

17:30E-13 et al
LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:30E-13 et al (Automobile insurance--restructure JUA rates and modify rating system)

LAWS OF: 1988 **CHAPTER:** 156

Bill No: A3702

Sponsor(s): Hardwick and Haytaian

Date Introduced: September 1, 1988

Committee: Assembly: -----

Senate: Labor Industry and Professions

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: September 8, 1988

Senate: October 24, 1988

Date of Approval: November 14, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: No

Hearings: Yes

See newspaper clipping file, "New Jersey-Insurance, Automobile-1988".

974.90 New Jersey. Legislature. Senate. Labor, Industry and Professions Committee.
A939 Public hearing on A3702, held 10-20-88. Trenton, 1988.
1988c

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[FIRST REPRINT]
ASSEMBLY, No. 3702
STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 1, 1988

By Assemblymen HARDWICK and HAYTAIAN

1 AN ACT concerning private passenger automobile insurance, and
revising various parts of the statutory law.

3

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

1. Section 25 of P.L.1983, c.65 (C.17:30E-13) is amended to
7 read as follows:

25. Notwithstanding the provisions of section 7 of P.L.1983,
9 c.65 (C.17:29A-36), the rates used by the association shall be as
follows:

11 a. On January 1, 1989, the territorial base rates used by the
association for policies issued or renewed following that date for
13 qualified applicants or association insureds who, for the three
years preceding the date of issuance or renewal, (1) have been
15 convicted of two or more moving violations, or have received
four or more motor vehicle points, whichever is less; or (2) have
17 had one or more at-fault accidents shall be adjusted by the
commissioner so that they exceed the territorial base rates under
19 the rating plan for standard insureds which is used by the rating
bureau which files rates for the greatest number of insurers
21 transacting private passenger automobile insurance in the
voluntary market in this State by 10%. Qualified applicants or
23 association insureds who have not had such accidents or moving
violations or motor vehicle points in the three years preceding
25 the issuance or renewal shall be rated under the rating plan for
standard insureds which is used by the rating bureau which files
27 rates for the greatest number of insurers transacting private
passenger automobile insurance in the voluntary market in this
29 State.

b. On January 1, 1990, the territorial base rates used by the
31 association for policies issued or renewed following that date for
qualified applicants or association insureds who, for the three
33 years preceding the date of issuance or renewal, (1) have been
convicted of two or more moving violations, or have received

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:
Senate SLI committee amendments adopted October 20, 1988.

1 four or more motor vehicle points, whichever is less; or (2) have
2 had one or more at-fault accidents shall be adjusted by the
3 commissioner [based on the needs of the association pursuant to a
4 filing made with the commissioner by the association no later
5 than October 1, 1989. The commissioner may adjust the
6 association rates] so that they exceed the territorial base rates
7 under the rating plan for standard insureds which ¹[are] is¹ used
8 by the rating bureau which files rates for the greatest number of
9 insurers transacting private passenger automobile insurance in
10 the voluntary market in this State by [no more than] 20% ¹, unless
11 the commissioner reduces the amount of the rate increase based
12 on his certification as to the needs of the association on that
13 date¹. Qualified applicants or association insureds who have not
14 had such accidents or moving violations or motor vehicle points in
15 the three years preceding the issuance or renewal shall be rated
16 under the rating plan for standard insureds which is used by the
17 rating bureau which files rates for the greatest number of
18 insurers transacting private passenger automobile insurance in
19 the voluntary market in this State.

20 c. On January 1, 1991, the territorial base rates used by the
21 association for policies issued or renewed following that date for
22 qualified applicants or association insureds who, for the three
23 years preceding the date of issuance or renewal, (1) have been
24 convicted of two or more moving violations, or have received
25 four or more motor vehicle points, whichever is less; or (2) have
26 had one or more at-fault accidents shall be adjusted by the
27 commissioner [based on the needs of the association pursuant to a
28 filing made with the commissioner by the association no later
29 than October 1, 1990. The commissioner may adjust the
30 association rates] so that they exceed the territorial base rates
31 under the rating plan for standard insureds which ¹[are] is¹ used
32 by the rating bureau which files rates for the greatest number of
33 insurers transacting private passenger automobile insurance in
34 the voluntary market in this State by [no more than] 30% ¹, unless
35 the commissioner reduces the amount of the rate increase based
36 on his certification as to the needs of the association on that
37 date¹. Qualified applicants or association insureds who have not
38 had such accidents or moving violations or motor vehicle points in
39 the three years preceding the issuance or renewal shall be rated

1 under the rating plan for standard insureds which is used by the
2 rating bureau which files rates for the greatest number of
3 insurers transacting private passenger automobile insurance in
4 the voluntary market in this State.

5 d. On January 1, 1992, the territorial base rates used by the
6 association for policies issued or renewed following that date for
7 qualified applicants or association insureds who, for the three
8 years preceding the date of issuance or renewal, (1) have been
9 convicted of two or more moving violations, or have received
10 four or more motor vehicle points, whichever is less; or (2) have
11 had one or more at-fault accidents shall be adjusted by the
12 commissioner [based on the needs of the association pursuant to a
13 filing made with the commissioner by the association no later
14 than October 1, 1991. The commissioner may adjust the
15 association rates] so that they exceed the territorial base rates
16 under the rating plan for standard insureds which ¹[are] ¹is¹ used
17 by the rating bureau which files rates for the greatest number of
18 insurers transacting private passenger automobile insurance in
19 the voluntary market in this State by [no more than] 40% ¹,
20 unless the commissioner reduces the amount of the rate increase
21 based on his certification as to the needs of the association on
22 that date¹. Qualified applicants or association insureds who have
23 not had such accidents or moving violations or motor vehicle
24 points in the three years preceding the issuance or renewal shall
25 be rated under the rating plan for standard insureds which is used
26 by the rating bureau which files rates for the greatest number of
27 insurers transacting private passenger automobile insurance in
28 the voluntary market in this State.

29 e. On January 1, 1993, the commissioner shall direct the board
30 to prepare, adopt and file with the commissioner rates which are
31 based upon past and prospective loss experience of the risks
32 underwritten by the association and the expenses attendant
33 thereto, and which maintain the association on a self-sustaining
34 basis. The commissioner shall approve or disapprove the rates
35 filed by the board pursuant to the provisions of P.L.1944, c.27
36 (C.17:29A-1 et seq.).

37 Nothing contained in this subsection shall be deemed to affect
38 the commissioner's ability to continue to maintain any flat
39 charges (also known as flat capitation fees or policy constants)

1 pursuant to section 1 of P.L.1984, c.1 (C.17:29A-37.1) or any
residual market equalization charge pursuant to section 20 of
3 P.L.1983, c.65 (C.17:30E-8) approved on or before 48 months
following the effective date of this 1988 amendatory and
5 supplementary act.

f. Nothing contained in subsections a. through e. of this
7 section shall operate to cause the rates charged by the
association to result in revenues to the association which exceed
9 the needs of the association in meeting its obligations and
expenses.

11 g. The commissioner may order the adjustment of association
rates in any territory in which the relationship between the rates
13 used by the association and the rates used by insurers in the
standard voluntary market is such that the voluntary market is
15 adversely affected.

h. The commissioner may order the establishment of
17 association rates which are higher than the rates which are
otherwise provided for by this section, which rates would be
19 applicable to certain drivers, based on their accident or violation
records. The rates applicable to these drivers shall be established
21 additively to the rates otherwise authorized for the use of the
association, shall be spread equably across all classes and
23 territories and may, at the discretion of the commissioner, vary
as to the extent of the at-fault accident or violation records of
25 the drivers.

(cf: P.L.1988, c.119, s.21)

27 2. Section 22 of P.L.¹1988¹, c.¹119¹ (C.¹17:30E-13.1¹) ¹[(now
pending in the Legislature as Senate Bill No. 2637 of 1988)]¹ is
29 amended to read as follows:

22. Notwithstanding any other provision of law to the
31 contrary, within 60 days of the effective date of this section, the
board of directors of the association shall establish rates for
33 collision and comprehensive coverages based on the past and
prospective loss experience of the association for those
35 coverages, which shall be filed for approval by the commissioner
pursuant to P.L.1944, c.27 (C.17:29A-1 et seq.). Any and all
37 proceedings relating to a filing made pursuant to this section
shall be completed on an expedited basis no later than 30 days
39 after the date of the filing, and upon terms and conditions

1 established by the commissioner. The rates so established shall,
2 upon their approval by the commissioner, be applied to all
3 qualified applicants and association insureds who, for the three
4 years preceding the date of the approval by the commissioner, (1)
5 have been convicted of two or more moving violations, or have
6 received four or more motor vehicle points, whichever is less; or
7 (2) have had one or more at-fault accidents.

(cf: P.L.1988, c.119, s.22)

9 3. Section 23 of P.L.¹1988¹, c.¹119¹ (C.¹17:30E-6.1¹) ¹[(now
10 pending in the Legislature as Senate Bill No. 2637 of 1988)]¹ is
11 amended to read as follows:

12 23. a. The [plan of operation] board shall [provide] , within 60
13 days following the effective date of this 1988 amendatory and
14 supplementary act, contract for the establishment of an
15 association data bank to facilitate the dissemination of
16 information regarding association risks to all insurers transacting
17 the business of private passenger automobile insurance in the
18 voluntary market.

19 b. The [plan of operation] board shall establish the type of
20 information which may be made available to insurers, which may
21 include, but not be limited to, the name, address, and
22 classification of the insured, a description of the vehicle, the loss
23 history of the insured, the limits of coverage on the policy, and
24 the producer of record.

25 c. The board shall make this data available to all insurers
26 writing private passenger automobile insurance in the voluntary
27 market in a nondiscriminatory manner to facilitate the insurers'
28 depopulation of the association.

29 d. The establishment of this data bank may be incorporated in
30 the plan of operation of the association, but it shall not require
31 the approval of the commissioner. The data bank [, as established
32 in the plan,] shall be fully operational within [six] five months of
33 the effective date of this section.

(cf: P.L.1988, c.119, s.23)

35 4. Section 10 of P.L.¹1988¹, c.¹119¹ (C.¹39:6A-4.6¹) ¹[(now
36 pending in the Legislature as Senate Bill No. 2637 of 1988)]¹ is
37 amended to read as follows:

38 10. The Commissioner of Insurance shall, within [180] 90 days
39 after the effective date of this 1988 amendatory and

1 supplementary act, promulgate medical fee schedules on a
2 regional basis for the reimbursement of health care providers
3 providing services or equipment for medical expense benefits for
4 which payment is required to be made under the personal injury
5 protection coverage provided for in section 4 of P.L.1972, c.70
6 (C.39:6A-4). These fee schedules shall be promulgated on the
7 basis of the type of [injury sustained or] service provided, and
8 shall be reviewed biannually by the commissioner.

9 (cf: P.L.1988, c.119, s.10)

10 5. (New section) a. Beginning July 1, 1989, a filer may charge
11 rates for private passenger automobile insurance in the voluntary
12 market which are not in excess of the following:

13 (1) For private passenger automobile personal injury protection
14 coverage, residual bodily injury and property damage insurance,
15 the maximum permissible annual rate increase applicable to each
16 rate level utilized by an insurer in the voluntary market pursuant
17 to section 6 of P.L. , c. (C.) (now pending in the
18 Legislature as this bill) shall be a Statewide average rate change
19 of not more than the last published increase in the medical care
20 services components of the national Consumer Price Index, all
21 urban consumers, U.S. city average, plus three percentage points.

22 (2) For private passenger automobile physical damage
23 coverage, the maximum permissible annual rate increase
24 applicable to each rate level utilized by an insurer in the
25 voluntary market pursuant to section 6 of P.L. , c. (C.) (now
26 pending in the Legislature as this bill) shall be a Statewide
27 average rate change of not more than the last published increase
28 in the automobile maintenance and repair components of the
29 national Consumer Price Index, U.S. city average, plus three
30 percentage points.

31 b. For the purposes of this section, "Statewide average rate
32 change" means the total Statewide premium for all coverages
33 combined at the rates in effect at the time of the filing for each
34 rate level.

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

38 d. If, at any time, the commissioner believes that an increase
39 in either or both of the published indices will produce rate levels

1 which are excessive, he may modify the Statewide average rate
change which may be used pursuant to this section.

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

f. Other than filings made pursuant to subsection c. of this
11 section, neither the provisions of subsection c. of section 14 of
P.L.1944, c.27 (C.17:29A-14), nor the provisions of section 19 of
13 P.L.1974, c.27 (C.52:27E-18), shall apply to any filing made
pursuant to this section.

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

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

b. An insurer which intends to use more than one rating plan
39 and which has a rating plan on file as of the effective date of this

1 1988 amendatory and supplementary act, may make an initial
filing for the additional rating plan in which the modification of
3 the plan on file is expressed as a percentage increase or decrease
of the existing rate level.

5 c. Notwithstanding any other law to the contrary, any rates
filed pursuant to subsection b. of this section shall be deemed to
7 be approved if not disapproved by the commissioner within 60
days. Any subsequent modification of any rate level other than
9 that provided for in section 5 of this 1988 amendatory and
supplementary act, or any initial rate level which is not expressed
11 as a percentage increase or decrease of an existing rate level as
provided for in this section, shall be subject to the provisions of
13 P.L.1944, c.27 (C.17:29A-1 et seq.).

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

e. Every insurer shall maintain such data for each rate level as
19 may be required by the commissioner by regulation for the
purpose of determining excess profits pursuant to the provisions
21 of P.L.¹1988,¹ c.¹118¹ (C.¹17:29A-5.6 et seq.¹) ¹[(now pending in
the Legislature as Senate Bill No. 124 of 1988)]¹.

23 7. (New section) a. Insurers shall put in writing all underwriting
rules applicable to each rate level utilized pursuant to section 6
25 of this 1988 amendatory and supplementary act. No underwriting
rule shall operate in such a manner as to assign a risk to a rating
27 plan ¹[solely]¹ on the basis of the territory in which the insured
resides. An insurer which knowingly fails to transact automobile
29 insurance consistently with its underwriting rules shall be subject
to a fine of not less than \$500.00 for each violation.

31 b. All underwriting rules applicable to each rate level as
provided for in section 6 of this 1988 amendatory and
33 supplementary act shall be filed with the commissioner and shall
be subject to his prior approval. All underwriting rules shall be
35 subject to public inspection. Insurers shall apply their
underwriting rules uniformly and without exception throughout
37 the State, so that every applicant or insured conforming with the
underwriting rules will be insured or renewed, and so that every
39 applicant or insured not conforming with the underwriting rules

1 will be refused insurance or be nonrenewed.

3 c. Affiliated insurers shall not adopt underwriting rules for
automobile insurance contracts providing identical coverages
5 which would permit a person to be insured for automobile
insurance with more than one of the affiliated insurers.

7 d. An insurer with more than one rating plan for automobile
insurance contracts providing identical coverages shall not adopt
underwriting rules which would permit a person to be insured
9 under more than one of the rating plans.

11 8. (New section) Every insurer which refuses an application for
automobile insurance shall inform the applicant of the reasons for
the refusal in writing, and shall include a statement as to whether
13 the applicant may qualify for insurance from an affiliate of the
insurer.

15 ¹9. (New section) The association shall mail to each
policyholder on or before January 1, 1990 the following notice,
17 printed in at least a 10-point type, separately from any other
mailing to the policyholder:

19 "Your automobile insurance policy is issued by the New Jersey
automobile joint underwriting association. The purpose of the
21 association is to insure high risk drivers. As a policyholder of
the association, you should be aware that the rates charged on
23 policies issued by the association will increase substantially
over the next four years, until the association becomes
25 self-supporting. If you are not in the category of high-risk
driver, you should be able to buy automobile insurance
27 coverage with another insurance company at lower rates. To
avoid the association rate increases, you should attempt to buy
29 this coverage elsewhere."]¹

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

33 6. a. A merit rating accident surcharge system for private
passenger automobiles may be used both in the voluntary market
and by the New Jersey Automobile Full Insurance Underwriting
35 Association created pursuant to section 16 of P.L.1983, c.65
(C.17:30E-4). No surcharges shall be imposed on or after the
37 operative date of this act, unless there is an at-fault accident
within a three year period immediately preceding the effective
39 date of coverage which results in payment by the insurer of at

1 least a \$300.00 claim. All moneys collected under this subsection
shall be retained by the insurer assessing the surcharge. Accident
3 surcharges shall be imposed for a three year period and shall, for
each filer, be uniform on a Statewide basis without regard to
5 classification or territory.

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

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

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

33 (2) Plan surcharges shall be levied for convictions (a) under
R.S.39:4-50 for violations occurring on or after February 10,
35 1983, and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or
for offenses committed in other jurisdictions of a substantially
37 similar nature to those under R.S.39:4-50 or section 2 of
P.L.1981, c.512 (C.39:4-50.4a), for violations occurring on or
39 after January 26, 1984. Surcharges under this paragraph shall be

1 levied annually for a three year period, and shall be not less than
2 \$1,000.00 per year for each of the first two convictions, and not
3 less than \$1,500.00 per year for the third conviction occurring
4 within a three year period. If a driver is convicted under both
5 R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for
6 offenses arising out of the same incident, the driver shall be
7 assessed only one surcharge for the two offenses. The
8 commissioner may increase the amount of surcharges as he deems
9 necessary to effectuate the purposes of subsection d. of this
10 section and P.L.1983, c.65 (C.17:29A-33 et al.), and may,
11 pursuant to regulation, permit the deferral of all or any part of
12 these surcharges as provided in paragraph (1)(a) of this subsection.

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

21 For the purposes of this subparagraph, "indigency" shall be
22 defined in rules and regulations promulgated by the Director of
23 the Division of Motor Vehicles.

24 All moneys collectible under this subsection shall be billed and
25 collected by the Division of Motor Vehicles. Of the moneys
26 collected, [80% shall be remitted to the New Jersey Automobile
27 Full Insurance Underwriting Association, and 20%] 10%, or the
28 actual cost of administering the collection of the surcharge,
29 whichever is less, shall be retained [, for administrative
30 expenses,] by the Division of Motor Vehicles and turned over to
31 the State Treasury for deposit in a special account to be used by
32 the Division of Motor Vehicles, as may be necessary, to
33 modernize its operations and improve its effectiveness and
34 efficiency in order to discharge its statutory obligations and the
35 remainder shall be remitted to the New Jersey Automobile Full
36 Insurance Underwriting Association. Any moneys in the special
37 account at the end of a fiscal year shall be transferred to the
38 General Fund for use for general State purposes. Moneys shall be
39 appropriated annually to the special account.

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

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

27 d. The dollar amount of all motor vehicle conviction
surcharges shall be at least equivalent to the differential between
29 the rates charged to insureds as promulgated by the rating bureau
which files rates for the greatest number of insurers in the
31 voluntary private passenger automobile insurance market in this
State and the Supplement I rates in use as of December 31, 1982
33 by the automobile insurance plan established pursuant to
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
automobile insurance plan established pursuant to P.L.1970, c.215
37 (C.17:29D-1 et seq.) prior to the implementation of this act;
except that in the first year of operation of the New Jersey
39 Automobile Full Insurance Underwriting Association, the dollar

1 amount of all motor vehicle surcharges shall be sufficient to
eliminate the need for imposition of a residual market
3 equalization charge authorized under section 20 of P.L.1983, c.65
(C.17:30E-8).

5 e. The Commissioner of Insurance and the Director of the
Division of Motor Vehicles as may be appropriate, shall adopt any
7 rules and regulations necessary or appropriate to effectuate the
purposes of this section.¹

9 (cf: P.L.1986, c.211, s.8)

10. (New section) The commissioner shall cause to have an
11 independent full financial and operational audit made of the
association. The audit shall include the servicing operations
13 conducted by its servicing carriers, including, but not limited to,
the claims handling practices of those carriers. The audit shall
15 be completed and a report made to the Legislature no later than
¹[November 1, 1988] February, 15, 1989¹.

17 11. (New section) If any servicing carrier is determined to
have knowingly violated the plan of operation, or any rule of
19 practice or guideline which has been established in connection
therewith, with respect to the handling of claims or the
21 underwriting of the policies of the association, or if a servicing
carrier has been determined to have overcharged the association
23 with respect to servicing carrier compensation, the servicing
carrier shall repay any money owed to the association within 15
25 business days of notification by the association that such money
is due, or shall pay the association interest on the money due at a
27 rate determined by the commissioner. If the servicing carrier is
determined to have willfully violated the plan of operation, or
29 any rule of practice or guideline which has been established in
connection therewith, with respect to the handling of claims or
31 the underwriting of the policies of the association, or has
willfully overcharged with respect to servicing carrier
33 compensation, the servicing carrier shall be liable for treble
damages.

35 12. (New section) a. Beginning January 1, 1989 and annually
thereafter, the commissioner shall determine whether the income
37 of the association as provided for in paragraphs (1), (2), (3), and
(5) of section 20 of P.L.1983, c.65 (C.17:30E-8), and the residual
39 market equalization charge levied pursuant to paragraph (4) of

1 that section prior to the effective date of this 1988 amendatory
and supplementary act is or will be sufficient to meet its
3 obligations in the ensuing year. If the commissioner determines
that the association has insufficient resources to meet its
5 obligations, he shall request the board of the association to
formulate a plan for the payment of no less than 50% of the
7 aggregate residual bodily injury losses for which the association is
to make payment during the ensuing 12 month period, which plan
9 shall provide for the payment of these losses in no more than four
annual installments. The board shall submit the plan to the
11 commissioner for his approval. Interest on the balance of the
unpaid claim shall be paid at the rate established by subsection
13 (a) of R.S.31:1-1 for loans in which there is no written contract.

b. In addition to the plan provided for in subsection a. of this
15 section, the commissioner may also request the submission of a
plan by the board for the deferral, for a period not to exceed
17 twelve months, of payments by the association of property
damage claims which are subject to subrogation.

19 c. No residual market equalization charge in excess of the
charge levied prior to the effective date of this 1988 amendatory
21 and supplementary act shall be approved by the commissioner
unless the procedures established pursuant to subsection a. or b.
23 of this section do not provide sufficient revenue for the
association to pay its obligations.

25 13. (New section) a. The board of the association shall amend
its plan of operation to establish a Task Force to conduct field
27 file audits of servicing carriers. The Task Force shall conduct
the audits to determine whether the servicing carriers have
29 followed normal and prudent industry practices in their handling
of claims on behalf of the association.

31 b. The Task Force shall report its findings to the board and to
the commissioner at least semiannually, along with any findings
33 or recommendations which have resulted from its audit.

c. The commissioner shall annually report to the Legislature
35 his findings with respect to the audits, along with any
recommendations which he may have with respect to the
37 servicing of association claims.

14. (New section) Notwithstanding any other provision of law
39 to the contrary, the dollar amount of the commission paid to a

1 producer for residual bodily injury coverage provided pursuant to
2 section 8 of P.L.1972, c.70 (C.39:6A-8) shall be the same whether
3 the named insured elects the tort option provided for in
4 subsection a. of that section or the tort option provided for in
5 subsection b. of that section.

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

8 2. Any owner [,] or registrant of a motor vehicle registered or
9 principally garaged in this State who operates or causes to be
10 operated a motor vehicle upon any public road or highway in this
11 State without motor vehicle liability insurance coverage required
12 by this act, and any operator who operates or causes a motor
13 vehicle to be operated and who knows or should know from the
14 attendant circumstances that the motor vehicle is without motor
15 vehicle liability insurance coverage required by this act shall be
16 subject, for the first offense, to a fine of [not less than \$100.00
17 nor more than] \$300.00 [or imprisonment for a term of not less
18 than 30 days nor more than three months or both, in the
19 discretion of the municipal judge] and a period of community
20 service to be determined by the court, and shall forthwith forfeit
21 his right to operate a motor vehicle over the highways of this
22 State for a period of [six months] one year from the date of
23 conviction. Upon subsequent conviction, he shall be subject to a
24 fine of [not less than \$250.00 nor more than] \$500.00 and [may]
25 shall be subject to imprisonment for a term of [not less than
26 three months nor more than six months in the discretion of the
27 municipal judge] 14 days and shall be ordered by the court to
28 perform community service for a period of 30 days, which shall
29 be of such form and on such terms as the court shall deem
30 appropriate under the circumstances, and shall forfeit his right to
31 operate a motor vehicle for a period of two years from the date
32 of his conviction, and, after the expiration of said period, he may
33 make application to the Director of the Division of Motor
34 Vehicles for a license to operate a motor vehicle, which
35 application may be granted at the discretion of the director. The
36 director's discretion shall be based upon an assessment of the
37 likelihood that the individual will operate or cause a motor
38 vehicle to be operated in the future without the insurance
39 coverage required by this act. A complaint for violation of this

1 act may be made to a municipal court at any time within six
months after the date of the alleged offense.

3 Failure to produce at the time of trial an insurance
5 identification card or an insurance policy which was in force for
the time of operation for which the offense is charged, creates a
7 rebuttable presumption that the person was uninsured when
charged with a violation of this section.¹

(cf: P.L.1987, c.46, s.1)

9 ¹[15.] 16.¹ Sections 29 and 30 of P.L.¹1988¹, c.¹119¹
11 (C.¹17:29A-42¹ and ¹17:29A-43¹) ¹[(now pending in the
Legislature as Senate Bill No. 2637 of 1988)]¹ are repealed.

¹[16.] 17.¹ This act shall take effect immediately, except that
13 sections 6 and 7 shall take effect on the 365th day following
enactment.

15

17 INSURANCE

Insurance - Automobile

19

Makes various changes in the laws governing automobile
21 insurance.

1 13. (New section) a. The board of the association shall amend
 its plan of operation to establish a Task Force to conduct field
 3 file audits of servicing carriers. The Task Force shall conduct
 the audits to determine whether the servicing carriers have
 5 followed normal and prudent industry practices in their handling
 of claims on behalf of the association.

7 b. The Task Force shall report its findings to the board and to
 the commissioner at least semiannually, along with any findings
 9 or recommendations which have resulted from its audit.

11 c. The commissioner shall annually report to the Legislature
 his findings with respect to the audits, along with any
 recommendations which he may have with respect to the
 13 servicing of association claims.

15 14. (New section) Notwithstanding any other provision of law
 to the contrary, the dollar amount of the commission paid to a
 producer for residual bodily injury coverage provided pursuant to
 17 section 8 of P.L.1972, c.70 (C.39:6A-8) shall be the same whether
 the named insured elects the tort option provided for in
 19 subsection a. of that section or the tort option provided for in
 subsection b. of that section.

21 15. Sections 29 and 30 of P.L. , c. (C. and) (now
 pending in the Legislature as Senate Bill No. 2637 of 1988) are
 23 repealed.

25 16. This act shall take effect immediately, except that
 sections 6 and 7 shall take effect on the 365th day following
 enactment.

27

29 *A. J. ... (1988) Sponsor*
 STATEMENT

31 This bill makes a number of revisions to the laws governing
 automobile insurance. The bill makes a number modifications to
 33 the Governor's conditional veto of Senate Bill No. 2637. It
 modifies the provisions of that conditional veto regarding the
 35 financial structure of the New Jersey Automobile Full Insurance
 Underwriting Association created pursuant to P.L.1983, c.65
 37 (C.17:30E-1 et seq.). The bill would require automatic rate
 increases of 10% per year for a period of four years until the
 39 association's rates become self sustaining. These rate increases

1 would apply only to those drivers in the association who have,
2 within a three year period, two or more moving violations or four
3 or more motor vehicle points, whichever is less, or who have
4 at-fault accidents. In addition, the rates for collision and
5 comprehensive coverage written by the association would be
6 increased for those drivers who have such accidents and
7 violations or motor vehicle points.

8 The bill would require that a notice be sent to all drivers who
9 have joint underwriting association policies informing them that
10 the rate levels in the association will increase substantially and
11 that they may wish to try to find coverage in the voluntary
12 market.

13 The bill gives the Commissioner of Insurance the authority to
14 require the board of the joint underwriting association to
15 formulate a plan for the payment of no less than 50% of the total
16 association payments for residual bodily injury coverage to
17 insureds in no more than four annual installments. This device
18 will help to alleviate the association's cash flow problems and
19 will obviate the need for further residual market equalization
20 charges (RMECs) to fund the association's anticipated cash
21 shortfall. The board would also be given the authority to defer
22 certain payments which are subject to subrogation. The
23 commissioner would be precluded from instituting a RMEC until
24 the deferral procedure had been employed.

25 The bill also provides for an audit of the joint underwriting
26 association, and penalties for association servicing carriers who
27 violate the plan of operation of the association.

28 The bill amends the language of the conditional veto of Senate
29 Bill No. 2637 to require the establishment of the joint
30 underwriting association data bank in a more timely manner, and
31 leaves this task to the board of the association. The purpose of
32 the data bank is to eliminate, or at least meliorate, the unfair
33 advantage which servicing carriers might have over other insurers
34 in terms of selecting insureds to take out of the association. For
35 this reason, it is deemed necessary to bring this about as
36 expeditiously as possible.

37 The bill modifies the flex rating provision of the conditional
38 veto by establishing a flex rating index based on the Consumer
39 Price Index. The bill also permits the establishment of a

1 multi-tier rating system in the voluntary market. The purpose of
this provision is to ameliorate the effect of writing higher risk
3 drivers in the voluntary market; if the voluntary market had only
one rate level, the losses of the higher risk drivers being newly
5 written in the voluntary market would increase that rate level
substantially. Insurers would be required to have underwriting
7 rules for each rate level approved by the commissioner, and
would be required to apply them uniformly, in a
9 non-discriminatory manner.

11

INSURANCE

13

Insurance - Automobile

15 Makes various changes in the laws governing automobile
insurance.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3702

with Senate committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 20, 1988

The Senate Labor, Industry and Professions Committee reports without recommendation and with committee amendments Assembly Bill No. 3702.

This bill makes a number of revisions and additions to the recently enacted law, P.L.1988, c.119, concerning automobile insurance.

The bill modifies a number of the provisions of that law regarding the financial structure of the New Jersey Automobile Full Insurance Underwriting Association (JUA). This bill requires automatic increases of 10% per year in the JUA's rates for a period of four years (1989 through 1992), as does Assembly Bill No. 3701. After that period, the association's rates are to become self sustaining. These increases in the JUA's rates would only apply to those drivers in the JUA who have, within a prior three-year period, two or more moving violations or four or more motor vehicle points, whichever is less, or who have one or more at-fault accidents. The committee amended the bill to provide that the mandatory rate increases in the JUA's rates provided by the bill in 1990, 1991 and 1992 would go into effect on January 1 unless the commissioner reduces the amount of the rate increase based on his certification as to the needs of the association on that date. The current law, contained in P.L.1988, c.119, provides that the JUA's rates will increase 10% in 1989 and that the Commissioner of Insurance may increase the JUA's rates not more than 10% per year during the following three years (1990 through 1992) based on the needs of the JUA. After the four-year period, the JUA's rates are to become self sustaining. The current law also provides that these rate increases apply to all drivers in the JUA and not just to those drivers who have certain motor vehicle points, moving violations or at-fault accidents. The bill further provides that the rates for collision and comprehensive coverage written by the JUA would be increased to reflect the past and prospective loss experience of the JUA for those coverages, but that those increases would only apply to those

drivers who have, within a prior three-year period, two or more moving violations or four or more motor vehicle points, whichever is less, or who have one or more at-fault accidents. The current law, contained in P.L. 1988, c. 119, provides for the same rate increase in collision and comprehensive coverage but applies it to all the drivers in the JUA.

The bill gives the Commissioner of Insurance the authority to require the board of the JUA to formulate a plan for the deferred payment of claims or judgments against its residual bodily injury coverage. These payments consist mainly of pain and suffering awards. If, at the beginning of any year, the Commissioner of Insurance determines that the income of the JUA is not or will not be sufficient to meet its obligations, he must require the JUA board to formulate and implement a plan for the payment of no less than 50% of its total payments, during the ensuing 12-month period, for residual bodily injury coverage to its insureds in no more than four annual installments, with interest. In addition, the JUA board, at the request of the commissioner, may also defer, for a period not to exceed 12 months, payments by the JUA of property damage claims which are subject to subrogation. The bill provides that the commissioner may only increase the residual market equalization charge in effect prior to the effective date of this bill if he determines that the implementation of either deferral payment plan will not provide sufficient revenue for the JUA to pay its obligations.

The bill also makes one major change in the provisions of P.L.1988, c.119 and adds a new provision which affect voluntary market insurers. The current law provides for "flex-rating" by requiring the Commissioner of Insurance to establish a Statewide average rate change percentage to be used by automobile insurers. This permits automobile insurance filers to effect a Statewide average rate change within the flex-band without prior approval by the commissioner or intervention by the Public Advocate. An informational filing in support of the rate change has to be made upon implementation of a rate change within the flex-band. The flex-band can be changed annually by the commissioner. If an insurer wants to impose a rate outside the flex-band, the rate must receive the prior approval of the commissioner. The commissioner is charged with monitoring and reporting on the use of flex-rating. The report, which is to be made to the Senate Labor, Industry and Professions Committee and the Assembly Insurance Committee no

later than July 1, 1992, is to provide an evaluation on the use of these rating mechanisms and their impact on the availability and affordability of private passenger automobile insurance and the depopulation of the JUA. This bill maintains most of these provisions but changes the main provision on how the average rate change percentage is established. Instead of the commissioner establishing it, the bill provides that for personal injury protection coverage, residual bodily injury and property damage insurance, the maximum permissible annual rate increase would be the last published increase in the medical care services components of the national Consumer Price Index plus three percentage points and for physical damage coverage, the maximum permissible annual rate increase would be the last published increase in the maintenance and repair components of the national Consumer Price Index plus three percentage points. However, the bill does provide that if the commissioner believes that the published indices would produce rate levels which are excessive, he may modify the Statewide average rate change provided by the indices.

The major addition which affects insurers is the establishment of a multi-tier rating system in the voluntary market. An insurer would be allowed to file rating plans in the voluntary market for standard risks or non-standard risks, or both, and the plans may include a good driver discount plan. Insurers would be required to have underwriting rules for each rate level approved by the commissioner, and would be required to apply them uniformly, in a nondiscriminatory manner. An insurer's underwriting rules should not allow an insured to be insured under more than one of its rating plans. The provisions establishing a multi-tier rating system and the concomitant underwriting rules would not go into effect until one year following the effective date of this bill. The committee amended this provision concerning underwriting rules to provide that an underwriting rule must not operate in such a manner as to assign a risk to a rating plan on the basis of the territory in which the insured resides, instead of "solely" on the basis of the territory in which the insured resides. Currently, the law does not prohibit or allow multi-tier rating or a non-standard market. However, New Jersey currently does not have a non-standard market and instead insurers have established rates for a standard market (although it could be considered a preferred market if you consider the large number of insureds who have been sent to the JUA). Also, P.L.1988, c.119

requires that all insurers file within 60 days a good driver discount plan applicable to private passenger automobile insurance rates.

Under the bill, the JUA board is required to contract for the establishment of the JUA data bank to facilitate the dissemination of information to insurers regarding risks in the JUA and to have the data bank fully operational by February 8, 1989. Current law, pursuant to P.L.1988, c.119, provides that the plan of operation of the JUA is to provide for the data bank and it is to be operational by March 8, 1989. The main changes made by this bill are to advance the operational date by one month and eliminate the approval of the commissioner concerning establishment of the data bank.

The bill requires the commissioner to promulgate medical fee schedules within 90 days following January 1, 1989 instead of within 180 days following January 1, 1989 as provided under P.L.1988, c.119, and provides that the fee schedules must be based on the type of service provided instead of on the basis of the type of injury sustained or service provided as currently exists pursuant to P.L.1988, c.119.

The bill requires the commissioner to conduct an independent full financial and operational audit of the JUA, including the servicing operations conducted by its servicing carriers, and to report the findings by November 1, 1988, which date was changed by committee amendment to February 15, 1989. P.L.1988, c.119 provided that the commissioner may conduct an examination of the finances, operations, methods of conducting business, and all other affairs of the JUA, its management and its servicing carriers. It further provided that the JUA shall pay for the expenses of the examination and assess its member companies for the expenses.

The bill requires the JUA board to provide in its plan of operation for a Task Force to conduct field file audits of servicing carriers. These audits would be to determine whether the servicing carriers have followed normal and prudent industry practices in their handling of claims on behalf of the JUA. The Task Force is required to report its findings to the commissioner semi-annually and the commissioner is required to report to the Legislature annually.

If any servicing carrier is found to have knowingly violated the plan of operation with respect to the handling of claims or the underwriting of JUA policies or to have overcharged the JUA with respect to servicing carrier compensation, the servicing carrier must repay the monies owed to the JUA within 15 business days of

notification by the JUA that such money is due, or pay interest thereon. However, if these violations of the plan of operation or these overcharges were willful, the servicing carrier would be liable for treble damages.

The bill requires that producers (agents and brokers) must be paid the same dollar amount of commission for residual bodily injury coverage whether the insured takes the verbal threshold or the zero dollar threshold.

The committee deleted a section in the bill which required that a notice be sent, on or before January 1, 1990, to all drivers who have JUA policies informing them that the rate level in the JUA will increase substantially and that they may wish to try to find coverage in the voluntary market.

Currently, the Division of Motor Vehicles receives 20% of the surcharges levied under the New Jersey Merit Rating Plan for motor vehicle points, certain non-point violations and drunk driving convictions. The committee amended the bill to reduce the amount the Division of Motor Vehicles receives to 10% of the amount collected or the actual cost of collection, whichever is less.

The committee amended the bill to provide for the following increases in the penalties for operating a motor vehicle without mandatory liability insurance: for a first conviction, a fine of \$300.00 and a court determined period of mandatory community service, and a mandatory one-year driver's license suspension (the current penalty is a fine of \$100.00 to \$300.00 or 30 to 60 days in jail at the discretion of the court, or both, and a mandatory six-month suspension); and for the second and each subsequent conviction, a fine of \$500.00, a mandatory 14 days imprisonment and a mandatory 30 days community service, and a mandatory license suspension of two years (current penalty is a fine of \$250.00 to \$500.00, 90 to 180 days imprisonment at the court's discretion, a mandatory 30 days community service and a two-year license suspension).

Sections 29 and 30 of P.L.1988, c.119 (C.17:29A-42 and 17:29A-43) that are repealed by the bill are the sections which provide for flex rating and the good driver discount plan.



OFFICE OF THE GOVERNOR

NEWS RELEASE

Governor Thomas H. Kean
TRENTON, N.J. 08625
Release: TUES., 11/15/88

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 609-292-6000 EXT. 207

Governor Thomas H. Kean today signed legislation revising the automobile insurance laws concerning the Joint Underwriting Association (JUA).

The legislation limits the mandated increases in the JUA insurance rates to approximately 600,000 persons who have been convicted of two or more moving violations or who have had one or more at-fault accidents in the last three years.

Governor Kean stated, "The legislation I am signing today is a step forward in insurance reform but there will not be true reductions in automobile insurance rates until the Legislature passes a mandatory verbal threshold such as the one used in the state of Michigan."

Other sections of the bill: require the Commissioner of Insurance to promulgate medical fee schedules within 90 days, requires insurers to inform applicants of the reason for their refusal to write insurance for an individual, permits insurance companies to charge higher risk drivers increased rates in the voluntary market, and requires an independent audit of the JUA by February 15, 1989.

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