

17:30B-1 ET SEQ.

LEGISLATIVE HISTORY CHECKLIST

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Laws of 1974 Chapter 106

Bill No. S 1355

Sponsor(s) Dunn

Date Introduced September 9

Committee: Assembly --

Senate --

Amended during passage Yes Amendments during passage denoted by asterisks

Date of passage: Assembly September 19

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Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly No

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Fiscal Note No

Veto message No

Message on signing No

Following were printed:

Reports No

Hearings No

[OFFICIAL COPY REPRINT]
SENATE, No. 1355

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 9, 1974

By Senator DUNN

(Without Reference)

AN ACT authorizing the Commissioner of Insurance to establish Special Joint Underwriting Associations, prescribing the powers, duties and functions thereof and supplementing Title 17 of the Revised Statutes.

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

1 1. This act shall be known as and may be cited as the Joint
2 Underwriting Association Act.

1 2. a. The purpose of this act is to avoid financial loss to and
2 to reduce financial burdens on claimants and policyholders because
3 of the insolvency of insurers, to authorize the creation of special
4 underwriting associations to assume certain obligations of insolvent
5 insurers and to continue, without interruption and without ad-
6 ditional cost, coverage for claimants and policyholders who transfer
7 their rights for unearned premiums from the said insolvent insurers
8 to said associations, and to provide a means by which the costs
9 of such coverage can be equitably assumed.

10 b. This act shall apply to all kinds of motor vehicle insurance.

1 3. As used in this act:

2 a. "Commissioner" means the Commissioner of Insurance of
3 this State;

4 b. "Guaranty Association" means the New Jersey Property-
5 Liability Insurance Guaranty Association, created under P. L.
6 1974, c. 17 (C. 17:30A-1 et seq.);

7 c. "Association" means a Special Joint Underwriting Associa-
8 tion created pursuant to section 4;

9 d. "Insolvent insurance company" means (1) an insurer admitted
10 or authorized to transact the business of insurance in this State

11 either at the time the policy was issued or when the insured event
 12 occurred, and (2) who is determined to be insolvent by a court of
 13 any competent jurisdiction;

14 e. "Servicing carrier" means a carrier licensed to provide
 15 insurance of the kind specified in section 2 B. and designated by
 16 an association, with the approval of the commissioner, to assist
 17 an association in fulfilling its obligations.

1 4. The commissioner shall have authority to establish, as he
 2 shall deem necessary, one or more associations to assume the
 3 unexpired policy obligations of insolvent insurance companies
 4 from the date of assumption established by regulation of the com-
 5 missioner. The membership of each association shall consist of
 6 all insurers authorized to write, within this State, on a direct
 7 basis, the same kind of direct insurance in which the commissioner
 8 has authorized participation by the association. Every such insurer
 9 shall be a member of the association and shall remain a member
 10 so long as the association is in existence as a condition of its
 11 authority to continue to transact such kinds of insurance in this
 12 State.

1 5. An association shall, pursuant to the provisions of this act
 2 and the plan of operation, have the power:

3 a. To assume the unexpired policy obligations of insolvent
 4 insurance companies;

5 b. To assess each of its members and to reimburse them for such
 6 assessments, at such times as directed by the commissioner;

7 c. To reimburse the servicing carriers out of the Joint Under-
 8 writing Association Fund;

9 d. To present claims to the Guaranty Association for unearned
 10 premiums on the assumed policies;

11 e. To adopt bylaws for the regulation of its affairs and the
 12 conduct of its business;

13 f. To sue and be sued;

14 g. To employ, subject to the approval of the commissioner, such
 15 employees as may be required in the judgment of the association,
 16 to carry out the purposes of this act, and to fix and pay their
 17 reasonable compensation from the Joint Underwriting Association
 18 Fund;

19 h. To borrow funds at prevailing interest rates;

20 i. To perform such other functions as may be deemed necessary
 21 by the commissioner to carry out the purposes of this act.

1 6. a. The board of directors of an association shall consist of not
 2 less than five nor more than nine members serving terms as

3 established in the plan of operation hereinafter described. All
4 directors of the board shall be appointed by the commissioner,
5 after consultation with the members of the association, from and
6 among the officers of the members of the association. Vacancies
7 on the board shall be filled for the remaining period of the term
8 by the commissioner in the same manner.

9 b. The commissioner shall also appoint a treasurer who shall
10 serve as the custodian of each association fund.

11 c. Each director of the association shall execute a bond to be
12 conditioned upon the faithful performance of the duties of such
13 director in such form and amount as may be prescribed by the
14 commissioner. Such bonds shall be filed in the office of the Secretary
15 of State. At all times thereafter the directors and treasurer of the
16 association shall maintain such bonds in full force and effect. All
17 costs of such bonds shall be borne by the association.

1 a. The directors of the association shall submit to the com-
2 missioner, within such time as he sets forth by regulation, for his
3 review and approval, a proposed plan of operation. Such a pro-
4 posed plan shall include provisions for: assessment of all members
5 of an amount necessary to finance a Joint Underwriting Association
6 Fund; notification to insureds regarding the assumption of their
7 policies from the insolvent insurance companies; recoupment of
8 unearned premiums for all insureds whose policies are assumed;
9 procedures for processing applications from servicing carriers for
10 reimbursement; management of the association; and such other
11 provisions as may be deemed necessary by the commissioner to
12 carry out the purposes of this act.

13 b. The proposed plan shall be reviewed by the commissioner and
14 approved by him if he finds that such plan fulfills the purposes
15 set forth in section 2 a. of this act. In his review of the proposed
16 plan the commissioner may consult with the directors and the
17 members of the association and any other individual or organiza-
18 tion. If the commissioner approves the proposed plan he shall
19 certify such approval to the directors and said plan shall take effect
20 at such date as directed by the commissioner. If the commissioner
21 disapproves all or any part of the proposed plan of operation, he
22 shall return same to the directors with a statement, in writing, of
23 the reasons for his disapproval and any recommendations he may
24 wish to make. The directors shall either accept within 5 days
25 the commissioner's recommendation, or propose a new plan, which
26 shall be submitted to the commissioner within 10 days. If the
27 directors fail to comply with the foregoing terms of this para-

28 graph, the commissioner shall promulgate a plan of operation
29 and certify same to the directors. Any such plan promulgated by
30 the commissioner shall take effect no later than 10 days after
31 certification to the directors.

32 c. The directors may, for good cause, amend the plan of opera-
33 tion at any time, subject to the approval of the commissioner.

34 d. The commissioner may review the plan of operation whenever
35 he deems necessary and amend said plan after consultation with
36 the directors.

1 8. a. There shall be created within each association a fund to
2 be known as the Joint Underwriting Association Fund for the
3 purpose of providing the finances necessary for the plan of opera-
4 tion of the association. The fund shall also be used to reimburse
5 the servicing carriers for all sums expended in fulfilling their
6 obligations arising under the assumed policies, including all
7 reasonable administrative costs. The funds shall be administered
8 by the association with the approval of the commissioner.

9 b. For the purpose of obtaining the moneys necessary to meet
10 the requirements of the fund, each association shall assess each
11 member according to the plan of operation as approved by the
12 commissioner.

13 c. Any insurer, which becomes authorized to write insurance
14 after the effective date of this act and which would have been
15 required to join an association created under the terms of this
16 act if it had been authorized to write insurance at that time, shall
17 become a member of the association immediately following such
18 authorization. The determination of any such insurer's participa-
19 tion in the association shall be made according to the plan of
20 operation as approved by the commissioner.

21 d. Upon termination of an association pursuant to section 14d
22 of this act and after discharge and satisfaction of all liabilities
23 then outstanding to claimants, policyholders, servicing carriers,
24 and member insurers, all moneys and assets still remaining in the
25 Joint Underwriting Association Fund shall be paid over by the
26 association treasurer into the Guaranty Association.

27 e. Associations shall be exempt from payment of all fees and all
28 taxes levied by this State or any of its subdivisions.

1 9. The treasurer of each association shall be the custodian of the
2 Joint Underwriting Association Fund. All disbursements from
3 said fund shall be made by the treasurer according to the plan of
4 operation and any rules and regulations promulgated by the com-
5 missioner.

1 10. a. A surcharge on insurance policies of the kind which are
 2 being assumed by the associations created hereunder shall be levied
 3 in amounts sufficient to recoup over a reasonable length of time a
 4 sum equal to the amounts necessary for reimbursement pursuant
 5 to section 5 b. of this act. The surcharge shall be a separate charge
 6 to the insured in addition to the premium to be paid and shall be
 7 reflected as such in the policy. The insurer shall be prohibited from
 8 absorbing such surcharge as an inducement for insurance or any
 9 other reason.

10 b. The amount of such surcharge shall be determined by the
 11 commissioner*, *but in no event shall the surcharge on any policy*
 12 *exceed \$2.00 per year*.*

13 **c. At any time moneys are recoverable from Gateway Insurance*
 14 *Company or any of its brokers or agents, or Financial Capital*
 15 *Corporation or any other lending institution financing Gateway*
 16 *auto insurance policies for New Jersey residents, or FISCO, Inc.,*
 17 *or any other subsidiary of FISCO, Inc. or any of its brokers or*
 18 *agents, said moneys shall be reimbursed to New Jersey automobile*
 19 *insurance policyholders in proportion to the surcharge imposed*
 20 *upon them under this act by virtue of rules and regulations adopted*
 21 *and promulgated by the Commissioner of Insurance; it being*
 22 *understood that all such reimbursement of moneys shall be within*
 23 *the scope of the Federal Bankruptcy laws.**

1 11. An association shall file at such time as directed by the com-
 2 missioner a statement which shall contain such information and
 3 be in such form as required by the commissioner. The commis-
 4 sioner may at any time require an association to furnish him with
 5 additional information with respect to its operations.

1 12. The commissioner may make an examination into the affairs
 2 of an association or any of its members whenever he deems it
 3 necessary. In undertaking any examination he may hold hearings
 4 pursuant to the procedures provided in chapter 1 of this Title and
 5 P. L. 1968, c. 410 (C. 52:14B-1 et seq.).

1 13. In addition to the annual reports of the commissioner re-
 2 quired by R. S. 17:1-9, the commissioner shall submit to the Leg-
 3 islature an annual report embracing the activities, affairs and
 4 condition of any association. Said report may contain specific
 5 recommendations the commissioner may wish to make concerning
 6 the association, including his evaluation of the association's effec-
 7 tiveness in fulfilling the purposes of this act.

1 14. The commissioner may:

2 a. Promulgate reasonable rules and regulations to carry out the
3 purposes of this act;

4 b. Suspend or revoke, after notice and hearing, the certificate
5 or authority to transact insurance in the State of any member
6 insurer which fails to comply with the provisions of this act, rules
7 or regulations promulgated thereunder or any plan of operation.
8 In addition to any other sanctions herein or otherwise provided
9 by law, the commissioner may levy a penalty on any member in-
10 surer which fails to pay or delays in paying an assessment when
11 due. For each month that an insurer fails to pay or delays in
12 paying the assessment on a timely basis, the penalty shall not ex-
13 ceed 5% of the unpaid assessment then outstanding. For all other
14 violations, the penalty shall not exceed \$5,000.00 per violation.

15 c. Revoke the designation of any servicing carrier if he finds
16 claims are being handled unsatisfactorily;

17 d. Terminate any association when he deems its existence no
18 longer necessary to effectuate the purposes of this act.

19 e. Require upon the termination of any association, a report of
20 its activities which shall set forth a complete operating and finan-
21 cial statement; make inspections of any association's books, ac-
22 counts and records including its receipts and disbursements, as
23 he shall deem necessary.

1 15. If any provision of this act or the application thereof to any
2 person or circumstance is held invalid, the invalidity shall not
3 affect other provisions or applications of this act which can be
4 given effect without the invalid provision or application, and for
5 this purpose the provisions of this act are declared to be severable,
6 provided however that if section 10 is held invalid, the entire act
7 shall be invalid.

1 16. a. This act shall be liberally construed to effectuate the pur-
2 poses set forth in section 2 a.

3 b. All laws and parts of laws of this State inconsistent with
4 this act are hereby deemed superseded to the extent of such in-
5 consistency.

1 17. There is hereby appropriated \$10,000.00 to the Department
2 of Insurance for the purpose of the commissioner fulfilling his
3 responsibilities under this act.

1 18. This act shall take effect immediately and, notwithstanding
2 the fact that any insurance company whose policies have been
3 assumed pursuant to this act, has been previously declared in-
4 solvent, apply to all claims which arise on or after this date.

SENATE, No. 1355

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 9, 1974

By Senator DUNN

(Without Reference)

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3 of the insolvency of insurers, to authorize the creation of special
4 underwriting associations to assume certain obligations of insolvent
5 insurers and to continue, without interruption and without ad-
6 ditional cost, coverage for claimants and policyholders who transfer
7 their rights for unearned premiums from the said insolvent insurers
8 to said associations, and to provide a means by which the costs
9 of such coverage can be equitably assumed.

10 b. This act shall apply to all kinds of motor vehicle insurance.

1 3. As used in this act:

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3 this State;

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6 1974, c. 17 (C. 17:30A-1 et seq.);

7 c. "Association" means a Special Joint Underwriting Associa-
8 tion created pursuant to section 4;

9 d. "Insolvent insurance company" means (1) an insurer admitted
10 or authorized to transact the business of insurance in this State
11 either at the time the policy was issued or when the insured event
12 occurred, and (2) who is determined to be insolvent by a court of
13 any competent jurisdiction;

14 e. "Servicing carrier" means a carrier licensed to provide
15 insurance of the kind specified in section 2 B. and designated by
16 an association, with the approval of the commissioner, to assist
17 an association in fulfilling its obligations.

1 4. The commissioner shall have authority to establish, as he
2 shall deem necessary, one or more associations to assume the
3 unexpired policy obligations of insolvent insurance companies
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6 all insurers authorized to write, within this State, on a direct
7 basis, the same kind of direct insurance in which the commissioner
8 has authorized participation by the association. Every such insurer
9 shall be a member of the association and shall remain a member
10 so long as the association is in existence as a condition of its
11 authority to continue to transact such kinds of insurance in this
12 State.

1 5. An association shall, pursuant to the provisions of this act
2 and the plan of operation, have the power:

3 a. To assume the unexpired policy obligations of insolvent
4 insurance companies;

5 b. To assess each of its members and to reimburse them for such
6 assessments, at such times as directed by the commissioner;

7 c. To reimburse the servicing carriers out of the Joint Under-
8 writing Association Fund;

9 d. To present claims to the Guaranty Association for unearned
10 premiums on the assumed policies;

11 e. To adopt bylaws for the regulation of its affairs and the
12 conduct of its business;

13 f. To sue and be sued;

14 g. To employ, subject to the approval of the commissioner, such
15 employees as may be required in the judgment of the association,
16 to carry out the purposes of this act, and to fix and pay their
17 reasonable compensation from the Joint Underwriting Association
18 Fund;

19 h. To borrow funds at prevailing interest rates;

20 i. To perform such other functions as may be deemed necessary
21 by the commissioner to carry out the purposes of this act.

1 6. a. The board of directors of an association shall consist of not
2 less than five nor more than nine members serving terms as
3 established in the plan of operation hereinafter described. All
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6 among the officers of the members of the association. Vacancies
7 on the board shall be filled for the remaining period of the term
8 by the commissioner in the same manner.

9 b. The commissioner shall also appoint a treasurer who shall
10 serve as the custodian of each association fund.

11 c. Each director of the association shall execute a bond to be
12 conditioned upon the faithful performance of the duties of such
13 director in such form and amount as may be prescribed by the
14 commissioner. Such bonds shall be filed in the office of the Secretary
15 of State. At all times thereafter the directors and treasurer of the
16 association shall maintain such bonds in full force and effect. All
17 costs of such bonds shall be borne by the association.

1 7. a. The directors of the association shall submit to the com-
2 missioner, within such time as he sets forth by regulation, for his
3 review and approval, a proposed plan of operation. Such a pro-
4 posed plan shall include provisions for: assessment of all members
5 of an amount necessary to finance a Joint Underwriting Association
6 Fund; notification to insureds regarding the assumption of their
7 policies from the insolvent insurance companies; recoupment of
8 unearned premiums for all insureds whose policies are assumed;
9 procedures for processing applications from servicing carriers for
10 reimbursement; management of the association; and such other
11 provisions as may be deemed necessary by the commissioner to
12 carry out the purposes of this act.

13 b. The proposed plan shall be reviewed by the commissioner and
14 approved by him if he finds that such plan fulfills the purposes
15 set forth in section 2 a. of this act. In his review of the proposed
16 plan the commissioner may consult with the directors and the
17 members of the association and any other individual or organiza-
18 tion. If the commissioner approves the proposed plan he shall
19 certify such approval to the directors and said plan shall take effect
20 at such date as directed by the commissioner. If the commissioner
21 disapproves all or any part of the proposed plan of operation, he
22 shall return same to the directors with a statement, in writing, of
23 the reasons for his disapproval and any recommendations he may
24 wish to make. The directors shall either accept within 5 days
25 the commissioner's recommendation, or propose a new plan, which
26 shall be submitted to the commissioner within 10 days. If the
27 directors fail to comply with the foregoing terms of this para-
28 graph, the commissioner shall promulgate a plan of operation
29 and certify same to the directors. Any such plan promulgated by

30 the commissioner shall take effect no later than 10 days after
31 certification to the directors.

32 c. The directors may, for good cause, amend the plan of opera-
33 tion at any time, subject to the approval of the commissioner.

34 d. The commissioner may review the plan of operation whenever
35 he deems necessary and amend said plan after consultation with
36 the directors.

1 8. a. There shall be created within each association a fund to
2 be known as the Joint Underwriting Association Fund for the
3 purpose of providing the finances necessary for the plan of opera-
4 tion of the association. The fund shall also be used to reimburse
5 the servicing carriers for all sums expended in fulfilling their
6 obligations arising under the assumed policies, including all
7 reasonable administrative costs. The funds shall be administered
8 by the association with the approval of the commissioner.

9 b. For the purpose of obtaining the moneys necessary to meet
10 the requirements of the fund, each association shall assess each
11 member according to the plan of operation as approved by the
12 commissioner.

13 c. Any insurer, which becomes authorized to write insurance
14 after the effective date of this act and which would have been
15 required to join an association created under the terms of this
16 act if it had been authorized to write insurance at that time, shall
17 become a member of the association immediately following such
18 authorization. The determination of any such insurer's participa-
19 tion in the association shall be made according to the plan of
20 operation as approved by the commissioner.

21 d. Upon termination of an association pursuant to section 14d
22 of this act and after discharge and satisfaction of all liabilities
23 then outstanding to claimants, policyholders, servicing carriers,
24 and member insurers, all moneys and assets still remaining in the
25 Joint Underwriting Association Fund shall be paid over by the
26 association treasurer into the Guaranty Association.

27 e. Associations shall be exempt from payment of all fees and all
28 taxes levied by this State or any of its subdivisions.

1 9. The treasurer of each association shall be the custodian of the
2 Joint Underwriting Association Fund. All disbursements from
3 said fund shall be made by the treasurer according to the plan of
4 operation and any rules and regulations promulgated by the com-
5 missioner.

1 10. a. A surcharge on insurance policies of the kind which are
2 being assumed by the associations created hereunder shall be levied

3 in amounts sufficient to recoup over a reasonable length of time a
4 sum equal to the amounts necessary for reimbursement pursuant
5 to section 5 b. of this act. The surcharge shall be a separate charge
6 to the insured in addition to the premium to be paid and shall be
7 reflected as such in the policy. The insurer shall be prohibited from
8 absorbing such surcharge as an inducement for insurance or any
9 other reason.

10 b. The amount of such surcharge shall be determined by the
11 commissioner.

1 11. An association shall file at such time as directed by the com-
2 missioner a statement which shall contain such information and
3 be in such form as required by the commissioner. The commis-
4 sioner may at any time require an association to furnish him with
5 additional information with respect to its operations.

1 12. The commissioner may make an examination into the affairs
2 of an association or any of its members whenever he deems it
3 necessary. In undertaking any examination he may hold hearings
4 pursuant to the procedures provided in chapter 1 of this Title and
5 P. L. 1968, c. 410 (C. 52:14B-1 et seq.).

1 13. In addition to the annual reports of the commissioner re-
2 quired by R. S. 17:1-9, the commissioner shall submit to the Leg-
3 islature an annual report embracing the activities, affairs and
4 condition of any association. Said report may contain specific
5 recommendations the commissioner may wish to make concerning
6 the association, including his evaluation of the association's effec-
7 tiveness in fulfilling the purposes of this act.

1 14. The commissioner may:

2 a. Promulgate reasonable rules and regulations to carry out the
3 purposes of this act;

4 b. Suspend or revoke, after notice and hearing, the certificate
5 or authority to transact insurance in the State of any member
6 insurer which fails to comply with the provisions of this act, rules
7 or regulations promulgated thereunder or any plan of operation.
8 In addition to any other sanctions herein or otherwise provided
9 by law, the commissioner may levy a penalty on any member in-
10 surer which fails to pay or delays in paying an assessment when
11 due. For each month that an insurer fails to pay or delays in
12 paying the assessment on a timely basis, the penalty shall not ex-
13 ceed 5% of the unpaid assessment then outstanding. For all other
14 violations, the penalty shall not exceed \$5,000.00 per violation.

15 c. Revoke the designation of any servicing carrier if he finds
16 claims are being handled unsatisfactorily;

17 d. Terminate any association when he deems its existence no
18 longer necessary to effectuate the purposes of this act.

19 e. Require upon the termination of any association, a report of
20 its activities which shall set forth a complete operating and finan-
21 cial statement; make inspections of any association's books, ac-
22 counts and records including its receipts and disbursements, as
23 he shall deem necessary.

1 15. If any provision of this act or the application thereof to any
2 person or circumstance is held invalid, the invalidity shall not
3 affect other provisions or applications of this act which can be
4 given effect without the invalid provision or application, and for
5 this purpose the provisions of this act are declared to be severable,
6 provided however that if section 10 is held invalid, the entire act
7 shall be invalid.

1 16. a. This act shall be liberally construed to effectuate the pur-
2 poses set forth in section 2 a.

3 b. All laws and parts of laws of this State inconsistent with
4 this act are hereby deemed superseded to the extent of such in-
5 consistency.

1 17. There is hereby appropriated \$10,000.00 to the Department
2 of Insurance for the purpose of the commissioner fulfilling his
3 responsibilities under this act.

1 18. This act shall take effect immediately and, notwithstanding
2 the fact that any insurance company whose policies have been
3 assumed pursuant to this act, has been previously declared in-
4 solvent, apply to all claims which arise on or after this date.

STATEMENT

At the present time, the only statutory relief for individuals holding insurance policies with insolvent insurance companies is the Property Liability Insurance Guaranty Association Act, which provides a mechanism for satisfying claims that arise during the 30-day period after a judicial declaration of insolvency. After such time, an individual has no recourse but to seek out a new insurance policy with another company. In order to correct this situation, this bill authorizes the Commissioner of Insurance to establish joint underwriting associations which would assume certain obligations of insolvent insurance companies and continue, without interruption and without additional cost, coverage for claimants

and policyholders who transfer to said associations their rights for unearned premiums. All insurers authorized to write the same kind of direct insurance in which the commissioner has authorized participation by these associations are required to join said associations. The associations will have the power to assess these members for the amount that it deems necessary to meet its responsibilities. In addition, the Commissioner of Insurance will have the authority to designate servicing carriers who will assist the associations in meeting their responsibilities. Servicing carriers will be reimbursed from association funds. The assessments paid in by all members will be returned through use of a surcharge that will be established by the commissioner and which will be imposed on all insurance policies of the kind which are assumed by the associations.

ASSEMBLY AMENDMENTS TO
SENATE, No. 1355

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 19, 1974

Amend page 5, section 10, line 11, after "commissioner", insert " , but in no event shall the surcharge on any policy exceed \$2.00 per year".

Amend page 5, section 10, after line 11, add a new subsection c. as follows:

"c. At any time moneys are recoverable from Gateway Insurance Company or any of its brokers or agents, or Financial Capital Corporation or any other lending institution financing Gateway auto insurance policies for New Jersey residents, or FISCO, Inc., or any other subsidiary of FISCO, Inc. or any of its brokers or agents, said moneys shall be reimbursed to New Jersey automobile insurance policyholders in proportion to the surcharge imposed upon them under this act by virtue of rules and regulations adopted and promulgated by the Commissioner of Insurance; it being understood that all such reimbursement of moneys shall be within the scope of the Federal Bankruptcy laws."