

**STATE OF NEW JERSEY**  
EXECUTIVE DEPARTMENT

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April 27, 1998

**SENATE BILL NO. 3**

**(First Reprint)**

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 3 (First Reprint) with my recommendations for reconsideration.

1. Introduction

Automobile insurance costs too much in New Jersey. That simple, undisputed fact has led, over the past twenty-six years, to numerous efforts to reform the system, from the institution of no-fault in 1972 to the establishment of the lawsuit threshold in 1988, from the institution of territorial rate caps 1983 to the elimination of surcharges in 1997.

Nothing has worked. Affordability has been the unintended casualty, fraud the inevitable consequence of an unremitting war among special interests. Those who are supposed to serve the system - insurance companies, attorneys, medical professionals - have manipulated it to their gain, and have deflected every effort to make the system work. The system has been complicated in order to accommodate competing interests, fairness has been lost in that complexity.

Senate Bill No. 3 is our opportunity to end this cycle of frustration. Under the courageous leadership of Senate President DiFrancesco, Assembly Speaker Collins,

and Minority Leaders Assemblyman Doria and Senator Codey, a bipartisan legislative committee held hearings over a two-month period on what should be done to lower auto insurance rates in New Jersey. This bill, sponsored by the Senate President and Senator Adler in the Senate, and by Assemblymembers Bateman and Greenwald in the Assembly, is the result of that process.

I congratulate both the sponsors and the members of the Select Committee for this product of their effort. The bill is truly comprehensive in scope, addressing all of the principal causes of high automobile insurance rates in this State: proliferating lawsuits; superfluous medical testing and treatment; rampant fraud; and an antiquated territorial system. By removing costs from the system through these measures, the bill guarantees drivers a 15 percent reduction on their automobile insurance rates, while assuring insurers an adequate rate of return through the ratemaking process. Automobile insurance should not cost as much as it has in New Jersey; with the enactment of this bill, it will not.

## II. Summary and Analysis of the Bill

Given the level of interest in and the certainty of judicial interpretation of the provisions of Senate Bill No. 3, discussion of its principal provisions is warranted.

### A. Revised Lawsuit Threshold

It is the settled and prudent public policy of this State to provide medical benefits on a first party basis, without regard to fault, to persons injured in automobile accidents. The cost of providing this benefit must be offset, however, by a reduction in the cost of other coverages in order to control premium costs. In 1988, the so-

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called "verbal threshold" option was enacted in an attempt to control premium costs by restricting the right of persons who choose it to sue for pain and suffering (as opposed to economic loss and other forms of compensatory loss).

The 1988 threshold has not worked. By allowing recovery for injuries that are nonpermanent, i.e., that heal, and for fractures that are not serious, the statute has not served as a meaningful limitation to control premium costs. Because the substantive standards are so nebulous, moreover, they have encouraged the employment of extensive and superfluous medical and chiropractic testing and treatment in order to establish standing to sue for pain and suffering. The substantial increase, since 1988, in the cost of medical expense benefits is the best indication that those benefits have been manipulated in order to frustrate the intent of the lawsuit threshold.

Senate Bill No. 3 replaces the existing lawsuit threshold, under which temporary, nonserious injuries qualify, with a requirement that fractures be displaced and that other injuries be serious enough never to heal sufficiently to regain normal function. In other words, the injury must be to a "body part or organ" (as opposed to "tissue," which was consciously omitted from the definition in negotiations) and must be permanent in order for the injured party to have standing to sue. Our courts will, of course, interpret these terms in the context of specific circumstances, and may look to the laws of other States in construing New Jersey's verbal threshold. It should be noted, therefore, that Florida's permanent injury threshold differs from the proposed standard in several decisive ways. First, Florida law does not define "permanent

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injury"; there is no requirement, in other words, that the injury be to a "body part or organ" and be serious enough never to heal to regain normal function. Second, it has been noted that in Florida "fifty-one percent of the plaintiffs who had succeeded [in meeting the threshold] had done so on the basis of medical reports whose rating of pain was based only on subjective complaints of pain." Oswin v. Shaw, 129 N.J. 290, 319 (1992). The proposed standard is explicit that the medical conclusion may not be based on subjective accounts of pain. Third, Florida law requires only "some evidence" of permanency, which Florida courts have held can be provided by the patient alone. City of Tampa v. Long, 638 So.2d 35 (1994). Under the proposed standard, permanency must be attested by the treating physician under penalty of perjury, must be based on objective clinical evidence, and may not rely upon experimental testing or the subjective impressions of the patient.

In short, I am confident that, construed in light of the statute's clear purpose to limit standing for recovery for pain and suffering, the proposed lawsuit threshold represents a significant improvement over current law. The savings resulting from adoption of this measure will be substantial.

**B. Anti-Fraud Measures**

Complementing the tightened lawsuit threshold in controlling premium costs are several measures designed to combat fraud. First, every complaint in a pain and suffering lawsuit brought under the lawsuit threshold must be accompanied by a certification from the treating physician attesting the seriousness of the plaintiff's condition. The certification is executed under penalty of perjury; fraudulent filing of a

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certification is grounds for imprisonment and revocation of one's professional license. The certification is intended as an anti-fraud measure to assure legitimacy; it is necessary to state a claim, not sufficient to establish one, and will be subject to challenge through the normal discovery and summary judgment processes. In addition, Senate Bill No. 3 builds on anti-fraud measures undertaken in 1997 by establishing, within the Department of Law and Public Safety, an Office of Fraud Prosecutor, which is given a broad mandate to investigate and prosecute the fraud which is rampant under the current system. The revised threshold makes fraud more difficult to perpetrate by raising the bar to require objective proof of a more serious species of injury; the establishment of the Office of Fraud Prosecutor ensures that the fraud that does persist will be investigated and prosecuted in a coordinated manner.

**C. Revised Medical Testing and Arbitration Procedures**

One of the causes of the higher premiums that plague the current system is the employment of superfluous medical testing and treatment. It is generally agreed, moreover, that the present arbitration system has not adequately excluded from payment testing and treatments that are not medically necessary. Senate Bill No. 3 addresses those concerns by providing for the establishment of a listing of commonly accepted diagnostic tests by the professional boards within the Division of Consumer Affairs, and treatment of those injured in automobile accidents in accordance with commonly accepted medical protocols. The protocols will serve as a guide in ascertaining the necessity of a given procedure. Furthermore, the bill replaces the current arbitration procedure, under which arbitrators are attorneys who function as

arbitrators on a part-time basis and who issue decisions orally, with a procedure in which the arbitrators are full-time professionals, and in which questions of medical 'ty or causality may be referred for medical peer review. These measures will assist substantially in constraining the principal reason for rising auto insurance premium rates: overutilization of medical benefits.

#### D. Affordability and Consumer Confidence

In addition to the cost-saving measures discussed above, the bill addresses the issue of affordability by providing for a new type of policy, the basic policy. Intended to reach those with fewer assets to protect as well as those who are currently priced out of the market, the basic policy provides \$15,000 in medical expense benefits, with benefits for catastrophic injuries not to exceed \$250,000. The basic policy also includes \$10,000 in bodily injury liability coverage and \$5,000 coverage for property damage liability. In addition, the bill provides for a named driver exclusion, under which substantial savings may be realized by households which limit access to their more expensive automobiles.

The bill also establishes, within the Division of Consumer Affairs, a Claims Ombudsman, which would perform many of the functions now performed by the Department of Banking and Insurance in investigating consumer complaints against insurers, and provides for rate intervention by intervenors certified by the Commissioner of Banking and Insurance under circumstances that are actuarially justified.

#### E. Territories and Rate Caps

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New Jersey operates under a territorial rating system in which the territories are fifty years old, predating the dramatic growth of population in this State's smaller towns and suburbs and the shifting driving patterns caused by the building of modern highways like the Garden State Parkway. Realizing that because the territories were outdated, their reflection of driving risks was inaccurate, but that the State was unprepared to redraw the territories at that time, the Legislature in 1983 put in place a requirement that the base rate of no territory exceed 1.35 times the base rate of the statewide average for a given insurance provider. Thus, the so-called rate cap law was a stopgap measure intended to moderate extreme disparities in rates, given antiquated and inadequate territories. Because the cap operates within the book of business for a given insurer, moreover, the profile of the capped areas will reflect the types of areas in which insurance is provided. As a consequence, municipalities as diverse as Camden and Pennington, Newark and Alpine are subject to the cap, depending upon which insurance company is underwriting the risk.

Senate Bill No. 3 recognizes that the time has come to bring New Jersey's territorial ratings up to date. Accordingly, the bill provides that each insurance company file, subject to approval by the Commissioner of Banking and Insurance, an updated territorial base rate map. The bill further provides for the elimination of the territorial rate cap effective for policies issued or renewed on or after the effective date of an insurer's revised territorial rating plan, but in any event no later than March 1, 1999. There is no provision for revenue neutrality under the new territories.

III. Recommended Action

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Senate Bill No. 3 represents comprehensive automobile insurance reform. I commend the sponsors, members of the Committee, legislative staffers Laurine Purola, Thomas Hasty, and Jarrod Grasso, and Assistant Counsel Darlene Pereksta for their diligence in fashioning this historic legislation.

There are, however, a few areas in which I believe the bill should be amended in order to effectuate its purposes.

A. Territories and Rate Caps

Rate caps were a stopgap measure put in place because the territories were antiquated-, it follows that a proper redrawing of the territories will obviate the need for rate caps. I am concerned, however, that the mechanism in the bill as drafted fails to set forth the kind of deliberative process needed to assure a proper redrawing, fails to guard against manipulation of the new territories to enhance revenues, and fails to provide safeguards should the redrawn territories result in unexpected disparities. Furthermore, I am informed by representatives of the insurance industry that lifting the rate caps completely on March 1, 1999 would be precipitous, because it will take them longer than one year to redraw the territories properly.

Accordingly, I recommend that the bill be amended to provide that territories are to be redrawn by January 1, 2000, in accordance with criteria fashioned to assure fairness. Among the factors to be considered are changing population densities, driving patterns, and contiguity. I further recommend that the bill be amended to provide for revenue neutrality as compared with current territories, so



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that insurance companies may not manipulate the process to increase revenues. I also recommend, in addition to the stringent criteria set forth, an additional safeguard to ensure affordability. recommend that the basic policy remain within the 1.35 percent parameter. Like the current cap on senior citizen drivers, which remains in effect under this bill, retaining a cap on the basic policy is justifiable despite the new territories because it is based not on the location of the driver but upon the driver's status: young or otherwise with few assets to protect.

Rate caps are an historical anomaly, resulting from the persistence of antiquated territories. If the bill is amended to assure that territories are redrawn responsibly, competition will increase in every area of the State, the territorial map will accurately reflect today's range of risks, and no chaos or shock will result when the rate caps are lifted.

**B. Affordability**

I continue to believe that in a State as diverse as New Jersey, consumer choice is indispensable to consumer satisfaction. The bill advances this objective by making available the basic policy, and by providing options such as the named driver exclusion. I believe, however, that within the options provided there is still more room for choice and, thus, for savings. Accordingly, I recommend that the \$10,000 bodily injury coverage provided for in the basic policy be offered as an option- I am informed that otherwise, the price of the basic policy may be high enough to defeat its underlying purpose

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Within the standard policy, moreover, I believe that consumers should be afforded the option to buy less PIP than the \$250,000 currently provided. No other state requires that level of protection-, abuse of it has been driving costs up dramatically. Accordingly, I recommend that purchasers of the standard policy be allowed to "buy down" to as low as \$15,000; \$250,000 would remain as the "default" amount chosen by the vast majority of drivers, and catastrophic injuries would be covered in any event in an amount not to exceed \$250,000.

C. Institutional Concerns

While I agree with the need for an enhanced ombudsman function, because the functions of the ombudsman are coextensive in some areas with those of the department, the bill creates an unnecessary new bureaucracy. Accordingly, I recommend that the bill be amended to locate the Ombudsman as a new division within the Department of Banking and Insurance. Furthermore, with respect to the rate intervenor, I am concerned about the prospect of obstructionist litigation tactics bordering on 'green mail' absent some threshold rate increase request to trigger the provisions of the bill. Accordingly, I recommend that the bill be amended to require that the intervenor be excluded from all expedited filings, and that 'green mail' be criminalized. Finally, I recommend that the bill be amended to maintain the status of criminal attorneys and investigators within the Attorney General's office as confidential employees. No one should lose his seniority status within state government as a consequence of an interdepartmental transfer; it is essential,

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however, for public safety reasons that criminal investigators remain confidential employees.

Therefore, I herewith return Senate Bill No. 3 (First Reprint) and recommend that it be amended as follows:

Page 6, Section 2, Line 22: After "prothetststs," insert "(20) licensed professional nurses,"

Page 6, Section 2, Line 23: Delete "(20)" and insert "(21)"

Page 6, Section 2, Line 32: Delete ",by" and insert "or with"

Page 6. Section 2.-Line 36: Delete "or repeated"

Page 8. Section 4. Lines 3-7: Delete "the reasonable and necessary treatment of bodily injuries which result in- death-, permanent and significant brain injury-, quadriplegia or paraplegia'. dismemberment: total loss of vision in one or both eyes-, total loss of hearing in one or both ears-, significant permanent injury due to prominent facial, scalp or neck scarring" and insert "for all medically necessary treatment of permanent or significant brain injury, spinal cord injury or disfigurement or for medically necessary treatment of other permanent or significant Injuries rendered at a trauma center or acute care hospital immediately following the accident and until the patient is stable, no longer requires critical care and can be safely discharged or transferred to another facility in the judgment of the attending physician"

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- Page 8, Section 4, Line 18: After "treatments" insert "diagnostic tests"
- Page 8, Section 4, Line 19: After "regulation" insert "a statement of"
- Page 8, Section 4, Line 31: After "." insert "The commissioner, in consultation with the commissioner to the Department of Health and Senior Services and the applicable licensing boards, may reject the use of protocols, standards and practices or lists of diagnostic tests set by any organization deemed not to have standing or general recognition be the provider community or the applicable licensing boards."
- Page 8, Section 4, Line 33: After "treatment" insert "and diagnostic tests"
- Page 9, Section 4, Line 11: Delete "90" and insert "120"
- Page 9, Section 4, Line 21: Delete "of up to \$250,"
- Page 9 Section 4, Line 27: Delete "bodily injurv, death.and"
- Page 9, Section 4, Lines 29-31: Delete ";(l) in an amount or limit of \$10,000 exclusive of interests and costs on account of injury to, or death of one or more persons in any one accident: and (2)"
- Page 9, Section 4, Line 34: Insert new section as follows:  
"c. In addition to the aforesaid

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coverages required to be provided in a basic automobile insurance policy, optional liability insurance coverage insuring against loss resulting from liability imposed by law for bodily injury or death in an amount or limit of \$10,000, exclusive of interests and costs, on account of injury to, or death of, one or more persons in any one accident."

Page 9, Section 4, Line 41:

After "policy" insert ', with or without the optional \$10,000 liability coverage insuring against loss resulting from liability imposed by law for bodily injury or death provided for in subsection c. of this section,"

Page 10, Section 5, Line 15:

After "policy" insert "will result in less coverage than the \$250,000 medical expense benefits coverage mandated prior to the effective date of this act. Furthermore, the coverage election form shall contain a statement, clearly readable and in 12-point bold type, in a form approved by the commissioner, that election of a basic automobile insurance policy without the optional \$10,000 liability coverage provided for in section 4 of P.L. , c. (C. )(now before the Legislature as this bill)"

Page 10, Section 5, Line 33:

After "require" insert "such as, but not limited to, the age of the policyholders and the territories in which the policyholders reside"

Page 13, Section 6, Line 9:

After "treatments" insert "diagnostic tests"

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- Page 13, Section 6, Line 10: After "regulation" insert "a statement of "
- Page 13, Section 6, Line 16: After "practices" insert "and lists of valid diagnostic tests"
- Page 13, Section 6, Line 22: After "." insert "The commissioner, in consultation with the commissioner of the Department of Health and Senior Services and the applicable licensing boards, may reject the use of protocols, standards and practices or lists of diagnostic tests set by any organization deemed not to have standing or general recognition by the provider community or the applicable licensing boards."
- Page 13, Section 6, Line 24: After "treatment" insert "and diagnostic tests"
- Page 14, Section 6, Line 3: Delete "90" and insert "120"
- Page 15, Section 6, Line 5: Delete "of \$250 on account of injury in any one accident"
- Page 15, Section 6, Lines 5-6: Delete "a copayment of 20 percent of any benefits payable between \$250 and \$5,000 in addition to"
- Page 15, Section 6, Lines 7-8: Delete "pursuant to subsection a. of this section" and insert "as provided In the policy, of any"
- Page 15, Section 7, Lines 25-26: Delete "[The option to exclude all benefits offered under subsections b., c., d., and

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e. of section 4;] (Deleted by amendment, P.L. .c. .)" and insert "The option to exclude all benefits offered under subsection b., c., d., and e. of section 4;"

Page 15, Section 7, Line 40-43:

Delete "The insurer shall provide an appropriate reduction from the territorial base rate for personal injury protection coverage for those electing the options in subsections a. and d. of this section."

Page 15, Section 7, Line 40:

Insert new section as follows:

"e. Medical expense benefits in amounts of \$150,000, \$75,000, \$50,000 or \$15,000 per person per accident; except that, medical expense benefits shall be paid in an amount not to exceed \$250,000 for all medically necessary treatment of permanent or significant brain injury, spinal cord injury or disfigurement or for medically necessary treatment of other permanent or significant injuries rendered at a trauma center or acute care hospital immediately following the accident and until the patient is stable, no longer requires critical care and can be safely discharged or transferred to another facility in the judgment of the attending physician. The coverage election form shall contain a statement, clearly readable and in 12-point bold type, in a form approved by the commissioner, that election of any of the aforesaid medical expense benefits options results in less coverage than the \$250,000 medical expense benefits coverage mandated prior to the effective date of this act.

If none of the aforesaid medical expenses

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benefits options is affirmatively chosen in writing, the policy shall provide \$250,000 medical expense benefits coverage.

f. The insurer shall provide an appropriate reduction from the territorial base rate for personal injury protection coverage for those electing any of the options in subsections a., d. and e. of this section."

Page 21, Section 11, Line 23:

After "apply" insert "whether or not the person has elected the optional \$10,000 liability coverage insuring against loss resulting from liability imposed by law for bodily injury or death provided for in subsection c. of section 4 of P.L. ,c.(C. )(now pending before the Legislature as this bill)"

Page 22, Section 12, Line 8:

Delete "test" and insert "tests, once approved by the Commissioner"

Page 24, Section 15, Lines 41-43:

Delete "or medical expense benefits under a basic automobile insurance policy pursuant to section 4 of P.L. , c. (C. ) (now before the Legislature as this bill)"

Page 26, Section 17, Line 31-42

Delete "Except for medical expense benefits provided under a standard automobile insurance policy pursuant to subsection a. of section 4 of P.L. 1972, c. 70 (C. 39:6A-4), under a basic automobile insurance policy pursuant to subsection b. of section 4 of P.L. , c. (C. )(now pending before the Legislature as this bill), under subsection a. of section 7 of P.L. 1972, c. 198 (C.39:6-86.1)and



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additional first party medical expense benefits coverage provided under a standard automobile insurance policy pursuant to section 10 of P.L. 1972, c.70 (C.39:6A10), if there is no dispute concerning whether the treatments, health care services or durable medical goods related to an injury for which reimbursement is being sought are causally related to an insured event, whenever" and insert "Whenever"

Page 30, Section 20, Line 18:

Delete "pursuant to" and insert "containing coverages provided pursuant to subsections a. and b. of"

Page 35, Section 24, Line 24:

Delete "fixed on a per case basis" and insert "established by the Commissioner"

Page 36, Section 24, Line 10-13:

Delete "professional licensing boards in the Division of Consumer Affairs in the Department of Law and Public Safety or other recognized professional organizations, or as otherwise provided in section 12 of P.L. , c. (C. ) (now before the Legislature as this bill)" and insert "Commissioner"

Page 36, Section 24, Line 36:

Delete "determined to have standing as precedent for" and insert "used as guidance in"

Page 36, Section 24, Line 45:

After "." insert "The determination of the medical review organization on the dispute referred shall be binding upon the dispute resolution professional."

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Page 37, Section 25, Lines 36-38:

Delete "set forth in section 12 of P.L. , c. (C. )(now before the Legislature as this bill)" and insert 'established by the Commissioner

Page 41-42, Section 26, Lines 45-28:

Delete entire section and insert "26. (New section ). Every insurer writing private passenger automobile insurance in this State and every rating organization establishing territorial rating plans on behalf of its member companies shall establish new territorial rating plans in place of the insurer or filers territorial rating plan in effect on June 1, 1998, which shall include territorial definitions, territorial relativity factors and territorial base rates, and which are in accordance with the provisions of sections 26 through 29 of this amendatory and supplementary act. The Commissioner of Banking and Insurance shall promulgate regulations establishing standards governing the establishment of new rating territories, which standards shall include, but not be limited to:

a. Territories shall be defined in such a manner as to recognize throughout the territorial rating plan both qualitative similarities and qualitative differences in driving environments or mix of driving environments, which may include, but not be limited to, traffic density, population density, comparative severity of loss, and the degree of homogeneity within a territory in terms of driving environments, population, and driver classification, and the territory shall be comprised of towns or cities which are contiguous;

b. Territories shall contain a sufficient number of exposures to result in

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statistically credible experience, in accordance with regulations established by the Commissioner, and shall be defined in a manner which minimizes the effect of variability of loss in a territory on a year-to-year basis;

c. Territory definitions shall take into account the impact of the overlapping of traffic patterns on exposure to loss, including the relative number of intraterritory trips and inter-territory trips applicable to each proposed territory, for which the Commissioner shall make available to the insurer, filer, or the Commission established pursuant to section 28 of this amendatory and supplementary act, appropriate information collected pursuant to the provisions of section 1 of P.L. 1987, c. 450 (C.43:21-41 a) by the Department of Labor;

Territories shall be created in a manner which results in an equitable distribution of exposures among territories throughout the State and no territorial rating plan shall result in territories which are arbitrary, unfairly discrimination significantly disproportionate in terms of the number of exposures per territory, or created in a manner which is primarily for marketing purposes rather than measuring relativity of exposure to probable loss, or created in a manner which can be used to avoid the insurer or filers obligations under section 27 of P.L. 1991, c. 8 (C.17-33B-15);

e. Territories shall be created in a manner which does not result in disproportionate differences in territorial relativity factors or territorial base rates between contiguous territories with similar

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driving environments or similar mix of driving environments-,

f. Factors to be considered in establishing territorial rate relativities shall include taking into account similarities or differences in driving environments or mix of driving environments, including traffic density, population density, mix of driver classifications within a territory, including classifications capped pursuant to the provisions of section 7 of P. L. 1983, c. 65 (C.17:29A-36), comparative degree of severity of loss, and the relative number of intraterritory and inter-territory trips;

g. Territories shall be defined in a manner which does not result in unfair interterritorial subsidization among territories with significant differences in driving environments or mix of driving environments, population density, traffic density, mix of driver classifications, including classifications capped pursuant to the provisions of section 7 of P.L. 1983, c. 65 (C.17:29A-36) and comparative degree of severity of loss.

h. For the purpose of defining territories and establishing territorial relativity factors, loss experience allocated to any territory by an insurer or filer (1) shall take into account any recovery applicable to exposures in the territory which are attributable to subrogation or any other kind of recovery by the insurer reporting the losses and (2) shall not include any loss attributable to capping of driver classifications pursuant to section 7 of P.L. 1983, c. 65 (C.17:29A-36).

The Commissioner shall establish by

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regulation the minimum number of exposures which shall be deemed to meet the standard of being statistically credible for the purpose of defining territories.

Page 42-43, Section 27, Lines 30-24:

Delete entire section and insert '27. (New section) 27. (New Section) An insurer or rate filer shall file its territorial rating plan with the Commissioner for the Commissioner's approval. The Commissioner shall approve the plan if he finds that the plan complies with the provisions of section 26 of this amendatory and supplementary act and the regulations promulgated thereto. If the Commissioner does not believe that the territorial rating plan meets the standards established by this act or by regulation, or that the territorial rating plan would serve to work against competition among insurers in this State, he shall order that the plan be modified.

b. A filer may file for its use: (1) an individual territorial rating plan which it has developed; or (2) the common territorial rating plan established and approved pursuant to section 28 of this act.

c. Approved individual territorial rating plans shall be on file with the Commissioner and available for review by filers subject to this section.

Every filer shall periodically review, at least once in every five-year period, the continued validity of the territorial rating plan which it is using and shall report its findings to the Commissioner, along with such data as the Commissioner deems necessary. If the Commissioner finds that

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it is not in accordance with the standards established pursuant to section 26 of this act, he may order that the filer amend its plan or, if the filer fails to do so, require the filer to adopt the common territorial rating plan established pursuant to section 28 of this act.

Any filer or filers may object to the territorial rating plan used by another filer on the grounds that it (1) is anticompetitive; (2) does not meet the standards established by the Commissioner pursuant to section 26 of this act; or (3) results in the insurer or filer not meeting its obligations pursuant to the provisions of section 27 of P.L. 1991, c. 8 (C,17:33B-15).

f. No territorial rating plan of any insurer or any rating organization filed with and approved by the Commissioner pursuant to section 27 of this act shall be implemented by any insurer until the 180th day following the approval of the common territorial rating plan established by the Commission created ant to section 27 of this act, but in no event no later than January 1, 2000.

Page 43-44, Section 28, Lines 26-17

Delete entire section and insert "28. (New section) There is established the Automobile Insurance Territorial Rating Plan Advisory Commission to review insurer data and establish a common territorial rating plan for use by insurers not filing a territorial rating plan pursuant to section 27 of this amendatory and supplementary act. The territorial rating plan established by the Commission shall be established according to the criteria and standards provided in section 26 of

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this amendatory and supplementary act and in accordance with regulations established by the Commissioner. The common territorial rating plan shall be subject to the prior approval of the Commissioner of Banking and Insurance, and shall be reviewed by the Commissioner from time to time but not less than once every five years.

The Commission shall consist of fifteen members: nine representatives of insurers writing private passenger automobile insurance in this State and one representative of a rating bureau filing rates on behalf of its members in this State, who shall be appointed by the Governor with the advice and consent of the Senate, four public members, of whom one shall be appointed by the President of the Senate, one by the Speaker of the General Assembly, one by the Minority Leader of the Senate and one by the Minority Leader of the General Assembly; and the Commissioner of Banking and Insurance, who shall serve ex-officio. Of the insurer members appointed by the Governor, at least two members shall be selected from member companies of the Alliance of American Insurers, and two members selected from member companies of the National Association of Independent Insurers or their successor organizations. The remaining insurer members shall be selected from insurers writing automobile insurance in this State, but no insurer or group of insurers under common control shall have more than one representative appointed to serve on the Commission.

c. The members of the Commission shall serve for two-year terms and until their

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successors are appointed and qualified.

d. The Commission shall elect a Chairman and Vice Chairman from among the insurer members.

e. After its initial territorial rating plan has been approved, the Commissioner may convene the Commission at any time to review the plan and to gather data from insurers. The Commissioner may, if he finds that the common territorial rating plan does not meet the standards established pursuant to section 26 of this act, order that the plan be revised.

Page 44, Section 29, Line 21:

After '7."insert" "a."

Page 44, Section 29, Line 30:

After 'discounts].' insert '; and (c) the automobile insurance rate of the base class in any territory for any filer shall not exceed 1.35 times the filer's Statewide average base rate for each coverage, exclusive of driving record surcharges and discounts for any standard policy issued or renewed before January 1, 2000 or the 180th day following approval of the common territorial rating plan pursuant to section 27 of P.L. 1998, c. (C. )(now before the Legislature as this bill), whichever first occurs.

b. No rating plan or rate filing applicable to any policy issued or renewed on or after January 1, 2000 or the 180th day following the approval of the common rating territory provided for in sections 27 through 28 of P.L. 1998, c. (now before the Legislature as this bill), whichever first occurs, shall be approved by the Commissioner which creates territorial



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relativities which are significantly disproportionate to those in effect as of the effective date of P. L. , c. (C. ) (now before the Legislature as this bill)."

Page 44, Section 29, Line 31:

Before "The" insert "d."

Page 44, Section 29, Line 38:

After "older." insert new section "e. As a result of the filings made pursuant to sections 26 and 27 of P.L. 1998, c. (C. ) (now before the Legislature as this bill) and subparagraphs b. and c. of this section, the filer's aggregate premium for all territories shall not exceed the filer's aggregate premium in effect prior to the date established in subparagraph (a) of subsection b. of this section."

Page 45, Section 29, Line 1:

After "automobiles." insert "or any discount from a standard rate provided for in the filer's tier rating system"

Pages 45-46, Section 30, Lines 14-6:

Delete "VWithin 180 days of the date of enactment of P.L. , c. (now before the Legislature as this bill), the division shall develop and maintain a computer data base to verify compliance of owners and registrants of motor vehicles with the motor vehicle liability insurance requirements of section 1 of P.L. 1972, c. 197 (C.39:6B-1). The data base shall be developed and maintained so that State and local law enforcement agencies can efficiently access the data base. The data base shall be funded from the Uninsured Motorist Prevention Fund established pursuant to section 2 of P.L. 1983, c. 141 (C.39:6B-3); except that the State Treasurer shall not disburse any funds to the director for the costs

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associated with the establishment and operation of the data base until the Director of the Division of Motor Vehicles certifies to the satisfaction of the Treasurer that the data base is fully operational.

(1) The information filed by the insurer shall include:

(a) the name, year, and driver's license number of each insured owner or operator, and the address of the names insured-,

(b) the make, year and vehicle identification number of each insured vehicle-, and(c) the policy number, effective date and expiration date of each policy.

(2) Each insurer shall provide this information on magnetic tape or in another form the division agrees to accept.

(3) The information to be filed pursuant to this subsection shall be confidential and proprietary and shall not be a public record subject to disclosure pursuant to section 2 of P.L. 1963, c. 73 (C.47:1A-2). The division shall establish security procedures to protect the confidentiality of the information provided pursuant to this subsection.

(4) In addition to the information supplied by insurers pursuant to paragraph (1) of this subsection, the computer data base shall also contain the following:

(a) the name, date of birth, address and drivers license number of all persons with current drivers licenses in this State-,

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and

(b) all current motor vehicle registrations.

(5) The division shall, at least monthly;

(a) update the data base with the motor vehicle insurance information provided by the insurers in accordance with paragraph (1) of this subsection; and

(b) compare all current motor vehicle registrations against the data base."

Page 47, Section 30, After Line 32:

Insert new sections as follows:

"i. Within 180 days of the effective date of this act the Division of Motor Vehicles shall develop a format for electronic reporting by insurers writing private passenger automobile insurance to the Division, on a real-time basis, information regarding the cancellation of policies of motor vehicle insurance, the issuance of new policies of motor vehicle insurance, and changes of vehicle on policies of motor vehicle insurance in force in order to verify compliance with the motor vehicle liability insurance requirements of section 1 of P.L. 1972, C. 197, and the mandatory automobile insurance requirements of section 4 of P.L. 1998, c. (C. ) (now before the Legislature as this bill). Information shall be maintained by driver's license number of the named insured. Other information to be provided by insurers shall be established by the Director by regulation.

j. The Director shall establish an electronic data base containing the information provided for in subsection a.

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of this section, which shall be made available to all law enforcement officers for the purpose of enforcing the mandatory motor vehicle insurance requirements of section 1 of P.L. 1972, c. 197. The data base shall not be made available until every insurer writing private passenger insurance has complied with regulations of the Director and information required by subsection a. of this subsection is reported on a real-time basis. The Division of Motor Vehicles shall establish security procedures to protect the confidentiality of the information on the data base, which shall preclude access to the information to any person not otherwise entitled to it under this or any other law.

k. The data base shall be funded from the Uninsured Motorist Prevention Fund established pursuant to section 2 of P.L. 1983, c. 141 (C.39:6B-3).'

Page 51, Section 33, Line 20-28:

Delete "; and, notwithstanding the provisions of section 4 of P.L. 1970, c.74 (C.52:17B-100), or any other law, to the contrary, all supervisory and investigative personnel of the Office of the Insurance Fraud Prosecutor including, but not limited to, supervisory and investigative personnel of the Division of Insurance Fraud Prevention transferred pursuant to this section and any such reorganization plan, shall not be confidential employees for the purposes of the 'New Jersey Employer-Employee Relations Act,' P.L. 1941, c. 100 (C.34-13A-1 et seq.)"

Page 52, Section 34, Line 1:

Delete "," and insert ";"

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- Page 53, Section 39, Line 23: Delete ", "
- Page 53, Section 39, Line 24: After "make" insert "available to the Office of the Insurance Fraud Prosecutor"
- Pages 53, Section 39, Lines 25-26: Delete "available to the Office of the Insurance Fraud Prosecutor that the Insurance Fraud Prosecutor shall request" and insert "in the insurer's possession"
- Page 54, Section 44, Line 29: After "of" insert "the"
- Page 54, Section 44, Line 33: After "Office of" insert "the"
- Page 55, Section 48, Lines 32-33: Delete "Division of Consumer Affairs in the Department of Law , and Public Safety" and insert "Department of Banking and Insurance"
- Page 56, Section 49, Line 6: Delete ", in consultation with the Attorney General"
- Page 56, Section 49, Line 7: After "employ" insert "attorneys, in accordance with any applicable law, regulation or executive order, and"
- Page 56, Section 49, Line 8: Delete ", attorneys"
- Page 56, Section 49, Line 9: Delete "legal and"
- Page 56, Section 50, Line 45: After "seq.)," insert "or"

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Pages 56-57, Section 50, Line 46-1:

Delete "or sections 24 and 25 of P.L. c. (C. )(now pending before the Legislature as this bill)"

Page 57, Section 50, Line 2:

After "." insert "Any disputes which may be or have been filed or adjudicated pursuant to sections 24 and 25 of P.L. ,c. (C. )(now before the Legislature as this bill) shall not be subject to the ombudsman's review."

Page 58, Section 55, Line 16:

Delete "adjudication" and insert "review"

Page 58, Section 55, Line 19:

Delete "adjudication" and insert "review"

Page 59, Section 58, Line 6:

Delete "applicant" and insert "complainant"

Page 59, Section 58, Line 9:

After "," insert "or"

Page 59, Section 58, Line 11:

After "recommendations" insert "or as be necessary to enable the commissioner to perform any function authorized by law"

Page 59, Section 58, Line 14:

After "ombudsman" and before "," insert ".or the Department of Banking and Insurance"; after "the ombudsman" insert "or the commissioner"

Page 59, Section 58, Line 19:

After "conducted" insert "either"; after . "ombudsman" insert "or by or on behalf of the commissioner"

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Page 59, Section 58, Line 25:

After "act" insert "or as the commissioner may deem necessary in conjunction with the execution of any power of the commissioner authorized by. law"

Page 59, Section 58, Line 26:

Insert new section

"e. Nothing in this section shall be deemed to limit the disclosure of information to law enforcement and regulatory agencies."

Page 59, Section 60, Line 45:

Delete "subject to the provisions" and insert "dispositive of a violation of " ; after "(C.56:8-1 et seq.)" insert "but may be considered relevant in determining whether a violation of such act has occurred"

Page 61, Section 64, Line 15:

Delete "an" and insert "one or more"; delete "shop" and insert "shops"; delete "facility" and insert "facilities"

Page 61, Section 64, Line 22:

After "conditions" insert "from the insurer, including, but not limited to. price,"

Page 61, Section 64, Line 23:

Delete "an"

Page 61, Section 64, Line 24:

Before "arrangement" insert "the most generous"

Page 61, Section 64, Lines 24-25:

Delete "and agrees to repair the covered vehicle at the same price" and insert "Prior to undertaking any repair, the auto body repair shop or other repair facility of the insured's choice shall provide the

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insured with written notification in a form to be established by the Commissioner of the Department of Banking and Insurance by regulation, that, by agreeing to have the auto body shop or other repair facility of the insured's choice accept the same terms and conditions from the insurer as the shop, facility or network with which the insurer has the most generous arrangement, the insured may jeopardize any manufacturer or dealer warranty or lease agreement. Such notification form shall be signed by the insured prior to the undertaking of any repair.”

Page 61, Section 65, Line 30:

After "by" insert "a"

Page 61, Section 65, Lines 30-31:

Delete "including the elements of the filing"

Page 61, Section 65, Line 31:

After "including" insert ", but not limited to;"; after "the" and before "filers" delete "insurer or "

Page 61, Section 66, Line 43:

After "section" insert ", who shall be deemed a 'public servant' within the meaning of N.J.S.2C:30-2"

Page 61, Section 66, Line 45:

After "," insert "other than an expedited prior approval rate filing made pursuant to section 34 of P.L. 1997, c. 151 (C.17:29A-46.6) and"

Page 62, Section 66, Line 13:

After "consumers" insert "and accepts a duty of fidelity to do so"



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Page 62, Section 66, Line 37:

After "order" delete ", regulation,"

Page 62, Section 66, After Line 40:

Insert new subsections as follows:

"h. A person commas a crime of the third degree if he solicits, accepts or agrees to accept any benefits as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject pursuant to this section. In addition, to any disposition authorized by law, the Commissioner of Banking and Insurance shall forever bar from registration as an intervenor any person convicted under this subsection.

i. A person commits a crime of the third degree if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section. In addition to any disposition authorized by law, the Commissioner of Banking of Insurance shall deny the rate filing of any person convicted under this subsection and the person shall be barred from filing for any rate increase for a period of one year.

j. Nothing herein shall be construed to preclude a prosecution or conviction for a violation of any other law."

Page 61, Section 64, Line 24:

Insert new sections as follows:

"70. Section 13 of P.L. 1995, c. 156 (C.17:IC-31) is amended to read as follows:

"13. The total amount assessable to companies in any fiscal year for all special purpose assessments made

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pursuant to applicable law as of the effective date of this act, including the special purpose apportionment established by this act, shall not increase, as a percentage, more than the percentage increase in the combined net written premiums received, as defined in subsection b. of section 2 of this act, by all companies for the previous year, except that, with respect to fiscal year 1998 and each fiscal year thereafter, the total amount of all direct and indirect expenditures incurred by the Division of Insurance Fraud Prevention [in connection with the appointment of additional insurance fraud investigators pursuant to the Special Purpose appropriation in P.L. 1997 c.131, may] the Office of Insurance Fraud Prosecutor and the Office of Insurance Claims Ombudsman shall be included in the special purpose apportionment, notwithstanding any limitation on the total amount assessable to companies under this section. With respect to each fiscal year after 1999, the total amount assessable to companies in any fiscal year for all special purpose assessments individually allocable to the direct and indirect expenditures incurred by the Division of Fraud Prosecutor and the Office of the Insurance Claims Ombudsman, respectively shall not increase, as a percentage, more than the percentage increase in the combined net written premiums received, as defined in subsection b.of section 2 of this act, by all companies for the previous year.

Section 2 of P.L. 1968, c.385 (C-17:28-1-1) is amended to read as follows:

2.a. [No] Except for a basic automobile

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insurance policy, no motor vehicle liability policy or renewal of such policy of insurance, including a standard liability policy for an automobile as defined in section 2 of P.L.1972, c-70 (C.39:6A-2), insuring against loss resulting from liability imposed by law for bodily injury or death, sustained by any person arising out of the ownership, maintenance or use of a motor vehicle, shall be issued in this State with respect to any motor vehicle registered or principally garaged in this State unless it includes coverage in limits for bodily injury or death as follows:

(1) an amount or limit of \$15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident, and

(2) an amount or limit, subject to such limit for any one person so injured or killed, of \$30,000.00, exclusive of interest and costs, on account of injury to or death of more than one person, in any one accident, under provisions approved by the Commissioner of Banking and Insurance, for payment of all or part of the sums which the insured or his legal representative shall be legally entitled to recover as damages from the operator or owner of an uninsured motor vehicle, or hit and run motor vehicle, as defined in section 18 of P.L. 1952, c.174 (C.39:6-78), because of bodily injury, sickness or disease, including death resulting therefrom, sustained by the insured, caused by accident and arising out of the ownership, maintenance, operation or use of such uninsured or hit and run motor vehicle anywhere within the United States or Canada, except that uninsured motorist coverage shall provide that in order to

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recover for non-economic loss, as defined in section 2 of P.L.1972, c.70 (C.39-6A-2), for accidents to which the benefits of section 4 (C.39-6A-4) of that act apply, the tort option elected pursuant to section 8 (C.39-6A-8) of that act shall apply to that injured person.

All motor vehicle liability policies, except basic automobile insurance policies, shall also include coverage for the payment of all or part of the sums which persons insured thereunder shall be legally entitled to recover as damages from owners or operators of uninsured motor vehicles, other than hit and run motor vehicles, because of injury to or destruction to the personal property of such insured, with a limit in the aggregate for all insures involved in any one accident of \$5,000.00, and subject, for each insured, to an exclusion of the first \$500.00 of such damages.

b. Uninsured and underinsured motorist coverage shall be provided as an option by an insurer to the named insured electing a standard automobile insurance policy up to at least the following limits: \$250,000.00 each person and \$500,000.00 each accident for bodily injury; \$100,000.00 each accident for property damage or \$500,000.00 single limit, subject to an exclusion of the first \$500.00 of such damage to property for each accident, except that the limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage, respectively.

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Rate for uninsured and underinsured motorist coverage for the same limits shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.

c. Uninsured and underinsured motorist coverage provided for in this section shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

d. Uninsured and underinsured motorist coverage shall be subject to the policy terms, conditions and exclusions approved by the Commissioner of Banking and Insurance, including, but not limited to, unauthorized settlements, nonduplication of coverage, subrogation and arbitration.

e. For the purpose of this section, (1) "underinsured motorist coverage" means insurance for damages because of bodily injury and property damage resulting from an accident arising out of the ownership, maintenance, operation or use of an underinsured motor vehicle. Underinsured motorist coverage shall not apply to an uninsured motor vehicle. A motor vehicle is underinsured when the sum of the limits of liability under all

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bodily injury and property damage liability bonds and insurance policies available to a person against whom recovery is sought for bodily injury or property damage is, at the time of the accident, less than the applicable limits for underinsured motorist coverage afforded under the motor vehicle insurance policy held by the person seeking that recovery. A motor vehicle shall not be considered an underinsured motor vehicle under this section unless the limits of all bodily injury liability insurance or bonds applicable at the time of the accident have been exhausted by payment of settlements or judgments. The limits of underinsured motorist coverage available to an injured person shall be reduced by the amount he has recovered under all bodily injury liability insurance or bonds;

(2) "uninsured motor vehicle" means:  
a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident;

(b) a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is bodily injury liability insurance in existence but the liability insurer denies coverage or is unable to make payment with respect to the legal liability of its insured because the insurer has become insolvent or bankrupt, or the Commissioner of Banking and Insurance has undertaken control of the insurer of the purpose of liquidation; or

(c) a hit and run motor vehicle as described in section 18 of P.L. 1952, c.174 (C.39:6-78). "Uninsured motor

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vehicle" shall not include an automobile covered by a basic automobile insurance policy; an underinsured motor vehicle: a motor vehicle owned by or furnished for the regular use of the named insured or any resident of the same household; a self-insurer within the meaning of any financial responsibility or similar law of the state in which the motor vehicle is registered or principally garaged; a motor vehicle which is owned by the United States or Canada, or a state, political subdivision or agency of those governments or any of the foregoing; a land motor vehicle or trailer operated on rails or crawler treads; a motor vehicle used as a residence or stationary structure and not as a vehicle; or equipment or vehicles designed for use principally off public roads, except while actually upon public roads. (cf:P,L. 1988, c.119, s.11)

72. Section 18 of P.L. 1985, c.520 (C.17:28-1.4) is amended to read as follows:

18. Any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the personal injury protection benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39-.6A-4) or section 19

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of P.L. 1983, c-362 (C. 17-28-1.3) for any New Jersey resident who is not otherwise required to maintain personal injury protection coverage pursuant to section 4 of P.L. 1972, c.70(C.39-6A-4) or section 4 of P. L. \_\_\_\_\_, c. (C. ) (now before the Legislature as this bill) and who is not otherwise eligible for such benefits, whenever the automobile or motor vehicle insured under the policy is used or operated in this State. In addition, any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the liability insurance requirements of subsection a. of section 1 of P.L. 1972, c.197 (C.39:6B-1) or section 3 of P.L. 1972, c.70 (C.39-.6A-3), the uninsured motorist insurance requirements of subsection a. of section 2 of P.L. 1968, c.385 (C.17:28-1.1), and personal injury protection benefits coverage pursuant to section 4 of P.L. 1972, c.70 (C.39-6A-4) or of section 19 of P.L. 1983, c-362 (C.17:28-1-3), whenever the automobile is used or operated in this State.

Any liability insurance policy subject to this section shall be construed as providing the coverage required herein, and any named insured, and any immediate family member as defined in section 14.1 of P.L.1983, c. 362 (C.39:6A-



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8. 1), under that policy, shall be subject to the tort option specified in subsection a. of section 8 of P.L. 1972, c.70 (C.39-6A-8).

Each insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State and subject to the provisions of this section shall file and maintain with the Department of Banking and Insurance written certification of compliance with the provisions of this section.

"Automobile" means an automobile as defined in section 3 of P.L. 1972, c.70 (C-39:6A-2).

73. The Commissioner may promulgate any rules and regulations pursuant to P.L. 1968, c. 410 (C.52:14B-1 et seq.) deemed necessary in order to effectuate the provisions of this amendatory and supplementary act."

Page 65, Section 70, Line 20:

Delete "70." insert "74."

Page 65, Section 70, Line 28:

Delete "28, 30, through"

Page 65, Section 70, Line 28:

Delete "; and (3) section 29"

Page 65, Section 70, Lines 30-34:

Delete "; and (3) section 29 shall take effect immediately and the elimination of the limit on territorial base rates provided therein shall apply to policies issued or renewed by an insurer on or after the effective date of the insurer's territorial rating plan approved by the commissioner as provided in section 27,

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but no later than March 1, 1999”

Respectfully,  
/s/ Christine Todd Whitman  
GOVERNOR

[seal]

Attest:

/s/ John J. Farmer, Jr.

Chief Counsel- to the Governor