

17:29A-14 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:29A-14 et al; 17:30E-8

(Automobile insurance statutes -
revise drunk driving surcharges)

LAWS OF: 1984

CHAPTER: 1

Bill No: A802

Sponsor(s): M. Adubato and Deverin

Date Introduced: January 10, 1984

Committee: Assembly: /////

Senate: /////

Amended during passage: Yes

Amendments during passage denoted
by asterisks

Date of Passage: Assembly: January 23, 1984

Senate: January 23, 1984

Date of Approval: January 26, 1984

Following statements are attached if available:

Sponsor statement:

Yes

Also attached: Assembly
amendments, adopted
1-23-84 (with statement)

Committee statement:

Assembly

No

Senate

No

Fiscal Note:

No

Veto Message:

No

Message on Signing:

Yes

Following were printed:

Reports:

No

Hearings:

No

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ASSEMBLY, No. 802

STATE OF NEW JERSEY

INTRODUCED JANUARY 10, 1984

By Assemblymen M. ADUBATO and DEVERIN

AN ACT concerning automobile insurance, amending P. L. 1944, c. 27,
and amending and supplementing P. L. 1983, c. 65.

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

1. 1. (New section) a. All flat charges (also referred to as flat
2. capitation fees or policy constants but not including premiums for
3. uninsured motorist or towing coverage, or flattened tax and expense
4. fees implemented pursuant to section 8 of P. L. 1983, c. 65 (C.
5. 17:29A-37)), adopted by orders of the Commissioner of Insurance
6. for use by all filers, as defined in section 1 of P. L. 1944, c. 27 (C.
7. 17:29A-1), writing private passenger automobile insurance in the
8. voluntary and residual markets, which are collected on a per car and
9. per coverage basis on automobile insurance policies issued or
10. renewed in the voluntary or residual market with an effective date
11. of January 1, 1984 or thereafter, shall be paid to the New Jersey
12. Automobile Full Insurance Underwriting Association for use for
13. association purposes. All moneys collected from the flat charge
14. shall be certified to by the filers, including servicing carriers of the
15. association, and transferred, net of **a pro rata portion of** any
15A **producer commissions and all** premium taxes payable thereon*,
15B *and company expenses or servicing carrier compensation deducti-*
16 *ble therefrom** to the association in accordance with the provisions
16A of this subsection and the association's plan of operation. No **[pro-*
17 *ducer commission shall be paid on flat charges subject to the pro-*
18 *visions of this subsection, nor shall a filer deduct therefrom any*
19 *acquisition or other company expenses, or, in the case of a servicing*

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:
*Assembly amendments adopted January 23, 1984.

20 carrier, any servicing carrier compensation] * *other expenses shall*
 21 *be payable to or deductible from the flat charges transferable to*
 21A *the association in accordance with the provisions of this subsection,*
 21B *and no servicing carrier shall be entitled to any servicing carrier*
 21C *compensation from moneys collected from flat charges on voluntary*
 21D *market policies and transferable to the association.**

22 Flat charges collected under this subsection shall be transferred
 23 to the association within 10 days of the close of the month of receipt
 24 by the insurer or servicing carrier. In the case of policy premiums
 25 paid in accordance with a payment plan or other installment basis,
 26 the insurer shall, within 10 days of the close of the month of receipt
 27 of payment, transfer to the association a proportionate share of the
 28 total flat charge on the policy, based on the payment schedule or
 29 amount of payment received.

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

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

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

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

3 6. a. A merit rating accident surcharge system for private
 4 passenger automobiles may be used both in the voluntary market
 5 and by the New Jersey Automobile Full Insurance Underwriting
 6 Association created pursuant to *section 16 of P. L. 1983, c. 65*; C.
 7 *(C. 17:30E-4)*. No surcharges for damage to any property shall be
 8 imposed on or after the operative date of this act, unless there is an
 9 accident within a three year period immediately preceding the
 10 effective date of coverage which results in payments by the insurer
 11 of at least a \$300.00 property damage liability claim or any payment
 12 by the insurer of a bodily injury claim arising out of a collision of a
 13 private passenger automobile with a pedestrian. All moneys

14 collected under this subsection shall be retained by the insurer
 15 assessing the surcharge. Accident surcharges shall be imposed for
 16 a three year period and shall, for each filer, be uniform on a State-
 17 wide basis without regard to classification or territory.

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

21 (1) (a) Plan surcharges shall be levied, *beginning on or after*
 22 *January 1, 1984*, by the Division of Motor Vehicles on any driver
 23 who has accumulated, within the immediately preceding three year
 24 period, [beginning on or after the effective date of this act,]
 24A **beginning on or after January 1, 1983,** six or more motor
 25 vehicle points as provided in Title 39 of the Revised Sta-
 26 tutes, exclusive of any points for convictions [pursuant to R. S.
 27 39:4-50] *for which surcharges are levied under paragraph (2) of*
 28 *this subsection*; except that the allowance for a reduction of points in
 29 Title 39 of the Revised Statutes shall not apply for the purpose of
 30 determining surcharges under this paragraph. Surcharges shall be
 31 levied for each year in which the driver possesses six or more points.
 32 Surcharges assessed pursuant to this paragraph shall be not less
 33 than \$100.00 for six points, and not less than \$25.00 for each addi-
 34 tional point. The commissioner may increase the amount of sur-
 35 charges as he deems necessary *to effectuate the purposes of subsec-*
 36 *tion d. of this section and P. L. 1983, c. 65 (C. 17:29A-33 et al.), and*
 37 *may, pursuant to regulation, permit the deferral of all or part of*
 38 *any surcharges authorized by this subsection until the end of the*
 39 *policy term of an automobile insurance policy with an effective date*
 40 *prior to January 1, 1984, upon presentation of appropriate evidence*
 41 *that an insured has already paid an equivalent surcharge arising*
 42 *from the same motor vehicle violations or convictions.*

43 (b) [For a three year period following the effective date of this
 44 act, any driver who has accumulated on or after that date three or
 45 more motor vehicle points, other than for a conviction pursuant to
 46 R. S. 39:4-50, shall be annually subject to a surcharge in the amount
 47 of \$55.00 for the first three points and \$15.00 for each additional
 48 point up to six. For six or more points, the surcharges provided in
 49 paragraph (1) (a) shall apply. The allowance for a reduction of
 50 points as provided in Title 39 of the Revised Statutes shall not
 51 apply for the purpose of determining surcharges under this para-
 52 graph. The provisions of this paragraph shall expire three years
 53 following the effective date of this act.] *(Deleted by amendment*
 54 *P. L. , c.)*

55 (2) Plan surcharges shall be levied for convictions under R. S.

56 39:4-50 or section 2 of P. L. 1981, c. 512 (C. 39:4-50.4a), or for
 57 offenses of a substantially similar nature committed in other juris-
 58 dictions, for [a violation] violations occurring on or after [the
 59 effective date of this act] ***[January 1, 1981]*** ***January 1, 1983***.
 59A Surcharges ***[levied]*** under this paragraph shall be ***levied an-**
 60 **nually*** for a three year period, and shall be not less than \$1,000.00
 61 ***per year*** for each of the first two convictions, and not less than
 62 \$1,500.00 ***per year*** for the third conviction occurring within a
 63 three year period. *If a driver is convicted under both R. S. 39:4-50*
 64 *and section 2 of P. L. 1981, c. 512 (C. 39:4-50.4a) for offenses arising*
 65 *out of the same incident, the driver shall be assessed only one sur-*
 66 *charge for the two offenses.* The commissioner may increase the
 67 amount of surcharges as he deems necessary to effectuate the pur-
 68 poses of subsection d. of this section and P. L. 1983, c. 65 (C.
 69 17:29A-33 et al.), and may, pursuant to regulation, permit the de-
 70 ferral of all or any part of these surcharges as provided in para-
 71 graph (1) (a) of this subsection.

72 If, upon [receipt of] written notification [by certified mail,
 73 return receipt requested,] from the Division of Motor Vehicles,
 74 mailed to the last address of record with the division, a driver fails
 75 to pay a surcharge levied under this subsection, the license of the
 76 driver shall be suspended forthwith until the surcharge is paid to the
 77 Division of Motor Vehicles; except that upon satisfactory showing
 78 of indigency, the Division of Motor Vehicles may authorize payment
 79 of the surcharge on an installment basis over a period not to exceed
 80 six months.

81 All moneys collectible under this subsection shall be billed and
 82 collected by the Division of Motor Vehicles. Of the moneys collected,
 83 80% shall be remitted to the New Jersey Automobile Full Insurance
 84 Underwriting Association, and 20% shall be retained, for adminis-
 85 trative expenses, by the Division of Motor Vehicles and turned over
 86 to the State Treasury for deposit in a special account to be used by
 87 the Division of Motor Vehicles, as may be necessary, to modernize
 88 its operations and improve its effectiveness and efficiency in order
 89 to discharge its statutory obligations. Any moneys in the special
 90 account at the end of a fiscal year shall be transferred to the
 91 General [State] Fund for use for general State purposes. Moneys
 92 shall be appropriated annually to the special account.

93 (3) *In addition to any other authority provided in P. L. 1983, c. 65*
 94 *(C. 17:29A-33 et al.), the commissioner, after consultation with the*
 95 *Director *of the Division* of Motor Vehicles, is specifically au-*
 95A *thorized (a) to increase the dollar amount of the surcharges for*
 96 *motor vehicle violations or convictions, (b) to impose, in accor-*

97. *dance with paragraph (1) (a) of this subsection, surcharges for*
 98. *motor vehicle violations or convictions for which motor vehicle*
 99. *points are not assessed under Title 39 of the Revised Statutes, or*
 100. *(c) to reduce the number of points for which surcharges may be*
 101. *assessed below the level provided in paragraph (1) (a) of this sub-*
 102. *section, except that the dollar amount of all surcharges levied*
 103. *under the New Jersey Merit Rating Plan shall be uniform on a*
 104. *Statewide basis for each filer, without regard to classification or*
 105. *territory.*

106. c. **[Any motor vehicle conviction points accumulated within a**
 107. **three year period prior to the operative date of this act by a driver**
 108. **insured under the automobile insurance plan established pursuant**
 109. **to P. L. 1970, c. 215 (C. 17:29D-1), shall be carried over into the**
 110. **New Jersey Automobile Full Insurance Underwriting Association,**
 111. **if such driver is insured by the association, and shall be used to**
 112. **determine any surcharges for motor vehicle convictions to which**
 113. **the driver may be subject pursuant to subsection b. of this section.**
 114. **Surcharges shall be levied in accordance with subsection b., except**
 115. **that the New Jersey Automobile Full Insurance Underwriting**
 116. **Association shall bill and collect the surcharges. Of the moneys**
 117. **collected, the association shall retain 80% and 20% shall be re-**
 118. **mitted to the Division of Motor Vehicles and turned over to the**
 119. **State Treasury for deposit in a special account for use as pro-**
 120. **vided in subsection b. Moneys shall be appropriated annually to**
 121. **the special account.**

122. **The provisions of this subsection shall expire three years from**
 123. **the operative date of this act.]** *No motor vehicle violation sur-*
 124. *charges shall be levied on an automobile insurance policy issued or*
 125. *renewed on or after January 1, 1984 except in accordance with the*
 126. *New Jersey Merit Rating Plan, and all surcharges levied thereunder*
 127. *shall be assessed, collected and distributed in accordance with sub-*
 128. *section b. of this section.*

129. d. **The dollar amount of all motor vehicle conviction surcharges**
 130. **shall be at least equivalent to the differential between the rates**
 131. **charged to insureds as promulgated by the rating bureau which**
 132. **files rates for the greatest number of insurers in the voluntary**
 133. **private passenger automobile insurance market in this State and**
 134. **the Supplement I rates in use as of December 31, 1982 by the**
 135. **automobile insurance plan established pursuant to P. L. 1970, c. 215**
 136. **(C. 17:29D-1), and the amount collectible under the motor vehicle**
 137. **conviction surcharge system in use by the automobile insurance**
 138. **plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1 et seq.)**
 139. **prior to the implementation of this act; except that in the first year**

140 of operation of the New Jersey Automobile Full Insurance Under-
 141 writing Association, the dollar amount of all motor vehicle sur-
 142 charges shall be sufficient to eliminate the need for imposition of a
 143 residual market equalization charge authorized under section 20 of
 144 P. L. 1983, c. 65 (C. 17:30E-8).

145 e. The Commissioner of Insurance and the Director of the Divi-
 146 sion of Motor Vehicles, as may be appropriate, shall adopt any
 147 rules and regulations necessary or appropriate to effectuate the
 148 purposes of this section.

1 3. 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
 6 adjustment 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) [and that collected and retained by the associa-
 14 tion pursuant to subsection c. of said section 6] ; (4) income collected
 15 by members of the association and by the association from the
 16 residual market equalization charge or flat charges (also referred
 17 to as capitation fees or policy constants but not including premiums
 18 for uninsured motorist or towing coverage, or flattened tax and
 19 expense fees implemented pursuant to section 8 of P. L. 1983, c. 65
 20 (C. 17:29A-37)) levied on a per car and per coverage basis; and
 21 (5) income from investment of moneys collected pursuant to [sub-
 22 sections] paragraphs (1), (2), [and] (3) and (4) of this sub-
 23 section. [Premiums received as a residual] Residual market equal-
 24 ization [charge] charges collected on behalf of the association [net
 25 of commissions paid, and net of all premium taxes,] shall on a
 26 monthly basis be certified to by the carrier and shall be transferred
 27 to the association in accordance with the plan of operation. No
 28 producer commissions or premium taxes shall be paid on, or com-
 29 pany expenses or servicing carrier compensation deducted from,
 30 the residual market equalization charge. All premiums received by
 31 servicing carriers on behalf of the association, net of commissions
 32 paid, net of all premium taxes, and servicing carrier compensation,
 33 shall on a monthly basis be certified to by the carrier and shall be
 34 transferred to the association in accordance with the plan of opera-
 35 tion.

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

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

58 At the end of the first 12 months of the operation of the associa-
59 tion and at least annually thereafter, the board shall also include
60 in its filing with the commissioner a review of the previous year's
61 experience, setting forth the income losses, and reserve require-
62 ments, including any adjustment in previously established reserves
63 for unpaid losses and loss adjustment expenses necessary to make
64 such reserves adequate and actuarially sound, and expenses of the
65 association during the previous year. If a profit is found by the
66 commissioner to have been realized, such amount shall reduce the
67 residual market equalization charge levied on policyholders pur-
68 suant to subsection d. of this section. If a loss is found by the com-
69 missioner to have occurred, such amount shall increase the charge
70 levied on policyholders pursuant to subsection d. of this section.
71 The filing shall be accompanied by such statistics and other in-
72 formation as the commissioner may deem necessary. The commis-
73 sioner shall, within 60 days of such filing, approve or disapprove the
74 filing. Failure to act within 60 days shall be deemed approval of
75 the filing except that the running of the 60-day period shall be
76 tolled by a request for additional information by the commissioner
77 or until the association notifies the commissioner that it will not
78 provide such additional information, together with the reason for

79 not supplying the information. Failure to comply with a reasonable
80 request for information may be a ground for disapproving all or
81 part of the filing. If the commissioner disapproves all or part of
82 the filing, he shall state the reasons for such disapproval, and in-
83 dicate such portion of the filing he approves. Such disapproval shall
84 be subject to review by the Appellate Division of the Superior
85 Court.

86 c. The residual market equalization charge last approved by the
87 commissioner shall continue to apply while the application for the
88 revised charge is being processed by the commissioner pursuant to
89 this section.

90 d. The residual market equalization charge per insured vehicle
91 shall be collected following the effective date of such approval by
92 the insurer from its policyholders, exclusive of principal operators
93 65 years of age or older, on a uniform net direct car year of liability
94 exposure basis and a net direct car year of physical damage ex-
95 posure basis. Any insurer or rating organization making a residual
96 market equalization charge pursuant to this subsection shall, 15
97 days prior to the date of the implementation of the proposed rate
98 adjustment, make an informational filing with the commissioner
99 documenting compliance with the established method of distributing
100 such residual market equalization charge.

101 e. Any insurer licensed to transact automobile insurance after the
102 effective date of this act, shall become a member of the association
103 upon receiving such license and the determination of any such in-
104 surer's participation in the association shall be made as of the date
105 of such membership in the same manner as for all other members
106 of the association.

107 f. *For purposes of this section and any other applicable provision*
108 *of law, the residual market equalization charge shall not be con-*
109 *sidered insurance premium unless otherwise specifically provided*
110 *therein.*

1 4. Section 2 of P. L. 1983, c. 65 (C. 17:29A-34) is amended to read
2 as follows:

3 2. It is the intent and purpose of this act:

- 4 a. To require each insurer to apply on a flat and uniform fee
5 basis per insured automobile Statewide its miscellaneous taxes,
6 licenses, fees and at least 90% of its general expenses and acqui-
7 sition, field supervision, and collection expense portions of the
8 premium, excluding commissions.
- 9 b. To require that each insurer flatten the tax portion of the
10 automobile insurance premium paid pursuant to P. L. 1945, c. 132
11 (C. 54:18A-1 et seq.) and certain assessments made pursuant to

12 sections 4, 6 and 7 of P. L. 1952, c. 174 (C. 39:6-64, 39:6-66 and
13 39:6-67) on a flat uniform fee basis per insured automobile State-
14 wide.

15 c. To establish the New Jersey Merit Rating Plan for convictions
16 for motor vehicle violations and an accident surcharge system for
17 motor vehicles based on criteria set forth in this act.

18 d. To require that automobile insurance rates charged any in-
19 sured shall not exceed certain average rates, as determined in the
20 act.

21 e. To provide that every senior citizen will receive the benefit of
22 at least a 5% rate reduction as a result of this act.

23 f. [To provide a modified prior approval system for private
24 passenger automobile insurance rates as set forth in this act.]
25 (*Deleted by amendment, P. L., c.*)

26 g. To establish a time guideline to assist in speeding the rate
27 review process for all property and casualty lines, including auto-
28 mobile insurance, and to provide that a filing shall be deemed
29 approved unless disapproved by the commissioner within the speci-
30 fied time.

31 h. To provide for higher deductibles on collision and compre-
32 hensive coverage, an increase in uninsured motorist coverage, and
33 underinsured motorist coverage for private passenger automobile
34 insurance.

35 i. To provide the funds necessary to modernize the operations
36 and improve the effectiveness and efficiencies of the Division of
37 Motor Vehicles so as to permit the division to discharge its statu-
38 tory obligations relating to the automobile insurance system.

39 j. To provide by the enactment of all these reforms that auto-
40 mobile insurance will be affordable, available, and more equitable
41 to the motorists of this State, and, in conjunction therewith, to
42 create a study commission to evaluate the automobile insurance
43 market and issue a report and its recommendation thereon within
44 three years of the operative date of this act.

1 5. Section 14 of P. L. 1944, c. 27 (C. 17:29A-14) is amended to
2 read as follows:

3 14. a. With regard to all property and casualty lines, a filer may,
4 from time to time, alter, supplement, or amend its rates, rating-
5 systems, or any part thereof, by filing with the commissioner copies
6 of such alterations, supplements, or amendments together with a
7 statement of the reason or reasons for such alteration, supplement,
8 or amendment, in a manner and with such information as may be
9 required by the commissioner. If such alteration, supplement or
10 amendment shall have the effect of increasing or decreasing rates,

11 the commissioner shall determine whether the rates as altered
12 thereby are reasonable, adequate, and not unfairly discriminatory.
13 If the commissioner shall determine that the rates as so altered are
14 not unreasonably high, or inadequate, or unfairly discriminatory,
15 he shall make an order approving them. If he shall find that the
16 rates as altered are unreasonable, inadequate, or unfairly discrim-
17 inatory, he shall issue an order disapproving such alteration, supple-
18 ment or amendment.

19 b. [With regard to private passenger automobile insurance, in
20 addition to or concurrently with the procedure prescribed for all
21 other property and casualty lines, a filer may, from time to time,
22 alter, supplement or amend its rates, rating systems or any part
23 thereof by making an informational filing with the commissioner of
24 alterations, supplements or amendments together with a statement
25 of the reason or reasons therefor, including but not limited to the
26 claim and expense experience of the individual filer, in accordance
27 with the provisions of subsection d. of this section.] (*Deleted by*
28 *amendment, P. L., c. . . .*)

29 c. If an insurer or rating organization files a proposed alteration,
30 supplement or amendment to its rating system, or any part thereof,
31 which would result in a change in rates, the commissioner may,
32 or upon the request of the filer or the Public Advocate, shall certify
33 the matter for a hearing. The hearing shall, at the commissioner's
34 discretion, be conducted by himself or by the Office of Administra-
35 tive Law, created by P. L. 1978, c. 67 (C. 52:14F-1 et seq.), as a con-
36 tested case. The following requirements shall apply to the hearing:

37 (1) The hearing shall commence within 30 days of the date of
38 the request or decision that a hearing is to be held. The hearing
39 shall be held on consecutive working days. If the hearing is con-
40 ducted by an administrative law judge, the administrative law
41 judge shall submit his findings and recommendations to the com-
42 missioner within 30 days of the close of the hearing. A decision
43 shall be rendered by the commissioner not later than 60 days from
44 the close of the hearing. A filing shall be deemed to be approved
45 unless rejected or modified by the commissioner within the time
46 period provided herein.

47 (2) The commissioner, or the Director of the Office of Admin-
48 istrative Law, as appropriate, shall notify all interested parties,
49 including the Public Advocate on behalf of insurance consumers,
50 of the date set for commencement of the hearing on the date of the
51 filing of the request for a hearing, or within 10 days of the decision
52 that a hearing is to be held.

53 (3) The insurer or rating organization making a filing on which
54 a hearing is held shall bear the costs of the hearing.

55 (4) The commissioner may promulgate rules and regulations
56 (a) to establish standards for the submission of proposed filings,
57 amendments, additions, deletions and alterations to the rating
58 system of filers, which may include forms to be submitted by each
59 filer; and (b) making such other provisions as he deems necessary
60 for effective implementation of this act, except that all requests
61 for information shall be limited to the kinds of detail required by
62 the commissioner under section 5 of P. L. 1944, c. 27 (C. 17:29A-5).

63 d. [(1) With regard to private passenger automobile insurance,
64 the commissioner shall annually promulgate, on or before February
65 1, separately for each coverage, a maximum annualized percentage
66 change in rate level which a filer may implement, in whole or in part,
67 in a single or multiple filings, in connection with the informational
68 filing procedure of subsection b. of this section. The maximum
69 annualized percentage change in rate level shall be based on rates
70 promulgated by the rating bureau which files rates for the greatest
71 number of insurers in the voluntary private passenger automobile
72 insurance market in the State, exclusive of the residual market
73 equalization charges as defined in subsection o. of section 15 of the
74 "New Jersey Automobile Full Insurance Availability Act" (P. L.
75 1983, c. 65; C. 17:30E-3).

76 (2) The maximum annualized percentage change which a filer
77 may implement pursuant to paragraph (1) of this subsection shall
78 be equal to the arithmetic average of the full annualized percentage
79 changes implemented during the preceding three calendar years in
80 which a rate increase was implemented by the rating bureau which
81 files rates for the greatest number of insurers in the voluntary
82 private passenger automobile insurance market in the State. For
83 purposes of this paragraph, the full annualized rate level per-
84 centage change implemented in any one calendar year shall be
85 equal to the sum of all full annualized rate level percentage changes
86 implemented during the same calendar year.

87 (3) Rates filed under this subsection should take effect on the
88 date of the informational filing with the commissioner.] *(Deleted by*
89 *amendment, P. L. , c.)*

1 *6. Section 18 of P. L. 1983, c. 65 (C. 17:30E-6) is amended
2 to read as follows:

3 18. a. Within 90 days after the organizational meeting, unless
4 after the sixtieth day, but not later than the seventieth day, fol-
5 lowing the organizational meeting, the commissioner for good cause
6 grants an additional period not to exceed 30 days, the board shall

7 file with the commissioner for his approval a proposed plan of
8 operation, consistent with the provisions of this act, which shall
9 provide for the prompt and efficient provision of automobile in-
10 surance to qualified applicants. The plan of operation shall provide
11 for, among other matters, methods and means for the collection,
12 investment and disbursement of funds; methods and standards for
13 the establishment of adequate, actuarially sound reserves for un-
14 paid losses, including provision for incurred but not reported
15 losses; reasonable and adequate commissions to producers; pro-
16 tection of the interests of producers of record without a contractual
17 relationship with a voluntary market member company; procedures
18 and methods for issuing policies on behalf of the association; the
19 method for determining and means of assessing the liability of an
20 insurer which ceases to transact automobile insurance in this State
21 with respect to business transacted prior to the effective date of
22 its termination of membership; minimum requirements for the
23 selection and performance of servicing carriers; minimum require-
24 ments for the performance of producers; reasonable and adequate
25 compensation of such servicing carriers; procedures for matching
26 producers with servicing carriers; the methods and procedures
27 for notifying directors of the time and place of board meetings;
28 and the phasing out of the plan for the providing and apportion-
29 ment of automobile insurance pursuant to section 1 of P. L. 1970,
30 c. 215 (C. 17:29D-1), in a manner which will minimize the shifting
31 of insureds among carriers, except that nothing herein shall be
32 interpreted to affect the provisions of P. L. 1968, c. 158 (C. 17:29C-6
33 et seq.).

34 b. The plan of operation adopted by the board shall be submitted
35 to the commissioner for his review and approval. If the commis-
36 sioner approves the proposed plan, he shall certify such approval
37 to the directors and said plan shall take effect on the date certified
38 by the commissioner. If the commissioner disapproves all or any
39 part of the proposed plan of operation, he shall return same to the
40 directors with a statement, in writing, of the reasons for his dis-
41 approval and any recommendations he may wish to make. The
42 directors may accept the commissioner's recommendations or may
43 propose a new plan, which recommendations or plan shall be sub-
44 mitted to the commissioner within 30 days after the return of a
45 disapproved plan to the directors. If the directors do not submit
46 a proposed plan of operation or if the directors do not submit a
47 new plan which is acceptable to the commissioner, or accept the
48 recommendations of the commissioner within 30 days after the
49 disapproval of a proposed plan, the commissioner shall promulgate

50 a plan of operation and certify same to the directors. Any such
51 plan promulgated by the commissioner shall take effect on the date
52 certified by the commissioner.

53 c. The directors of the association may amend the plan of opera-
54 tion at any time, subject to approval by the commissioner.

55 d. The commissioner shall *annually* review the plan of operation
56 [at least once a year] *and, not later than April 1, 1985 and not*
57 *later than April 1 of each year thereafter, shall approve or amend*
58 *the plan of operation; and any amendments to the plan adopted*
59 *by the commissioner pursuant to the annual review shall be bind-*
60 *ing on the board as of the effective date of the amendments. The*
61 *commissioner may review the plan of operation at any other time,*
62 *and may propose amendments to the board. If the board does not*
63 *adopt amendments acceptable to the commissioner within 30 days,*
64 *the commissioner may certify amendments and their effective date*
65 *to the board.*

66 e. Any order of the commissioner with respect to the plan of
67 operation, or any amendment thereto, shall be subject to review by
68 the Appellate Division of the Superior Court.*

1 ***[6.]*** *7.* This act shall take effect immediately and shall be
2 retroactive to January 1, 1984.

63 d. [(1) With regard to private passenger automobile insurance,
 64 the commissioner shall annually promulgate, on or before February
 65 1, separately for each coverage, a maximum annualized percentage
 66 change in rate level which a filer may implement, in whole or in part,
 67 in a single or multiple filings, in connection with the informational
 68 filing procedure of subsection b. of this section. The maximum
 69 annualized percentage change in rate level shall be based on rates
 70 promulgated by the rating bureau which files rates for the greatest
 71 number of insurers in the voluntary private passenger automobile
 72 insurance market in the State, exclusive of the residual market
 73 equalization charges as defined in subsection o. of section 15 of the
 74 "New Jersey Automobile Full Insurance Availability Act" (P. L.
 75 1983, c. 65; C. 17:30E-3).

76 (2) The maximum annualized percentage change which a filer
 77 may implement pursuant to paragraph (1) of this subsection shall
 78 be equal to the arithmetic average of the full annualized percentage
 79 changes implemented during the preceding three calendar years in
 80 which a rate increase was implemented by the rating bureau which
 81 files rates for the greatest number of insurers in the voluntary
 82 private passenger automobile insurance market in the State. For
 83 purposes of this paragraph, the full annualized rate level per-
 84 centage change implemented in any one calendar year shall be
 85 equal to the sum of all full annualized rate level percentage changes
 86 implemented during the same calendar year.

87 (3) Rates filed under this subsection should take effect on the
 88 date of the informational filing with the commissioner.] (*Deleted by*
 89 *amendment, P. L. , c.*)

1 6. This act shall take effect immediately and shall be retroactive
 2 to January 1, 1984.

STATEMENT

The main provisions of this bill are as follows:

(1) All flat charges collected on a per car and per coverage basis on automobile insurance policies with an effective date on or after January 1, 1984 shall be paid to the New Jersey Automobile Full Insurance Underwriting Association (the association). No producer commissions or company expenses, including servicing carrier compensation shall be deducted from any flat charges payable to the association.

(2) The amount of motor vehicle violation surcharges shall be exclusively used to make up any revenue short-fall in the first year of the association's operations. No residual market equalization

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charge shall be assessed in the first year of the association's operations.

(3) No producer commissions, company expenses or servicing carrier compensation, or taxes shall be deducted from the residual market equalization charge.

(4) Motor vehicle violation surcharges to be assessed under, and payable to the association, including those for "DWI" convictions, shall be assessed and collected beginning January 1, 1984 for offenses having occurred within the three year period prior to that date.

(5) It is also made clear that the Commissioner of Insurance may, in consultation with the Director of Motor Vehicles, increase the amount of the violation surcharges, add to the violations that may be surcharged, or reduce the number of violation points that may be surcharged below six.

(6) The right of automobile insurers to make informational filings for rate increases is rescinded. The informational filing provisions allow an automobile insurer to take, without prior departmental approval, an annual rate increase up to the amount of the average annualized rate increase for the three prior years of the rating bureau filing rates for the greatest number of insurers in the voluntary market.

Flat charges (or policy constants) levied on a per car and per coverage basis on automobile insurance policies written in the voluntary and residual markets were established by order of the Commissioner of Insurance to provide companies with additional income to meet the costs of each company's share of the assigned risk market. Creation of a joint underwriting association under which voluntary market insurers no longer have legal responsibility to insure risks they do not wish to insure will transform into a revenue windfall voluntary market flat charges collected on automobile insurance policies issued or renewed on or after January 1, 1984. By requiring that all flat charges collected on all such policies be paid over to the joint underwriting association, section 1 assures that flat charges will continue to be used for their intended purpose.

The residual market equalization charge provisions of this bill prohibit the levying of an equalization charge in the first year of the association's operation. The equalization charge is designed to be a last resort revenue measure assuring that the association is operated on a non-profit/non-loss basis.

The reasons for prohibiting the levy of an equalization charge in the first year of operations are:

(1) The association's November 23, 1983 filing evidently fails

adequately to take into account either the impact of the cost containment measures adopted by the Legislature in 1983 or the substantial rate increases, including an increase in flat charges, afforded insurance companies in the last 24 months;

(2) The association does not have any actuarial experience based on the automobile insurance system to be put into place in 1984 on which to base an equalization charge filing;

(3) The association's filing for 1984 has been filed without supportive documentation and, among other things, fails to provide an accounting of the flat charge per car and per coverage presently in effect; and

(4) The Commissioner of Insurance and Director of Motor Vehicles have ample authority under section 6 of chapter 65 to increase violation surcharges to make up any revenue short-fall experienced by the association.

amended 1.28.84

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STATEMENT

Sec.

Line

The Assembly Amendments:

- (1) limit motor vehicle violations (including "driving while under the influence" offenses) subject to the New Jersey Merit Rating Plan, to offenses occurring on or after January 1, 1983;
- (2) require that surcharges for "driving while under the influence" offenses be collected at the rate of \$1,000.00 per annum for a three year period for each of the first and second offenses, and at the rate of \$1,500.00 per annum for a three period, for a third offense occurring within a three year period. This amendment is in keeping with the original intent of Assembly Bill No. 1696, enacted into law as P.L. 1983, c. 65 ;
- (3) allow a pro rata share of producer commissions and company expenses to be deducted from policy constants required to be transferred to the New Jersey Automobile Full Insurance Underwriting Association on or after January 1, 1984, but no other expenses shall be deductible therefrom;
- (4) require the Commissioner of Insurance, as part of his review of the plan of operation of the New Jersey Automobile

OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATE

CONTACT: CARL GOLDEN

THURSDAY, JANUARY 26, 1984

Governor Thomas H. Kean today signed legislation to prohibit a proposed \$90 automobile insurance surcharge, prohibit annual automatic rate increases by insurance companies and revise the system of surcharges imposed for motor vehicle violations.

The legislation, A-802, was sponsored by Assemblyman Michael Adubato, D-Essex. The legislation generally conforms to the Governor's recommendations contained in a conditional veto issued by the Governor on January 5.

The legislation provides:

*The \$70 policy constant now being charged be used to cover losses incurred in the residual market, either the Joint Underwriting Association (JUA), or, when required, the assigned risk pool. This provision has the effect of negating the need for the \$90 surcharge which had been requested by the JUA.

*Provide for a \$1,000 per year surcharge for three years for drivers convicted of drunken driving dating back to January 1, 1983.

*Prohibit automatic annual rate increases by insurance companies.

The entire system of surcharges, including those imposed on drivers with six or more points, is expected to produce \$54 million in 1984, \$109 million in 1985, and \$166 million in 1986.

"With this legislation now law, New Jersey has taken a major step toward eliminating an inherent unfairness in the auto insurance system; namely, the subsidization of bad drivers by good drivers," Kean said.

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