

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:30E-3 et al (Automobile Joint Underwriting Association-- various amendments)

LAWS OF: 1986 CHAPTER: 211

Bill No: S2790

Sponsor(s): Lesniak

Date Introduced: November 17, 1986

Committee: Assembly: -----

Senate: Labor, Industry and Professions

Amended during passage: Yes Substituted for A3440 (not attached since identical to S2790)

Date of Passage: Assembly: December 15, 1986

Senate: December 15, 1986

Date of Approval: January 12, 1987

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: Yes

Hearings: Yes

974.90 New Jersey. Legislature. Senate. Special Insurance Committee on Auto A939
A939 Insurance Reform.
1986a Public hearing held 4-21-86, 2-27-86, 3-10-86, 3-26-86, 5-5-86, 5-28-86
Trenton, 1986.

DO NOT CIRCULATE

(OVER)

See Independent Insurance Agents of New Jersey Newsletter, 2-10-87-- attached

974.90 New Jersey. Legislature. Senate. Special Committee on Automobile Insurance
A939 Reform.
1986b Final report.

974.90 New Jersey. Legislature. Senate. Labor, Industry and Professions Committee
A939 Public hearing on S2594 (embodies recommendations of Special Committee
1986c on Automobile Reform), held 10-6-86, 10-16-86, Trenton, 1986.

See newspaper clipping file, "N.J.-- Insurance, Automobile," 1986 and 1987 in New Jersey Reference Department.

Report mentioned in act-- not issued as of 5-1-88.

16
1-12-87

[OFFICIAL COPY REPRINT]

SENATE, No. 2790

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1986

By Senator LESNIAK

Referred to Committee on Labor, Industry and Professions

AN ACT concerning automobile insurance and certain other motor vehicle insurance, and amending *P. L. 1970, c. 217* P. L. 1983, c. 65, P. L. 1984, c. 1 and P. L. 1985, c. 520 and supplementing Title 17 of the Revised Statutes.

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

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

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

4 a. "Association" means the New Jersey Automobile Full In-
5 surance Underwriting Association.

6 b. "Automobile" means a private passenger automobile of a
7 private passenger or station wagon type that is owned or hired, and
8 **[includes a private passenger automobile used in the profession,**
9 **partnership or individual proprietorship of the owner, but excludes**
10 **a private passenger automobile]** *is neither* used as a public or
11 livery conveyance for passengers **[or]** *nor* rented to others with a
12 driver; a motor vehicle with a pickup body, a delivery sedan or a
13 panel truck or a camper type vehicle used for recreational purposes
14 owned by an individual or by husband and wife who are residents of
15 the same household, not customarily used in the occupation, pro-
16 fession or business of the insured other than farming or ranching;
17 and, solely for the purposes of this act, a motorcycle, as defined in
18 R. S. 39:1-1. An automobile owned by a farm family copartnership
19 or corporation which is principally garaged on a farm or ranch and
20 otherwise meets the definitions contained in this section, shall be

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted December 4, 1986.**

21 considered a private passenger automobile owned by two or more
22 relatives resident in the same household.

23 c. "Automobile insurance" means direct insurance against injury
24 or damage, including the legal liability therefor, arising out of
25 the ownership, operation, maintenance or use of automobiles, in-
26 cluding but not limited to, personal injury protection insurance,
27 bodily injury liability insurance, property damage liability insur-
28 ance, physical damage insurance and uninsured and underinsured
29 motorist insurance.

30 d. "Board" or "board of directors" means the board of directors
31 of the association.

32 e. "Company" or "member" means an insurer member of the
33 association.

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

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

37 h. "Net direct car years of liability exposure" means direct
38 bodily injury liability car years of exposure, after deducting re-
39 turns for cancellations, but without adding reinsurance assumed or
40 deducting reinsurance ceded, as determined by the board and
41 approved by the commissioner.

42 i. "Net direct car years of physical damage exposure" means
43 direct physical damage car years of exposure, after deducting
44 returns for cancellations, but without adding reinsurance assumed
45 or deducting reinsurance ceded, as determined by the board and
46 approved by the commissioner.

47 j. "Person" means every natural person.

48 k. "Plan of operation" means the plan of operation of the asso-
49 ciation created pursuant to section 18 of this act.

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

52 m. "Qualified applicant" means a person[, partnership, pro-
53 fession or individual proprietorship] domiciled in New Jersey
54 who [or which] is an owner of an automobile registered, or to be
55 registered within 60 days of application, and principally garaged in
56 this State, except that a member of the United States military
57 forces if otherwise eligible for insurance coverage issued by the
58 association, shall be eligible with respect to an automobile if, at the
59 time the application is made, he is either (1) a nonresident who
60 is stationed in this State, whose automobile is registered in another
61 state and garaged in this State; or (2) a resident who is stationed
62 in another state, whose automobile is registered in this State and
63 garaged in another state. No person[, partnership, profession or

64 individual proprietorship] shall, however, be deemed a qualified
 65 applicant, if the principal operator of the automobile to be insured
 65A does not hold a driver's license which is valid in this State; or if
 66 a regular operator of the automobile other than the principal op-
 67 erator does not hold such a license; or if timely payment of pre-
 68 mium is not tendered; or if the principal operator of the automobile
 69 does not furnish the information necessary to effect insurance; or
 70 if such person[, partnership, profession or individual proprietor-
 71 ship] rents or leases automobiles to others or automobiles which
 72 are used for commercial purposes. ["Qualified applicant," in the
 73 case of a partnership, profession or individual proprietorship, shall
 74 be limited to a partnership, profession or individual proprietor-
 75 ship with its principal place of business in New Jersey, registering
 76 not more than four automobiles for use by that partnership, pro-
 77 fession or individual proprietorship.]

78 n. "Underinsured motorist coverage" means insurance for
 79 damages because of bodily injury and property damage caused by
 80 accident and arising out of the ownership, maintenance or use of an
 81 underinsured automobile. An automobile is underinsured when the
 82 sum of the limits of liability under all bodily injury and property
 83 damage liability bonds and insurance policies available to a person
 84 against whom recovery is sought for bodily injury or property
 85 damage is, at the time of the accident, less than the applicable
 86 limits of liability afforded under the automobile insurance policy
 87 held by the person seeking such recovery.

88 o. "Residual market equalization charge" means the amount
 89 which when added to all other sources of association income, will
 90 cause the association to operate on a no profit, no loss basis.

1 2. Section 17 of P. L. 1983, c. 65 (C. 17:30E-5) is amended to
 2 read as follows:

3 17. a. Within 45 days after the effective date of this act, there
 4 shall be appointed a board of directors, and within 30 days after
 5 the appointment of the board, the commissioner shall call the first,
 6 or organizational, meeting of the association, which shall seat the
 7 board of directors. The board shall consist of 17 persons, 14 of
 8 whom shall be appointed by the Governor, one of whom shall be
 9 appointed by the Speaker of the General Assembly, and one by
 10 the President of the Senate; the Director of the Division of Motor
 11 Vehicles in the Department of Law and Public Safety shall be an
 12 ex officio member of the board. Of the board members appointed
 13 by the Governor, eight shall represent member companies, three
 14 shall represent producers, and three shall be public members.

15 Members of the board shall be compensated from the moneys of
16 the association for their services, pursuant to standards and pro-
17 cedures set forth in the plan of operation. In appointing the
18 representatives of the member companies, the Governor shall select
19 two persons from a list of not fewer than three persons nominated
20 by the American Insurance Association, or its successor organiza-
21 tion, from the officers or employees of insurers which are licensed
22 to transact automobile insurance in this State and which are
23 members or subscribers of that organization; two persons from a
24 list of not fewer than three persons nominated by the Alliance of
25 American Insurers, or its successor organization, from the officers
26 or employees of insurers which are licensed to transact automobile
27 insurance in this State and which are members or subscribers of
28 that organization, two persons from a list of not less than three
29 persons nominated by the National Association of Independent
30 Insurers, or its successor organization, from the officers or em-
31 ployees of insurers which are licensed to transact automobile in-
32 surance in this State and which are members or subscribers of that
33 organization; and two persons from the officers or employees of any
34 insurers which are licensed in this State and are not members or
35 subscribers of any of the above-mentioned organizations *or from*
36 *the officers or employees of any non-insurer servicing carriers,*
37 *as provided for in section 24 of P. L. 1983, c. 65 (C. 17:30E-12).*
38 All nominations made by the associations shall include at least one
39 representative of an insurer which does not intend to be a servicing
40 carrier. In appointing the producer representatives, the Governor
41 shall select one person from a list of not fewer than three nominated
42 by the Professional Insurance Agents Association or its successor
43 organization; one person from a list of not fewer than three
44 nominated by the Independent Insurance Agents Association or
45 its successor organization; and one person from a list of not fewer
46 than three nominated by the Insurance Brokers Association or
47 its successor organization. The Governor shall name two surro-
48 gates for each director on the board from a list submitted to him
49 by each appointee. The Governor shall, with the advice and consent
50 of the Senate, also appoint three public members to the board.
51 The Speaker of the General Assembly and the President of the
52 Senate shall each appoint a public member. The commissioner or
53 his designated representative shall be entitled to attend and par-
54 ticipate in all meetings of the board or any of its committees.
55 Each trade association and producer association shall have 15
56 days from the effective date of this act to submit its prescribed

57 list of board of director candidates to the Governor. The Governor
58 shall have 30 days from receipt of each list to select permanent
59 board members from it. If any of the associations named in this
60 section fails to submit the lists from which the Governor is to
61 select members of the board of directors within time, the Gov-
62 ernor shall appoint temporary board members to represent each
63 association that has failed to submit its list. In selecting tempor-
64 ary board members, the Governor shall be guided by the selection
65 criteria set forth herein. Upon subsequent receipt of the list from
66 the association, the Governor shall select permanent board mem-
67 bers to replace temporary board members within 30 days. Such
68 replacement shall become effective immediately.

69 The initial appointment of four insurer directors, one producer-
70 group director, and one public member appointed by the Governor
71 shall be for a term of one year. The initial appointments of all
72 other directors shall be for terms of two years. After the initial
73 appointments all directors shall be appointed for terms of two
74 years and shall serve until their successors are appointed and
75 qualified. All appointive vacancies on the board shall be filled in
76 accordance with the above-mentioned procedures and classifica-
77 tions. Appointments to fill vacancies shall be for the unexpired
78 term of the director to be replaced. Except in the case of the
79 Director of the Division of Motor Vehicles, directors may be
80 reimbursed from the moneys of the association for reasonable
81 expenses incurred by them as members.

82 b. After the board has been appointed, it shall elect from its
83 membership a chairman and shall then meet thereafter at least
84 annually, and as often as the chairman or the plan of operation
85 shall require, or at the request of any five members of the board
86 or the commissioner. All meetings of the board shall be held in
87 New Jersey. Written notice setting forth the meeting agenda shall
88 be provided for each board meeting. Written notice shall be
89 provided, at least five days prior to the date of the meeting, to
90 all directors, the commissioner, and the chairmen of the Assembly
91 Banking and Insurance Committee and the Senate Labor, Industry
92 and Professions Committee, or the successors to those committees.
93 Minutes shall be kept of all meetings. **[A true copy of the minutes*
94 *of every meeting of the board shall be forthwith delivered by and*
95 *under the certification of the secretary of the board to the com-*
96 *missioner. No action taken at any meeting by the board shall have*
97 *force or effect until 10 days, Saturdays, Sundays, and public*
98 *holidays excepted, after the copy of the minutes have been so*

99 *delivered, unless during the 10-day period the commissioner ap-*
 100 *proves them, in which case they shall have force and effect im-*
 101 *mediately. If, in the 10-day period, the commissioner returns the*
 102 *copy of the minutes with the veto of any action, the action shall*
 103 *be null and void and of no effect.]** A copy of the minutes shall be
 104 sent within five business days following the [meeting to the com-
 105 missioner, and] ***[approval by the commissioner]** * *meeting to the*
 106 *commissioner, and** to the chairmen of the two legislative commit-
 107 tees. Each member of the board shall be entitled to one vote. The
 108 commissioner, or his designated representative, shall have no right
 109 to vote. Nine voting members of the board shall constitute a
 110 quorum. No votes shall be cast on any matter except at an autho-
 111 rized board meeting. All votes shall be recorded in the minutes of
 112 the meeting. No votes shall be cast on any matter not listed as an
 113 agenda item in the written notice for that meeting. No member or
 114 his surrogate[,] shall be entitled to vote on any matter if not
 115 physically present at the meeting at which the vote is taken. A
 116 majority of the voting members shall determine any action of the
 117 board. No member may serve as chairman for more than two
 118 consecutive years.

119 c. The board shall have and exercise all powers of the associa-
 120 tion not reserved to the members by the plan of operation or as
 121 otherwise provided in this act.

1 ***[3.** Section 19 of P. L. 1983, c. 65 (C. 17:30E-7) is amended to
 2 read as follows:

3 19. Pursuant to the plan of operation, the association shall have
 4 the power and duty to:

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

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

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

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

22 e. Arrange for the issuance of automobile insurance to any qual-
23 ified applicant through servicing carriers. Each servicing carrier
24 shall issue policies in the name of the servicing carrier, on behalf
25 of the association, to the extent the plan of operation provides.

26 Servicing carriers, as agents of the association, shall have no in-
27 dividual liability for claims or policies written by the association;

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

33 g. Establish standards for, and review operating practices of,
34 servicing carriers and producers to determine whether such prac-
35 tices are adequate to properly service association business, and to
36 take appropriate action to eliminate inadequate operating practices
37 and develop adequate operating practices, and to appoint an audit
38 committee to review operating practices. The audit committee shall
39 be composed of servicing carriers, producers, and member com-
40 panies who are not servicing carriers;

41 h. Develop criteria and establish a monitoring system to ensure
42 that: (1) servicing carriers do not obtain an unfair advantage,
43 because of their servicing carrier relationship with producers, over
44 other member companies which are not servicing carriers; and
45 (2) member companies do not obtain an unfair advantage over
46 producers of record without a contractual relationship with a
47 voluntary market company, as a result of an offer of voluntary
48 market coverage to an insured of the association;

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

51 j. Reimburse servicing carriers from association funds;

52 k. Adopt bylaws for the regulation of its internal affairs;

53 l. **Employ a general manager, who shall serve at its pleasure**
54 **and be responsible for the conduct of the administrative affairs of**
55 **the association.** The board may employ **other** necessary person-
56 nel and may delegate to the general manager and other personnel
57 such authority as it deems necessary to assure proper administra-
58 tion and operation of the association consistent with the plan of
59 operation. The board shall arrange and contract if necessary for
60 suitable quarters within the State of New Jersey for operations of
61 the association; for such equipment, goods and services; and incur
62 such expenses as it deems necessary to assure efficient administra-
63 tion of the association consistent with the plan of operation. If
64 required by the plan of operation, the board may establish service
65 centers in underserved areas, which service centers shall provide

66 for the dissemination of full information on the coverages available
 66A under this act and for referrals to appropriate outlets for the
 66B acquisition of such coverage;

67 m. Hear and determine complaints of any member or producer
 68 concerning the operation of the association, in accordance with pro-
 69 cedures prescribed in section 28 of this act;

70 n. Annually report to the commissioner on the operation of the
 71 association;

72 o. Record and investigate complaints involving the conduct of
 73 producers and to take appropriate corrective action or to recom-
 74 mend to the commissioner appropriate disciplinary action, includ-
 75 ing suspension or revocation of authority to write association
 76 business;

77 p. Review servicing practices of servicing carriers to determine
 78 whether such practices are adequate to properly service the risks
 79 written by the association; and upon finding that the practices of
 80 any servicing carrier are inadequate, establish a program for that
 81 member which will assist the servicing carrier in the performance
 82 of its duties and charge that servicing carrier a reasonable fee for
 83 establishing and operating such a program;

84 q. Audit the operations of members for the purpose of deter-
 85 mining compliance with this act;

86 r. Develop methods and standards for the establishment of
 87 adequate, actuarially sound reserves for unpaid losses and loss
 88 adjustment expenses, including provision for incurred but not
 89 reported losses; and

90 s. Take such other action as is necessary to effectuate the pur-
 91 poses of this act.]*

1 ***[4.** Section 20 of P. L. 1983, c. 65 (C. 17:30E-8) is amended to
 2 read as follows:

3 20. a. The association shall derive income from the following
 4 sources for the payment of expenses, losses, and the provision of
 5 adequate, actuarially sound reserves for unpaid losses and loss ad-
 6 justment expenses, including incurred but not reported losses, in
 7 connection with association business: (1) net premiums earned; (2)
 8 income generated from any association accident surcharge system
 9 permitted or required by law; (3) that percentage of surcharges
 10 collected by the Division of Motor Vehicles and deposited with the
 11 association pursuant to subsection b. of section 6 of the "New
 12 Jersey Automobile Insurance Reform Act of 1982" (P. L. 1983,
 13 c. 65; C. 17:29A-35); (4) income collected by members of the asso-
 14 ciation and by the association from the residual market equaliza-
 15 tion charge or flat charges (also referred to as capitation fees or

16 policy constants, but not including premiums for uninsured
17 motorists or towing coverage, or flattened tax and expense fees im-
18 plemented pursuant to section 8 of P. L. 1983, c. 65 (C. 17:29A-37))
19 levied on a per car and per coverage basis; and (5) income from
20 investment of moneys collected pursuant to paragraphs (1), (2),
21 (3) and (4) of this subsection. Residual market equalization
22 charges collected on behalf of the association shall on a monthly
23 basis be certified to by the carrier and shall be transferred to the
24 association in accordance with the plan of operation. No producer
25 commissions or premium taxes shall be paid on, or company ex-
26 penses or servicing carrier compensation deducted from, the
27 residual market equalization charge *or the flat charges*. No servic-
28 ing carrier compensation or commissions shall be paid by the
29 association on violation surcharges deposited by the Division of
30 Motor Vehicles with the association. All premiums received by
31 servicing carriers on behalf of the association shall on a monthly
32 basis be certified to by the carrier and shall be transferred to the
33 association in accordance with the plan of operation. Premiums
34 shall be transferred to the association net of commissions paid, all
35 premium taxes and, servicing carrier compensation, except as
36 otherwise required by law.

37 All claims and claim expense payments paid on association busi-
38 ness shall be disbursed by the servicing carriers or the association
39 through drafts drawn on association funds in accordance with the
40 plan of operation. Servicing carriers, as agents of the association,
41 shall have no individual liability on claims or policies written by the
42 association.

43 b. At least annually, the board shall file its experience with the
44 commissioner, which experience shall include the projected income,
45 expenses, losses and reserve requirements of the association for the
46 ensuing year, any adjustment in previously established reserves for
47 unpaid losses and loss adjustment expenses necessary to make such
48 reserves adequate and actuarially sound, and the initial filing shall
49 include the experience of the automobile insurance plan established
50 pursuant to P. L. 1970, c. 215 (C. 17:29D-1). Except in the case
51 of the initial or other filing applicable to the first year of operation
52 of the association, the board shall include in its filing with the
53 commissioner, for his approval, a computation of the residual
54 market equalization charge per insured vehicle to be collected by
55 each member from its voluntary insureds, exclusive of principal
56 operators 65 years of age or older, and by each servicing carrier
57 from association insureds, exclusive of principal operators 65 years

58 of age or older, to offset the anticipated losses of the association.

59 At the end of the first 12 months of the operation of the associa-
60 tion and at least annually thereafter, the board shall also include
61 in its filing with the commissioner a review of the previous year's
62 experience, setting forth the income, losses, and reserve require-
63 ments, including any adjustment in previously established reserves
64 for unpaid losses and loss adjustment, expenses necessary to make
65 such reserves adequate and actuarially sound, and expenses of
66 the association during the previous year. If a profit is found by
67 the commissioner to have been realized, such amount shall reduce
68 the residual market equalization charge levied on policyholders pur-
69 suant to subsection d. of this section. If a loss is found by the com-
70 missioner to have occurred, such amount shall increase the charge
71 levied on policyholders pursuant to subsection d. of this section.
72 The filing shall be accompanied by such statistics and other in-
73 formation as the commissioner may deem necessary. The commis-
74 sioner shall, within 60 days of such filing, approve or disapprove the
75 filing, except that the commissioner may, for good cause, extend
76 by not more than 60 days the period for approving or disap-
77 proving the filing. Failure to act within the period allowed for
78 the commissioner's review of the filing shall be deemed approval
79 of the filing except that the running of the period shall be tolled
80 by a request for additional information by the commissioner or
81 until the association notifies the commissioner that it will not
82 provide such additional information, together with the reason for
83 not supplying the information. Failure to comply with a reason-
84 able request for information may be a ground for disapproving
85 all or part of the filing. If the commissioner disapproves all or
86 part of the filing, he shall state the reasons for such disapproval,
87 and indicate such portion of the filing he approves. Such disap-
88 approval shall be subject to review by the Appellate Division of the
89 Superior Court.

90 c. The residual market equalization charge last approved by the
91 commissioner shall continue to apply while the application for the
92 revised charge is being processed by the commissioner pursuant to
93 this section.

94 d. The residual market equalization charge per insured vehicle
95 shall be collected following the effective date of such approval by
96 the insurer from its policyholders, exclusive of principal operators
97 65 years of age or older, on a uniform net direct car year of liability
98 exposure basis and a net direct car year of physical damage ex-
99 posure basis. Any insurer or rating organization making a residual

100 market equalization charge pursuant to this subsection shall, 15
 101 days prior to the date of the implementation of the proposed rate
 102 adjustment, make an informational filing with the commissioner,
 103 documenting compliance with the established method of distributing
 104 such residual market equalization charge.

105 e. Any insurer licensed to transact automobile insurance after the
 106 effective date of this act shall become a member of the associa-
 107 tion upon receiving such license and the determination of any such
 108 insurer's participation in the association shall be made as of the
 109 date of such membership in the same manner as for all other
 110 members of the association.

111 f. For purposes of this section and any other applicable pro-
 112 vision of law, the residual market equalization charge shall not be
 113 considered insurance premium unless otherwise specifically pro-
 114 vided therein.]*

1 ***[5.]*** *3.* Section 21 of P. L. 1983, c. 65 (C. 17:30E-9) is
 2 amended to read as follows:

3 21. a. Any qualified applicant shall be entitled to apply to the
 4 association for insurance coverage available pursuant to section
 5 27 of this act. Subject to procedures established in the plan of
 6 operation, producers shall have authority to issue binders to quali-
 7 fied applicants.

8 b. If the servicing carrier determines that the applicant is a
 9 qualified applicant, the carrier, as an agent of the association, upon
 10 receipt of the appropriate premium, or such portion thereof as is
 11 prescribed in the plan of operation, shall issue or cause to be issued
 12 a policy of automobile insurance which shall include coverages and
 13 limits requested by the applicant and available under section 27
 14 of this act.

15 c. No licensed insurance producer **[regularly engaged in selling**
 16 **or placing automobile insurance in this State]** *selected by the asso-*
 17 *ciation to sell association policies* shall refuse to furnish to any
 18 applicant quotations of premiums for association automobile in-
 19 surance or shall fail to submit the application of a qualified appli-
 20 cant to the association when requested to do so by a qualified ap-
 21 plicant.

22 d. No company shall terminate any agent or restrict the au-
 23 thority of any agent, directly or indirectly, or in any manner
 24 whatsoever, solely by reason of the volume of such agent's business
 25 written on behalf of the association or the experience produced
 26 by such business.

27 e. The association shall accept applications for coverage 90 days
 28 after the plan of operation has been approved.

29 *f. The board may suspend the binding authority of any producer*
 30 *who has violated any provision of the plan of operation. In no*
 31 *event shall any failure on the part of the producer to properly per-*
 32 *form under the provisions of the plan of operation or any directive*
 33 *of the association prejudice the rights of a good faith applicant to*
 34 *coverage through the association.*

1 ***[6.]*** *4.* Section 22 of P. L. 1983, c. 65 (C. 17:30E-10) is
 2 amended to read as follows:

3 22. a. *Association business shall be serviced by producers se-*
 4 *lected by the board, in accordance with selection procedures and*
 5 *eligibility standards established by the plan of operation *pursuant*
 6 *to rules and regulations promulgated by the commissioner*. The*
 6A *selection procedure shall include an affirmative action program and*
 7 *the establishment of a producer-to-population ratio which shall*
 8 *ensure adequate service on a regional basis. The plan of operation*
 9 *shall also establish procedures to facilitate the transition from the*
 10 *procedures governing producers which are in effect as of the effec-*
 11 *tive date of this act to the selection procedure established by the*
 12 *association pursuant to this subsection.*

13 b. *Producers who are exclusive representatives of a company*
 14 *which is a servicing carrier shall be assigned to that carrier for*
 15 *the servicing of association policies. Producers who are not ex-*
 16 *clusive representatives of a servicing carrier may, at the election*
 17 *of the producer and with the consent of the servicing carrier, con-*
 18 *tract with the association to do business through any servicing*
 19 *carrier. Producers who are not exclusive representatives of a*
 20 *company which is a servicing carrier or who have not otherwise*
 21 *established a contractual relationship with a servicing carrier*
 22 *pursuant to this section, shall be assigned to all servicing carriers*
 23 *on an equitable basis by the association, pursuant to the plan of*
 24 *operation. The assignments shall be in proportion to the percent-*
 25 *age of association business which each servicing carrier has con-*
 26 *tracted with the association to accept and shall be balanced among*
 27 *territories. The assignments shall be reviewed at least annually*
 28 *and upon the request of a servicing carrier or producer. Pursuant*
 29 *to the plan of operation, the assignments shall be reallocated if*
 30 *it is found that the allocations are demonstrably inequitable. Re-*
 31 *allocations shall be made in a manner to minimize the shifting of*
 32 *producers.*

33 c. *Every producer shall be assigned two alternate servicing car-*
 34 *riers, pursuant to the plan of operation. In the event that any*
 35 *servicing carrier normally assigned to any producer ceases, as*
 36 *may be provided in the plan of operation, to accept applications*

37 temporarily, such applications shall be redistributed by the associ-
38 ation to each producer's alternate servicing carrier.

1 ***[7.]*** *5.* Section 24 of P. L. 1983, c. 65 (C. 17:30E-12) is
2 amended to read as follows:

3 24. a. Pursuant to the procedures and standards established in
4 the plan of operation, the board **[may permit any qualified mem-
5 ber to act as a servicing carrier upon application by the member.]**
6 *shall solicit, by advertisement in at least two newspapers of gen-
7 eral circulation in the State, proposals from members and eligible
8 non-insurers to act as a servicing carrier for the association. Stan-
9 dards may include the submission of a deposit.*

10 *All proposals shall be publicly opened by the board, which, after
11 consultation with, and the approval of, the commissioner, shall
12 award a contract to the proposer or proposers, as the case may be,
13 whose proposal, conforming to the solicitation for proposals, is
14 most advantageous to the association and its policyholders in its
15 judgment, upon consideration of price and other factors.*

16 *Any person who makes, or causes to be made, a false, deceptive,
17 or fraudulent statement in any proposal to be a servicing carrier
18 or in the course of any proceeding in connection therewith, shall
19 be subject to a fine of not less than \$20,000.00, shall forfeit any fee
20 which may be required to be submitted in conjunction with the
21 proposal, and shall be permanently disqualified from submitting
22 any further proposal under this section.*

23 b. Insurers under common management or ownership may elect
24 to submit an application to act as a servicing carrier in the name
25 of any company in the group which is licensed and authorized to
26 transact automobile insurance in this State. The commissioner
27 may disapprove the action by the board, if he finds that the ac-
28 tion is not in the best interests of the association, the insurer, or
29 the purposes of this act, within 20 days of final approval by the
30 board. The disapproval shall be made in writing and shall set
31 forth the reasons for disapproval.

32 c. *Any person other than a member may act as a servicing car-
33 rier if: (1) the person meets the standards of eligibility for non-
34 insurer servicing carriers established by the commissioner in the
35 plan of operation after consultation with the board; and (2) the
36 person is approved by the commissioner as being eligible. The
37 plan of operation shall contain any standards of eligibility which
38 the commissioner may deem appropriate for establishing the quali-
39 fications of persons desiring to become non-insurer servicing car-
40 riers, which standards may include, but not be limited to, financial
41 soundness, the capacity to perform the services required, experi-*

42 *ence, and record of past performance. *Notwithstanding the provi-*
 43 *sions of subsection a. of this section, non-insurer servicing carriers*
 44 *shall not service, in the aggregate, more than 50% of the policies*
 45 *issued by the association.**

46 *The commissioner shall have the authority to exercise all the*
 47 *powers granted to him by Title 17 of the Revised Statutes, includ-*
 48 *ing the powers of examination, with respect to non-insurer servic-*
 49 *ing carriers deemed to be eligible pursuant to this subsection.*

50 **d. The standards of eligibility shall require that every non-*
 51 *insurer servicing carrier: (1) have minimum assets of*
 52 *\$10,000,000.00; (2) shall have been in business for at least five*
 53 *years; (3) shall have had at least three years experience in*
 54 *insurance related fields or activities; and (4) shall be able to*
 55 *demonstrate to the commissioner and the board that it has the*
 56 *capacity to issue and service a minimum of 100,000 private passen-*
 57 *ger automobile insurance policies.**

58 **[b.] * [d.] * e.** *After notice and hearing, the commissioner may*
 59 *require one or more members of the association or member of a*
 60 *group as provided in subsection [a.] b. of this section to act as*
 61 *servicing carriers, if he determines that the action is necessary to*
 62 *effectuate the purposes of this act, except that no company having*
 63 *less than 1% of the private passenger automobile insurance market*
 64 *in this State based on its net written cars years of exposure shall be*
 65 *subject to the provisions of this subsection.*

66 **[c.] * [e.] * f.** *Pursuant to procedures established by the com-*
 67 *missioner, any member of the association or eligible non-insurer*
 68 *which is acting as a servicing carrier may apply to the commissioner*
 69 *for permission to discontinue acting as a servicing carrier or to*
 70 *reduce its participation. After notice and a hearing, the commis-*
 71 *sioner may permit such insurer or eligible non-insurer to discon-*
 72 *tinue acting as a servicing carrier or to reduce its participation,*
 73 *on terms to be imposed by the commissioner, if the commissioner*
 74 *finds that such action is in the best interests of the insurer or*
 75 *eligible non-insurer, the association and the purposes of this act.*

76 *** [f.] * g.** *After a notice and hearing, the association may*
 77 *recommend to the commissioner that the authority of a servicing*
 78 *carrier be terminated or the commissioner may terminate the*
 79 *authority of a servicing carrier to act as a servicing carrier if the*
 80 *association or the commissioner determines that it is in the best*
 81 *interest of the association.*

82 **[d.] * [g.] * h.** *Any order of the commissioner pursuant to this*
 83 *section shall be subject to review by the Appellate Division of the*
 84 *Superior Court.*

1 ***[8.]*** *6.* Section 25 of P. L. 1983, c. 65 (C. 17:30E-13) is
2 amended to read as follows:

3 25. The rates used by the association shall be the same as those
4 used by the rating bureau which files rates for the greatest num-
5 ber of insurers transacting private passenger automobile insur-
6 ance in the voluntary market in this State, *except that notwith-*
7 *standing the provisions of section 7 of P. L. 1983, c. 65 (C.*
8 *17:29A-36):*

9 *a. The commissioner may order the adjustment of association*
10 *rates in any territory in which the relationship between the rates*
11 *used by the association and the rates used by insurers in the*
12 **standard* voluntary market is such that the voluntary market is*
13 *adversely affected;*

14 *b. ***[The commissioner may order the establishment of associa-***
15 *tion base rates which are higher than the base rates which are other-*
16 *wise provided for by this section, which base rates may be applied,*
17 *in accordance with procedures established in the plan of operation*
18 *by the commissioner, to policies issued by the association to in-*
19 *sureds on the basis of their accident or violation records.]* *The*
20 *commissioner may order the establishment of association rates*
21 *which are higher than the rates which are otherwise provided for*
22 *by this section, which rates would be applicable to certain drivers,*
23 *based on their accident or violation records. The rates applicable*
24 *to these drivers shall be established additively to the rates other-*
25 *wise authorized for the use of the association, shall be spread*
26 *equally across all classes and territories and may, at the discretion*
27 *of the commissioner, vary as to the extent of the at-fault accident*
28 *or violation records of the drivers.**

1 ***[9.]*** *7.* Section 26 of P. L. 1983, c. 65 (C. 17:30E-14) is
2 amended to read as follows:

3 26. The association shall, in the plan of operation, establish
4 procedures to encourage the voluntary writing of qualified appli-
5 cants without the utilization of the association. These procedures
6 shall include provisions for appropriate incentives to encourage
7 companies to voluntarily write those applicants who are qualified
8 for insurance by the automobile insurance plan established pur-
9 suant to P. L. 1970, c. 215 (C. 17:29D-1).

10 **[Any voluntary coverage offered in accordance with established**
11 **procedures of this section shall be offered through the producer**
12 **of record, if such producer is the voluntary market producer of the**
13 **company offering to provide this coverage; if the producer of**
14 **record does not have a contractual relationship with any voluntary**
15 **market company, he shall be entitled to the payment of a pro-**
16 **ducer's commission for three years following the providing of**
17 **voluntary coverage. Renewals of this policy shall be written**

18 through the voluntary market producer of record, unless written
 19 notice to the contrary is given by the insured not less than 30 days
 20 prior to such renewal.】

1 *【10. (New section) After consultation with the board, the com-
 2 missioner shall appoint a general manager to be responsible for
 3 the conduct of the administrative affairs of the association. The
 4 general manager shall serve at the pleasure of the commissioner.】*

1 *【11.】* *8.* Section 6 of P. L. 1983, c. 65 (C. 17:29A-35) is
 2 amended to read as follows :

3 6. a. A merit rating accident surcharge system for private pas-
 4 senger automobiles 【may】 *【shall】* *may* be used both in the
 5 voluntary market and by the New Jersey Automobile Full Insur-
 6 ance Underwriting Association created pursuant to section 16 of
 7 P. L. 1983, c. 65 (C. 17:30E-4). No surcharges 【for damage to any
 8 property】 shall be imposed on or after the operative date of this
 9 act, unless there is an *at fault* accident within a three year period
 10 immediately preceding the effective date of coverage which results
 11 in payment by the insurer of at least a \$300.00 【property damage】
 12 claim 【involving an at fault accident or any payment by the insurer
 13 of a bodily injury claim arising out of a collision of a private pas-
 14 senger automobile with a pedestrian】. All moneys collected under
 15 this subsection shall be retained by the insurer assessing the sur-
 16 charge. Accident surcharges shall be imposed for a three year
 17 period and shall, for each filer, be uniform on a Statewide basis
 18 without regard to classification or territory.

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

22 (1) (a) Plan surcharges shall be levied, beginning on or after
 23 January 1, 1984, by the Division of Motor Vehicles on any driver
 24 who has accumulated, within the immediately preceding three year
 25 period, beginning on or after February 10, 1983, six or more
 26 motor vehicle points as provided in Title 39 of the Revised Stat-
 27 utes, exclusive of any points for convictions for which surcharges
 28 are levied under paragraph (2) of this subsection; except that
 29 the allowance for a reduction of points in Title 39 of the Revised
 30 Statutes shall not apply for the purpose of determining sur-
 31 charges under this paragraph. Surcharges shall be levied for
 32 each year in which the driver possesses six or more points. Sur-
 33 charges assessed pursuant to this paragraph shall be not less
 34 than \$100.00 for six points, and not less than \$25.00 for each addi-
 35 tional point. The commissioner may increase the amount of sur-

36 charges as he deems necessary to effectuate the purposes of sub-
37 section d. of this section and P. L. 1983, c. 65 (C. 17:29A-33 et al.),
38 and may, pursuant to regulation, permit the deferral of all or
39 part of any surcharges authorized by this subsection until the end
40 of the policy term of an automobile insurance policy with an effec-
41 tive date prior to January 1, 1984, upon presentation of appro-
42 priate evidence that an insured has already paid an equivalent
43 surcharge arising from the same motor vehicle violation or con-
44 viction.

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

46 (2) Plan surcharges shall be levied for convictions (a) under
47 R. S. 39:4-50 for violations occurring on or after February 10,
48 1983, and (b) under section 2 of P. L. 1981, c. 512 (C. 39:4-50.4a),
49 or for offenses committed in other jurisdictions of a substantially
50 similar nature to those under R. S. 39:4-50 or section 2 of P. L.
51 1981, c. 512 (C. 39:4-50.4a), for violations occurring on or after
52 January 26, 1984. Surcharges under this paragraph shall be levied
53 annually for a three year period, and shall be not less than
54 \$1,000.00 per year for each of the first two convictions, and not
55 less than \$1,500.00 per year for the third conviction occurring
56 within a three year period. If a driver is convicted under both
57 R. S. 39:4-50 and section 2 of P. L. 1981, c. 512 (C. 39:4-50.4a)
58 for offenses arising out of the same incident, the driver shall be
59 assessed only one surcharge for the two offenses. The commis-
60 sioner may increase the amount of surcharges as he deems neces-
61 sary to effectuate the purposes of subsection d. of this section
62 and P. L. 1983, c. 65 (C. 17:29A-33 et al.), and may, pursuant to
63 regulation, permit the deferral of all or any part of these sur-
64 charges as provided in paragraph (1) (a) of this subsection.

65 If, upon written notification from the Division of Motor Vehi-
66 cles, mailed to the last address of record with the division, a driver
67 fails to pay a surcharge levied under this subsection, the license
68 of the driver shall be suspended forthwith until the surcharge is
69 paid to the Division of Motor Vehicles; except that upon satis-
70 factory showing of indigency, the Division of Motor Vehicles may
71 authorize payment of the surcharge on an installment basis over
72 a period not to exceed 10 months.

73 For the purposes of this subparagraph, "indigency" shall be
74 defined in rules and regulations promulgated by the Director of
75 the Division of Motor Vehicles.

76 All moneys collectible under this subsection shall be billed and
77 collected by the Division of Motor Vehicles. Of the moneys col-

78 lected, 80% shall be remitted to the New Jersey Automobile Full
79 Insurance Underwriting Association, and 20% shall be retained,
80 for administrative expenses, by the Division of Motor Vehicles
81 and turned over to the State Treasury for deposit in a special
82 account to be used by the Division of Motor Vehicles, as may be
83 necessary, to modernize its operations and improve its effective-
84 ness and efficiency in order to discharge its statutory obligations.
85 Any moneys in the special account at the end of a fiscal year shall
86 be transferred to the General Fund for use for general State
87 purposes. Moneys shall be appropriated annually to the special
88 account.

89 (3) In addition to any other authority provided in P. L. 1983,
90 c. 65 (C. 17:29A-33 et al.), the commissioner, after consultation
91 with the Director of the Division of Motor Vehicles, is specifically
92 authorized (a) to increase the dollar amount of the surcharges for
93 motor vehicle violations or convictions, (b) to impose, in accor-
94 dance with paragraph (1) (a) of this subsection, surcharges for
95 motor vehicle violations or convictions for which motor vehicle
96 points are not assessed under Title 39 of the Revised Statutes, or
97 (c) to reduce the number of points for which surcharges may be
98 assessed below the level provided in paragraph (1) (a) of this
99 subsection, except that the dollar amount of all surcharges levied
100 under the New Jersey Merit Rating Plan shall be uniform on a
101 Statewide basis for each filer, without regard to classification or
102 territory. Surcharges adopted by the commissioner on or after
103 January 1, 1984 for motor vehicle violations or convictions for
104 which motor vehicle points are not assessable under Title 39 of
105 the Revised Statutes shall not be retroactively applied but shall
106 take effect on the date of the New Jersey Register in which
107 notice of adoption appears or the effective date set forth in that
108 notice, whichever is later.

109 c. No motor vehicle violation surcharges shall be levied on an
110 automobile insurance policy issued or renewed on or after January
111 1, 1984, except in accordance with the New Jersey Merit Rating
112 Plan, and all surcharges levied thereunder shall be assessed, col-
113 lected and distributed in accordance with subsection b. of this
114 section.

115 d. The dollar amount of all motor vehicle conviction surcharges
116 shall be at least equivalent to the differential between the rates
117 charged to insureds as promulgated by the rating bureau which
118 files rates for the greatest number of insurers in the voluntary
119 private passenger automobile insurance market in this State and

120 the Supplement I rates in use as of December 31, 1982 by the
 121 automobile insurance plan established pursuant to P. L. 1970, c. 215
 122 (C. 17:29D-1), and the amount collectible under the motor vehicle
 123 conviction surcharge system in use by the automobile insurance
 124 plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1 et seq.)
 125 prior to the implementation of this act; except that in the first
 126 year of operation of the New Jersey Automobile Full Insurance
 127 Underwriting Association, the dollar amount of all motor vehicle
 128 surcharges shall be sufficient to eliminate the need for imposition
 129 of a residual market equalization charge authorized under section
 130 20 of P. L. 1983, c. 65 (C. 17:30E-8).

131 e. The Commissioner of Insurance and the Director of the Divi-
 132 sion of Motor Vehicles as may be appropriate, shall adopt any
 133 rules and regulations necessary or appropriate to effectuate the
 134 purposes of this section.

1 ***[12.]*** *9.* Section 1 of P. L. 1984, c. 1 (C. 17:29A-37.1) is
 2 amended to read as follows:

3 1. a. All flat charges (also referred to as flat capitation fees
 4 or policy constants but not including premiums for uninsured
 5 motorist or towing coverage, or flattened tax and expense fees
 6 implemented pursuant to section 8 of P. L. 1983, c. 65 (C.
 7 17:29A-37)), **[adopted by orders of]** *authorized by* the Commis-
 8 sioner of Insurance for use by all filers, as defined in section 1 of
 9 P. L. 1944, c. 27 (C. 17:29A-1), writing private passenger auto-
 10 mobile insurance in the voluntary and residual markets, which
 11 are collected on a per car and per coverage basis on automobile
 12 insurance policies issued or renewed in the voluntary or residual
 13 market with an effective date of January 1, 1984 or thereafter,
 14 shall be paid to the New Jersey Automobile Full Insurance Under-
 15 writing Association for use for association purposes. All moneys
 16 collected from the flat charge shall be certified to by the filers,
 17 including servicing carriers of the association, and transferred,
 18 **[net of a pro rata portion of any producer commissions and all**
 19 **premium taxes payable thereon, and company expenses or servicing**
 20 **carrier compensation deductible therefrom]** **net of a pro rata*
 21 *portion of any producer commissions and all premium taxes paya-*
 22 *ble thereon** to the association in accordance with the provisions of
 23 this subsection and the association's plan of operation. **[No other**
 24 **expenses]** **[No amount]* *No other expenses** shall be payable
 25 to or deductible from the flat charges transferable to the association
 26 **[in accordance with the provisions of this subsection, and no**
 27 **servicing carrier shall be entitled to any servicing carrier compen-**
 27A **sation from moneys collected from flat charges on voluntary market**
 27B **policies and transferable to the association].**

28 Flat charges collected under this subsection shall be transferred
29 to the association within 10 days of the close of the month of re-
30 ceipt by the insurer or servicing carrier. In the case of policy
31 premiums paid in accordance with a payment plan or other in-
32 stallment basis, the insurer shall, within 10 days of the close of
33 the month of receipt of payment, transfer to the association a
34 proportionate share of the total flat charge on the policy, based
35 on the payment schedule or amount of payment received.

36 b. Flat charges collected on any automobile insurance policy
37 written in the voluntary or residual market with an effective date
38 prior to January 1, 1984, the policy term of which, however, ex-
39 tends into 1984, shall be retained by the insurer or filer; except that
40 if a policy subject to this subsection has been canceled for reasons
41 other than nonpayment of premium, the insurer or filer shall retain
42 only that portion of the flat charge earned on the policy up to the
43 date of cancellation and shall return any unearned remainder to
44 the policyholder in the same manner as other unearned premium.

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

48 Flat charges collected in accordance with subsection a. of this
49 section shall be considered in determining taxable premiums in
50 accordance with P. L. 1945, c. 132 (C. 54:18A-1 et seq.), but shall
51 not be considered in determining excess profits in accordance with
52 section 2 of P. L. 1983, c. 357 (C. 17:29A-5.3).

53 *c. The flat charges authorized by the Commissioner of Insur-*
54 *ance for private passenger automobile insurance in the voluntary*
55 *and residual markets may be imposed upon all insured motor*
56 *vehicles other than private passenger automobiles, including motor*
57 *vehicles insured by the automobile insurance plan established pur-*
58 *suant to P. L. 1970, c. 215 (C. 17:29D-1), and motor vehicles which*
59 *are registered with the Division of Motor Vehicles as self-insured*
60 *vehicles pursuant to P. L. 1952, c. 173 (C. 39:6-52), in accordance*
61 *with rules and regulations established by the commissioner. In the*
62 *case of motor vehicles other than private passenger automobiles*
63 *which are insured by an insurer in the voluntary market or in any*
64 *insurance plan established pursuant to P. L. 1970, c. 215*
65 *(C. 17:29D-1), the insurer shall forward the flat charge*, net of a*
66 *pro rata portion of the producer's commission,* to the New Jersey*
67 *Automobile Full Insurance Underwriting Association. In the case*
68 *of a self insurer, the self insurer shall forward the full amount of*
69 *the flat charge to the association. The Division of Motor Vehicles*

70 shall not issue a certificate of self-insurance unless the association
 71 has certified that the flat charge has been paid. Failure to pay the
 72 flat charge shall constitute a reasonable ground for cancellation of
 73 a certificate of self-insurance pursuant to P. L. 1952, c. 173 (C.
 74 39:6-52). Any self insurer which fails to pay the flat charge to the
 75 association for any self-insured vehicle shall be liable to pay a fine
 76 in the amount of \$100.00 per vehicle for the first offense and
 77 \$200.00 for the second and each subsequent offense.

1 ***[13.]*** *10.* Section 8 of P. L. 1985, c. 520 (C. 17:29C-2.1) is
 2 amended to read as follows:

3 8. No insurer, including the New Jersey Automobile Full In-
 4 surance Underwriting Association, shall be required to issue or
 5 renew collision or comprehensive insurance coverages, or both, at
 6 standard market rates, for an automobile, as defined in section 2
 7 of P. L. 1972, c. 70 (C. 39:6A-2), or as defined in section 15 of P. L.
 8 1983, c. 65 (C. 17:30E-3) in the case of the New Jersey Automobile
 9 Full Insurance Underwriting Association, to any person identified
 10 as a dangerous driver or as having excessive claims in accordance
 11 with standards and guidelines to be adopted by the Commissioner
 12 of Insurance. Insurers writing in the voluntary market may, and
 13 the New Jersey Full Insurance Underwriting Association shall,
 14 issue collision or comprehensive insurance coverage, or both, to a
 15 person whose coverage was not issued or not renewed pursuant
 16 to this section on the basis of the person's experience. With re-
 17 gard to the identification of dangerous drivers, the standards and
 18 guidelines adopted by the commissioner shall take into considera-
 19 tion the total driving record of the driver, as well as any serious
 20 driving offenses, as defined by the commissioner, committed within
 21 a three year period, including motor vehicle violations resulting
 22 in an at fault automobile accident. *In the case of the New Jersey*
 23 *Full Insurance Underwriting Association, the plan of operation*
 24 *may provide that certain risks may be excluded from collision and*
 25 *comprehensive coverage altogether.*

26 The commissioner shall adopt rules and regulations necessary
 27 or appropriate to effectuate the purposes of this section.

1 *11. Section 1 of P. L. 1970, c. 217 (C. 17:22-6.14a) is amended
 2 to read as follows:

3 1. *a.* In the event that a policy is canceled by the insurer, either at
 4 its own behest or at the behest of the agent or broker of record,
 5 the unearned premium, including the unearned commission shall
 6 be returned to the policyholder. *b.* In the event that a policy of
 7 **[automobile]** insurance issued by the automobile insurance plan

8 established pursuant to P. L. 1970, c. 215 (C. 17:29D-1) or any
9 successor thereto, is cancelled by reason of nonpayment of pre-
10 mium to the insurer issuing the policy or nonpayment of an install-
11 ment payment due pursuant to an insurance premium finance
12 agreement, the broker of record for that policy may retain the full
13 annual commission due thereon and, if a premium finance agreement
14 is not involved, the effective date of cancellation of the policy shall
15 be no earlier than 10 days prior to the last full day for which the
16 premium paid by the insured, net of the broker's full annual
17 commission, would pay for coverage on a pro rata basis in accord-
18 ance with rules established by the commissioner. *c.* Contracts
19 between insurance companies and agents for the appointment of the
20 agent as the representative of the company shall set forth the rate
21 of commission to be paid to the agent for each class of insurance
22 within the scope of such appointment written on all risks or
23 operations in this State except:

24 **[(a)]** (1) Reinsurance.

25 **[(b)]** (2) Life insurance.

26 **[(c)]** (3) Annuities.

27 **[(d)]** (4) Accident and health insurance.

28 **[(e)]** (5) Title insurance.

29 **[(f)]** (6) Mortgage guaranty insurance.

30 **[(g)]** (7) Hospital service, medical service, or dental service
31 corporations, investment companies, mutual benefit associations, or
32 fraternal beneficiary associations.

33 Said rates of commission shall continue in force and effect unless
34 changed by mutual written consent or until termination of said
35 contract as hereinafter provided. Failure to achieve such mutual
36 consent shall require that the agent's contract be terminated as
37 hereinbelow provided. The rate of commissions being paid on each
38 class of insurance on the date of enactment hereof shall be deemed
39 to be pursuant to the existing contract between agent and company.

40 *d.* Termination of any such contract for any reason other than one
41 excluded herein shall become effective after not less than 90 days'
42 notice in writing given by the company to the agent and the Com-
43 missioner of Insurance. No new business nor increases in liability
44 on renewal or in force business shall be written by the agent for
45 the company after notice of termination without written approval
46 of the company. However, during the term of the agency contract,
47 including the said 90-day period, the company shall not refuse to
48 renew such business from the agent as would be in accordance with
49 said company's current underwriting standards. The company
50 shall during a period of nine months from the effective date of such

51 termination, provided the former agent has not been replaced as
52 the broker of record by the insured, and upon request in writing
53 of the terminated agent, renew all contracts of insurance for such
54 agent for said company as may be in accordance with said com-
55 pany's then current underwriting standards and pay to the ter-
56 minated agent a commission in accordance with the previous agency
57 contract of the terminated agent. Said commission can be paid
58 only to the holder of a New Jersey broker's license. In the event
59 any risk shall not meet the then current underwriting standards of
60 said company, that company may decline its renewal, provided that
61 the company shall give the terminated agent and the insured not
62 less than 60 days' of its intention not to renew said contract of
63 insurance.

64 e. The agency termination provisions of this act shall not apply to
65 those contracts in which the agent is paid on a salary basis without
66 commission or where he agrees to represent exclusively one com-
67 pany or to the termination of an agent's contract for insolvency,
68 abandonment, gross and willful misconduct, or failure to pay over
69 to the company moneys due to the company after his receipt of a
70 written demand therefor, or after revocation of the agent's license
71 by the Commissioner of Insurance; and in any such case the com-
72 pany shall upon request of the insured, provided he meets the then
73 current underwriting standards of the company, renew any contract
74 of insurance formerly processed by the terminated agent through
75 an active agent, or directly pursuant to such rules and regulations
76 as may be promulgated by the Commissioner of Insurance.

77 f. The Commissioner of Insurance, on the written complaint of
78 any person stating that there has been a violation of this act, or
79 when he deems it necessary without a complaint, may inquire and
80 otherwise investigate to determine whether there has been any
81 violation of this act.

82 g. All existing contracts between agent and company in effect in
83 the State of New Jersey on the effective date of this act are subject
84 to all provisions of this act.

85 h. The Commissioner of Insurance may, if he determines that a
86 company is in unsatisfactory financial condition, exclude such com-
87 pany from the provisions of this act.

88 i. Whenever under this act it is required that the company shall
89 renew a contract of insurance, the renewal shall be for a time
90 period equal to one additional term of the term specified in the
91 original contract, but in no event to be less than one year.

92 j. *The provisions of subsection b. of this section shall not apply*
93 *to policies written by the New Jersey Full Insurance Underwriting*
94 *Association established pursuant to P. L. 1983, c. 65 (C. 17:30E-1*
95 *et seq.).*

96 *k. The New Jersey Full Insurance Underwriting Association*
97 *established pursuant to P. L. 1983, c. 65 (C. 17:30E-1) et seq., shall*
98 *not be liable to pay any commission required by subsection b. of this*
99 *section on any policies written by the association prior to January*
100 *1, 1986.*

1 12. Section 23 of P. L. 1983, c. 65 (C. 17:30E-11) is amended to
2 read as follows:

3 23. *a. The producer shall receive commissions on association*
4 *business [in accordance with a schedule of commissions promul-*
5 *gated in the plan of operation. The schedule of commissions so*
6 *promulgated] which shall be designed to [serve and reconcile the*
7 *following objectives: a. to encourage equal treatment of policy-*
8 *holders in the association and the voluntary market; b. to minimize*
9 *disincentives to the placement of applicants in the voluntary*
10 *market; c. to stimulate marketing efforts in underserved areas; d.*
11 *to] provide reasonable compensation for services performed by*
12 *producers[; e. to provide protection to the producer of record*
13 *without a voluntary market company, upon the offer of voluntary*
14 *market coverage to an association insured; f. to provide for an*
15 *equitable rate of commission for producers during a transition*
16 *period, as the term of such period is determined by the board. No*
17 *rate of commission shall be less than that provided pursuant to the*
18 *automobile insurance plan established pursuant to P. L. 1970, c. 215*
19 *(C. 17:29D-1), as payable as of December 31, 1981].*

20 *b. The rate of commission payable on policies issued by the*
21 *association after January 1, 1987, shall be 10%, which rate shall*
22 *remain in effect until January 1, 1988, at which time the rate of*
23 *commission payable on association policies shall be 9%. This rate*
24 *shall remain in effect until January 1, 1989, or until the number of*
25 *drivers insured by the association is no greater than 30% of the*
26 *aggregate number of insured private passenger automobiles in*
27 *this State, whichever occurs later, at which time the commission*
28 *payable on association policies shall be 8%.*

29 *c. Notwithstanding the provisions of subsection a. of this section,*
30 *a higher commission, as established by the commissioner, may be*
31 *paid by the association to producers who meet criteria established*
32 *by the commissioner in the plan of operation which criteria may*
33 *include, but not be limited to, the territory in which the producer is*
34 *located and whether or not the producer has an affiliation with an*
35 *insurer which writes private passenger automobile insurance in*
36 *the voluntary market.*

37 *d. In the event that a policy issued by the association is cancelled*
38 *by reason of nonpayment of premium or nonpayment of an install-*

39 *ment payment due pursuant to an insurance premium finance*
40 *agreement, the unearned commission shall be retained by the*
41 *association and the effective cancellation date of the policy shall be*
42 *no earlier than 10 days prior to the last full day for which the*
43 *premium paid by the insured, net of the producer's full annual*
44 *commission, would pay for coverage on a pro rata basis.*

1 13. (New section) The study commission established by section
2 35 of P. L. 1983, c. 65 (C. 17:30E-23) shall be established no later
3 than 90 days after the effective date of this act, shall make an
4 interim report no later than July 1, 1987 and a final report no later
5 than January 1, 1988.*

1 14. This act shall take effect immediately.

INSURANCE—AUTOMOBILE

Makes various amendments to the law governing the operation of
the automobile joint underwriting association.

14 issue collision or comprehensive insurance coverage, or both, to a
15 person whose coverage was not issued or not renewed pursuant
16 to this section on the basis of the person's experience. With re-
17 gard to the identification of dangerous drivers, the standards and
18 guidelines adopted by the commissioner shall take into considera-
19 tion the total driving record of the driver, as well as any serious
20 driving offenses, as defined by the commissioner, committed within
21 a three year period, including motor vehicle violations resulting
22 in an at fault automobile accident. *In the case of the New Jersey*
23 *Full Insurance Underwriting Association, the plan of operation*
24 *may provide that certain risks may be excluded from collision and*
25 *comprehensive coverage altogether.*

26 The commissioner shall adopt rules and regulations necessary
27 or appropriate to effectuate the purposes of this section.

1 14. This act shall take effect immediately.

STATEMENT

This bill makes a number of changes to the law governing the operation of the New Jersey Full Insurance Underwriting Association. The bill would provide for the establishment of a bidding process for the awarding of contracts to serve as association servicing carriers, and would permit non-insurers to be servicing carriers.

The bill would provide for the appointment of the general manager of the association by the Commissioner of Insurance rather than the board of the association, and would permit the commissioner to veto actions taken by the board of the association. It would also give the commissioner the authority to adjust the premiums charged by the association if the relationship between association rates and rates used by insurers in the voluntary market is such that the voluntary market is adversely affected by competition with the association. The bill also permits the commissioner to establish a higher rate level for risks who have bad accident or violation records.

The bill would require all insurers writing private passenger insurance in the voluntary market to charge accident surcharges, and would require that the policy constant which is now applicable to private passenger vehicles be charged on commercial vehicles and on vehicles which are self-insured. The bill clarifies the fact that the association may establish its own accident surcharge system, independent of the I. S. O. accident surcharge system. Producer commissions and premium taxes would not be permitted to

be deducted from the policy constant. The bill permits the plan of operation of the association to exclude certain risks from obtaining collision and comprehensive coverage.

The bill also would permit the association to select producers to sell and service association business, in accordance with selection procedures and eligibility standards established by the plan of operation. These procedures would be required to include an affirmative action program and the establishment of a producer-to-population ratio which ensures adequate coverage on a regional basis.

INSURANCE—AUTOMOBILE

Makes various amendments to the law governing the operation of the automobile joint underwriting association.

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SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 2790

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 2, 1986

This bill, as amended, makes a number of modifications to the body of law governing the operation of the New Jersey Automobile Full Insurance Underwriting Association, which is the residual market mechanism presently in use for private passenger automobiles. The JUA, as the association is commonly called, was established by the Legislature in 1983 to supplant the Assigned Risk Plan for private passenger vehicles. It was designed to provide private passenger automobile insurance coverage at voluntary market rates for drivers who are unable to secure coverage in the voluntary market. This bill deals primarily with the governance, operations, and revenue of the association.

Under present law, association business is written and serviced by member insurers which act as servicing carriers for the association. The bill would permit the appointment of noninsurer servicing carriers, provided that the noninsurer meets standards of eligibility established by the commissioner in the plan of operation of the association. Noninsurers would also have to be approved by the commissioner as being eligible to act in the capacity of a servicing carrier.

The committee has amended the bill to provide certain specific statutory criteria for eligibility for noninsurer servicing carriers; these include the requirement that the noninsurer have minimum assets of \$10,000,000.00, that it have been in business for a period of at least five years, that it has had at least three years' experience in insurance-related fields or activities, and that it demonstrate to the commissioner that it has the capacity to issue and service a minimum of 100,000 private passenger automobile insurance policies. The committee amendments also provide that noninsurers may not service more than 50% of the aggregate number of policies written by the association. The commissioner would be given the same powers of supervision and examination with respect to noninsurers acting as servicing carriers as he has with respect to insurance companies generally. The law governing the appointment of board members is

modified by the bill to permit the appointment of noninsurers who serve as servicing carriers.

The bill establishes a bidding procedure for servicing carriers. The board of the association would be required to solicit proposals from members and eligible noninsurers to act as servicing carriers. Contracts would be awarded to those proposals which are deemed to be most advantageous to the association, upon consideration of price and other factors. Either the board or the commissioner could recommend the termination of servicing carriers.

As originally drafted, the bill would have permitted the commissioner to veto the minutes of the board of the association. This provision has been deleted by committee amendment, as has the provision of the bill which would have required that the general manager of the association report to the commissioner rather than the board.

The bill makes a number of adjustments to the law which are intended to augment the revenues of the association. While the committee has deleted the provision which would have required all voluntary market carriers to impose accident surcharges, insurers which do charge accident surcharges, including the JUA, would be required to surcharge all at-fault accidents in which personal injury protection, bodily injury, property damage, or physical damage exceeds \$300.00. The bill would also require the policy constant, now paid on all private passenger vehicles, to be paid by all commercial vehicles, including vehicles which are self-insured.

The committee has amended the bill to provide that all commissions on policies issued by the JUA be fully earned; thus, if a policy is cancelled before the end of the policy term, a pro rata portion of the commission would be paid to the agent, with the balance being retained by the association. The amendments also clarify the fact that section 1 of P. L. 1970, c. 217 (C. 17:22-6.14a), which deals with the disposition of unearned commission with regard to policies generally, does not apply to the New Jersey Automobile Full Insurance Underwriting Association, and that the association is not liable to pay commissions pursuant to that section on any policies written by it prior to January 1, 1986. The bill eliminates the provision of law which requires the payment of commission to the producer of record for three years after a risk is taken out of the JUA. The committee amendments delete that portion of the bill which would have eliminated the paying of producer commissions on the policy constant.

The bill modifies the present commission structure of the association. The committee amendments provide that the rate of commission payable on association policies issued after January 1, 1987, will

be 10%. This rate will remain in effect for a year, until January 1, 1988, at which time the rate of commission will be reduced to 9%. The 9% rate will remain in effect until January 1, 1989, or until the number of drivers insured by the association is no greater than 30% of the aggregate number of insured private passenger automobiles in the State, whichever occurs later, at which time the commission will be reduced to 8%.

Notwithstanding the foregoing, the committee amendments provide that the commissioner may establish a higher commission rate for producers which meet certain special criteria, such as producers located in certain territories, and producers who have no affiliation with insurers which write private passenger insurance in the voluntary market.

The bill contains two major provisions regarding the rates charged by the association. The commissioner would be permitted to adjust association rates in any territory in which the relationship between the rates used by the association and the rates used by insurers in the voluntary market is such that the voluntary market is adversely affected. The bill also provides for the establishment of a "second tier," or higher rates, for those individuals with poor driving records. The committee has amended this section of the bill to require that this second tier be established in such a manner as to result in the higher rates being applied to those drivers in a uniform manner, without regard to class or territory.

At present, all licensed agents and brokers in the State have the authority to place business in the association. The bill modifies this to provide that association business is to be serviced by producers who are selected by the association in accordance with selection procedures and eligibility standards which are established by the plan of operation. The selection procedure would be required to include an affirmative action program and the establishment of a producer-to-population ratio which insures adequate service on a regional basis.

The bill would permit the association to suspend the binding authority of producers who violate the provisions of the plan of operation, and would permit the association to exclude certain risks from certain types of coverage. It also amends the definition of "qualified applicant" to eliminate those vehicles which are registered to partnerships, professionals, and individual proprietorships.

Finally, the committee amendments would require the establishment of the study commission which was originally intended to be established after the passage of P. L. 1983, c. 65 (C. 17:30E-1 et seq.). The commission would be required to present an interim report no later than July 1, 1987 and a final report no later than January 1, 1988.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
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TRENTON, N.J. 08625

Release: MON., JAN. 12, 1987

Governor Thomas H. Kean today signed legislation to amend the law governing operation of the New Jersey Automobile Full Insurance Underwriting Association (JUA).

The JUA is an unincorporated association of all auto insurers in the State as a replacement for the "assigned risk" plan. The JUA is obligated to provide automobile insurance to those unable to obtain through ordinary means.

S-2790 was sponsored by Senator Raymond Lesniak, D-Union, Assemblyman Ralph Loveys, R-Morris and Assemblyman Michael Adubato, D-Essex.

The legislation contains a number of cost-cutting and revenue raising measures intended to improve the fiscal stability of the JUA. Combined with administrative actions taken by the Department of Insurance, the measures in this bill are expected to raise \$300 million a year. These steps are expected to eliminate any further increase in the JUA deficit.

The legislation is effective immediately.

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