and non-commercial vehicles would produce a total of \$144 million of gross revenue in the first full 12 months of operation. It is expected, however, that the net revenue gain would be less in the first year due to the added operational costs above current levels to revise the computer systems to accommodate the proposed modification. Revenues in future years will depend in part on changes in the number of commercial and non-commercial registrations which is influenced by economic conditions in the State.

For the six and one-half years that these additional registration fees would be imposed, OLS estimates that they will generate \$935 million.

SUMMARY OF ESTIMATED REVENUES

OLS estimates that the proposed surcharges and fees would generate the following revenues during the period 1990-1997:

<u>Revenue Source</u>	<u>(\$Million)</u>
• Assessments on Property -Casualty Insurers (1990-1992)	\$1,120
• Automobile Premium Surtax (1990-1992)	300
• JUA Premium Tax (1990-1992)	3
• Merit Rating Plan Surcharges (1991-1997)	880
• \$100 Fees on Occupations & Professions (1990-1996)	66
• Registration Fees (1990-1996)	<u>935</u>
Total (1990-1997)	\$3,304

ADMINISTRATIVE COSTS

The bill increases the administrative responsibilities of the Department of Insurance and the agencies responsible for collecting proposed fees and taxes.

Department of Insurance. Among its more significant provisions, the bill requires the Commissioner of Insurance to: (a) appoint an insolvency trustee for the JUA; (b) set forth a plan of operation that will be administered by the trustee; (c) promulgate a schedule of automobile insurance eligibility points that would assess a point valuation to driving experience related violations; (d) establish an assigned risk plan in which drivers who cannot secure automobile insurance in the voluntary market may secure that coverage under the plan; (e) require that insurers make known the rights and obligations of insured and insurers; (f) provide a copy of any filing made under the flex-rate statute to the Public Advocate, who may in turn challenge any rate change; (g) hear any rate change challenge and render a final determination on said challenge; (h) review the financial status of certain insurers for the purpose of determining the feasibility of enforcing certain requirements placed upon them regarding insuring "good drivers;" (i) facilitate the shift of brokers who do JUA business into the voluntary market by creating a producer assignment plan and encouraging these brokers to expand their authorities; (j) introduce measures to decrease fraud and other costs in the system and increase safety and compliance with certain motor vehicle insurance laws; (k) study the feasibility of continuing the current system of mandatory motor vehicle insurance coverage, (l) promulgate towing and storage fee schedules on a regional basis for reimbursement of towing charges and storage charges for automobiles that are damaged in accidents or recovered after being stolen, and (m) create a Market Transition Facility (MTF), which is to be operated by the commissioner, and an advisory board for the facility. The MTF will act as

a temporary insurance market for those insureds in the JUA who cannot be immediately placed in the voluntary market. It would arrange for the issuance and renewal of automobile insurance policies beginning October 1, 1990 and ending September 30, 1992. At the end of those two years, it will cease to function and all automobile insureds will be placed into either the voluntary market, which would consist of the standard and non-standard plans, or the assigned-risk plan.

The preliminary informal estimate by the Department of Insurance of the costs of implementing the bill before it was amended was \$1,529,000 representing: \$1,079,000 in salaries for 39 positions, the majority of which would be involved with actuarial services, and approximately \$350,000 to update the computer system to handle the new and increased workload. There was no estimate for space, furniture, supplies and fringe benefits. As noted, these are preliminary cost estimates which the department is reviewing. This bill would require the department to perform several new functions that it does not currently perform, and, thus, it is difficult to estimate the costs that will result when the provisions are fully implemented.

The bill also increases the premium tax currently imposed on all insurers and dedicates the revenues from this increase to the department for payment of administrative expenses. The general 2 percent tax is increased by the imposition of an additional 0.1 percent tax; the 1 percent tax on group accident and health policies is increased by the imposition of an additional 0.05 percent tax, and the 5 percent tax on marine insurance is increased by the imposition of an additional 0.25 percent tax. OLS estimates that, based on FY 1990 data, the fractional increases in the current insurance premium taxes will generate approximately \$7.0 million for the department's administrative costs in FY 1991.

OLS is unable to reach a conclusion on the adequacy of the proposed \$7.0 million to cover the department's increased administrative costs absent more information from the department.

Division of Motor Vehicles (DMV), Department of Law and Public Safety. The bill gives the division two additional responsibilities. The first is a cancellation notification program. Motor vehicle insurers are required to notify DMV within 30 days of a cancellation of a motor vehicle liability insurance policy. DMV would then notify the policyholder that, unless proof of insurance is filed within 30 days, sanctions and penalties may apply, including

suspension of the vehicle's registration, fines and suspension of the registrant's driver's license. The second new responsibility is administering the registration fee increase for commercial and non-commercial vehicles; for the latter, there are different fees depending on the age and type of vehicle.

For the cancellation notification program, the bill provides that DMV receive the lesser of 5 percent of motor vehicle violation surcharges collected or the actual cost of administering the cancellation notification system. Based on an estimated \$112.4 million in surcharges collected in FY 1991, DMV would receive up to \$5.6 million for the cancellation notification system. However, this funding appears to be duplicative. DMV already receives funds to enforce the compulsory motor vehicle insurance laws under C.39:6B-1 et seq. In FY 1990, DMV received a \$1 million appropriation and a \$1 million reappropriation. The program also receives appropriated receipts from uninsured motorist fines and penalties. As of January 31, 1990, this program had spent none of its \$2 million appropriation. These funds could be used to implement the cancellation notification program. Although DMV has not provided an estimate of implementation costs, OLS believes that the funds presently appropriated would be sufficient to offset all or part of DMV's cost to implement this program. To the extent this cost is offset from existing resources, revenues for JUA debt payment purposes would be increased.

However, the amount collected from uninsured motorist fines and penalties will be reduced in FY 1991 as a result of the amnesty period provided, in Section 49, from October 1, 1990 through January 31, 1991, to first time offenders who produce at the time of trial proof of motor vehicle insurance. This provision could reduce the estimated revenue from uninsured motorist fines and penalties for FY 1991 from \$2.1 million to \$1.4 million.

The increase in motor vehicle registration fees also changes the bases on which the State imposes registration fees. The present system distinguishes between passenger and non-passenger vehicles with many classes and different fee structures, but with variations added to meet changing conditions. The proposed changes to the system seek to distinguish clearly between commercial and non-commercial registrations. Also, the proposed program seeks to impose a higher fee on new non-commercial vehicles based on age. These changes in the bases on which registration fees are calculated will add to DMV operational costs to revise its computer systems to

accommodate the modification proposed. The number of changes needed is not clear nor is the cost per change, but it is noted that the division estimated, in a fiscal note to Assembly Bill No. 983 of 1988, that the cost of reprogramming its computer systems to introduce only two factors, age and disability, into the registration system was \$150,000. The Office of Telecommunications and Information Systems (OTIS) in the Department of the Treasury concurred with that estimate. However, OTIS states that the more complicated reprogramming required by this bill could cost several times this amount. This would be a one-time cost. If this estimate by the division and OTIS is reasonable, OLS estimates that the one-time cost related to the proposed motor vehicle fee increase might be a few million dollars. No funds are appropriated to DMV for the costs of reprogramming.

Other duties associated with increasing motor vehicle registration fees are printing and distribution of DMV's "Motorist Guide" and other flyers notifying the public of the changes, responding to inquiries regarding the changes either through the mail or on the DMV's toll-free telephone line, and possible additional maintenance of the computer system. DMV will also be responsible for collecting the \$100 fee from auto body repair shops. DMV should be able to absorb the costs of these duties in its regular budget. OLS notes that the auto body licensing program receives appropriated receipts from civil penalties which could be used to cover the additional cost of collecting the \$100 annual fee.

Division of Consumer Affairs, Department of Law and Public Safety. OLS estimates that the first year costs to the various licensing boards in the division for collecting the \$100 annual fee would be: Medical Examiners - \$22,493; Chiropractors - \$1,911, and Physical Therapists - \$2,982. OLS notes that these costs would have no impact on the General Fund because the boards operate using licensing fees.

Division of Rate Counsel, Department of the Public Advocate. Under current law, the Division of Rate Counsel may represent insurance consumers in a challenge to an insurance rate change proposed by an insurance carrier. As provided in C.17:92A-14, the insurer must bear the costs of such a hearing. Since all costs incurred by the Rate Counsel are reimbursed, this function imposes virtually no additional cost to the State. The bill, as amended, provides that the Rate Counsel could also challenge a rate implemented by an insurer according to the provisions of the bill. However, it only provides for reimbursement by the insurer in the

event that the Commissioner of Insurance reduces or rescinds a rate change as a result of a challenge by the Rate Counsel. Thus, if a challenge proves unsuccessful, i.e., the rate change request is granted, the State will be required to pay for all costs incurred by the Rate Counsel. Since it is impossible to predict the success rate of challenges to rate change proposals pursuant to the provisions of this bill, it is also not possible to estimate the additional cost to the State.

Department of the Treasury. The bill, as amended, provides that the proposed attorney fee of \$100 be collected by the Department of the Treasury. Currently, the Clients' Security Fund in the Administrative Office of the Courts (AOC) collects fees from attorneys. The AOC's FY 1990 budget request reveals that the expenses of the Clients' Security Fund totaled \$411,000 in FY 1989. Absent further information from the AOC on the costs of the billing operation, it can only be concluded that Treasury's cost of administering the bill's requirements should be a subset of total expenditures of the Clients' Security Fund in FY 1989.

COST SHIFTS TO THE STATE AND OTHER GOVERNMENTS

Registration Fees. Although buses owned by school districts are not subject to school bus registration fees, buses operated by private contractors will be subject to the increased \$75 per vehicle registration fee. It is estimated that there are approximately 8,700 school buses, both Type I and Type II, being operated by private contractors. Their total cost will be \$652,500. It is expected that these costs will be passed through to the school districts. OLS estimates that the additional amounts to be raised by local property taxes will be as follows: FY 1991 - \$652,500; FY 1992 \$630,968; and FY 1993 \$43,718. These amounts decrease as the State aid for transportation costs is phased in retroactively. The estimated increases in State Aid for School Transportation is as follows: FY 1991 - \$0; FY 1992 - \$21,333; and FY 1993 - \$608,783.

Health Insurance Benefits. The bill's provisions for capping medical benefits at \$250,000 and providing the insured with an option to have their health insurance coverage become primary for costs related to vehicle accidents might result in shifting some costs from automobile insurance to health insurance. This, in turn, might increase the health insurance costs of some New Jersey public employers, or, if the costs are not paid by the employers, they will be paid by the individual employees.

The State is self-insured and in FY 1990 is spending an

estimated \$296.5 million for health benefits for its employees. The State's contracts with its unionized employees do not provide for the employee opting to have health insurance coverage be primary for private automobile injuries.

The other public employers in New Jersey will spend the following estimated amounts in 1991 for health benefits for their employees:

	<u>(\$Million)</u>
Counties:	\$211.6
Municipalities	332.3
School Districts	<u>565.9</u>
Total	\$1,109.8

These estimates are based on 1987 data adjusted for subsequent increases in health benefits costs which, for the State, have been increasing at 29 percent annually for the last three years.

The bill reduces medical expense benefit coverage under no-fault personal injury protection coverage from an unlimited amount to \$250,000 per person per accident and provides that insureds may opt for coverage in excess of \$250,000. The bill also provides insureds with the option to have health insurance as the primary carrier for automobile related injuries. The above changes and options are applicable on policies issued or renewed on or after January 1, 1991.

Of the 567 municipalities, 284 participate in the State Health Benefits Plan (SHBP) as do 8 of the 21 counties. The municipalities and counties in SHBP, a self-insurance plan, would not be affected by the bill unless the SHBP provisions were to be changed to permit employees to have their health benefits pay for automobile related injuries.

OLS estimates that giving insureds the option to designate their health insurance coverage as their primary carrier in regard to medical expenses under the no-fault personal injury protection coverage could result in additional costs to those municipal and county governments, which do not participate the State Health Benefits Plan, and to school districts. However, information is not available at this time to estimate such additional costs.

• Department of Health, Uncompensated Care Trust Fund. What impact the bill may have on hospital costs is not known, as data are not routinely published regarding the number of hospital admissions due to automobile accidents or their associated costs. Similarly, the

amount of hospital uncompensated care generated by automobile accidents is not routinely available.

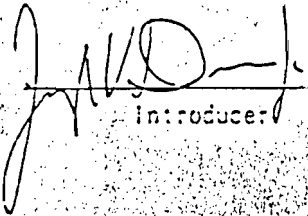
It is unlikely that the bill would have a significant impact on hospital finances or the Uncompensated Care Trust Fund as the usual cost of inpatient hospital admissions resulting from automobile accidents should be less than the \$250,000 cap included in the legislation. If inpatient hospital costs exceed the \$250,000 cap per admission, there may be an increase in uncompensated care, but data are not available on this point. (The \$250,000 cap may have a greater impact on post-hospital care for automobile accidents in nursing homes or rehabilitation hospitals, but the Department of Health is not involved in financing or regulating such costs).

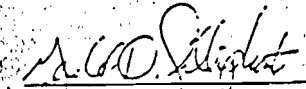
This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

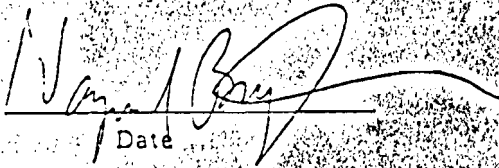
This fiscal estimate has been prepared pursuant to P.L. 1980, c. 67.

Approved:

Approved:


Introducer:


Gerald D. Silliphant
Legislative Budget and
Finance Officer


Date

Remarks of Governor Jim Florio
Joint Session of the Legislature
Re: Car Insurance
Trenton, New Jersey
Monday, January 22, 1990

Mr. Speaker, Mr. President, members of the State Legislature, I want to thank you for agreeing to convening this joint session to hear my proposals for solving a problem that has plagued the people of New Jersey for too long.

I believe that you and I are going to have a productive four years together. We want the same things, and your willingness to meet so soon today tells me you are as eager as I am to get to work.

Everyone in New Jersey knows what our first order of business has to be -- car insurance. I was in New York over the weekend taping a television program. And it was interesting -- so characteristic -- two members of the studio crew came over to me, said that they live in New Jersey, and they provided me with the latest of the horror stories that I was able to add to the growing volume of legitimate complaints that people have.

Car insurance is a problem across the country. It's a problem in other states, too. But New Jersey drivers pay the highest rates of any state in the entire nation. So we should be in the vanguard of tackling this challenge. That's the kind of leadership that the people of New Jersey expect from their government. And that's the kind we're going to give to them.

People want representation from their government that represents the interests of the people -- not special interests. By solving this problem, as we're going to do, we not only bring down insurance rates -- but we will help to bring back the people's faith in those who serve them.

Our car insurance system is a disgrace. It costs drivers too much. It's too generous to the industry. It's unfair. To borrow a word used to describe a car wrecked beyond repair, our system of car insurance is "totaled." And we may as well start anew.

We're going to deal with first things first. And we're going to put the automobile insurance system in New Jersey where it belongs -- on the junk heap -- and start fresh.

I promised in my campaign to bring down this unfair tax on New Jersey drivers. We're going to give good drivers their due. And we're committed to do that. We're going to make sure that New Jersey drivers don't pay more just because they happen to be unmarried, and they don't pay more because they happen to be male or female, old or young. None of those things have anything to do with rationality.

In short, we're going to bring this system under control so that people think it's fair. And it will be fair.

Today I take the first formal step to make good on my promise.

I am not coming today with anything that is radical. We're not talking about radical proposals. I'm offering to you the best ideas that have been tried and tested in other states, and in other places around this nation. What I've done is to combine them all into a comprehensive, rational plan that is coherent.

I'm not going to spend a lot of time, because it's not productive, talking about how we got to this point. I'm not going to be spending time assigning blame. As far as I'm concerned the chief enemy today is time. Our system, if allowed to continue, just doesn't stay as bad as it's been -- it gets worse.

Just last week the insurance department informed me that New Jersey drivers face another increase in their already obscenely high rates, just to keep the Joint Underwriters Association afloat.

We can't let that happen.

My plan starts by keeping a simple promise I made through the course of this last year: the JUA should be, and will be, DOA.

Insurance companies have labeled up to 53 percent of New Jersey drivers as "bad drivers" and thrown them into the JUA, the bad driver fund. You and I know that half the drivers of our state should not be so categorized.

Last year those companies were audited. The state found the companies owed New Jersey drivers \$900 million, just short of a billion dollars. We will pursue that audit and we will go about the effort of recovering every penny that is owed one way or another.

Under my plan, the JUA will write no more policies after October 1st of this year. Surcharges will end within a year of enactment. The average policy will cost at least \$225 less.

Ladies and gentlemen, it's time to start telling the truth about the JUA. The JUA is more than \$3 billion in debt. It's bankrupt, and we ought to treat it that way.

Bloomington's is a model of fiscal restraint compared to the JUA. Under my plan, a trustee will be appointed and will liquidate the bankrupt JUA as it should be.

The JUA deficit will be paid off, and those who prospered the most will pay pack the most. The insurance companies will be assessed at least \$1.4 billion. Doctors, lawyers, body shops -- they'll all pay too.

The second part of my plan is again something that is long overdue -- a "good driver guarantee." Good drivers will not be turned down for coverage by insurance companies in the arbitrary ways they have been in the past. How will we define a good driver? Well, how about a little bit of good common sense.

When rates are set for drivers, the questions they'll have to answer will be: What's your accident record? How many miles do you drive a year? What kind of car do you own? Not just where do you live; not just how old are you; are you married, are you single? Are you a male or female? We're going to have relevant considerations taken into account.

Third, there will be a place for bad drivers. Not everyone is a good driver and those who are not will be treated differently. That's fair, and that's what every other state in the Union does. But no more than 10 percent of New Jersey drivers will be allowed to be put into a bad driver system. And the new system won't look anything like the JUA. For one thing, insurance companies will be responsible for paying the claims against those drivers as they are in every other one of the 49 states.

For another thing, drivers won't have to be stuck forever in this high-risk group. When they clean up their records they can get out -- giving them strong financial incentives to be better, safer drivers. That incentive is clearly lacking in our current, crazy system.

Fourth, the insurance companies' exemption from anti-trust laws will end. No more price fixing. The companies will join the world of free enterprise and compete like everyone else does in business.

Fifth, drivers will be for the first time able to have the opportunity to get their choice of letting their health insurance policies cover them in car accidents. If you pay for health insurance anyway, why pay twice? Again this is the norm almost everywhere else. It saved drivers money in other states because health insurers have lower expenses than car insurers. They are more efficient. The drivers of the state should have the benefits of that efficiency.

My plan offers fairness that will spread through the system like the ripples on a pond. No longer will drivers of economy cars subsidize, as they currently do, the insurance of those who want to spend \$35,000 for what they drive. No longer will good drivers who happen to live in certain communities be denied affordable coverage just because of where it is that they live.

Now, ladies and gentlemen, I'm not going to pretend to you that these changes are going to be made easily. Those who have benefitted from New Jersey's car insurance boondoggle are not particularly eager for change. They may not realize right away that these changes really are in their interest, too.

But you, members of the Legislature, who represent the people of New Jersey, you'll be called upon to be courageous. The special interests will converge undoubtedly, perhaps even now, on Trenton to try to convince you this plan is a bad idea, because they like their piece of the status quo. I urge you, as I know you do, to always keep in mind that it is the people's interests we are here to protect.

And by the way, I'm not telling you anything I haven't said to the faces of the insurance executives and the representatives of all of the other special interests who have been benefitting off of our system. I made it clear that if they stand in the way of the people's will, they'll lose. The people have had it too bad for too long. And they want, no, they demand, change. And if I have anything to say about it they're going to get it.

Ladies and gentlemen, let me conclude. Because through the course of this process we will take into account all dimensions of the problem. I know that this Legislature is intellectually committed to having full discussions and deliberations about each and every aspect of this proposal. And I just want to leave you with my firm belief and share with you my philosophical commitment to the proposition that we all are interested in having a healthy industry but we're also interested in fairness to New Jersey's drivers.

I'm not against fair profits and healthy competition. But I don't want to allow in this state, as I know you don't, an organized ripoff of the drivers of New Jersey.

Car insurance should not be an issue of class. Everyone has to have car insurance and everyone should be able to afford it. That's certainly not the case now. Cars are an essential part of life. Let's face it, Americans have a love affair with their automobiles and it's no different in New Jersey than anyplace else.

One of our distinguished citizens here in New Jersey, Bruce Springsteen has got a song, "Thunder Road," for those of you who happen to be fans, in which he talks about "rolling down the window and letting the wind roll back your hair." I'll always remember my first automobile. I was 17, I was in the Navy and I bought a 1949 Ford for \$300. It was a great feeling. I was on top of the world -- I owned the world.

Today people of New Jersey are paying more than three times that just for insurance much less the car. The cost of insurance has turned the joy of owning a car into a heartache.

And that's why I have asked the Legislature to introduce a bill this Thursday that will reflect my proposals. Study my plan. Consider it. And deliberate.

But let me remind you that time is of the essence. We have a commitment to the drivers of New Jersey. It's a commitment to fairness; a commitment to keeping promises. A commitment to working together. I'm confident that we're going to keep all of those commitments.

Thank you very much.