

17:28-1.1 et al.

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:28-1.1 et al.; 39:6-69 et al.; 39:6A-2 et al.

(\*Automobile Insurance Freedom of Choice and Containment Act\*)

LAWS OF: 1983

CHAPTER: 362

Bill No: A3981

Sponsor(s): Adubato and others

Date Introduced: Sept. 22, 1983

Committee: Assembly: \_\_\_\_\_

Senate: \_\_\_\_\_

Amended during passage: ///

No Substituted for S3696 (not attached since identical to A3981)

Date of Passage:

Assembly: Sept. 26, 1983

Senate: Oct. 4, 1983

Date of Approval: Oct. 4, 1983

Following statements are attached if available:

Sponsor statement:		Yes	//
Committee statement:	Assembly	///	No
	Senate	///	No
Fiscal Note:		///	No
Veto Message:		///	No
Message on Signing:		Yes	//
Following were printed:			
Reports:		///	No
Hearings:		///	No

For background on legislation proposed on subject during previous Legislative sessions:

- 974.90 Hansler, Herman
- A939 An assessment of the New Jersey no-fault automobile reformation act.
- 1982a December, 1982. Trenton, 1982.

(over)

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974.90 New Jersey. Legislature. Assembly. Banking and Insurance Committee.  
A939 Ad Hoc Committee to Study Automobile Insurance Reform.  
1979 Chairman's report. Jan. 3, 1979. Trenton, 1979.

974.90 New Jersey. Legislature. Commission of Study the "New Jersey Automobile  
A939 Reparation Reform Act"  
1977f No-fault automobile insurance reform in New Jersey. Dec. 1977.  
Trenton, 1977.

974.90 New Jersey. Legislature. No-fault Study Commission.  
A939 Public hearing, held 7-21-77 & 7-28-77. Trenton & Elizabeth, 1977.  
1977e

See news clipping file in New Jersey Reference Department under "New Jersey-Insurance  
Auto- No-fault - 1983"

974.90 New Jersey. Legislature. Assembly. Commerce, Banking and Insurance  
A939 Committee.  
1977b Public hearing, held 2-16-77. Trenton, 1977.

974.90 Purola, Laurine.  
A939 Automobile insurance in NJ: the issues, a staff report. Feb. 8, 1977.  
1977c Trenton, 1977.

CHAPTER 362 LAWS OF N. J. 1983  
APPROVED 10-4-83

ASSEMBLY, No. 3981

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 22, 1983

By Assemblymen ADUBATO, KARCHER and DEVERIN

AN ACT concerning automobile insurance, to be known as "The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984," and revising parts of the statutory law.

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

1 1. Section 2 of P. L. 1968, c. 385 (C. 17:28-1.1) is amended to  
2 read as follows:

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

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

15 (2) an amount or limit, subject to such limit for any one  
16 person so injured or killed, of \$30,000.00, exclusive of interest  
17 and costs, on account of injury to or death of more than one  
18 person, in any one accident,

19 under provisions approved by the Commissioner of Insurance, for  
20 payment of all or part of the sums which the insured or his legal

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.

21 representative shall be legally entitled to recover as damages  
 22 from the operator or owner of an uninsured [automobile] motor  
 23 vehicle, or hit and run [automobile] motor vehicle, as defined in  
 24 section 18 of [chapter 174 of the laws of 1952] P. L. 1952, c. 174  
 25 (C. 39:6-78), because of bodily injury, sickness or disease, including  
 26 death resulting therefrom, sustained by the insured, caused by  
 27 accident and arising out of the ownership, maintenance or use of  
 28 such uninsured or hit and run [automobile] motor vehicle any-  
 29 where within the United States or Canada; *except that uninsured*  
 30 *motorist coverage shall provide that in order to recover for non-*  
 31 *economic loss, as defined in section 2 of P. L. 1972, c. 70 (C.*  
 32 *39:6A-2), for accidents to which the benefits of section 4 of that act*  
 33 *apply (C. 39:6A-4) the injured person shall have sustained an*  
 34 *injury or incurred the medical expenses described under the tort*  
 35 *option elected pursuant to section 8 of that act (C. 39:6A-8).*

36 All [such automobile] motor vehicle liability policies shall also  
 37 include coverage for the payment of all or part of the sums which  
 38 persons insured thereunder shall be legally entitled to recover as  
 39 damages from owners or operators of uninsured [automobiles]  
 40 motor vehicles, other than hit and run [automobiles] motor  
 41 vehicles, because of injury to or destruction to the personal prop-  
 42 erty of such insured with a limit in the aggregate for all insureds  
 43 involved in any one accident of \$5,000.00, and subject, for each  
 44 insured, to an exclusion of the first [\$100.00] \$250.00 of such  
 45 damages.

45A b. Uninsured and underinsured motorist coverage [in excess of  
 45B that provided for in subsection a. of this section] shall be provided  
 45C as an option by an insurer to the named insured up to at least  
 45D the following limits: \$250,000.00 each person and \$500,000.00 each  
 46 accident for bodily injury[:]; \$100,000.00 each accident for prop-  
 47 erty damage or \$500,000.00 single limit, subject to an exclusion of  
 48 the first [\$100.00] \$250.00, of such damage to property for each  
 49 accident, except that the limits for uninsured and underinsured  
 50 motorist coverage shall not exceed the insured's [automobile]  
 51 motor vehicle liability policy limits for bodily injury and property  
 52 damage, respectively.

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

56 [For the purpose of this section, "underinsured motorist cov-  
 57 erage" means insurance for damages because of bodily injury and  
 58 property damage resulting from an accident arising out of the  
 59 ownership, maintenance or use of an underinsured automobile. An

60 automobile is underinsured when the sum of the limits of liability  
61 under all bodily injury and property damage liability bonds and  
62 insurance policies available to a person against whom recovery is  
63 sought for bodily injury or property damage is, at the time of the  
64 accident, less than the applicable limits of liability afforded under  
65 the automobile insurance policy held by the person seeking such  
66 recovery.]

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

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

81 *e. For the purpose of this section, (1) "underinsured motorist*  
82 *coverage" means insurance for damages because of bodily injury*  
83 *and property damage resulting from an accident arising out of the*  
84 *ownership, maintenance or use of an underinsured motor vehicle.*  
84A *Underinsured motorist coverage shall not apply to an uninsured*  
85 *motor vehicle. A motor vehicle is underinsured when the sum of the*  
86 *limits of liability under all bodily injury and property damage liabil-*  
87 *ity bonds and insurance policies available to a person against whom*  
88 *recovery is sought for bodily injury or property damage is, at the*  
89 *time of the accident, less than the applicable limits for underinsured*  
90 *motorist coverage afforded under the motor vehicle insurance policy*  
91 *held by the person seeking that recovery. A motor vehicle shall not*  
92 *be considered an underinsured motor vehicle under this section*  
93 *unless the limits of all bodily injury liability insurance or bonds*  
94 *applicable at the time of the accident have been exhausted by pay-*  
95 *ment of settlements or judgments. The limits of underinsured*  
96 *motorist coverage available to an injured person shall be reduced*  
97 *by the amount he has recovered under all bodily injury liability*  
98 *insurance or bonds;*

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

103 (b) a motor vehicle with respect to the ownership, operation,  
 104 maintenance, or use of which there is bodily injury liability insur-  
 105 ance in existence but the liability insurer denies coverage or is  
 106 unable to make payment with respect to the legal liability of its  
 107 insured because the insurer has become insolvent or bankrupt, or  
 108 the Commissioner of Insurance has undertaken control of the  
 109 insurer for the purpose of liquidation; or

110 (c) a hit and run motor vehicle as described in section 18 of P. L.  
 111 1952, c. 174 (C. 39:6-78).

112 "Uninsured motor vehicle" shall not include an underinsured  
 113 motor vehicle; a motor vehicle owned by or furnished for the  
 114 regular use of the named insured or any resident of the same  
 115 household; a self-insurer within the meaning of any financial  
 116 responsibility or simliar law of the state in which the motor vehicle  
 117 is registered or principally garaged; a motor vehicle which is owned  
 118 by the United States or Canada, or a state, political subdivision or  
 119 agency of those governments or any of the foregoing; a land motor  
 120 vehicle or trailer operated on rails or crawler treads; a motor  
 121 vehicle used as a residence or stationary structure and not as  
 122 a vehicle; or equipment or vehicles designed for use principally  
 123 off public roads, except while actually upon public roads.

1 2. Section 10 of P. L. 1952, c. 174 (C. 39:6-70) is amended to  
 2 read as follows:

3 10. Hearing on application for payment of judgment. The court  
 4 shall proceed upon such application, in a summary manner, and,  
 5 upon the hearing thereof, the applicant shall be required to show

6 (a) He is not a person covered with respect to such injury or  
 7 death by any **workmen's** workers' compensation law, or the  
 8 personal representative of such a person,

9 (b) He is not a spouse, parent or child of the judgment debtor,  
 10 or the personal representative of such spouse, parent or child,

11 (c) He was not at the time of the accident a person (1) operating  
 12 or riding in a motor vehicle which he had stolen or participated in  
 13 stealing or (2) operating or riding in a motor vehicle without the  
 14 permission of the owner, and is not the personal representative of  
 15 such a person,

16 (d) He was not at the time of the accident, **operating or riding**  
 17 in an uninsured motor vehicle owned by him or his spouse, parent  
 18 or child, and **the owner or registrant of an uninsured motor vehicle,**  
 19 or was not operating a motor vehicle in violation of an order of  
 20 suspension or revocation,

21 (e) He has complied with all of the requirements of section 5,

22 (f) The judgment debtor at the time of the accident was not

23 insured under a policy of automobile liability insurance under the  
24 terms of which the insurer is liable to pay in whole or in part the  
25 amount of the judgment,

26 (g) He has obtained a judgment as set out in section 9 of this act,  
27 stating the amount thereof and the amount owing thereon at the  
28 date of the application,

29 (h) He has caused to be issued a writ of execution upon said  
30 judgment and the sheriff or officer executing the same has made a  
31 return showing that no personal or real property of the judgment  
32 debtor, liable to be levied upon in satisfaction of the judgment,  
33 could be found or that the amount realized on the sale of them or  
34 of such of them as were found, under said execution, was insuffi-  
35 cient to satisfy the judgment, stating the amount so realized and  
36 the balance remaining due on the judgment after application  
37 thereon of the amount realized,

38 (i) He has caused the judgment debtor to make discovery under  
39 oath, pursuant to law, concerning his personal property and as to  
40 whether such judgment debtor was at the time of the accident  
41 insured under any policy or policies of insurance described in sub-  
42 paragraph (f) of this section,

43 (j) He has made all reasonable searches and inquiries to ascer-  
44 tain whether the judgment debtor is possessed of personal or real  
45 property or other assets, liable to be sold or applied in satisfaction  
46 of the judgment,

47 (k) By such search he has discovered no personal or real prop-  
48 erty or other assets, liable to be sold or applied or that he has  
49 discovered certain of them, describing them, owned by the judgment  
50 debtor and liable to be so sold and applied and that he has taken  
51 all necessary action and proceedings for the realization thereof  
52 and that the amount thereby realized was insufficient to satisfy the  
53 judgment, stating the amount so realized and the balance remaining  
54 due on the judgment after application of the amount realized,

55 (l) The application is not made by or on behalf of, any insurer  
56 by reason of the existence of a policy of insurance, whereby the  
57 insurer is liable to pay, in whole or in part, the amount of the  
58 judgment and that no part of the amount to be paid out of the  
59 fund is sought in lieu of making a claim or receiving a payment  
60 which is payable by reason of the existence of such a policy of  
61 insurance and that no part of the amount so sought will be paid  
62 to an insurer to reimburse or otherwise indemnify the insurer in  
63 respect of any amount paid or payable by the insurer by reason of  
64 the existence of such a policy of insurance,

65 (m) Whether or not he has recovered a judgment in an action.

66 against any other person against whom he has a cause of action in  
 67 respect of his damages for bodily injury or death or damage to  
 68 property arising out of the accident and what amounts, if any, he  
 69 has received by way of payments upon the judgment, or by way of  
 70 settlement of such cause of action, in whole or in part, from or on  
 71 behalf of such other person,

72 *(n) In order to recover for noneconomic loss, as defined in sec-*  
 73 *tion 2 of P. L. 1972, c. 70 (C. 39:6A-2) for accidents to which the*  
 74 *benefits of sections 7 and 10 of P. L. 1972, c. 198 (C. 39:6-86.1 and*  
 75 *C. 39:6-86.4) apply, the injured person shall have sustained an*  
 76 *injury or incurred the medical expenses described in subsection a.*  
 77 *of section 8 of P. L. 1972, c. 70 (C. 39:6A-8).*

78 Whenever the applicant satisfies the court that it is not possible  
 79 to comply with one or more of the requirements enumerated in sub-  
 80 paragraphs (h) and (i) of this section and that the applicant has  
 81 taken all reasonable steps to collect the amount of the judgment  
 82 or the unsatisfied part thereof and has been unable to collect the  
 83 same, the court may dispense with the necessity for complying with  
 84 such requirements.

85 The board or any insurer to which the action has been assigned  
 86 may appear and be heard on application and show cause why the  
 87 order should not be made.

1 2.1 Section 18 of P. L. 1952, c. 174 (C. 39:6-78) is amended to  
 2 read as follows:

3 18. When the death of, or personal injury to, any person arises  
 4 out of the ownership, maintenance or use of a motor vehicle in this  
 5 State on or after April 1, 1955, but the identity of the motor vehicle  
 6 and of the operator and owner thereof cannot be ascertained or it  
 7 is established that the motor vehicle was at the time said accident  
 8 occurred, in the possession of some person other than the owner  
 9 without the owner's consent and that the identity of such person  
 10 cannot be ascertained, any qualified person who would have a  
 11 cause of action against the operator or owner or both in respect to  
 12 such death or personal injury may bring an action therefor against  
 13 the director in any court of competent jurisdiction, but no judgment  
 14 against the director shall be entered in such an action unless the  
 15 court is satisfied, upon the hearing of the action, that—

16 (a) The claimant has complied with the requirements of section 5,

17 (b) The claimant is not a person covered with respect to such  
 18 injury or death by any **[workmen's]** *workers'* compensation law,  
 19 or the personal representative of such a person,

20 (c) The claimant was not at the time of the accident **[operating**  
 21 or riding in an uninsured motor vehicle owned by him or his spouse,



22 parent or child, and] *the owner or registrant of an uninsured motor*  
 23 *vehicle, or was not operating a motor vehicle in violation or an*  
 24 *order of suspension or revocation,*

25 (d) The claimant has a cause of action against the operator or  
 26 owner of such motor vehicle or against the operator who was  
 27 operating the motor vehicle without the consent of the owner of  
 28 the motor vehicle,

29 (e) All reasonable efforts have been made to ascertain the  
 30 identity of the motor vehicle and of the owner and operator thereof  
 31 and either that the identity of the motor vehicle and the owner and  
 32 operator thereof cannot be established, or that the identity of the  
 33 operator, who was operating the motor vehicle without the owner's  
 34 consent, cannot be established,

35 (f) The action is not brought by or on behalf of an insurer under  
 36 circumstances set forth in paragraph (1) of section 10.

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

3 7. When any person qualified to receive payments under the  
 4 provisions of the "Unsatisfied Claim and Judgment Fund Law,"  
 5 suffers bodily injury or death *through being struck, as a pedestrian,*  
 6 *as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2), by a motor*  
 7 *vehicle, including an automobile as defined in section 2 of P. L.*  
 8 *1972, c. 70 (C. 39:6A-2), and a motorcycle, or by an object propelled*  
 9 *therefrom, or arising out of [the ownership, maintenance, operation*  
 10 *or use of] an accident while occupying, entering into, alighting*  
 11 *from, or using an automobile, [as defined in P. L. 1972, c. 70,]*  
 12 *registered or principally garaged in this State for which personal*  
 13 *injury protection benefits under the "New Jersey Automobile*  
 14 *Reparation Reform Act", P. L. 1972, c. 70 (C. 39:6A-1 et seq.), or*  
 15 *section 19 of this 1983 amendatory and supplementary act, would*  
 16 *be payable to such person if personal injury protection coverage*  
 17 *were in force and the damages resulting from such [automobile]*  
 18 *accident or deaths are not satisfied due to the personal injury*  
 19 *protection coverage not being in effect with respect to such*  
 20 *[automobile] accident, then in such event the Unsatisfied Claim*  
 21 *and Judgment Fund shall provide, under the following conditions,*  
 21A *the following benefits:*

22 a. Medical expense benefits. Payment of all reasonable medical  
 23 expenses incurred as a result of personal injury sustained in [an  
 24 automobile] *a motor vehicle* accident. In the event of death,  
 25 payment shall be made to the estate of the decedent.

26 b. Income continuation benefits. The payment of the loss of  
 27 income of an income producer as a result of bodily injury disability,

28 subject to a maximum weekly payment of \$100.00, per week. Such  
29 sums shall be payable during the life of the injured person and  
30 shall be subject to an amount or limit of \$5,200.00, on account of  
31 injury to any one person, in any one accident, *except that in no case*  
32 *shall income continuation benefits exceed the net income normally*  
33 *earned during the period in which the benefits are payable.*

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

43 d. **[Survivor]** *Death* benefits. In the event of the death of an  
44 income producer as a result of injuries sustained in an accident  
45 entitling such person to benefits under section 7 of this act, the  
46 maximum amount of benefits which could have been paid to the  
47 income producer, but for his death, under section 7 b. shall be paid  
48 to the surviving spouse, or in the event there is no surviving spouse,  
49 then to the surviving children, and in the event there are no  
50 surviving spouse or surviving children, then to the estate of the  
51 income producer.

52 In the event of the death of one performing essential services as  
53 a result of injuries sustained in an accident entitling such person to  
54 benefits under section 7 c. of this act, the maximum amount of  
55 benefits which could have been paid such person, under section 7 c.,  
56 shall be paid to the person incurring the expense of providing such  
57 essential services.

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

62 Provided, however, that no benefits shall be paid under this sec-  
63 tion unless the person applying for benefits has demonstrated[ ]:

- 64 1. He is not a person covered with respect to such injury or  
65 death by any workmen's compensation law, or the personal  
66 representative of such a person;
- 67 2. He is not a spouse, parent or child of the uninsured motorist  
68 referred to in 4. of this section, or the personal representative of  
69 such spouse, parent or child;
- 70 3. He was not, at the time of the accident, a person:

71 (a) Operating or riding in a motor vehicle which he had  
72 stolen or participated in stealing; or

73 (b) Operating a motor vehicle without the permission of the  
74 owner, and is not the personal representative of such a person,

75 4. He was not, at the time of the accident, operating or riding in  
76 an uninsured motor vehicle owned by him or his spouse, parent or  
77 child, and was not operating a motor vehicle in violation of an  
78 order of suspension or revocation; and

79 5. He is not an insurer, and is not bringing this action on behalf  
80 of any insurer] *that he is not disqualified by reason of the*  
81 *provisions of subsections (a), (c), (d) or (1) of section 10 of*  
82 *P. L. 1952, c. 174 (C. 39:6-70), or any other provision of law.*

1 4. Section 8 of P. L. 1972, c. 198 (C. 39:6-86.2) is amended to  
2 read as follows:

3 8. The benefits provided in sections 7 and 10, shall be payable as  
4 loss accrues, upon written notice of such loss including reasonable  
5 proof of such loss [and without regard to collateral sources], except  
6 that benefits collectible under:

7 a. Employees temporary disability benefit statutes and medicare  
8 provided under Federal law[, ] shall be deducted from the benefits  
9 collectible under sections 7 and 10; and

10 b. *Any hospital, medical or dental benefit plan or policy coverage*  
11 *with benefits similar to those provided under section 7, in an amount*  
12 *not to exceed \$2,500.00 for any one claim for any one person, shall*  
13 *be deducted from the benefits collectible under sections 7 and 10.*

14 *Evidence of benefit payments collectible under subsections a. and*  
15 *b. of this section shall not be admissible in a civil action by the*  
16 *claimant for recovery of damages for bodily injury from the fund.*

1 5. Section 10 of P. L. 1972, c. 198 (C. 39:6-86.4) is amended to  
2 read as follows:

3 10. When the death of or personal injury to any person arises out  
4 of the ownership, maintenance or use of an automobile in this State  
5 on or after the effective date of this act, but the identity of the  
6 automobile and of the operator and owner thereof cannot be  
7 ascertained or it is established that the automobile was at the time  
8 said accident occurred, in the possession of some person other  
9 than the owner without the owner's consent and that the identity  
10 of such person cannot be ascertained, any person qualified to  
11 receive payments under the provisions of the "Unsatisfied Claim  
12 and Judgment Fund Law" shall be entitled to receive payment  
13 under sections 7 and 10 of this act, provided that:

14 a. The claimant is not a person covered with respect to such  
15 injury or death by any [workmen's] workers' compensation law, or  
16 the personal representative of such a person,

17 b. The claimant was not at the time of the accident [operating or  
 18 riding in an uninsured motor vehicle owned by him or his spouse,  
 19 parent or child, and] *the owner or registrant of an uninsured motor*  
 20 *vehicle, or was not operating a motor vehicle in violation of an order*  
 21 *of suspension or revocation,*

22 c. The claimant was not at the time of the accident:

23 (1) A person operating or riding in a motor vehicle which he  
 24 had stolen or participated in stealing, or

25 (2) Operating a motor vehicle without the permission of the  
 26 owner, and is not the personal representative of such a person,

27 d. All reasonable efforts have been made to ascertain the identity  
 28 of the motor vehicle and of the owner and operator thereof and  
 29 either that the identity of the motor vehicle and the owner and  
 30 operator thereof cannot be established, or that the identity of the  
 31 operator, who was operating the motor vehicle without the owner's  
 32 consent, cannot be established, or

33 e. [The claimant is not a spouse, parent or child of the uninsured  
 34 motorist referred to in subsection b. of this section, or the personal  
 35 representative of such spouse, parent or child, or] (*Deleted by*  
 36 *amendment, P. L. . . . , c. . . .*)

37 f. The action or claim is not brought by or on behalf of an insurer:

1 6. Section 2 of P. L. 1972, c. 70 (C. 39:6A-2) is amended to read  
 2 as follows:

3 2. Definitions. As used in this act:

4 a. "Automobile" means a private passenger automobile of a  
 5 private passenger or station wagon type that is owned or hired  
 6 and is neither used as a public or livery conveyance for passengers  
 7 nor rented to others with a driver; and a motor vehicle with a pick-  
 8 up body, a delivery sedan, *a van*, or a panel truck or a camper type  
 9 vehicle used for recreational purposes owned by an individual or  
 10 by husband and wife who are residents of the same household, not  
 11 customarily used in the occupation, profession or business of the  
 12 insured other than farming or ranching. An automobile owned by a  
 13 farm family copartnership or corporation which is principally  
 14 garaged on a farm or ranch and otherwise meets the definitions  
 15 contained in this section, shall be considered a private passenger  
 16 automobile owned by two or more relatives resident in the same  
 17 household.

18 b. "Essential services" means those services performed not for  
 19 income which are ordinarily performed by an individual for the  
 20 care and maintenance of such individual's family or family house-  
 21 hold.

22 c. "Income" means salary, wages, tips, commissions, fees and  
 23 other earnings derived from work or employment.

24 d. "Income producer" means a person, who at the time of the  
25 accident causing personal injury or death, was in an occupational  
26 status, earning or producing income.

27 e. "Medical expenses" means expenses for medical treatment,  
28 surgical treatment, dental treatment, professional nursing services,  
29 hospital [services] expenses, rehabilitation services, X-ray and  
30 other diagnostic services, prosthetic devices, ambulance services,  
31 medication and other reasonable and necessary expenses resulting  
32 from the treatment prescribed by persons licensed to practice  
33 medicine and surgery pursuant to R. S. 45:9-1 et seq., dentistry  
34 pursuant to R. S. 45:6-1 et seq., psychology pursuant to P. L. 1966,  
35 c. 282 (C. 45:14B-1 et seq.) or chiropractic pursuant to P. L. 1953,  
36 c. 233 (C. 45:9-41.1 et seq.) or by persons similarly licensed in other  
37 states and nations or any nonmedical remedial treatment rendered  
38 in accordance with a recognized religious method of healing.

39 f. "Hospital expenses" means:

40 (1) The cost of a semiprivate room, based on rates customarily  
41 charged by the institution in which the recipient of benefits is  
42 confined;

43 (2) The cost of board, meals and dietary services;

44 (3) The cost of other hospital services, such as operating room;  
45 medicines, drugs, anesthetics, treatments with X-ray, radium and  
46 other radioactive substances; laboratory tests, surgical dressings  
47 and supplies; and other medical care and treatment rendered by  
48 the hospital;

49 (4) The cost of treatment by a physiotherapist;

50 (5) The cost of medical supplies such as prescribed drugs and  
51 medicines; blood and blood plasma; artificial limbs and eyes;  
52 surgical dressings, casts, splints, trusses, braces, crutches, rental  
53 of wheelchair, hospital bed or iron lung; oxygen and rental of equip-  
54 ment for its administration.

55 g. "Named insured" means the person or persons identified as  
56 the insured in the policy and, if an individual, his or her spouse, *if*  
57 *the spouse is named as a resident of the same household, except that*  
58 *if the spouse ceases to be a resident of the household of the named*  
59 *insured, coverage shall be extended to the spouse for the full term*  
60 *of any policy period in effect at the time of the cessation of*  
61 *residency.*

62 h. "Pedestrian" means any person who is not occupying, *enter-*  
63 *ing into, or alighting from* a vehicle propelled by other than mus-  
64 cular power and designed primarily for use on highways, rails and  
65 tracks [and includes any person who is entering into or alighting  
66 from such a vehicle].

67 i. "Noneconomic loss" means pain, suffering and inconvenience.  
 68 j. "Motor vehicle" means a motor vehicle as defined in R. S.  
 69 39:1-1, exclusive of an automobile as defined in subsection a. of this  
 70 section.

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

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

4 Every automobile liability insurance policy insuring an auto-  
 5 mobile as defined in this act against loss resulting from liability  
 6 imposed by law for bodily injury, death and property damage  
 7 sustained by any person arising out of ownership, operation, main-  
 8 tenance or use of an automobile shall provide [additional] *personal*  
 9 *injury protection* coverage, as defined herein below, under provi-  
 10 sions approved by the Commissioner of Insurance, for the payment  
 11 of benefits without regard to negligence, liability or fault of any  
 12 kind, to the named insured and members of his family residing in  
 13 his household who sustained bodily injury as a result of an acci-  
 14 dent [involving] *while occupying, entering into, alighting from or*  
 15 *using* an automobile, or, as a pedestrian, being struck by an auto-  
 16 *mobile*, to other persons sustaining bodily injury while occupying,  
 17 *entering into, alighting from or using* the automobile of the named  
 18 insured [or while using such automobile], with the permission of  
 19 the named insured, and to pedestrians, sustaining bodily injury  
 20 caused by the named insured's automobile or struck by an object  
 21 propelled by or from such automobile.

22 "[Additional] *Personal injury protection coverage*" means and  
 23 includes:

24 a. Medical expense benefits. Payment of all reasonable medical  
 25 expenses incurred as a result of personal injury sustained in an  
 26 automobile accident. In the event of death, payment shall be made  
 27 to the estate of the decedent. In the event benefits paid by an  
 28 insurer, pursuant to this subsection are in excess of \$75,000.00 on  
 29 account of personal injury to any one person in any one accident,  
 30 such excess shall be paid by the insurer in consultation with the  
 31 Unsatisfied Claim and Judgment Fund Board and shall be reim-  
 32 bursable to the insurer from the Unsatisfied Claim and Judgment  
 33 Fund pursuant to section 2 of [this act] *P. L. 1977, c. 310 (C.*  
 34 *39:6-73.1)*.

35 b. Income continuation benefits. The payment of the loss of  
 36 income of an income producer as a result of bodily injury disability,  
 37 subject to a maximum weekly payment of \$100.00, per week. Such  
 38 sum shall be payable during the life of the injured person and  
 39 shall be subject to an amount or limit of \$5,200.00, on account of

40 injury to any one person, in any one accident, *except that in no*  
 41 *case shall income continuation benefits exceed the net income*  
 42 *normally earned during the period in which the benefits are payable.*

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

52 d. **[Survivor]** *Death* benefits. In the event of the death of an  
 53 income producer as a result of injuries sustained in an accident  
 54 entitling such person to benefits under section 4 of this act, the  
 55 maximum amount of benefits which could have been paid to the  
 56 income producer, but for his death, under section 4 b. shall be paid  
 57 to the surviving spouse, or in the event there is no surviving spouse,  
 58 then to the surviving children, and in the event there are no sur-  
 59 viving spouse or surviving children, then to the estate of the  
 60 income producer.

61 In the event of the death of one performing essential services as  
 62 a result of injuries sustained in an accident entitling such person  
 63 to benefits under section 4 c. of this act, the maximum amount of  
 64 benefits which could have been paid such person, under section 4 c.,  
 65 shall be paid to the person incurring the expense of providing such  
 66 essential services.

67 e. Funeral expenses benefits. All reasonable funeral, burial and  
 68 cremation expenses, subject to a maximum benefit of \$1,000.00, on  
 69 account of the death to any one person in any one **[account]** *acci-*  
 70 *dent* shall be payable to decedent's estate.

71 Benefits payable under this section shall:

72 (1) *Be subject to any deductibles or exclusions elected by the*  
 73 *policyholder pursuant to section 13 of this 1983 amendatory and*  
 74 *supplementary act;*

75 (2) *Not be assignable [or], except to a provider of service bene-*  
 76 *fits under this section, nor subject to levy, execution, attachment*  
 77 *or other process for satisfaction of debts.*

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

3 5. Payment of personal injury protection coverage benefits.

4 a. An insurer may require written notice to be given as soon as  
 5 practicable after an accident involving an automobile with respect

6 to which the policy affords personal injury protection coverage  
7 benefits required by this act.

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

37 For the purpose of calculating the extent to which any benefits  
38 are overdue, payment shall be treated as being made on the date  
39 a draft or other valid instrument which is equivalent to payment  
40 was placed in the United States mail in a properly addressed,  
41 postpaid envelope, or, if not so posted, on the date of delivery.

42 c. All overdue payments shall bear [simple] interest at the  
43 percentage [rate] of [10% per annum] *interest prescribed in the*  
44 *Rules Governing the Courts of the State of New Jersey for judg-*  
45 *ments, awards and orders for the payment of money. All automobile*  
46 *insurers shall provide any claimant with the option of submitting*  
47 *a dispute under this section to binding arbitration. Arbitration pro-*  
48 *ceedings shall be administered and subject to procedures established*  
49 *by the American Arbitration Association. If the claimant prevails*



50 in the arbitration proceedings, the insurer shall pay all the costs  
 51 of the proceedings, including reasonable attorney's fees to be  
 52 determined in accordance with a schedule of hourly rates for  
 53 services performed to be prescribed by the Supreme Court of  
 54 New Jersey.

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

3 6. Collateral source. The benefits provided in section 4 [a., b., c.,  
 4 d., and e.] and section 10, shall be payable as loss accrues, upon  
 5 written notice of such loss and without regard to collateral sources,  
 6 except that benefits, collectible under [workmen's] workers' com-  
 7 pensation insurance, employees' temporary disability benefit sta-  
 8 tutes medicare provided under Federal law, and benefits, in fact  
 9 collected, that are provided under Federal law to active and retired  
 10 military personnel shall be deducted from the benefits collectible  
 11 under section 4 [a., b., c., d., and e.] and section 10.

12 If an insurer has paid those benefits and the insured is entitled  
 13 to, but has failed to apply for, workers' compensation benefits or  
 14 employees' temporary disability benefits, the insurer may immedi-  
 15 ately apply to the provider of workers' compensation benefits or of  
 16 employees' temporary disability benefits, for a reimbursement of  
 17 any section 4 and section 10 benefits it has paid.

1 10. Section 7 of P. L. 1972, c. 70 (C. 39:6A-7) is amended to  
 2 read as follows:

3 7. Exclusions. a. Insurers may exclude a person from benefits  
 4 under section 4 [a., b., c., d., and e.] and section 10 where such per-  
 5 son's conduct contributed to his personal injuries or death occurred  
 6 in any of the following ways:

7 [a.] (1) while committing a high misdemeanor or felony or  
 8 seeking to avoid lawful apprehension or arrest by a police officer; or

9 [b.] (2) while acting with specific intent of causing injury or  
 10 damage to himself or others.

11 b. An insurer may also exclude from section 4 and section 10  
 12 benefits any person having incurred injuries or death, who, at the  
 13 time of the accident:

14 (1) was the owner or registrant of an automobile registered or  
 15 principally garaged in this State that was being operated without  
 16 personal injury protection coverage;

17 (2) was occupying or operating an automobile without the per-  
 18 mission of the owner or other named insured.

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

3 12. Inadmissibility of evidence of losses collectible under per-  
 4 sonal injury protection coverage. [Evidence] Except as may be

5 *required in an action brought pursuant to section 20 of this 1983*  
 6 *amendatory and supplementary act, evidence of the amounts col-*  
 7 *lectible or paid pursuant to sections 4 and 10 of this act to an in-*  
 8 *jured person, including the amounts of any deductibles or exclu-*  
 9 *sions elected by the named insured pursuant to section 13 of this*  
 10 *1983 amendatory and supplementary act otherwise compensated,*  
 11 *is inadmissible in a civil action for recovery of damages for bodily*  
 12 *injury by such injured person.*

13 *The court shall instruct the jury that, in arriving at a verdict*  
 14 *as to the amount of the damages for noneconomic loss to be recov-*  
 15 *ered by the injured person, the jury shall not speculate as to the*  
 16 *amount of the medical expense benefits paid or payable under sec-*  
 17 *tion 4 to the injured person.*

18 *Nothing in this section shall be construed to limit the right of*  
 19 *recovery, against the tortfeasor, of uncompensated economic loss*  
 20 *sustained by the injured party.*

1 12. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is sup-  
 2 plemented as follows:

3 *Primacy of coverages. The personal injury protection coverage*  
 4 *of the named insured shall be the primary coverage for the named*  
 5 *insured and any resident relative in the named insured's house-*  
 6 *hold who is not a named insured under an automobile insurance*  
 7 *policy of his own. No person shall recover personal injury pro-*  
 8 *tection benefits under more than one automobile insurance policy*  
 9 *for injuries sustained in any one accident.*

1 13. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is sup-  
 2 plemented as follows:

3 *Personal injury protection coverage deductibles, exclusions and*  
 4 *setoffs. With respect to personal injury protection coverage pro-*  
 5 *vided on an automobile in accordance with section 4 of P. L. 1972,*  
 6 *c. 70 (C. 39:6A-4), the automobile insurer shall, at appropriately*  
 7 *reduced premiums, provide the following coverage options:*

8 a. *medical expense benefit deductibles in amounts of \$500.00,*  
 9 *\$1,000.00 and \$2,500.00 for any one accident for any one person;*

10 b. *the option to exclude all benefits offered under subsections b.,*  
 11 *c., d., and e. of section 4;*

12 c. *a setoff option entitling an automobile insurer paying medical*  
 13 *expense benefits under section 4 to reimbursement from, and a lien*  
 14 *on, any recovery for noneconomic loss by an injured party pursuant*  
 15 *to an arbitration award, judicial judgment or voluntary settlement*  
 16 *for the amount of the medical expense benefits paid, not to exceed*  
 17 *20% of the amount of the award, judgment or settlement, including*  
 18 *recoveries under uninsured and underinsured motorist coverage;*

19 except that if, at the time of the award, judgment or settlement,  
20 the amount of medical expense benefits does not exceed 20% but  
21 additional expense benefits of an indeterminate amount are antici-  
22 pated, the amount of the setoff shall be 20% of the award, judg-  
23 ment or settlement, with the difference between the value of the  
24 20% and the amount of medical expense benefits previously paid  
25 to be placed in an interest bearing trust account for use to indemnify  
26 the insurer paying the medical expense benefits, as the benefits are  
27 paid. Attorney's contingent fees shall be computed on the amount  
28 of the award, judgment or settlement, less the amount of the setoff,  
29 which setoff shall be, if the medical expense benefit claim of the  
30 injured person, as of the date of the award, judgment or settle-  
31 ment is made, is: (1) closed, the amount of medical expense bene-  
32 fits paid, not to exceed 20% of the award, judgment or settlement,  
33 or (2) open, 20% of the award, judgment or settlement. Under a  
34 contingent fee arrangement, the attorney shall also be entitled to  
35 reimbursement out of the amount of the setoff for costs actually  
36 incurred in the institution and prosecution of the claim or action,  
37 which amount shall in no instance exceed 10% of the amount of  
38 the setoff, in a manner to be prescribed by the Supreme Court.  
39 Nothing in this subsection shall be construed to prohibit an attorney  
40 representing the injured party from recovering from the insurer  
41 providing personal injury protection benefits the reasonable cost  
42 of any legal services rendered to that insurer primarily in con-  
43 junction with the setoff reimbursement.

44 a deductible, exclusion or setoff elected by the named insured in  
45 accordance with this section shall apply only to the named insured  
46 and any resident relative in the named insured's household, and  
47 not to any other person eligible for personal injury protection  
48 benefits required to be provided in accordance with section 4.

49 No insurer or health provider providing benefits to an insured  
50 who has elected a deductible pursuant to subsection a. of this sec-  
51 tion shall have a right of subrogation for the amount of benefits  
52 paid pursuant to a deductible elected thereunder.

53 Where a trust account has been established in accordance with  
54 subsection c. of this section, any remaining principal and all accrued  
55 interest in the trust account at the time the final payment of medi-  
56 cal expense benefits is made shall be paid to the party to whom the  
57 award, judgment or settlement was made, or to his estate.

58 The Commissioner of Insurance shall adopt rules and regulations  
59 to effectuate the purposes of this section.

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

3 8. Tort exemption; limitation on the right to [damages] non-  
4 economic loss.

5 One of the following two tort options shall be elected, in accor-  
6 dance with section 14.1 of this 1983 amendatory and supplementary  
7 act, by any named insured required to maintain personal injury  
8 protection coverage pursuant to section 4 of P. L. 1972, c. 70 (C.  
9 39:6A-4):

10 a. Every owner, registrant, operator or occupant of an auto-  
11 mobile to which section 4, personal injury protection coverage,  
12 regardless of fault, applies, and every person or organization  
13 legally responsible for his acts or omissions, is hereby exempted  
14 from tort liability for [damages] noneconomic loss to [any] a  
15 person who is subject to this subsection and who is either a person  
16 who is required to maintain the coverage mandated by this act,  
17 or [to any] is a person who has a right to receive benefits under  
18 section 4 of this act as a result of bodily injury, arising out of the  
19 ownership, operation, maintenance or use of such automobile in  
20 this State, if the bodily injury, is confined solely to the soft tissue  
21 of the body and the medical expenses incurred or to be incurred  
22 by such injured person or the equivalent value thereof for the  
23 reasonable and necessary treatment of such bodily injury, is less  
24 than \$200.00, exclusive of hospital expenses, X-rays and other  
25 diagnostic medical expenses. There shall be no exemption from  
26 tort liability if the injured party has sustained death, permanent  
27 disability, permanent significant disfigurement, permanent loss of  
28 any bodily function or loss of a body member in whole or in part,  
29 regardless of the right of any person to receive benefits under  
30 section 4 of this act. Bodily injury confined solely to the soft tissue,  
31 for the purpose of this section means, injury in the form of sprains,  
32 strains, contusions, lacerations, bruises, hematomas, cuts, abrasions,  
33 scrapes, scratches, and tears confined to the muscles, tendons,  
34 ligaments, cartilages, nerves, fibers, veins, arteries and skin of the  
35 human body; or

36 b. As an alternative to the basic tort option specified in sub-  
37 section a. of this section, every owner, registrant, operator, or occu-  
38 pant of an automobile to which section 4 of P. L. 1972, c. 70 (C.  
39 39:6A-4) applies, and every person or organization legally respon-  
40 sible for his acts or omissions, is hereby exempted from tort lia-  
41 bility for noneconomic loss to a person who is subject to this sub-  
42 section and who is either a person who is required to maintain the  
43 coverage mandated by P. L. 1972, c. 70 (C. 39:6A-1 et seq.) or is  
44 a person who has a right to receive benefits under section 4 of that  
45 act (C. 39:6A-4), as a result of bodily injury, arising out of the

46 ownership, operation, maintenance or use of such automobile in  
47 this State, if the medical expenses incurred or to be incurred by  
48 that injured person, or the equivalent value thereof, for the reason-  
49 able and necessary treatment of the bodily injury, is less than  
50 \$1,500.00, which amount shall be adjusted annually on January 1  
51 of each year following the operative date of this act by the Com-  
52 missioner of Insurance to reflect increases or decreases in the na-  
53 tional Consumer Price Index for the professional services com-  
54 ponent of medical care services, all urban consumers, U. S. city  
55 average, and which amount shall be exclusive of hospital expenses,  
56 X-rays and other diagnostic medical expenses. The adjusted rate  
57 shall apply to any claim for noneconomic loss arising from any  
58 automobile accident occurring on or after the adjustment date.  
59 There shall be no exemption from tort liability if the injured party  
60 has sustained death, permanent disability, permanent significant  
61 disfigurement, permanent loss of any bodily function or loss of a  
62 body member in whole or in part, regardless of the right of any  
63 person to receive benefits under section 4 of P. L. 1972, c. 70 (C.  
64 39:6A-4).

65 The tort option provisions of subsection a. of this section shall  
66 also apply to the right to recover for noneconomic loss of any  
67 person eligible for benefits pursuant to section 4 of P. L. 1972, c. 70  
68 (C. 39:6A-4) but who is not required to maintain personal injury  
69 protection coverage and is not an immediate family member, as  
70 defined in section 14.1 of this 1983 amendatory and supplementary  
71 act, under an automobile insurance policy.

72 The tort option provisions of subsection b. of this section shall  
73 also apply to the right to recover for noneconomic loss of any  
74 person who is required but fails to maintain personal injury pro-  
75 tection coverage mandated by P. L. 1972, c. 70 (C. 39:6A-1 et seq.)  
76 at the time of accident.

77 The tort option provisions of subsection b. of this section shall  
78 remain inoperative until July 1, 1984, and shall apply to accidents  
79 occurring on or after that date.

80 If any provision of subsection b. of this section shall be deemed  
81 to be unconstitutional, the provisions of the entire subsection shall  
82 be deemed null and void, and without further effect, but the deci-  
83 sion of the court shall not affect the validity of any other provision  
84 of this act.

1 14.1. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is  
2 amended to read as follows:

3 Election of tort option. a. Election of a tort option pursuant to  
4 section 8 of P. L. 1972, c. 70 (C. 39:6A-8) shall be in writing by

5 the named insured on a form approved by the Commissioner of  
6 Insurance. The tort option elected shall apply to the named insured  
7 and any immediate family member residing in the named insured's  
8 household. "Immediate family member" means the spouse of the  
9 named insured and any child of the named insured or spouse  
10 residing in the named insured's household who is not a named  
11 insured under another automobile insurance policy.

12 b. If the named insured fails to elect, in writing, any of the tort  
13 options offered pursuant to section 8 of P. L. 1972, c. 70 (C.  
14 39:6A-8), the named insured shall be deemed to elect the tort  
15 option of subsection a. of that section 8. No new automobile policy  
16 issued on or after July 1, 1984 in this State shall be issued by an  
17 insurer unless the named insured has elected one of the tort options  
18 provided in section 8.

19 c. The tort option elected by a named insured shall continue in  
20 force as to subsequent renewal or replacement policies until the  
21 insurer or its authorized representative receives a properly ex-  
22 ecuted form electing the other tort option.

23 d. The tort option elected by the named insured shall apply to  
24 all automobiles owned by the named insured and to any immediate  
25 family member who is not a named insured under another auto-  
26 mobile insurance policy, except that in the case where more than  
27 one policy is applicable to the named insured or immediate family  
28 member, and the policies have different tort options, the tort option  
29 elected by the injured named insured shall apply or, in the case  
30 of an immediate family member who is not a named insured and  
31 is injured in an accident involving an automobile to which a policy  
32 issued to a named insured in the household of the injured immediate  
33 family member applies, the tort option elected by that named in-  
34 sured shall apply.

35 In the case of automobile insurance policies in force on July 1,  
36 1984, notice of the tort options available pursuant to the aforesaid  
37 section 8 shall be given in accordance with section 17 of this 1983  
38 amendatory and supplementary act.

1 15. (New section) P. L. 1972, c. 70 (C. 39:6A-1) is supplemented  
2 as follows:

3 The New Jersey Automobile Insurance Risk Exchange: member-  
4 ship, board of directors.

5 There shall be created, within 45 days of the operative date of  
6 this act, an unincorporated association, to operate on a nonprofit-  
7 nonloss basis, to be known as the New Jersey Automobile Insur-  
8 ance Risk Exchange, with its headquarters to be located within  
9 the State of New Jersey. Every insurer licensed to transact

10 private-passenger automobile insurance in this State shall be a  
11 member of the exchange and shall be bound by the rules of the  
12 exchange as a condition of the authority to transact insurance  
13 business in this State. The New Jersey Automobile Full Insurance  
14 Underwriting Association created pursuant to section 16 of P. L.  
15 1983, c. 65 (C. 17:30E-4) shall also be a member of the exchange  
16 and shall be bound by the rules of the exchange. Any insurer which  
17 ceases to transact automobile insurance business in this State  
18 shall remain liable for any amounts due to the exchange for busi-  
19 ness transacted prior to the effective date of its cessation of busi-  
20 ness in the State.

21 The rules of the exchange shall be determined and its business  
22 affairs governed by a board of directors to be comprised of nine  
23 members who shall be appointed by the Governor, with the advice  
24 and consent of the Senate, and who shall serve at the pleasure  
25 of the Governor, of whom two shall represent the Alliance of  
26 American Insurers, or its successor organization; two shall repre-  
27 sent the National Association of Independent Insurers, or its suc-  
28 cessor organization; two shall represent the American Insurance  
29 Association, or its successor organization: two shall represent the  
30 independent companies; and one shall be an insurer representative  
31 on the board of directors of the New Jersey Automobile Full Insur-  
32 ance Underwriting Association. No insurer shall represent more  
33 than one organization on the board of directors of the exchange.  
34 Appointments shall be made from a list of names submitted by the  
35 Commissioner of Insurance. Vacancies in the board of directors of  
36 the exchange shall be filled in the same manner as the original  
37 appointments.

1 16. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is sup-  
2 plemented as follows:

3 Powers of exchange. A. The exchange shall be empowered to raise  
4 sufficient monies to (1) pay its operating expenses, and (2) to  
5 compensate members of the exchange for claims for noneconomic  
6 loss, and associated claim adjustment expenses, which would not  
7 have been incurred had the tort limitation option provided in  
8 section 14 of this 1983 amendatory and supplementary act been  
9 elected by the injured party filing the claim for noneconomic loss.

10 b. In order to meet its obligations under subsection a. of this  
11 section, the exchange shall collect:

12 (1) from every insurer transacting automobile insurance in this  
13 State, a percentage designated by the board of directors of the  
14 exchange of all bodily injury premiums paid by insureds not elect-  
15 ing the tort limitation option;

16 (2) from the New Jersey Full Insurance Underwriting Asso-  
17 ciation, the percentage designated by the board of directors of  
18 the exchange of the bodily injury portion of association's total  
19 income, as defined in section 20 of P. L. 1983, c. 65 (C. 17:30E-8),  
20 for every insured not electing the tort limitation option.

21 c. All exchange members shall furnish the exchange with, and  
22 periodically update, lists of all persons electing the tort limitation  
23 option for claim verification by members.

24 d. The exchange shall have such powers as may be necessary  
25 or appropriate to effectuate the purposes of the exchange.

1 17. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is  
2 supplemented as follows:

3 Notice of available coverages and rate credits for deductible,  
4 exclusion, setoff and tort limitation options.

5 a. No new automobile insurance policy, shall be issued on or  
6 after July 1, 1984, unless the application for the policy is accom-  
7 panied by a written notice identifying and containing a brief  
8 description of all available policy coverages and benefit limits,  
9 and identifying which coverages are mandatory and which are  
10 optional under State law, as well as all deductible, exclusion, setoff  
11 and tort limitation options offered by the insurer. The insurer  
12 shall identify the percentage of premium rate credit for each option  
13 or combination of options, as the case may be.

14 The written notice shall also contain a statement on the possible  
15 coordination of other health benefit coverages with the personal  
16 injury protection coverage options, the form and contents of which  
17 shall be prescribed by the Commissioner of Insurance.

18 The applicant shall indicate the options elected on the written  
19 notice which shall be signed and returned to the insurer. Each  
20 applicant shall also be provided with a buyer's guide containing a  
21 description of the policy coverages, benefit limits and coverage  
22 options offered by the insurer, and a statement on the possible  
23 coordination of personal injury protection coverage benefits with  
24 other health benefit coverages.

25 b. In the case of any automobile insurance policy in force on  
26 July 1, 1984, the named insured shall be provided not later than  
27 May 15, 1984 with a written notice and buyer's guide, as required  
28 under subsection a. of this section. Every policy subject to this  
29 subsection shall be endorsed and, if necessary, rerated in accord-  
30 ance with the instructions provided by the named insured, as  
31 indicated on the written notice, which instructions shall be executed  
32 and shall take effect on July 1, 1984.

33 c. Any notice of renewal of an automobile insurance policy with



34 an effective date subsequent to July 1, 1984, shall be accompanied  
35 by a written notice of all policy coverage information required to  
36 be provided under subsection a. of this section.

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

1 18. (New section) P. L. 1944, c. 27 (C. 17:29A-1 et seq.) is  
2 supplemented as follows:

3 Premium credits shall be provided for each deductible, exclusion  
4 and setoff on personal injury protection coverage offered in  
5 accordance with section 13, and for the tort limitation option on  
6 bodily injury liability coverage offered in accordance with section  
7 14 of this 1983 amendatory and supplementary act. All premium  
8 credits to which this section applies shall be calculated and repre-  
9 sented to the insured as a percentage of the applicable premium,  
10 and the percentage shall be uniform by filer on a Statewide basis.

11 The premium charged for each coverage shall be clearly set forth  
12 in any policy or endorsement provided the insured.

13 The percentage rate of commission or rate of other compensation  
14 payable by an automobile insurer to an agent or broker shall not  
15 vary by reason of the selection or nonselection of any option pro-  
16 vided in sections 13 and 14 of this 1983 amendatory and supple-  
17 mentary act.

1 19. (New section) P. L. 1968, c. 385 (C. 17:28-1.1 et seq.) is  
2 supplemented as follows:

3 Every liability insurance policy issued in this State on a motor  
4 vehicle, exclusive of an automobile as defined in section 2 of P. L.  
5 1972, c. 70 (C. 39:6A-2), but including a motorcycle, insuring  
6 against loss resulting from liability imposed by law for bodily  
7 injury, death, and property damage sustained by any person aris-  
8 ing out of the ownership, operation, maintenance, or use of a motor  
9 vehicle shall provide personal injury protection coverage benefits,  
10 in accordance with section 4 of P. L. 1972, c. 70 (C. 39:6A-4), to  
11 pedestrians who sustain bodily injury in the State caused by the  
12 named insured's motor vehicle or by being struck by an object  
13 propelled by or from the motor vehicle.

1 20. (New section) P. L. 1972, c. 70 (C. 39:6A-1 et seq.) is supple-  
2 mented as follows:

3 An insurer paying personal injury protection benefits in accor-  
4 dance with section 4 or section 10 of P. L. 1972, c. 70, (C. 39:6A-4  
5 or C. 39:6A-10) as a result of an accident occurring within this  
6 State shall, within two years of the filing of the claim, have the  
7 right to recover the amount of payments from any tortfeasor who

8 was not, at the time of the accident, required to maintain personal  
 9 injury protection coverage, other than for pedestrians. In the case  
 10 of an accident occurring in this State involving an insured tort-  
 11 feator, the determination as to whether an insurer is legally en-  
 12 titled to recover the amount of payments and the amount of  
 13 recovery, including the costs of processing benefit claims and en-  
 14 forcing rights granted under this section, shall be made against  
 15 the insurer of the tortfeasor, and shall be by agreement of the  
 16 involved insurers or, upon failing to agree, by arbitration.

1 21. Section 9 of P. L. 1952, c. 174 (C. 39:6-69) is amended to  
 2 read as follows:

3 9. When any qualified person recovers a valid judgment in any  
 4 court of competent jurisdiction in this State, against any other  
 5 person, who was the operator or owner of a motor vehicle, for  
 6 injury to, death of, any person or persons, or a similar valid  
 7 judgment in such court against such a defendant for an amount  
 8 in excess of ~~[\$100.00]~~ \$250.00 exclusive of interest and costs, for  
 9 damages to property, except property of others in charge of such  
 10 operator or owner or such operator's or owner's employees, arising  
 11 out of the ownership, maintenance or use of the motor vehicle in  
 12 this State on or after April 1, 1955, and any amount remains unpaid  
 13 thereon in the case of a judgment for bodily injury or death, or  
 14 any amount in excess of ~~[\$100.00]~~ \$250.00 remains unpaid thereon  
 15 in case of a judgment for damage to property, such judgment  
 16 creditor may, upon the termination of all proceedings, including  
 17 reviews and appeals in connection with such judgment, file a veri-  
 18 fied claim in the court in which the judgment was entered and,  
 19 upon 10 days' written notice to the board may apply to the court  
 20 for an order directing payment out of the fund, of the amount  
 21 unpaid upon such judgment for bodily injury or death, which does  
 22 not exceed, or upon such judgment for damage to property which  
 23 exceeds the sum of ~~[\$100.00]~~ \$250.00 and does not exceed—

24 (a) The maximum amount or limit of \$15,000.00, exclusive of in-  
 25 terest and costs, on account of injury to, or death of, one person,  
 26 in any one accident, and

27 (b) The maximum amount or limit, subject to such limit for  
 28 any one person so injured or killed, of \$30,000.00, exclusive of  
 29 interest and costs, on account of injury to, or death of, more than  
 30 one person, in any one accident, and

31 (c) The maximum amount or limit of \$5,000.00 exclusive of  
 32 interest and costs, for damage to property in any one accident.

1 22. Section 13 of P. L. 1952, c. 174 (C. 39:6-73) is amended to  
 2 read as follows:

3 13. Except with respect to medical expense benefits paid pursuant  
4 to section 2 of ~~["this act"]~~ *P. L. 1977, c. 310 (C. 39:6-73.1)* no order  
5 shall be made for the payment and the treasurer shall make no  
6 payment, out of the fund, of

7 (a) Any claim for damage to property for less than ~~["\$100.00"]~~  
8 *\$250.00*.

9 (b) The first ~~["\$100.00"]~~ *\$250.00* of any judgment for damage to  
10 property or of the unsatisfied portion thereof, or

11 (c) The unsatisfied portion of any judgment which, after deduct-  
12 ing ~~["\$100.00"]~~ *\$250.00* therefrom if the judgment is for damage to  
13 property, exceeds

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

17 (2) the maximum amount or limit, subject to such limit for  
18 any one person so injured or killed, of, \$30,000.00 exclusive of  
19 interest and costs, on account of injury to, or death of, more  
20 than one person, in any one accident, and

21 (3) the maximum amount or limit of \$5,000.00, exclusive of  
22 interest and costs, for damages to property in any one accident  
23 provided, that such maximum amounts shall be reduced by any  
24 amount received or recovered as specified in subparagraph (m)  
25 of section 10.

26 (d) Any claim for damage to property which includes any sum  
27 greater than the difference between said maximum amounts and the  
28 sum of ~~["\$100.00"]~~ *\$250.00* and any amount paid out of the fund in  
29 excess of the amount so authorized may be recovered by the trea-  
30 surer in an action brought to him against the person receiving the  
31 same.

1 23. Section 27 of P. L. 1983, c. 65 (C. 17:30E-15) is amended to  
2 read as follows:

3 27. A qualified applicant who is eligible for coverage through the  
4 association shall be offered and entitled to coverage up to at least  
5 the following limits: a. bodily injury liability: \$250,000.00 each  
6 person, \$500,000.00 each accident; b. property damage liability:  
7 \$100,000.00; c. bodily injury and property damage: \$500,000.00  
8 single limit each accident; d. comprehensive and collision coverage;  
9 e. uninsured motorist and underinsured motorist coverage:  
10 \$250,000.00 each person and \$500,000.00 each accident for bodily  
11 injury; \$100,000.00 each accident for property damage or  
12 \$500,000.00 single limit, subject to an exclusion of the first ~~["\$100.00"]~~  
13 *\$250.00* of the damage to property for each accident, except that the  
14 limits for uninsured and underinsured motorist coverages on

15 association coverage shall not exceed the insured's policy limits  
16 for bodily injury and property damage, respectively; f. personal  
17 injury protection coverage as required by law; g. additional  
18 personal injury protection coverage required to be offered by law;  
19 and h. any other automobile insurance required to be offered by  
20 law and subject to the limits stated in the law. Motorcycles shall  
21 not be written for the coverages required or required to be offered  
22 pursuant to P. L. 1972, c. 70 (C. 39:6A-1 et seq.).

1 24. This act shall take effect immediately, but subsection a. of  
2 section 13 shall remain inoperative for 60 days following enact-  
3 ment; sections 1, 2, 2.1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14.1, 15, 16, 17, 18,  
4 19, 20, 21, 22 and 23, shall remain inoperative until January 1, 1984;  
5 and subsections b. and c. of section 13 and section 14 shall remain  
6 inoperative until July 1, 1984.

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*Sponsors'* STATEMENT

This bill, known as "The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984", offers motorists for the first time the option to choose the type of insurance coverage that suits their needs and finances. The main provisions of the bill are as follows:

1. *No-Fault Medical Benefits*

There would continue to be unlimited medical expense benefits but insureds would have the option to choose, at reduced premiums stated as a percentage of the coverage premium, medical expense deductibles in amounts of \$500, \$1,000 and \$2,500. This option would permit an insured to coordinate his automobile insurance coverage with other forms of health coverage.

2. *No-Fault Non-Medical Benefits*

The no fault law now mandates the payment of the loss of income, essential services and funeral expenses as a result of an injury or death sustained in an automobile accident. This provision would offer an insured, at reduced premiums stated as a percentage of the coverage premium, the option to purchase or not to purchase these coverages. There are insureds, including senior citizens, who are not working and would never be eligible to collect for income losses, or who may not have a need for or want essential service benefits, and have adequate funeral expense benefits under other insurance coverage.

3. *Set-Off*

This provision would permit an insured the *option to choose to*

entitle his insurer, when it has paid medical expense benefits on his behalf, to reimbursement for the amount of such benefits paid from any recovery for general damages sustained in an auto accident and received by the insured. The reimbursement shall not exceed 20% of the amount of the recovery. Attorneys' contingent fees would be computed on the amount of the recovery, less the amount of the set-off. An attorney would also be entitled to reimbursement out of the set-off for out-of-pocket legal expenses, not to exceed 10% of the total amount of the set-off. This set-off provision would offer an insured the option to reduce his no fault medical coverage premium, which must be stated as a percentage of the coverage premium, by reimbursing his insurer from a general damage recovery for all or a portion of the medical benefits paid on his behalf.

#### *4. Tort Limitation Option*

This provision would require insurers to offer all insureds the right to choose to limit their right to sue for general damages (pain and suffering) resulting from bodily injuries incurred in an auto accident. The choice of monetary tort options is \$200.00 or \$1,500.00, exclusive of hospital, X-ray and diagnostic medical expenses. The \$1,500.00 option covers both soft tissue injuries and fractures, and would be adjusted annually in accordance with a specified index. The tort limitation would not apply to injuries subject to the exclusionary provisions of the current law. In return for electing the tort limitation option, an insured would receive a reduction in his bodily injury liability premium stated as a percentage of the coverage premium.

#### *5. No-Fault And Related Clean-Up Provisions*

These provisions mainly are designed to tighten statutory eligibility requirements for personal injury protection coverage so as to comport with the original intent of the no-fault law.

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OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATE

CONTACT: CARL GOLDEN

TUESDAY, OCTOBER 4, 1983

A 3981

Governor Thomas H. Kean today signed five bills to reform and revise the State's no-fault automobile insurance system "and bring about long sought after reductions in premiums for New Jersey motorists."

"These bills, and the reform legislation which I signed earlier, represent a victory over the private interest forces which have blocked so consistently and for so long all attempts to revise the system," Kean said. "Their enactment into law represents a victory for the public good over those whose interest in their own welfare was paramount."

The Governor said the package of bills would result in an average savings of \$150 in insurance premiums.

"These savings and these reforms have eluded administrations for the past eight years," Kean said. "In fact, before today, the only consistent element in attempts to reform the no-fault system was that the attempts would fail."

"It is important to recognize that this package of reform legislation was developed in a bipartisan fashion and exemplifies the kind of progress which can be made on behalf of the people of the State, even in the face of strong private interest pressures," Kean said.

The major bill in the package signed by Kean was A-3981, sponsored by Assemblyman Michael Adubato, D-Essex.

- more -

GOVERNOR SIGNS NO-FAULT INSURANCE BILLS

PAGE TWO

TUESDAY, OCTOBER 4, 1983

It provides:

- \* Establishment of an optional threshold for pain and suffering lawsuits --- either \$200 or \$1,500. The policyholder who selects the \$200 threshold will pay a substantially higher premium than those selecting the \$1,500 threshold.

- \* Continuation of mandatory minimum liability coverage.

- \* Creation of an Auto Insurance Risk Exchange under which monies collected from those drivers who choose the \$200 threshold option would be deposited in a fund and the money used to compensate persons who do not accumulate \$1,500 in medical bills for injuries suffered in an accident.

- \* Continuation of the mandatory personal injury protection (PIP) coverage, but provide for optional deductibles to permit policyholders to choose full PIP coverage or to coordinate coverage with existing medical coverage. It provides, also, that PIP coverage for funeral expenses, essential services, and wage loss be made optional.

- \* Establishment of an option under which a policyholder could agree to return to his insurance company up to 20 percent of any award received for pain and suffering to help cover monies spent on medical costs by the insurance carrier.

- \* Require that within six months of the effective date of the law every insurance company reissue its policies and include information setting forth existing coverage as well as all options available to the purchaser and the costs of each option

- more -

GOVERNOR SIGNS NO-FAULT INSURANCE BILLS

PAGE THREE

TUESDAY, OCTOBER 4, 1983

The other bills signed by Kean are:

A-3896, sponsored by Assembly Minority Leader Dean A. Gallo, R-Morris, to permit higher deductible and coinsurance options on collision and comprehensive coverages.

A-3822, sponsored by Assemblyman Thomas Deverin, D-Middlesex, to provide for a system of mandatory, non-binding arbitration for law suits with damages of \$15,000 or less.

A-3898, sponsored by Assemblyman Thomas Shusted, R-Camden, to provide for licensing of auto body repair shops.

A-3820, sponsored by Assembly Speaker Alan Karcher, D-Middlesex, to require auto insurance companies to file annual financial disclosure statements and to establish standards for determining excess profits on auto insurance.

A copy of the Governor's statement is on the reverse side.

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STATEMENT OF GOVERNOR THOMAS H. KEAN

I am pleased to affix my signature today to legislation which will reform the State's no-fault automobile insurance system and bring about long sought after reductions in premiums for New Jersey motorists.

My action today brings to a conclusion years of effort to revise the system --- efforts which had been blocked consistently by alliances of private interest groups or individuals who placed self interest above the public good.

This signing represents a victory over those private interests and over those forces which had succeeded for so long in opposing any reform in the insurance system.

The legislation is not the total answer to the auto insurance problem. It does, however, contain 90 percent of the reform program which I have fought for over the past year or more.

My Administration intends to continue its efforts toward bringing the cost of auto insurance under even greater control and I urge the Legislature to move quickly toward the enactment of a medical fee schedule bill as one more step toward cutting premium costs.

It is important to recognize that the package of insurance reform legislation was developed in a bipartisan fashion and exemplifies the kind of progress which can be made on behalf of the people of the State even in the face of strong private interest pressures.

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