

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER: 21

NJSA: 39:6A-1.1 et seq.
"Automobile Insurance Cost Reduction Act"

BILL NO: S3 (Substituted for A1970)

SPONSOR(S): DiFrancesco and Adler

DATE INTRODUCED: April 2, 1998

COMMITTEE:

ASSEMBLY: ~~~~

SENATE: ~~~~

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE:

ASSEMBLY: April 20, 1998, Re-enacted 5-18-98

SENATE: April 27, 1998, Re-enacted 4-27-98

DATE OF APPROVAL: May 19, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 2nd reprint
(Amendments during passage denoted by superscript numbers)

S3

SPONSORS STATEMENT: *Yes* (Begins on page 56 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *Yes*

LEGISLATIVE FISCAL ESTIMATE: *No*

A1970

SPONSORS STATEMENT: *Yes* (Begins on page 62 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

VETO MESSAGE: *Yes*

GOVERNOR'S PRESS RELEASE ON CONDITIONAL VETO: *Yes*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS, HEARINGS, MEETINGS:

974.90 A939 1997

New Jersey. Governor (1994- : Whitman) Whitman, Christine Todd. New Jersey. Dept. of Banking and Insurance.

Consumers' choice : New Jersey automobile insurance reform plan

974.90 A939 1997a

New Jersey. Legislature. Senate. Commerce Committee.

Public hearing before Senate Commerce Committee: automobile insurance, including the governor's automobile insurance plan, uninsured motorists, automobile insurance fraud, and other recommendations on

improving insurance in New Jersey.

Trenton, NJ. May 12, 1997.

The Senate and Assembly formed a Joint Committee on Automobile Insurance Reform that held twelve "committee meetings" between December 16, 1997 and April 2, 1998. The first seven meetings consisted of testimony on stated topics:

974.90 A939 1997e

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : public testimony concerning automobile insurance reform, including the current system of private passenger automobile insurance in this state, and the factors that contribute to its costs.

Trenton, NJ. December 16, 1997.

974.90 A939 1998b

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : testimony of the outline of the no-fault system as it has developed in New Jersey since enactment of the New Jersey Automobile Reparation Reform Act, and an overview of the components of the current system.

Trenton, NJ. January 5, 1998.

974.90 A939 1998a

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : testimony regarding the elimination of the no-fault system or elimination of mandatory insurance in general.

Trenton, NJ. January 15, 1998.

974.90 A939 1998

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : testimony regarding personal injury protection (PIP) reforms, and related issues.

Trenton, NJ. January 22, 1998.

974.90 A939 1998f

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.

Committee meeting of Joint Committee on Automobile Insurance Reform : testimony regarding private passenger automobile insurance rating, risk classification and related issues.

Trenton, NJ. February 4, 1998.

974.90 A939 1998c

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : testimony regarding recent anti-fraud reforms and additional remedies, the problem of the uninsured driver and the "mini-policy" alternative.

Trenton, NJ. February 9, 1998.

974.90 A939 1998g

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : testimony from the commissioner of banking and insurance and invited witnesses.

Trenton, NJ. February 23, 1998.

The last five meetings were "deliberations":

974.90 A939 1998e

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : deliberations with regard to automobile insurance reform.

Trenton, NJ. March 19, 1998.

974.90 A939 1998d

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : deliberations with regard to automobile insurance reform.

Trenton, NJ. March 23, 1998.

974.90 A939 1998h

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
Committee meeting of Joint Committee on Automobile Insurance Reform : deliberations with regard to automobile insurance reform.

Trenton, NJ. March 26, 1998.

974.90 A939 1998k

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
**Committee meeting of Joint Committee on Automobile Insurance Reform
: deliberations with regard to automobile insurance reform.**

Trenton, NJ. March 30, 1998.

974.90 A939 1998j

New Jersey. Legislature. Joint Committee on Automobile Insurance Reform.
**Committee meeting of Joint Committee on Automobile Insurance Reform
: deliberations with regard to automobile insurance reform.**

Trenton, NJ. April 2, 1998.

NEWSPAPER ARTICLES:

"Auto insurance reform is 'spin'," 5-20-98, Trentonian, p.3.

"Politicians celebrate car insurance reform," 5-20-98, Newark Star Ledger, p.
A3.

"Whitman says reform bill will bring auto rate relief," 5-20-98, Bergen Record,
p. A3.

"Auto insurance reform promises to reduce costs," 5-20-98, Asbury Park Press,
p. A3.

[Second Reprint]
SENATE, No. 3

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED APRIL 2, 1998

Sponsored by:

Senator DONALD T. DIFRANCESCO

District 22 (Middlesex, Morris, Somerset and Union)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

Senators Kyrillos, Codey, Cardinale, Inverso, Bennett, Assemblymen Bateman, Greenwald, Collins, DiGaetano, Stuhltrager, Kelly, Gregg, Rooney, Assemblywoman Vandervalk, Assemblymen Weingarten, O'Toole, Azzolina, Thompson, Felice, Garrett, Assemblywoman Wright, Assemblymen Talarico, Biondi, Merkt, Moran, Bodine, Chatzidakis, Kramer, Holzapfel, Wolfe, Assemblywoman Murphy, Assemblymen Asselta, Gibson, Assemblywoman Heck, Assemblymen LeFevre, T.Smith, Blee, Assemblywoman Farragher, Assemblyman Arnone, Assemblywoman Myers, Assemblymen Cottrell, Malone, Assemblywoman Crecco, Assemblymen DeCroce, Conners, Conaway and Assemblywoman Previte

SYNOPSIS

"The Automobile Insurance Cost Reduction Act."

CURRENT VERSION OF TEXT

As amended on April 27, 1998 by the Senate pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 5/5/1998)

1 AN ACT concerning automobile insurance and revising parts of the
2 statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) a. This act shall be known and may be cited as
8 the "Automobile Insurance Cost Reduction Act."

9 b. The Legislature finds and declares:

10 **WHEREAS**, While New Jersey's automobile insurance no-fault law,
11 enacted twenty-six years ago, has provided valuable benefits in
12 the form of medical benefits and wage replacement benefits,
13 without regard to fault, to New Jersey residents who have been
14 injured in an automobile accident; and

15 **WHEREAS**, Medical benefits paid by no-fault policies over those
16 years amount to billions of dollars, which would otherwise
17 have been paid by health insurance, thus raising the cost of
18 health insurance for everyone; and

19 **WHEREAS**, While medical benefits under no-fault insurance were
20 unlimited under the law enacted in 1972, the rapidly escalating
21 cost of those benefits made it necessary for the Legislature to
22 reduce those benefits to a limit of \$250,000 in 1990; and

23 **WHEREAS**, Since the enactment of the verbal threshold in 1988, the
24 substantial increase in the cost of medical expense benefits
25 indicates that the benefits are being overutilized for the
26 purpose of gaining standing to sue for pain and suffering, thus
27 undermining the limitations imposed by the threshold and
28 necessitating the imposition of further controls on the use of
29 those benefits, including the establishment of a basis for
30 determining whether treatments or diagnostic tests are
31 medically necessary; and

32 **WHEREAS**, The present arbitration system has not sufficiently
33 addressed the Legislature's goal of eliminating payment for
34 treatments and diagnostic tests which are not medically
35 necessary, leading to the belief that a revised dispute
36 resolution mechanism needs to be established which will
37 accomplish this goal; and

38 **WHEREAS**, The principle underlying the philosophical basis of the
39 no-fault system is that of a trade-off of one benefit for another;
40 in this case, providing medical benefits in return for a limitation

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted April 20, 1998.

² Senate amendments adopted in accordance with Governor's recommendations April 27, 1998.

1 on the right to sue for non-serious injuries; and
2 **WHEREAS**, While the Legislature believes that it is good public
3 policy to provide medical benefits on a first party basis,
4 without regard to fault, to persons injured in automobile
5 accidents, it recognizes that in order to keep premium costs
6 down, the cost of the benefit must be offset by a reduction in
7 the cost of other coverages, most notably a restriction on the
8 right of persons who have non-permanent or non-serious
9 injuries to sue for pain and suffering; and
10 **WHEREAS**, The high cost of automobile insurance in New Jersey
11 has presented a significant problem for many-lower income
12 residents of the state, many of whom have been forced to drop
13 or lapse their coverage in violation of the State's mandatory
14 motor vehicle insurance laws, making it necessary to provide
15 a lower-cost option to protect people by providing coverage to
16 pay their medical expenses if they are injured; and
17 **WHEREAS**, To meet these goals, this legislation provides for the
18 creation of two insurance coverage options, a basic policy and
19 a standard policy, provides for cost containment of medical
20 expense benefits through a revised dispute resolution
21 proceeding, provides for a revised lawsuit threshold for suits
22 for pain and suffering which will eliminate suits for injuries
23 which are not serious or permanent, including those for soft
24 tissue injuries, would more precisely define the benefits
25 available under the medical expense benefits coverage, and
26 establishes standard treatment and diagnostic procedures
27 against which the medical necessity of treatments reimbursable
28 under medical expense benefits coverage would be judged; and
29 **WHEREAS**, It is generally recognized that fraud, whether in the
30 form of inappropriate medical treatments, inflated claims,
31 staged accidents, falsification of records, or in any other form,
32 has increased premiums, and must be uncovered and vigorously
33 prosecuted, and while the pursuit of those who defraud the
34 automobile insurance system has heretofore been addressed by
35 the State through various agencies, it has been without
36 sufficient coordination to aggressively combat fraud, leading to
37 the conclusion that greater consolidation of agencies which
38 were created to combat fraud is necessary to accomplish this
39 purpose; and
40 **WHEREAS**, With these many objectives, the Legislature
41 nevertheless recognizes that to provide a healthy and
42 competitive automobile insurance market, insurers are entitled
43 to earn an adequate rate of return through the ratemaking
44 process, which shall reflect the impact of the cost-saving
45 provisions of this act and other recent legislative insurance
46 reforms; and

1 **WHEREAS**, The Legislature has thus addressed these and other
2 issues in this comprehensive legislation designed to preserve
3 the no-fault system, while at the same time reducing
4 unnecessary costs which drive premiums higher.

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

8 2. As used in this act:

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

22 b. "Essential services" means those services performed not for
23 income which are ordinarily performed by an individual for the care
24 and maintenance of such individual's family or family household.

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

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

30 e. "Medical expenses" means **[**expenses for medical treatment,
31 surgical treatment, dental treatment, professional nursing services,
32 hospital expenses, rehabilitation services, X-ray and other diagnostic
33 services, prosthetic devices, ambulance services, medication and other
34 reasonable and necessary expenses resulting from the treatment
35 prescribed by persons licensed to practice medicine and surgery
36 pursuant to R.S.45:9-1 et seq., dentistry pursuant to R.S.45:6-1 et
37 seq., psychology pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.) or
38 chiropractic pursuant to P.L.1953, c.233 (C.45:9-41.1 et seq.) or by
39 persons similarly licensed in other states and nations or**]** reasonable
40 and necessary expenses for treatment or services as provided by the
41 policy, including medical, surgical, rehabilitative and diagnostic
42 services and hospital expenses, provided by a health care provider
43 licensed or certified by the State or by another state or nation, and
44 reasonable and necessary expenses for ambulance services or other
45 transportation, medication and other services as may be provided for,
46 and subject to such limitations as provided for, in the policy, as

1 approved by the commissioner. "Medical expenses" shall also include
2 any nonmedical remedial treatment rendered in accordance with a
3 recognized religious method of healing.

4 f. "Hospital expenses" means [:

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

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

8 (3) The cost of other hospital services, such as operating room;
9 medicines, drugs, anesthetics; treatments with X-ray, radium and
10 other radioactive substances; laboratory tests, surgical dressings and
11 supplies; and other medical care and treatment rendered by the
12 hospital;

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

14 (5) The cost of medical supplies, such as prescribed drugs and
15 medicines; blood and blood plasma; artificial limbs and eyes; surgical
16 dressings, casts, splints, trusses, braces, crutches; rental of
17 wheelchair, hospital bed or iron lung; oxygen and rental of equipment
18 for its administration] the cost of treatment and services, as provided
19 in the policy approved by the commissioner, by a licensed and
20 accredited acute care facility which engages primarily in providing
21 diagnosis, treatment and care of sick and injured persons on an
22 inpatient or outpatient basis; the cost of covered treatment and
23 services provided by an extended care facility which provides room
24 and board and skilled nursing care 24 hours a day and which is
25 recognized by the administrators of the federal Medicare program as
26 an extended care facility; and the cost of covered services at an
27 ambulatory surgical facility supervised by a physician licensed in this
28 State or in another jurisdiction and recognized by the Commissioner
29 of Health and Senior Services, or any other facility licensed, certified
30 or recognized by the Commissioner of Health and Senior Services or
31 the Commissioner of Human Services or a nationally recognized
32 system such as the Commission on Accreditation of Rehabilitation
33 Facilities, or by another jurisdiction in which it is located.

34 g. "Named insured" means the person or persons identified as the
35 insured in the policy and, if an individual, his or her spouse, if the
36 spouse is named as a resident of the same household, except that if the
37 spouse ceases to be a resident of the household of the named insured,
38 coverage shall be extended to the spouse for the full term of any policy
39 period in effect at the time of the cessation of residency.

40 h. "Pedestrian" means any person who is not occupying, entering
41 into, or alighting from a vehicle propelled by other than muscular
42 power and designed primarily for use on highways, rails and tracks.

43 i. "Noneconomic loss" means pain, suffering and inconvenience.

44 j. "Motor vehicle" means a motor vehicle as defined in R.S. 39:1-1,
45 exclusive of an automobile as defined in subsection a. of this section.

46 k. "Economic loss" means uncompensated loss of income or

1 property, or other uncompensated expenses, including, but not limited
2 to, medical expenses.

3 1. "Health care provider" or "provider" means those persons
4 licensed or certified to perform health care treatment or services
5 compensable as medical expenses and shall include, but not be limited
6 to, (1) a hospital or health care facility which is maintained by a state
7 or any of its political subdivisions, (2) a hospital or health care facility
8 licensed by the Department of Health and Senior Services, (3) other
9 hospitals or health care facilities designated by the Department of
10 Health and Senior Services to provide health care services, or other
11 facilities, including facilities for radiology and diagnostic testing,
12 freestanding emergency clinics or offices, and private treatment
13 centers, (4) a nonprofit voluntary visiting nurse organization providing
14 health care services other than in a hospital, (5) hospitals or other
15 health care facilities or treatment centers located in other states or
16 nations, (6) physicians licensed to practice medicine and surgery, (7)
17 licensed chiropractors, (8) licensed dentists, (9) licensed optometrists,
18 (10) licensed pharmacists, (11) licensed chiropodists, (12) registered
19 bio-analytical laboratories, (13) licensed psychologists, (14) licensed
20 physical therapists, (16) certified nurse-midwives, (17) certified nurse-
21 practitioners/clinical nurse-specialists, (18) licensed health
22 maintenance organizations, (19) licensed orthotists and prosthetists,
23 ²(20) licensed professional nurses,² and ²[(20)](21)² providers of
24 other health care services or supplies, including durable medical
25 goods.

26 m. "Medically necessary" means that the treatment is consistent
27 with the symptoms or diagnosis, and treatment of the injury (1) is not
28 primarily for the convenience of the injured person or provider, (2) is
29 the most appropriate standard or level of service which is in
30 accordance with standards of good practice and standard professional
31 treatment protocols, as such protocols may be recognized or
32 designated by the Commissioner of Banking and Insurance, in
33 consultation with the Commissioner of Health and Senior Services ²[,
34 by] or with² a professional licensing or certifying board in the Division
35 of Consumer Affairs in the Department of Law and Public Safety, or
36 by a nationally recognized professional organization, and (3) does not
37 involve unnecessary ²[or repeated]² diagnostic testing.

38 n. "Standard automobile insurance policy" means an automobile
39 insurance policy with at least the coverage required pursuant to
40 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4).

41 o. "Basic automobile insurance policy" means an automobile
42 insurance policy pursuant to section of 4 of P.L. , c. (C.)(now
43 before the Legislature as this bill).

44 (cf: P.L.1983, c.362, s.6)

45

46 3. Section 3 of P.L.1972, c.70 (C.39:6A-3) is amended to read as

1 follows:

2 3. Compulsory automobile insurance coverage; limits. **[Every]**
3 Except as provided by section 4 of P.L. _____, c. _____ (C. _____)(now
4 before the Legislature as this bill), every owner or registered owner of
5 an automobile registered or principally garaged in this State shall
6 maintain automobile liability insurance coverage, under provisions
7 approved by the Commissioner of Banking and Insurance, insuring
8 against loss resulting from liability imposed by law for bodily injury,
9 death and property damage sustained by any person arising out of the
10 ownership, maintenance, operation or use of an automobile wherein
11 such coverage shall be at least in:

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

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

19 c. an amount or limit of \$5,000.00, exclusive of interest and costs,
20 for damage to property in any one accident.

21 No licensed insurance carrier shall refuse to renew the required
22 coverage stipulated by this act of an eligible person as defined in
23 section 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with
24 the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or
25 with the consent of the Commissioner of Banking and Insurance.
26 (cf: P.L.1990, c.8, s.3)

27

28 4. (New section) As an alternative to the mandatory coverages
29 provided in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-
30 4), any owner or registered owner of an automobile registered or
31 principally garaged in this State may elect a basic automobile insurance
32 policy providing the following coverage:

33 a. Personal injury protection coverage, for the payment of benefits
34 without regard to negligence, liability or fault of any kind, to the
35 named insured and members of his family residing in his household,
36 who sustained bodily injury as a result of an accident while occupying,
37 entering into, alighting from or using an automobile, or as a
38 pedestrian, caused by an automobile or by an object propelled by or
39 from an automobile, to other persons sustaining bodily injury while
40 occupying, entering into, alighting from or using the automobile of the
41 named insured, with the permission of the named insured, and to
42 pedestrians sustaining bodily injury caused by the named insured's
43 automobile or struck by an object propelled by or from such
44 automobile. "Personal injury protection coverage" issued pursuant to
45 this section means and includes payment of medical expense benefits,
46 as provided in the policy and approved by the commissioner, for the

1 reasonable and necessary treatment of bodily injury in an amount not
2 to exceed \$15,000 per person per accident; except that, medical
3 expense benefits shall be paid in an amount not to exceed \$250,000 for
4 ²[the reasonable and necessary treatment of bodily injuries which
5 result in: death; permanent and significant brain injury; quadriplegia or
6 paraplegia; dismemberment; total loss of vision in one or both eyes;
7 total loss of hearing in one or both ears; significant permanent injury
8 due to prominent facial, scalp or neck scarring] all medically necessary
9 treatment of permanent or significant brain injury, spinal cord injury
10 or disfigurement or for medically necessary treatment of other
11 permanent or significant injuries rendered at a trauma center or acute
12 care hospital immediately following the accident and until the patient
13 is stable, no longer requires critical care and can be safely discharged
14 or transferred to another facility in the judgement of the attending
15 physician². In the event benefits paid by an insurer pursuant to this
16 subsection are in excess of \$75,000 on account of personal injury to
17 any one person in any one accident, such excess shall be paid by the
18 insurer in consultation with the Unsatisfied Claim and Judgment Fund
19 Board and shall be reimbursable to the insurer from the Unsatisfied
20 Claim and Judgment Fund pursuant to section 2 of P.L.1977, c.310
21 (C.39:6-73.1). Benefits provided under basic coverage shall be in
22 accordance with a benefit plan provided in the policy and approved by
23 the commissioner. The policy form, which shall be subject to the
24 approval of the commissioner, shall set forth the benefits provided
25 under the policy, including eligible medical treatments ²diagnostic
26 tests² and services as well as such other benefits as the policy may
27 provide. The commissioner shall set forth by regulation ²a statement
28 of² the basic benefits which shall be included in the policy. Medical
29 treatments, diagnostic tests, and services provided by the policy shall
30 be rendered in accordance with commonly accepted protocols and
31 professional standards and practices which are commonly accepted as
32 being beneficial for the treatment of the covered injury. Protocols and
33 professional standards and practices which are deemed to be
34 commonly accepted pursuant to this section shall be those recognized
35 by national standard setting organizations, national or state
36 professional organizations of the same discipline as the treating
37 provider, or those designated or approved by the commissioner in
38 consultation with the professional licensing boards in the Division of
39 Consumer Affairs in the Department of Law and Public Safety. ²The
40 commissioner, in consultation with the Commissioner of the
41 Department of Health and Senior Services and the applicable licensing
42 boards, may reject the use of protocols, standards and practices or lists
43 of diagnostic tests set by any organization deemed not to have
44 standing or general recognition by the provider community or the
45 applicable licensing boards.² Protocols shall be deemed to establish
46 guidelines as to standard appropriate treatment ²and diagnostic tests²

1 for injuries sustained in automobile accidents, but the establishment of
2 standard treatment protocols or protocols for the administration of
3 diagnostic tests shall not be interpreted in such a manner as to
4 preclude variance from the standard when warranted by reason of
5 medical necessity. The policy form may provide for the
6 precertification of certain procedures, treatments, diagnostic tests, or
7 other services or for the purchase of durable medical goods, as
8 approved by the commissioner, provided that the requirement for
9 precertification shall not be unreasonable, and no precertification
10 requirement shall apply within ten days of the insured event. The
11 policy may provide that certain benefits provided by the policy which
12 are in excess of the basic benefits required by the commissioner to be
13 included in the policy may be subject to reasonable copayments in
14 addition to the copayments provided for herein, provided that the
15 copayments shall not be unreasonable and shall be established in such
16 as manner as not to serve to encourage underutilization of benefits
17 subject to the copayments, nor encourage overutilization of benefits.
18 The policy form shall clearly set forth any limitations on benefits or
19 exclusions, which may include, but need not be limited to, benefits
20 which are otherwise compensable under workers' compensation, or
21 benefits for treatments deemed to be experimental or investigational,
22 or benefits deducted pursuant to section 6 of P.L.1972, c.70
23 (C.39:6A-6). The commissioner may enlist the services of a benefit
24 consultant in establishing the basic benefits level provided in this
25 subsection, which shall be set forth by regulation no later than
26 ²[90]120² days following the enactment date of this amendatory and
27 supplementary act. The commissioner shall not advertise for the
28 consultant as provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-
29 8 and 52:34-9).

30 Medical expense benefits payable under this subsection shall not be
31 assignable, except to a provider of service benefits, in accordance with
32 policy terms approved by the commissioner, nor shall they be subject
33 to levy, execution, attachment or other process for satisfaction of
34 debts. Medical expense benefits payable in accordance with this
35 subsection may be subject to a deductible ²[of up to \$250,]² and
36 copayments as provided for in the policy, if any. No insurer or
37 provider providing service benefits to an insured shall have a right of
38 subrogation for the amount of benefits paid pursuant to any deductible
39 or copayment under this section.

40 b. Liability insurance coverage insuring against loss resulting from
41 liability imposed by law for ²[¹bodily injury, death and¹]² property
42 damage sustained by any person arising out of the ownership,
43 maintenance, operation or use of an automobile ²[¹: (1) in an amount
44 or limit of \$10,000, exclusive of interests and costs, on account of
45 injury to, or death of, one or more persons in any one accident; and
46 (2)¹]² in an amount or limit of \$5,000, exclusive of interest and costs,

1 for damage to property in any one accident.

2 ²c. In addition to the aforesaid coverages required to be provided
3 in a basic automobile insurance policy, optional liability insurance
4 coverage insuring against loss resulting from liability imposed by law
5 for bodily injury or death in an amount or limit of \$10,000, exclusive
6 of interests and costs, on account of injury to, or death of, one or
7 more persons in any one accident.²

8 If a named insured has elected the basic automobile insurance policy
9 option and an immediate family member or members or relatives
10 resident in his household have one or more policies with the coverages
11 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and
12 39:6A-4), the provisions of section 12 of P.L.1983, c.362 (C.39:6A-
13 4.2) shall apply.

14 Every named insured and any other person to whom the basic
15 automobile insurance policy ²with or without the optional \$10,000
16 liability coverage insuring against loss resulting from liability imposed
17 by law for bodily injury or death provided for in subsection c. of this
18 section.² applies shall be subject to the tort option provided in
19 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

20 No licensed insurance carrier shall refuse to renew the coverage
21 stipulated by this section of an eligible person as defined in section 25
22 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
23 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
24 the consent of the Commissioner of Banking and Insurance.

25

26 5. (New section) a. All automobile insurance policies issued or
27 renewed on or after the effective date of P.L. , c. (C.)(now
28 before the Legislature as this bill) shall be issued or renewed including
29 at least the coverages required pursuant to sections 3 and 4 of
30 P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless the named insured
31 elects a basic automobile insurance policy pursuant to section 4 of
32 P.L. , c. (C.)(now before the Legislature as this bill).
33 Election of a basic automobile insurance policy shall be in writing and
34 signed by the named insured on the coverage selection form required
35 by section 17 of P.L.1983, c.362 (C.39:6A-23). The coverage election
36 form shall contain a statement, clearly readable and in 12-point bold
37 type, in a form approved by the commissioner, that election of a basic
38 automobile insurance policy ²will result in less coverage than the
39 \$250,000 medical expense benefits coverage mandated prior to the
40 effective date of this act. Furthermore, the coverage election form
41 shall contain a statement, clearly readable and in 12-point bold type,
42 in a form approved by the commissioner, that election of a basic
43 automobile insurance policy without the optional \$10,000 liability
44 coverage provided for in section 4 of P.L. , c. (C.)(now before
45 the Legislature as this bill)² may subject the named insured to a claim
46 or judgment for noneconomic loss which is not covered by the basic

1 automobile insurance policy, and which may place his assets at risk,
2 and in the event the named insured is sued, the insurer shall not
3 provide legal counsel.

4 b. The insurance coverages provided for in section 4 of P.L. , c.
5 (C.)(now before the Legislature as this bill) shall be offered by
6 every insurer which writes insurance coverages pursuant to sections
7 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) for a period of
8 five years after the effective date of P.L. , c. (C.)(now
9 before the Legislature as this bill). The commissioner shall require
10 every company writing such insurance coverage to report to him
11 annually during that five-year period as to the number of policies
12 written pursuant to this subsection in the previous year, the number of
13 policies with the coverage offered pursuant to section 4 of P.L.1972,
14 c.70 (C.39:6A-4) which have been converted to policies with the
15 coverage offered pursuant to section 4 of P.L. , c. (C.)(now
16 before the Legislature as this bill) and any other information the
17 commissioner may require ²such as, but not limited to, the age of the
18 policyholders and the territories in which the policyholders reside².
19 The commissioner shall then report to the Governor and the
20 Legislature regarding the acceptance of the basic automobile insurance
21 policy by the automobile insurance consumers of this State annually
22 for the first four years the basic policy is sold. On or before January
23 1, 2003, the commissioner shall make a final, cumulative report which
24 shall include recommendations as to the continuation of the basic
25 policy to the Governor and the Legislature.

26

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

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

30 **【**Every automobile liability insurance policy, issued or renewed on
31 or after January 1, 1991, insuring an automobile as defined in section
32 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability
33 imposed by law for bodily injury, death and property damage sustained
34 by any person arising out of ownership, operation, maintenance or use
35 of an automobile shall provide personal injury protection coverage, as
36 defined hereinbelow, under provisions approved by the Commissioner
37 of Banking and Insurance, for the payment of benefits without regard
38 to negligence, liability or fault of any kind, to the named insured and
39 members of his family residing in his household who sustained bodily
40 injury as a result of an accident while occupying, entering into,
41 alighting from or using an automobile, or as a pedestrian, caused by an
42 automobile or by an object propelled by or from an automobile, to
43 other persons sustaining bodily injury while occupying, entering into,
44 alighting from or using the automobile of the named insured, with the
45 permission of the named insured, and to pedestrians, sustaining bodily
46 injury caused by the named insured's automobile or struck by an object

1 propelled by or from such automobile.

2 "Personal injury protection coverage" means and includes:

3 a. Medical expense benefits. Payment of reasonable medical
4 expense benefits in an amount not to exceed \$250,000 per person per
5 accident. In the event benefits paid by an insurer pursuant to this
6 subsection are in excess of \$75,000 on account of personal injury to
7 any one person in any one accident, such excess shall be paid by the
8 insurer in consultation with the Unsatisfied Claim and Judgment Fund
9 Board and shall be reimbursable to the insurer from the Unsatisfied
10 Claim and Judgment Fund pursuant to section 2 of P.L.1977, c.310
11 (C.39:6-73.1).

12 b. Income continuation benefits. The payment of the loss of
13 income of an income producer as a result of bodily injury disability,
14 subject to a maximum weekly payment of \$100.00. Such sum shall be
15 payable during the life of the injured person and shall be subject to an
16 amount or limit of \$5,200.00, on account of injury to any one person
17 in any one accident, except that in no case shall income continuation
18 benefits exceed the net income normally earned during the period in
19 which the benefits are payable.

20 c. Essential services benefits. Payment of essential services
21 benefits to an injured person shall be made in reimbursement of
22 necessary and reasonable expenses incurred for such substitute
23 essential services ordinarily performed by the injured person for
24 himself, his family and members of the family residing in the
25 household, subject to an amount or limit of \$12.00 per day. Such
26 benefits shall be payable during the life of the injured person and shall
27 be subject to an amount or limit of \$4,380.00, on account of injury to
28 any one person in any one accident.

29 d. Death benefits. In the event of the death of an income producer
30 as a result of injuries sustained in an accident entitling such person to
31 benefits under this section, the maximum amount of benefits which
32 could have been paid to the income producer, but for his death, under
33 subsection b. of this section shall be paid to the surviving spouse, or
34 in the event there is no surviving spouse, then to the surviving
35 children, and in the event there are no surviving spouse or surviving
36 children, then to the estate of the income producer.

37 In the event of the death of one performing essential services as a
38 result of injuries sustained in an accident entitling such person to
39 benefits under subsection c. of this section, the maximum amount of
40 benefits which could have been paid such person, under subsection c.,
41 shall be paid to the person incurring the expense of providing such
42 essential services.

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

1 Benefits payable under this section shall:

2 (1) Be subject to any option elected by the policyholder pursuant
3 to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

4 (2) Not be assignable, except to a provider of service benefits
5 under this section in accordance with policy terms approved by the
6 commissioner, nor subject to levy, execution, attachment or other
7 process for satisfaction of debts.

8 Medical expense benefit payments shall be subject to a deductible
9 of \$250.00 on account of injury in any one accident and a copayment
10 of 20% of any benefits payable between \$250.00 and \$5,000.00.】

11 Except as provided by section 4 of P.L. , c. (C.)(now
12 before the Legislature as this bill), every standard automobile liability
13 insurance policy issued or renewed on or after the effective date of
14 P.L. , c. (C.)(now before the Legislature as this bill)
15 shall contain personal injury protection benefits for the payment of
16 benefits without regard to negligence, liability or fault of any kind, to
17 the named insured and members of his family residing in his household
18 who sustain bodily injury as a result of an accident while occupying,
19 entering into, alighting from or using an automobile, or as a
20 pedestrian, caused by an automobile or by an object propelled by or
21 from an automobile, to other persons sustaining bodily injury while
22 occupying, entering into, alighting from or using the automobile of the
23 named insured, with permission of the named insured, and to
24 pedestrians sustaining bodily injury caused by the named insured's
25 automobile or struck by an automobile or struck by an object propelled
26 by or from that automobile.

27 "Personal injury protection coverage" means and includes:

28 a. Payment of medical expense benefits in accordance with a
29 benefit plan provided in the policy and approved by the commissioner,
30 for reasonable, necessary, and appropriate treatment and provision of
31 services to persons sustaining bodily injury, in an amount not to
32 exceed \$250,000 per person per accident. In the event benefits paid
33 by an insurer pursuant to this subsection are in excess of \$75,000 on
34 account of bodily injury to any one person in any one accident, that
35 excess shall be paid by the insurer in consultation with the Unsatisfied
36 Claim and Judgment Fund Board and shall be reimbursable to the
37 insurer from the Unsatisfied Claim and Judgment Fund pursuant to
38 section 2 of P.L.1977, c.310 (C.39:6-73.1). The policy form, which
39 shall be subject to the approval of the commissioner, shall set forth the
40 benefits provided under the policy, including eligible medical
41 treatments ²diagnostic tests² and services as well as such other
42 benefits as the policy may provide. The commissioner shall set forth
43 by regulation ²a statement of² the basic benefits which shall be
44 included in the policy. Medical treatments, diagnostic tests, and
45 services provided by the policy shall be rendered in accordance with
46 commonly accepted protocols and professional standards and practices

1 which are commonly accepted as being beneficial for the treatment of
2 the covered injury. Protocols and professional standards and practices
3 ²and lists of valid diagnostic tests² which are deemed to be commonly
4 accepted pursuant to this section shall be those recognized by national
5 standard setting organizations, national or state professional
6 organizations of the same discipline as the treating provider, or those
7 designated or approved by the commissioner in consultation with the
8 professional licensing boards in the Division of Consumer Affairs in
9 the Department of Law and Public Safety. ²The commissioner, in
10 consultation with the Commissioner of the Department of Health and
11 Senior Services and the applicable licensing boards, may reject the use
12 of protocols, standards and practices or lists of diagnostic tests set by
13 any organization deemed not to have standing or general recognition
14 by the provider community or the applicable licensing boards.²
15 Protocols shall be deemed to establish guidelines as to standard
16 appropriate treatment ²and diagnostic tests² for injuries sustained in
17 automobile accidents, but the establishment of standard treatment
18 protocols or protocols for the administration of diagnostic tests shall
19 not be interpreted in such a manner as to preclude variance from the
20 standard when warranted by reason of medical necessity. The policy
21 form may provide for the precertification of certain procedures,
22 treatments, diagnostic tests, or other services or for the purchase of
23 durable medical goods, as approved by the commissioner, provided
24 that the requirement for precertification shall not be unreasonable, and
25 no precertification requirement shall apply within ten days of the
26 insured event. The policy may provide that certain benefits provided
27 by the policy which are in excess of the basic benefits required by the
28 commissioner to be included in the policy may be subject to reasonable
29 copayments in addition to the copayments provided for pursuant to
30 subsection e. of this section, provided that the copayments shall not be
31 unreasonable and shall be established in such as manner as not to serve
32 to encourage underutilization of benefits subject to the copayments,
33 nor encourage overutilization of benefits. The policy form shall clearly
34 set forth any limitations on benefits or exclusions, which may include,
35 but need not be limited to, benefits which are otherwise compensable
36 under workers' compensation, or benefits for treatments deemed to be
37 experimental or investigational, or benefits deducted pursuant to
38 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may
39 enlist the services of a benefit consultant in establishing the basic
40 benefits level provided in this subsection, which shall be set forth by
41 regulation no later than ²[90] 120² days following the enactment date
42 of P.L. , c. (C.)(now before the Legislature as this bill). The
43 commissioner shall not advertise for bids for the consultant as
44 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
45 9).
46 b. Income continuation benefits. The payment of the loss of

1 income of an income producer as a result of bodily injury disability,
2 subject to a maximum weekly payment of \$100. Such sum shall be
3 payable during the life of the injured person and shall be subject to an
4 amount or limit of \$5,200, on account of injury to any one person in
5 any one accident, except that in no case shall income continuation
6 benefits exceed the net income normally earned during the period in
7 which the benefits are payable.

8 c. Essential services benefits. Payment of essential services
9 benefits to an injured person shall be made in reimbursement of
10 necessary and reasonable expenses incurred for such substitute
11 essential services ordinarily performed by the injured person for
12 himself, his family and members of the family residing in the
13 household, subject to an amount or limit of \$12 per day. Such benefits
14 shall be payable during the life of the injured person and shall be
15 subject to an amount or limit of \$4,380, on account of injury to any
16 one person in any one accident.

17 d. Death benefits. In the event of the death of an income producer
18 as a result of injuries sustained in an accident entitling such person to
19 benefits under this section, the maximum amount of benefits which
20 could have been paid to the income producer, but for his death, under
21 subsection b. of this section shall be paid to the surviving spouse, or
22 in the event there is no surviving spouse, then to the surviving
23 children, and in the event there are no surviving spouse or surviving
24 children, then to the estate of the income producer.

25 In the event of the death of one performing essential services as a
26 result of injuries sustained in an accident entitling such person to
27 benefits under subsection c. of this section, the maximum amount of
28 benefits which could have been paid to such person, under subsection
29 c., shall be paid to the person incurring the expense of providing such
30 essential services.

31 e. Funeral expenses benefits. All reasonable funeral, burial and
32 cremation expenses, subject to a maximum benefit of \$1,000, on
33 account of the death of any one person in any one accident shall be
34 payable to the decedent's estate.

35 Benefits payable under this section shall:

36 (1) Be subject to any option elected by the policyholder pursuant
37 to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

38 (2) Not be assignable, except to a provider of service benefits
39 under this section in accordance with policy terms approved by the
40 commissioner, nor subject to levy, execution, attachment or other
41 process for satisfaction of debts.

42 Medical expense benefit payments shall be subject to a deductible
43 ²[of \$250 on account of injury in any one accident] ² and ~~fa~~ ²[a
44 copayment of 20% of any benefits payable between \$250 and \$5,000
45 in addition to] ² any copayment which may be established ²[pursuant
46 to subsection a. of this section] as provided in the policy, of any² .

1 Upon the request of the commissioner or any party to a claim for
2 benefits or payment for services rendered, a provider shall present
3 adequate proof that any deductible or copayment related to that claim
4 has not been waived or discharged by the provider.

5 No insurer or health provider providing benefits to an insured shall
6 have a right of subrogation for the amount of benefits paid pursuant
7 to any deductible or copayment under this section.

8 (cf: P.L.1997, c.151, s.31)

9
10 7. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to read
11 as follows:

12 13. Personal injury protection coverage options. With respect to
13 personal injury protection coverage provided on an automobile in
14 accordance with section 4 of P.L.1972, c.70 (C.39:6A-4), the
15 automobile insurer shall provide the following coverage options:

16 a. Medical expense benefit deductibles in amounts of \$500.00,
17 \$1,000.00, ~~\$2,000.00~~ and \$2,500.00 for any one accident;

18 b. ~~【The option to exclude all benefits offered under subsections b.,~~
19 ~~c., d., and e. of section 4;】²~~【(Deleted by amendment, P.L. ____, c. __~~
20 ~~.)】 The option to exclude all benefits offered under subsection b., c.,~~
21 ~~d., and e. of section 4;】²~~~~

22 c. (Deleted by amendment, P.L.1988, c.119.)

23 d. For policies issued or renewed on or after January 1, 1991, the
24 option that other health insurance coverage or benefits of the insured,
25 including health care services provided by a health maintenance
26 organization and any coverage or benefits provided under any federal
27 or State program, are the primary coverage in regard to medical
28 expense benefits pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4).
29 If health insurance coverage or benefits are primary, an automobile
30 insurer providing medical expense benefits under personal injury
31 protection coverage shall be liable for reasonable medical expenses not
32 covered by the health insurance coverage or benefits up to the limit of
33 the medical expense benefit coverage. The principles of coordination
34 of benefits shall apply to personal injury protection medical expense
35 benefits coverage pursuant to this subsection. ²【The insurer shall
36 provide an appropriate reduction from the territorial base rate for
37 personal injury protection coverage for those electing the options in
38 subsections a. and d. of this section.】

39 e. Medical expense benefits in amounts of \$150,000, \$75,000,
40 \$50,000 or \$15,000 per person per accident; except that, medical
41 expense benefits shall be paid in an amount not to exceed \$250,000 for
42 all medically necessary treatment of permanent or significant brain
43 injury, spinal cord injury or disfigurement or for medically necessary
44 treatment of other permanent or significant injuries rendered at a
45 trauma center or acute care hospital immediately following the
46 accident and until the patient is stable, no longer requires critical care

1 and can be safely discharged or transferred to another facility in the
2 judgment of the attending physician. The coverage election form shall
3 contain a statement, clearly readable and in 12-point bold type, in a
4 form approved by the commissioner, that election of any of the
5 aforesaid medical expense benefits options results in less coverage
6 than the \$250,000 medical expense benefits coverage mandated prior
7 to the effective date of this act.

8 If none of the aforesaid medical expenses benefits options is
9 affirmatively chosen in writing, the policy shall provide \$250,000
10 medical expense benefits coverage.

11 f. The insurer shall provide an appropriate reduction from the
12 territorial base rate for personal injury protection coverage for those
13 electing any of the options in subsections a., d. and e. of this section.²

14 **【Insurers shall offer the options provided by subsections a. and b.**
15 **of this section at appropriately reduced premiums. For policies issued**
16 **or renewed prior to January 1, 1992, insurers shall offer the option**
17 **provided by subsection d. of this section at a discount of not less than**
18 **25% from the base rate applicable to the first \$250,000 of medical**
19 **expense benefits, and for policies issued or renewed on or after**
20 **January 1, 1992, insurers shall offer the option at an appropriate**
21 **discount from the base rate for the amount of medical expense benefits**
22 **coverage taken.】**

23 Any named insured who chooses the option provided by subsection
24 d. of this section shall provide proof that he and members of his family
25 residing in his household are covered by health insurance coverage or
26 benefits in a manner and to an extent approved by the commissioner.
27 Nothing in this section shall be construed to require a health insurer,
28 health maintenance organization or governmental agency to cover
29 individuals or treatment which is not normally covered under the
30 applicable benefit contract or plan. If it is determined that an insured
31 who selected or is otherwise covered by the option provided in
32 subsection d. of this section did not have such health coverage in
33 effect at the time of an accident, medical expense benefits shall be
34 payable by the person's automobile insurer and shall be subject to any
35 deductible required by law or otherwise selected as an option pursuant
36 to subsection a. of this section, any copayment required by law and an
37 additional deductible in the amount of \$750.

38 An option elected by the named insured in accordance with this
39 section shall apply only to the named insured and any resident relative
40 in the named insured's household who is not a named insured under
41 another automobile insurance policy, and not to any other person
42 eligible for personal injury protection benefits required to be provided
43 in accordance with section 4 of P.L.1972, c.70 (C.39:6A-4).

44 **【In the case of a medical expense benefit deductible, the deductible**
45 **elected by the named insured shall be satisfied for any one accident,**
46 **whether the medical expense benefits are paid or provided, in the**

1 amount of the deductible, to the named insured or to one or more
2 resident relatives in the named insured's household who are not named
3 insureds under another insurance policy, or to any combination
4 thereof.]

5 Medical expense benefits payable in any amount between the
6 deductible selected pursuant to subsection a. of this section and
7 \$5,000.00 shall be subject to [a] the copayment [of 20%] provided
8 in the policy, if any.

9 No insurer or health provider providing benefits to an insured who
10 has elected a deductible pursuant to subsection a. of this section shall
11 have a right of subrogation for the amount of benefits paid pursuant
12 to a deductible elected thereunder or any applicable copayment.

13 The Commissioner of Banking and Insurance shall adopt rules and
14 regulations to effectuate the purposes of this section and may
15 promulgate standards applicable to the coordination of personal injury
16 protection medical expense benefits coverage.

17 (cf: P.L.1997, c.151, s.32)

18

19 8. Section 14 of P.L.1985, c.520 (C.39:6A-4.5) is amended to read
20 as follows:

21 14. a. Any person who, at the time of an automobile accident
22 resulting in injuries to that person, is required but fails to maintain
23 medical expense benefits coverage mandated by section 4 of P.L.1972,
24 c.70 (C.39:6A-4) or section 4 of P.L. _____, c. _____ (C. _____)(now before
25 the Legislature as this bill) shall have no cause of action for recovery
26 of economic or noneconomic loss sustained as a result of an accident
27 while operating an uninsured automobile.

28 b. Any person who is convicted of, or pleads guilty to, operating
29 a motor vehicle in violation of R.S.39:4-50, section 2 of P.L.1981,
30 c.512 (C.39:4-50.4a), or a similar statute from any other jurisdiction,
31 in connection with an accident, shall have no cause of action for
32 recovery of economic or noneconomic loss sustained as a result of the
33 accident.

34 c. Any person acting with specific intent of causing injury to
35 himself or others in the operation or use of an automobile shall have
36 no cause of action for recovery of economic or noneconomic loss
37 sustained as a result of an accident arising from such conduct.

38 (cf: P.L.1997, c.151, s.13)

39

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

42 6. Collateral Source. The benefits provided in [section] sections
43 4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
44 the medical expense benefits provided in section 4 of P.L. _____, c. _____
45 (C. _____)(now before the Legislature as this bill) shall be payable as
46 loss accrues, upon written notice of such loss and without regard to

1 collateral sources, except that benefits, collectible under workers'
2 compensation insurance, employees' temporary disability benefit
3 statutes, medicare provided under Federal law, and benefits, in fact
4 collected, that are provided under Federal law to active and retired
5 military personnel shall be deducted from the benefits collectible under
6 【section】 sections 4 and 【section】 10 of P.L.1972, c.70 (C.39:6A-4
7 and 39:6A-10) and the medical expense benefits provided in section 4
8 of P.L. , c. (C.)(now before the Legislature as this bill).

9 If an insurer has paid those benefits and the insured is entitled to,
10 but has failed to apply for, workers' compensation benefits or
11 employees' temporary disability benefits, the insurer may immediately
12 apply to the provider of workers' compensation benefits or of
13 employees' temporary disability benefits for a reimbursement of any
14 【section 4 and section 10】 benefits pursuant to sections 4 and 10 of
15 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits
16 pursuant to section 4 of P.L. ,c. (C.)(now before the
17 Legislature as this bill) it has paid.

18 (cf: P.L.1983, c.362, s.9)

19

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

22 7. Exclusions. a. Insurers may exclude a person from benefits
23 under 【section】 sections 4 and 【section】 10 of P.L.1972, c.70
24 (C.39:6A-4 and 39:6A-10) 【where such】 and medical expense benefits
25 provided in section 4 of P.L. , c. (C.)(now before the
26 Legislature as this bill) if that person's conduct contributed to his
27 personal injuries or death occurred in any of the following ways:

28 (1) while committing a high misdemeanor or felony or seeking to
29 avoid lawful apprehension or arrest by a police officer; or

30 (2) while acting with specific intent of causing injury or damage to
31 himself or others.

32 b. An insurer may also exclude from 【section 4 and section 10】 the
33 benefits provided in sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
34 and 39:6A-10) and the medical expense benefits provided in section 4
35 of P.L. , c. (C.)(now before the Legislature as this bill) any
36 person having incurred injuries or death, who, at the time of the
37 accident:

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

41 (2) was occupying or operating an automobile without the
42 permission of the owner or other named insured;

43 (3) was a person other than the named insured or a member and
44 named insured's family residing in his household, if that person is
45 entitled to coverage under section 4 or section 10 of P.L.1972, c.70
46 (C.39:6A-4 or 39:6A-10), or both, or section 4 of P.L. , c.

1 (C. _____)(now before the Legislature as this bill), as a named insured
2 or member of the named insured's family residing in his household
3 under the terms of another policy: or

4 (4) was a member of the named insured's family residing in the
5 named insured's household, if that person is entitled to coverage under
6 section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or
7 both, or section 4 of P.L. _____, c. _____ (C. _____)(now before the
8 Legislature as this bill) as a named insured under the terms of another
9 policy.

10 (cf: P.L.1997, c.270, s.1)

11

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

14 8. Tort exemption; limitation on the right to noneconomic loss.

15 One of the following two tort options shall be elected, in
16 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by
17 any named insured required to maintain personal injury protection
18 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4):

19 a. **【**Every owner, registrant, operator or occupant of an automobile
20 to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury
21 protection coverage, regardless of fault, applies, and every person or
22 organization legally responsible for his acts or omissions, is hereby
23 exempted from tort liability for noneconomic loss to a person who is
24 subject to this subsection and who is either a person who is required
25 to maintain the coverage mandated by this act, or is a person who has
26 a right to receive benefits under section 4 of P.L.1972, c.70
27 (C.39:6A-4) as a result of bodily injury, arising out of the ownership,
28 operation, maintenance or use of such automobile in this State, unless
29 that person has sustained a personal injury which results in death;
30 dismemberment; significant disfigurement; a fracture; loss of a fetus;
31 permanent loss of use of a body organ, member, function or system;
32 permanent consequential limitation of use of a body organ or member;
33 significant limitation of use of a body function or system; or a
34 medically determined injury or impairment of a non-permanent nature
35 which prevents the injured person from performing substantially all of
36 the material acts which constitute that person's usual and customary
37 daily activities for not less than 90 days during the 180 days
38 immediately following the occurrence of the injury or impairment**】**

39 Limitation on lawsuit option. Every owner, registrant, operator or
40 occupant of an automobile to which section 4 of P.L.1972, c.70
41 (C.39:6A-4), personal injury protection coverage, or section 4 of
42 P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) medical
43 expense benefits coverage, regardless of fault, applies, and every
44 person or organization legally responsible for his acts or omissions, is
45 hereby exempted from tort liability for noneconomic loss to a person
46 who is subject to this subsection and who is either a person who is

1 required to maintain personal injury protection coverage pursuant to
2 section 4 of P.L.1972, c.70 (C.39:6A-4) or medical expense benefits
3 pursuant to section 4 of P.L. , c. (C.)(now before the
4 Legislature as this bill), or is a person who has a right to receive
5 benefits under section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of
6 P.L. , c. (C.)(now before the Legislature as this bill), as a
7 result of bodily injury, arising out of the ownership, operation,
8 maintenance or use of such automobile in this State, unless that person
9 has sustained a bodily injury which results in death; dismemberment;
10 significant disfigurement or significant scarring; displaced fractures;
11 loss of a fetus; or a permanent injury within a reasonable degree of
12 medical probability, other than scarring or disfigurement. An injury
13 shall be considered permanent when the body part or organ, or both,
14 has not healed to function normally and will not heal to function
15 normally with further medical treatment. For the purposes of this
16 subsection, "physician" means a physician as defined in section 5 of
17 P.L.1939,c.115 (C.45:9-5.1).

18 In order to satisfy the tort option provisions of this subsection, the
19 plaintiff shall, within 60 days following the date of the answer to the
20 complaint by the defendant, provide the defendant with a certification
21 from the licensed treating physician or a board-certified licensed
22 physician to whom the plaintiff was referred by the treating physician.
23 The certification shall state, under penalty of perjury, that the plaintiff
24 has sustained an injury described above. The certification shall be
25 based on and refer to objective clinical evidence, which may include
26 medical testing, except that any such testing shall be performed in
27 accordance with medical protocols pursuant to subsection a. of section
28 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
29 administered in accordance with section 12 of P.L. , c. (C.)(now
30 before the Legislature as this bill). Such testing may not be
31 experimental in nature or dependent entirely upon subjective patient
32 response. The court may grant no more than one additional period not
33 to exceed 60 days to file the certification pursuant to this subsection
34 upon a finding of good cause.

35 A person is guilty of a crime of the fourth degree if that person
36 purposefully or knowingly makes, or causes to be made, a false,
37 fictitious, fraudulent, or misleading statement of material fact in, or
38 omits a material fact from, or causes a material fact to be omitted
39 from, any certification filed pursuant to this subsection.
40 Notwithstanding the provisions of subsection e. of N.J.S. 2C:44-1, the
41 court shall deal with a person who has been convicted of a violation
42 of this subsection by imposing a sentence of imprisonment unless,
43 having regard to the character and condition of the person, the court
44 is of the opinion that imprisonment would be a serious injustice which
45 overrides the need to deter such conduct by others. If the court
46 imposes a noncustodial or probationary sentence, such sentence shall

1 not become final for 10 days in order to permit the appeal of such
2 sentence by the prosecution. Nothing in this subsection a. shall
3 preclude an indictment and conviction for any other offense defined by
4 the laws of this State. In addition, any professional license held by the
5 person shall be forfeited according to the procedures established by
6 section 4 of P.L.1997, c.353 (C.2C:51-5); or

7 b. No limitation on lawsuit option. As an alternative to the basic
8 tort option specified in subsection a. of this section, every owner,
9 registrant, operator, or occupant of an automobile to which section 4
10 of P.L.1972, c.70 (C.39:6A-4) , personal injury protection coverage,
11 or section 4 of P.L. _____, c. _____ (C. _____)(now before the Legislature as
12 this bill), medical expense benefits coverage, regardless of fault,
13 applies, and every person or organization legally responsible for his
14 acts or omissions, shall be liable for noneconomic loss to a person who
15 is subject to this subsection and who is either a person who is required
16 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et
17 seq.) or is a person who has a right to receive benefits under section
18 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the
19 ownership, operation, maintenance or use of such automobile in this
20 State.

21 The tort option provisions of subsection b. of this section shall also
22 apply to the right to recover for noneconomic loss of any person
23 eligible for benefits pursuant to section 4 of P.L.1972, c.70
24 (C.39:6A-4) or section 4 of P.L. _____, c. _____ (C. _____)(now before the
25 Legislature as this bill) but who is not required to maintain personal
26 injury protection coverage pursuant to section 4 of P.L.1972, c.70
27 (C.39:6A-4) or medical expense benefits coverage pursuant to section
28 4 of P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) and
29 is not an immediate family member, as defined in section 14.1 of
30 P.L.1983, c.362 (C.39:6A-8.1), under **[an]** a standard automobile
31 insurance policy or basic automobile insurance policy.

32 The tort option provisions of subsection a. of this section shall also
33 apply to any person subject to section 14 of P.L.1985, c.520
34 (C.39:6A-4.5) and to every named insured and any other person to
35 whom the medical expense benefits of the basic automobile insurance
36 policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
37 Legislature as this bill) apply ²whether or not the person has elected
38 the optional \$10,000 liability coverage insuring against loss resulting
39 from liability imposed by law for bodily injury or death provided for
40 in subsection c. of section 4 of P.L. _____, c. _____ (C. _____)(now before the
41 Legislature as this bill)².

42 The tort option provisions of subsections a. and b. of this section
43 as provided in this **[1988]** 1998 amendatory and supplementary act
44 shall apply to automobile insurance policies issued or renewed on or
45 after **[January 1, 1989]** the effective date of P.L. _____, c. _____
46 (C. _____)(now before the Legislature as this bill) and as otherwise

1 provided by law.
2 (cf: P.L.1990, c.8, s.9)

3
4 12. (New section) The professional licensing boards governing
5 health care providers in the Division of Consumer Affairs shall
6 promulgate, pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), a list of valid diagnostic tests
8 to be used in conjunction with the appropriate health care protocols in
9 the treatment of persons sustaining bodily injury and subject to
10 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8). Inclusion of
11 a test on the list of valid diagnostic tests shall be based on
12 demonstrated medical value, and a level of general acceptance by the
13 relevant provider community and shall not be dependent for results
14 entirely upon subjective patient response. The initial lists shall be
15 promulgated within 180 days of the effective date of this section and
16 shall be revised from time to time as determined by the respective
17 boards to reflect new testing procedures and emerging technologies
18 enjoying a level of general acceptance within the appropriate provider
19 community. In updating its list, a board may take action at a regularly
20 scheduled meeting, notwithstanding the provisions of P.L.1968, c.410
21 (C.52:14B-1 et seq.) to the contrary, after notice as provided herein.
22 The professional boards, individually or collectively, may enlist the
23 services of a consulting firm to assist in compiling and updating the
24 list. The Commissioner of Banking and Insurance may reimburse the
25 boards for the cost of the services of the consultant. The list of valid
26 diagnostic ²[test] tests, once approved by the commissioner² shall
27 apply only to benefits under section 4 of P.L.1972, c.70 (C.39:6A-4)
28 and section 4 of P.L. , c. (C.)(now before the Legislature as this
29 bill). The board or boards hiring a consultant shall not advertise for
30 bids, as provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and
31 52:34-9). Notwithstanding any of the provisions of this section to the
32 contrary, a diagnostic test performed in an acute care facility, or
33 extended care facility recognized by Medicare, shall not be excluded
34 from a list of valid diagnostic tests promulgated pursuant to this
35 section.

36 a. For the purposes of this section, "action" includes, but is not
37 limited to:

- 38 (1) the addition or deletion of a test to the list; or
39 (2) procedures and standards for the performance of a test.

40 "Action" shall not include the hearing and resolution of contested
41 cases, licensing matters, personnel matters or any other duties of a
42 professional licensing board.

43 b. Prior to the adoption of an action by the board, the board shall
44 forward the notice of intended action and a detailed description of the
45 intended action to the Office of Administrative Law for publication in
46 the New Jersey Register.

1 A copy of the text of the intended action shall be available in the
2 Division of Consumer Affairs in accordance with the provisions of
3 P.L.1963, c.73 (C.47:1A-1 et seq.).

4 c. The board may hold a public hearing on any intended action.

5 d. Whether or not a public hearing is held, the board shall afford all
6 interested persons an opportunity to comment in writing on the
7 intended action. Written comments shall be submitted to the board
8 within the time established by the board in the notice of intended
9 action, which time shall not be less than 10 calendar days from the
10 date of notice. The board shall give due consideration to all comments
11 received. A copy of the submissions shall be filed with the Office of
12 Administrative Law for publication in the New Jersey Register.

13 e. The board may adopt the intended action immediately following
14 the expiration of the public comment period provided in subsection d.
15 of this section, or the hearing provided for in subsection c. of this
16 section, whichever date is later. The final action adopted by the board
17 shall be submitted for publication in the New Jersey Register to the
18 Office of Administrative Law, and shall be effective on the date of the
19 submission or such later date as the board may establish.

20 f. Actions filed with the Office of Administrative Law pursuant to
21 this section shall be filed subject to the provisions of subsections (a),
22 (c), (d) and (e) of section 5 of P.L.1968, c.410 (C.52:14B-5).

23 g. Nothing in this section shall be construed to prohibit the board
24 from adopting any action pursuant to the provisions of the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.).

27 h. Nothing in this section shall be construed to prohibit the
28 Director of the Division of Consumer Affairs from adopting any rule
29 or regulation pursuant to the provisions of the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

31

32 13. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to
33 read as follows:

34 20. An insurer, health maintenance organization or governmental
35 agency paying benefits pursuant to subsection a., b. or d. of section 13
36 of P.L.1983, c.362 (C.39:6A-4.3) or personal injury protection
37 benefits in accordance with section 4 or section 10 of P.L.1972, c.70
38 (C.39:6A-4 or 39:6A-10) or medical expense benefits pursuant to
39 section 4 of P.L. , c. (C.)(now before the Legislature as this
40 bill), as a result of an accident occurring within this State, shall, within
41 two years of the filing of the claim, have the right to recover the
42 amount of payments from any tortfeasor who was not, at the time of
43 the accident, required to maintain personal injury protection or medical
44 expense benefits coverage, other than for pedestrians, under the laws
45 of this State, including personal injury protection coverage required to
46 be provided in accordance with section 18 of P.L.1985, c.520

1 (C.17:28-1.4), or although required did not maintain personal injury
2 protection or medical expense benefits coverage at the time of the
3 accident. In the case of an accident occurring in this State involving
4 an insured tortfeasor, the determination as to whether an insurer,
5 health maintenance organization or governmental agency is legally
6 entitled to recover the amount of payments and the amount of
7 recovery, including the costs of processing benefit claims and
8 enforcing rights granted under this section, shall be made against the
9 insurer of the tortfeasor, and shall be by agreement of the involved
10 parties or, upon failing to agree, by arbitration.

11 (cf: P.L.1990, c.8, s.10)

12

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

15 10. Additional personal injury protection coverage. Insurers shall
16 make available to the named insured electing the standard automobile
17 insurance policy and covered under section 4 of P.L.1972, c.70
18 (C.39:6A-4), and, at his option, to resident relatives in the household
19 of the named insured, suitable additional first party coverage for
20 income continuation benefits, essential services benefits, death benefits
21 and funeral expense benefits, but the income continuation and essential
22 services benefits shall cease upon the death of the claimant, and shall
23 not operate to increase the amount of any death benefits payable under
24 section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional first party
25 coverage shall be payable only to the extent that the claimant
26 establishes that the amount of loss sustained exceeds the coverage
27 specified in section 4 of P.L.1972, c.70 (C.39:6A-4). Insurers may also
28 make available to named insureds electing a standard automobile
29 insurance policy and covered under section 4 of P.L.1972, c.70
30 (C.39:6A-4), and, at their option, to resident relatives in the household
31 of the named insured or to other persons provided medical expense
32 benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4),
33 or both, additional first party medical expense **【benefit】** benefits
34 coverage. The additional coverage shall be offered by the insurer at
35 least annually as part of the coverage selection form applicable to the
36 standard automobile insurance policy and required by section 17 of
37 P.L.1983, c.362 (C.39:6A-23). Income continuation in excess of that
38 provided for in section 4 **【must】** of P.L.1972, c.70 (C.39:6A-4) shall
39 be provided as an option by insurers for disabilities, as long as the
40 disability persists, up to an income level of \$35,000.00 per year,
41 provided that a. the excess between \$5,200.00 and the amount of
42 coverage contracted for shall be written on the basis of 75% of said
43 difference, and b. regardless of the duration of the disability, the
44 benefits payable shall not exceed the total maximum amount of income
45 continuation benefits contracted for. Death benefits provided pursuant
46 to this section shall be payable without regard to the period of time

1 elapsing between the date of the accident and the date of death, if
2 death occurs within two years of the accident and results from bodily
3 injury from that accident to which coverage under this section applies.
4 The Commissioner of Insurance is hereby authorized and empowered
5 to establish, by rule or regulation, the amounts and terms of income
6 continuation insurance to be provided pursuant to this section.
7 (cf: P.L.1990, c.8, s.11)

8
9 15. Section 11 of P.L.1972, c.70 (C.39:6A-11) is amended to read
10 as follows:

11 11. Contribution among insurers. If two or more insurers are liable
12 to pay benefits under sections 4 and 10 of **[this act] P.L.1972, c.70**
13 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
14 policy ²[or medical expense benefits under a basic automobile
15 insurance policy pursuant to section 4 of P.L. , c. (C.)(now
16 before the Legislature as this bill)]² for the same bodily injury, or
17 death, of any one person, the maximum amount payable shall be as
18 specified in those sections 4 and 10 of P.L.1972, C.70 (C.39:6A-4 and
19 39:6A-10) and section 4 of P.L. , c. (C.)(now before the
20 Legislature as this bill), respectively, if additional first party coverage
21 applies and any insurer paying the benefits shall be entitled to recover
22 from each of the other insurers, only by inter-company arbitration or
23 inter-company agreement, an equitable pro-rata share of the benefits
24 paid.

25 (cf: P.L.1972, c.70, s.11)

26
27 16. Section 12 of P.L.1972, c.70 (C.39:6A-12) is amended to read
28 as follows:

29 12. Inadmissibility of evidence of losses collectible under personal
30 injury protection coverage. Except as may be required in an action
31 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),
32 evidence of the amounts collectible or paid under a standard
33 automobile insurance policy pursuant to sections 4 and 10 of
34 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and amounts collectible or
35 paid for medical expense benefits under a basic automobile insurance
36 policy pursuant to 4 of P.L. , c. (C.)(now before the
37 Legislature as this bill), to an injured person, including the amounts of
38 any deductibles, copayments or exclusions, including exclusions
39 pursuant to subsection d. of section 13 of P.L.1983, c.362
40 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action
41 for recovery of damages for bodily injury by such injured person.

42 The court shall instruct the jury that, in arriving at a verdict as to
43 the amount of the damages for noneconomic loss to be recovered by
44 the injured person, the jury shall not speculate as to the amount of the
45 medical expense benefits paid or payable by an automobile insurer
46 under personal injury protection coverage payable under a standard

1 automobile insurance policy pursuant to sections 4 and 10 of
2 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits
3 under a basic automobile insurance policy pursuant to section 4 of
4 P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) to the
5 injured person, nor shall they speculate as to the amount of benefits
6 paid or payable by a health insurer, health maintenance organization or
7 governmental agency under subsection d. of section 13 of P.L.1983,
8 c.362 (C.39:6A-4.3).

9 Nothing in this section shall be construed to limit the right of
10 recovery, against the tortfeasor, of uncompensated economic loss
11 sustained by the injured party.

12 (cf: P.L.1990, c.8, s.12)

13
14 17. Section 13 of P.L.1972, c.70 (C.39:6A-13) is amended to read
15 as follows:

16 13. Discovery of facts as to personal injury protection coverage.
17 The following apply to personal injury protection coverage benefits
18 payable under a standard automobile insurance policy pursuant to
19 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
20 medical expense benefits payable under a basic automobile insurance
21 policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
22 Legislature as this bill):

23 a. Every employer shall, if a request is made by an insurer or the
24 Unsatisfied Claim and Judgment Fund providing personal injury
25 protection benefits under **[this act]** a standard automobile insurance
26 policy or medical expense benefits payable under a basic automobile
27 insurance policy against whom a claim has been made, furnish
28 forthwith, in a form approved by the Commissioner of Banking and
29 Insurance, a signed statement of the lost earnings since the date of the
30 bodily injury and for a reasonable period before the injury, of the
31 person upon whose injury the claim is based.

32 b. Every physician, hospital, **[clinic or other medical institution]**
33 or other health care provider providing, before and after the bodily
34 injury upon which a claim for personal injury protection benefits or
35 medical expense benefits is based, any products, services or
36 accommodations in relation to such bodily injury or any other injury,
37 or in relation to a condition claimed to be connected with such bodily
38 injury or any other injury, shall, if requested to do so by the insurer or
39 the Unsatisfied Claim and Judgment Fund against whom the claim has
40 been made, furnish forthwith a written report of the history, condition,
41 treatment, dates and costs of such treatment of the injured person, and
42 produce forthwith and permit the inspection and copying of his or its
43 records regarding such history, condition, treatment dates and costs of
44 treatment. The person requesting such records shall pay all reasonable
45 costs connected therewith.

46 c. The injured person shall be furnished upon demand a copy of all

1 information obtained by the insurer or the Unsatisfied Claim and
2 Judgment Fund under the provisions of this section, and shall pay a
3 reasonable charge, if required by the insurer and the Unsatisfied Claim
4 and Judgment Fund.

5 d. ~~Whenever~~²~~Except for medical expense benefits provided~~
6 ~~under a standard automobile insurance policy pursuant to subsection~~
7 ~~a. of section 4 of P.L.1972, c.70 (C.39:6A-4), under a basic~~
8 ~~automobile insurance policy pursuant to subsection b. of section 4 of~~
9 ~~P.L. , c. (C.)(now before the Legislature as this bill), under~~
10 ~~subsection a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and~~
11 ~~additional first party medical expense benefits coverage provided~~
12 ~~under a standard automobile insurance policy pursuant to section 10~~
13 ~~of P.L.1972, c.70 (C.39:6A-10), if there is no dispute concerning~~
14 ~~whether the treatments, health care services or durable medical goods~~
15 ~~related to an injury for which reimbursement is being sought are~~
16 ~~causally related to an insured event, whenever~~² Whenever² the mental
17 or physical condition of an injured person covered by personal injury
18 protection ~~under a standard automobile insurance policy or medical~~
19 ~~expense benefits under a basic automobile insurance policy~~ is material
20 to any claim that has been or may be made for ~~such~~ past or future
21 personal injury protection benefits ~~or medical expense benefits~~, such
22 person shall, upon request of an insurer or the Unsatisfied Claim and
23 Judgment Fund submit to mental or physical examination ~~by a~~
24 ~~physician or physicians , or chiropractor or chiropractors. Only a~~
25 ~~licensed chiropractor may determine the clinical need for further~~
26 ~~chiropractic treatment by performing a chiropractic examination and~~
27 ~~this determination shall not depend solely upon a review of the treating~~
28 ~~chiropractor patient records in cases of denial of benefits~~ ~~conducted~~
29 ~~by a health care provider licensed in this State in the same profession~~
30 ~~or speciality as the health care provider whose services are subject to~~
31 ~~review under this section and who is located within a reasonable~~
32 ~~proximity to the injured person's residence. The injured person shall~~
33 ~~provide or make available to the provider any pertinent medical~~
34 ~~records or medical history that the provider deems necessary to the~~
35 ~~examination. The costs of any examinations requested by an insurer~~
36 ~~or the Unsatisfied Claim and Judgment Fund shall be borne entirely by~~
37 ~~whomever makes such request. Such examination shall be conducted~~
38 ~~within the municipality of residence of the injured person. If there is~~
39 ~~no qualified [physician or chiropractor] health care provider~~ to
40 conduct the examination within the municipality of residence of the
41 injured person, then such examination shall be conducted in an area of
42 the closest proximity to the injured person's residence. ~~Personal~~
43 ~~protection insurers~~ ~~Insurers providing personal injury protection~~
44 ~~coverage under a standard automobile insurance policy or medical~~
45 ~~expense benefits under a basic automobile insurance policy~~ are
46 authorized to include reasonable provisions ~~in personal injury~~

1 protection coverage policies for mental and physical examinations of]
2 requiring those claiming personal injury protection coverage benefits
3 or medical expense benefits to submit to mental or physical
4 examination as requested by an insurer or the Unsatisfied Claim and
5 Judgment Fund pursuant to the provisions of this section. Failure to
6 submit to a mental or physical examination requested by an insurer or
7 the Unsatisfied Claim and Judgment Fund pursuant to the provisions
8 of this section shall subject the injured person to certain limitations in
9 coverage as specified in regulations promulgated by the commissioner.

10 e. If requested by the person examined, a party causing an
11 examination to be made, shall deliver to him a copy of every written
12 report concerning the examination rendered by an examining
13 **[physician or chiropractor]** health care provider, at least one of which
14 reports must set out his findings and conclusions in detail. After such
15 request and delivery, the party causing the examination to be made is
16 entitled upon request to receive from the person examined every
17 written report available to him, or his representative, concerning any
18 examination, previously or thereafter made of the same mental or
19 physical condition.

20 f. The injured person, upon reasonable request by the insurer or the
21 Unsatisfied Claim and Judgment Fund, shall sign all forms,
22 authorizations **[,]** or releases for information, approved by the
23 Commissioner of Banking and Insurance, which may be necessary to
24 the discovery of the above facts, in order to reasonably prove the
25 injured person's losses.

26 g. In the event of any dispute regarding an insurer's or the
27 Unsatisfied Claim and Judgment Fund's or an injured person's right as
28 to the discovery of facts about the injured person's earnings or about
29 his history, condition, treatment, dates and costs of such treatment, or
30 the submission of such injured person to a mental or physical
31 examination subject to the provisions of this section, the insurer,
32 Unsatisfied Claim and Judgment Fund or the injured person may
33 petition a court of competent jurisdiction for an order resolving the
34 dispute and protecting the rights of all parties. The order may be
35 entered on motion for good cause shown giving notice to all persons
36 having an interest therein. Such court may protect against annoyance,
37 embarrassment or oppression and may as justice requires, enter an
38 order compelling or refusing discovery, or specifying conditions of
39 such discovery; the court may further order the payment of costs and
40 expenses of the proceeding, as justice requires.

41 (cf: P.L.1993, c.186, s.1)

42

43 18. Section 11 of P.L.1972, c.203 (C.39:6A-13.1) is amended to
44 read as follows:

45 11. a. Every action for the payment of benefits **[set forth in]**
46 payable under a standard automobile insurance policy pursuant to

1 sections 4 and 10 of **[this act]** P.L.1972, c.70 (C.39:6A-4 and 39:6A-
2 10) or medical expense benefits payable under a basic automobile
3 insurance policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now
4 before the Legislature as this bill), except an action by a decedent's
5 estate, shall be commenced not later than **[2]** two years after the
6 injured person or survivor suffers a loss or incurs an expense and
7 either knows or in the exercise of reasonable diligence should know
8 that the loss or expense was caused by the accident, or not later than
9 **[4]** four years after the accident whichever is earlier, provided,
10 however, that if benefits have been paid before then an action for
11 further benefits may be commenced not later than **[2]** two years after
12 the last payment of benefits.

13 b. Every action by a decedent's estate for the payment of benefits
14 **[set forth in]** provided under a standard automobile insurance policy
15 pursuant to sections 4 and 10 of [this act] P.L.1972, c.70 (C.39:6A-4
16 and 39:6A-10) or medical expense benefits provided under a basic
17 automobile insurance policy pursuant to section 4 of P.L. _____, c. _____
18 (C. _____)(now before the Legislature as this bill) shall be commenced
19 not later than **[2]** two years after death or **[4]** four years after the
20 accident from which death results, whichever is earlier, provided,
21 however, that if benefits had been paid to the decedent prior to his
22 death then an action may be commenced not later than **[2]** two years
23 after his death or **[4]** four years after the last payment of benefits,
24 whichever is earlier, provided, further, that if the decedent's estate has
25 received benefits before then an action for further benefits shall be
26 commenced not later than **[2]** two years from the last payment of
27 benefits.

28 (cf: P.L.1972, c.203, s.11)

29

30 19. Section 15 of P.L.1972, c.70 (C.39:6A-15) is amended to read
31 as follows:

32 15. In any claim or action arising for benefits payable under a
33 standard automobile insurance policy under section 4 of **[this act]**
34 P.L.1972, c.70 (C.39:6A-4) or any claim or action arising for medical
35 expense benefits payable under a basic automobile insurance policy
36 under section 4 of P.L. _____, c. _____ (C. _____)(now before the Legislature
37 as this bill) wherein any person **[,]** obtains or attempts to obtain from
38 any other person, insurance company or Unsatisfied Claim and
39 Judgment Fund any money or other thing of value by (1) falsely or
40 fraudulently representing that such person is entitled to such benefits
41 **[under section 4 or,]** ; (2) falsely and fraudulently making statements
42 or presenting documentation in order to obtain or attempt to obtain
43 such benefits **[under section 4]** ; or **[,]** (3) cooperates, conspires or
44 otherwise acts in concert with any person seeking to falsely or
45 fraudulently obtain, or attempt to obtain, such benefits **[under section**

1 4] may upon conviction be fined not more than \$5,000.00, or
2 imprisoned for not more than [3] three years or both, or in the event
3 the sum so obtained or attempted to be obtained is not more than
4 \$500.00, may upon conviction, be fined not more than \$500.00, or
5 imprisoned for not more than [6] six months or both, as a disorderly
6 person.

7 In addition to any penalties imposed by law, any person who is
8 either found by a court of competent jurisdiction to have violated any
9 provision of P.L.1983 c.320 (C.17:33A-1 et seq.) pertaining to
10 automobile insurance or been convicted of any violation of Title 2C of
11 the New Jersey Statutes arising out of automobile insurance fraud shall
12 not operate a motor vehicle over the highways of this State for a
13 period of one year from the date of judgment or conviction.

14 (cf: P.L.1997, c.151, s.9)

15

16 20. Section 1 of P.L.1972, c.197 (C.39:6B-1) is amended to read
17 as follows:

18 1. a. Every owner or registered owner of a motor vehicle
19 registered or principally garaged in this State shall maintain motor
20 vehicle liability insurance coverage, under provisions approved by the
21 Commissioner of Banking and Insurance, insuring against loss
22 resulting from liability imposed by law for bodily injury, death and
23 property damage sustained by any person arising out of the ownership,
24 maintenance, operation or use of a motor vehicle wherein such
25 coverage shall be at least in: [a.] (1) an amount or limit of
26 \$15,000.00, exclusive of interest and costs, on account of injury to, or
27 death of, one person, in any one accident; and [b.] (2) an amount or
28 limit, subject to such limit for any one person so injured or killed, of
29 \$30,000.00, exclusive of interest and costs, on account of injury to or
30 death of, more than one person, in any one accident; and [c.] (3) an
31 amount or limit of \$5,000.00, exclusive of interest and costs, for
32 damage to property in any one accident.

33 b. Notwithstanding the provisions of subsection a. of this section,
34 an owner or registered owner of an automobile, as defined in section
35 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
36 State may satisfy the requirements of subsection a. of this section by
37 maintaining a basic automobile insurance policy ²[pursuant to]
38 containing coverages provided pursuant to subsections a. and b. of²
39 section 4 of P.L. , c. (C.)(now before the Legislature as this
40 bill).

41 (cf: P.L.1972, c.197, s.1)

42

43 21. Section 2 of P.L.1952, c.174 (C.39:6-62) is amended to read
44 as follows:

45 2. Definitions. As used in this act:

46 "Executive director" means the official designated by and serving

1 at the pleasure of the commissioner to administer to and be in charge
2 of the Unsatisfied Claim and Judgment Fund and who shall be
3 responsible to the Unsatisfied Claim and Judgment Fund Board.

4 "Treasurer" means the State Treasurer of New Jersey acting as the
5 custodian of the Unsatisfied Claim and Judgment Fund.

6 "Commissioner" means the Commissioner of Banking and
7 Insurance.

8 "Unsatisfied Claim and Judgment Fund" or "Fund" means the fund
9 derived from the sources specified in this act.

10 "Unsatisfied Claim and Judgment Fund Board" or "Board" means
11 the board created in section 4 of this act.

12 "Qualified person" means a resident of this State or the owner of a
13 motor vehicle registered in this State or a resident of another state,
14 territory, or federal district of the United States or province of Canada
15 or of a foreign country, in which recourse is afforded, to residents of
16 this State, of substantially similar character to that provided for by this
17 act; provided, however, that no person shall be a qualified person
18 where such person is an insured under a policy provision providing
19 coverage for damages sustained by the insured as a result of the
20 operation of an uninsured motor vehicle in a form authorized to be
21 included in automobile liability policies of insurance delivered or
22 issued for delivery in this State, pursuant to the provisions of, or any
23 supplement to, chapter 28 of Title 17 of the Revised Statutes or in a
24 form substantially similar thereto.

25 "Uninsured motor vehicle" means a motor vehicle as to which there
26 is not in force a liability policy meeting the requirements of section 3,
27 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,
28 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
29 of a certificate of self-insurance under said law, but shall not include
30 a motor vehicle with a policy in force which is insured pursuant to
31 section 4 of P.L. , c. (C.)(now before the Legislature as this
32 bill).

33 "Person" includes natural persons, firms, copartnerships,
34 associations and corporations.

35 "Insurer" means any insurer authorized in this State to write the
36 kinds of insurance specified in paragraphs d. and e. of R.S.17:17-1.

37 "Net direct written premiums" means direct gross premiums written
38 on policies, insuring against legal liability for bodily injury or death
39 and for damage to property arising out of the ownership, operation or
40 maintenance of motor vehicles, which are principally garaged in this
41 State, less return premiums thereon and dividends paid to
42 policyholders on such direct business.

43 "Registration license year" means the period beginning June 1,
44 1956, and ending May 31, 1957, and each subsequent 12 month
45 period, beginning June 1 and ending the following May 31.

46 (cf: P.L.1985, c.148, s.3)

1 22. Section 14 of P.L.1988, c.156 (C.17:29A-15.2) is amended to
2 read as follows:

3 14. Notwithstanding any other provision of law to the contrary, the
4 dollar amount of the commission paid to a producer for residual bodily
5 injury coverage provided pursuant to section 8 of P.L.1972, c.70
6 (C.39:6A-8) shall be the same whether the named insured elects the
7 tort option provided for in subsection a. of that section or the tort
8 option provided for in subsection b. of that section. This section shall
9 not apply to commissions on a basic automobile insurance policy
10 issued pursuant to section 4 of P.L. , c. (C.)(now before the
11 Legislature as this bill).
12 (cf: P.L.1988, c.156, s.14)

13

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

16 5. Payment of personal injury protection coverage benefits.

17 a. An insurer may require written notice to be given as soon as
18 practicable after an accident involving an automobile with respect to
19 which the policy affords personal injury protection coverage benefits
20 payable under a standard automobile insurance policy pursuant to
21 section 4 of P.L.1972, c.70 (C.34:6A-4) or medical expense benefits
22 payable under a basic automobile insurance policy pursuant to [this
23 act] section 4 of P.L. , c. (C.)(now before the Legislature
24 as this bill). In the case of claims for medical expense benefits under
25 either policy, written notice shall be provided to the insurer by the
26 treating **[medical]** health care provider no later than 21 days following
27 the commencement of treatment. Notification required under this
28 section shall be made in accordance with regulations adopted by the
29 Commissioner of Banking and Insurance and on a form prescribed by
30 the Commissioner of Banking and Insurance. Within a reasonable time
31 after receiving notification required pursuant to this act, the insurer
32 shall confirm to the treating **[medical]**health care provider that its
33 policy affords the claimant personal injury protection coverage benefits
34 as required by section **[5]** 4 of P.L.1972, c.70
35 **[(C.39:6A-5)]**(C.39:6A-4) or medical expense benefits pursuant to
36 section 4 of P.L. , c. (C.)(now before the Legislature as this
37 bill).

38 b. For the purposes of this section, notification shall be deemed to
39 be met if a treating **[medical]**health care provider submits a bill or
40 invoice to the insurer for reimbursement of services within 21 days of
41 the commencement of treatment.

42 c. In the event that notification is not made by the treating
43 **[medical]**health care provider within 21 days following the
44 commencement of treatment, the insurer shall reserve the right to
45 deny, in accordance with regulations established by the Commissioner
46 of Banking and Insurance, payment of the claim and the treating

1 **【medical】health care** provider shall be prohibited from seeking any
2 payment directly from the insured. In establishing the standards for
3 denial of payment, the Commissioner of Banking and Insurance shall
4 consider the length of delay in notification, the severity of the treating
5 **【medical】health care** provider's failure to comply with the notification
6 provisions of this act based upon the potential adverse impact to the
7 public and whether or not the provider has engaged in a pattern of
8 noncompliance with the notification provisions of this act. In
9 establishing the regulations necessary to effectuate the purposes of this
10 subsection, the Commissioner of Banking and Insurance shall define
11 specific instances where the sanctions permitted pursuant to this
12 subsection shall not apply. Such instances may include, but not be
13 limited to, a treating medical provider's failure to provide notification
14 to the insurer as required by this act due to the insured's medical
15 condition during the time period within which notification is required.

16 d. A **【medical】health care** provider who fails to notify the insurer
17 within 21 days and whose claim for payment has been denied by the
18 insurer pursuant to the standards established by the Commissioner of
19 Banking and Insurance may, in the discretion of a judge of the
20 Superior Court, be permitted to refile such claim provided that the
21 insurer has not been substantially prejudiced thereby. Application to
22 the court for permission to refile a claim shall be made within 14 days
23 of notification of denial of payment and shall be made upon motion
24 based upon affidavits showing sufficient reasons for the failure to
25 notify the insurer within the period of time prescribed by this act.

26 e. **【For the purposes of this section, "treating medical provider"**
27 **shall mean any licensee of the State of New Jersey whose services are**
28 **reimbursable under personal injury protection coverage, including but**
29 **not limited to persons licensed to practice medicine and surgery,**
30 **psychology, chiropractic, or such other professions as the**
31 **Commissioner of Insurance determines pursuant to regulation, or other**
32 **licensees similarly licensed in other states and nations, or the**
33 **practitioner of any religious method of healing, or any general hospital,**
34 **mental hospital, convalescent home, nursing home or any other**
35 **institution, whether operated for profit or not, which maintains or**
36 **operates facilities for health care, whose services are compensated**
37 **under personal injury protection insurance proceeds.】 (Deleted by**
38 **amendment, P.L. . . , c. . .)**

39 f. In instances when multiple treating **【medical】health care**
40 providers render services in connection with emergency care, the
41 Commissioner of Banking and Insurance shall designate, through
42 regulation, a process whereby notification by one treating
43 **【medical】health care** provider to the insurer shall be deemed to meet
44 the notification requirements of all the treating **【medical】health care**
45 providers who render services in connection with emergency care.

46 g. Personal injury protection coverage benefits pursuant to section

1 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
2 pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
3 Legislature as this bill) shall be overdue if not paid within 60 days after
4 the insurer is furnished written notice of the fact of a covered loss and
5 of the amount of same. If such written notice is not furnished to the
6 insurer as to the entire claim, any partial amount supported by written
7 notice is overdue if not paid within 60 days after such written notice
8 is furnished to the insurer. Any part or all of the remainder of the
9 claim that is subsequently supported by written notice is overdue if not
10 paid within 60 days after such written notice is furnished to the
11 insurer; provided, however, that any payment shall not be deemed
12 overdue where, within 60 days of receipt of notice of the claim, the
13 insurer notifies the claimant or his representative in writing of the
14 denial of the claim or the need for additional time, not to exceed 45
15 days, to investigate the claim, and states the reasons therefor. The
16 written notice stating the need for additional time to investigate the
17 claim shall set forth the number of the insurance policy against which
18 the claim is made, the claim number, the address of the office handling
19 the claim and a telephone number, which is toll free or can be called
20 collect, or is within the claimant's area code. Written notice to the
21 organization administering dispute resolution pursuant to sections 24
22 and 25 of P.L. _____, c. _____ (C. _____)(now before the Legislature as this
23 bill) shall satisfy the notice request for additional time to investigate
24 a claim pursuant to this subsection. For the purpose of determining
25 interest charges in the event the injured party prevails in a subsequent
26 proceeding where an insurer has elected a 45-day extension pursuant
27 to this subsection, payment shall be considered overdue at the
28 expiration of the 45-day period or, if the injured person was required
29 to provide additional information to the insurer, within 10 business
30 days following receipt by the insurer of all the information requested
31 by it, whichever is later.

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

37 h. All overdue payments shall bear interest at the percentage of
38 interest prescribed in the Rules Governing the Courts of the State of
39 New Jersey for judgments, awards and orders for the payment of
40 money.

41 i. All automobile insurers and the Unsatisfied Claim and Judgment
42 Fund shall provide any claimant with the option of submitting a dispute
43 under this section to binding arbitration. Arbitration proceedings
44 shall be administered and subject to procedures established by the
45 American Arbitration Association. If the claimant prevails in the
46 arbitration proceedings, the insurer shall pay all the costs of the

1 proceedings, including reasonable attorney's fees, to be determined in
2 accordance with a schedule of hourly rates for services performed, to
3 be prescribed by the Supreme Court of New Jersey] dispute resolution
4 pursuant to sections 24 and 25 of P.L. , c. (C.)(now before
5 the Legislature as this bill).
6 (cf: P.L.1995, c.407, s.1)

7
8 24. (New section) a. Any dispute regarding the recovery of
9 medical expense benefits or other benefits provided under personal
10 injury protection coverage pursuant to section 4 of P.L.1972, c.70
11 (C.39:6A-4), or section 4 of P.L. , c. (C.) (now before the
12 Legislature as this bill) arising out of the operation, ownership,
13 maintenance or use of an automobile may be submitted to dispute
14 resolution on the initiative of any party to the dispute, as hereinafter
15 provided.

16 b. The Commissioner of Banking and Insurance shall designate an
17 organization, and for that purpose may, at his discretion, advertise for
18 proposals, for the purpose of administering dispute resolution
19 proceedings regarding medical expense benefits and other benefits
20 provided under personal injury protection pursuant to section 4 of P.L.
21 1972, c.70 (C.39:6A-4) or medical expense benefits coverage pursuant
22 to section 4 of P.L. , c. (C.)(now before the Legislature as this
23 bill). The commissioner shall promulgate rules and regulations with
24 respect to the conduct of the dispute resolution proceedings. The
25 organization administering dispute resolution shall utilize qualified
26 professionals who serve on a full-time basis and who meet standards
27 of competency established by the commissioner. The commissioner
28 shall establish standards of performance for the organization to ensure
29 the independence and fairness of the review process, including, but not
30 limited to, standards relative to the professional qualifications of the
31 professionals presiding over the dispute resolution process, and
32 standards to ensure that no conflict of interest exists which would
33 prevent the professional from performing his duties in an impartial
34 manner. The standards of performance shall include a requirement
35 that the organization establish an advisory council composed of parties
36 who are users of the dispute resolution mechanism established herein.
37 The commissioner may contract with a consulting firm for the
38 formulation of the standards of performance of the organization and
39 establishment of qualifications for the persons who are to conduct the
40 dispute resolution proceedings. The commissioner shall not advertise
41 for bids for the consulting firm, as provided in sections 3 and 4 of
42 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Compensation to the dispute
43 resolution professionals shall be ²**[fixed on a per case basis]**
44 established by the commissioner² and adjusted from time to time as
45 appropriate, with the approval of the commissioner. In no case shall
46 compensation be paid on a contingency basis. The organization shall

1 establish a dispute resolution plan, which shall include procedures and
2 rules governing the dispute resolution process and provisions for
3 monitoring the dispute resolution process to ensure adherence to the
4 standards of performance established by the commissioner. The plan,
5 and any amendments thereto, shall be subject to the approval of the
6 commissioner.

7 c. Dispute resolution proceedings under this section 24 and section
8 25 of this amendatory and supplementary act shall include disputes
9 arising regarding medical expense benefits provided under subsection
10 a. of section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. ,
11 c. (C.) (now before the Legislature as this bill), benefits provided
12 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70
13 (C.39:6A-4), subsection b., c., d. or e. of P.L.1972, c.198 (C.39:6-
14 86.1), and disputes as to additional first party coverage benefits
15 required to be offered pursuant to section 10 of P.L.1972, c.70
16 (C.39:6A-10). Disputes involving medical expense benefits may
17 include, but not necessarily be limited to, matters concerning: (1)
18 interpretation of the insurance contract; (2) whether the treatment or
19 health care service which is the subject of the dispute resolution
20 proceeding is in accordance with the provisions of section 4 of
21 P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c. (C.)
22 (now before the Legislature this bill) or the terms of the policy; (3) the
23 eligibility of the treatment or service for compensation; (4) the
24 eligibility of the provider performing the treatment or service to be
25 compensated under the terms of the policy or under regulations
26 promulgated by the commissioner, including whether the person is
27 licensed or certified to perform such treatment; (5) whether the
28 disputed medical treatment was actually performed; (6) whether
29 diagnostic tests performed in connection with the treatment are those
30 recognized by the ² [professional licensing boards in the Division of
31 Consumer Affairs in the Department of Law and Public Safety or other
32 recognized professional organizations, or as otherwise provided in
33 section 12 of P.L. , c. (C.) (now before the Legislature as this
34 bill)] commissioner² ; (7) the necessity or appropriateness of
35 consultations by other health care providers; (8) disputes involving
36 application of and adherence to fee schedules promulgated by the
37 commissioner; and (9) whether the treatment performed is reasonable,
38 necessary, and compatible with the protocols provided for pursuant to
39 P.L. , c. (C.) (now before the Legislature as this bill).
40 The dispute resolution professionals may review the entire claims file
41 of the insurer, subject to any confidentiality requirement established
42 pursuant to State or federal law. All decisions of the dispute
43 resolution professional shall be in writing, in a form prescribed by the
44 commissioner, shall state the issues in dispute, the findings and
45 conclusions on which the decision is based, and shall be signed by the
46 dispute resolution professional. All decisions of a dispute resolution

1 professional shall be binding. The dispute resolution organization shall
2 provide for the retention of all documents used in dispute resolution
3 proceedings under this section and section 25 of this amendatory and
4 supplementary act, including the written decision, for a period of at
5 least five years, in a form approved by the commissioner, or for such
6 additional time as may be established by the commissioner. The
7 written decisions of the dispute resolution professional shall be
8 forwarded to the commissioner, who shall establish a record of the
9 proceedings conducted under the dispute resolution procedure, which
10 shall be accessible to the public and may be ²[determined to have
11 standing as precedent for] used as guidance in² subsequent dispute
12 resolution proceedings.

13 d. With respect to disputes as to the diagnosis, the medical
14 necessity of the treatment or diagnostic test administered to the injured
15 person, whether the injury is causally related to the insured event or
16 is the product of a preexisting condition, or disputes as to the
17 appropriateness of the protocols utilized by the provider, the dispute
18 resolution professional shall, either at his option or at the request of
19 any party to the dispute, refer the matter to a medical review
20 organization for a determination. ²The determination of the medical
21 review organization on the dispute referred shall be binding upon the
22 dispute resolution professional.²

23 e. Any person submitting a matter to the dispute resolution process
24 established herein may submit for review all or a portion of a disputed
25 treatment or treatments or a dispute regarding a diagnostic test or
26 tests or a dispute regarding the providing of services or durable
27 medical goods. Any portion of a treatment or diagnostic test or
28 service which is not under review shall be reimbursed in accordance
29 with the provisions of section 5 of P.L.1972, c.70 (C.39:6A-5). If the
30 dispute resolution proceeding results in a determination that all or part
31 of a treatment or treatments, diagnostic test or tests or service
32 performed, or durable medical goods provided are medically necessary
33 and appropriate, reimbursement shall be made with interest payable in
34 accordance with the provisions of section 5 of P.L.1972, c.70
35 (C.39:6A-5).

36
37 25. (New section) a. The commissioner shall establish standards
38 for the certification of medical review organizations, which shall
39 include standards of performance formulated by the commissioner in
40 consultation with the Commissioner of Health and Senior Services.
41 The standards of performance shall set forth procedures to ensure a
42 timely and impartial review of the medical records of the injured
43 person by a medical review organization, including, but not limited to,
44 a review of the necessity or appropriateness of treatments for injuries,
45 including diagnostic tests, sustained in an automobile accident. The
46 commissioner shall establish standards for persons conducting the

1 medical review, including standards with respect to credentials,
2 experience, licensure, fees, and confidentiality. The standards shall
3 include a requirement that all persons performing reviews are New
4 Jersey licensed or certified health care providers, and a requirement
5 that any medical review panel contain a health care provider licensed
6 or certified in the same profession as the treating health care provider
7 and that it contain a sufficient representation of reviewers to judge the
8 appropriateness of treatment or treatments in dispute, including, but
9 not limited to, the medical necessity of such treatments,
10 appropriateness of the protocols used by the treating provider, issues
11 regarding causality and preexisting conditions, the appropriateness and
12 efficacy of diagnostic tests performed in connection with the diagnosis,
13 and whether the diagnostic tests meet the requirements ²[set forth in
14 section 12 of P.L. , c. (C.)(now before the Legislature
15 as this bill)] established by the commissioner². The commissioner may
16 contract with a consultant for the formulation of the standards
17 governing the certification of the persons conducting the medical
18 reviews. The commissioner shall not advertise for bids for the
19 consultant, as provided in sections 3 and 4 of P.L.1954, c.48
20 (C.52:34-8 and 52:34-9).

21 b. Before certifying a medical review organization to receive
22 referrals from dispute resolution proceedings, the commissioner shall
23 determine that the organization has a sufficient number of qualified
24 health care providers, by specialty, to perform the reviews, has a
25 satisfactory procedure for maintaining the confidentiality of medical
26 records, is not owned or controlled by an insurer, and has met any
27 other requirements established by the commissioner.

28 c. The medical review organization shall establish and utilize
29 written review procedures, which shall be filed with the commissioner.
30 Every determination made by a medical review organization shall be
31 in writing and shall be retained by the organization for a period of no
32 less than five years.

33 d. The medical review organization may review the medical
34 treatment or treatments in dispute to determine whether: (1) the
35 treatment or diagnostic test being given for the injury or the services
36 provided in connection with the injury is medically necessary; (2) the
37 treatment is in accordance with or compatible with medically
38 recognized standard protocols, professional standards, and commonly
39 accepted medical practice in the same health care discipline as the
40 treating provider; (3) the treatment is consistent with the symptoms
41 or diagnosis of the injury; (4) the treatment or health care service is
42 related to the injury sustained in the insured event, or is required for
43 the diagnosis, evaluation or confirmation of the injury; (5) the
44 treatment is of a palliative, rather than restorative, nature; and (6)
45 medical procedures, treatment, or testing which have been repeated
46 are medically necessary and consistent with standard practice.

1 e. Cases referred by a dispute resolution professional for medical
2 review shall be referred to appropriate certified medical reviewers
3 affiliated with the certified medical review organization by a dispute
4 resolution organization. The dispute resolution organization shall
5 forward the referrals to certified medical reviewers on a random basis,
6 so that there is a relatively equal apportionment among all medical
7 reviewers. Referrals shall be made in such a manner so as not to
8 disclose to the medical reviewers the identity of the insurer, nor shall
9 the identity of the reviewer be disclosed to the insurer.

10 f. When appropriate in the context of its review of services or
11 treatments under dispute, a medical reviewer may request and shall
12 receive a written report or copy of the provider's records regarding
13 the case history, treatment dates, or the dates diagnostic tests or other
14 services were performed, and the provider's projected treatment plan.
15 The injured person or provider, as applicable, shall provide or make
16 available to the medical reviewer any pertinent medical records or
17 medical history which the medical reviewer may request. The medical
18 reviewer shall complete its review and make a determination within 20
19 business days of receipt of all of the requested information from the
20 dispute resolution professional or provider, as the case may be. The
21 medical reviewer shall submit its determination in writing to the
22 referring dispute resolution organization, which shall forward it to the
23 dispute resolution professional.

24 g. The cost of the proceedings shall be apportioned by the dispute
25 resolution professional. Fees shall be determined to be reasonable if
26 they are consonant with the amount of the award, in accordance with
27 a schedule established by the New Jersey Supreme Court. If the
28 treatment, diagnostic test, or service performed is not determined to
29 be medically necessary or appropriate, the injured person shall not be
30 liable to pay the provider the disputed amount.

31
32 ¹[26. (New section) No later than three months following the
33 effective date of this section, every insurer writing automobile
34 insurance in this State and any rating bureau which establishes a
35 territorial and risk classification plan on behalf of insurers shall
36 establish a procedure for collecting loss experience by postal zip code
37 and shall begin collecting that data in that manner in addition to any
38 other manner which it normally employs no later than six months
39 following the effective date of this section Loss experience collected
40 by zip code shall be confidential.]¹

41
42 ¹[27. (New section) There is established an automobile insurance
43 industry committee to revise the territorial rating system which is in
44 place as of the effective date of this section. The committee shall
45 consist of eighteen members. Eleven members shall be representatives
46 of insurers writing automobile insurance in this State, two members

1 shall represent a rating bureau which compiles loss experience and
2 assembles statistical data for insurers writing automobile insurance in
3 this State and four members shall be public members. Of the public
4 members, one shall be appointed by the President of the Senate, the
5 Speaker of the General Assembly, the Minority Leader of the Senate
6 and the Minority Leader of the General Assembly. Of the insurer
7 members, two shall be elected from member companies of the
8 American Insurance Association, two from member companies of the
9 Alliance of American Insurers, and two from member companies of the
10 National Association of Independent Insurers or their successor
11 organizations. The remaining members affiliated with the insurance
12 industry shall be elected at large as representatives of insurers writing
13 automobile insurance in this State, but no insurer or group of insurers
14 under common control shall have more than one representative elected
15 to the board. The representatives of insurers shall include at least five
16 actuaries. The commissioner or his designee shall be the eighteenth
17 member of the committee, but shall not have voting privileges.】¹

18

19 ¹【28. (New section) No later than three months following the
20 effective date of this section, the commissioner shall cause nominations
21 to be made and an election to be held among all insurers writing
22 automobile insurance in this State. Each trade association shall
23 nominate members from their association and shall hold an election for
24 membership to the committee. The respective trade associations shall
25 nominate candidates for the five seats to be elected at large.】¹

26

27 ¹【29. (New section) The committee shall elect a chairman and a
28 vice chairman from among the members representing the insurance
29 industry elected pursuant to section 28 of this amendatory and
30 supplementary act. The committee shall review the present territorial
31 rating system and recommend any revision to the territorial rating plan
32 in existence on the effective date of this section as it deems reasonable
33 and proper; provided, however, that any such recommendation be
34 based on the principles that territories shall:

35 a. be created in such a manner as to recognize qualitative
36 differences in driving environments, which may include, but not be
37 limited to, traffic density, population density, comparative severity of
38 loss in like driving environments, similarities in the relative mix of
39 driving environments applicable to each proposed territory and
40 comparative homogeneity;

41 b. be based on statistically credible data, which shall include a
42 consideration of the rate of variability of loss in each territory on a
43 year-to-year basis;

44 c. take into account the impact of the overlapping of traffic
45 patterns on exposure to loss, including the relative number of intra-
46 territory trips and out-of-territory trips applicable to each proposed

1 territory, for which the committee shall have access to the information
2 on commuting patterns collected pursuant to the provisions of section
3 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

4 d. take into account the relative mix of business in each proposed
5 territory, by driver classification;

6 e. be created in a manner which shall not result in territory
7 boundaries which are arbitrary, unfairly discriminatory, significantly
8 disproportionate in size although similar in driving environments and
9 losses, or delineated in a manner which is primarily for marketing
10 reasons rather than measuring relativity of exposure to probable
11 loss.】¹

12

13 ¹【30. (New section) The committee may utilize the resources of
14 any insurer, rating bureau, or group of insurers in performing its
15 duties. The committee shall review the data made available to it from
16 insurers or rating bureaus collecting data by zip code, as provided in
17 section 26 of this amendatory and supplementary act. The committee
18 may also request the commissioner to order a closed claim study from
19 any insurer or insurers writing private passenger automobile insurance
20 in this State, and the commissioner shall provide the committee with
21 the results of the study. The insurer or insurers supplying the
22 information from the closed claim study need not be identified to the
23 members of the committee. The committee may hold public hearings
24 as it determines are necessary in addition to its regular meetings.】¹

25

26 ¹【31. (New section) When the committee determines that it has
27 accumulated sufficient data to develop recommendations to the
28 commissioner, it may submit a territorial revision plan to the
29 commissioner for approval. The plan shall include at least one
30 common territorial rating system, but the committee may recommend,
31 that insurers may file individual territorial rating systems. The
32 commissioner may, if he determines that separate territorial rating
33 plans filed by individual insurers are in the interest of the citizens of
34 this State, approve an individual territorial rating system proposed by
35 an insurer, but only if the insurer's individual territorial rating system
36 meets the criteria established in section 29 of this amendatory and
37 supplementary act. The commissioner shall not approve any individual
38 territorial rating system, or any portion thereof, which contains
39 territorial configurations which he determines to be primarily directed
40 toward marketing purposes, or which would result in the likelihood
41 that an insurer's market share would be distributed unevenly
42 throughout the State.】¹

43

44 ¹【32. (New section) a. Upon finding that the plan or plans meet
45 the criteria above, the commissioner shall approve the territories or
46 require that adjustments be made in order that they conform with the

1 standards set forth in sections 26 through 33 of this amendatory and
2 supplementary act. If the commissioner approves territorial rating
3 plans for individual insurers, he shall also approve a territorial rating
4 plan for common use by insurers not filing their own plan.

5 b. Notwithstanding the provisions of section 7 of P.L.1983, c.65
6 (C.17:29A-36), the territorial configuration established by the
7 committee or by any insurer or filer pursuant to sections 29 through
8 32 of this amendatory and supplementary act shall produce territorial
9 rate relativities which accurately reflect differences in traffic density;
10 population density; and comparative severity of loss in like driving
11 environments, which do not produce unfair cross-subsidization
12 between territories with differing characteristics.】¹

13
14 ¹【33. (New section) Any insurer filing its own territorial rating
15 plan shall file a revised rating plan, along with its proposed territorial
16 relativity factors, which shall not take effect until approved by the
17 commissioner, in accordance with the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.). In determining whether to
19 approve an individual territorial rating plan, the commissioner shall
20 consider whether the territorial relativity factors which are filed are (1)
21 not unfairly discriminatory; and (2) accurately reflect the probable
22 differentials in losses among territories.】¹

23
24 ²【¹26. (New section) The Commissioner of Banking and Insurance
25 shall promulgate regulations, to take effect no later than 90 days
26 following the effective date of this section, which require every
27 insurer or group of insurers writing private passenger automobile
28 insurance in this State, by itself or by a rating organization on its
29 behalf, to file and implement a territorial rating plan, including
30 territorial definitions, territorial relativity factors and territorial base
31 rates, that meet the requirements of this section. Automobile
32 insurance territories shall:

33 a. be created in such a manner as to recognize the qualitative
34 differences in driving environments, which may include but not be
35 limited to, traffic density, population density, comparative severity in
36 like driving environments, similarities in the relative mix of driving
37 environments applicable to each proposed territory and comparative
38 homogeneity;

39 b. be based on statistically credible data, which shall include a
40 consideration of the rate of variability of loss in each territory on a
41 year-to-year basis;

42 c. consider the impact of the overlapping of traffic patterns on
43 exposure to loss, including the relative number of intra-territory trips
44 and out-of-territory trips applicable to each proposed territory;

45 d. consider the relative mix of business in each territory by driver
46 classification;

1 e. be created in a manner which shall not result in territorial
2 definitions which are arbitrary, unfairly discriminatory, significantly
3 disproportionate, or delineated in a manner which is primarily for
4 marketing reasons, rather than for measuring the relativity of exposure
5 to probable loss; and

6 f. be created so as to include such other reasonable and necessary
7 standards as the commissioner may establish by regulation.¹]²

8
9 ²26. (New section) Every insurer writing private passenger
10 automobile insurance in this State and every rating organization
11 establishing territorial rating plans on behalf of its member companies
12 shall establish new territorial rating plans in place of the insurer or
13 filer's territorial rating plan in effect on June 1, 1998, which shall
14 include territorial definitions, territorial relativity factors and territorial
15 base rates, and which are in accordance with the provisions of sections
16 26 through 29 of this amendatory and supplementary act. The
17 Commissioner of Banking and Insurance shall promulgate regulations
18 establishing standards governing the establishment of new rating
19 territories, which standards shall include, but not be limited to:

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

28 b. Territories shall contain a sufficient number of exposures to
29 result in statistically credible experience, in accordance with
30 regulations established by the commissioner, and shall be defined in a
31 manner which minimizes the effect of variability of loss in a territory
32 on a year-to-year basis;

33 c. Territory definitions shall take into account the impact of the
34 overlapping of traffic patterns on exposure to loss, including the
35 relative number of intraterritory trips and inter-territory trips
36 applicable to each proposed territory, for which the commissioner shall
37 make available to the insurer, filer, or the commission established
38 pursuant to section 28 of this amendatory and supplementary act,
39 appropriate information collected pursuant to the provisions of section
40 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

41 d. Territories shall be created in a manner which results in an
42 equable distribution of exposures among territories throughout the
43 State and no territorial rating plan shall result in territories which are
44 arbitrary, unfairly discriminatory, significantly disproportionate in
45 terms of the number of exposures per territory, or created in a manner
46 which is primarily for marketing purposes rather than measuring

1 relativity of exposure to probable loss, or created in a manner which
2 can be used to avoid the insurer or filer's obligations under section 27
3 of P.L.1990, c.8 (C.17:33B-15):

4 e. Territories shall be created in a manner which does not result in
5 disproportionate differences in territorial relativity factors or territorial
6 base rates between contiguous territories with similar driving
7 environments or similar mix of driving environments;

8 f. Factors to be considered in establishing territorial rate relativities
9 shall include taking into account similarities or differences in driving
10 environments or mix of driving environments, including traffic density,
11 population density, mix of driver classifications within a territory,
12 including classifications capped pursuant to the provisions of section
13 7 of P.L.1983, c.65 (C.17:29A-36), comparative degree of severity
14 of loss, and the relative number of intraterritory and inter-territory
15 trips;

16 g. Territories shall be defined in a manner which does not result in
17 unfair inter-territorial subsidization among territories with significant
18 differences in driving environments or mix of driving environments,
19 population density, traffic density, mix of driver classifications,
20 including classifications capped pursuant to the provisions of section
21 7 of P.L.1983, c.65 (C.17:29A-36) and comparative degree of severity
22 of loss.

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

30 The commissioner shall establish by regulation the minimum number
31 of exposures which shall be deemed to meet the standard of being
32 statistically credible for the purpose of defining territories.²

33
34 ²[¹27. (New section) a. Within 45 days of the establishment of
35 the common territorial rating plan pursuant to section 28 of this
36 amendatory and supplementary act, each filer shall file for approval by
37 the commissioner a territorial rating plan for its use which meets the
38 standards of section 26 of this amendatory and supplementary act. A
39 filer may file for its use:

40 (1) an individual territorial rating plan which it has developed;

41 (2) the territorial rating plan of another filer which has been
42 approved pursuant to this section; or

43 (3) the common territorial rating plan established and approved
44 pursuant to section 28 of this amendatory and supplementary act.

45 b. The commissioner shall approve or disapprove the use of a
46 territorial rating plan by a filer by written notice within 15 days of its

1 filing. If the commissioner disapproves a plan, he shall state his
2 reasons therefor, along with any amendments necessary for his
3 approval. The amended plan shall be filed and approved no later than
4 15 days thereafter.

5 c. Territorial rating plans approved pursuant to this section shall
6 apply to policies of the filer issued or renewed on or after the effective
7 date of the plan, which in no case shall be more than 30 days following
8 the date of that approval and, in the case of plans initially filed and
9 approved pursuant to this section, shall be no later than March 1,
10 1999.

11 d. Approved individual territorial rating plans shall be on file and
12 available for review by filers subject to this section.

13 e. Filers shall periodically review, at least once in every five year
14 period following the effective date of this section, the continued
15 validity of the territorial rating plan it has implemented pursuant to
16 subsection a. of this section, and shall report its findings to the
17 commissioner. Based on his review of the report and a comparison of
18 the filer's territorial rating plan to the common plan established
19 pursuant to section 28 of this amendatory and supplementary act, the
20 commissioner may require the filer to amend its plan or, if the filer fails
21 to do so, to adopt the common plan.

22 f. All rating territories, and any subsequent modifications of
23 territorial rating plans, shall be filed with the commissioner and shall
24 be subject to his prior approval in accordance with this section and
25 section 26 of this amendatory and supplementary act.

26 g. As used in this section, "filer" means a rating organization or an
27 insurer or group of affiliated insurers making its own rates for private
28 passenger automobile insurance in this State. ¹]²

29
30 ²27. (New section) a. An insurer or rate filer shall file its
31 territorial rating plan with the commissioner for the commissioner's
32 approval. The commissioner shall approve the plan if he finds that the
33 plan complies with the provisions of section 26 of this amendatory and
34 supplementary act and the regulations promulgated thereto. If the
35 commissioner does not believe that the territorial rating plan meets the
36 standards established by this act or by regulation, or that the territorial
37 rating plan would serve to work against competition among insurers
38 in this State, he shall order that the plan be modified.

39 b. A filer may file for its use:

40 (1) an individual territorial rating plan which it has developed; or
41 (2) the common territorial rating plan established and approved
42 pursuant to section 28 of this act.

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

46 d. Every filer shall periodically review, at least once in every five-

1 year period, the continued validity of the territorial rating plan which
2 it is using and shall report its findings to the commissioner, along with
3 such data as the commissioner deems necessary. If the commissioner
4 finds that it is not in accordance with the standards established
5 pursuant to section 26 of this act, he may order that the filer amend its
6 plan or, if the filer fails to do so, require the filer to adopt the common
7 territorial rating plan established pursuant to section 28 of this act.

8 e. Any filer or filers may object to the territorial rating plan used
9 by another filer on the grounds that it (1) is anticompetitive; (2) does
10 not meet the standards established by the commissioner pursuant to
11 section 26 of this act; or (3) results in the insurer or filer not meeting
12 its obligations pursuant to the provisions of section 27 of P.L.1990,
13 c.8 (C.17:33B-15).

14 f. No territorial rating plan of any insurer or any rating
15 organization filed with and approved by the commissioner pursuant to
16 section 27 of this act shall be implemented by any insurer until the
17 180th day following the approval of the common territorial rating plan
18 established by the commission created pursuant to section 28 of this
19 act, but in no event no later than January 1, 2000.²

20
21 ²[¹28. (New section) a. There is established the Automobile
22 Insurance Territorial Rating Plan Advisory Commission to review data
23 and establish one common territorial rating plan for use by insurers not
24 filing a territorial rating plan pursuant to paragraph (1) or (2) of
25 subsection a. of section 27 of this amendatory and supplementary act.
26 The territorial rating plan established by the commission shall be
27 established according to the criteria and standards provided in section
28 26 of this amendatory and supplementary act. The common territorial
29 rating plan shall be subject to the prior approval of the Commissioner
30 of Banking and Insurance, and shall be reviewed by the commissioner
31 at least once every five years as provided in section 27 of this
32 amendatory and supplementary act.

33 b. The commission shall consist of 14 members: nine
34 representatives of insurers writing private passenger automobile
35 insurance in this State appointed by the Governor with the advice and
36 consent of the Senate; four public members, of whom one shall be
37 appointed by the President of the Senate, one by the Speaker of the
38 General Assembly, one by the Minority Leader of the Senate and one
39 by the Minority Leader of the General Assembly; and the
40 Commissioner of Banking and Insurance, who shall serve ex-officio.
41 Of the insurer members appointed by the Governor, at least two
42 members shall be selected from member companies of the American
43 Insurance Association, two members selected from member companies
44 of the Alliance of American Insurers, and two members selected from
45 member companies of the National Association of Independent
46 Insurers or their successor organizations. The remaining insurer

1 members shall be selected from insurers writing automobile insurance
2 in this State, but no insurer or group of insurers under common
3 control shall have more than one representative appointed to serve on
4 the commission.

5 c. The members of the commission shall serve for two year terms
6 and until their successors are appointed and qualified.

7 d. The commission shall elect a chairman and a vice chairman from
8 among the insurer members.

9 e. The commission shall establish a common territorial rating plan
10 pursuant to subsection a. of this section within 45 days of the effective
11 date of the regulations promulgated by the commissioner pursuant to
12 section 26 of this amendatory and supplementary act.¹]²

13
14 ²28. (New section) a. There is established the Automobile
15 Insurance Territorial Rating Plan Advisory Commission to review
16 insurer data and establish a common territorial rating plan for use by
17 insurers not filing a territorial rating plan pursuant to section 27 of this
18 amendatory and supplementary act. The territorial rating plan
19 established by the commission shall be established according to the
20 criteria and standards provided in section 26 of this amendatory and
21 supplementary act and in accordance with regulations established by
22 the commissioner. The common territorial rating plan shall be subject
23 to the prior approval of the Commissioner of Banking and Insurance,
24 and shall be reviewed by the commissioner from time to time but not
25 less than once every five years.

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

44 c. The members of the commission shall serve for two-year terms
45 and until their successors are appointed and qualified.

46 d. The commission shall elect a chairman and a vice chairman from

1 among the insurer members.

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

8
9 ¹29. Section 7 of P.L.1983, c.65 (C.17:29A-36) is amended to read
10 as follows:

11 7. ²a.² Any filing made for the purpose of automobile insurance
12 rate making shall indicate the actual rate needs of the filer; provided,
13 however, that (a) each filer's rate classification definitions, as used by
14 that filer, shall be uniform Statewide; and (b) the automobile insurance
15 rate charged an insured shall not exceed two and one-half times the
16 filer's territorial base rate for each coverage, exclusive of driving
17 record surcharges and discounts **];** and (c) the automobile insurance
18 rate for the base class in any territory for any filer shall not exceed
19 1.35 times the filer's Statewide average base rate for each coverage,
20 exclusive of driving record surcharges and discounts **]²; and (c) the**
21 automobile insurance rate of the base class in any territory for any filer
22 shall not exceed 1.35 times the filer's Statewide average base rate for
23 each coverage, exclusive of driving record surcharges and discounts
24 for any standard policy issued or renewed before January 1, 2000 or
25 the 180th day following approval of the common territorial rating plan
26 pursuant to section 28 of P.L.1998, c. (C.)(now before the
27 Legislature as this bill), whichever first occurs.

28 b. No rating plan or rate filing applicable to any policy issued or
29 renewed on or after January 1, 2000 or the 180th day following the
30 approval of the common rating territory provided for in sections 27
31 through 28 of P.L.1998, c. (C.)(now before the Legislature as this
32 bill), whichever first occurs, shall be approved by the commissioner
33 which creates territorial relativities which are significantly
34 disproportionate to those in effect as of the effective date of P.L. ,
35 c. (C.)(now before the Legislature as this bill)².

36 ²d.² The automobile insurance rate of an automobile whose
37 principal operator is 65 years of age or older shall not exceed one and
38 one-quarter times the Statewide average rate for principal operators
39 65 years of age or older for each coverage, exclusive of driving
40 record surcharges and discounts; provided, however, that no filer shall
41 increase rates for principal operators 65 years of age or older as a
42 result of the implementation of this section unless more than 50% of
43 its insureds are principal operators 65 years of age or older.

44 ²e. As a result of the filings made pursuant to sections 26 and 27
45 of P.L.1998, c. (C.)(now before the Legislature as this bill) and
46 subparagraphs b. and c. of this section, the filer's aggregate premium

1 for all territories shall not exceed the filer's aggregate premium in
2 effect prior to the date established in subparagraph (a) of subsection
3 b. of this section.²

4 As used in this section, base rate means the automobile insurance
5 rate charged for an automobile that is not used in business and not
6 used in going to and from work, except for the going to and from
7 work distance included in the pleasure use classification of the filer,
8 and where there is no youthful operator, as defined in the filer's
9 classification system. The base rate class shall not include
10 automobiles to which discounts apply under the filer's classification
11 system, including, but not limited to, farmers' and senior citizens'
12 automobiles² or any discount from a standard rate provided for in the
13 filer's tier rating system².

14 The provisions of this section shall be implemented after the
15 implementation of the provisions of subsection a. of section 8 of this
16 act.¹

17 (cf: P.L.1983, c.65, s.7)

18
19 ¹30. Section 50 of P.L.1990, c.8 (C.17:33B-41) is amended to read
20 as follows:

21 50. a. Upon the termination of a policy of motor vehicle liability
22 insurance by cancellation for nonpayment of premium pursuant to
23 section 2 of P.L.1968, c.158 (C.17:29C-7), notice of that cancellation
24 shall be filed by the insurer with the Division of Motor Vehicles not
25 later than 30 days following the effective date of that cancellation.
26 ²Within 180 days of the date of enactment of P.L. , c. (now before
27 the Legislature as this bill), the division shall develop and maintain a
28 computer data base to verify compliance of owners and registrants of
29 motor vehicles with the motor vehicle liability insurance requirements
30 of section 1 of P.L.1972, c.197 (C.39:6B-1). The data base shall be
31 developed and maintained so that State and local law enforcement
32 agencies can efficiently access the data base. The data base shall be
33 funded from the Uninsured Motorist Prevention Fund established
34 pursuant to section 2 of P.L.1983, c.141 (C.39:6B-3); except that the
35 State Treasurer shall not disburse any funds to the director for the
36 costs associated with the establishment and operation of the data base
37 until the Director of the Division of Motor Vehicles certifies to the
38 satisfaction of the Treasurer that the data base is fully operational.

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

40 (a) the name, year, and driver's license number of each insured
41 owner or operator, and the address of the named insured;

42 (b) the make, year and vehicle identification number of each
43 insured vehicle; and

44 (c) the policy number, effective date and expiration date of each
45 policy.

46 (2) Each insurer shall provide this information on magnetic tape or

1 in another form the division agrees to accept.

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

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

10 (a) the name, date of birth, address and driver's license number of
11 all persons with current driver's licenses in this State; and

12 (b) all current motor vehicle registrations.

13 (5) The division shall, at least monthly:

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

17 (b) compare all current motor vehicle registrations against the data
18 base.】²

19 b. The division shall notify the person whose policy was canceled
20 that, unless proof of motor vehicle liability insurance is filed with the
21 division within 30 days of the notification or some other allowable
22 circumstance exists and the division is notified of that circumstance
23 within 30 days of the notification, the sanctions and penalties of this
24 section shall apply.

25 c. If the Director of the Division of Motor Vehicles has not
26 received proof of motor vehicle liability insurance or other allowable
27 circumstances within 30 days pursuant to subsection b. of this section,
28 he shall suspend the registration of such vehicle, except that:

29 (1) Suspension shall not be made under this subsection upon the
30 basis of a cancellation of motor vehicle liability insurance if the
31 registration certificate and registration plates of the motor vehicle are
32 surrendered prior to the time at which the cancellation of insurance
33 becomes effective. Such surrender shall be made to such officers of
34 the division as the director shall direct. For the purposes of this
35 paragraph, the expiration of a registration without renewal of that
36 registration shall be deemed to be a surrender of registration as of the
37 date of expiration;

38 (2) Suspension shall not be made under this subsection upon a
39 cancellation of motor vehicle liability insurance if the vehicle has been,
40 or will be, prior to the date of that cancellation, removed from the
41 United States in North America and the Dominion of Canada for the
42 purpose of international traffic, provided that the owner of the vehicle,
43 prior to the date of that cancellation, has filed with the director a
44 statement, in a form prescribed by him, indicating that the vehicle has
45 been, or will be, so removed, and agreeing to notify the director
46 immediately upon return of the vehicle to the United States in North

1 America or the Dominion of Canada. Upon receipt of the statement
2 the director shall restrict the use of the registration to such
3 international traffic until new proof that motor vehicle liability
4 insurance has been secured for the vehicle;

5 (3) Suspension need not be made under this subsection upon the
6 basis of a cancellation of motor vehicle liability insurance if the period
7 of time during which the motor vehicle remained both registered and
8 uninsured was not greater than 15 days. The director shall promulgate
9 regulations governing the conditions under which suspension action
10 may be withheld pursuant to this paragraph.

11 d. Notwithstanding the provisions of subsection c. of this section,
12 an order of suspension may be rescinded if the registrant pays to the
13 commissioner a civil penalty in the amount of \$4 for each day up to 90
14 days for which motor vehicle liability insurance was not in effect. The
15 provisions of this subsection shall apply only once during any
16 36-month period and only if the registrant surrenders the certificate of
17 registration and registration plates to the director not more than 90
18 days from the date of cancellation of motor vehicle liability insurance
19 coverage or submits to the director proof of motor vehicle liability
20 insurance which took effect not more than 90 days from the
21 cancellation of his previous motor vehicle liability insurance.

22 e. Any motor vehicle, the registration for which has been
23 suspended pursuant to this section, shall not be registered or
24 reregistered in the name of the same registrant, or in any other name
25 where the director has reasonable grounds to believe that such
26 registration or reregistration will have the effect of defeating the
27 purposes of this section, and no other motor vehicle shall be registered
28 in the name of such person during the period of suspension.

29 f. No registration plates shall be returned to the registrant until
30 proof of motor vehicle liability insurance is submitted to the director.

31 g. If a registrant has not surrendered his certificate of registration
32 and registration plates or obtained motor vehicle liability insurance
33 within 90 days from the date of cancellation of motor vehicle liability
34 insurance, the director shall suspend the driver's license of any such
35 registrant. The suspension shall take effect on the date specified in the
36 order and shall remain in effect until termination of the suspension of
37 the registrant's registration.

38 h. The Director of the Division of Motor Vehicles shall adopt rules
39 and regulations pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of
41 this section. The director may, by regulation, require that the
42 provisions of this section shall be applicable to the termination of
43 policies of motor vehicle liability insurance for reasons other than
44 cancellation for nonpayment of premium, including nonrenewals.

45 ²i. Within 180 days of the effective date of this act the Division of
46 Motor Vehicles shall develop a format for electronic reporting by

1 insurers writing private passenger automobile insurance to the
2 division, on a real-time basis, information regarding the cancellation
3 of policies of motor vehicle insurance, the issuance of new policies of
4 motor vehicle insurance, and changes of vehicle on policies of motor
5 vehicle insurance in force in order to verify compliance with the motor
6 vehicle liability insurance requirements of section 1 of P.L.1972, c.197
7 (C.39:6B-1), and the mandatory automobile insurance requirements of
8 section 4 of P.L.1998, c. (C.) (now before the Legislature as this
9 bill). Information shall be maintained by driver's license number of the
10 named insured. Other information to be provided by insurers shall be
11 established by the director by regulation.

12 j. The director shall establish an electronic data base containing the
13 information provided for in subsection a. of this section, which shall
14 be made available to all law enforcement officers for the purpose of
15 enforcing the mandatory motor vehicle insurance requirements of
16 section 1 of P.L.1972, c.197 (C.39:6B-1). The data base shall not be
17 made available until every insurer writing private passenger insurance
18 has complied with regulations of the director and information required
19 by subsection a. of this section is reported on a real-time basis. The
20 Division of Motor Vehicles shall establish security procedures to
21 protect the confidentiality of the information on the data base, which
22 shall preclude access to the information to any person not otherwise
23 entitled to it under this or any other law.

24 k. The data base shall be funded from the Uninsured Motorist
25 Prevention Fund established pursuant to section 2 of P.L.1983, c.141
26 (C.39:6B-3).^{2 1}
27 (cf: P.L.1990, c.8, s.50)

28
29 ¹31. Section 1 of P.L.1970, c.215 (C.17:29D-1) is amended to
30 read as follows:

31 1. The Commissioner of Banking and Insurance may adopt, issue
32 and promulgate rules and regulations establishing a plan for the
33 providing and apportionment of insurance coverage for applicants
34 therefor who are in good faith entitled to, but are unable to procure
35 the same, through ordinary methods. Every insurer admitted to
36 transact and transacting any line, or lines, of insurance in the State of
37 New Jersey shall participate in such plan and provide insurance
38 coverage to the extent required in such rules and regulations.

39 The governing board of any plan established pursuant to the
40 commissioner's rules and regulations shall continue to exercise such
41 administrative authority, subject to the commissioner's oversight and
42 as provided in any rules and regulations promulgated pursuant to this
43 section, as is necessary to ensure the plan's efficient operation,
44 including, but not limited to, the authority to investigate complaints
45 and hear appeals from applicants, insureds, producers, servicing
46 carriers or participants about any matter pertaining to the plan's proper

1 administration, as well as the authority to appoint subcommittees to
2 hear such appeals. Any determination of an appeal by a plan's
3 governing board shall be subject to review by the commissioner on the
4 record below, and shall not be considered a contested case under the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.). The commissioner's determination shall be a final order and
7 shall be subject to review by the Superior Court.

8 Any plan established pursuant to this section to provide insurance
9 for automobiles, as defined in section 2 of P.L.1972, c.70
10 (C.39:6A-2), shall provide:

11 a. For a rating system which shall produce rates for each coverage
12 which are adequate for the safeness and soundness of the plan, and are
13 not excessive nor unfairly discriminatory with regard to risks in the
14 plan involving essentially the same hazards and expense elements,
15 which rates may be changed from time to time by a filing with the
16 commissioner in a manner and form approved by the commissioner;

17 b. For rates charged to plan insureds which shall be sufficient to
18 meet the plan's expenses and the plan's losses on an incurred basis,
19 including the establishment and maintenance of actuarially sound loss
20 reserves to cover all future costs associated with the exposure;

21 c. For a limited assignment distribution system permitting insurers
22 to enter into agreements with other mutually agreeable insurers or
23 other qualified entities to transfer their applicants and insureds under
24 such plan to such insurers or other entities;

25 d. That it shall not provide insurance coverage for more than 10
26 percent of the aggregate number of private passenger automobile
27 non-fleet exposures being written in the total private passenger
28 automobile insurance market in this State. The plan shall provide for
29 the cessation of the acceptance of applications or the issuance of new
30 policies at any time it reaches 10 percent of marketshare, as certified
31 by the commissioner, until such time that the commissioner certifies
32 that the plan is insuring less than 10 percent of the aggregate number
33 of private passenger automobile non-fleet exposures being written in
34 the total private passenger automobile insurance market in this State;

35 e. Except for risks written in automobile insurance urban enterprise
36 zones pursuant to subsection i. of this section, that it shall not provide
37 coverage to an eligible person as defined pursuant to section 25 of
38 P.L.1990, c.8 (C.17:33B-13);

39 f. (Deleted by amendment, P.L.1997, c.151.)

40 g. That the plan shall not be subsidized by any source external to
41 the plan;

42 h. That a qualified insurer who writes automobile insurance risks
43 in those automobile insurance urban enterprise zones designated by the
44 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-2)
45 shall receive assigned risk credits for voluntary risks written in those
46 designated automobile insurance urban enterprise zones as a direct

1 writer or through a UEZ agent or agents or through any agent with
2 whom the insurer has an in-force contract as of the effective date of
3 P.L.1997, c.151(C.17:33B-64 et al.). The commissioner shall establish
4 by regulation the manner in which any qualified automobile insurer
5 may utilize the provisions of this subsection. In no event shall that
6 credit apply to reduce an insurer's obligations under subsection i. of
7 this section; and

8 i. (1) For a voluntary rating tier to accommodate eligible persons,
9 as defined in section 25 of P.L.1990, c.8 (C.17:33B-13), residing in
10 automobile insurance urban enterprise zones, designated by the
11 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-2),
12 to provide increased availability and encourage the voluntary writing
13 of eligible persons residing in those zones;

14 (2) The rates utilized in this voluntary rating tier shall be the
15 voluntary market rates in use by the insurer to whom the risk is
16 assigned in that territory;

17 (3) The voluntary rating tier shall not provide insurance coverage
18 for more than five percent of the aggregate number of private
19 passenger automobile non-fleet exposures being written in the total
20 private passenger automobile insurance market in this State, and the
21 number of exposures written in the voluntary rating tier shall be
22 included for computing the maximum number of exposures permitted
23 to be written in the plan;

24 (4) The plan shall distribute risks submitted by qualified producers
25 to insurers authorized to write automobile insurance in this State
26 pursuant to a fair and nondiscriminatory formula established by the
27 commissioner. The formula shall provide that insurers which have,
28 and maintain, an aggregate voluntary automobile insurance
29 marketshare in automobile insurance urban enterprise zones, which is
30 reasonably equal to the insurer's voluntary Statewide marketshare
31 excluding risks written in automobile insurance urban enterprise zones,
32 shall be exempt from these distributions;

33 (5) Qualified producers may submit eligible person risks from
34 automobile insurance urban enterprise zones to the plan for coverage
35 in the voluntary rating tier. As used in this subsection i.: a "qualified
36 producer" means a UEZ agent, as defined in section 19 of P.L.1997,
37 c.151 (C.17:33C-1), who has met any limit on exposures that may be
38 written in accordance with the UEZ agent's agreement with the
39 appointing insurer pursuant to section 22 of P.L.1997, c.151
40 (C.17:33C-4); and a producer who: is duly licensed with
41 property/casualty authority for the three years immediately preceding
42 the effective date of P.L.1997, c.151 (C.17:33B-64 et al.); has no
43 affiliation with a voluntary market insurer for the placement of
44 automobile insurance; had an affiliation with a voluntary market
45 insurer for the placement of automobile insurance that was terminated
46 by the insurer in the last three years; demonstrates to the plan his

1 competency, efficiency and effectiveness in the solicitation, negotiation
2 and effectuation of automobile insurance as evidenced by any history
3 of disciplinary actions or complaints against the producer, and other
4 relevant factors; and conducts his business in an office in an
5 automobile insurance urban enterprise zone. For purposes of this
6 subsection i., "insurer" means an insurer or group of affiliated insurers
7 admitted or authorized to transact the business of automobile
8 insurance in this State;

9 (6) This subsection shall expire on **[December 31, 2000]** the first
10 day of the 61st month after the first policy using the voluntary rating
11 tier required by this subsection was issued to a risk, as certified by the
12 commissioner.

13 Prior to the adoption or amendment of such rules and regulations,
14 the commissioner shall consult with such members of the insurance
15 industry as he deems appropriate. Such consultation shall be in
16 addition to any otherwise required public hearing or notice with regard
17 to the adoption or amendment of rules and regulations.

18 The governing body administering the plan shall report annually to
19 the Legislature and the Governor on the activities of the plan. The
20 report shall contain an actuarial analysis regarding the adequacy of the
21 rates for each coverage for the safeness and soundness of the plan.¹

22 (cf: P.L.1997, c.151, s.26)

23

24 ¹**[34.] 32.**¹ (New section) There is established in the Division of
25 Criminal Justice in the Department of Law and Public Safety the Office
26 of the Insurance Fraud Prosecutor. The Insurance Fraud Prosecutor
27 shall be appointed by, and serve at the pleasure of, the Governor with
28 the advice and consent of the Senate and be under the direction and
29 supervision of the Attorney General. Any person appointed as
30 Insurance Fraud Prosecutor shall have had prosecutorial experience,
31 including experience in the litigation of civil and criminal cases. The
32 Attorney General shall establish standards of performance for the
33 Office of Insurance Fraud Prosecutor, which shall include standards of
34 accountability.

35

36 ¹**[35.] 33.**¹ (New section) The Attorney General may appoint
37 such personnel, including attorneys and clerical personnel, as
38 necessary to carry out the duties of the office. The personnel charged
39 with investigatory work in ¹the¹ Division of ¹Insurance¹ Fraud
40 Prevention in the Department of Banking and Insurance shall be
41 transferred to the Office of the Insurance Fraud Prosecutor as
42 determined by the Commissioner of Banking and Insurance and the
43 Attorney General, in accordance with a plan of reorganization, and
44 shall become the Fraud Investigatory Section of the Office of the
45 Insurance Fraud Prosecutor. ¹**[A section of the Office of Insurance**
46 **Fraud Prosecutor shall be designated to be responsible for establishing**

1 a liaison and continuing communication between the office and the
 2 Department of Health and Senior Services, the Department of Human
 3 Services, any professional board in the Division of Consumer Affairs
 4 in the Department of Law and Public Safety, the Department of
 5 Banking and Insurance, the Division of State Police, every county
 6 prosecutor's office, such local government units as may be necessary
 7 or practicable and insurers.】 Personnel transferred from the Division
 8 of Insurance Fraud Prevention in the Department of Banking and
 9 Insurance to the Office of the Insurance Fraud Prosecutor pursuant to
 10 this section and any such reorganization plan shall be transferred with
 11 all tenure rights and any rights or protections provided by Title 11A
 12 of the New Jersey Statutes or other applicable statutes, as provided in
 13 section 8 of P.L.1983, c.320 (C.17:33A-8), and any pension law or
 14 retirement system²【; and, notwithstanding the provisions of section
 15 4 of P.L.1970, c.74 (C.52:17B-100), or any other law, to the contrary,
 16 all supervisory and investigative personnel of the Office of the
 17 Insurance Fraud Prosecutor including, but not limited to, supervisory
 18 and investigative personnel of the Division of Insurance Fraud
 19 Prevention transferred pursuant to this section and any such
 20 reorganization plan, shall not be confidential employees for the
 21 purposes of the "New Jersey Employer-Employee Relations Act,"
 22 P.L.1941, c.100 (C.34:13A-1 et seq.)】².¹

23
 24 ¹【36.】 34.¹ (New section) ¹a. A section of the Office of
 25 Insurance Fraud Prosecutor shall be designated to be responsible for
 26 establishing a liaison and continuing communication between the office
 27 and the Department of Health and Senior Services, the Department of
 28 Human Services, any professional board in the Division of Consumer
 29 Affairs in the Department of Law and Public Safety, the Department
 30 of Banking and Insurance, the Division of State Police, every county
 31 prosecutor's office, such local government units as may be necessary
 32 or practicable and insurers.

33 b.¹ The section of the office responsible for such liaison shall
 34 establish procedures: (1) for receiving notice from all entities
 35 enumerated in ¹subsection a. of this¹ section ¹【35 of this amendatory
 36 and supplementary act】¹ of any case in which fraud is suspected or has
 37 been substantiated; (2) for receiving referrals for the investigation of
 38 alleged fraud; (3) for receiving referrals for the prosecution of fraud
 39 by the office; (4) for receiving and referring information regarding
 40 cases, administrative or otherwise, under investigation by any
 41 department or other entity to the appropriate authority²【,】²; and (5)
 42 for providing information to and coordinating information among any
 43 referring entities on pending cases of insurance fraud which are under
 44 investigation or being litigated or prosecuted. The liaison section of
 45 the office shall maintain a record of every referral or investigation.

1 ¹**[37.] 35.**¹ (New section) The Insurance Fraud Prosecutor shall
2 investigate and, if warranted, prosecute, cases referred to it by
3 insurers, State agencies, or county and municipal governments. The
4 Insurance Fraud Prosecutor may assist county prosecutors in the
5 investigation and prosecution of fraud, and shall give county
6 prosecutors access to the data base maintained pursuant to section
7 ¹**[40] 38**¹ of this amendatory and supplementary act.

8

9 ¹**[38.] 36.**¹ (New section) The Attorney General shall, in
10 consultation with county prosecutors, establish a Statewide fraud
11 enforcement policy for all State and local agencies, including
12 guidelines for the investigation and prosecution of fraud, which shall
13 include standards for detecting fraud, for the investigation of alleged
14 fraud and standards for the submission of cases for prosecution.
15 Priorities shall be established among the cases referred to the office for
16 prosecution or other litigation and the office shall assist referring
17 entities in establishing priorities among investigations or cases to be
18 disposed of by the entities themselves. The Insurance Fraud
19 Prosecutor shall prosecute criminal cases, litigate civil cases as
20 appropriate, or assist county prosecutors in prosecuting criminal cases
21 in accordance with the guidelines and priorities so established.

22

23 ¹**[39.] 37.**¹ (New section) Standards of performance shall be
24 established for the Fraud Investigatory Section, which shall include,
25 but not be limited to, recording the cases referred by insurers, local
26 government agencies and others which are assigned to the Fraud
27 Investigatory Section, investigating cases of alleged fraud in
28 accordance with the priorities established by the Insurance Fraud
29 Prosecutor, recording the disposition of the cases referred to the
30 section, and making recommendations to the Insurance Fraud
31 Prosecutor as to any procedural, regulatory, or statutory changes
32 which may be necessary to carry out the provisions of this amendatory
33 and supplementary act.

34

35 ¹**[40.] 38.**¹ (New section) a. The Insurance Fraud Prosecutor shall
36 maintain a data base which includes referrals, reports of fraud
37 investigations, prosecution, or litigation, and the results of such
38 proceedings, which shall include: (1) identification of the referring
39 entity; (2) type of fraud; (3) disposition of case; and (4) such other
40 data as may be necessary to the work of the office and the referring
41 entities.

42 b. The Insurance Fraud Prosecutor shall provide for the reporting
43 of claims information by insurers writing at least \$2,000,000 in direct
44 insurance premiums in any calendar year, in a standard reporting form,
45 which shall include, but shall not be limited to, information on stolen
46 vehicles, including the owners of such vehicles, information on

1 automobile accidents, including date and location of accidents, persons
2 involved in accidents, the kinds of injuries sustained in accidents and
3 treating health care providers, for the purpose of identifying patterns
4 of possible fraudulent activity, which information shall be shared with
5 county prosecutors, local law enforcement officials, and the New
6 Jersey State Police. Every insurer shall submit the data required by the
7 Insurance Fraud Prosecutor for all claims closing with payment during
8 a period established by the Insurance Fraud Prosecutor.

9
10 ¹[41.] 39.¹ (New section) The Insurance Fraud Prosecutor shall
11 have access to all necessary information in the possession of the State
12 or local public entities, including agency inspection reports, motor
13 vehicle records and license information, individual case files, and
14 intelligence information compiled and maintained by the Division of
15 State Police in the Department of Law and Public Safety. Upon the
16 request of the Insurance Fraud Prosecutor, any insurer which has
17 referred a case to the Insurance Fraud Prosecutor ²[,]² or to any
18 county or local government agency shall make ²available to the Office
19 of the Insurance Fraud Prosecutor² all information on the case
20 ²[available to the Office of the Insurance Fraud Prosecutor that the
21 Insurance Fraud Prosecutor shall request] in the insurer's possession².

22
23 ¹[42.] 40.¹ (New section) The Attorney General shall direct the
24 Office of the Insurance Fraud Prosecutor to:

25 a. Confer from time to time with departments or other units of
26 State government which have units which investigate fraud, in order
27 to coordinate activities, share information, and provide any assistance
28 necessary to any State agency in overseeing administrative
29 enforcement activities;

30 b. Formulate and evaluate proposals for legislative, administrative
31 and judicial initiatives to strengthen insurance fraud enforcement;

32 c. In connection with insurance fraud enforcement activities, act as
33 the liaison for the Executive Branch of government with agencies
34 involved in insurance fraud enforcement outside the Executive Branch,
35 including federal agencies and the Judiciary.

36 d. Provide an annual report to the Governor and the Legislature,
37 no later than March 1 of each year, as to the activities of the Insurance
38 Fraud Prosecutor for the preceding twelve months, including, but not
39 limited to, the number of cases referred, the number of cases
40 investigated, the number of cases in which professional licenses were
41 suspended or revoked, by type of license, the number of cases
42 prosecuted, the number of convictions procured, and the aggregate
43 amount of money collected in fines and returned in restitution to
44 insurers or others.

45
46 ¹[43.] 41.¹ (New section) In the case of a professional licensed

1 or certified by a professional licensing board in the Division of
2 Consumer Affairs in the Department of Law and Public Safety who is
3 guilty of fraud, the Insurance Fraud Prosecutor may recommend to the
4 appropriate board a suspension or revocation of the professional
5 license.

6
7 ¹[44.] 42.¹ (New section) The Insurance Fraud Prosecutor shall
8 consider the restitution of moneys to insurers and others who are
9 defrauded as a major priority, in order that policyholders may benefit
10 from the prosecution of those persons guilty of insurance fraud, and
11 to that end, any assets of any person guilty of fraud shall be subject to
12 seizure.

13
14 ¹[45.] 43.¹ (New section) The Insurance Fraud Prosecutor shall
15 have access to all information concerning insurance fraud enforcement
16 activities in the possession of all State departments and agencies. The
17 office shall meet on a regular basis with representatives of State
18 departments and agencies and county prosecutors to set specific goals
19 and strategies for the most effective resolution of insurance fraud
20 cases, whether by criminal, civil, or administrative enforcement action,
21 or a combination thereof.

22
23 ¹[46.] 44.¹ (New section) Any county prosecutor may apply to
24 the Office of ²the² Insurance Fraud Prosecutor for reimbursement for
25 activities undertaken in connection with investigating and prosecuting
26 insurance fraud. The Attorney General shall allocate such funds as he
27 deems necessary from such moneys as may be appropriated for the
28 operation of the Office of ²the² Insurance Fraud Prosecutor to a fund
29 dedicated for the purpose of reimbursing county prosecutors or
30 sharing in fines levied by the Attorney General, which reimbursement
31 or sharing may be made by the Attorney General at his discretion.

32
33 ¹[47.] 45.¹ (New section) Every state and local law enforcement
34 agency, including the New Jersey State Police, shall make available to
35 investigators employed by insurers, upon presentation of appropriate
36 identification, information from any accident report, as set forth in this
37 section, no later than 24 hours following the time of occurrence. The
38 information may include, but need not be limited to, the names and
39 addresses of the owners of the vehicles, insurance information
40 recorded on the accident report, and the names and addresses of
41 passengers in the vehicles at the time of the occurrence and, if
42 applicable, the name of any pedestrian injured in an accident. Every
43 accident report form shall contain the names and addresses of any
44 person occupying a vehicle involved in an accident, and any pedestrian
45 injured in an accident.

1 ¹**[48.] 46.**¹ (New section) The Attorney General shall annually,
2 on or before October 1, certify to the State Treasurer an amount
3 allocable to the expenses of the Office of the Insurance Fraud
4 Prosecutor for the preceding fiscal year, which amount shall be
5 transferred to the Department of Law and Public Safety by the State
6 Treasurer from the amounts assessed and collected for the operation
7 of the Division of Insurance Fraud Prevention in the Department of
8 Banking and Insurance pursuant to section 8 of P.L.1983, c.320
9 (C.17:33A-8).

10

11 ¹**[49.] 47.**¹ (New section) For the purposes of sections ¹**[50] 48**¹
12 through ¹**[63] 61**¹ of this amendatory and supplementary act:

13 "Commissioner" means the Commissioner of Banking and
14 Insurance;

15 "Claim" means any claim filed under a policy of insurance issued
16 pursuant to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any
17 policy of life or health insurance issued pursuant to Title 17 of the
18 Revised Statutes or Title 17B of the New Jersey Statutes;

19 "Insurance" means any contract of direct insurance written pursuant
20 to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any policy of
21 life or health insurance issued pursuant to Title 17 of the Revised
22 Statutes or Title 17B of the New Jersey Statutes;

23 "Ombudsman" means the Insurance Claims Ombudsman appointed
24 pursuant to section ¹**[50] 48**¹ of this amendatory and supplementary
25 act.

26

27 ¹**[50.] 48.**¹ (New section) There is created within the ²**[Division**
28 of Consumer Affairs in the Department of Law and Public Safety]
29 Department of Banking and Insurance² the Office of the Insurance
30 Claims Ombudsman. The ombudsman shall be appointed by the
31 Governor with the advice and consent of the Senate and shall serve at
32 the pleasure of the Governor during the Governor's term of office.
33 The ombudsman shall devote his entire time to the duties of his office.
34 Any vacancy occurring in the position of ombudsman shall be filled in
35 the same manner as the original appointment. If the ombudsman shall
36 be unable for any reason to serve his full term of office, the Governor
37 may designate an acting ombudsman until a successor is appointed and
38 qualified. The ombudsman shall have at least a baccalaureate degree
39 and at least seven years' experience in property and casualty or life and
40 health insurance, which may include experience as a broker or an
41 agent.

42

43 ¹**[51.] 49.**¹ (New section) The ombudsman shall:

44 a. Administer and organize the work of the office and hire such
45 persons as shall be deemed necessary to effectuate his duties, subject
46 to Title 11A (Civil Service) of the New Jersey Statutes, and within the

1 limits of funds made available by the Department of Banking and
2 Insurance ²[, in consultation with the Attorney General]².

3 b. Appoint and employ ²attorneys, in accordance with any
4 applicable law, regulation or executive order, and² any consultants,
5 independent adjusters, claims specialists ²[, attorneys]² or others for
6 the purpose of providing ²[legal and]² professional advice as the
7 ombudsman may from time to time require, within the limits of the
8 funds provided therefor;

9 c. Investigate consumer complaints regarding policies of insurance,
10 including the payment of claims on policies of insurance;

11 d. Establish procedures to monitor the implementation of
12 P.L.1985, c.179 (C17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et
13 seq.), P.L.1982, c.95 (C.17:35C-1 et seq.) and chapter 30 of Title 17B
14 of the New Jersey Statutes and investigate violations of section 8 of
15 P.L.1992, c.144 (C.17:35C-11).

16 e. Respond to inquiries from consumers, including, but not limited
17 to, those regarding policy provisions and the availability of coverage;

18 f. Publish and disseminate buyers' guides and, where provided by
19 law, comparative rates; provided, however, that this shall not apply to
20 any policy of health insurance issued pursuant to P.L.1992, c.161
21 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

22 g. Review conduct of arbitrators appointed under the terms of the
23 policy to arbitrate disputes, except policies issued pursuant to
24 P.L.1972, c.70 (C.39:6A-1 et seq.)

25 h. Promulgate such rules and regulations as shall be necessary to
26 effectuate the purposes of sections ¹[50] 48¹ through ¹[63] 61¹ of
27 this amendatory and supplementary act; and

28 i. Perform such other functions as may be prescribed by this or by
29 any other law or regulation.

30

31 ¹[52.] 50.¹ (New section) Any person who: a. has reasonable
32 cause to believe that an insurer has failed or refuses to settle a claim
33 in accordance with the provisions of the insurance contract or engaged
34 in any practice in violation of the provisions of P.L.1985, c.179
35 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et seq.), P.L.1982,
36 c.95 (C.17:35C-1 et seq.), chapter 30 of Title 17B of the New Jersey
37 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11); and, in the
38 case of disputed claims, b. has previously filed an appeal with the
39 insurer's internal appeals procedure established pursuant to section
40 ¹[57] 55¹ of this amendatory and supplementary act, which has been
41 adjudicated, or other dispute resolution procedure established pursuant
42 to P.L.1972, c.70 (C.39:6A-1 et seq.), P.L.1997, c.192 (C.26:2S-1 et
43 seq.), ²or² sections 1 through 12 of P.L.1983, c.358 (C.39:6A-24
44 through 39:6A-35, inclusive) ²[or sections 24 and 25 of P.L. , c.
45 (C.)(now before the Legislature as this bill)]² may file an
46 application with the ombudsman for a review of the claims settlement.

1 ²Any disputes which may be or have been filed or adjudicated pursuant
2 to sections 24 and 25 of P.L. _____, c. _____ (C. _____)(now before the
3 Legislature as this bill) shall not be subject to the ombudsman's
4 review.²

5
6 ¹**[53.] 51.**¹ (New section) In any investigation involving a
7 disputed claim, the ombudsman may:

8 a. Investigate whether the claims settlement was appropriate and
9 in accordance with the contract;

10 b. Make the necessary inquiries and obtain such information as he
11 deems necessary;

12 c. Hold a hearing on the disputed claim;

13 d. Inspect any books or records which are relevant to the claim;

14 e. Compel any person to produce at a specific time and place, by
15 subpoena, any documents, books, records, papers, objects or other
16 evidence which he believes may relate to a claim under investigation.

17
18 ¹**[54.] 52.**¹ (New section) The ombudsman need not investigate
19 any complaint if he determines that:

20 a. The complaint is trivial, frivolous, vexatious or not made in
21 good faith;

22 b. The complaint has been too long delayed to justify present
23 investigation;

24 c. The resources available, considering the established priorities,
25 are insufficient for an adequate investigation; or

26 d. The matter complained of is not within the investigatory
27 authority of the office.

28
29 ¹**[55.] 53.**¹ (New section) The ombudsman shall maintain a
30 central registry of all claims investigations which have been disposed
31 of and closed, the nature of the investigation, findings, and
32 recommended actions. No information so compiled shall be construed
33 to be a public record. In addition, the ombudsman shall:

34 a. Report to the commissioner any evidence that an insurer has
35 established a pattern of settlement practices which would constitute an
36 unfair claims settlement practice within the meaning of P.L.1947,
37 c.379 (C.17:29B-1 et seq.) or any violations of P.L.1985, c.179
38 (C.17:23A-1 et seq.), P.L.1947, c.379 (C17:29B-1 et seq.), P.L.1982,
39 c.95 (C.17:35C-1 et seq.) chapter 30 of Title 17B of the New Jersey
40 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11);

41 b. Report to the commissioner any contract provision, including
42 any endorsements, which are unfairly discriminatory, confusing,
43 misleading or contrary to public policy, along with a recommendation
44 as to whether the policy form should be modified or withdrawn.

45
46 ¹**[56.] 54.**¹ (New section) With respect to trade or marketing

1 practices, the ombudsman may:

2 a. Conduct an investigation regarding an insurer's trade practices,
3 including claims settlement practices and marketing practices;

4 b. Make the necessary inquiries and obtain such information as he
5 deems necessary;

6 c. Hold a hearing;

7 d. Inspect any books or records which may be necessary for the
8 investigation;

9 e. Compel any person to produce at a specific time and place, by
10 subpoena, any documents, books, records, papers, objects or other
11 evidence which he believes may relate to the investigation.

12 The ombudsman shall report his findings to the commissioner with
13 respect to the trade practices or marketing practices under
14 investigation.

15

16 ¹[57.] 55.¹ (New section) Every insurer writing property and
17 casualty insurance or life insurance in this State shall establish an
18 internal appeals procedure for the ²[adjudication] review² of disputed
19 claims, in accordance with terms set forth by the commissioner by rule
20 and regulation or as otherwise provided by law or regulation. The
21 ²[adjudication] review² shall be conducted by a panel of the insurer's
22 employees, who shall be personnel other than those responsible for
23 claims payment on a day-to-day basis and shall be conducted within 10
24 business days of the receipt of the complaint.

25

26 ¹[58.] 56.¹ (New section) Complaints shall be filed on a form set
27 forth by the ombudsman. The office of the ombudsman shall
28 acknowledge the receipt of complaints, and advise the applicants of
29 any action taken or opinions and recommendations which may have
30 been made by it to the insurer. The ombudsman shall make
31 recommendations to the commissioner as he deems necessary,
32 including, but not limited to:

33 a. A recommendation that a policy form or endorsement thereon
34 which he finds unfairly discriminatory, misleading or contrary to public
35 policy be modified;

36 b. A recommendation that specific rules and regulations
37 promulgated by the commissioner, including rules concerning trade
38 practices and claims settlement practices, be modified or repealed;

39 c. A recommendation that the claims settlement practices of a
40 specific insurer or insurers be further investigated by the
41 commissioner;

42 d. A recommendation that the commissioner impose penalties or
43 other sanctions against an insurer or insurers as a result of the insurer's
44 claims settlement practices.

45

46 ¹[59.] 57.¹ (New section) Every buyer's guide which is required

1 to be provided to insureds for any line of insurance shall contain a
2 notice describing the functions of the ombudsman, the mailing address
3 of the ombudsman, and a toll-free information telephone number. The
4 ombudsman may publicize his existence, function and activities to the
5 public at large.

6
7 ¹[60.] 58.¹ (New section) a. Any correspondence or written
8 communication from any ²[applicant] complainant² and any written
9 material submitted by an insurer shall remain confidential and shall not
10 be part of any public record, unless the parties authorize, in writing,
11 the release of the information, ²or² except for such disclosures as may
12 be necessary to enable the ombudsman to perform his duties and to
13 support any opinions or recommendations ²or as may be necessary to
14 enable the commissioner to perform any function authorized by law².

15 b. Any person conducting or participating in any investigation of
16 a complaint who discloses to any person, other than the office of the
17 ombudsman ²or the Department of Banking and Insurance², or those
18 authorized by the ombudsman ²or the commissioner² to receive it, any
19 information collected during the investigation, is guilty of a disorderly
20 person's offense.

21 c. Any statement or communication made by the office of the
22 ombudsman relevant to a complaint received by the ombudsman, to
23 proceedings conducted ²either² by the ombudsman ²or by or on behalf
24 of the commissioner², or relating to an investigation conducted by the
25 ombudsman, which is provided to the office in good faith, shall be
26 absolutely privileged.

27 d. The ombudsman shall not be required to testify in court with
28 respect to matters held to be confidential except as the court may
29 deem necessary to enforce the provisions of sections ¹[50] 48¹
30 through ¹[63] 61¹ of this amendatory and supplementary act ²or as
31 the commissioner may deem necessary in conjunction with the
32 execution of any power of the commissioner authorized by law².

33 ²e. Nothing in this section shall be deemed to limit the disclosure
34 of information to law enforcement and regulatory agencies.²

35
36 ¹[61.] 59.¹ (New section) Upon making his determination as to
37 the appropriate disposition of a claim, the ombudsman shall notify the
38 insurer and the claimant of his decision. The decision shall be
39 admissible in any court action or any other proceeding which is
40 instituted to determine final disposition of the claim. The ombudsman
41 may file a brief with the court in connection with an action relating to
42 the disposition of claim.

43
44 ¹[62.] 60.¹ (New section) Any person who willfully hinders the
45 lawful actions of the ombudsman or willfully refuses to comply with
46 his lawful demands, including the demand for the inspection of

1 records, shall be subject to a penalty of not more than \$5,000. The
2 penalty shall be collected and enforced by summary proceedings
3 pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.
4 Each violation of sections ¹[50] 48¹ through ¹[63] 61¹ of this
5 amendatory and supplementary act shall constitute a separate offense.
6 Notwithstanding any other provision of law to the contrary, no
7 investigation or determination made by the ombudsman shall be
8 ²[subject to the provisions] dispositive of a violation ²of P.L.1960,
9 c.39 (C.56:8-1 et seq.) ²but may be considered relevant in determining
10 whether a violation of such act has occurred².

11

12 ¹[63.] 61.¹ (New section) The ombudsman shall report to the
13 Governor and the Legislature on or before September 30 of each year,
14 summarizing his activities for the preceding year, documenting any
15 significant insurance industry problems with regard to claims
16 settlement practices in any line of insurance, and setting forth any
17 recommendations for statutory or regulatory change which will further
18 the State's capacity to resolve claims disputes.

19

20 ¹[64.] 62.¹ Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended
21 to read as follows:

22 4. No insurer shall fail to renew a policy unless it shall mail or
23 deliver to the named insured, at the address shown in the policy, at
24 least 60 days' advance notice of its intention not to renew. This
25 section shall not apply:

26 (a) If the insurer has manifested its willingness to renew; nor

27 (b) In case of nonpayment of premium;

28 provided that, notwithstanding the failure of an insurer to comply
29 with this section, the policy shall terminate on the effective date of any
30 other insurance policy with respect to any automobile designated in
31 both policies.

32 **【If a named insured qualifies for his insurer's non-standard rate**
33 **level after having been insured at the standard rate level, the insurer**
34 **shall mail or deliver to the named insured, at the address shown in the**
35 **policy, at least 60 days' advance notice of its intention to renew at the**
36 **non-standard rate level.】**

37 Renewal of a policy shall not constitute a waiver or estoppel with
38 respect to grounds for cancellation which existed before the effective
39 date of such renewal.

40 (cf: P.L.1997, c.240, s.1)

41

42 ¹[65.] 63.¹ (New section) a. An insurer authorized to transact or
43 transacting automobile insurance business in this State shall file with
44 the commissioner, for the commissioner's approval, an endorsement to
45 its automobile liability insurance policy which contains a "named
46 excluded driver" provision that would exclude physical damage

1 coverage on an automobile covered by an automobile liability
2 insurance policy if it is operated by the "named excluded driver." For
3 purposes of this section, "named excluded driver" means a driver in the
4 household of the named insured who is specifically identified in the
5 endorsement as a person whose operation of an automobile covered
6 under the automobile liability insurance policy at the time of an
7 accident would result in the denial of a physical damage claim for that
8 automobile.

9 b. The premium charged for the physical damage coverage on a
10 policy containing a "named excluded driver" endorsement shall not
11 reflect the claim experience or driving record of the "named excluded
12 driver" or drivers.

13 c. Election of a "named excluded driver" endorsement shall be in
14 writing and signed by the named insured on a form prescribed by the
15 commissioner. The "named excluded driver" endorsement shall
16 continue in force as to subsequent renewal or replacement policies
17 until the insurer or its authorized representative receives a properly
18 executed form electing to discontinue the endorsement.

19 d. Notwithstanding any other provision of the law to the contrary,
20 no person, including, but not limited to, an insurer or an insurance
21 producer, shall be liable in an action for damages on account of the
22 election of a "named excluded driver" endorsement.

23 e. The commissioner may promulgate rules and regulations
24 necessary to implement the provisions of this section.

25
26 ¹[66.] 64.¹ (New section) If an insurer has a financial
27 arrangement with ²[an] one or more² auto body repair ²[shop]
28 shops² or other repair ²[facility] facilities² or a network of facilities
29 for the purpose of repairing vehicles covered under physical damage,
30 collision, or comprehensive coverages, the insurer shall not deny a
31 person the right to select an auto body repair shop or other repair
32 facility of his choice for repair of a covered vehicle, provided that such
33 auto body repair shop or other repair facility elected by the person
34 accepts the same terms and conditions ²from the insurer, including, but
35 not limited to, price.² as the shop, facility, or network with which the
36 insurer has ²[an] the most generous² arrangement ²[and agrees to
37 repair the covered vehicle at the same price]². ²Prior to undertaking
38 any repair, the auto body repair shop or other repair facility of the
39 insured's choice shall provide the insured with written notification, in
40 a form to established by the Commissioner of the Department of
41 Banking and Insurance by regulation, that, by agreeing to have the
42 auto body shop or other repair facility of the insured's choice accept
43 the same terms and conditions from the insurer as the shop, facility or
44 network with which the insurer has the most generous arrangement,
45 the insured may jeopardize any manufacturer or dealer warranty or
46 lease agreement. Such notification form shall be signed by the insured

1 prior to the undertaking of any repair.²

2

3 ¹[67.] 65.¹ (New section) a. The Commissioner of Banking and
4 Insurance may, in connection with any profits report made under
5 P.L.1988, c.118 (C.17:29A-5.6 et seq.), require a review of all or part
6 of the filing by ²a² qualified independent actuary, ¹including the
7 elements of the filing² including ²but not limited to,² the ²[insurer
8 or]² filer's assumptions with respect to the development of losses or
9 loss adjustment expenses developed to an ultimate basis, allowance for
10 profit and contingencies and anticipated investment income.

11 b. For the purposes of this section, "qualified independent actuary"
12 means a person or firm with annual billings of at least \$5,000,000, who
13 has not worked for the insurer or filer whose filing is under review
14 during the previous three year period.

15

16 ¹[68.] 66.¹ (New section) a. For the purposes of this section:

17 "Qualified person" means a person qualified by the Commissioner
18 of Banking and Insurance to intervene in public hearings pursuant to
19 this section ², who shall be deemed a "public servant" within the
20 meaning of N.J.S.2C:30-2²;

21 "Rate filing" means a filing for a rate increase by an automobile
22 insurer writing private passenger automobile insurance in this State,
23 ²other than an expedited prior approval rate filing made pursuant to
24 section 34 of P.L.1997, c.151 (C.17:29A-46.6) and² other than a rate
25 filing made pursuant to any statutory change in coverage provided
26 under a policy of private passenger automobile insurance.

27 b. The Commissioner of Banking and Insurance shall establish
28 standards for qualifying persons to intervene in rate filings pursuant to
29 this section. The standards shall include, but shall not necessarily be
30 limited to, requiring that any person intervening in a rate filing
31 demonstrate: (1) expertise in the insurance laws of this State; (2) an
32 understanding of the actuarial principles employed in establishing rates
33 and rating systems; (3) sufficient access to a qualified actuary and
34 sufficient expertise to conduct a technical examination of a rate filing;
35 (4) sufficient resources to intervene in the rate filing process as
36 provided herein; and (5) that the person represents the interest of
37 consumers ²and accepts a duty of fidelity to do so².

38 c. The commissioner shall require such documentation as he
39 determines is necessary to qualify a person to intervene in a rate filing,
40 and may charge a fee for registration with the department as an
41 intervenor, which fee shall be payable annually.

42 d. The commissioner may remove the registration of an intervenor
43 if he determines that (1) the intervenor no longer meets the
44 qualifications, or (2) if the intervenor is convicted of a crime or loses
45 a professional license for misconduct.

46 e. If an insurer or rating organization files for a rate increase for

1 private passenger automobile insurance, the commissioner shall notify
2 the public of the proposed rate change in a newspaper or newspapers
3 of general circulation throughout the State. A qualified person may
4 request, and shall receive, a copy of the rate filing and any
5 amendments and supplements thereto and shall pay the expenses in
6 connection therewith. The qualified person may request that the
7 commissioner certify the rate filing for a hearing pursuant to section
8 14 of P.L.1944, c.27 (C:17:29A-14).

9 f. The commissioner shall establish by regulation the terms and
10 conditions under which the proceedings under this section shall be
11 conducted, including, but not limited to the supporting material which
12 shall accompany the intervention.

13 g. Upon determining that the intervenor has demonstrated that the
14 qualified person has made a substantial contribution to the adoption of
15 any order ²[, regulation,]² or decision by the commissioner or a court
16 in connection with a rate filing made pursuant to this section, the
17 commissioner shall award reasonable advocacy and witness fees and
18 expenses.

19 ²h. A person commits a crime of the third degree if he solicits,
20 accepts or agrees to accept any benefits as consideration for
21 knowingly violating or agreeing to violate a duty of fidelity to which
22 he is subject pursuant to this section. In addition, to any disposition
23 authorized by law, the Commissioner of Banking and Insurance shall
24 forever bar from registration as an intervenor any person convicted
25 under this subsection.

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

33 j. Nothing herein shall be construed to preclude a prosecution or
34 conviction for a violation of any other law.²

35
36 ¹[69.] 67.¹ (New section) a. Except for the plan established
37 pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1), every insurer
38 writing private passenger automobile insurance in this State pursuant
39 to P.L.1972, c.70 (C.39:6A-1 et seq.) shall file rates with the
40 Commissioner of Banking and Insurance which result in:

41 (1) a reduction of at least 25% from the personal injury protection
42 territorial base rate applicable to medical expense benefits, at least
43 10% of which shall reflect a reduction in the actuarial value of the
44 medical expense benefits provided pursuant to section 4 of P.L.1972,
45 c.70 (C.39:6A-4), within the policy limits provided for in that section;

46 (2) a reduction of at least 22% in the territorial base rate for bodily

1 injury liability coverage applicable to named insureds to whom the
2 Limitation on Lawsuit Option provided for in subsection a. of section
3 8 of P.L.1972, c.70 (C.39:6A-8) applies;

4 (3) a reduction of at least 6% in the territorial base rate for
5 collision coverage which shall reflect the provisions of section ¹~~66~~
6 ~~64~~¹ of this amendatory and supplementary act; and

7 (4) after the reductions required pursuant to paragraphs (1), (2) and
8 (3) of this subsection have been applied, an additional aggregate
9 reduction of at least 3% in the territorial base rates for personal injury
10 protection, bodily injury, property damage, comprehensive and
11 collision coverages, as apportioned by the insurer and approved by the
12 commissioner, which reduction is attributable to the effect of the
13 enhanced insurance fraud provisions of this amendatory and
14 supplementary act and of other such laws including, but not limited to
15 P.L.1997, c.353 (C.2C:21-4.2 et seq.) and P.L.1997, c.151
16 (C.17:33B-64 et al.).

17 b. The rate filings reflecting these reductions shall apply to policies
18 issued or renewed on or after 90 days following:

19 (1) the establishment by the commissioner of basic benefits
20 required to be provided pursuant to section 4 of P.L.1972, c.70
21 (C.39:6A-4); or

22 (2) the adoption by rule of the professional boards of the
23 designation of valid diagnostic tests pursuant to the provisions of
24 section 12 of P.L. , c. (C.)(now before the Legislature as this
25 bill);

26 whichever is later.

27

28 ¹~~[70.] 68.~~¹ Section 3 of P.L.1991,c.154 (C.17:28-1.7) is amended
29 to read as follows:

30 3. Every owner, registrant or operator of a motor bus registered or
31 principally garaged in this State and every person or organization
32 legally responsible for his acts or omissions, is hereby exempted from
33 tort liability for noneconomic loss to a passenger who has a right to
34 receive benefits under section 2 of this act as a result of bodily injury
35 arising out of the ownership, operation, maintenance or use of a motor
36 bus in this State, unless that person has sustained a personal injury
37 which results in death; dismemberment; significant disfigurement or
38 significant scarring; ~~[a fracture]~~displaced fractures; loss of a fetus;
39 [permanent loss of use of a body organ, member, function or system;
40 permanent consequential limitation of use of a body organ or member;
41 significant limitation of use of a body function or system; or a
42 medically determined injury or impairment of a non-permanent nature
43 which prevents the injured person from performing substantially all of
44 the material acts which constitute that person's usual and customary
45 daily activities for not less than 90 days during the 180 days
46 immediately following the occurrence of the injury or impairment]or

1 a permanent injury within a reasonable degree of medical probability,
2 other than scarring or disfigurement. An injury shall be considered
3 permanent when the body part or organ, or both, has not healed to
4 function normally and will not heal to function normally with further
5 medical treatment. For the purposes of this subsection, "physician"
6 means a physician as defined in section 5 of P.L.1939,c.115 (C.45:9-
7 5.1).

8 In order to satisfy the provisions of this section, the plaintiff shall,
9 within 60 days following the date of the answer to the complaint by
10 the defendant, provide the defendant with a certification from the
11 licensed treating physician or a board-certified licensed physician to
12 whom the plaintiff was referred by the treating physician. The
13 certification shall state, under penalty of perjury, that the plaintiff has
14 sustained an injury described above. The certification shall be based
15 on and refer to objective clinical evidence, which may include medical
16 testing, except that any such testing shall be performed in accordance
17 with medical protocols pursuant to subsection a. of section 4 of
18 P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
19 administered in accordance with section 12 of P.L. , c. (C.)(now
20 before the Legislature as this bill). Such testing may not be
21 experimental in nature or dependent entirely upon subjective patient
22 response. The court may grant no more than one additional period not
23 to exceed 60 days to file the certification pursuant to this section upon
24 a finding of good cause.

25 A person is guilty of a crime of the fourth degree if that person
26 purposefully or knowingly makes, or causes to be made, a false,
27 fictitious, fraudulent, or misleading statement of material fact in, or
28 omits a material fact from, or causes a material fact to be omitted
29 from, any certification filed pursuant to this section. Notwithstanding
30 the provisions of subsection e. of N.J.S. 2C:44-1, the court shall deal
31 with a person who has been convicted of a violation of this section by
32 imposing a sentence of imprisonment unless, having regard to the
33 character and condition of the person, the court is of the opinion that
34 imprisonment would be a serious injustice which overrides the need to
35 deter such conduct by others. If the court imposes a noncustodial or
36 probationary sentence, such sentence shall not become final for 10
37 days in order to permit the appeal of such sentence by the prosecution.
38 Nothing in this section shall preclude an indictment and conviction for
39 any other offense defined by the laws of this State. In addition, any
40 professional license held by the person shall be forfeited according to
41 the procedures established by section 4 of P.L.1997, c.353 (C.2C:51-
42 5).

43 (cf: P.L.1991, c.154, s.3)

44
45 ¹[71.] 69.¹ Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended
46 to read as follows:

1 2. In the event medical expense benefits paid by an insurer, in
2 accordance with subsection a. of section 4 of P.L.1972, c.70
3 (C.39:6A-4) or section 4 of P.L. , c. (C.)(now before the
4 Legislature as this bill), are in excess of \$75,000.00 on account of
5 personal injury to any one person in any one accident, the Unsatisfied
6 Claim and Judgment Fund shall assume such excess up to \$250,000
7 and reimburse the insurer therefor in accordance with rules and
8 regulations promulgated by the commissioner; provided, however, that
9 this provision is not intended to broaden the coverage available to
10 accidents involving uninsured or hit-and-run automobiles, to provide
11 extraterritorial coverage, or to pay excess medical expenses.
12 (cf: P.L.1990, c.8, s.14)

13

14 ²70. Section 13 of P.L.1995, c.156 (C.17:1C-31) is amended to
15 read as follows:

16 13. The total amount assessable to companies in any fiscal year for
17 all special purpose assessments made pursuant to applicable law as of
18 the effective date of this act, including the special purpose
19 apportionment established by this act, shall not increase, as a
20 percentage, more than the percentage increase in the combined net
21 written premiums received, as defined in subsection b. of section 2 of
22 this act, by all companies for the previous year, except that, with
23 respect to fiscal year 1998 and each fiscal year thereafter, the total
24 amount of all direct and indirect expenditures incurred by the Division
25 of Insurance Fraud Prevention **[in connection with the appointment of**
26 **additional insurance fraud investigators pursuant to the Special**
27 **Purpose appropriation in P.L.1997, c.131, may]** , the Office of the
28 Insurance Fraud Prosecutor and the Office of the Insurance Claims
29 Ombudsman shall be included in the special purpose apportionment,
30 notwithstanding any limitation on the total amount assessable to
31 companies under this section. With respect to each fiscal year after
32 1999, the total amount assessable to companies in any fiscal year for
33 all special purpose assessments individually allocable to the direct and
34 indirect expenditures incurred by the Division of Insurance Fraud
35 Prevention, the Office of the Insurance Fraud Prosecutor and the
36 Office of the Insurance Claims Ombudsman, respectively, shall not
37 increase, as a percentage, more than the percentage increase in the
38 combined net written premiums received, as defined in subsection b.
39 of section 2 of this act, by all companies for the previous year.²
40 (cf: P.L.1997, c.154, s.1)

41

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

44 2. a. **[No]** Except for a basic automobile insurance policy, no
45 motor vehicle liability policy or renewal of such policy of insurance,
46 including a standard liability policy for an automobile as defined in

1 section 2 of P.L.1972, c.70 (C.39:6A-2), insuring against loss resulting
2 from liability imposed by law for bodily injury or death, sustained by
3 any person arising out of the ownership, maintenance or use of a
4 motor vehicle, shall be issued in this State with respect to any motor
5 vehicle registered or principally garaged in this State unless it includes
6 coverage in limits for bodily injury or death as follows:

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

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

14 under provisions approved by the Commissioner of Banking and
15 Insurance, for payment of all or part of the sums which the insured or
16 his legal representative shall be legally entitled to recover as damages
17 from the operator or owner of an uninsured motor vehicle, or hit and
18 run motor vehicle, as defined in section 18 of P.L.1952, c.174
19 (C.39:6-78), because of bodily injury, sickness or disease, including
20 death resulting therefrom, sustained by the insured, caused by accident
21 and arising out of the ownership, maintenance, operation or use of
22 such uninsured or hit and run motor vehicle anywhere within the
23 United States or Canada; except that uninsured motorist coverage
24 shall provide that in order to recover for non-economic loss, as defined
25 in section 2 of P.L.1972, c.70 (C.39:6A-2), for accidents to which the
26 benefits of section 4 (C.39:6A-4) of that act apply, the tort option
27 elected pursuant to section 8 (C.39:6A-8) of that act shall apply to
28 that injured person.

29 All motor vehicle liability policies , except basic automobile
30 insurance policies, shall also include coverage for the payment of all
31 or part of the sums which persons insured thereunder shall be legally
32 entitled to recover as damages from owners or operators of uninsured
33 motor vehicles, other than hit and run motor vehicles, because of
34 injury to or destruction to the personal property of such insured, with
35 a limit in the aggregate for all insureds involved in any one accident of
36 \$5,000.00, and subject, for each insured, to an exclusion of the first
37 \$500.00 of such damages.

38 b. Uninsured and underinsured motorist coverage shall be provided
39 as an option by an insurer to the named insured electing a standard
40 automobile insurance policy up to at least the following limits:
41 \$250,000.00 each person and \$500,000.00 each accident for bodily
42 injury; \$100,000.00 each accident for property damage or \$500,000.00
43 single limit, subject to an exclusion of the first \$500.00 of such
44 damage to property for each accident, except that the limits for
45 uninsured and underinsured motorist coverage shall not exceed the
46 insured's motor vehicle liability policy limits for bodily injury and

1 property damage, respectively.

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

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

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

20 e. For the purpose of this section, (1) "underinsured motorist
21 coverage" means insurance for damages because of bodily injury and
22 property damage resulting from an accident arising out of the
23 ownership, maintenance, operation or use of an underinsured motor
24 vehicle. Underinsured motorist coverage shall not apply to an
25 uninsured motor vehicle. A motor vehicle is underinsured when the
26 sum of the limits of liability under all bodily injury and property
27 damage liability bonds and insurance policies available to a person
28 against whom recovery is sought for bodily injury or property damage
29 is, at the time of the accident, less than the applicable limits for
30 underinsured motorist coverage afforded under the motor vehicle
31 insurance policy held by the person seeking that recovery. A motor
32 vehicle shall not be considered an underinsured motor vehicle under
33 this section unless the limits of all bodily injury liability insurance or
34 bonds applicable at the time of the accident have been exhausted by
35 payment of settlements or judgments. The limits of underinsured
36 motorist coverage available to an injured person shall be reduced by
37 the amount he has recovered under all bodily injury liability insurance
38 or bonds;

39 (2) "uninsured motor vehicle" means:

40 (a) a motor vehicle with respect to the ownership, operation,
41 maintenance, or use of which there is no bodily injury liability
42 insurance or bond applicable at the time of the accident;

43 (b) a motor vehicle with respect to the ownership, operation,
44 maintenance, or use of which there is bodily injury liability insurance
45 in existence but the liability insurer denies coverage or is unable to
46 make payment with respect to the legal liability of its insured because

1 the insurer has become insolvent or bankrupt, or the Commissioner of
2 Banking and Insurance has undertaken control of the insurer for the
3 purpose of liquidation; or

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

6 "Uninsured motor vehicle" shall not include an automobile covered
7 by a basic automobile insurance policy; an underinsured motor vehicle;
8 a motor vehicle owned by or furnished for the regular use of the
9 named insured or any resident of the same household; a self-insurer
10 within the meaning of any financial responsibility or similar law of the
11 state in which the motor vehicle is registered or principally garaged;
12 a motor vehicle which is owned by the United States or Canada, or a
13 state, political subdivision or agency of those governments or any of
14 the foregoing; a land motor vehicle or trailer operated on rails or
15 crawler treads; a motor vehicle used as a residence or stationary
16 structure and not as a vehicle; or equipment or vehicles designed for
17 use principally off public roads, except while actually upon public
18 roads. ²

19 (cf: P.L.1988, c.119, s.11)

20

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

23 18. Any insurer authorized to transact or transacting automobile or
24 motor vehicle insurance business in this State, or controlling or
25 controlled by, or under common control by, or with, an insurer
26 authorized to transact or transacting insurance business in this State,
27 which sells a policy providing automobile or motor vehicle liability
28 insurance coverage, or any similar coverage, in any other state or in
29 any province of Canada, shall include in each policy coverage to
30 satisfy at least the personal injury protection benefits coverage
31 pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or section 19 of
32 P.L.1983, c.362 (C.17:28-1.3) for any New Jersey resident who is not
33 required to maintain personal injury protection coverage pursuant to
34 section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c.
35 (C.)(now before the Legislature as this bill) and who is not
36 otherwise eligible for such benefits, whenever the automobile or motor
37 vehicle insured under the policy is used or operated in this State. In
38 addition, any insurer authorized to transact or transacting automobile
39 or motor vehicle insurance business in this State, or controlling or
40 controlled by, or under common control by, or with, an insurer
41 authorized to transact or transacting automobile or motor vehicle
42 insurance business in this State, which sells a policy providing
43 automobile or motor vehicle liability insurance coverage, or any similar
44 coverage, in any other state or in any province of Canada, shall include
45 in each policy coverage to satisfy at least the liability insurance
46 requirements of subsection a. of section 1 of P.L.1972, c.197

1 (C.39:6B-1) or section 3 of P.L.1972, c.70 (C.39:6A-3), the uninsured
 2 motorist insurance requirements of subsection a. of section 2 of
 3 P.L.1968, c.385 (C.17:28-1.1), and personal injury protection benefits
 4 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or of
 5 section 19 of P.L.1983, c.362 (C.17:28-1.3), whenever the automobile
 6 or motor vehicle insured under the policy is used or operated in this
 7 State.

8 Any liability insurance policy subject to this section shall be
 9 construed as providing the coverage required herein, and any named
 10 insured, and any immediate family member as defined in section 14.1
 11 of P.L.1983, c.362 (C.39:6A-8.1), under that policy, shall be subject
 12 to the tort option specified in subsection a. of section 8 of P.L.1972,
 13 c.70 (C.39:6A-8).

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

19 "Automobile" means an automobile as defined in section 2 of
 20 P.L.1972, c.70 (C.39:6A-2).²
 21 (cf: P.L.1997, c.436, s.1)

22
 23 ²73. (New section) The commissioner may promulgate any rules
 24 and regulations pursuant to P.L.1968, c.410 (C.52:14B-1 et seq.)
 25 deemed necessary in order to effectuate the provisions of this
 26 amendatory and supplementary act.²

27
 28 ¹[72.] ²[70.] 74.² a.¹ This act shall take effect 90 days following
 29 the establishment by the Commissioner of Banking and Insurance of
 30 basic benefits required to be provided pursuant to section 4 of
 31 P.L.1972, c.70 (C.39:6A-4) or the adoption by rule of the professional
 32 boards of the designation of valid diagnostic tests pursuant to the
 33 provisions of section 12 of this act, whichever is later, except that ¹;
 34 (1)¹ sections ¹[49] 47¹ through ¹[63] 61¹ shall take effect on the
 35 90th day after the date of enactment ¹[and] ;(2)¹ sections 1, 12, 26
 36 through ¹[48] ²[28, 30 through] ² 46¹, ¹[64] 62¹ through ¹[67] 65¹
 37 and ¹[69] 67¹ shall take effect immediately ¹ and (3) section 29
 38 shall take effect immediately and the elimination of the limit on
 39 territorial base rates provided therein shall apply to policies issued or
 40 renewed by an insurer on or after the effective date of the insurer's
 41 territorial rating plan approved by the commissioner as provided in
 42 section 27, but no later than March 1, 1999¹]².

43 ¹b.¹ Prior to the effective date of any section of this act, the
 44 Commissioner of Banking and Insurance may take those actions and
 45 promulgate those regulations necessary to implement the provisions of
 46 this act.

SENATE, No. 3

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED APRIL 2, 1998

Sponsored by:

Senator DONALD T. DIFRANCESCO

District 22 (Middlesex, Morris, Somerset and Union)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

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SYNOPSIS

"The Automobile Insurance Cost Reduction Act."

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 4/21/1998)

1 AN ACT concerning automobile insurance and revising parts of the
2 statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) a. This act shall be known and may be cited as
8 the "Automobile Insurance Cost Reduction Act."

9 b. The Legislature finds and declares:

10 **WHEREAS**, While New Jersey's automobile insurance no-fault law,
11 enacted twenty-six years ago, has provided valuable benefits in
12 the form of medical benefits and wage replacement benefits,
13 without regard to fault, to New Jersey residents who have been
14 injured in an automobile accident; and

15 **WHEREAS**, Medical benefits paid by no-fault policies over those
16 years amount to billions of dollars, which would otherwise
17 have been paid by health insurance, thus raising the cost of
18 health insurance for everyone; and

19 **WHEREAS**, While medical benefits under no-fault insurance were
20 unlimited under the law enacted in 1972, the rapidly escalating
21 cost of those benefits made it necessary for the Legislature to
22 reduce those benefits to a limit of \$250,000 in 1990; and

23 **WHEREAS**, Since the enactment of the verbal threshold in 1988, the
24 substantial increase in the cost of medical expense benefits
25 indicates that the benefits are being overutilized for the
26 purpose of gaining standing to sue for pain and suffering, thus
27 undermining the limitations imposed by the threshold and
28 necessitating the imposition of further controls on the use of
29 those benefits, including the establishment of a basis for
30 determining whether treatments or diagnostic tests are
31 medically necessary; and

32 **WHEREAS**, The present arbitration system has not sufficiently
33 addressed the Legislature's goal of eliminating payment for
34 treatments and diagnostic tests which are not medically
35 necessary, leading to the belief that a revised dispute
36 resolution mechanism needs to be established which will
37 accomplish this goal; and

38 **WHEREAS**, The principle underlying the philosophical basis of the
39 no-fault system is that of a trade-off of one benefit for another;
40 in this case, providing medical benefits in return for a limitation
41 on the right to sue for non-serious injuries; and

42 **WHEREAS**, While the Legislature believes that it is good public
43 policy to provide medical benefits on a first party basis,

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 underlined thus is new matter.

1 without regard to fault, to persons injured in automobile
2 accidents, it recognizes that in order to keep premium costs
3 down, the cost of the benefit must be offset by a reduction in
4 the cost of other coverages, most notably a restriction on the
5 right of persons who have non-permanent or non-serious
6 injuries to sue for pain and suffering; and

7 **WHEREAS**, The high cost of automobile insurance in New Jersey
8 has presented a significant problem for many-lower income
9 residents of the state, many of whom have been forced to drop
10 or lapse their coverage in violation of the State's mandatory
11 motor vehicle insurance laws, making it necessary to provide
12 a lower-cost option to protect people by providing coverage to
13 pay their medical expenses if they are injured; and

14 **WHEREAS**, To meet these goals, this legislation provides for the
15 creation of two insurance coverage options, a basic policy and
16 a standard policy, provides for cost containment of medical
17 expense benefits through a revised dispute resolution
18 proceeding, provides for a revised lawsuit threshold for suits
19 for pain and suffering which will eliminate suits for injuries
20 which are not serious or permanent, including those for soft
21 tissue injuries, would more precisely define the benefits
22 available under the medical expense benefits coverage, and
23 establishes standard treatment and diagnostic procedures
24 against which the medical necessity of treatments reimbursable
25 under medical expense benefits coverage would be judged; and

26 **WHEREAS**, It is generally recognized that fraud, whether in the
27 form of inappropriate medical treatments, inflated claims,
28 staged accidents, falsification of records, or in any other form,
29 has increased premiums, and must be uncovered and vigorously
30 prosecuted, and while the pursuit of those who defraud the
31 automobile insurance system has heretofore been addressed by
32 the State through various agencies, it has been without
33 sufficient coordination to aggressively combat fraud, leading to
34 the conclusion that greater consolidation of agencies which
35 were created to combat fraud is necessary to accomplish this
36 purpose; and

37 **WHEREAS**, With these many objectives, the Legislature
38 nevertheless recognizes that to provide a healthy and
39 competitive automobile insurance market, insurers are entitled
40 to earn an adequate rate of return through the ratemaking
41 process, which shall reflect the impact of the cost-saving
42 provisions of this act and other recent legislative insurance
43 reforms; and

44 **WHEREAS**, The Legislature has thus addressed these and other
45 issues in this comprehensive legislation designed to preserve
46 the no-fault system, while at the same time reducing

1 unnecessary costs which drive premiums higher.

2

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

5 2. As used in this act:

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

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

22 c. "Income" means salary, wages, tips, commissions, fees and other
23 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 expenses, rehabilitation services, X-ray and other diagnostic
30 services, prosthetic devices, ambulance services, medication and other
31 reasonable and necessary expenses resulting from the treatment
32 prescribed by persons licensed to practice medicine and surgery
33 pursuant to R.S.45:9-1 et seq., dentistry pursuant to R.S.45:6-1 et
34 seq., psychology pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.) or
35 chiropractic pursuant to P.L.1953, c.233 (C.45:9-41.1 et seq.) or by
36 persons similarly licensed in other states and nations or] reasonable
37 and necessary expenses for treatment or services as provided by the
38 policy, including medical, surgical, rehabilitative and diagnostic
39 services and hospital expenses, provided by a health care provider
40 licensed or certified by the State or by another state or nation, and
41 reasonable and necessary expenses for ambulance services or other
42 transportation, medication and other services as may be provided for,
43 and subject to such limitations as provided for, in the policy, as
44 approved by the commissioner. "Medical expenses" shall also include
45 any nonmedical remedial treatment rendered in accordance with a
46 recognized religious method of healing.

1 f. "Hospital expenses" means [:

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

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

5 (3) The cost of other hospital services, such as operating room;
6 medicines, drugs, anesthetics; treatments with X-ray, radium and
7 other radioactive substances; laboratory tests, surgical dressings and
8 supplies; and other medical care and treatment rendered by the
9 hospital;

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

11 (5) The cost of medical supplies, such as prescribed drugs and
12 medicines; blood and blood plasma; artificial limbs and eyes; surgical
13 dressings, casts, splints, trusses, braces, crutches; rental of
14 wheelchair, hospital bed or iron lung; oxygen and rental of equipment
15 for its administration] the cost of treatment and services, as provided
16 in the policy approved by the commissioner, by a licensed and
17 accredited acute care facility which engages primarily in providing
18 diagnosis, treatment and care of sick and injured persons on an
19 inpatient or outpatient basis; the cost of covered treatment and
20 services provided by an extended care facility which provides room
21 and board and skilled nursing care 24 hours a day and which is
22 recognized by the administrators of the federal Medicare program as
23 an extended care facility; and the cost of covered services at an
24 ambulatory surgical facility supervised by a physician licensed in this
25 State or in another jurisdiction and recognized by the Commissioner
26 of Health and Senior Services, or any other facility licensed, certified
27 or recognized by the Commissioner of Health and Senior Services or
28 the Commissioner of Human Services or a nationally recognized
29 system such as the Commission on Accreditation of Rehabilitation
30 Facilities, or by another jurisdiction in which it is located.

31 g. "Named insured" means the person or persons identified as the
32 insured in the policy and, if an individual, his or her spouse, if the
33 spouse is named as a resident of the same household, except that if the
34 spouse ceases to be a resident of the household of the named insured,
35 coverage shall be extended to the spouse for the full term of any policy
36 period in effect at the time of the cessation of residency.

37 h. "Pedestrian" means any person who is not occupying, entering
38 into, or alighting from a vehicle propelled by other than muscular
39 power and designed primarily for use on highways, rails and tracks.

40 i. "Noneconomic loss" means pain, suffering and inconvenience.

41 j. "Motor vehicle" means a motor vehicle as defined in R.S. 39:1-1,
42 exclusive of an automobile as defined in subsection a. of this section.

43 k. "Economic loss" means uncompensated loss of income or
44 property, or other uncompensated expenses, including, but not limited
45 to, medical expenses.

46 l. "Health care provider" or "provider" means those persons

1 licensed or certified to perform health care treatment or services
2 compensable as medical expenses and shall include, but not be limited
3 to, (1) a hospital or health care facility which is maintained by a state
4 or any of its political subdivisions, (2) a hospital or health care facility
5 licensed by the Department of Health and Senior Services, (3) other
6 hospitals or health care facilities designated by the Department of
7 Health and Senior Services to provide health care services, or other
8 facilities, including facilities for radiology and diagnostic testing,
9 freestanding emergency clinics or offices, and private treatment
10 centers, (4) a nonprofit voluntary visiting nurse organization providing
11 health care services other than in a hospital, (5) hospitals or other
12 health care facilities or treatment centers located in other states or
13 nations, (6) physicians licensed to practice medicine and surgery, (7)
14 licensed chiropractors, (8) licensed dentists, (9) licensed optometrists,
15 (10) licensed pharmacists, (11) licensed chiropodists, (12) registered
16 bio-analytical laboratories, (13) licensed psychologists, (14) licensed
17 physical therapists, (16) certified nurse-midwives, (17) certified nurse-
18 practitioners/clinical nurse-specialists, (18) licensed health
19 maintenance organizations, (19) licensed orthotists and prosthetists,
20 and (20) providers of other health care services or supplies, including
21 durable medical goods.

22 m. "Medically necessary" means that the treatment is consistent
23 with the symptoms or diagnosis, and treatment of the injury (1) is not
24 primarily for the convenience of the injured person or provider, (2) is
25 the most appropriate standard or level of service which is in
26 accordance with standards of good practice and standard professional
27 treatment protocols, as such protocols may be recognized or
28 designated by the Commissioner of Banking and Insurance, in
29 consultation with the Commissioner of Health and Senior Services, by
30 a professional licensing or certifying board in the Division of
31 Consumer Affairs in the Department of Law and Public Safety, or by
32 a nationally recognized professional organization, and (3) does not
33 involve unnecessary or repeated diagnostic testing.

34 n. "Standard automobile insurance policy" means an automobile
35 insurance policy with at least the coverage required pursuant to
36 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4).

37 o. "Basic automobile insurance policy" means an automobile
38 insurance policy pursuant to section of 4 of P.L. , c. (C.)(now
39 before the Legislature as this bill).

40 (cf: P.L.1983, c.362, s.6)

41

42 3. Section 3 of P.L.1972, c.70 (C.39:6A-3) is amended to read as
43 follows:

44 3. Compulsory automobile insurance coverage; limits. [Every]
45 Except as provided by section 4 of P.L. , c. (C.)(now
46 before the Legislature as this bill), every owner or registered owner of

1 an automobile registered or principally garaged in this State shall
2 maintain automobile liability insurance coverage, under provisions
3 approved by the Commissioner of Banking and Insurance, insuring
4 against loss resulting from liability imposed by law for bodily injury,
5 death and property damage sustained by any person arising out of the
6 ownership, maintenance, operation or use of an automobile wherein
7 such coverage shall be at least in:

8 a. an amount or limit of \$15,000.00, exclusive of interest and
9 costs, on account of injury to, or death of, one person, in any one
10 accident; and

11 b. an amount or limit, subject to such limit for any one person so
12 injured or killed, of \$30,000.00, exclusive of interest and costs, on
13 account of injury to or death of, more than one person, in any one
14 accident; and

15 c. an amount or limit of \$5,000.00, exclusive of interest and costs,
16 for damage to property in any one accident.

17 No licensed insurance carrier shall refuse to renew the required
18 coverage stipulated by this act of an eligible person as defined in
19 section 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with
20 the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or
21 with the consent of the Commissioner of Banking and Insurance.

22 (cf: P.L.1990, c.8, s.3)

23

24 4. (New section) As an alternative to the mandatory coverages
25 provided in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-
26 4), any owner or registered owner of an automobile registered or
27 principally garaged in this State may elect a basic automobile insurance
28 policy providing the following coverage:

29 a. Personal injury protection coverage, for the payment of benefits
30 without regard to negligence, liability or fault of any kind, to the
31 named insured and members of his family residing in his household,
32 who sustained bodily injury as a result of an accident while occupying,
33 entering into, alighting from or using an automobile, or as a
34 pedestrian, caused by an automobile or by an object propelled by or
35 from an automobile, to other persons sustaining bodily injury while
36 occupying, entering into, alighting from or using the automobile of the
37 named insured, with the permission of the named insured, and to
38 pedestrians sustaining bodily injury caused by the named insured's
39 automobile or struck by an object propelled by or from such
40 automobile. "Personal injury protection coverage" issued pursuant to
41 this section means and includes payment of medical expense benefits,
42 as provided in the policy and approved by the commissioner, for the
43 reasonable and necessary treatment of bodily injury in an amount not
44 to exceed \$15,000 per person per accident; except that, medical
45 expense benefits shall be paid in an amount not to exceed \$250,000 for
46 the reasonable and necessary treatment of bodily injuries which result

1 in: death; permanent and significant brain injury; quadriplegia or
2 paraplegia; dismemberment; total loss of vision in one or both eyes;
3 total loss of hearing in one or both ears; significant permanent injury
4 due to prominent facial, scalp or neck scarring. In the event benefits
5 paid by an insurer pursuant to this subsection are in excess of \$75,000
6 on account of personal injury to any one person in any one accident,
7 such excess shall be paid by the insurer in consultation with the
8 Unsatisfied Claim and Judgment Fund Board and shall be reimbursable
9 to the insurer from the Unsatisfied Claim and Judgment Fund pursuant
10 to section 2 of P.L.1977, c.310 (C.39:6-73.1). Benefits provided
11 under basic coverage shall be in accordance with a benefit plan
12 provided in the policy and approved by the commissioner. The policy
13 form, which shall be subject to the approval of the commissioner, shall
14 set forth the benefits provided under the policy, including eligible
15 medical treatments and services as well as such other benefits as the
16 policy may provide. The commissioner shall set forth by regulation the
17 basic benefits which shall be included in the policy. Medical
18 treatments, diagnostic tests, and services provided by the policy shall
19 be rendered in accordance with commonly accepted protocols and
20 professional standards and practices which are commonly accepted as
21 being beneficial for the treatment of the covered injury. Protocols and
22 professional standards and practices which are deemed to be
23 commonly accepted pursuant to this section shall be those recognized
24 by national standard setting organizations, national or state
25 professional organizations of the same discipline as the treating
26 provider, or those designated or approved by the commissioner in
27 consultation with the professional licensing boards in the Division of
28 Consumer Affairs in the Department of Law and Public Safety.
29 Protocols shall be deemed to establish guidelines as to standard
30 appropriate treatment for injuries sustained in automobile accidents,
31 but the establishment of standard treatment protocols or protocols for
32 the administration of diagnostic tests shall not be interpreted in such
33 a manner as to preclude variance from the standard when warranted by
34 reason of medical necessity. The policy form may provide for the
35 precertification of certain procedures, treatments, diagnostic tests, or
36 other services or for the purchase of durable medical goods, as
37 approved by the commissioner, provided that the requirement for
38 precertification shall not be unreasonable, and no precertification
39 requirement shall apply within ten days of the insured event. The
40 policy may provide that certain benefits provided by the policy which
41 are in excess of the basic benefits required by the commissioner to be
42 included in the policy may be subject to reasonable copayments in
43 addition to the copayments provided for herein, provided that the
44 copayments shall not be unreasonable and shall be established in such
45 as manner as not to serve to encourage underutilization of benefits
46 subject to the copayments, nor encourage overutilization of benefits.

1 The policy form shall clearly set forth any limitations on benefits or
2 exclusions, which may include, but need not be limited to, benefits
3 which are otherwise compensable under workers' compensation, or
4 benefits for treatments deemed to be experimental or investigational,
5 or benefits deducted pursuant to section 6 of P.L.1972, c.70
6 (C.39:6A-6). The commissioner may enlist the services of a benefit
7 consultant in establishing the basic benefits level provided in this
8 subsection, which shall be set forth by regulation no later than 90 days
9 following the enactment date of this amendatory and supplementary
10 act. The commissioner shall not advertise for the consultant as
11 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
12 9).

13 Medical expense benefits payable under this subsection shall not be
14 assignable, except to a provider of service benefits, in accordance with
15 policy terms approved by the commissioner, nor shall they be subject
16 to levy, execution, attachment or other process for satisfaction of
17 debts. Medical expense benefits payable in accordance with this
18 subsection may be subject to a deductible of up to \$250, and
19 copayments as provided for in the policy, if any. No insurer or
20 provider providing service benefits to an insured shall have a right of
21 subrogation for the amount of benefits paid pursuant to any deductible
22 or copayment under this section.

23 b. Liability insurance coverage insuring against loss resulting from
24 liability imposed by law for property damage sustained by any person
25 arising out of the ownership, maintenance, operation or use of an
26 automobile in an amount or limit of \$5,000, exclusive of interest and
27 costs, for damage to property in any one accident.

28 If a named insured has elected the basic automobile insurance policy
29 option and an immediate family member or members or relatives
30 resident in his household have one or more policies with the coverages
31 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and
32 39:6A-4), the provisions of section 12 of P.L.1983, c.362 (C.39:6A-
33 4.2) shall apply.

34 Every named insured and any other person to whom the basic
35 automobile insurance policy applies shall be subject to the tort option
36 provided in subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

37 No licensed insurance carrier shall refuse to renew the coverage
38 stipulated by this section of an eligible person as defined in section 25
39 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
40 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
41 the consent of the Commissioner of Banking and Insurance.

42

43 5. (New section) a. All automobile insurance policies issued or
44 renewed on or after the effective date of P.L. , c. (C.)(now
45 before the Legislature as this bill) shall be issued or renewed including
46 at least the coverages required pursuant to sections 3 and 4 of

1 P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless the named insured
2 elects a basic automobile insurance policy pursuant to section 4 of
3 P.L. , c. (C.)(now before the Legislature as this bill).
4 Election of a basic automobile insurance policy shall be in writing and
5 signed by the named insured on the coverage selection form required
6 by section 17 of P.L.1983, c.362 (C.39:6A-23). The coverage election
7 form shall contain a statement, clearly readable and in 12-point bold
8 type, in a form approved by the commissioner, that election of a basic
9 automobile insurance policy may subject the named insured to a claim
10 or judgment for noneconomic loss which is not covered by the basic
11 automobile insurance policy, and which may place his assets at risk,
12 and in the event the named insured is sued, the insurer shall not
13 provide legal counsel.

14 b. The insurance coverages provided for in section 4 of P.L. , c.
15 (C.)(now before the Legislature as this bill) shall be offered by
16 every insurer which writes insurance coverages pursuant to sections
17 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) for a period of
18 five years after the effective date of P.L. , c. (C.)(now
19 before the Legislature as this bill). The commissioner shall require
20 every company writing such insurance coverage to report to him
21 annually during that five-year period as to the number of policies
22 written pursuant to this subsection in the previous year, the number of
23 policies with the coverage offered pursuant to section 4 of P.L.1972,
24 c.70 (C.39:6A-4) which have been converted to policies with the
25 coverage offered pursuant to section 4 of P.L. , c. (C.)(now
26 before the Legislature as this bill) and any other information the
27 commissioner may require. The commissioner shall then report to the
28 Governor and the Legislature regarding the acceptance of the basic
29 automobile insurance policy by the automobile insurance consumers of
30 this State annually for the first four years the basic policy is sold. On
31 or before January 1, 2003, the commissioner shall make a final,
32 cumulative report which shall include recommendations as to the
33 continuation of the basic policy to the Governor and the Legislature.
34

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

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

38 [Every automobile liability insurance policy, issued or renewed on
39 or after January 1, 1991, insuring an automobile as defined in section
40 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability
41 imposed by law for bodily injury, death and property damage sustained
42 by any person arising out of ownership, operation, maintenance or use
43 of an automobile shall provide personal injury protection coverage, as
44 defined hereinbelow, under provisions approved by the Commissioner
45 of Banking and Insurance, for the payment of benefits without regard
46 to negligence, liability or fault of any kind, to the named insured and

1 members of his family residing in his household who sustained bodily
2 injury as a result of an accident while occupying, entering into,
3 alighting from or using an automobile, or as a pedestrian, caused by an
4 automobile or by an object propelled by or from an automobile, to
5 other persons sustaining bodily injury while occupying, entering into,
6 alighting from or using the automobile of the named insured, with the
7 permission of the named insured, and to pedestrians, sustaining bodily
8 injury caused by the named insured's automobile or struck by an object
9 propelled by or from such automobile.

10 "Personal injury protection coverage" means and includes:

11 a. Medical expense benefits. Payment of reasonable medical
12 expense benefits in an amount not to exceed \$250,000 per person per
13 accident. In the event benefits paid by an insurer pursuant to this
14 subsection are in excess of \$75,000 on account of personal injury to
15 any one person in any one accident, such excess shall be paid by the
16 insurer in consultation with the Unsatisfied Claim and Judgment Fund
17 Board and shall be reimbursable to the insurer from the Unsatisfied
18 Claim and Judgment Fund pursuant to section 2 of P.L.1977, c.310
19 (C.39:6-73.1).

20 b. Income continuation benefits. The payment of the loss of
21 income of an income producer as a result of bodily injury disability,
22 subject to a maximum weekly payment of \$100.00. Such sum shall be
23 payable during the life of the injured person and shall be subject to an
24 amount or limit of \$5,200.00, on account of injury to any one person
25 in any one accident, except that in no case shall income continuation
26 benefits exceed the net income normally earned during the period in
27 which the benefits are payable.

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

37 d. Death benefits. In the event of the death of an income producer
38 as a result of injuries sustained in an accident entitling such person to
39 benefits under this section, the maximum amount of benefits which
40 could have been paid to the income producer, but for his death, under
41 subsection b. of this section shall be paid to the surviving spouse, or
42 in the event there is no surviving spouse, then to the surviving
43 children, and in the event there are no surviving spouse or surviving
44 children, then to the estate of the income producer.

45 In the event of the death of one performing essential services as a
46 result of injuries sustained in an accident entitling such person to

1 benefits under subsection c. of this section, the maximum amount of
2 benefits which could have been paid such person, under subsection c.,
3 shall be paid to the person incurring the expense of providing such
4 essential services.

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

9 Benefits payable under this section shall:

10 (1) Be subject to any option elected by the policyholder pursuant
11 to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

12 (2) Not be assignable, except to a provider of service benefits
13 under this section in accordance with policy terms approved by the
14 commissioner, nor subject to levy, execution, attachment or other
15 process for satisfaction of debts.

16 Medical expense benefit payments shall be subject to a deductible
17 of \$250.00 on account of injury in any one accident and a copayment
18 of 20% of any benefits payable between \$250.00 and \$5,000.00.]

19 Except as provided by section 4 of P.L. , c. (C.)(now
20 before the Legislature as this bill), every standard automobile liability
21 insurance policy issued or renewed on or after the effective date of
22 P.L. , c. (C.)(now before the Legislature as this bill)
23 shall contain personal injury protection benefits for the payment of
24 benefits without regard to negligence, liability or fault of any kind, to
25 the named insured and members of his family residing in his household
26 who sustain bodily injury as a result of an accident while occupying,
27 entering into, alighting from or using an automobile, or as a
28 pedestrian, caused by an automobile or by an object propelled by or
29 from an automobile, to other persons sustaining bodily injury while
30 occupying, entering into, alighting from or using the automobile of the
31 named insured, with permission of the named insured, and to
32 pedestrians sustaining bodily injury caused by the named insured's
33 automobile or struck by an automobile or struck by an object propelled
34 by or from that automobile.

35 "Personal injury protection coverage" means and includes:

36 a. Payment of medical expense benefits in accordance with a
37 benefit plan provided in the policy and approved by the commissioner,
38 for reasonable, necessary, and appropriate treatment and provision of
39 services to persons sustaining bodily injury, in an amount not to
40 exceed \$250,000 per person per accident. In the event benefits paid
41 by an insurer pursuant to this subsection are in excess of \$75,000 on
42 account of bodily injury to any one person in any one accident, that
43 excess shall be paid by the insurer in consultation with the Unsatisfied
44 Claim and Judgment Fund Board and shall be reimbursable to the
45 insurer from the Unsatisfied Claim and Judgment Fund pursuant to
46 section 2 of P.L.1977, c.310 (C.39:6-73.1). The policy form, which

1 shall be subject to the approval of the commissioner, shall set forth the
2 benefits provided under the policy, including eligible medical
3 treatments and services as well as such other benefits as the policy may
4 provide. The commissioner shall set forth by regulation the basic
5 benefits which shall be included in the policy. Medical treatments,
6 diagnostic tests, and services provided by the policy shall be rendered
7 in accordance with commonly accepted protocols and professional
8 standards and practices which are commonly accepted as being
9 beneficial for the treatment of the covered injury. Protocols and
10 professional standards and practices which are deemed to be
11 commonly accepted pursuant to this section shall be those recognized
12 by national standard setting organizations, national or state
13 professional organizations of the same discipline as the treating
14 provider, or those designated or approved by the commissioner in
15 consultation with the professional licensing boards in the Division of
16 Consumer Affairs in the Department of Law and Public Safety.
17 Protocols shall be deemed to establish guidelines as to standard
18 appropriate treatment for injuries sustained in automobile accidents,
19 but the establishment of standard treatment protocols or protocols for
20 the administration of diagnostic tests shall not be interpreted in such
21 a manner as to preclude variance from the standard when warranted by
22 reason of medical necessity. The policy form may provide for the
23 precertification of certain procedures, treatments, diagnostic tests, or
24 other services or for the purchase of durable medical goods, as
25 approved by the commissioner, provided that the requirement for
26 precertification shall not be unreasonable, and no precertification
27 requirement shall apply within ten days of the insured event. The
28 policy may provide that certain benefits provided by the policy which
29 are in excess of the basic benefits required by the commissioner to be
30 included in the policy may be subject to reasonable copayments in
31 addition to the copayments provided for pursuant to subsection e. of
32 this section, provided that the copayments shall not be unreasonable
33 and shall be established in such as manner as not to serve to encourage
34 underutilization of benefits subject to the copayments, nor encourage
35 overutilization of benefits. The policy form shall clearly set forth any
36 limitations on benefits or exclusions, which may include, but need not
37 be limited to, benefits which are otherwise compensable under
38 workers' compensation, or benefits for treatments deemed to be
39 experimental or investigational, or benefits deducted pursuant to
40 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may
41 enlist the services of a benefit consultant in establishing the basic
42 benefits level provided in this subsection, which shall be set forth by
43 regulation no later than 90 days following the enactment date of
44 P.L. , c. (C.)(now before the Legislature as this bill). The
45 commissioner shall not advertise for bids for the consultant as

1 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
2 9).

3 b. Income continuation benefits. The payment of the loss of
4 income of an income producer as a result of bodily injury disability,
5 subject to a maximum weekly payment of \$100. Such sum shall be
6 payable during the life of the injured person and shall be subject to an
7 amount or limit of \$5,200, on account of injury to any one person in
8 any one accident, except that in no case shall income continuation
9 benefits exceed the net income normally earned during the period in
10 which the benefits are payable.

11 c. Essential services benefits. Payment of essential services
12 benefits to an injured person shall be made in reimbursement of
13 necessary and reasonable expenses incurred for such substitute
14 essential services ordinarily performed by the injured person for
15 himself, his family and members of the family residing in the
16 household, subject to an amount or limit of \$12 per day. Such benefits
17 shall be payable during the life of the injured person and shall be
18 subject to an amount or limit of \$4,380, on account of injury to any
19 one person in any one accident.

20 d. Death benefits. In the event of the death of an income producer
21 as a result of injuries sustained in an accident entitling such person to
22 benefits under this section, the maximum amount of benefits which
23 could have been paid to the income producer, but for his death, under
24 subsection b. of this section shall be paid to the surviving spouse, or
25 in the event there is no surviving spouse, then to the surviving
26 children, and in the event there are no surviving spouse or surviving
27 children, then to the estate of the income producer.

28 In the event of the death of one performing essential services as a
29 result of injuries sustained in an accident entitling such person to
30 benefits under subsection c. of this section, the maximum amount of
31 benefits which could have been paid to such person, under subsection
32 c., shall be paid to the person incurring the expense of providing such
33 essential services.

34 e. Funeral expenses benefits. All reasonable funeral, burial and
35 cremation expenses, subject to a maximum benefit of \$1,000, on
36 account of the death of any one person in any one accident shall be
37 payable to the decedent's estate.

38 Benefits payable under this section shall:

39 (1) Be subject to any option elected by the policyholder pursuant
40 to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

41 (2) Not be assignable, except to a provider of service benefits
42 under this section in accordance with policy terms approved by the
43 commissioner, nor subject to levy, execution, attachment or other
44 process for satisfaction of debts.

45 Medical expense benefit payments shall be subject to a deductible
46 of \$250 on account of injury in any one accident and a copayment of

1 20% of any benefits payable between \$250 and \$5,000 in addition to
2 any copayment which may be established pursuant to subsection a. of
3 this section. Upon the request of the commissioner or any party to a
4 claim for benefits or payment for services rendered, a provider shall
5 present adequate proof that any deductible or copayment related to
6 that claim has not been waived or discharged by the provider.

7 No insurer or health provider providing benefits to an insured shall
8 have a right of subrogation for the amount of benefits paid pursuant
9 to any deductible or copayment under this section.

10 (cf: P.L.1997, c.151, s.31)

11
12 7. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to read
13 as follows:

14 13. Personal injury protection coverage options. With respect to
15 personal injury protection coverage provided on an automobile in
16 accordance with section 4 of P.L.1972, c.70 (C.39:6A-4), the
17 automobile insurer shall provide the following coverage options:

18 a. Medical expense benefit deductibles in amounts of \$500.00,
19 \$1,000.00, \$2,000.00 and \$2,500.00 for any one accident;

20 b. ~~【The option to exclude all benefits offered under subsections b.,~~
21 ~~c., d., and e. of section 4;】 (Deleted by amendment, P.L. , c. .)~~

22 c. (Deleted by amendment, P.L.1988, c.119.)

23 d. For policies issued or renewed on or after January 1, 1991, the
24 option that other health insurance coverage or benefits of the insured,
25 including health care services provided by a health maintenance
26 organization and any coverage or benefits provided under any federal
27 or State program, are the primary coverage in regard to medical
28 expense benefits pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4).
29 If health insurance coverage or benefits are primary, an automobile
30 insurer providing medical expense benefits under personal injury
31 protection coverage shall be liable for reasonable medical expenses not
32 covered by the health insurance coverage or benefits up to the limit of
33 the medical expense benefit coverage. The principles of coordination
34 of benefits shall apply to personal injury protection medical expense
35 benefits coverage pursuant to this subsection. The insurer shall
36 provide an appropriate reduction from the territorial base rate for
37 personal injury protection coverage for those electing the options in
38 subsections a. and d. of this section.

39 ~~【Insurers shall offer the options provided by subsections a. and b.~~
40 ~~of this section at appropriately reduced premiums. For policies issued~~
41 ~~or renewed prior to January 1, 1992, insurers shall offer the option~~
42 ~~provided by subsection d. of this section at a discount of not less than~~
43 ~~25% from the base rate applicable to the first \$250,000 of medical~~
44 ~~expense benefits, and for policies issued or renewed on or after~~
45 ~~January 1, 1992, insurers shall offer the option at an appropriate~~
46 ~~discount from the base rate for the amount of medical expense benefits~~

1 coverage taken.]

2 Any named insured who chooses the option provided by subsection
3 d. of this section shall provide proof that he and members of his family
4 residing in his household are covered by health insurance coverage or
5 benefits in a manner and to an extent approved by the commissioner.
6 Nothing in this section shall be construed to require a health insurer,
7 health maintenance organization or governmental agency to cover
8 individuals or treatment which is not normally covered under the
9 applicable benefit contract or plan. If it is determined that an insured
10 who selected or is otherwise covered by the option provided in
11 subsection d. of this section did not have such health coverage in
12 effect at the time of an accident, medical expense benefits shall be
13 payable by the person's automobile insurer and shall be subject to any
14 deductible required by law or otherwise selected as an option pursuant
15 to subsection a. of this section, any copayment required by law and an
16 additional deductible in the amount of \$750.

17 An option elected by the named insured in accordance with this
18 section shall apply only to the named insured and any resident relative
19 in the named insured's household who is not a named insured under
20 another automobile insurance policy, and not to any other person
21 eligible for personal injury protection benefits required to be provided
22 in accordance with section 4 of P.L.1972, c.70 (C.39:6A-4).

23 [In the case of a medical expense benefit deductible, the deductible
24 elected by the named insured shall be satisfied for any one accident,
25 whether the medical expense benefits are paid or provided, in the
26 amount of the deductible, to the named insured or to one or more
27 resident relatives in the named insured's household who are not named
28 insureds under another insurance policy, or to any combination
29 thereof.]

30 Medical expense benefits payable in any amount between the
31 deductible selected pursuant to subsection a. of this section and
32 \$5,000.00 shall be subject to [a] the copayment [of 20%] provided
33 in the policy, if any.

34 No insurer or health provider providing benefits to an insured who
35 has elected a deductible pursuant to subsection a. of this section shall
36 have a right of subrogation for the amount of benefits paid pursuant
37 to a deductible elected thereunder or any applicable copayment.

38 The Commissioner of Banking and Insurance shall adopt rules and
39 regulations to effectuate the purposes of this section and may
40 promulgate standards applicable to the coordination of personal injury
41 protection medical expense benefits coverage.

42 (cf: P.L.1997, c.151, s.32)

43

44 8. Section 14 of P.L.1985, c.520 (C.39:6A-4.5) is amended to read
45 as follows:

46 14. a. Any person who, at the time of an automobile accident

1 resulting in injuries to that person, is required but fails to maintain
2 medical expense benefits coverage mandated by section 4 of P.L.1972,
3 c.70 (C.39:6A-4) or section 4 of P.L. , c. (C.)(now before
4 the Legislature as this bill) shall have no cause of action for recovery
5 of economic or noneconomic loss sustained as a result of an accident
6 while operating an uninsured automobile.

7 b. Any person who is convicted of, or pleads guilty to, operating
8 a motor vehicle in violation of R.S.39:4-50, section 2 of P.L.1981,
9 c.512 (C.39:4-50.4a), or a similar statute from any other jurisdiction,
10 in connection with an accident, shall have no cause of action for
11 recovery of economic or noneconomic loss sustained as a result of the
12 accident.

13 c. Any person acting with specific intent of causing injury to
14 himself or others in the operation or use of an automobile shall have
15 no cause of action for recovery of economic or noneconomic loss
16 sustained as a result of an accident arising from such conduct.

17 (cf: P.L.1997, c.151, s.13)

18

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

21 6. Collateral Source. The benefits provided in **[section] sections**
22 **4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and**
23 **the medical expense benefits provided in section 4 of P.L. , c.**
24 **(C.)(now before the Legislature as this bill)** shall be payable as
25 loss accrues, upon written notice of such loss and without regard to
26 collateral sources, except that benefits, collectible under workers'
27 compensation insurance, employees' temporary disability benefit
28 statutes, medicare provided under Federal law, and benefits, in fact
29 collected, that are provided under Federal law to active and retired
30 military personnel shall be deducted from the benefits collectible under
31 **[section] sections 4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4**
32 **and 39:6A-10) and the medical expense benefits provided in section 4**
33 **of P.L. , c. (C.)(now before the Legislature as this bill).**

34 If an insurer has paid those benefits and the insured is entitled to,
35 but has failed to apply for, workers' compensation benefits or
36 employees' temporary disability benefits, the insurer may immediately
37 apply to the provider of workers' compensation benefits or of
38 employees' temporary disability benefits for a reimbursement of any
39 **[section 4 and section 10] benefits pursuant to sections 4 and 10 of**
40 **P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits**
41 **pursuant to section 4 of P.L. ,c. (C.)(now before the**
42 **Legislature as this bill)** it has paid.

43 (cf: P.L.1983, c.362, s.9)

44

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

1 7. Exclusions. a. Insurers may exclude a person from benefits
2 under [section] sections 4 and [section] 10 of P.L.1972, c.70
3 (C.39:6A-4 and 39:6A-10) [where such] and medical expense benefits
4 provided in section 4 of P.L. , c. (C.)(now before the
5 Legislature as this bill) if that person's conduct contributed to his
6 personal injuries or death occurred in any of the following ways:

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

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

11 b. An insurer may also exclude from [section 4 and section 10] the
12 benefits provided in sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
13 and 39:6A-10) and the medical expense benefits provided in section 4
14 of P.L. , c. (C.)(now before the Legislature as this bill) any
15 person having incurred injuries or death, who, at the time of the
16 accident:

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

20 (2) was occupying or operating an automobile without the
21 permission of the owner or other named insured;

22 (3) was a person other than the named insured or a member and
23 named insured's family residing in his household, if that person is
24 entitled to coverage under section 4 or section 10 of P.L.1972, c.70
25 (C.39:6A-4 or 39:6A-10), or both, or section 4 of P.L. , c.
26 (C.)(now before the Legislature as this bill), as a named insured
27 or member of the named insured's family residing in his household
28 under the terms of another policy: or

29 (4) was a member of the named insured's family residing in the
30 named insured's household, if that person is entitled to coverage under
31 section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or
32 both, or section 4 of P.L. , c. (C.)(now before the
33 Legislature as this bill) as a named insured under the terms of another
34 policy.

35 (cf: P.L.1997, c.270, s.1)

36
37 11. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read as
38 follows:

39 8. Tort exemption; limitation on the right to noneconomic loss.

40 One of the following two tort options shall be elected, in
41 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by
42 any named insured required to maintain personal injury protection
43 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4):

44 a. [Every owner, registrant, operator or occupant of an automobile
45 to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury
46 protection coverage, regardless of fault, applies, and every person or

1 organization legally responsible for his acts or omissions, is hereby
2 exempted from tort liability for noneconomic loss to a person who is
3 subject to this subsection and who is either a person who is required
4 to maintain the coverage mandated by this act, or is a person who has
5 a right to receive benefits under section 4 of P.L.1972, c.70
6 (C.39:6A-4) as a result of bodily injury, arising out of the ownership,
7 operation, maintenance or use of such automobile in this State, unless
8 that person has sustained a personal injury which results in death;
9 dismemberment; significant disfigurement; a fracture; loss of a fetus;
10 permanent loss of use of a body organ, member, function or system;
11 permanent consequential limitation of use of a body organ or member;
12 significant limitation of use of a body function or system; or a
13 medically determined injury or impairment of a non-permanent nature
14 which prevents the injured person from performing substantially all of
15 the material acts which constitute that person's usual and customary
16 daily activities for not less than 90 days during the 180 days
17 immediately following the occurrence of the injury or impairment]

18 Limitation on lawsuit option. Every owner, registrant, operator or
19 occupant of an automobile to which section 4 of P.L.1972, c.70
20 (C.39:6A-4), personal injury protection coverage, or section 4 of
21 P.L. , c. (C.)(now before the Legislature as this bill) medical
22 expense benefits coverage, regardless of fault, applies, and every
23 person or organization legally responsible for his acts or omissions, is
24 hereby exempted from tort liability for noneconomic loss to a person
25 who is subject to this subsection and who is either a person who is
26 required to maintain personal injury protection coverage pursuant to
27 section 4 of P.L.1972, c.70 (C.39:6A-4) or medical expense benefits
28 pursuant to section 4 of P.L. , c. (C.)(now before the
29 Legislature as this bill), or is a person who has a right to receive
30 benefits under section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of
31 P.L. , c. (C.)(now before the Legislature as this bill), as a
32 result of bodily injury, arising out of the ownership, operation,
33 maintenance or use of such automobile in this State, unless that person
34 has sustained a bodily injury which results in death; dismemberment;
35 significant disfigurement or significant scarring; displaced fractures;
36 loss of a fetus; or a permanent injury within a reasonable degree of
37 medical probability, other than scarring or disfigurement. An injury
38 shall be considered permanent when the body part or organ, or both,
39 has not healed to function normally and will not heal to function
40 normally with further medical treatment. For the purposes of this
41 subsection, "physician" means a physician as defined in section 5 of
42 P.L.1939,c.115 (C.45:9-5.1).

43 In order to satisfy the tort option provisions of this subsection, the
44 plaintiff shall, within 60 days following the date of the answer to the
45 complaint by the defendant, provide the defendant with a certification
46 from the licensed treating physician or a board-certified licensed

1 physician to whom the plaintiff was referred by the treating physician.
2 The certification shall state, under penalty of perjury, that the plaintiff
3 has sustained an injury described above. The certification shall be
4 based on and refer to objective clinical evidence, which may include
5 medical testing, except that any such testing shall be performed in
6 accordance with medical protocols pursuant to subsection a. of section
7 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
8 administered in accordance with section 12 of P.L. , c. (C.)(now
9 before the Legislature as this bill). Such testing may not be
10 experimental in nature or dependent entirely upon subjective patient
11 response. The court may grant no more than one additional period not
12 to exceed 60 days to file the certification pursuant to this subsection
13 upon a finding of good cause.

14 A person is guilty of a crime of the fourth degree if that person
15 purposefully or knowingly makes, or causes to be made, a false,
16 fictitious, fraudulent, or misleading statement of material fact in, or
17 omits a material fact from, or causes a material fact to be omitted
18 from, any certification filed pursuant to this subsection.
19 Notwithstanding the provisions of subsection e. of N.J.S. 2C:44-1, the
20 court shall deal with a person who has been convicted of a violation
21 of this subsection by imposing a sentence of imprisonment unless,
22 having regard to the character and condition of the person, the court
23 is of the opinion that imprisonment would be a serious injustice which
24 overrides the need to deter such conduct by others. If the court
25 imposes a noncustodial or probationary sentence, such sentence shall
26 not become final for 10 days in order to permit the appeal of such
27 sentence by the prosecution. Nothing in this subsection a. shall
28 preclude an indictment and conviction for any other offense defined by
29 the laws of this State. In addition, any professional license held by the
30 person shall be forfeited according to the procedures established by
31 section 4 of P.L.1997, c.353 (C.2C:51-5); or

32 b. No limitation on lawsuit option. As an alternative to the basic
33 tort option specified in subsection a. of this section, every owner,
34 registrant, operator, or occupant of an automobile to which section 4
35 of P.L.1972, c.70 (C.39:6A-4) , personal injury protection coverage,
36 or section 4 of P.L. , c. (C.)(now before the Legislature as
37 this bill), medical expense benefits coverage, regardless of fault,
38 applies, and every person or organization legally responsible for his
39 acts or omissions, shall be liable for noneconomic loss to a person who
40 is subject to this subsection and who is either a person who is required
41 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et
42 seq.) or is a person who has a right to receive benefits under section
43 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the
44 ownership, operation, maintenance or use of such automobile in this
45 State.

46 The tort option provisions of subsection b. of this section shall also

1 apply to the right to recover for noneconomic loss of any person
2 eligible for benefits pursuant to section 4 of P.L.1972, c.70
3 (C.39:6A-4) or section 4 of P.L. _____, c. _____ (C. _____)(now before the
4 Legislature as this bill) but who is not required to maintain personal
5 injury protection coverage pursuant to section 4 of P.L.1972, c.70
6 (C.39:6A-4) or medical expense benefits coverage pursuant to section
7 4 of P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) and
8 is not an immediate family member, as defined in section 14.1 of
9 P.L.1983, c.362 (C.39:6A-8.1), under [an] a standard automobile
10 insurance policy or basic automobile insurance policy.

11 The tort option provisions of subsection a. of this section shall also
12 apply to any person subject to section 14 of P.L.1985, c.520
13 (C.39:6A-4.5) and to every named insured and any other person to
14 whom the medical expense benefits of the basic automobile insurance
15 policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
16 Legislature as this bill) apply.

17 The tort option provisions of subsections a. and b. of this section
18 as provided in this [1988] 1998 amendatory and supplementary act
19 shall apply to automobile insurance policies issued or renewed on or
20 after [January 1, 1989] the effective date of P.L. _____, c. _____
21 (C. _____)(now before the Legislature as this bill) and as otherwise
22 provided by law.

23 (cf: P.L.1990, c.8, s.9)

24

25 12. (New section) The professional licensing boards governing
26 health care providers in the Division of Consumer Affairs shall
27 promulgate, pursuant to the "Administrative Procedure Act,"
28 P.L.1968, c.410 (C.52:14B-1 et seq.), a list of valid diagnostic tests
29 to be used in conjunction with the appropriate health care protocols in
30 the treatment of persons sustaining bodily injury and subject to
31 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8). Inclusion of
32 a test on the list of valid diagnostic tests shall be based on
33 demonstrated medical value, and a level of general acceptance by the
34 relevant provider community and shall not be dependent for results
35 entirely upon subjective patient response. The initial lists shall be
36 promulgated within 180 days of the effective date of this section and
37 shall be revised from time to time as determined by the respective
38 boards to reflect new testing procedures and emerging technologies
39 enjoying a level of general acceptance within the appropriate provider
40 community. In updating its list, a board may take action at a regularly
41 scheduled meeting, notwithstanding the provisions of P.L.1968, c.410
42 (C.52:14B-1 et seq.) to the contrary, after notice as provided herein.
43 The professional boards, individually or collectively, may enlist the
44 services of a consulting firm to assist in compiling and updating the
45 list. The Commissioner of Banking and Insurance may reimburse the
46 boards for the cost of the services of the consultant. The list of valid

1 diagnostic test shall apply only to benefits under section 4 of P.L.1972,
2 c.70 (C.39:6A-4) and section 4 of P.L. , c. (C.)(now before the
3 Legislature as this bill). The board or boards hiring a consultant shall
4 not advertise for bids, as provided in sections 3 and 4 of P.L.1954,
5 c.48 (C.52:34-8 and 52:34-9). Notwithstanding any of the provisions
6 of this section to the contrary, a diagnostic test performed in an acute
7 care facility, or extended care facility recognized by Medicare, shall
8 not be excluded from a list of valid diagnostic tests promulgated
9 pursuant to this section.

10 a. For the purposes of this section, "action" includes, but is not
11 limited to:

12 (1) the addition or deletion of a test to the list; or

13 (2) procedures and standards for the performance of a test.

14 "Action" shall not include the hearing and resolution of contested
15 cases, licensing matters, personnel matters or any other duties of a
16 professional licensing board.

17 b. Prior to the adoption of an action by the board, the board shall
18 forward the notice of intended action and a detailed description of the
19 intended action to the Office of Administrative Law for publication in
20 the New Jersey Register.

21 A copy of the text of the intended action shall be available in the
22 Division of Consumer Affairs in accordance with the provisions of
23 P.L.1963, c.73 (C.47:1A-1 et seq.).

24 c. The board may hold a public hearing on any intended action.

25 d. Whether or not a public hearing is held, the board shall afford all
26 interested persons an opportunity to comment in writing on the
27 intended action. Written comments shall be submitted to the board
28 within the time established by the board in the notice of intended
29 action, which time shall not be less than 10 calendar days from the
30 date of notice. The board shall give due consideration to all comments
31 received. A copy of the submissions shall be filed with the Office of
32 Administrative Law for publication in the New Jersey Register.

33 e. The board may adopt the intended action immediately following
34 the expiration of the public comment period provided in subsection d.
35 of this section, or the hearing provided for in subsection c. of this
36 section, whichever date is later. The final action adopted by the board
37 shall be submitted for publication in the New Jersey Register to the
38 Office of Administrative Law, and shall be effective on the date of the
39 submission or such later date as the board may establish.

40 f. Actions filed with the Office of Administrative Law pursuant to
41 this section shall be filed subject to the provisions of subsections (a),
42 (c), (d) and (e) of section 5 of P.L.1968, c.410 (C.52:14B-5).

43 g. Nothing in this section shall be construed to prohibit the board
44 from adopting any action pursuant to the provisions of the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.).

1 h. Nothing in this section shall be construed to prohibit the
2 Director of the Division of Consumer Affairs from adopting any rule
3 or regulation pursuant to the provisions of the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

5
6 13. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to
7 read as follows:

8 20. An insurer, health maintenance organization or governmental
9 agency paying benefits pursuant to subsection a., b. or d. of section 13
10 of P.L.1983, c.362 (C.39:6A-4.3) or personal injury protection
11 benefits in accordance with section 4 or section 10 of P.L.1972, c.70
12 (C.39:6A-4 or 39:6A-10) or medical expense benefits pursuant to
13 section 4 of P.L. , c. (C.)(now before the Legislature as this
14 bill), as a result of an accident occurring within this State, shall, within
15 two years of the filing of the claim, have the right to recover the
16 amount of payments from any tortfeasor who was not, at the time of
17 the accident, required to maintain personal injury protection or medical
18 expense benefits coverage, other than for pedestrians, under the laws
19 of this State, including personal injury protection coverage required to
20 be provided in accordance with section 18 of P.L.1985, c.520
21 (C.17:28-1.4), or although required did not maintain personal injury
22 protection or medical expense benefits coverage at the time of the
23 accident. In the case of an accident occurring in this State involving
24 an insured tortfeasor, the determination as to whether an insurer,
25 health maintenance organization or governmental agency is legally
26 entitled to recover the amount of payments and the amount of
27 recovery, including the costs of processing benefit claims and
28 enforcing rights granted under this section, shall be made against the
29 insurer of the tortfeasor, and shall be by agreement of the involved
30 parties or, upon failing to agree, by arbitration.

31 (cf: P.L.1990, c.8, s.10)

32
33 14. Section 10 of P.L.1972, c.70 (C.39:6A-10) is amended to read
34 as follows:

35 10. Additional personal injury protection coverage. Insurers shall
36 make available to the named insured electing the standard automobile
37 insurance policy and covered under section 4 of P.L.1972, c.70
38 (C.39:6A-4), and, at his option, to resident relatives in the household
39 of the named insured, suitable additional first party coverage for
40 income continuation benefits, essential services benefits, death benefits
41 and funeral expense benefits, but the income continuation and essential
42 services benefits shall cease upon the death of the claimant, and shall
43 not operate to increase the amount of any death benefits payable under
44 section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional first party
45 coverage shall be payable only to the extent that the claimant
46 establishes that the amount of loss sustained exceeds the coverage

1 specified in section 4 of P.L.1972, c.70 (C.39:6A-4). Insurers may also
2 make available to named insureds electing a standard automobile
3 insurance policy and covered under section 4 of P.L.1972, c.70
4 (C.39:6A-4), and, at their option, to resident relatives in the household
5 of the named insured or to other persons provided medical expense
6 benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4),
7 or both, additional first party medical expense **[benefit]** benefits
8 coverage. The additional coverage shall be offered by the insurer at
9 least annually as part of the coverage selection form applicable to the
10 standard automobile insurance policy and required by section 17 of
11 P.L.1983, c.362 (C.39:6A-23). Income continuation in excess of that
12 provided for in section 4 **[must]** of P.L.1972, c.70 (C.39:6A-4) shall
13 be provided as an option by insurers for disabilities, as long as the
14 disability persists, up to an income level of \$35,000.00 per year,
15 provided that a. the excess between \$5,200.00 and the amount of
16 coverage contracted for shall be written on the basis of 75% of said
17 difference, and b. regardless of the duration of the disability, the
18 benefits payable shall not exceed the total maximum amount of income
19 continuation benefits contracted for. Death benefits provided pursuant
20 to this section shall be payable without regard to the period of time
21 elapsing between the date of the accident and the date of death, if
22 death occurs within two years of the accident and results from bodily
23 injury from that accident to which coverage under this section applies.
24 The Commissioner of Insurance is hereby authorized and empowered
25 to establish, by rule or regulation, the amounts and terms of income
26 continuation insurance to be provided pursuant to this section.

27 (cf: P.L.1990, c.8, s.11)

28

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

31 11. Contribution among insurers. If two or more insurers are liable
32 to pay benefits under sections 4 and 10 of **[this act]** P.L.1972, c.70
33 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
34 policy or medical expense benefits under a basic automobile insurance
35 policy pursuant to section 4 of P.L. , c. (C.)(now before
36 the Legislature as this bill) for the same bodily injury, or death, of any
37 one person, the maximum amount payable shall be as specified in those
38 sections 4 and 10 of P.L.1972, C.70 (C.39:6A-4 and 39:6A-10) and
39 section 4 of P.L. , c. (C.)(now before the Legislature as this
40 bill), respectively, if additional first party coverage applies and any
41 insurer paying the benefits shall be entitled to recover from each of the
42 other insurers, only by inter-company arbitration or inter-company
43 agreement, an equitable pro-rata share of the benefits paid.

44 (cf: P.L.1972, c.70, s.11)

45

46 16. Section 12 of P.L.1972, c.70 (C.39:6A-12) is amended to read

1 as follows:

2 12. Inadmissibility of evidence of losses collectible under personal
3 injury protection coverage. Except as may be required in an action
4 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),
5 evidence of the amounts collectible or paid under a standard
6 automobile insurance policy pursuant to sections 4 and 10 of
7 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and amounts collectible or
8 paid for medical expense benefits under a basic automobile insurance
9 policy pursuant to 4 of P.L. _____, c. _____ (C. _____)(now before the
10 Legislature as this bill), to an injured person, including the amounts of
11 any deductibles, copayments or exclusions, including exclusions
12 pursuant to subsection d. of section 13 of P.L.1983, c.362
13 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action
14 for recovery of damages for bodily injury by such injured person.

15 The court shall instruct the jury that, in arriving at a verdict as to
16 the amount of the damages for noneconomic loss to be recovered by
17 the injured person, the jury shall not speculate as to the amount of the
18 medical expense benefits paid or payable by an automobile insurer
19 under personal injury protection coverage payable under a standard
20 automobile insurance policy pursuant to sections 4 and 10 of
21 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits
22 under a basic automobile insurance policy pursuant to section 4 of
23 P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) to the
24 injured person, nor shall they speculate as to the amount of benefits
25 paid or payable by a health insurer, health maintenance organization or
26 governmental agency under subsection d. of section 13 of P.L.1983,
27 c.362 (C.39:6A-4.3).

28 Nothing in this section shall be construed to limit the right of
29 recovery, against the tortfeasor, of uncompensated economic loss
30 sustained by the injured party.

31 (cf: P.L.1990, c.8, s.12)

32

33 17. Section 13 of P.L.1972, c.70 (C.39:6A-13) is amended to read
34 as follows:

35 13. Discovery of facts as to personal injury protection coverage.
36 The following apply to personal injury protection coverage benefits
37 payable under a standard automobile insurance policy pursuant to
38 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
39 medical expense benefits payable under a basic automobile insurance
40 policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
41 Legislature as this bill):

42 a. Every employer shall, if a request is made by an insurer or the
43 Unsatisfied Claim and Judgment Fund providing personal injury
44 protection benefits under [this act] a standard automobile insurance
45 policy or medical expense benefits payable under a basic automobile
46 insurance policy against whom a claim has been made, furnish

1 forthwith, in a form approved by the Commissioner of Banking and
2 Insurance, a signed statement of the lost earnings since the date of the
3 bodily injury and for a reasonable period before the injury, of the
4 person upon whose injury the claim is based.

5 b. Every physician, hospital, [clinic or other medical institution]
6 or other health care provider providing, before and after the bodily
7 injury upon which a claim for personal injury protection benefits or
8 medical expense benefits is based, any products, services or
9 accommodations in relation to such bodily injury or any other injury,
10 or in relation to a condition claimed to be connected with such bodily
11 injury or any other injury, shall, if requested to do so by the insurer or
12 the Unsatisfied Claim and Judgment Fund against whom the claim has
13 been made, furnish forthwith a written report of the history, condition,
14 treatment, dates and costs of such treatment of the injured person, and
15 produce forthwith and permit the inspection and copying of his or its
16 records regarding such history, condition, treatment dates and costs of
17 treatment. The person requesting such records shall pay all reasonable
18 costs connected therewith.

19 c. The injured person shall be furnished upon demand a copy of all
20 information obtained by the insurer or the Unsatisfied Claim and
21 Judgment Fund under the provisions of this section, and shall pay a
22 reasonable charge, if required by the insurer and the Unsatisfied Claim
23 and Judgment Fund.

24 d. [Whenever] Except for medical expense benefits provided under
25 a standard automobile insurance policy pursuant to subsection a. of
26 section 4 of P.L.1972, c.70 (C.39:6A-4), under a basic automobile
27 insurance policy pursuant to subsection b. of section 4 of P.L. _____,
28 c. _____(now before the Legislature as this bill), under subsection
29 a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and additional first
30 party medical expense benefits coverage provided under a standard
31 automobile insurance policy pursuant to section 10 of P.L.1972, c.70
32 (C.39:6A-10), if there is no dispute concerning whether the
33 treatments, health care services or durable medical goods related to an
34 injury for which reimbursement is being sought are causally related to
35 an insured event, whenever the mental or physical condition of an
36 injured person covered by personal injury protection under a standard
37 automobile insurance policy or medical expense benefits under a basic
38 automobile insurance policy is material to any claim that has been or
39 may be made for such past or future personal injury protection benefits
40 or medical expense benefits, such person shall, upon request of an
41 insurer or the Unsatisfied Claim and Judgment Fund submit to mental
42 or physical examination [by a physician or physicians , or chiropractor
43 or chiropractors. Only a licensed chiropractor may determine the
44 clinical need for further chiropractic treatment by performing a
45 chiropractic examination and this determination shall not depend solely
46 upon a review of the treating chiropractor patient records in cases of

1 denial of benefits] conducted by a health care provider licensed in this
2 State in the same profession or speciality as the health care provider
3 whose services are subject to review under this section and who is
4 located within a reasonable proximity to the injured person's residence.
5 The injured person shall provide or make available to the provider any
6 pertinent medical records or medical history that the provider deems
7 necessary to the examination. The costs of any examinations
8 requested by an insurer or the Unsatisfied Claim and Judgment Fund
9 shall be borne entirely by whomever makes such request. Such
10 examination shall be conducted within the municipality of residence of
11 the injured person. If there is no qualified [physician or chiropractor]
12 health care provider to conduct the examination within the
13 municipality of residence of the injured person, then such examination
14 shall be conducted in an area of the closest proximity to the injured
15 person's residence. [Personal protection insurers] Insurers providing
16 personal injury protection coverage under a standard automobile
17 insurance policy or medical expense benefits under a basic automobile
18 insurance policy are authorized to include reasonable provisions [in
19 personal injury protection coverage policies for mental and physical
20 examinations of] requiring those claiming personal injury protection
21 coverage benefits or medical expense benefits to submit to mental or
22 physical examination as requested by an insurer or the Unsatisfied
23 Claim and Judgment Fund pursuant to the provisions of this section.
24 Failure to submit to a mental or physical examination requested by an
25 insurer or the Unsatisfied Claim and Judgment Fund pursuant to the
26 provisions of this section shall subject the injured person to certain
27 limitations in coverage as specified in regulations promulgated by the
28 commissioner.

29 e. If requested by the person examined, a party causing an
30 examination to be made, shall deliver to him a copy of every written
31 report concerning the examination rendered by an examining
32 [physician or chiropractor] health care provider, at least one of which
33 reports must set out his findings and conclusions in detail. After such
34 request and delivery, the party causing the examination to be made is
35 entitled upon request to receive from the person examined every
36 written report available to him, or his representative, concerning any
37 examination, previously or thereafter made of the same mental or
38 physical condition.

39 f. The injured person, upon reasonable request by the insurer or the
40 Unsatisfied Claim and Judgment Fund, shall sign all forms,
41 authorizations [,] or releases for information, approved by the
42 Commissioner of Banking and Insurance, which may be necessary to
43 the discovery of the above facts, in order to reasonably prove the
44 injured person's losses.

45 g. In the event of any dispute regarding an insurer's or the
46 Unsatisfied Claim and Judgment Fund's or an injured person's right as

1 to the discovery of facts about the injured person's earnings or about
2 his history, condition, treatment, dates and costs of such treatment, or
3 the submission of such injured person to a mental or physical
4 examination subject to the provisions of this section, the insurer,
5 Unsatisfied Claim and Judgment Fund or the injured person may
6 petition a court of competent jurisdiction for an order resolving the
7 dispute and protecting the rights of all parties. The order may be
8 entered on motion for good cause shown giving notice to all persons
9 having an interest therein. Such court may protect against annoyance,
10 embarrassment or oppression and may as justice requires, enter an
11 order compelling or refusing discovery, or specifying conditions of
12 such discovery; the court may further order the payment of costs and
13 expenses of the proceeding, as justice requires.

14 (cf: P.L.1993, c.186, s.1)

15

16 18. Section 11 of P.L.1972, c.203 (C.39:6A-13.1) is amended to
17 read as follows:

18 11. a. Every action for the payment of benefits [set forth in]
19 payable under a standard automobile insurance policy pursuant to
20 sections 4 and 10 of [this act] P.L.1972, c.70 (C.39:6A-4 and 39:6A-
21 10) or medical expense benefits payable under a basic automobile
22 insurance policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now
23 before the Legislature as this bill), except an action by a decedent's
24 estate, shall be commenced not later than [2] two years after the
25 injured person or survivor suffers a loss or incurs an expense and
26 either knows or in the exercise of reasonable diligence should know
27 that the loss or expense was caused by the accident, or not later than
28 [4] four years after the accident whichever is earlier, provided,
29 however, that if benefits have been paid before then an action for
30 further benefits may be commenced not later than [2] two years after
31 the last payment of benefits.

32 b. Every action by a decedent's estate for the payment of benefits
33 [set forth in] provided under a standard automobile insurance policy
34 pursuant to sections 4 and 10 of [this act] P.L.1972, c.70 (C.39:6A-4
35 and 39:6A-10) or medical expense benefits provided under a basic
36 automobile insurance policy pursuant to section 4 of P.L. _____, c. _____
37 (C. _____)(now before the Legislature as this bill) shall be commenced
38 not later than [2] two years after death or [4] four years after the
39 accident from which death results, whichever is earlier, provided,
40 however, that if benefits had been paid to the decedent prior to his
41 death then an action may be commenced not later than [2] two years
42 after his death or [4] four years after the last payment of benefits,
43 whichever is earlier, provided, further, that if the decedent's estate has
44 received benefits before then an action for further benefits shall be

1 commenced not later than [2] two years from the last payment of
2 benefits.

3 (cf: P.L.1972, c.203, s.11)

4

5 19. Section 15 of P.L.1972, c.70 (C.39:6A-15) is amended to read
6 as follows:

7 15. In any claim or action arising for benefits payable under a
8 standard automobile insurance policy under section 4 of [this act]
9 P.L.1972, c.70 (C.39:6A-4) or any claim or action arising for medical
10 expense benefits payable under a basic automobile insurance policy
11 under section 4 of P.L. , c. (C.)(now before the Legislature
12 as this bill) wherein any person [,] obtains or attempts to obtain from
13 any other person, insurance company or Unsatisfied Claim and
14 Judgment Fund any money or other thing of value by (1) falsely or
15 fraudulently representing that such person is entitled to such benefits
16 [under section 4 or,] ; (2) falsely and fraudulently making statements
17 or presenting documentation in order to obtain or attempt to obtain
18 such benefits [under section 4] ; or [,] (3) cooperates, conspires or
19 otherwise acts in concert with any person seeking to falsely or
20 fraudulently obtain, or attempt to obtain, such benefits [under section
21 4] may upon conviction be fined not more than \$5,000.00, or
22 imprisoned for not more than [3] three years or both, or in the event
23 the sum so obtained or attempted to be obtained is not more than
24 \$500.00, may upon conviction, be fined not more than \$500.00, or
25 imprisoned for not more than [6] six months or both, as a disorderly
26 person.

27 In addition to any penalties imposed by law, any person who is
28 either found by a court of competent jurisdiction to have violated any
29 provision of P.L.1983 c.320 (C.17:33A-1 et seq.) pertaining to
30 automobile insurance or been convicted of any violation of Title 2C of
31 the New Jersey Statutes arising out of automobile insurance fraud shall
32 not operate a motor vehicle over the highways of this State for a
33 period of one year from the date of judgment or conviction.

34 (cf: P.L.1997, c.151, s.9)

35

36 20. Section 1 of P.L.1972, c.197 (C.39:6B-1) is amended to read
37 as follows:

38 1. a. Every owner or registered owner of a motor vehicle
39 registered or principally garaged in this State shall maintain motor
40 vehicle liability insurance coverage, under provisions approved by the
41 Commissioner of Banking and Insurance, insuring against loss
42 resulting from liability imposed by law for bodily injury, death and
43 property damage sustained by any person arising out of the ownership,
44 maintenance, operation or use of a motor vehicle wherein such
45 coverage shall be at least in: [a.] (1) an amount or limit of

1 \$15,000.00, exclusive of interest and costs, on account of injury to, or
2 death of, one person, in any one accident; and [b.] (2) an amount or
3 limit, subject to such limit for any one person so injured or killed, of
4 \$30,000.00, exclusive of interest and costs, on account of injury to or
5 death of, more than one person, in any one accident; and [c.] (3) an
6 amount or limit of \$5,000.00, exclusive of interest and costs, for
7 damage to property in any one accident.

8 b. Notwithstanding the provisions of subsection a. of this section,
9 an owner or registered owner of an automobile, as defined in section
10 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
11 State may satisfy the requirements of subsection a. of this section by
12 maintaining a basic automobile insurance policy pursuant to section 4
13 of P.L. , c. (C.)(now before the Legislature as this bill).
14 (cf: P.L.1972, c.197, s.1)

15
16 21. Section 2 of P.L.1952, c.174 (C.39:6-62) is amended to read
17 as follows:

18 2. Definitions. As used in this act:

19 "Executive director" means the official designated by and serving
20 at the pleasure of the commissioner to administer to and be in charge
21 of the Unsatisfied Claim and Judgment Fund and who shall be
22 responsible to the Unsatisfied Claim and Judgment Fund Board.

23 "Treasurer" means the State Treasurer of New Jersey acting as the
24 custodian of the Unsatisfied Claim and Judgment Fund.

25 "Commissioner" means the Commissioner of Banking and
26 Insurance.

27 "Unsatisfied Claim and Judgment Fund" or "Fund" means the fund
28 derived from the sources specified in this act.

29 "Unsatisfied Claim and Judgment Fund Board" or "Board" means
30 the board created in section 4 of this act.

31 "Qualified person" means a resident of this State or the owner of a
32 motor vehicle registered in this State or a resident of another state,
33 territory, or federal district of the United States or province of Canada
34 or of a foreign country, in which recourse is afforded, to residents of
35 this State, of substantially similar character to that provided for by this
36 act; provided, however, that no person shall be a qualified person
37 where such person is an insured under a policy provision providing
38 coverage for damages sustained by the insured as a result of the
39 operation of an uninsured motor vehicle in a form authorized to be
40 included in automobile liability policies of insurance delivered or
41 issued for delivery in this State, pursuant to the provisions of, or any
42 supplement to, chapter 28 of Title 17 of the Revised Statutes or in a
43 form substantially similar thereto.

44 "Uninsured motor vehicle" means a motor vehicle as to which there
45 is not in force a liability policy meeting the requirements of section 3,
46 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,

1 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
2 of a certificate of self-insurance under said law, but shall not include
3 a motor vehicle with a policy in force which is insured pursuant to
4 section 4 of P.L. , c. (C.)(now before the Legislature as this
5 bill).

6 "Person" includes natural persons, firms, copartnerships,
7 associations and corporations.

8 "Insurer" means any insurer authorized in this State to write the
9 kinds of insurance specified in paragraphs d. and e. of R.S.17:17-1.

10 "Net direct written premiums" means direct gross premiums written
11 on policies, insuring against legal liability for bodily injury or death
12 and for damage to property arising out of the ownership, operation or
13 maintenance of motor vehicles, which are principally garaged in this
14 State, less return premiums thereon and dividends paid to
15 policyholders on such direct business.

16 "Registration license year" means the period beginning June 1,
17 1956, and ending May 31, 1957, and each subsequent 12 month
18 period, beginning June 1 and ending the following May 31.

19 (cf: P.L.1985, c.148, s.3)

20

21 22. Section 14 of P.L.1988, c.156 (C.17:29A-15.2) is amended to
22 read as follows:

23 14. Notwithstanding any other provision of law to the contrary, the
24 dollar amount of the commission paid to a producer for residual bodily
25 injury coverage provided pursuant to section 8 of P.L.1972, c.70
26 (C.39:6A-8) shall be the same whether the named insured elects the
27 tort option provided for in subsection a. of that section or the tort
28 option provided for in subsection b. of that section. This section shall
29 not apply to commissions on a basic automobile insurance policy
30 issued pursuant to section 4 of P.L. , c. (C.)(now before the
31 Legislature as this bill).

32 (cf: P.L.1988, c.156, s.14)

33

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

36 5. Payment of personal injury protection coverage benefits.

37 a. An insurer may require written notice to be given as soon as
38 practicable after an accident involving an automobile with respect to
39 which the policy affords personal injury protection coverage benefits
40 payable under a standard automobile insurance policy pursuant to
41 section 4 of P.L.1972, c.70 (C.34:6A-4) or medical expense benefits
42 payable under a basic automobile insurance policy pursuant to [this
43 act] section 4 of P.L. , c. (C.)(now before the Legislature
44 as this bill). In the case of claims for medical expense benefits under
45 either policy, written notice shall be provided to the insurer by the
46 treating [medical] health care provider no later than 21 days following

1 the commencement of treatment. Notification required under this
2 section shall be made in accordance with regulations adopted by the
3 Commissioner of Banking and Insurance and on a form prescribed by
4 the Commissioner of Banking and Insurance. Within a reasonable time
5 after receiving notification required pursuant to this act, the insurer
6 shall confirm to the treating ~~[medical]~~health care provider that its
7 policy affords the claimant personal injury protection coverage benefits
8 as required by section ~~[5]~~ 4 of P.L.1972, c.70
9 ~~[(C.39:6A-5)](C.39:6A-4) or medical expense benefits pursuant to~~
10 ~~section 4 of P.L. , c. (C.)~~(now before the Legislature as this
11 bill).

12 b. For the purposes of this section, notification shall be deemed to
13 be met if a treating ~~[medical]~~health care provider submits a bill or
14 invoice to the insurer for reimbursement of services within 21 days of
15 the commencement of treatment.

16 c. In the event that notification is not made by the treating
17 ~~[medical]~~health care provider within 21 days following the
18 commencement of treatment, the insurer shall reserve the right to
19 deny, in accordance with regulations established by the Commissioner
20 of Banking and Insurance, payment of the claim and the treating
21 ~~[medical]~~ health care provider shall be prohibited from seeking any
22 payment directly from the insured. In establishing the standards for
23 denial of payment, the Commissioner of Banking and Insurance shall
24 consider the length of delay in notification, the severity of the treating
25 ~~[medical]~~health care provider's failure to comply with the notification
26 provisions of this act based upon the potential adverse impact to the
27 public and whether or not the provider has engaged in a pattern of
28 noncompliance with the notification provisions of this act. In
29 establishing the regulations necessary to effectuate the purposes of this
30 subsection, the Commissioner of Banking and Insurance shall define
31 specific instances where the sanctions permitted pursuant to this
32 subsection shall not apply. Such instances may include, but not be
33 limited to, a treating medical provider's failure to provide notification
34 to the insurer as required by this act due to the insured's medical
35 condition during the time period within which notification is required.

36 d. A ~~[medical]~~health care provider who fails to notify the insurer
37 within 21 days and whose claim for payment has been denied by the
38 insurer pursuant to the standards established by the Commissioner of
39 Banking and Insurance may, in the discretion of a judge of the
40 Superior Court, be permitted to refile such claim provided that the
41 insurer has not been substantially prejudiced thereby. Application to
42 the court for permission to refile a claim shall be made within 14 days
43 of notification of denial of payment and shall be made upon motion
44 based upon affidavits showing sufficient reasons for the failure to
45 notify the insurer within the period of time prescribed by this act.

1 e. [For the purposes of this section, "treating medical provider"
2 shall mean any licensee of the State of New Jersey whose services are
3 reimbursable under personal injury protection coverage, including but
4 not limited to persons licensed to practice medicine and surgery,
5 psychology, chiropractic, or such other professions as the
6 Commissioner of Insurance determines pursuant to regulation, or other
7 licensees similarly licensed in other states and nations, or the
8 practitioner of any religious method of healing, or any general hospital,
9 mental hospital, convalescent home, nursing home or any other
10 institution, whether operated for profit or not, which maintains or
11 operates facilities for health care, whose services are compensated
12 under personal injury protection insurance proceeds.] (Deleted by
13 amendment, P.L. , c.)

14 f. In instances when multiple treating [medical] health care
15 providers render services in connection with emergency care, the
16 Commissioner of Banking and Insurance shall designate, through
17 regulation, a process whereby notification by one treating
18 [medical]health care provider to the insurer shall be deemed to meet
19 the notification requirements of all the treating [medical]health care
20 providers who render services in connection with emergency care.

21 g. Personal injury protection coverage benefits pursuant to section
22 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
23 pursuant to section 4 of P.L. , c. (C.)(now before the
24 Legislature as this bill) shall be overdue if not paid within 60 days after
25 the insurer is furnished written notice of the fact of a covered loss and
26 of the amount of same. If such written notice is not furnished to the
27 insurer as to the entire claim, any partial amount supported by written
28 notice is overdue if not paid within 60 days after such written notice
29 is furnished to the insurer. Any part or all of the remainder of the
30 claim that is subsequently supported by written notice is overdue if not
31 paid within 60 days after such written notice is furnished to the
32 insurer; provided, however, that any payment shall not be deemed
33 overdue where, within 60 days of receipt of notice of the claim, the
34 insurer notifies the claimant or his representative in writing of the
35 denial of the claim or the need for additional time, not to exceed 45
36 days, to investigate the claim, and states the reasons therefor. The
37 written notice stating the need for additional time to investigate the
38 claim shall set forth the number of the insurance policy against which
39 the claim is made, the claim number, the address of the office handling
40 the claim and a telephone number, which is toll free or can be called
41 collect, or is within the claimant's area code. Written notice to the
42 organization administering dispute resolution pursuant to sections 24
43 and 25 of P.L. , c. (C.)(now before the Legislature as this
44 bill) shall satisfy the notice request for additional time to investigate
45 a claim pursuant to this subsection. For the purpose of determining
46 interest charges in the event the injured party prevails in a subsequent

1 proceeding where an insurer has elected a 45-day extension pursuant
2 to this subsection, payment shall be considered overdue at the
3 expiration of the 45-day period or, if the injured person was required
4 to provide additional information to the insurer, within 10 business
5 days following receipt by the insurer of all the information requested
6 by it, whichever is later.

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

12 h. All overdue payments shall bear interest at the percentage of
13 interest prescribed in the Rules Governing the Courts of the State of
14 New Jersey for judgments, awards and orders for the payment of
15 money.

16 i. All automobile insurers and the Unsatisfied Claim and Judgment
17 Fund shall provide any claimant with the option of submitting a dispute
18 under this section to [binding arbitration. Arbitration proceedings
19 shall be administered and subject to procedures established by the
20 American Arbitration Association. If the claimant prevails in the
21 arbitration proceedings, the insurer shall pay all the costs of the
22 proceedings, including reasonable attorney's fees, to be determined in
23 accordance with a schedule of hourly rates for services performed, to
24 be prescribed by the Supreme Court of New Jersey] dispute resolution
25 pursuant to sections 24 and 25 of P.L. , c. (C.)(now before
26 the Legislature as this bill).

27 (cf: P.L.1995, c.407, s.1)

28

29 24. (New section) a. Any dispute regarding the recovery of
30 medical expense benefits or other benefits provided under personal
31 injury protection coverage pursuant to section 4 of P.L.1972, c.70
32 (C.39:6A-4), or section 4 of P.L. , c. (C.) (now before the
33 Legislature as this bill) arising out of the operation, ownership,
34 maintenance or use of an automobile may be submitted to dispute
35 resolution on the initiative of any party to the dispute, as hereinafter
36 provided.

37 b. The Commissioner of Banking and Insurance shall designate an
38 organization, and for that purpose may, at his discretion, advertise for
39 proposals, for the purpose of administering dispute resolution
40 proceedings regarding medical expense benefits and other benefits
41 provided under personal injury protection pursuant to section 4 of P.L.
42 1972, c.70 (C.39:6A-4) or medical expense benefits coverage pursuant
43 to section 4 of P.L. , c. (C.)(now before the Legislature as this
44 bill). The commissioner shall promulgate rules and regulations with
45 respect to the conduct of the dispute resolution proceedings. The
46 organization administering dispute resolution shall utilize qualified

1 professionals who serve on a full-time basis and who meet standards
2 of competency established by the commissioner. The commissioner
3 shall establish standards of performance for the organization to ensure
4 the independence and fairness of the review process, including, but not
5 limited to, standards relative to the professional qualifications of the
6 professionals presiding over the dispute resolution process, and
7 standards to ensure that no conflict of interest exists which would
8 prevent the professional from performing his duties in an impartial
9 manner. The standards of performance shall include a requirement
10 that the organization establish an advisory council composed of parties
11 who are users of the dispute resolution mechanism established herein.
12 The commissioner may contract with a consulting firm for the
13 formulation of the standards of performance of the organization and
14 establishment of qualifications for the persons who are to conduct the
15 dispute resolution proceedings. The commissioner shall not advertise
16 for bids for the consulting firm, as provided in sections 3 and 4 of
17 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Compensation to the dispute
18 resolution professionals shall be fixed on a per case basis and adjusted
19 from time to time as appropriate, with the approval of the
20 commissioner. In no case shall compensation be paid on a contingency
21 basis. The organization shall establish a dispute resolution plan, which
22 shall include procedures and rules governing the dispute resolution
23 process and provisions for monitoring the dispute resolution process
24 to ensure adherence to the standards of performance established by the
25 commissioner. The plan, and any amendments thereto, shall be subject
26 to the approval of the commissioner.

27 c. Dispute resolution proceedings under this section 24 and section
28 25 of this amendatory and supplementary act shall include disputes
29 arising regarding medical expense benefits provided under subsection
30 a. of section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. ,
31 c. (C.) (now before the Legislature as this bill), benefits provided
32 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70
33 (C.39:6A-4), subsection b., c., d. or e. of P.L.1972, c.198 (C.39:6-
34 86.1), and disputes as to additional first party coverage benefits
35 required to be offered pursuant to section 10 of P.L.1972, c.70
36 (C.39:6A-10). Disputes involving medical expense benefits may
37 include, but not necessarily be limited to, matters concerning: (1)
38 interpretation of the insurance contract; (2) whether the treatment or
39 health care service which is the subject of the dispute resolution
40 proceeding is in accordance with the provisions of section 4 of
41 P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c. (C.)
42 (now before the Legislature this bill) or the terms of the policy; (3) the
43 eligibility of the treatment or service for compensation; (4) the
44 eligibility of the provider performing the treatment or service to be
45 compensated under the terms of the policy or under regulations
46 promulgated by the commissioner, including whether the person is

1 licensed or certified to perform such treatment; (5) whether the
2 disputed medical treatment was actually performed; (6) whether
3 diagnostic tests performed in connection with the treatment are those
4 recognized by the professional licensing boards in the Division of
5 Consumer Affairs in the Department of Law and Public Safety or other
6 recognized professional organizations, or as otherwise provided in
7 section 12 of P.L. , c. (C.)(now before the Legislature as this bill);
8 (7) the necessity or appropriateness of consultations by other health
9 care providers; (8) disputes involving application of and adherence to
10 fee schedules promulgated by the commissioner; and (9) whether the
11 treatment performed is reasonable, necessary, and compatible with the
12 protocols provided for pursuant to P.L. , c. (C.)(now
13 before the Legislature as this bill). The dispute resolution
14 professionals may review the entire claims file of the insurer, subject
15 to any confidentiality requirement established pursuant to State or
16 federal law. All decisions of the dispute resolution professional shall
17 be in writing, in a form prescribed by the commissioner, shall state the
18 issues in dispute, the findings and conclusions on which the decision
19 is based, and shall be signed by the dispute resolution professional. All
20 decisions of a dispute resolution professional shall be binding. The
21 dispute resolution organization shall provide for the retention of all
22 documents used in dispute resolution proceedings under this section
23 and section 25 of this amendatory and supplementary act, including the
24 written decision, for a period of at least five years, in a form approved
25 by the commissioner, or for such additional time as may be established
26 by the commissioner. The written decisions of the dispute resolution
27 professional shall be forwarded to the commissioner, who shall
28 establish a record of the proceedings conducted under the dispute
29 resolution procedure, which shall be accessible to the public and may
30 be determined to have standing as precedent for subsequent dispute
31 resolution proceedings.

32 d. With respect to disputes as to the diagnosis, the medical
33 necessity of the treatment or diagnostic test administered to the injured
34 person, whether the injury is causally related to the insured event or
35 is the product of a preexisting condition, or disputes as to the
36 appropriateness of the protocols utilized by the provider, the dispute
37 resolution professional shall, either at his option or at the request of
38 any party to the dispute, refer the matter to a medical review
39 organization for a determination.

40 e. Any person submitting a matter to the dispute resolution process
41 established herein may submit for review all or a portion of a disputed
42 treatment or treatments or a dispute regarding a diagnostic test or
43 tests or a dispute regarding the providing of services or durable
44 medical goods. Any portion of a treatment or diagnostic test or
45 service which is not under review shall be reimbursed in accordance
46 with the provisions of section 5 of P.L.1972, c.70 (C.39:6A-5). If the

1 dispute resolution proceeding results in a determination that all or part
2 of a treatment or treatments, diagnostic test or tests or service
3 performed, or durable medical goods provided are medically necessary
4 and appropriate, reimbursement shall be made with interest payable in
5 accordance with the provisions of section 5 of P.L.1972, c.70
6 (C.39:6A-5).

7
8 25. (New section) a. The commissioner shall establish standards
9 for the certification of medical review organizations, which shall
10 include standards of performance formulated by the commissioner in
11 consultation with the Commissioner of Health and Senior Services.
12 The standards of performance shall set forth procedures to ensure a
13 timely and impartial review of the medical records of the injured
14 person by a medical review organization, including, but not limited to,
15 a review of the necessity or appropriateness of treatments for injuries,
16 including diagnostic tests, sustained in an automobile accident. The
17 commissioner shall establish standards for persons conducting the
18 medical review, including standards with respect to credentials,
19 experience, licensure, fees, and confidentiality. The standards shall
20 include a requirement that all persons performing reviews are New
21 Jersey licensed or certified health care providers, and a requirement
22 that any medical review panel contain a health care provider licensed
23 or certified in the same profession as the treating health care provider
24 and that it contain a sufficient representation of reviewers to judge the
25 appropriateness of treatment or treatments in dispute, including, but
26 not limited to, the medical necessity of such treatments,
27 appropriateness of the protocols used by the treating provider, issues
28 regarding causality and preexisting conditions, the appropriateness and
29 efficacy of diagnostic tests performed in connection with the diagnosis,
30 and whether the diagnostic tests meet the requirements set forth in
31 section 12 of P.L. , c. (C.)(now before the Legislature
32 as this bill). The commissioner may contract with a consultant for the
33 formulation of the standards governing the certification of the persons
34 conducting the medical reviews. The commissioner shall not advertise
35 for bids for the consultant, as provided in sections 3 and 4 of
36 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

37 b. Before certifying a medical review organization to receive
38 referrals from dispute resolution proceedings, the commissioner shall
39 determine that the organization has a sufficient number of qualified
40 health care providers, by specialty, to perform the reviews, has a
41 satisfactory procedure for maintaining the confidentiality of medical
42 records, is not owned or controlled by an insurer, and has met any
43 other requirements established by the commissioner.

44 c. The medical review organization shall establish and utilize
45 written review procedures, which shall be filed with the commissioner.
46 Every determination made by a medical review organization shall be

1 in writing and shall be retained by the organization for a period of no
2 less than five years.

3 d. The medical review organization may review the medical
4 treatment or treatments in dispute to determine whether: (1) the
5 treatment or diagnostic test being given for the injury or the services
6 provided in connection with the injury is medically necessary; (2) the
7 treatment is in accordance with or compatible with medically
8 recognized standard protocols, professional standards, and commonly
9 accepted medical practice in the same health care discipline as the
10 treating provider; (3) the treatment is consistent with the symptoms
11 or diagnosis of the injury; (4) the treatment or health care service is
12 related to the injury sustained in the insured event, or is required for
13 the diagnosis, evaluation or confirmation of the injury; (5) the
14 treatment is of a palliative, rather than restorative, nature; and (6)
15 medical procedures, treatment, or testing which have been repeated
16 are medically necessary and consistent with standard practice.

17 e. Cases referred by a dispute resolution professional for medical
18 review shall be referred to appropriate certified medical reviewers
19 affiliated with the certified medical review organization by a dispute
20 resolution organization. The dispute resolution organization shall
21 forward the referrals to certified medical reviewers on a random basis,
22 so that there is a relatively equal apportionment among all medical
23 reviewers. Referrals shall be made in such a manner so as not to
24 disclose to the medical reviewers the identity of the insurer, nor shall
25 the identity of the reviewer be disclosed to the insurer.

26 f. When appropriate in the context of its review of services or
27 treatments under dispute, a medical reviewer may request and shall
28 receive a written report or copy of the provider's records regarding
29 the case history, treatment dates, or the dates diagnostic tests or other
30 services were performed, and the provider's projected treatment plan.
31 The injured person or provider, as applicable, shall provide or make
32 available to the medical reviewer any pertinent medical records or
33 medical history which the medical reviewer may request. The medical
34 reviewer shall complete its review and make a determination within 20
35 business days of receipt of all of the requested information from the
36 dispute resolution professional or provider, as the case may be. The
37 medical reviewer shall submit its determination in writing to the
38 referring dispute resolution organization, which shall forward it to the
39 dispute resolution professional.

40 g. The cost of the proceedings shall be apportioned by the dispute
41 resolution professional. Fees shall be determined to be reasonable if
42 they are consonant with the amount of the award, in accordance with
43 a schedule established by the New Jersey Supreme Court. If the
44 treatment, diagnostic test, or service performed is not determined to
45 be medically necessary or appropriate, the injured person shall not be
46 liable to pay the provider the disputed amount.

1 26. (New section) No later than three months following the
2 effective date of this section, every insurer writing automobile
3 insurance in this State and any rating bureau which establishes a
4 territorial and risk classification plan on behalf of insurers shall
5 establish a procedure for collecting loss experience by postal zip code
6 and shall begin collecting that data in that manner in addition to any
7 other manner which it normally employs no later than six months
8 following the effective date of this section. Loss experience collected
9 by zip code shall be confidential.

10
11 27. (New section) There is established an automobile insurance
12 industry committee to revise the territorial rating system which is in
13 place as of the effective date of this section. The committee shall
14 consist of eighteen members. Eleven members shall be representatives
15 of insurers writing automobile insurance in this State, two members
16 shall represent a rating bureau which compiles loss experience and
17 assembles statistical data for insurers writing automobile insurance in
18 this State and four members shall be public members. Of the public
19 members, one shall be appointed by the President of the Senate, the
20 Speaker of the General Assembly, the Minority Leader of the Senate
21 and the Minority Leader of the General Assembly. Of the insurer
22 members, two shall be elected from member companies of the
23 American Insurance Association, two from member companies of the
24 Alliance of American Insurers, and two from member companies of the
25 National Association of Independent Insurers or their successor
26 organizations. The remaining members affiliated with the insurance
27 industry shall be elected at large as representatives of insurers writing
28 automobile insurance in this State, but no insurer or group of insurers
29 under common control shall have more than one representative elected
30 to the board. The representatives of insurers shall include at least five
31 actuaries. The commissioner or his designee shall be the eighteenth
32 member of the committee, but shall not have voting privileges.

33
34 28. (New section) No later than three months following the
35 effective date of this section, the commissioner shall cause nominations
36 to be made and an election to be held among all insurers writing
37 automobile insurance in this State. Each trade association shall
38 nominate members from their association and shall hold an election for
39 membership to the committee. The respective trade associations shall
40 nominate candidates for the five seats to be elected at large.

41
42 29. (New section) The committee shall elect a chairman and a vice
43 chairman from among the members representing the insurance industry
44 elected pursuant to section 28 of this amendatory and supplementary
45 act. The committee shall review the present territorial rating system
46 and recommend any revision to the territorial rating plan in existence

1 on the effective date of this section as it deems reasonable and proper;
2 provided, however, that any such recommendation be based on the
3 principles that territories shall:

4 a. be created in such a manner as to recognize qualitative
5 differences in driving environments, which may include, but not be
6 limited to, traffic density, population density, comparative severity of
7 loss in like driving environments, similarities in the relative mix of
8 driving environments applicable to each proposed territory and
9 comparative homogeneity;

10 b. be based on statistically credible data, which shall include a
11 consideration of the rate of variability of loss in each territory on a
12 year-to-year basis;

13 c. take into account the impact of the overlapping of traffic
14 patterns on exposure to loss, including the relative number of intra-
15 territory trips and out-of-territory trips applicable to each proposed
16 territory, for which the committee shall have access to the information
17 on commuting patterns collected pursuant to the provisions of section
18 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

19 d. take into account the relative mix of business in each proposed
20 territory, by driver classification;

21 e. be created in a manner which shall not result in territory
22 boundaries which are arbitrary, unfairly discriminatory, significantly
23 disproportionate in size although similar in driving environments and
24 losses, or delineated in a manner which is primarily for marketing
25 reasons rather than measuring relativity of exposure to probable loss.

26

27 30. (New section) The committee may utilize the resources of any
28 insurer, rating bureau, or group of insurers in performing its duties.
29 The committee shall review the data made available to it from insurers
30 or rating bureaus collecting data by zip code, as provided in section 26
31 of this amendatory and supplementary act. The committee may also
32 request the commissioner to order a closed claim study from any
33 insurer or insurers writing private passenger automobile insurance in
34 this State, and the commissioner shall provide the committee with the
35 results of the study. The insurer or insurers supplying the information
36 from the closed claim study need not be identified to the members of
37 the committee. The committee may hold public hearings as it
38 determines are necessary in addition to its regular meetings.

39

40 31. (New section) When the committee determines that it has
41 accumulated sufficient data to develop recommendations to the
42 commissioner, it may submit a territorial revision plan to the
43 commissioner for approval. The plan shall include at least one
44 common territorial rating system, but the committee may recommend,
45 that insurers may file individual territorial rating systems. The
46 commissioner may, if he determines that separate territorial rating

1 plans filed by individual insurers are in the interest of the citizens of
2 this State, approve an individual territorial rating system proposed by
3 an insurer, but only if the insurer's individual territorial rating system
4 meets the criteria established in section 29 of this amendatory and
5 supplementary act. The commissioner shall not approve any individual
6 territorial rating system, or any portion thereof, which contains
7 territorial configurations which he determines to be primarily directed
8 toward marketing purposes, or which would result in the likelihood
9 that an insurer's market share would be distributed unevenly
10 throughout the State.

11

12 32. (New section) a. Upon finding that the plan or plans meet the
13 criteria above, the commissioner shall approve the territories or
14 require that adjustments be made in order that they conform with the
15 standards set forth in sections 26 through 33 of this amendatory and
16 supplementary act. If the commissioner approves territorial rating
17 plans for individual insurers, he shall also approve a territorial rating
18 plan for common use by insurers not filing their own plan.

19 b. Notwithstanding the provisions of section 7 of P.L.1983, c.65
20 (C.17:29A-36), the territorial configuration established by the
21 committee or by any insurer or filer pursuant to sections 29 through
22 32 of this amendatory and supplementary act shall produce territorial
23 rate relativities which accurately reflect differences in traffic density;
24 population density; and comparative severity of loss in like driving
25 environments, which do not produce unfair cross-subsidization
26 between territories with differing characteristics.

27

28 33. (New section) Any insurer filing its own territorial rating plan
29 shall file a revised rating plan, along with its proposed territorial
30 relativity factors, which shall not take effect until approved by the
31 commissioner, in accordance with the "Administrative Procedure Act,"
32 P.L.1968, c.410 (C.52:14B-1 et seq.). In determining whether to
33 approve an individual territorial rating plan, the commissioner shall
34 consider whether the territorial relativity factors which are filed are (1)
35 not unfairly discriminatory; and (2) accurately reflect the probable
36 differentials in losses among territories.

37

38 34. (New section) There is established in the Division of Criminal
39 Justice in the Department of Law and Public Safety the Office of the
40 Insurance Fraud Prosecutor. The Insurance Fraud Prosecutor shall be
41 appointed by, and serve at the pleasure of, the Governor with the
42 advice and consent of the Senate and be under the direction and
43 supervision of the Attorney General. Any person appointed as
44 Insurance Fraud Prosecutor shall have had prosecutorial experience,
45 including experience in the litigation of civil and criminal cases. The
46 Attorney General shall establish standards of performance for the

1 Office of Insurance Fraud Prosecutor, which shall include standards of
2 accountability.

3
4 35. (New section) The Attorney General may appoint such
5 personnel, including attorneys and clerical personnel, as necessary to
6 carry out the duties of the office. The personnel charged with
7 investigatory work in Division of Fraud Prevention in the Department
8 of Banking and Insurance shall be transferred to the Office of the
9 Insurance Fraud Prosecutor as determined by the Commissioner of
10 Banking and Insurance and the Attorney General, in accordance with
11 a plan of reorganization, and shall become the Fraud Investigatory
12 Section of the Office of the Insurance Fraud Prosecutor. A section of
13 the Office of Insurance Fraud Prosecutor shall be designated to be
14 responsible for establishing a liaison and continuing communication
15 between the office and the Department of Health and Senior Services,
16 the Department of Human Services, any professional board in the
17 Division of Consumer Affairs in the Department of Law and Public
18 Safety, the Department of Banking and Insurance, the Division of
19 State Police, every county prosecutor's office, such local government
20 units as may be necessary or practicable and insurers.

21
22 36. (New section) The section of the office responsible for such
23 liaison shall establish procedures: (1) for receiving notice from all
24 entities enumerated in section 35 of this amendatory and
25 supplementary act of any case in which fraud is suspected or has been
26 substantiated; (2) for receiving referrals for the investigation of alleged
27 fraud; (3) for receiving referrals for the prosecution of fraud by the
28 office; (4) for receiving and referring information regarding cases,
29 administrative or otherwise, under investigation by any department or
30 other entity to the appropriate authority, and (5) for providing
31 information to and coordinating information among any referring
32 entities on pending cases of insurance fraud which are under
33 investigation or being litigated or prosecuted. The liaison section of
34 the office shall maintain a record of every referral or investigation.

35
36 37. (New section) The Insurance Fraud Prosecutor shall
37 investigate and, if warranted, prosecute, cases referred to it by
38 insurers, State agencies, or county and municipal governments. The
39 Insurance Fraud Prosecutor may assist county prosecutors in the
40 investigation and prosecution of fraud, and shall give county
41 prosecutors access to the data base maintained pursuant to section 40
42 of this amendatory and supplementary act.

43
44 38. (New section) The Attorney General shall, in consultation with
45 county prosecutors, establish a Statewide fraud enforcement policy for
46 all State and local agencies, including guidelines for the investigation

1 and prosecution of fraud, which shall include standards for detecting
2 fraud, for the investigation of alleged fraud and standards for the
3 submission of cases for prosecution. Priorities shall be established
4 among the cases referred to the office for prosecution or other
5 litigation and the office shall assist referring entities in establishing
6 priorities among investigations or cases to be disposed of by the
7 entities themselves. The Insurance Fraud Prosecutor shall prosecute
8 criminal cases, litigate civil cases as appropriate, or assist county
9 prosecutors in prosecuting criminal cases in accordance with the
10 guidelines and priorities so established.

11

12 39. (New section) Standards of performance shall be established
13 for the Fraud Investigatory Section, which shall include, but not be
14 limited to, recording the cases referred by insurers, local government
15 agencies and others which are assigned to the Fraud Investigatory
16 Section, investigating cases of alleged fraud in accordance with the
17 priorities established by the Insurance Fraud Prosecutor, recording the
18 disposition of the cases referred to the section, and making
19 recommendations to the Insurance Fraud Prosecutor as to any
20 procedural, regulatory, or statutory changes which may be necessary
21 to carry out the provisions of this amendatory and supplementary act.

22

23 40. (New section) a. The Insurance Fraud Prosecutor shall
24 maintain a data base which includes referrals, reports of fraud
25 investigations, prosecution, or litigation, and the results of such
26 proceedings, which shall include: (1) identification of the referring
27 entity; (2) type of fraud; (3) disposition of case; and (4) such other
28 data as may be necessary to the work of the office and the referring
29 entities.

30 b. The Insurance Fraud Prosecutor shall provide for the reporting
31 of claims information by insurers writing at least \$2,000,000 in direct
32 insurance premiums in any calendar year, in a standard reporting form,
33 which shall include, but shall not be limited to, information on stolen
34 vehicles, including the owners of such vehicles, information on
35 automobile accidents, including date and location of accidents, persons
36 involved in accidents, the kinds of injuries sustained in accidents and
37 treating health care providers, for the purpose of identifying patterns
38 of possible fraudulent activity, which information shall be shared with
39 county prosecutors, local law enforcement officials, and the New
40 Jersey State Police. Every insurer shall submit the data required by the
41 Insurance Fraud Prosecutor for all claims closing with payment during
42 a period established by the Insurance Fraud Prosecutor.

43

44 41. (New section) The Insurance Fraud Prosecutor shall have
45 access to all necessary information in the possession of the State or
46 local public entities, including agency inspection reports, motor vehicle

1 records and license information, individual case files, and intelligence
2 information compiled and maintained by the Division of State Police
3 in the Department of Law and Public Safety. Upon the request of the
4 Insurance Fraud Prosecutor, any insurer which has referred a case to
5 the Insurance Fraud Prosecutor, or to any county or local government
6 agency shall make all information on the case available to the Office
7 of the Insurance Fraud Prosecutor that the Insurance Fraud Prosecutor
8 shall request.

9
10 42. (New section) The Attorney General shall direct the Office of
11 the Insurance Fraud Prosecutor to:

12 a. Confer from time to time with departments or other units of
13 State government which have units which investigate fraud, in order
14 to coordinate activities, share information, and provide any assistance
15 necessary to any State agency in overseeing administrative
16 enforcement activities;

17 b. Formulate and evaluate proposals for legislative, administrative
18 and judicial initiatives to strengthen insurance fraud enforcement;

19 c. In connection with insurance fraud enforcement activities, act as
20 the liaison for the Executive Branch of government with agencies
21 involved in insurance fraud enforcement outside the Executive Branch,
22 including federal agencies and the Judiciary.

23 d. Provide an annual report to the Governor and the Legislature,
24 no later than March 1 of each year, as to the activities of the Insurance
25 Fraud Prosecutor for the preceding twelve months, including, but not
26 limited to, the number of cases referred, the number of cases
27 investigated, the number of cases in which professional licenses were
28 suspended or revoked, by type of license, the number of cases
29 prosecuted, the number of convictions procured, and the aggregate
30 amount of money collected in fines and returned in restitution to
31 insurers or others.

32
33 43. (New section) In the case of a professional licensed or
34 certified by a professional licensing board in the Division of Consumer
35 Affairs in the Department of Law and Public Safety who is guilty of
36 fraud, the Insurance Fraud Prosecutor may recommend to the
37 appropriate board a suspension or revocation of the professional
38 license.

39
40 44. (New section) The Insurance Fraud Prosecutor shall consider
41 the restitution of moneys to insurers and others who are defrauded as
42 a major priority, in order that policyholders may benefit from the
43 prosecution of those persons guilty of insurance fraud, and to that end,
44 any assets of any person guilty of fraud shall be subject to seizure.

45
46 45. (New section) The Insurance Fraud Prosecutor shall have

1 access to all information concerning insurance fraud enforcement
2 activities in the possession of all State departments and agencies. The
3 office shall meet on a regular basis with representatives of State
4 departments and agencies and county prosecutors to set specific goals
5 and strategies for the most effective resolution of insurance fraud
6 cases, whether by criminal, civil, or administrative enforcement action,
7 or a combination thereof.

8

9 46. (New section) Any county prosecutor may apply to the Office
10 of Insurance Fraud Prosecutor for reimbursement for activities
11 undertaken in connection with investigating and prosecuting insurance
12 fraud. The Attorney General shall allocate such funds as he deems
13 necessary from such moneys as may be appropriated for the operation
14 of the Office of Insurance Fraud Prosecutor to a fund dedicated for the
15 purpose of reimbursing county prosecutors or sharing in fines levied
16 by the Attorney General, which reimbursement or sharing may be
17 made by the Attorney General at his discretion.

18

19 47. (New section) Every state and local law enforcement agency,
20 including the New Jersey State Police, shall make available to
21 investigators employed by insurers, upon presentation of appropriate
22 identification, information from any accident report, as set forth in this
23 section, no later than 24 hours following the time of occurrence. The
24 information may include, but need not be limited to, the names and
25 addresses of the owners of the vehicles, insurance information
26 recorded on the accident report, and the names and addresses of
27 passengers in the vehicles at the time of the occurrence and, if
28 applicable, the name of any pedestrian injured in an accident. Every
29 accident report form shall contain the names and addresses of any
30 person occupying a vehicle involved in an accident, and any pedestrian
31 injured in an accident.

32

33 48. (New section) The Attorney General shall annually, on or
34 before October 1, certify to the State Treasurer an amount allocable
35 to the expenses of the Office of the Insurance Fraud Prosecutor for the
36 preceding fiscal year, which amount shall be transferred to the
37 Department of Law and Public Safety by the State Treasurer from the
38 amounts assessed and collected for the operation of the Division of
39 Insurance Fraud Prevention in the Department of Banking and
40 Insurance pursuant to section 8 of P.L.1983, c.320 (C.17:33A-8).

41

42 49. (New section) For the purposes of sections 50 through 63 of
43 this amendatory and supplementary act:

44 "Commissioner" means the Commissioner of Banking and
45 Insurance;

46 "Claim" means any claim filed under a policy of insurance issued

1 pursuant to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any
2 policy of life or health insurance issued pursuant to Title 17 of the
3 Revised Statutes or Title 17B of the New Jersey Statutes;

4 "Insurance" means any contract of direct insurance written pursuant
5 to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any policy of
6 life or health insurance issued pursuant to Title 17 of the Revised
7 Statutes or Title 17B of the New Jersey Statutes;

8 "Ombudsman" means the Insurance Claims Ombudsman appointed
9 pursuant to section 50 of this amendatory and supplementary act.

10
11 50. (New section) There is created within the Division of
12 Consumer Affairs in the Department of Law and Public Safety the
13 Office of the Insurance Claims Ombudsman. The ombudsman shall be
14 appointed by the Governor with the advice and consent of the Senate
15 and shall serve at the pleasure of the Governor during the Governor's
16 term of office. The ombudsman shall devote his entire time to the
17 duties of his office. Any vacancy occurring in the position of
18 ombudsman shall be filled in the same manner as the original
19 appointment. If the ombudsman shall be unable for any reason to
20 serve his full term of office, the Governor may designate an acting
21 ombudsman until a successor is appointed and qualified. The
22 ombudsman shall have at least a baccalaureate degree and at least
23 seven years' experience in property and casualty or life and health
24 insurance, which may include experience as a broker or an agent.

25
26 51. (New section) The ombudsman shall:

27 a. Administer and organize the work of the office and hire such
28 persons as shall be deemed necessary to effectuate his duties, subject
29 to Title 11A (Civil Service) of the New Jersey Statutes, and within the
30 limits of funds made available by the Department of Banking and
31 Insurance, in consultation with the Attorney General.

32 b. Appoint and employ any consultants, independent adjusters,
33 claims specialists, attorneys or others for the purpose of providing
34 legal and professional advice as the ombudsman may from time to time
35 require, within the limits of the funds provided therefor;

36 c. Investigate consumer complaints regarding policies of insurance,
37 including the payment of claims on policies of insurance;

38 d. Establish procedures to monitor the implementation of
39 P.L.1985, c.179 (C17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et
40 seq.), P.L.1982, c.95 (C.17:35C-1 et seq.) and chapter 30 of Title 17B
41 of the New Jersey Statutes and investigate violations of section 8 of
42 P.L.1992, c.144 (C.17:35C-11).

43 e. Respond to inquiries from consumers, including, but not limited
44 to, those regarding policy provisions and the availability of coverage;

45 f. Publish and disseminate buyers' guides and, where provided by
46 law, comparative rates; provided, however, that this shall not apply to

1 any policy of health insurance issued pursuant to P.L.1992, c.161
2 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

3 g. Review conduct of arbitrators appointed under the terms of the
4 policy to arbitrate disputes, except policies issued pursuant to
5 P.L.1972, c.70 (C.39:6A-1 et seq.)

6 h. Promulgate such rules and regulations as shall be necessary to
7 effectuate the purposes of sections 50 through 63 of this amendatory
8 and supplementary act; and

9 i. Perform such other functions as may be prescribed by this or by
10 any other law or regulation.

11

12 52. (New section) Any person who: a. has reasonable cause to
13 believe that an insurer has failed or refuses to settle a claim in
14 accordance with the provisions of the insurance contract or engaged
15 in any practice in violation of the provisions of P.L.1985, c.179
16 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et seq.), P.L.1982,
17 c.95 (C.17:35C-1 et seq.), chapter 30 of Title 17B of the New Jersey
18 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11); and, in the
19 case of disputed claims, b. has previously filed an appeal with the
20 insurer's internal appeals procedure established pursuant to section 57
21 of this amendatory and supplementary act, which has been adjudicated,
22 or other dispute resolution procedure established pursuant to
23 P.L.1972, c.70 (C.39:6A-1 et seq.), P.L.1997, c.192 (C.26:2S-1 et
24 seq.), sections 1 through 12 of P.L.1983, c.358 (C.39:6A-24 through
25 39:6A-35, inclusive) or sections 24 and 25 of P.L. , c. (C.)(now
26 before the Legislature as this bill) may file an application with the
27 ombudsman for a review of the claims settlement.

28

29 53. (New section) In any investigation involving a disputed claim,
30 the ombudsman may:

31 a. Investigate whether the claims settlement was appropriate and
32 in accordance with the contract;

33 b. Make the necessary inquiries and obtain such information as he
34 deems necessary;

35 c. Hold a hearing on the disputed claim;

36 d. Inspect any books or records which are relevant to the claim;

37 e. Compel any person to produce at a specific time and place, by
38 subpoena, any documents, books, records, papers, objects or other
39 evidence which he believes may relate to a claim under investigation.

40

41 54. (New section) The ombudsman need not investigate any
42 complaint if he determines that:

43 a. The complaint is trivial, frivolous, vexatious or not made in
44 good faith;

45 b. The complaint has been too long delayed to justify present
46 investigation;

1 c. The resources available, considering the established priorities,
2 are insufficient for an adequate investigation; or

3 d. The matter complained of is not within the investigatory
4 authority of the office.

5

6 55. (New section) The ombudsman shall maintain a central registry
7 of all claims investigations which have been disposed of and closed,
8 the nature of the investigation, findings, and recommended actions.
9 No information so compiled shall be construed to be a public record.
10 In addition, the ombudsman shall:

11 a. Report to the commissioner any evidence that an insurer has
12 established a pattern of settlement practices which would constitute an
13 unfair claims settlement practice within the meaning of P.L.1947,
14 c.379 (C.17:29B-1 et seq.) or any violations of P.L.1985, c.179
15 (C.17:23A-1 et seq.), P.L.1947, c.379 (C17:29B-1 et seq.), P.L.1982,
16 c.95 (C.17:35C-1 et seq.) chapter 30 of Title 17B of the New Jersey
17 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11);

18 b. Report to the commissioner any contract provision, including
19 any endorsements, which are unfairly discriminatory, confusing,
20 misleading or contrary to public policy, along with a recommendation
21 as to whether the policy form should be modified or withdrawn.

22

23 56. (New section) With respect to trade or marketing practices,
24 the ombudsman may:

25 a. Conduct an investigation regarding an insurer's trade practices,
26 including claims settlement practices and marketing practices;

27 b. Make the necessary inquiries and obtain such information as he
28 deems necessary;

29 c. Hold a hearing;

30 d. Inspect any books or records which may be necessary for the
31 investigation;

32 e. Compel any person to produce at a specific time and place, by
33 subpoena, any documents, books, records, papers, objects or other
34 evidence which he believes may relate to the investigation.

35 The ombudsman shall report his findings to the commissioner with
36 respect to the trade practices or marketing practices under
37 investigation.

38

39 57. (New section) Every insurer writing property and casualty
40 insurance or life insurance in this State shall establish an internal
41 appeals procedure for the adjudication of disputed claims, in
42 accordance with terms set forth by the commissioner by rule and
43 regulation or as otherwise provided by law or regulation. The
44 adjudication shall be conducted by a panel of the insurer's employees,
45 who shall be personnel other than those responsible for claims payment
46 on a day-to-day basis and shall be conducted within 10 business days

1 of the receipt of the complaint.

2

3 58. (New section) Complaints shall be filed on a form set forth by
4 the ombudsman. The office of the ombudsman shall acknowledge the
5 receipt of complaints, and advise the applicants of any action taken or
6 opinions and recommendations which may have been made by it to the
7 insurer. The ombudsman shall make recommendations to the
8 commissioner as he deems necessary, including, but not limited to:

9 a. A recommendation that a policy form or endorsement thereon
10 which he finds unfairly discriminatory, misleading or contrary to public
11 policy be modified;

12 b. A recommendation that specific rules and regulations
13 promulgated by the commissioner, including rules concerning trade
14 practices and claims settlement practices, be modified or repealed;

15 c. A recommendation that the claims settlement practices of a
16 specific insurer or insurers be further investigated by the
17 commissioner;

18 d. A recommendation that the commissioner impose penalties or
19 other sanctions against an insurer or insurers as a result of the insurer's
20 claims settlement practices.

21

22 59. (New section) Every buyer's guide which is required to be
23 provided to insureds for any line of insurance shall contain a notice
24 describing the functions of the ombudsman, the mailing address of the
25 ombudsman, and a toll-free information telephone number. The
26 ombudsman may publicize his existence, function and activities to the
27 public at large.

28

29 60. (New section) a. Any correspondence or written
30 communication from any applicant and any written material submitted
31 by an insurer shall remain confidential and shall not be part of any
32 public record, unless the parties authorize, in writing, the release of
33 the information, except for such disclosures as may be necessary to
34 enable the ombudsman to perform his duties and to support any
35 opinions or recommendations.

36 b. Any person conducting or participating in any investigation of
37 a complaint who discloses to any person, other than the office of the
38 ombudsman, or those authorized by the ombudsman to receive it, any
39 information collected during the investigation, is guilty of a disorderly
40 person's offense.

41 c. Any statement or communication made by the office of the
42 ombudsman relevant to a complaint received by the ombudsman, to
43 proceedings conducted by the ombudsman, or relating to an
44 investigation conducted by the ombudsman, which is provided to the
45 office in good faith, shall be absolutely privileged.

46 d. The ombudsman shall not be required to testify in court with

1 respect to matters held to be confidential except as the court may
2 deem necessary to enforce the provisions of sections 50 through 63 of
3 this amendatory and supplementary act.

4
5 61. (New section) Upon making his determination as to the
6 appropriate disposition of a claim, the ombudsman shall notify the
7 insurer and the claimant of his decision. The decision shall be
8 admissible in any court action or any other proceeding which is
9 instituted to determine final disposition of the claim. The ombudsman
10 may file a brief with the court in connection with an action relating to
11 the disposition of claim.

12
13 62. (New section) Any person who willfully hinders the lawful
14 actions of the ombudsman or willfully refuses to comply with his
15 lawful demands, including the demand for the inspection of records,
16 shall be subject to a penalty of not more than \$5,000. The penalty
17 shall be collected and enforced by summary proceedings pursuant to
18 "the penalty enforcement law," N.J.S.2A:58-1 et seq. Each violation
19 of sections 50 through 63 of this amendatory and supplementary act
20 shall constitute a separate offense. Notwithstanding any other
21 provision of law to the contrary, no investigation or determination
22 made by the ombudsman shall be subject to the provisions of
23 P.L.1960, c. 39 (C.56:8-1 et seq.).

24
25 63. (New section) The ombudsman shall report to the Governor
26 and the Legislature on or before September 30 of each year,
27 summarizing his activities for the preceding year, documenting any
28 significant insurance industry problems with regard to claims
29 settlement practices in any line of insurance, and setting forth any
30 recommendations for statutory or regulatory change which will further
31 the State's capacity to resolve claims disputes.

32
33 64. Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended to read
34 as follows:

35 4. No insurer shall fail to renew a policy unless it shall mail or
36 deliver to the named insured, at the address shown in the policy, at
37 least 60 days' advance notice of its intention not to renew. This
38 section shall not apply:

39 (a) If the insurer has manifested its willingness to renew; nor

40 (b) In case of nonpayment of premium;

41 provided that, notwithstanding the failure of an insurer to comply
42 with this section, the policy shall terminate on the effective date of any
43 other insurance policy with respect to any automobile designated in
44 both policies.

45 [If a named insured qualifies for his insurer's non-standard rate
46 level after having been insured at the standard rate level, the insurer

1 shall mail or deliver to the named insured, at the address shown in the
2 policy, at least 60 days' advance notice of its intention to renew at the
3 non-standard rate level.】

4 Renewal of a policy shall not constitute a waiver or estoppel with
5 respect to grounds for cancellation which existed before the effective
6 date of such renewal.

7 (cf: P.L.1997, c.240, s.1)

8

9 65. (New section) a. An insurer authorized to transact or
10 transacting automobile insurance business in this State shall file with
11 the commissioner, for the commissioner's approval, an endorsement to
12 its automobile liability insurance policy which contains a "named
13 excluded driver" provision that would exclude physical damage
14 coverage on an automobile covered by an automobile liability
15 insurance policy if it is operated by the "named excluded driver." For
16 purposes of this section, "named excluded driver" means a driver in the
17 household of the named insured who is specifically identified in the
18 endorsement as a person whose operation of an automobile covered
19 under the automobile liability insurance policy at the time of an
20 accident would result in the denial of a physical damage claim for that
21 automobile.

22 b. The premium charged for the physical damage coverage on a
23 policy containing a "named excluded driver" endorsement shall not
24 reflect the claim experience or driving record of the "named excluded
25 driver" or drivers.

26 c. Election of a "named excluded driver" endorsement shall be in
27 writing and signed by the named insured on a form prescribed by the
28 commissioner. The "named excluded driver" endorsement shall
29 continue in force as to subsequent renewal or replacement policies
30 until the insurer or its authorized representative receives a properly
31 executed form electing to discontinue the endorsement.

32 d. Notwithstanding any other provision of the law to the contrary,
33 no person, including, but not limited to, an insurer or an insurance
34 producer, shall be liable in an action for damages on account of the
35 election of a "named excluded driver" endorsement.

36 e. The commissioner may promulgate rules and regulations
37 necessary to implement the provisions of this section.

38

39 66. (New section) If an insurer has a financial arrangement with
40 an auto body repair shop or other repair facility or a network of
41 facilities for the purpose of repairing vehicles covered under physical
42 damage, collision, or comprehensive coverages, the insurer shall not
43 deny a person the right to select an auto body repair shop or other
44 repair facility of his choice for repair of a covered vehicle, provided
45 that such auto body repair shop or other repair facility elected by the
46 person accepts the same terms and conditions as the shop, facility, or

1 network with which the insurer has an arrangement and agrees to
2 repair the covered vehicle at the same price.

3

4 67. (New section) a. The Commissioner of Banking and Insurance
5 may, in connection with any profits report made under P.L.1988, c.118
6 (C.17:29A-5.6 et seq.), require a review of all or part of the filing by
7 qualified independent actuary, including the elements of the filing
8 including the insurer or filer's assumptions with respect to the
9 development of losses or loss adjustment expenses developed to an
10 ultimate basis, allowance for profit and contingencies and anticipated
11 investment income.

12 b. For the purposes of this section, "qualified independent actuary"
13 means a person or firm with annual billings of at least \$5,000,000, who
14 has not worked for the insurer or filer whose filing is under review
15 during the previous three year period.

16

17 68. (New section) a. For the purposes of this section:

18 "Qualified person" means a person qualified by the Commissioner
19 of Banking and Insurance to intervene in public hearings pursuant to
20 this section;

21 "Rate filing" means a filing for a rate increase by an automobile
22 insurer writing private passenger automobile insurance in this State,
23 other than a rate filing made pursuant to any statutory change in
24 coverage provided under a policy of private passenger automobile
25 insurance.

26 b. The Commissioner of Banking and Insurance shall establish
27 standards for qualifying persons to intervene in rate filings pursuant to
28 this section. The standards shall include, but shall not necessarily be
29 limited to, requiring that any person intervening in a rate filing
30 demonstrate: (1) expertise in the insurance laws of this State; (2) an
31 understanding of the actuarial principles employed in establishing rates
32 and rating systems; (3) sufficient access to a qualified actuary and
33 sufficient expertise to conduct a technical examination of a rate filing;
34 (4) sufficient resources to intervene in the rate filing process as
35 provided herein; and (5) that the person represents the interest of
36 consumers.

37 c. The commissioner shall require such documentation as he
38 determines is necessary to qualify a person to intervene in a rate filing,
39 and may charge a fee for registration with the department as an
40 intervenor, which fee shall be payable annually.

41 d. The commissioner may remove the registration of an intervenor
42 if he determines that (1) the intervenor no longer meets the
43 qualifications, or (2) if the intervenor is convicted of a crime or loses
44 a professional license for misconduct.

45 e. If an insurer or rating organization files for a rate increase for
46 private passenger automobile insurance, the commissioner shall notify

1 the public of the proposed rate change in a newspaper or newspapers
2 of general circulation throughout the State. A qualified person may
3 request, and shall receive, a copy of the rate filing and any
4 amendments and supplements thereto and shall pay the expenses in
5 connection therewith. The qualified person may request that the
6 commissioner certify the rate filing for a hearing pursuant to section
7 14 of P.L.1944, c.27 (C:17:29A-14).

8 f. The commissioner shall establish by regulation the terms and
9 conditions under which the proceedings under this section shall be
10 conducted, including, but not limited to the supporting material which
11 shall accompany the intervention.

12 g. Upon determining that the intervenor has demonstrated that the
13 qualified person has made a substantial contribution to the adoption of
14 any order, regulation, or decision by the commissioner or a court in
15 connection with a rate filing made pursuant to this section, the
16 commissioner shall award reasonable advocacy and witness fees and
17 expenses.

18

19 69. (New section) a. Except for the plan established pursuant to
20 section 1 of P.L.1970, c.215 (C.17:29D-1), every insurer writing
21 private passenger automobile insurance in this State pursuant to
22 P.L.1972, c.70 (C.39:6A-1 et seq.) shall file rates with the
23 Commissioner of Banking and Insurance which result in:

24 (1) a reduction of at least 25% from the personal injury protection
25 territorial base rate applicable to medical expense benefits, at least
26 10% of which shall reflect a reduction in the actuarial value of the
27 medical expense benefits provided pursuant to section 4 of P.L.1972,
28 c.70 (C.39:6A-4), within the policy limits provided for in that section;

29 (2) a reduction of at least 22% in the territorial base rate for bodily
30 injury liability coverage applicable to named insureds to whom the
31 Limitation on Lawsuit Option provided for in subsection a. of section
32 8 of P.L.1972, c.70 (C.39:6A-8) applies;

33 (3) a reduction of at least 6% in the territorial base rate for
34 collision coverage which shall reflect the provisions of section 66 of
35 this amendatory and supplementary act; and

36 (4) after the reductions required pursuant to paragraphs (1), (2) and
37 (3) of this subsection have been applied, an additional aggregate
38 reduction of at least 3% in the territorial base rates for personal injury
39 protection, bodily injury, property damage, comprehensive and
40 collision coverages, as apportioned by the insurer and approved by the
41 commissioner, which reduction is attributable to the effect of the
42 enhanced insurance fraud provisions of this amendatory and
43 supplementary act and of other such laws including, but not limited to
44 P.L.1997, c.353 (C.2C:21-4.2 et seq.) and P.L.1997, c.151
45 (C.17:33B-64 et seq.).

46 b. The rate filings reflecting these reductions shall apply to policies

1 issued or renewed on or after 90 days following:

2 (1) the establishment by the commissioner of basic benefits
3 required to be provided pursuant to section 4 of P.L.1972, c.70
4 (C.39:6A-4); or

5 (2) the adoption by rule of the professional boards of the
6 designation of valid diagnostic tests pursuant to the provisions of
7 section 12 of P.L. , c. (C.)(now before the Legislature as this
8 bill);

9 whichever is later.

10

11 70. Section 3 of P.L.1991,c.154 (C.17:28-1.7) is amended to read
12 as follows:

13 3. Every owner, registrant or operator of a motor bus registered or
14 principally garaged in this State and every person or organization
15 legally responsible for his acts or omissions, is hereby exempted from
16 tort liability for noneconomic loss to a passenger who has a right to
17 receive benefits under section 2 of this act as a result of bodily injury
18 arising out of the ownership, operation, maintenance or use of a motor
19 bus in this State, unless that person has sustained a personal injury
20 which results in death; dismemberment; significant disfigurement or
21 significant scarring; [a fracture]displaced fractures; loss of a fetus;
22 [permanent loss of use of a body organ, member, function or system;
23 permanent consequential limitation of use of a body organ or member;
24 significant limitation of use of a body function or system; or a
25 medically determined injury or impairment of a non-permanent nature
26 which prevents the injured person from performing substantially all of
27 the material acts which constitute that person's usual and customary
28 daily activities for not less than 90 days during the 180 days
29 immediately following the occurrence of the injury or impairment] or
30 a permanent injury within a reasonable degree of medical probability,
31 other than scarring or disfigurement. An injury shall be considered
32 permanent when the body part or organ, or both, has not healed to
33 function normally and will not heal to function normally with further
34 medical treatment. For the purposes of this subsection, "physician"
35 means a physician as defined in section 5 of P.L.1939,c.115 (C.45:9-
36 5.1).

37 In order to satisfy the provisions of this section, the plaintiff shall,
38 within 60 days following the date of the answer to the complaint by
39 the defendant, provide the defendant with a certification from the
40 licensed treating physician or a board-certified licensed physician to
41 whom the plaintiff was referred by the treating physician. The
42 certification shall state, under penalty of perjury, that the plaintiff has
43 sustained an injury described above. The certification shall be based
44 on and refer to objective clinical evidence, which may include medical
45 testing, except that any such testing shall be performed in accordance
46 with medical protocols pursuant to subsection a. of section 4 of

1 P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
2 administered in accordance with section 12 of P.L. , c. (C.)(now
3 before the Legislature as this bill). Such testing may not be
4 experimental in nature or dependent entirely upon subjective patient
5 response. The court may grant no more than one additional period not
6 to exceed 60 days to file the certification pursuant to this section upon
7 a finding of good cause.

8 A person is guilty of a crime of the fourth degree if that person
9 purposefully or knowingly makes, or causes to be made, a false,
10 fictitious, fraudulent, or misleading statement of material fact in, or
11 omits a material fact from, or causes a material fact to be omitted
12 from, any certification filed pursuant to this section. Notwithstanding
13 the provisions of subsection e. of N.J.S. 2C:44-1, the court shall deal
14 with a person who has been convicted of a violation of this section by
15 imposing a sentence of imprisonment unless, having regard to the
16 character and condition of the person, the court is of the opinion that
17 imprisonment would be a serious injustice which overrides the need to
18 deter such conduct by others. If the court imposes a noncustodial or
19 probationary sentence, such sentence shall not become final for 10
20 days in order to permit the appeal of such sentence by the prosecution.
21 Nothing in this section shall preclude an indictment and conviction for
22 any other offense defined by the laws of this State. In addition, any
23 professional license held by the person shall be forfeited according to
24 the procedures established by section 4 of P.L.1997, c.353 (C.2C:51-
25 5).

26 (cf: P.L.1991, c.154, s.3)

27
28 71. Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended to read
29 as follows:

30 2. In the event medical expense benefits paid by an insurer, in
31 accordance with subsection a. of section 4 of P.L.1972, c.70
32 (C.39:6A-4) or section 4 of P.L. , c. (C.)(now before the
33 Legislature as this bill), are in excess of \$75,000.00 on account of
34 personal injury to any one person in any one accident, the Unsatisfied
35 Claim and Judgment Fund shall assume such excess up to \$250,000
36 and reimburse the insurer therefor in accordance with rules and
37 regulations promulgated by the commissioner; provided, however, that
38 this provision is not intended to broaden the coverage available to
39 accidents involving uninsured or hit-and-run automobiles, to provide
40 extraterritorial coverage, or to pay excess medical expenses.

41 (cf: P.L.1990, c.8, s.14)

42
43 72. This act shall take effect 90 days following the establishment
44 by the Commissioner of Banking and Insurance of basic benefits
45 required to be provided pursuant to section 4 of P.L.1972, c.70
46 (C.39:6A-4) or the adoption by rule of the professional boards of the

1 designation of valid diagnostic tests pursuant to the provisions of
2 section 12 of this act, whichever is later, except that sections 49
3 through 63 shall take effect on the 90th day after the date of
4 enactment and sections 1, 12, 26 through 48, 64 through 67 and 69
5 shall take effect immediately. Prior to the effective date of any section
6 of this act, the Commissioner of Banking and Insurance may take
7 those actions and promulgate those regulations necessary to implement
8 the provisions of this act.

9

10

11

STATEMENT

12

13 This bill makes a number of substantial changes to the private
14 passenger automobile insurance system under the state's no-fault law.

15

16 The bill modernizes the definition section of the no-fault law,
17 modifying the 26-year old descriptions of medical expenses and
18 hospital expenses to take into account health care professions licensed
19 since that time, and setting forth a new definition of "hospital" to take
20 into account the larger number of facilities which now come under the
21 purview of the act. The bill establishes a new type of policy, the basic
22 policy, which would permit people to meet the state's mandatory
23 insurance requirement at substantially lower cost than at present, and
24 is directed toward reducing the number of uninsured drivers. This
25 policy provides for \$15,000 medical expense benefits, with benefits for
26 catastrophic injuries, as enumerated in the bill, which would permit
27 recovery up to \$250,000. The basic policy also includes \$5,000
28 coverage for property damage liability. It is anticipated that
29 individuals purchasing this policy would be those with few tangible
30 assets to protect as well as lower-income persons who cannot now
31 purchase insurance because it is unaffordable. It is likely that many
32 drivers now driving without insurance will purchase this coverage,
33 thus ensuring that in the event they are seriously injured they will be
34 able to pay for their medical bills. It is estimated that on average, this
35 policy will cost somewhere around \$350 to \$400. The bill contains a
36 provision that prospective purchasers of this coverage must be notified
37 that purchase of the policy could put their assets at risk. Drivers with
38 full coverage who are injured by someone who elects a basic policy
39 would be covered by their own personal injury protection coverage,
40 and would collect benefits for pain and suffering under their own
41 insurance policies.

41

42 In order to reduce the overutilization of medical benefits under
43 automobile insurance policies, which is the principal cause of the
44 escalation in premiums in recent years, the bill establishes the standard
45 that providers are expected to use commonly accepted protocols in
46 treating patients injured in automobile accidents; while the bill does
not impose a rigid adherence to treatment protocols, the protocols

1 establish a baseline for determining whether unnecessary treatment is
2 taking place. Similarly, to better define standards for diagnostic
3 testing, the bill requires the professional boards in the Division of
4 Consumer Affairs to establish a list of diagnostic tests generally
5 determined to be acceptable for treatment in the respective
6 professions. This is intended to eliminate the problem of the use of
7 diagnostic tests which are not generally recognized as useful or
8 appropriate.

9 In order to reduce the number of disputes regarding medical
10 treatment, the bill provides for more specificity in the policy form
11 itself, so that it would be more similar to a health insurance policy.
12 The lack of specificity as to eligible benefits in the policy form dates
13 back to the time when no-fault policies contained unlimited medical
14 benefits and there was less need for specificity. This would not serve
15 to limit such things as the purchase of specialized vehicles for injured
16 persons or other special benefits provided in connection with personal
17 injury protection coverage which are not normally reimbursable under
18 health insurance, but would, among other things, make disputes over
19 the eligibility of benefits easier to decide by the dispute resolution
20 procedure established in the policy.

21 The bill replaces the present arbitration procedure for medical
22 expense benefits with a refined dispute resolution procedure; the
23 existing arbitration procedure, which uses part time arbitrators who
24 are also engaged in the active practice of law and who are not required
25 to set forth their decisions in writing, is generally recognized as being
26 ineffective in terms of holding down costs. The commissioner would
27 establish standards of performance for a dispute resolution
28 organization and establish qualifications for full-time dispute
29 resolution professionals, similar to the system now in use in New
30 York, and decisions would have to be in writing and would have value
31 as precedent for subsequent cases. Under certain circumstances set
32 forth in the bill, any party, including the person conducting the dispute
33 resolution proceedings, could ask for a medical review for questions
34 including medical necessity or causality. The reviews would be
35 conducted by a professional medical review organization certified by
36 the commissioner. The organization could not have any affiliation
37 with an insurer or a dispute resolution organization, and the reviews
38 would be distributed on a random basis among qualified professionals
39 in the same discipline as the health care provider whose treatment is
40 under review. It is anticipated, however, that because of the enhanced
41 specificity of the insurance policy and the establishment of standard
42 treatment protocols and standards for diagnostic testing, substantially
43 fewer cases would be referred to dispute resolution.

44 The bill establishes a committee, which would include public
45 members, to collect accident data and reconfigure the existing
46 automobile insurance rating territories. Existing territories are over 50

1 years old and the boundaries which delineate them do not adequately
2 reflect demographic changes in the state which have occurred since
3 they were drawn. The bill establishes standards for the reconfiguration
4 of territories and permits the commissioner to allow insurers to use
5 individual territorial configurations if it is deemed to be in the public
6 interest. It is anticipated that a redrawing of territorial boundaries will
7 ameliorate the inequities presented by the existence of the territorial
8 rating caps established in 1983.

9 The bill establishes an Office of Insurance Fraud Prosecutor in the
10 Division of Criminal Justice in the Department of Law and Public
11 Safety. To provide for more effective investigation and prosecution
12 of fraud than exists at the present time, the bill consolidates the
13 investigatory component of the Division of Fraud Prevention in the
14 Department of Banking and Insurance and the Office of Fraud
15 Prosecutor. It also establishes a formal liaison between the Office of
16 Insurance Fraud Prosecutor and the county prosecutors, and provides
17 for the reimbursement of county prosecutors for their anti-fraud
18 activities by the Attorney General if he deems it to be warranted. The
19 Office of Insurance Fraud Prosecutor, which encompasses both
20 property and casualty and life and health insurance-related anti-fraud
21 activities, would be responsible for coordinating anti-fraud activities
22 on a statewide basis, including state agencies.

23 The bill also establishes the Office of the Insurance Claims
24 Ombudsman in the Division of Consumer Affairs in the Department of
25 Law and Public Safety. The Ombudsman would perform many of the
26 duties now performed by the Department of Banking and Insurance in
27 investigating consumer complaints against insurers. It would also
28 monitor possible violations of the insurance trade practices laws, and
29 report them to the Commissioner of Banking and Insurance. The
30 Ombudsman would also be charged with publishing and disseminating
31 buyers' guides for all lines of insurance. The bill requires that all
32 insurers establish an internal procedure for the adjudication of
33 consumer complaints; this and other avenues of appeal would have to
34 be exhausted before the Ombudsman would become involved in a
35 claims dispute.

36 The bill provides for the election of a "named excluded driver" on
37 automobile insurance policy forms. At present, if there is a young
38 driver in a household, insurers apply the high rating factors applicable
39 to that driver on the most expensive car in the household. This option
40 would permit the exclusion of a specific driver in the household on a
41 specified car. This would mean that the excluded driver could not
42 drive the car, but it also means that the premiums for that car would
43 be substantially lower. In the event that the excluded driver does drive
44 the car and is in an accident, no physical damage coverage (collision
45 and comprehensive) would apply to the car, and the insured would
46 have to pay the costs of repair himself. All other coverages, including

1 personal injury protection coverage and the liability coverages, would
2 continue to apply.

3 The bill contains a provision that certain portions of a filing under
4 the excess profits law could be submitted for review to an outside
5 independent actuary. These components of the excess profits filing
6 would be those upon which the judgment of the filer may be viewed as
7 subjective.

8 Finally, in order to further limit the number of lawsuits filed and
9 thereby reduce premiums for bodily injury coverage, the bill
10 completely eliminates the existing verbal threshold and substitutes a
11 new verbal threshold which is intended to eliminate some of the
12 lawsuits for minor injuries, including soft tissue injuries, which are
13 neither serious nor permanent. The new threshold would permit suits
14 in the event of death, dismemberment, significant disfigurement or
15 significant scarring, displaced fractures, loss of a fetus, or permanent
16 injuries other than significant disfigurement or significant scarring if
17 the injury is permanent to the extent that the body part or organ
18 system has not healed to function normally and will not heal to
19 function normally with further medical treatment. Certification by a
20 licensed treating physician that the body part or organ system has not
21 healed to function normally and will not heal to function normally
22 would be necessary before suit was filed. The certification would have
23 to be based on objective clinical evidence which would include medical
24 testing. Fraudulent certification by a physician could be a crime of the
25 fourth degree. No provision in this bill is intended to repeal otherwise
26 applicable case law.

27 The bill establishes terms and conditions under which a person
28 could intervene in private passenger rate filings for rate increases.
29 This provides that such intervenors must be qualified by the
30 commissioner, and that they demonstrate the capacity to intervene in
31 a rate filing with actuarial support.

32 The bill provides for a mandatory rate decrease applicable to
33 various coverages which will result in a reduction of 15% from a
34 typical policy with full coverage.

STATEMENT TO

SENATE, No. 3

with Assembly Floor Amendments
(Proposed By Assemblyman BATEMAN)

ADOPTED: APRIL 20, 1998

These amendments amend Senate, No. 3 to make it identical to Assembly, No. 1970; both bills are entitled "The Automobile Insurance Cost Reduction Act."

First, the amendments add a bodily injury liability component to the basic automobile insurance policy, in the amount of \$10,000 for injury or death to one or more persons in any one accident.

Second, the provisions regarding the reconfiguration of rating territories used by insurers have been rewritten. The amendments establish standards for the reconfiguration of territories and permit insurers to use individual territorial rating plans they develop, to adopt the individual plan of another insurer, or that drafted by an advisory commission, which includes public members, created to reconfigure the territories, subject to the approval of the Commissioner of Banking and Insurance. New territorial rating plans must be in place no later than March 1, 1999.

Next, in a related amendment, the territorial rate cap established in 1983 is eliminated, effective for policies issued or renewed on or after the effective date of an insurer's revised territorial rating plan, but no later than March 1, 1999.

In an effort to further combat the problem of uninsured motorists, the amendments require the Division of Motor Vehicles to establish a data base in order to compare, by computer matching, the motor vehicles registered in this State with the motor vehicles insured in this State. The data base will be funded from the Uninsured Motorist Prevention Fund, but the amendments provide that the State Treasurer shall not disburse any funds to the division for the costs associated with the establishment and operation of the data base until the Director of the Division of Motor Vehicles certifies to the satisfaction of the Treasurer that the data base is fully operational. One purpose of this database is to provide access to this information for State and local law enforcement agencies. Insurers are required to provide the insurance information every month to the division for the comparison. The required insurance information will be confidential and proprietary and is not a public record subject to disclosure.

The provision of the current law which requires the establishment of a voluntary rating tier to accommodate eligible persons in automobile insurance urban enterprise zones under the assigned risk plan, which is set to expire on December 31, 2000, is also amended to

provide that it shall not expire until five years after the first policy using that rating tier is issued.

Finally, technical amendments are made to protect employees who are transferred from the Division of Insurance Fraud Protection in the Department of Banking and Insurance to the Office of the Fraud Prosecutor, and to ensure that none of the supervisory or investigative personnel in the Office are considered confidential employees under the "New Jersey Employer-Employee Relations Act."

Additional technical amendments are made to the effective date and other provisions of the bill to reflect the above changes.

ASSEMBLY, No. 1970

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED APRIL 16, 1998

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Co-Sponsored by:

**Assemblymen Collins, DiGaetano, Stuhltrager, Kelly, Gregg, Rooney,
Assemblywoman Vandervalk, Assemblymen Weingarten, O'Toole,
Azzolina, Thompson, Felice, Garrett, Assemblywoman Wright,
Assemblymen Talarico, Biondi, Merkt, Moran, Bodine, Chatzidakis,
Kramer, Holzapfel, Wolfe, Assemblywoman Murphy, Assemblymen
Asselta, Gibson, Assemblywoman Heck, Assemblymen LeFevre, T.Smith,
Blee, Assemblywoman Farragher, Assemblyman Arnone, Assemblywoman
Myers, Assemblymen Cottrell, Malone, Assemblywoman Crecco,
Assemblymen DeCroce, Conners and Conaway**

SYNOPSIS

"The Automobile Insurance Cost Reduction Act"

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 4/21/1998)

1 AN ACT concerning automobile insurance and revising parts of the
2 statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) a. This act shall be known and may be cited as
8 the "Automobile Insurance Cost Reduction Act."

9 b. The Legislature finds and declares:

10 **WHEREAS**, While New Jersey's automobile insurance no-fault law,
11 enacted twenty-six years ago, has provided valuable benefits in the
12 form of medical benefits and wage replacement benefits, without
13 regard to fault, to New Jersey residents who have been injured in
14 an automobile accident; and

15 **WHEREAS**, Medical benefits paid by no-fault policies over those years
16 amount to billions of dollars, which would otherwise have been paid
17 by health insurance, thus raising the cost of health insurance for
18 everyone; and

19 **WHEREAS**, While medical benefits under no-fault insurance were
20 unlimited under the law enacted in 1972, the rapidly escalating cost
21 of those benefits made it necessary for the Legislature to reduce
22 those benefits to a limit of \$250,000 in 1990; and

23 **WHEREAS**, Since the enactment of the verbal threshold in 1988, the
24 substantial increase in the cost of medical expense benefits indicates
25 that the benefits are being overutilized for the purpose of gaining
26 standing to sue for pain and suffering, thus undermining the
27 limitations imposed by the threshold and necessitating the
28 imposition of further controls on the use of those benefits, including
29 the establishment of a basis for determining whether treatments or
30 diagnostic tests are medically necessary; and

31 **WHEREAS**, The present arbitration system has not sufficiently
32 addressed the Legislature's goal of eliminating payment for
33 treatments and diagnostic tests which are not medically necessary,
34 leading to the belief that a revised dispute resolution mechanism
35 needs to be established which will accomplish this goal; and

36 **WHEREAS**, The principle underlying the philosophical basis of the no-
37 fault system is that of a trade-off of one benefit for another; in this
38 case, providing medical benefits in return for a limitation on the
39 right to sue for non-serious injuries; and

40 **WHEREAS**, While the Legislature believes that it is good public policy
41 to provide medical benefits on a first party basis, without regard to
42 fault, to persons injured in automobile accidents, it recognizes that
43 in order to keep premium costs down, the cost of the benefit must

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 underlined thus is new matter.

1 be offset by a reduction in the cost of other coverages, most
2 notably a restriction on the right of persons who have non-
3 permanent or non-serious injuries to sue for pain and suffering; and
4 **WHEREAS**, The high cost of automobile insurance in New Jersey has
5 presented a significant problem for many-lower income residents of
6 the state, many of whom have been forced to drop or lapse their
7 coverage in violation of the State's mandatory motor vehicle
8 insurance laws, making it necessary to provide a lower-cost option
9 to protect people by providing coverage to pay their medical
10 expenses if they are injured; and

11 **WHEREAS**, To meet these goals, this legislation provides for the
12 creation of two insurance coverage options, a basic policy and a
13 standard policy, provides for cost containment of medical expense
14 benefits through a revised dispute resolution proceeding, provides
15 for a revised lawsuit threshold for suits for pain and suffering which
16 will eliminate suits for injuries which are not serious or permanent,
17 including those for soft tissue injuries, would more precisely define
18 the benefits available under the medical expense benefits coverage,
19 and establishes standard treatment and diagnostic procedures
20 against which the medical necessity of treatments reimbursable
21 under medical expense benefits coverage would be judged; and

22 **WHEREAS**, It is generally recognized that fraud, whether in the form
23 of inappropriate medical treatments, inflated claims, staged
24 accidents, falsification of records, or in any other form, has
25 increased premiums, and must be uncovered and vigorously
26 prosecuted, and while the pursuit of those who defraud the
27 automobile insurance system has heretofore been addressed by the
28 State through various agencies, it has been without sufficient
29 coordination to aggressively combat fraud, leading to the
30 conclusion that greater consolidation of agencies which were
31 created to combat fraud is necessary to accomplish this purpose;
32 and

33 **WHEREAS**, With these many objectives, the Legislature nevertheless
34 recognizes that to provide a healthy and competitive automobile
35 insurance market, insurers are entitled to earn an adequate rate of
36 return through the ratemaking process, which shall reflect the
37 impact of the cost-saving provisions of this act and other recent
38 legislative insurance reforms; and

39 **WHEREAS**, The Legislature has thus addressed these and other issues
40 in this comprehensive legislation designed to preserve the no-fault
41 system, while at the same time reducing unnecessary costs which
42 drive premiums higher.

43
44 2. Section 2 of P.L.1972, c.70 (C.39:6A-2) is amended to read as
45 follows:

46 2. As used in this act:

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

14 b. "Essential services" means those services performed not for
15 income which are ordinarily performed by an individual for the care
16 and maintenance of such individual's family or family household.

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

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

22 e. "Medical expenses" means [expenses for medical treatment,
23 surgical treatment, dental treatment, professional nursing services,
24 hospital expenses, rehabilitation services, X-ray and other diagnostic
25 services, prosthetic devices, ambulance services, medication and other
26 reasonable and necessary expenses resulting from the treatment
27 prescribed by persons licensed to practice medicine and surgery
28 pursuant to R.S.45:9-1 et seq., dentistry pursuant to R.S.45:6-1 et
29 seq., psychology pursuant to P.L.1966, c. 282 (C.45:14B-1 et seq.) or
30 chiropractic pursuant to P.L.1953, c. 233 (C.45:9-41.1 et seq.) or by
31 persons similarly licensed in other states and nations or] reasonable
32 and necessary expenses for treatment or services as provided by the
33 policy, including medical, surgical, rehabilitative and diagnostic
34 services and hospital expenses, provided by a health care provider
35 licensed or certified by the State or by another state or nation, and
36 reasonable and necessary expenses for ambulance services or other
37 transportation, medication and other services as may be provided for,
38 and subject to such limitations as provided for, in the policy, as
39 approved by the commissioner. "Medical expenses" shall also include
40 any nonmedical remedial treatment rendered in accordance with a
41 recognized religious method of healing.

42 f. "Hospital expenses" means [:

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

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

46 (3) The cost of other hospital services, such as operating room;

1 medicines, drugs, anesthetics; treatments with X-ray, radium and
2 other radioactive substances; laboratory tests, surgical dressings and
3 supplies; and other medical care and treatment rendered by the
4 hospital;

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

6 (5) The cost of medical supplies, such as prescribed drugs and
7 medicines; blood and blood plasma; artificial limbs and eyes; surgical
8 dressings, casts, splints, trusses, braces, crutches; rental of
9 wheelchair, hospital bed or iron lung; oxygen and rental of equipment
10 for its administration] the cost of treatment and services, as provided
11 in the policy approved by the commissioner, by a licensed and
12 accredited acute care facility which engages primarily in providing
13 diagnosis, treatment and care of sick and injured persons on an
14 inpatient or outpatient basis; the cost of covered treatment and
15 services provided by an extended care facility which provides room
16 and board and skilled nursing care 24 hours a day and which is
17 recognized by the administrators of the federal Medicare program as
18 an extended care facility; and the cost of covered services at an
19 ambulatory surgical facility supervised by a physician licensed in this
20 State or in another jurisdiction and recognized by the Commissioner
21 of Health and Senior Services, or any other facility licensed, certified
22 or recognized by the Commissioner of Health and Senior Services or
23 the Commissioner of Human Services or a nationally recognized
24 system such as the Commission on Accreditation of Rehabilitation
25 Facilities, or by another jurisdiction in which it is located.

26 g. "Named insured" means the person or persons identified as the
27 insured in the policy and, if an individual, his or her spouse, if the
28 spouse is named as a resident of the same household, except that if the
29 spouse ceases to be a resident of the household of the named insured,
30 coverage shall be extended to the spouse for the full term of any policy
31 period in effect at the time of the cessation of residency.

32 h. "Pedestrian" means any person who is not occupying, entering
33 into, or alighting from a vehicle propelled by other than muscular
34 power and designed primarily for use on highways, rails and tracks.

35 i. "Noneconomic loss" means pain, suffering and inconvenience.

36 j. "Motor vehicle" means a motor vehicle as defined in R.S.39:1-1,
37 exclusive of an automobile as defined in subsection a. of this section.

38 k. "Economic loss" means uncompensated loss of income or
39 property, or other uncompensated expenses, including, but not limited
40 to, medical expenses.

41 l. "Health care provider" or "provider" means those persons
42 licensed or certified to perform health care treatment or services
43 compensable as medical expenses and shall include, but not be limited
44 to, (1) a hospital or health care facility which is maintained by a state
45 or any of its political subdivisions, (2) a hospital or health care facility
46 licensed by the Department of Health and Senior Services, (3) other

1 hospitals or health care facilities designated by the Department of
2 Health and Senior Services to provide health care services, or other
3 facilities, including facilities for radiology and diagnostic testing,
4 freestanding emergency clinics or offices, and private treatment
5 centers, (4) a nonprofit voluntary visiting nurse organization providing
6 health care services other than in a hospital, (5) hospitals or other
7 health care facilities or treatment centers located in other states or
8 nations, (6) physicians licensed to practice medicine and surgery, (7)
9 licensed chiropractors, (8) licensed dentists, (9) licensed optometrists,
10 (10) licensed pharmacists, (11) licensed chiropodists, (12) registered
11 bio-analytical laboratories, (13) licensed psychologists, (14) licensed
12 physical therapists, (16) certified nurse-midwives, (17) certified nurse-
13 practitioners/clinical nurse-specialists, (18) licensed health
14 maintenance organizations, (19) licensed orthotists and prosthetists,
15 and (20) providers of other health care services or supplies, including
16 durable medical goods.

17 m. "Medically necessary" means that the treatment is consistent
18 with the symptoms or diagnosis, and treatment of the injury (1) is not
19 primarily for the convenience of the injured person or provider, (2) is
20 the most appropriate standard or level of service which is in
21 accordance with standards of good practice and standard professional
22 treatment protocols, as such protocols may be recognized or
23 designated by the Commissioner of Banking and Insurance, in
24 consultation with the Commissioner of Health and Senior Services, by
25 a professional licensing or certifying board in the Division of
26 Consumer Affairs in the Department of Law and Public Safety, or by
27 a nationally recognized professional organization, and (3) does not
28 involve unnecessary or repeated diagnostic testing.

29 n. "Standard automobile insurance policy" means an automobile
30 insurance policy with at least the coverage required pursuant to
31 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4).

32 o. "Basic automobile insurance policy" means an automobile
33 insurance policy pursuant to section of 4 of P.L. , c. (C.)(now
34 before the Legislature as this bill).

35 (cf: P.L.1983, c.362, s.6)

36

37 3. Section 3 of P.L.1972, c.70 (C.39:6A-3) is amended to read as
38 follows:

39 3. Compulsory automobile insurance coverage; limits. **[Every]**
40 Except as provided by section 4 of P.L. , c. (C.)(now
41 before the Legislature as this bill), every owner or registered owner of
42 an automobile registered or principally garaged in this State shall
43 maintain automobile liability insurance coverage, under provisions
44 approved by the Commissioner of Banking and Insurance, insuring
45 against loss resulting from liability imposed by law for bodily injury,
46 death and property damage sustained by any person arising out of the

1 ownership, maintenance, operation or use of an automobile wherein
2 such coverage shall be at least in:

3 a. an amount or limit of \$15,000.00, exclusive of interest and
4 costs, on account of injury to, or death of, one person, in any one
5 accident; and

6 b. an amount or limit, subject to such limit for any one person so
7 injured or killed, of \$30,000.00, exclusive of interest and costs, on
8 account of injury to or death of, more than one person, in any one
9 accident; and

10 c. an amount or limit of \$5,000.00, exclusive of interest and costs,
11 for damage to property in any one accident.

12 No licensed insurance carrier shall refuse to renew the required
13 coverage stipulated by this act of an eligible person as defined in
14 section 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with
15 the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or
16 with the consent of the Commissioner of Banking and Insurance.

17 (cf: P.L.1990, c.8, s.3)

18

19 4. (New section) As an alternative to the mandatory coverages
20 provided in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-
21 4), any owner or registered owner of an automobile registered or
22 principally garaged in this State may elect a basic automobile insurance
23 policy providing the following coverage:

24 a. Personal injury protection coverage, for the payment of benefits
25 without regard to negligence, liability or fault of any kind, to the
26 named insured and members of his family residing in his household,
27 who sustained bodily injury as a result of an accident while occupying,
28 entering into, alighting from or using an automobile, or as a
29 pedestrian, caused by an automobile or by an object propelled by or
30 from an automobile, to other persons sustaining bodily injury while
31 occupying, entering into, alighting from or using the automobile of the
32 named insured, with the permission of the named insured, and to
33 pedestrians sustaining bodily injury caused by the named insured's
34 automobile or struck by an object propelled by or from such
35 automobile. "Personal injury protection coverage" issued pursuant to
36 this section means and includes payment of medical expense benefits,
37 as provided in the policy and approved by the commissioner, for the
38 reasonable and necessary treatment of bodily injury in an amount not
39 to exceed \$15,000 per person per accident; except that, medical
40 expense benefits shall be paid in an amount not to exceed \$250,000 for
41 the reasonable and necessary treatment of bodily injuries which result
42 in: death; permanent and significant brain injury; quadriplegia or
43 paraplegia; dismemberment; total loss of vision in one or both eyes;
44 total loss of hearing in one or both ears; significant permanent injury
45 due to prominent facial, scalp or neck scarring. In the event benefits
46 paid by an insurer pursuant to this subsection are in excess of \$75,000

1 on account of personal injury to any one person in any one accident,
2 such excess shall be paid by the insurer in consultation with the
3 Unsatisfied Claim and Judgment Fund Board and shall be reimbursable
4 to the insurer from the Unsatisfied Claim and Judgment Fund pursuant
5 to section 2 of P.L.1977, c.310 (C.39:6-73.1). Benefits provided
6 under basic coverage shall be in accordance with a benefit plan
7 provided in the policy and approved by the commissioner. The policy
8 form, which shall be subject to the approval of the commissioner, shall
9 set forth the benefits provided under the policy, including eligible
10 medical treatments and services as well as such other benefits as the
11 policy may provide. The commissioner shall set forth by regulation the
12 basic benefits which shall be included in the policy. Medical
13 treatments, diagnostic tests, and services provided by the policy shall
14 be rendered in accordance with commonly accepted protocols and
15 professional standards and practices which are commonly accepted as
16 being beneficial for the treatment of the covered injury. Protocols and
17 professional standards and practices which are deemed to be
18 commonly accepted pursuant to this section shall be those recognized
19 by national standard setting organizations, national or state
20 professional organizations of the same discipline as the treating
21 provider, or those designated or approved by the commissioner in
22 consultation with the professional licensing boards in the Division of
23 Consumer Affairs in the Department of Law and Public Safety.
24 Protocols shall be deemed to establish guidelines as to standard
25 appropriate treatment for injuries sustained in automobile accidents,
26 but the establishment of standard treatment protocols or protocols for
27 the administration of diagnostic tests shall not be interpreted in such
28 a manner as to preclude variance from the standard when warranted by
29 reason of medical necessity. The policy form may provide for the
30 precertification of certain procedures, treatments, diagnostic tests, or
31 other services or for the purchase of durable medical goods, as
32 approved by the commissioner, provided that the requirement for
33 precertification shall not be unreasonable, and no precertification
34 requirement shall apply within ten days of the insured event. The
35 policy may provide that certain benefits provided by the policy which
36 are in excess of the basic benefits required by the commissioner to be
37 included in the policy may be subject to reasonable copayments in
38 addition to the copayments provided for herein, provided that the
39 copayments shall not be unreasonable and shall be established in such
40 as manner as not to serve to encourage underutilization of benefits
41 subject to the copayments, nor encourage overutilization of benefits.
42 The policy form shall clearly set forth any limitations on benefits or
43 exclusions, which may include, but need not be limited to, benefits
44 which are otherwise compensable under workers' compensation, or
45 benefits for treatments deemed to be experimental or investigational,
46 or benefits deducted pursuant to section 6 of P.L.1972, c.70

1 (C.39:6A-6). The commissioner may enlist the services of a benefit
2 consultant in establishing the basic benefits level provided in this
3 subsection, which shall be set forth by regulation no later than 90 days
4 following the enactment date of this amendatory and supplementary
5 act. The commissioner shall not advertise for the consultant as
6 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
7 9).

8 Medical expense benefits payable under this subsection shall not be
9 assignable, except to a provider of service benefits, in accordance with
10 policy terms approved by the commissioner, nor shall they be subject
11 to levy, execution, attachment or other process for satisfaction of
12 debts. Medical expense benefits payable in accordance with this
13 subsection may be subject to a deductible of up to \$250, and
14 copayments as provided for in the policy, if any. No insurer or
15 provider providing service benefits to an insured shall have a right of
16 subrogation for the amount of benefits paid pursuant to any deductible
17 or copayment under this section.

18 b. Liability insurance coverage insuring against loss resulting from
19 liability imposed by law for bodily injury, death and property damage
20 sustained by any person arising out of the ownership, maintenance,
21 operation or use of an automobile: (1) in an amount or limit of
22 \$10,000, exclusive of interests and costs, on account of injury to, or
23 death of, one or more persons in any one accident; and (2) in an
24 amount or limit of \$5,000, exclusive of interest and costs, for damage
25 to property in any one accident.

26 If a named insured has elected the basic automobile insurance policy
27 option and an immediate family member or members or relatives
28 resident in his household have one or more policies with the coverages
29 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and
30 39:6A-4), the provisions of section 12 of P.L.1983, c.362 (C.39:6A-
31 4.2) shall apply.

32 Every named insured and any other person to whom the basic
33 automobile insurance policy applies shall be subject to the tort option
34 provided in subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

35 No licensed insurance carrier shall refuse to renew the coverage
36 stipulated by this section of an eligible person as defined in section 25
37 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
38 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
39 the consent of the Commissioner of Banking and Insurance.

40

41 5. (New section) a. All automobile insurance policies issued or
42 renewed on or after the effective date of P.L. , c. (C.)(now
43 before the Legislature as this bill) shall be issued or renewed including
44 at least the coverages required pursuant to sections 3 and 4 of
45 P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless the named insured
46 elects a basic automobile insurance policy pursuant to section 4 of

1 P.L. , c. (C.)(now before the Legislature as this bill).
2 Election of a basic automobile insurance policy shall be in writing and
3 signed by the named insured on the coverage selection form required
4 by section 17 of P.L.1983, c.362 (C.39:6A-23). The coverage election
5 form shall contain a statement, clearly readable and in 12-point bold
6 type, in a form approved by the commissioner, that election of a basic
7 automobile insurance policy may subject the named insured to a claim
8 or judgment for noneconomic loss which is not covered by the basic
9 automobile insurance policy, and which may place his assets at risk,
10 and in the event the named insured is sued, the insurer shall not
11 provide legal counsel.

12 b. The insurance coverages provided for in section 4 of P.L. , c.
13 (C.)(now before the Legislature as this bill) shall be offered by
14 every insurer which writes insurance coverages pursuant to sections
15 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) for a period of
16 five years after the effective date of P.L. , c. (C.)(now
17 before the Legislature as this bill). The commissioner shall require
18 every company writing such insurance coverage to report to him
19 annually during that five-year period as to the number of policies
20 written pursuant to this subsection in the previous year, the number of
21 policies with the coverage offered pursuant to section 4 of P.L.1972,
22 c70 (C.39:6A-4) which have been converted to policies with the
23 coverage offered pursuant to section 4 of P.L. , c. (C.)(now
24 before the Legislature as this bill) and any other information the
25 commissioner may require. The commissioner shall then report to the
26 Governor and the Legislature regarding the acceptance of the basic
27 automobile insurance policy by the automobile insurance consumers of
28 this State annually for the first four years the basic policy is sold. On
29 or before January 1, 2003, the commissioner shall make a final,
30 cumulative report which shall include recommendations as to the
31 continuation of the basic policy to the Governor and the Legislature.
32

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

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

36 **【**Every automobile liability insurance policy, issued or renewed on
37 or after January 1, 1991, insuring an automobile as defined in section
38 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability
39 imposed by law for bodily injury, death and property damage sustained
40 by any person arising out of ownership, operation, maintenance or use
41 of an automobile shall provide personal injury protection coverage, as
42 defined hereinbelow, under provisions approved by the Commissioner
43 of Banking and Insurance, for the payment of benefits without regard
44 to negligence, liability or fault of any kind, to the named insured and
45 members of his family residing in his household who sustained bodily
46 injury as a result of an accident while occupying, entering into,

1 alighting from or using an automobile, or as a pedestrian, caused by an
2 automobile or by an object propelled by or from an automobile, to
3 other persons sustaining bodily injury while occupying, entering into,
4 alighting from or using the automobile of the named insured, with the
5 permission of the named insured, and to pedestrians, sustaining bodily
6 injury caused by the named insured's automobile or struck by an object
7 propelled by or from such automobile.

8 "Personal injury protection coverage" means and includes:

9 a. Medical expense benefits. Payment of reasonable medical
10 expense benefits in an amount not to exceed \$250,000 per person per
11 accident. In the event benefits paid by an insurer pursuant to this
12 subsection are in excess of \$75,000 on account of personal injury to
13 any one person in any one accident, such excess shall be paid by the
14 insurer in consultation with the Unsatisfied Claim and Judgment Fund
15 Board and shall be reimbursable to the insurer from the Unsatisfied
16 Claim and Judgment Fund pursuant to section 2 of P.L.1977, c.310
17 (C.39:6-73.1).

18 b. Income continuation benefits. The payment of the loss of
19 income of an income producer as a result of bodily injury disability,
20 subject to a maximum weekly payment of \$100.00. Such sum shall be
21 payable during the life of the injured person and shall be subject to an
22 amount or limit of \$5,200.00, on account of injury to any one person
23 in any one accident, except that in no case shall income continuation
24 benefits exceed the net income normally earned during the period in
25 which the benefits are payable.

26 c. Essential services benefits. Payment of essential services
27 benefits to an injured person shall be made in reimbursement of
28 necessary and reasonable expenses incurred for such substitute
29 essential services ordinarily performed by the injured person for
30 himself, his family and members of the family residing in the
31 household, subject to an amount or limit of \$12.00 per day. Such
32 benefits shall be payable during the life of the injured person and shall
33 be subject to an amount or limit of \$4,380.00, on account of injury to
34 any one person in any one accident.

35 d. Death benefits. In the event of the death of an income producer
36 as a result of injuries sustained in an accident entitling such person to
37 benefits under this section, the maximum amount of benefits which
38 could have been paid to the income producer, but for his death, under
39 subsection b. of this section shall be paid to the surviving spouse, or
40 in the event there is no surviving spouse, then to the surviving
41 children, and in the event there are no surviving spouse or surviving
42 children, then to the estate of the income producer.

43 In the event of the death of one performing essential services as a
44 result of injuries sustained in an accident entitling such person to
45 benefits under subsection c. of this section, the maximum amount of
46 benefits which could have been paid such person, under subsection c.,

1 shall be paid to the person incurring the expense of providing such
2 essential services.

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

7 Benefits payable under this section shall:

8 (1) Be subject to any option elected by the policyholder pursuant
9 to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

10 (2) Not be assignable, except to a provider of service benefits
11 under this section in accordance with policy terms approved by the
12 commissioner, nor subject to levy, execution, attachment or other
13 process for satisfaction of debts.

14 Medical expense benefit payments shall be subject to a deductible
15 of \$250.00 on account of injury in any one accident and a copayment
16 of 20% of any benefits payable between \$250.00 and \$5,000.00.】

17 Except as provided by section 4 of P.L. , c. (C.)(now
18 before the Legislature as this bill), every standard automobile liability
19 insurance policy issued or renewed on or after the effective date of
20 P.L. , c. (C.)(now before the Legislature as this bill)
21 shall contain personal injury protection benefits for the payment of
22 benefits without regard to negligence, liability or fault of any kind, to
23 the named insured and members of his family residing in his household
24 who sustain bodily injury as a result of an accident while occupying,
25 entering into, alighting from or using an automobile, or as a
26 pedestrian, caused by an automobile or by an object propelled by or
27 from an automobile, to other persons sustaining bodily injury while
28 occupying, entering into, alighting from or using the automobile of the
29 named insured, with permission of the named insured, and to
30 pedestrians sustaining bodily injury caused by the named insured's
31 automobile or struck by an automobile or struck by an object propelled
32 by or from that automobile.

33 "Personal injury protection coverage" means and includes:

34 a. Payment of medical expense benefits in accordance with a
35 benefit plan provided in the policy and approved by the commissioner,
36 for reasonable, necessary, and appropriate treatment and provision of
37 services to persons sustaining bodily injury, in an amount not to
38 exceed \$250,000 per person per accident. In the event benefits paid
39 by an insurer pursuant to this subsection are in excess of \$75,000 on
40 account of bodily injury to any one person in any one accident, that
41 excess shall be paid by the insurer in consultation with the Unsatisfied
42 Claim and Judgment Fund Board and shall be reimbursable to the
43 insurer from the Unsatisfied Claim and Judgment Fund pursuant to
44 section 2 of P.L. 1977, c. 310 (C.39:6-73.1). The policy form, which
45 shall be subject to the approval of the commissioner, shall set forth the
46 benefits provided under the policy, including eligible medical

1 treatments and services as well as such other benefits as the policy may
2 provide. The commissioner shall set forth by regulation the basic
3 benefits which shall be included in the policy. Medical treatments,
4 diagnostic tests, and services provided by the policy shall be rendered
5 in accordance with commonly accepted protocols and professional
6 standards and practices which are commonly accepted as being
7 beneficial for the treatment of the covered injury. Protocols and
8 professional standards and practices which are deemed to be
9 commonly accepted pursuant to this section shall be those recognized
10 by national standard setting organizations, national or state
11 professional organizations of the same discipline as the treating
12 provider, or those designated or approved by the commissioner in
13 consultation with the professional licensing boards in the Division of
14 Consumer Affairs in the Department of Law and Public Safety.
15 Protocols shall be deemed to establish guidelines as to standard
16 appropriate treatment for injuries sustained in automobile accidents,
17 but the establishment of standard treatment protocols or protocols for
18 the administration of diagnostic tests shall not be interpreted in such
19 a manner as to preclude variance from the standard when warranted by
20 reason of medical necessity. The policy form may provide for the
21 precertification of certain procedures, treatments, diagnostic tests, or
22 other services or for the purchase of durable medical goods, as
23 approved by the commissioner, provided that the requirement for
24 precertification shall not be unreasonable, and no precertification
25 requirement shall apply within ten days of the insured event. The
26 policy may provide that certain benefits provided by the policy which
27 are in excess of the basic benefits required by the commissioner to be
28 included in the policy may be subject to reasonable copayments in
29 addition to the copayments provided for pursuant to subsection e. of
30 this section, provided that the copayments shall not be unreasonable
31 and shall be established in such as manner as not to serve to encourage
32 underutilization of benefits subject to the copayments, nor encourage
33 overutilization of benefits. The policy form shall clearly set forth any
34 limitations on benefits or exclusions, which may include, but need not
35 be limited to, benefits which are otherwise compensable under
36 workers' compensation, or benefits for treatments deemed to be
37 experimental or investigational, or benefits deducted pursuant to
38 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may
39 enlist the services of a benefit consultant in establishing the basic
40 benefits level provided in this subsection, which shall be set forth by
41 regulation no later than 90 days following the enactment date of
42 P.L. ____, c. ____ (C. ____)(now before the Legislature as this bill). The
43 commissioner shall not advertise for bids for the consultant as
44 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
45 9).
46 b. Income continuation benefits. The payment of the loss of

1 income of an income producer as a result of bodily injury disability,
2 subject to a maximum weekly payment of \$100. Such sum shall be
3 payable during the life of the injured person and shall be subject to an
4 amount or limit of \$5,200, on account of injury to any one person in
5 any one accident, except that in no case shall income continuation
6 benefits exceed the net income normally earned during the period in
7 which the benefits are payable.

8 c. Essential services benefits. Payment of essential services
9 benefits to an injured person shall be made in reimbursement of
10 necessary and reasonable expenses incurred for such substitute
11 essential services ordinarily performed by the injured person for
12 himself, his family and members of the family residing in the
13 household, subject to an amount or limit of \$12 per day. Such benefits
14 shall be payable during the life of the injured person and shall be
15 subject to an amount or limit of \$4,380, on account of injury to any
16 one person in any one accident.

17 d. Death benefits. In the event of the death of an income producer
18 as a result of injuries sustained in an accident entitling such person to
19 benefits under this section, the maximum amount of benefits which
20 could have been paid to the income producer, but for his death, under
21 subsection b. of this section shall be paid to the surviving spouse, or
22 in the event there is no surviving spouse, then to the surviving
23 children, and in the event there are no surviving spouse or surviving
24 children, then to the estate of the income producer.

25 In the event of the death of one performing essential services as a
26 result of injuries sustained in an accident entitling such person to
27 benefits under subsection c. of this section, the maximum amount of
28 benefits which could have been paid to such person, under subsection
29 c., shall be paid to the person incurring the expense of providing such
30 essential services.

31 e. Funeral expenses benefits. All reasonable funeral, burial and
32 cremation expenses, subject to a maximum benefit of \$1,000, on
33 account of the death of any one person in any one accident shall be
34 payable to the decedent's estate.

35 Benefits payable under this section shall:

36 (1) Be subject to any option elected by the policyholder pursuant
37 to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

38 (2) Not be assignable, except to a provider of service benefits
39 under this section in accordance with policy terms approved by the
40 commissioner, nor subject to levy, execution, attachment or other
41 process for satisfaction of debts.

42 Medical expense benefit payments shall be subject to a deductible
43 of \$250 on account of injury in any one accident and a copayment of
44 20% of any benefits payable between \$250 and \$5,000 in addition to
45 any copayment which may be established pursuant to subsection a. of
46 this section. Upon the request of the commissioner or any party to a

1 claim for benefits or payment for services rendered, a provider shall
2 present adequate proof that any deductible or copayment related to
3 that claim has not been waived or discharged by the provider.

4 No insurer or health provider providing benefits to an insured shall
5 have a right of subrogation for the amount of benefits paid pursuant
6 to any deductible or copayment under this section.

7 (cf: P.L.1997, c.151, s.31)

8
9 7. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to read
10 as follows:

11 13. Personal injury protection coverage options. With respect to
12 personal injury protection coverage provided on an automobile in
13 accordance with section 4 of P.L.1972, c.70 (C.39:6A-4), the
14 automobile insurer shall provide the following coverage options:

15 a. Medical expense benefit deductibles in amounts of \$500.00,
16 \$1,000.00, ~~\$2,000.00~~ and \$2,500.00 for any one accident;

17 b. **【The option to exclude all benefits offered under subsections b.,**
18 **c., d., and e. of section 4;】** ~~(Deleted by amendment, P.L. , c. .)~~

19 c. (Deleted by amendment, P.L.1988, c.119.)

20 d. For policies issued or renewed on or after January 1, 1991, the
21 option that other health insurance coverage or benefits of the insured,
22 including health care services provided by a health maintenance
23 organization and any coverage or benefits provided under any federal
24 or State program, are the primary coverage in regard to medical
25 expense benefits pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4).
26 If health insurance coverage or benefits are primary, an automobile
27 insurer providing medical expense benefits under personal injury
28 protection coverage shall be liable for reasonable medical expenses not
29 covered by the health insurance coverage or benefits up to the limit of
30 the medical expense benefit coverage. The principles of coordination
31 of benefits shall apply to personal injury protection medical expense
32 benefits coverage pursuant to this subsection. The insurer shall
33 provide an appropriate reduction from the territorial base rate for
34 personal injury protection coverage for those electing the options in
35 subsections a. and d. of this section.

36 **【Insurers shall offer the options provided by subsections a. and b.**
37 **of this section at appropriately reduced premiums. For policies issued**
38 **or renewed prior to January 1, 1992, insurers shall offer the option**
39 **provided by subsection d. of this section at a discount of not less than**
40 **25% from the base rate applicable to the first \$250,000 of medical**
41 **expense benefits, and for policies issued or renewed on or after**
42 **January 1, 1992, insurers shall offer the option at an appropriate**
43 **discount from the base rate for the amount of medical expense benefits**
44 **coverage taken.】**

45 Any named insured who chooses the option provided by subsection
46 d. of this section shall provide proof that he and members of his family

1 residing in his household are covered by health insurance coverage or
2 benefits in a manner and to an extent approved by the commissioner.
3 Nothing in this section shall be construed to require a health insurer,
4 health maintenance organization or governmental agency to cover
5 individuals or treatment which is not normally covered under the
6 applicable benefit contract or plan. If it is determined that an insured
7 who selected or is otherwise covered by the option provided in
8 subsection d. of this section did not have such health coverage in
9 effect at the time of an accident, medical expense benefits shall be
10 payable by the person's automobile insurer and shall be subject to any
11 deductible required by law or otherwise selected as an option pursuant
12 to subsection a. of this section, any copayment required by law and an
13 additional deductible in the amount of \$750.

14 An option elected by the named insured in accordance with this
15 section shall apply only to the named insured and any resident relative
16 in the named insured's household who is not a named insured under
17 another automobile insurance policy, and not to any other person
18 eligible for personal injury protection benefits required to be provided
19 in accordance with section 4 of P.L.1972, c.70 (C.39:6A-4).

20 **【In the case of a medical expense benefit deductible, the deductible**
21 **elected by the named insured shall be satisfied for any one accident,**
22 **whether the medical expense benefits are paid or provided, in the**
23 **amount of the deductible, to the named insured or to one or more**
24 **resident relatives in the named insured's household who are not named**
25 **insureds under another insurance policy, or to any combination**
26 **thereof.】**

27 Medical expense benefits payable in any amount between the
28 deductible selected pursuant to subsection a. of this section and
29 \$5,000.00 shall be subject to **【a】** the copayment **【of 20%】** provided
30 in the policy, if any.

31 No insurer or health provider providing benefits to an insured who
32 has elected a deductible pursuant to subsection a. of this section shall
33 have a right of subrogation for the amount of benefits paid pursuant
34 to a deductible elected thereunder or any applicable copayment.

35 The Commissioner of Banking and Insurance shall adopt rules and
36 regulations to effectuate the purposes of this section and may
37 promulgate standards applicable to the coordination of personal injury
38 protection medical expense benefits coverage.

39 (cf: P.L.1997, c.151, s.32)

40

41 8. Section 14 of P.L.1985, c.520 (C.39:6A-4.5) is amended to read
42 as follows:

43 14. a. Any person who, at the time of an automobile accident
44 resulting in injuries to that person, is required but fails to maintain
45 medical expense benefits coverage mandated by section 4 of P.L.1972,
46 c.70 (C.39:6A-4) or section 4 of P.L. _____, c. _____ (C. _____)(now before

1 the Legislature as this bill) shall have no cause of action for recovery
2 of economic or noneconomic loss sustained as a result of an accident
3 while operating an uninsured automobile.

4 b. Any person who is convicted of, or pleads guilty to, operating
5 a motor vehicle in violation of R.S.39:4-50, section 2 of P.L.1981,
6 c.512 (C.39:4-50.4a), or a similar statute from any other jurisdiction,
7 in connection with an accident, shall have no cause of action for
8 recovery of economic or noneconomic loss sustained as a result of the
9 accident.

10 c. Any person acting with specific intent of causing injury to
11 himself or others in the operation or use of an automobile shall have
12 no cause of action for recovery of economic or noneconomic loss
13 sustained as a result of an accident arising from such conduct.

14 (cf: P.L.1997, c.151, s.13)

15

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

18 6. Collateral Source. The benefits provided in **[section] sections**
19 4 and **[section] 10** of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
20 the medical expense benefits provided in section 4 of P.L. , c.
21 (C.)(now before the Legislature as this bill) shall be payable as
22 loss accrues, upon written notice of such loss and without regard to
23 collateral sources, except that benefits, collectible under workers'
24 compensation insurance, employees' temporary disability benefit
25 statutes, medicare provided under Federal law, and benefits, in fact
26 collected, that are provided under Federal law to active and retired
27 military personnel shall be deducted from the benefits collectible under
28 **[section] sections 4 and [section] 10** of P.L.1972, c.70 (C.39:6A-4
29 and 39:6A-10) and the medical expense benefits provided in section 4
30 of P.L. , c. (C.)(now before the Legislature as this bill).

31 If an insurer has paid those benefits and the insured is entitled to,
32 but has failed to apply for, workers' compensation benefits or
33 employees' temporary disability benefits, the insurer may immediately
34 apply to the provider of workers' compensation benefits or of
35 employees' temporary disability benefits for a reimbursement of any
36 **[section 4 and section 10] benefits pursuant to sections 4 and 10 of**
37 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits
38 pursuant to section 4 of P.L. ,c. (C.)(now before the
39 Legislature as this bill) it has paid.

40 (cf: P.L.1983, c.362, s.9)

41

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

44 7. Exclusions. a. Insurers may exclude a person from benefits
45 under **[section] sections 4 and [section] 10** of P.L.1972, c.70
46 (C.39:6A-4 and 39:6A-10) **[where such] and medical expense benefits**

1 provided in section 4 of P.L. _____, c. _____ (C. _____)(now before the
2 Legislature as this bill) if that person's conduct contributed to his
3 personal injuries or death occurred in any of the following ways:

4 (1) while committing a high misdemeanor or felony or seeking to
5 avoid lawful apprehension or arrest by a police officer; or

6 (2) while acting with specific intent of causing injury or damage to
7 himself or others.

8 b. An insurer may also exclude from **[section 4 and section 10]** the
9 benefits provided in sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
10 and 39:6A-10) and the medical expense benefits provided in section 4
11 of P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) any
12 person having incurred injuries or death, who, at the time of the
13 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
18 permission of the owner or other named insured;

19 (3) was a person other than the named insured or a member and
20 named insured's family residing in his household, if that person is
21 entitled to coverage under section 4 or section 10 of P.L.1972, c.70
22 (C.39:6A-4 or 39:6A-10), or both, or section 4 of P.L. _____, c. _____
23 (C. _____)(now before the Legislature as this bill), as a named insured
24 or member of the named insured's family residing in his household
25 under the terms of another policy: or

26 (4) was a member of the named insured's family residing in the
27 named insured's household, if that person is entitled to coverage under
28 section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or
29 both, or section 4 of P.L. _____, c. _____ (C. _____)(now before the
30 Legislature as this bill) as a named insured under the terms of another
31 policy.

32 (cf: P.L.1997, c.270, s.1)

33

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

36 8. Tort exemption; limitation on the right to noneconomic loss.

37 One of the following two tort options shall be elected, in
38 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by
39 any named insured required to maintain personal injury protection
40 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4):

41 a. **[**Every owner, registrant, operator or occupant of an automobile
42 to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury
43 protection coverage, regardless of fault, applies, and every person or
44 organization legally responsible for his acts or omissions, is hereby
45 exempted from tort liability for noneconomic loss to a person who is
46 subject to this subsection and who is either a person who is required

1 to maintain the coverage mandated by this act, or is a person who has
2 a right to receive benefits under section 4 of P.L.1972, c.70
3 (C.39:6A-4) as a result of bodily injury, arising out of the ownership,
4 operation, maintenance or use of such automobile in this State, unless
5 that person has sustained a personal injury which results in death;
6 dismemberment; significant disfigurement; a fracture; loss of a fetus;
7 permanent loss of use of a body organ, member, function or system;
8 permanent consequential limitation of use of a body organ or member;
9 significant limitation of use of a body function or system; or a
10 medically determined injury or impairment of a non-permanent nature
11 which prevents the injured person from performing substantially all of
12 the material acts which constitute that person's usual and customary
13 daily activities for not less than 90 days during the 180 days
14 immediately following the occurrence of the injury or impairment]

15 Limitation on lawsuit option. Every owner, registrant, operator or
16 occupant of an automobile to which section 4 of P.L.1972, c.70
17 (C.39:6A-4), personal injury protection coverage, or section 4 of
18 P.L. , c. (C.)(now before the Legislature as this bill) medical
19 expense benefits coverage, regardless of fault, applies, and every
20 person or organization legally responsible for his acts or omissions, is
21 hereby exempted from tort liability for noneconomic loss to a person
22 who is subject to this subsection and who is either a person who is
23 required to maintain personal injury protection coverage pursuant to
24 section 4 of P.L.1972, c.70 (C.39:6A-4) or medical expense benefits
25 pursuant to section 4 of P.L. , c. (C.)(now before the
26 Legislature as this bill), or is a person who has a right to receive
27 benefits under section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of
28 P.L. , c. (C.)(now before the Legislature as this bill), as a
29 result of bodily injury, arising out of the ownership, operation,
30 maintenance or use of such automobile in this State, unless that person
31 has sustained a bodily injury which results in death; dismemberment;
32 significant disfigurement or significant scarring; displaced fractures;
33 loss of a fetus; or a permanent injury within a reasonable degree of
34 medical probability, other than scarring or disfigurement. An injury
35 shall be considered permanent when the body part or organ, or both,
36 has not healed to function normally and will not heal to function
37 normally with further medical treatment. For the purposes of this
38 subsection, "physician" means a physician as defined in section 5 of
39 P.L.1939,c.115 (C.45:9-5.1).

40 In order to satisfy the tort option provisions of this subsection, the
41 plaintiff shall, within 60 days following the date of the answer to the
42 complaint by the defendant, provide the defendant with a certification
43 from the licensed treating physician or a board-certified licensed
44 physician to whom the plaintiff was referred by the treating physician.
45 The certification shall state, under penalty of perjury, that the plaintiff
46 has sustained an injury described above. The certification shall be

1 based on and refer to objective clinical evidence, which may include
2 medical testing, except that any such testing shall be performed in
3 accordance with medical protocols pursuant to subsection a. of section
4 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
5 administered in accordance with section 12 of P.L. , c. (C.)(now
6 before the Legislature as this bill). Such testing may not be
7 experimental in nature or dependent entirely upon subjective patient
8 response. The court may grant no more than one additional period not
9 to exceed 60 days to file the certification pursuant to this subsection
10 upon a finding of good cause.

11 A person is guilty of a crime of the fourth degree if that person
12 purposefully or knowingly makes, or causes to be made, a false,
13 fictitious, fraudulent, or misleading statement of material fact in, or
14 omits a material fact from, or causes a material fact to be omitted
15 from, any certification filed pursuant to this subsection.
16 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-1, the
17 court shall deal with a person who has been convicted of a violation
18 of this subsection by imposing a sentence of imprisonment unless,
19 having regard to the character and condition of the person, the court
20 is of the opinion that imprisonment would be a serious injustice which
21 overrides the need to deter such conduct by others. If the court
22 imposes a noncustodial or probationary sentence, such sentence shall
23 not become final for 10 days in order to permit the appeal of such
24 sentence by the prosecution. Nothing in this subsection a. shall
25 preclude an indictment and conviction for any other offense defined by
26 the laws of this State. In addition, any professional license held by the
27 person shall be forfeited according to the procedures established by
28 section 4 of P.L.1997, c.353 (C.2C:51-5); or

29 b. No limitation on lawsuit option. As an alternative to the basic
30 tort option specified in subsection a. of this section, every owner,
31 registrant, operator, or occupant of an automobile to which section 4
32 of P.L.1972, c.70 (C.39:6A-4) , personal injury protection coverage,
33 or section 4 of P.L. , c. (C.)(now before the Legislature as
34 this bill), medical expense benefits coverage, regardless of fault,
35 applies, and every person or organization legally responsible for his
36 acts or omissions, shall be liable for noneconomic loss to a person who
37 is subject to this subsection and who is either a person who is required
38 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et
39 seq.) or is a person who has a right to receive benefits under section
40 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the
41 ownership, operation, maintenance or use of such automobile in this
42 State.

43 The tort option provisions of subsection b. of this section shall also
44 apply to the right to recover for noneconomic loss of any person
45 eligible for benefits pursuant to section 4 of P.L.1972, c.70
46 (C.39:6A-4) or section 4 of P.L. , c. (C.)(now before the

1 Legislature as this bill) but who is not required to maintain personal
2 injury protection coverage pursuant to section 4 of P.L.1972, c.70
3 (C.39:6A-4) or medical expense benefits coverage pursuant to section
4 4 of P.L. , c. (C.)(now before the Legislature as this bill) and
5 is not an immediate family member, as defined in section 14.1 of
6 P.L.1983, c.362 (C.39:6A-8.1), under **[an]** a standard automobile
7 insurance policy or basic automobile insurance policy.

8 The tort option provisions of subsection a. of this section shall also
9 apply to any person subject to section 14 of P.L.1985, c.520
10 (C.39:6A-4.5) and to every named insured and any other person to
11 whom the medical expense benefits of the basic automobile insurance
12 policy pursuant to section 4 of P.L. , c. (C.)(now before the
13 Legislature as this bill) apply.

14 The tort option provisions of subsections a. and b. of this section
15 as provided in this **[1988]** 1998 amendatory and supplementary act
16 shall apply to automobile insurance policies issued or renewed on or
17 after **[January 1, 1989]** the effective date of P.L. , c.
18 (C.)(now before the Legislature as this bill) and as otherwise
19 provided by law.

20 (cf: P.L.1990, c.8, s.9)

21

22 12. (New section) The professional licensing boards governing
23 health care providers in the Division of Consumer Affairs shall
24 promulgate, pursuant to the "Administrative Procedure Act,"
25 P.L.1968, c.410 (C.52:14B-1 et seq.), a list of valid diagnostic tests
26 to be used in conjunction with the appropriate health care protocols in
27 the treatment of persons sustaining bodily injury and subject to
28 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8). Inclusion of
29 a test on the list of valid diagnostic tests shall be based on
30 demonstrated medical value, and a level of general acceptance by the
31 relevant provider community and shall not be dependent for results
32 entirely upon subjective patient response. The initial lists shall be
33 promulgated within 180 days of the effective date of this section and
34 shall be revised from time to time as determined by the respective
35 boards to reflect new testing procedures and emerging technologies
36 enjoying a level of general acceptance within the appropriate provider
37 community. In updating its list, a board may take action at a regularly
38 scheduled meeting, notwithstanding the provisions of P.L.1968, c. 410
39 (C.52:14B-1 et seq.) to the contrary, after notice as provided herein.
40 The professional boards, individually or collectively, may enlist the
41 services of a consulting firm to assist in compiling and updating the
42 list. The Commissioner of Banking and Insurance may reimburse the
43 boards for the cost of the services of the consultant. The list of valid
44 diagnostic test shall apply only to benefits under section 4 of P.L.1972,
45 c.70 (C.39:6A-4) and section 4 of P.L. , c. (C.)(now before
46 the Legislature as this bill). The board or boards hiring a consultant

1 shall not advertise for bids, as provided in sections 3 and 4 of
2 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Notwithstanding any of the
3 provisions of this section to the contrary, a diagnostic test performed
4 in an acute care facility, or extended care facility recognized by
5 Medicare, shall not be excluded from a list of valid diagnostic tests
6 promulgated pursuant to this section.

7 a. For the purposes of this section, "action" includes, but is not
8 limited to:

- 9 (1) the addition or deletion of a test to the list; or
- 10 (2) procedures and standards for the performance of a test.

11 "Action" shall not include the hearing and resolution of contested
12 cases, licensing matters, personnel matters or any other duties of a
13 professional licensing board.

14 b. Prior to the adoption of an action by the board, the board shall
15 forward the notice of intended action and a detailed description of the
16 intended action to the Office of Administrative Law for publication in
17 the New Jersey Register.

18 A copy of the text of the intended action shall be available in the
19 Division of Consumer Affairs in accordance with the provisions of
20 P.L.1963, c. 73 (C.47:1A-1 et seq.).

21 c. The board may hold a public hearing on any intended action.

22 d. Whether or not a public hearing is held, the board shall afford all
23 interested persons an opportunity to comment in writing on the
24 intended action. Written comments shall be submitted to the board
25 within the time established by the board in the notice of intended
26 action, which time shall not be less than 10 calendar days from the
27 date of notice. The board shall give due consideration to all comments
28 received. A copy of the submissions shall be filed with the Office of
29 Administrative Law for publication in the New Jersey Register.

30 e. The board may adopt the intended action immediately following
31 the expiration of the public comment period provided in subsection d.
32 of this section, or the hearing provided for in subsection c. of this
33 section, whichever date is later. The final action adopted by the board
34 shall be submitted for publication in the New Jersey Register to the
35 Office of Administrative Law, and shall be effective on the date of the
36 submission or such later date as the board may establish.

37 f. Actions filed with the Office of Administrative Law pursuant to
38 this section shall be filed subject to the provisions of subsections (a),
39 (c), (d) and (e) of section 5 of P.L.1968, c.410 (C.52:14B-5).

40 g. Nothing in this section shall be construed to prohibit the board
41 from adopting any action pursuant to the provisions of the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.).

44 h. Nothing in this section shall be construed to prohibit the
45 Director of the Division of Consumer Affairs from adopting any rule
46 or regulation pursuant to the provisions of the "Administrative

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

2 13. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to
3 read as follows:

4 20. An insurer, health maintenance organization or governmental
5 agency paying benefits pursuant to subsection a., b. or d. of section 13
6 of P.L.1983, c.362 (C.39:6A-4.3) or personal injury protection
7 benefits in accordance with section 4 or section 10 of P.L.1972, c.70
8 (C.39:6A-4 or 39:6A-10) or medical expense benefits pursuant to
9 section 4 of P.L. , c. (C.)(now before the Legislature as this
10 bill), as a result of an accident occurring within this State, shall, within
11 two years of the filing of the claim, have the right to recover the
12 amount of payments from any tortfeasor who was not, at the time of
13 the accident, required to maintain personal injury protection or medical
14 expense benefits coverage, other than for pedestrians, under the laws
15 of this State, including personal injury protection coverage required to
16 be provided in accordance with section 18 of P.L.1985, c.520
17 (C.17:28-1.4), or although required did not maintain personal injury
18 protection or medical expense benefits coverage at the time of the
19 accident. In the case of an accident occurring in this State involving
20 an insured tortfeasor, the determination as to whether an insurer,
21 health maintenance organization or governmental agency is legally
22 entitled to recover the amount of payments and the amount of
23 recovery, including the costs of processing benefit claims and
24 enforcing rights granted under this section, shall be made against the
25 insurer of the tortfeasor, and shall be by agreement of the involved
26 parties or, upon failing to agree, by arbitration.

27 (cf: P.L.1990, c.8, s.10)

28

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

31 10. Additional personal injury protection coverage. Insurers shall
32 make available to the named insured electing the standard automobile
33 insurance policy and covered under section 4 of P.L.1972, c.70
34 (C.39:6A-4), and, at his option, to resident relatives in the household
35 of the named insured, suitable additional first party coverage for
36 income continuation benefits, essential services benefits, death benefits
37 and funeral expense benefits, but the income continuation and essential
38 services benefits shall cease upon the death of the claimant, and shall
39 not operate to increase the amount of any death benefits payable under
40 section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional first party
41 coverage shall be payable only to the extent that the claimant
42 establishes that the amount of loss sustained exceeds the coverage
43 specified in section 4 of P.L.1972, c.70 (C.39:6A-4). Insurers may also
44 make available to named insureds electing a standard automobile
45 insurance policy and covered under section 4 of P.L.1972, c.70
46 (C.39:6A-4), and, at their option, to resident relatives in the household

1 of the named insured or to other persons provided medical expense
2 benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4),
3 or both, additional first party medical expense **【benefit】** benefits
4 coverage. The additional coverage shall be offered by the insurer at
5 least annually as part of the coverage selection form applicable to the
6 standard automobile insurance policy and required by section 17 of
7 P.L.1983, c.362 (C.39:6A-23). Income continuation in excess of that
8 provided for in section 4 **【must】** of P.L.1972, c.70 (C.39:6A-4) shall
9 be provided as an option by insurers for disabilities, as long as the
10 disability persists, up to an income level of \$35,000.00 per year,
11 provided that a. the excess between \$5,200.00 and the amount of
12 coverage contracted for shall be written on the basis of 75% of said
13 difference, and b. regardless of the duration of the disability, the
14 benefits payable shall not exceed the total maximum amount of income
15 continuation benefits contracted for. Death benefits provided pursuant
16 to this section shall be payable without regard to the period of time
17 elapsing between the date of the accident and the date of death, if
18 death occurs within two years of the accident and results from bodily
19 injury from that accident to which coverage under this section applies.
20 The Commissioner of Insurance is hereby authorized and empowered
21 to establish, by rule or regulation, the amounts and terms of income
22 continuation insurance to be provided pursuant to this section.
23 (cf: P.L.1990, c.8, s.11)

24
25 15. Section 11 of P.L.1972, c.70 (C.39:6A-11) is amended to read
26 as follows:

27 11. Contribution among insurers. If two or more insurers are liable
28 to pay benefits under sections 4 and 10 of **【this act】** P.L.1972, c.70
29 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
30 policy or medical expense benefits under a basic automobile insurance
31 policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before
32 the Legislature as this bill) for the same bodily injury, or death, of any
33 one person, the maximum amount payable shall be as specified in those
34 sections 4 and 10 of P.L.1972, C.70 (C.39:6A-4 and 39:6A-10) and
35 section 4 of P.L. _____, c. _____ (C. _____)(now before the Legislature as this
36 bill), respectively, if additional first party coverage applies and any
37 insurer paying the benefits shall be entitled to recover from each of the
38 other insurers, only by inter-company arbitration or inter-company
39 agreement, an equitable pro-rata share of the benefits paid.
40 (cf: P.L.1972, c.70, s.11)

41
42 16. Section 12 of P.L.1972, c.70 (C.39:6A-12) is amended to read
43 as follows:

44 12. Inadmissibility of evidence of losses collectible under personal
45 injury protection coverage. Except as may be required in an action
46 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),

1 evidence of the amounts collectible or paid under a standard
2 automobile insurance policy pursuant to sections 4 and 10 of
3 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and amounts collectible or
4 paid for medical expense benefits under a basic automobile insurance
5 policy pursuant to 4 of P.L. , c. (C.)(now before the
6 Legislature as this bill), to an injured person, including the amounts of
7 any deductibles, copayments or exclusions, including exclusions
8 pursuant to subsection d. of section 13 of P.L.1983, c.362
9 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action
10 for recovery of damages for bodily injury by such injured person.

11 The court shall instruct the jury that, in arriving at a verdict as to
12 the amount of the damages for noneconomic loss to be recovered by
13 the injured person, the jury shall not speculate as to the amount of the
14 medical expense benefits paid or payable by an automobile insurer
15 under personal injury protection coverage payable under a standard
16 automobile insurance policy pursuant to sections 4 and 10 of
17 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits
18 under a basic automobile insurance policy pursuant to section 4 of
19 P.L. , c. (C.)(now before the Legislature as this bill) to the
20 injured person, nor shall they speculate as to the amount of benefits
21 paid or payable by a health insurer, health maintenance organization or
22 governmental agency under subsection d. of section 13 of P.L.1983,
23 c.362 (C.39:6A-4.3).

24 Nothing in this section shall be construed to limit the right of
25 recovery, against the tortfeasor, of uncompensated economic loss
26 sustained by the injured party.

27 (cf: P.L.1990, c.8, s.12)

28

29 17. Section 13 of P.L.1972, c.70 (C.39:6A-13) is amended to read
30 as follows:

31 13. Discovery of facts as to personal injury protection coverage.
32 The following apply to personal injury protection coverage benefits
33 payable under a standard automobile insurance policy pursuant to
34 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
35 medical expense benefits payable under a basic automobile insurance
36 policy pursuant to section 4 of P.L. , c. (C.)(now before the
37 Legislature as this bill):

38 a. Every employer shall, if a request is made by an insurer or the
39 Unsatisfied Claim and Judgment Fund providing personal injury
40 protection benefits under **[this act]** a standard automobile insurance
41 policy or medical expense benefits payable under a basic automobile
42 insurance policy against whom a claim has been made, furnish
43 forthwith, in a form approved by the Commissioner of Banking and
44 Insurance, a signed statement of the lost earnings since the date of the
45 bodily injury and for a reasonable period before the injury, of the
46 person upon whose injury the claim is based.

1 b. Every physician, hospital, **【clinic or other medical institution】**
2 or other health care provider providing, before and after the bodily
3 injury upon which a claim for personal injury protection benefits or
4 medical expense benefits is based, any products, services or
5 accommodations in relation to such bodily injury or any other injury,
6 or in relation to a condition claimed to be connected with such bodily
7 injury or any other injury, shall, if requested to do so by the insurer or
8 the Unsatisfied Claim and Judgment Fund against whom the claim has
9 been made, furnish forthwith a written report of the history, condition,
10 treatment, dates and costs of such treatment of the injured person, and
11 produce forthwith and permit the inspection and copying of his or its
12 records regarding such history, condition, treatment dates and costs of
13 treatment. The person requesting such records shall pay all reasonable
14 costs connected therewith.

15 c. The injured person shall be furnished upon demand a copy of all
16 information obtained by the insurer or the Unsatisfied Claim and
17 Judgment Fund under the provisions of this section, and shall pay a
18 reasonable charge, if required by the insurer and the Unsatisfied Claim
19 and Judgment Fund.

20 d. **【Whenever】** Except for medical expense benefits provided under
21 a standard automobile insurance policy pursuant to subsection a. of
22 section 4 of P.L.1972, c.70 (C.39:6A-4), under a basic automobile
23 insurance policy pursuant to subsection b. of section 4 of P.L. _____,
24 c. _____(now before the Legislature as this bill), under subsection
25 a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and additional first
26 party medical expense benefits coverage provided under a standard
27 automobile insurance policy pursuant to section 10 of P.L.1972, c.70
28 (C.39:6A-10), if there is no dispute concerning whether the
29 treatments, health care services or durable medical goods related to an
30 injury for which reimbursement is being sought are causally related to
31 an insured event, whenever the mental or physical condition of an
32 injured person covered by personal injury protection under a standard
33 automobile insurance policy or medical expense benefits under a basic
34 automobile insurance policy is material to any claim that has been or
35 may be made for such past or future personal injury protection benefits
36 or medical expense benefits, such person shall, upon request of an
37 insurer or the Unsatisfied Claim and Judgment Fund submit to mental
38 or physical examination **【by a physician or physicians , or chiropractor**
39 **or chiropractors. Only a licensed chiropractor may determine the**
40 **clinical need for further chiropractic treatment by performing a**
41 **chiropractic examination and this determination shall not depend solely**
42 **upon a review of the treating chiropractor patient records in cases of**
43 **denial of benefits】** conducted by a health care provider licensed in this
44 State in the same profession or speciality as the health care provider
45 whose services are subject to review under this section and who is
46 located within a reasonable proximity to the injured person's residence.

1 The injured person shall provide or make available to the provider any
2 pertinent medical records or medical history that the provider deems
3 necessary to the examination. The costs of any examinations
4 requested by an insurer or the Unsatisfied Claim and Judgment Fund
5 shall be borne entirely by whomever makes such request. Such
6 examination shall be conducted within the municipality of residence of
7 the injured person. If there is no qualified **【physician or chiropractor】**
8 health care provider to conduct the examination within the
9 municipality of residence of the injured person, then such examination
10 shall be conducted in an area of the closest proximity to the injured
11 person's residence. **【Personal protection insurers】** Insurers providing
12 personal injury protection coverage under a standard automobile
13 insurance policy or medical expense benefits under a basic automobile
14 insurance policy are authorized to include reasonable provisions **【in**
15 **personal injury protection coverage policies for mental and physical**
16 **examinations of】** requiring those claiming personal injury protection
17 coverage benefits or medical expense benefits to submit to mental or
18 physical examination as requested by an insurer or the Unsatisfied
19 Claim and Judgment Fund pursuant to the provisions of this section.
20 Failure to submit to a mental or physical examination requested by an
21 insurer or the Unsatisfied Claim and Judgment Fund pursuant to the
22 provisions of this section shall subject the injured person to certain
23 limitations in coverage as specified in regulations promulgated by the
24 commissioner.

25 e. If requested by the person examined, a party causing an
26 examination to be made, shall deliver to him a copy of every written
27 report concerning the examination rendered by an examining
28 **【physician or chiropractor】** health care provider, at least one of which
29 reports must set out his findings and conclusions in detail. After such
30 request and delivery, the party causing the examination to be made is
31 entitled upon request to receive from the person examined every
32 written report available to him, or his representative, concerning any
33 examination, previously or thereafter made of the same mental or
34 physical condition.

35 f. The injured person, upon reasonable request by the insurer or the
36 Unsatisfied Claim and Judgment Fund, shall sign all forms,
37 authorizations **【,】** or releases for information, approved by the
38 Commissioner of Banking and Insurance, which may be necessary to
39 the discovery of the above facts, in order to reasonably prove the
40 injured person's losses.

41 g. In the event of any dispute regarding an insurer's or the
42 Unsatisfied Claim and Judgment Fund's or an injured person's right as
43 to the discovery of facts about the injured person's earnings or about
44 his history, condition, treatment, dates and costs of such treatment, or
45 the submission of such injured person to a mental or physical
46 examination subject to the provisions of this section, the insurer,

1 Unsatisfied Claim and Judgment Fund or the injured person may
2 petition a court of competent jurisdiction for an order resolving the
3 dispute and protecting the rights of all parties. The order may be
4 entered on motion for good cause shown giving notice to all persons
5 having an interest therein. Such court may protect against annoyance,
6 embarrassment or oppression and may as justice requires, enter an
7 order compelling or refusing discovery, or specifying conditions of
8 such discovery; the court may further order the payment of costs and
9 expenses of the proceeding, as justice requires.

10 (cf: P.L.1993, c.186, s.1)

11
12 18. Section 11 of P.L.1972, c.203 (C.39:6A-13.1) is amended to
13 read as follows:

14 11. a. Every action for the payment of benefits **[set forth in]**
15 payable under a standard automobile insurance policy pursuant to
16 sections 4 and 10 of **[this act]** P.L.1972, c.70 (C.39:6A-4 and 39:6A-
17 10) or medical expense benefits payable under a basic automobile
18 insurance policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now
19 before the Legislature as this bill), except an action by a decedent's
20 estate, shall be commenced not later than **[2] two** years after the
21 injured person or survivor suffers a loss or incurs an expense and
22 either knows or in the exercise of reasonable diligence should know
23 that the loss or expense was caused by the accident, or not later than
24 **[4] four** years after the accident whichever is earlier, provided,
25 however, that if benefits have been paid before then an action for
26 further benefits may be commenced not later than **[2] two** years after
27 the last payment of benefits.

28 b. Every action by a decedent's estate for the payment of benefits
29 **[set forth in]** provided under a standard automobile insurance policy
30 pursuant to sections 4 and 10 of **[this act]** P.L.1972, c.70 (C.39:6A-4
31 and 39:6A-10) or medical expense benefits provided under a basic
32 automobile insurance policy pursuant to section 4 of P.L. _____, c. _____
33 (C. _____)(now before the Legislature as this bill) shall be commenced
34 not later than **[2] two** years after death or **[4] four** years after the
35 accident from which death results, whichever is earlier, provided,
36 however, that if benefits had been paid to the decedent prior to his
37 death then an action may be commenced not later than **[2] two** years
38 after his death or **[4] four** years after the last payment of benefits,
39 whichever is earlier, provided, further, that if the decedent's estate has
40 received benefits before then an action for further benefits shall be
41 commenced not later than **[2] two** years from the last payment of
42 benefits.

43 (cf: P.L.1972, c.203, s.11)

44
45 19. Section 15 of P.L.1972, c.70 (C.39:6A-15) is amended to read

1 as follows:

2 15. In any claim or action arising for benefits payable under a
3 standard automobile insurance policy under section 4 of **[this act]**
4 P.L.1972, c.70 (C.39:6A-4) or any claim or action arising for medical
5 expense benefits payable under a basic automobile insurance policy
6 under section 4 of P.L. , c. (C.)(now before the Legislature
7 as this bill) wherein any person **[,]** obtains or attempts to obtain from
8 any other person, insurance company or Unsatisfied Claim and
9 Judgment Fund any money or other thing of value by (1) falsely or
10 fraudulently representing that such person is entitled to such benefits
11 **[under section 4 or,]** ; (2) falsely and fraudulently making statements
12 or presenting documentation in order to obtain or attempt to obtain
13 such benefits **[under section 4]** ; or**[,]** (3) cooperates, conspires or
14 otherwise acts in concert with any person seeking to falsely or
15 fraudulently obtain, or attempt to obtain, such benefits **[under section**
16 **4]** may upon conviction be fined not more than \$5,000.00, or
17 imprisoned for not more than **[3]** three years or both, or in the event
18 the sum so obtained or attempted to be obtained is not more than
19 \$500.00, may upon conviction, be fined not more than \$500.00, or
20 imprisoned for not more than **[6]** six months or both, as a disorderly
21 person.

22 In addition to any penalties imposed by law, any person who is
23 either found by a court of competent jurisdiction to have violated any
24 provision of P.L.1983 c.320 (C.17:33A-1 et seq.) pertaining to
25 automobile insurance or been convicted of any violation of Title 2C of
26 the New Jersey Statutes arising out of automobile insurance fraud shall
27 not operate a motor vehicle over the highways of this State for a
28 period of one year from the date of judgment or conviction.

29 (cf: P.L.1997, c.151, s.9)

30

31 20. Section 1 of P.L.1972, c.197 (C.39:6B-1) is amended to read
32 as follows:

33 1. a. Every owner or registered owner of a motor vehicle
34 registered or principally garaged in this State shall maintain motor
35 vehicle liability insurance coverage, under provisions approved by the
36 Commissioner of Banking and Insurance, insuring against loss
37 resulting from liability imposed by law for bodily injury, death and
38 property damage sustained by any person arising out of the ownership,
39 maintenance, operation or use of a motor vehicle wherein such
40 coverage shall be at least in: **[a.]** (1) an amount or limit of
41 \$15,000.00, exclusive of interest and costs, on account of injury to, or
42 death of, one person, in any one accident; and **[b.]** (2) an amount or
43 limit, subject to such limit for any one person so injured or killed, of
44 \$30,000.00, exclusive of interest and costs, on account of injury to or
45 death of, more than one person, in any one accident; and **[c.]** (3) an

1 amount or limit of \$5,000.00, exclusive of interest and costs, for
2 damage to property in any one accident.

3 b. Notwithstanding the provisions of subsection a. of this section,
4 an owner or registered owner of an automobile, as defined in section
5 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
6 State may satisfy the requirements of subsection a. of this section by
7 maintaining a basic automobile insurance policy pursuant to section 4
8 of P.L. , c. (C.)(now before the Legislature as this bill).
9 (cf: P.L.1972, c.197, s.1)

10

11 21. Section 2 of P.L.1952, c.174 (C.39:6-62) is amended to read
12 as follows:

13 2. Definitions. As used in this act:

14 "Executive director" means the official designated by and serving
15 at the pleasure of the commissioner to administer to and be in charge
16 of the Unsatisfied Claim and Judgment Fund and who shall be
17 responsible to the Unsatisfied Claim and Judgment Fund Board.

18 "Treasurer" means the State Treasurer of New Jersey acting as the
19 custodian of the Unsatisfied Claim and Judgment Fund.

20 "Commissioner" means the Commissioner of Banking and
21 Insurance.

22 "Unsatisfied Claim and Judgment Fund" or "Fund" means the fund
23 derived from the sources specified in this act.

24 "Unsatisfied Claim and Judgment Fund Board" or "Board" means
25 the board created in section 4 of this act.

26 "Qualified person" means a resident of this State or the owner of a
27 motor vehicle registered in this State or a resident of another state,
28 territory, or federal district of the United States or province of Canada
29 or of a foreign country, in which recourse is afforded, to residents of
30 this State, of substantially similar character to that provided for by this
31 act; provided, however, that no person shall be a qualified person
32 where such person is an insured under a policy provision providing
33 coverage for damages sustained by the insured as a result of the
34 operation of an uninsured motor vehicle in a form authorized to be
35 included in automobile liability policies of insurance delivered or
36 issued for delivery in this State, pursuant to the provisions of, or any
37 supplement to, chapter 28 of Title 17 of the Revised Statutes or in a
38 form substantially similar thereto.

39 "Uninsured motor vehicle" means a motor vehicle as to which there
40 is not in force a liability policy meeting the requirements of section 3,
41 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,
42 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
43 of a certificate of self-insurance under said law, but shall not include
44 a motor vehicle with a policy in force which is insured pursuant to
45 section 4 of P.L. , c. (C.)(now before the Legislature as this
46 bill).

1 "Person" includes natural persons, firms, copartnerships,
2 associations and corporations.

3 "Insurer" means any insurer authorized in this State to write the
4 kinds of insurance specified in paragraphs d. and e. of R.S.17:17-1.

5 "Net direct written premiums" means direct gross premiums written
6 on policies, insuring against legal liability for bodily injury or death
7 and for damage to property arising out of the ownership, operation or
8 maintenance of motor vehicles, which are principally garaged in this
9 State, less return premiums thereon and dividends paid to
10 policyholders on such direct business.

11 "Registration license year" means the period beginning June 1,
12 1956, and ending May 31, 1957, and each subsequent 12 month
13 period, beginning June 1 and ending the following May 31.

14 (cf: P.L.1985, c.148, s.3)

15

16 22. Section 14 of P.L.1988, c.156 (C.17:29A-15.2) is amended to
17 read as follows:

18 14. Notwithstanding any other provision of law to the contrary, the
19 dollar amount of the commission paid to a producer for residual bodily
20 injury coverage provided pursuant to section 8 of P.L.1972, c.70
21 (C.39:6A-8) shall be the same whether the named insured elects the
22 tort option provided for in subsection a. of that section or the tort
23 option provided for in subsection b. of that section. This section shall
24 not apply to commissions on a basic automobile insurance policy
25 issued pursuant to section 4 of P.L. , c. (C.)(now before the
26 Legislature as this bill).

27 (cf: P.L.1988, c.156, s.14)

28

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

31 5. Payment of personal injury protection coverage benefits.

32 a. An insurer may require written notice to be given as soon as
33 practicable after an accident involving an automobile with respect to
34 which the policy affords personal injury protection coverage benefits
35 payable under a standard automobile insurance policy pursuant to
36 section 4 of P.L.1972, c.70 (C.34:6A-4) or medical expense benefits
37 payable under a basic automobile insurance policy pursuant to [this
38 act] section 4 of P.L. , c. (C.)(now before the Legislature
39 as this bill). In the case of claims for medical expense benefits under
40 either policy, written notice shall be provided to the insurer by the
41 treating **[medical]** health care provider no later than 21 days following
42 the commencement of treatment. Notification required under this
43 section shall be made in accordance with regulations adopted by the
44 Commissioner of Banking and Insurance and on a form prescribed by
45 the Commissioner of Banking and Insurance. Within a reasonable time
46 after receiving notification required pursuant to this act, the insurer

1 shall confirm to the treating ~~medical~~ health care provider that its
2 policy affords the claimant personal injury protection coverage benefits
3 as required by section ~~5~~ 4 of P.L.1972, c.70
4 ~~[(C.39:6A-5)](C.39:6A-4) or medical expense benefits pursuant to~~
5 section 4 of P.L. , c. (C.)(now before the Legislature as this
6 bill).

7 b. For the purposes of this section, notification shall be deemed to
8 be met if a treating ~~medical~~ health care provider submits a bill or
9 invoice to the insurer for reimbursement of services within 21 days of
10 the commencement of treatment.

11 c. In the event that notification is not made by the treating
12 ~~medical~~ health care provider within 21 days following the
13 commencement of treatment, the insurer shall reserve the right to
14 deny, in accordance with regulations established by the Commissioner
15 of Banking and Insurance, payment of the claim and the treating
16 ~~medical~~ health care provider shall be prohibited from seeking any
17 payment directly from the insured. In establishing the standards for
18 denial of payment, the Commissioner of Banking and Insurance shall
19 consider the length of delay in notification, the severity of the treating
20 ~~medical~~ health care provider's failure to comply with the notification
21 provisions of this act based upon the potential adverse impact to the
22 public and whether or not the provider has engaged in a pattern of
23 noncompliance with the notification provisions of this act. In
24 establishing the regulations necessary to effectuate the purposes of this
25 subsection, the Commissioner of Banking and Insurance shall define
26 specific instances where the sanctions permitted pursuant to this
27 subsection shall not apply. Such instances may include, but not be
28 limited to, a treating medical provider's failure to provide notification
29 to the insurer as required by this act due to the insured's medical
30 condition during the time period within which notification is required.

31 d. A ~~medical~~ health care provider who fails to notify the insurer
32 within 21 days and whose claim for payment has been denied by the
33 insurer pursuant to the standards established by the Commissioner of
34 Banking and Insurance may, in the discretion of a judge of the
35 Superior Court, be permitted to refile such claim provided that the
36 insurer has not been substantially prejudiced thereby. Application to
37 the court for permission to refile a claim shall be made within 14 days
38 of notification of denial of payment and shall be made upon motion
39 based upon affidavits showing sufficient reasons for the failure to
40 notify the insurer within the period of time prescribed by this act.

41 e. ~~For the purposes of this section, "treating medical provider"~~
42 shall mean any licensee of the State of New Jersey whose services are
43 reimbursable under personal injury protection coverage, including but
44 not limited to persons licensed to practice medicine and surgery,
45 psychology, chiropractic, or such other professions as the

1 Commissioner of Insurance determines pursuant to regulation, or other
2 licensees similarly licensed in other states and nations, or the
3 practitioner of any religious method of healing, or any general hospital,
4 mental hospital, convalescent home, nursing home or any other
5 institution, whether operated for profit or not, which maintains or
6 operates facilities for health care, whose services are compensated
7 under personal injury protection insurance proceeds.] (Deleted by
8 amendment, P.L. , c. .)

9 f. In instances when multiple treating **[medical]** health care
10 providers render services in connection with emergency care, the
11 Commissioner of Banking and Insurance shall designate, through
12 regulation, a process whereby notification by one treating
13 **[medical]**health care provider to the insurer shall be deemed to meet
14 the notification requirements of all the treating **[medical]**health care
15 providers who render services in connection with emergency care.

16 g. Personal injury protection coverage benefits pursuant to section
17 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
18 pursuant to section 4 of P.L. , c. (C.)(now before the
19 Legislature as this bill) shall be overdue if not paid within 60 days after
20 the insurer is furnished written notice of the fact of a covered loss and
21 of the amount of same. If such written notice is not furnished to the
22 insurer as to the entire claim, any partial amount supported by written
23 notice is overdue if not paid within 60 days after such written notice
24 is furnished to the insurer. Any part or all of the remainder of the
25 claim that is subsequently supported by written notice is overdue if not
26 paid within 60 days after such written notice is furnished to the
27 insurer; provided, however, that any payment shall not be deemed
28 overdue where, within 60 days of receipt of notice of the claim, the
29 insurer notifies the claimant or his representative in writing of the
30 denial of the claim or the need for additional time, not to exceed 45
31 days, to investigate the claim, and states the reasons therefor. The
32 written notice stating the need for additional time to investigate the
33 claim shall set forth the number of the insurance policy against which
34 the claim is made, the claim number, the address of the office handling
35 the claim and a telephone number, which is toll free or can be called
36 collect, or is within the claimant's area code. Written notice to the
37 organization administering dispute resolution pursuant to sections 24
38 and 25 of P.L. , c. (C.)(now before the Legislature as this
39 bill) shall satisfy the notice request for additional time to investigate
40 a claim pursuant to this subsection. For the purpose of determining
41 interest charges in the event the injured party prevails in a subsequent
42 proceeding where an insurer has elected a 45-day extension pursuant
43 to this subsection, payment shall be considered overdue at the
44 expiration of the 45-day period or, if the injured person was required
45 to provide additional information to the insurer, within 10 business
46 days following receipt by the insurer of all the information requested

1 by it, whichever is later.

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

7 h. All overdue payments shall bear interest at the percentage of
8 interest prescribed in the Rules Governing the Courts of the State of
9 New Jersey for judgments, awards and orders for the payment of
10 money.

11 i. All automobile insurers and the Unsatisfied Claim and Judgment
12 Fund shall provide any claimant with the option of submitting a dispute
13 under this section to **[binding arbitration. Arbitration proceedings**
14 **shall be administered and subject to procedures established by the**
15 **American Arbitration Association. If the claimant prevails in the**
16 **arbitration proceedings, the insurer shall pay all the costs of the**
17 **proceedings, including reasonable attorney's fees, to be determined in**
18 **accordance with a schedule of hourly rates for services performed, to**
19 **be prescribed by the Supreme Court of New Jersey] dispute resolution**
20 **pursuant to sections 24 and 25 of P.L. , c. (C.)(now before**
21 **the Legislature as this bill).**

22 (cf: P.L.1995, c.407, s.1)

23

24 24. (New section) a. Any dispute regarding the recovery of
25 medical expense benefits or other benefits provided under personal
26 injury protection coverage pursuant to section 4 of P.L.1972, c.70
27 (C.39:6A-4), or section 4 of P.L. , c. (C.) (now before the
28 Legislature as this bill) arising out of the operation, ownership,
29 maintenance or use of an automobile may be submitted to dispute
30 resolution on the initiative of any party to the dispute, as hereinafter
31 provided.

32 b. The Commissioner of Banking and Insurance shall designate an
33 organization, and for that purpose may, at his discretion, advertise for
34 proposals, for the purpose of administering dispute resolution
35 proceedings regarding medical expense benefits and other benefits
36 provided under personal injury protection pursuant to section 4 of
37 P.L.1972, c.70 (C.39:6A-4) or medical expense benefits coverage
38 pursuant to section 4 of P.L. , c. (C.)(now before the Legislature
39 as this bill). The commissioner shall promulgate rules and regulations
40 with respect to the conduct of the dispute resolution proceedings. The
41 organization administering dispute resolution shall utilize qualified
42 professionals who serve on a full-time basis and who meet standards
43 of competency established by the commissioner. The commissioner
44 shall establish standards of performance for the organization to ensure
45 the independence and fairness of the review process, including, but not
46 limited to, standards relative to the professional qualifications of the

1 professionals presiding over the dispute resolution process, and
2 standards to ensure that no conflict of interest exists which would
3 prevent the professional from performing his duties in an impartial
4 manner. The standards of performance shall include a requirement
5 that the organization establish an advisory council composed of parties
6 who are users of the dispute resolution mechanism established herein.
7 The commissioner may contract with a consulting firm for the
8 formulation of the standards of performance of the organization and
9 establishment of qualifications for the persons who are to conduct the
10 dispute resolution proceedings. The commissioner shall not advertise
11 for bids for the consulting firm, as provided in sections 3 and 4 of
12 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Compensation to the dispute
13 resolution professionals shall be fixed on a per case basis and adjusted
14 from time to time as appropriate, with the approval of the
15 commissioner. In no case shall compensation be paid on a contingency
16 basis. The organization shall establish a dispute resolution plan, which
17 shall include procedures and rules governing the dispute resolution
18 process and provisions for monitoring the dispute resolution process
19 to ensure adherence to the standards of performance established by the
20 commissioner. The plan, and any amendments thereto, shall be subject
21 to the approval of the commissioner.

22 c. Dispute resolution proceedings under this section 24 and section
23 25 of this amendatory and supplementary act shall include disputes
24 arising regarding medical expense benefits provided under subsection
25 a. of section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. ,
26 c. (C.) (now before the Legislature as this bill), benefits provided
27 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70
28 (C.39:6A-4), subsection b., c., d. or e. of P.L.1972, c.198 (C.39:6-
29 86.1), and disputes as to additional first party coverage benefits
30 required to be offered pursuant to section 10 of P.L.1972, c.70
31 (C.39:6A-10). Disputes involving medical expense benefits may
32 include, but not necessarily be limited to, matters concerning: (1)
33 interpretation of the insurance contract; (2) whether the treatment or
34 health care service which is the subject of the dispute resolution
35 proceeding is in accordance with the provisions of section 4 of
36 P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c. (C.)
37 (now before the Legislature this bill) or the terms of the policy; (3) the
38 eligibility of the treatment or service for compensation; (4) the
39 eligibility of the provider performing the treatment or service to be
40 compensated under the terms of the policy or under regulations
41 promulgated by the commissioner, including whether the person is
42 licensed or certified to perform such treatment; (5) whether the
43 disputed medical treatment was actually performed; (6) whether
44 diagnostic tests performed in connection with the treatment are those
45 recognized by the professional licensing boards in the Division of
46 Consumer Affairs in the Department of Law and Public Safety or other

1 recognized professional organizations, or as otherwise provided in
2 section 12 of P.L. , c. (C.)(now before the Legislature as this bill);
3 (7) the necessity or appropriateness of consultations by other health
4 care providers; (8) disputes involving application of and adherence to
5 fee schedules promulgated by the commissioner; and (9) whether the
6 treatment performed is reasonable, necessary, and compatible with the
7 protocols provided for pursuant to P.L. , c. (C.)(now
8 before the Legislature as this bill). The dispute resolution
9 professionals may review the entire claims file of the insurer, subject
10 to any confidentiality requirement established pursuant to State or
11 federal law. All decisions of the dispute resolution professional shall
12 be in writing, in a form prescribed by the commissioner, shall state the
13 issues in dispute, the findings and conclusions on which the decision
14 is based, and shall be signed by the dispute resolution professional. All
15 decisions of a dispute resolution professional shall be binding. The
16 dispute resolution organization shall provide for the retention of all
17 documents used in dispute resolution proceedings under this section
18 and section 25 of this amendatory and supplementary act, including the
19 written decision, for a period of at least five years, in a form approved
20 by the commissioner, or for such additional time as may be established
21 by the commissioner. The written decisions of the dispute resolution
22 professional shall be forwarded to the commissioner, who shall
23 establish a record of the proceedings conducted under the dispute
24 resolution procedure, which shall be accessible to the public and may
25 be determined to have standing as precedent for subsequent dispute
26 resolution proceedings.

27 d. With respect to disputes as to the diagnosis, the medical
28 necessity of the treatment or diagnostic test administered to the injured
29 person, whether the injury is causally related to the insured event or
30 is the product of a preexisting condition, or disputes as to the
31 appropriateness of the protocols utilized by the provider, the dispute
32 resolution professional shall, either at his option or at the request of
33 any party to the dispute, refer the matter to a medical review
34 organization for a determination.

35 e. Any person submitting a matter to the dispute resolution process
36 established herein may submit for review all or a portion of a disputed
37 treatment or treatments or a dispute regarding a diagnostic test or
38 tests or a dispute regarding the providing of services or durable
39 medical goods. Any portion of a treatment or diagnostic test or
40 service which is not under review shall be reimbursed in accordance
41 with the provisions of section 5 of P.L.1972, c.70 (C.39:6A-5). If the
42 dispute resolution proceeding results in a determination that all or part
43 of a treatment or treatments, diagnostic test or tests or service
44 performed, or durable medical goods provided are medically necessary
45 and appropriate, reimbursement shall be made with interest payable in

1 accordance with the provisions of section 5 of P.L.1972, c.70
2 (C.39:6A-5).

3
4 25. (New section) a. The commissioner shall establish standards
5 for the certification of medical review organizations, which shall
6 include standards of performance formulated by the commissioner in
7 consultation with the Commissioner of Health and Senior Services.
8 The standards of performance shall set forth procedures to ensure a
9 timely and impartial review of the medical records of the injured
10 person by a medical review organization, including, but not limited to,
11 a review of the necessity or appropriateness of treatments for injuries,
12 including diagnostic tests, sustained in an automobile accident. The
13 commissioner shall establish standards for persons conducting the
14 medical review, including standards with respect to credentials,
15 experience, licensure, fees, and confidentiality. The standards shall
16 include a requirement that all persons performing reviews are New
17 Jersey licensed or certified health care providers, and a requirement
18 that any medical review panel contain a health care provider licensed
19 or certified in the same profession as the treating health care provider
20 and that it contain a sufficient representation of reviewers to judge the
21 appropriateness of treatment or treatments in dispute, including, but
22 not limited to, the medical necessity of such treatments,
23 appropriateness of the protocols used by the treating provider, issues
24 regarding causality and preexisting conditions, the appropriateness and
25 efficacy of diagnostic tests performed in connection with the diagnosis,
26 and whether the diagnostic tests meet the requirements set forth in
27 section 12 of P.L. , c. (C.)(now before the Legislature
28 as this bill). The commissioner may contract with a consultant for the
29 formulation of the standards governing the certification of the persons
30 conducting the medical reviews. The commissioner shall not advertise
31 for bids for the consultant, as provided in sections 3 and 4 of
32 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

33 b. Before certifying a medical review organization to receive
34 referrals from dispute resolution proceedings, the commissioner shall
35 determine that the organization has a sufficient number of qualified
36 health care providers, by specialty, to perform the reviews, has a
37 satisfactory procedure for maintaining the confidentiality of medical
38 records, is not owned or controlled by an insurer, and has met any
39 other requirements established by the commissioner.

40 c. The medical review organization shall establish and utilize
41 written review procedures, which shall be filed with the commissioner.
42 Every determination made by a medical review organization shall be
43 in writing and shall be retained by the organization for a period of no
44 less than five years.

45 d. The medical review organization may review the medical
46 treatment or treatments in dispute to determine whether: (1) the

1 treatment or diagnostic test being given for the injury or the services
2 provided in connection with the injury is medically necessary; (2) the
3 treatment is in accordance with or compatible with medically
4 recognized standard protocols, professional standards, and commonly
5 accepted medical practice in the same health care discipline as the
6 treating provider; (3) the treatment is consistent with the symptoms
7 or diagnosis of the injury; (4) the treatment or health care service is
8 related to the injury sustained in the insured event, or is required for
9 the diagnosis, evaluation or confirmation of the injury; (5) the
10 treatment is of a palliative, rather than restorative, nature; and (6)
11 medical procedures, treatment, or testing which have been repeated
12 are medically necessary and consistent with standard practice.

13 e. Cases referred by a dispute resolution professional for medical
14 review shall be referred to appropriate certified medical reviewers
15 affiliated with the certified medical review organization by a dispute
16 resolution organization. The dispute resolution organization shall
17 forward the referrals to certified medical reviewers on a random basis,
18 so that there is a relatively equal apportionment among all medical
19 reviewers. Referrals shall be made in such a manner so as not to
20 disclose to the medical reviewers the identity of the insurer, nor shall
21 the identity of the reviewer be disclosed to the insurer.

22 f. When appropriate in the context of its review of services or
23 treatments under dispute, a medical reviewer may request and shall
24 receive a written report or copy of the provider's records regarding
25 the case history, treatment dates, or the dates diagnostic tests or other
26 services were performed, and the provider's projected treatment plan.
27 The injured person or provider, as applicable, shall provide or make
28 available to the medical reviewer any pertinent medical records or
29 medical history which the medical reviewer may request. The medical
30 reviewer shall complete its review and make a determination within 20
31 business days of receipt of all of the requested information from the
32 dispute resolution professional or provider, as the case may be. The
33 medical reviewer shall submit its determination in writing to the
34 referring dispute resolution organization, which shall forward it to the
35 dispute resolution professional.

36 g. The cost of the proceedings shall be apportioned by the dispute
37 resolution professional. Fees shall be determined to be reasonable if
38 they are consonant with the amount of the award, in accordance with
39 a schedule established by the New Jersey Supreme Court. If the
40 treatment, diagnostic test, or service performed is not determined to
41 be medically necessary or appropriate, the injured person shall not be
42 liable to pay the provider the disputed amount.

43

44 26. (New section) The Commissioner of Banking and Insurance
45 shall promulgate regulations, to take effect no later than 90 days
46 following the effective date of this section, which require every

1 insurer or group of insurers writing private passenger automobile
2 insurance in this State, by itself or by a rating organization on its
3 behalf, to file and implement a territorial rating plan, including
4 territorial definitions, territorial relativity factors and territorial base
5 rates, that meet the requirements of this section. Automobile
6 insurance territories shall:

7 a. be created in such a manner as to recognize the qualitative
8 differences in driving environments, which may include but not be
9 limited to, traffic density, population density, comparative severity in
10 like driving environments, similarities in the relative mix of driving
11 environments applicable to each proposed territory and comparative
12 homogeneity;

13 b. be based on statistically credible data, which shall include a
14 consideration of the rate of variability of loss in each territory on a
15 year-to-year basis;

16 c. consider the impact of the overlapping of traffic patterns on
17 exposure to loss, including the relative number of intra-territory trips
18 and out-of-territory trips applicable to each proposed territory;

19 d. consider the relative mix of business in each territory by driver
20 classification;

21 e. be created in a manner which shall not result in territorial
22 definitions which are arbitrary, unfairly discriminatory, significantly
23 disproportionate, or delineated in a manner which is primarily for
24 marketing reasons, rather than for measuring the relativity of exposure
25 to probable loss; and

26 f. be created so as to include such other reasonable and necessary
27 standards as the commissioner may establish by regulation.

28

29 27. (New section) a. Within 45 days of the establishment of the
30 common territorial rating plan pursuant to section 28 of this
31 amendatory and supplementary act, each filer shall file for approval by
32 the commissioner a territorial rating plan for its use which meets the
33 standards of section 26 of this amendatory and supplementary act. A
34 filer may file for its use:

35 (1) an individual territorial rating plan which it has developed;

36 (2) the territorial rating plan of another filer which has been
37 approved pursuant to this section; or

38 (3) the common territorial rating plan established and approved
39 pursuant to section 28 of this amendatory and supplementary act.

40 b. The commissioner shall approve or disapprove the use of a
41 territorial rating plan by a filer by written notice within 15 days of its
42 filing. If the commissioner disapproves a plan, he shall state his
43 reasons therefor, along with any amendments necessary for his
44 approval. The amended plan shall be filed and approved no later than
45 15 days thereafter.

46 c. Territorial rating plans approved pursuant to this section shall

1 apply to policies of the filer issued or renewed on or after the effective
2 date of the plan, which in no case shall be more than 30 days following
3 the date of that approval and, in the case of plans initially filed and
4 approved pursuant to this section, shall be no later than March 1,
5 1999.

6 d. Approved individual territorial rating plans shall be on file and
7 available for review by filers subject to this section.

8 e. Filers shall periodically review, at least once in every five year
9 period following the effective date of this section, the continued
10 validity of the territorial rating plan it has implemented pursuant to
11 subsection a. of this section, and shall report its findings to the
12 commissioner. Based on his review of the report and a comparison of
13 the filer's territorial rating plan to the common plan established
14 pursuant to section 28 of this amendatory and supplementary act, the
15 commissioner may require the filer to amend its plan or, if the filer fails
16 to do so, to adopt the common plan.

17 f. All rating territories, and any subsequent modifications of
18 territorial rating plans, shall be filed with the commissioner and shall
19 be subject to his prior approval in accordance with this section and
20 section 26 of this amendatory and supplementary act.

21 g. As used in this section, "filer" means a rating organization or an
22 insurer or group of affiliated insurers making its own rates for private
23 passenger automobile insurance in this State.

24

25 28. (New section) a. There is established the Automobile
26 Insurance Territorial Rating Plan Advisory Commission to review data
27 and establish one common territorial rating plan for use by insurers not
28 filing a territorial rating plan pursuant to paragraph (1) or (2) of
29 subsection a. of section 27 of this amendatory and supplementary act.
30 The territorial rating plan established by the commission shall be
31 established according to the criteria and standards provided in section
32 26 of this amendatory and supplementary act. The common territorial
33 rating plan shall be subject to the prior approval of the Commissioner
34 of Banking and Insurance, and shall be reviewed by the commissioner
35 at least once every five years as provided in section 27 of this
36 amendatory and supplementary act.

37 b. The commission shall consist of 14 members: nine
38 representatives of insurers writing private passenger automobile
39 insurance in this State appointed by the Governor with the advice and
40 consent of the Senate; four public members, of whom one shall be
41 appointed by the President of the Senate, one by the Speaker of the
42 General Assembly, one by the Minority Leader of the Senate and one
43 by the Minority Leader of the General Assembly; and the
44 Commissioner of Banking and Insurance, who shall serve ex-officio.
45 Of the insurer members appointed by the Governor, at least two
46 members shall be selected from member companies of the American

1 Insurance Association, two members selected from member companies
2 of the Alliance of American Insurers, and two members selected from
3 member companies of the National Association of Independent
4 Insurers or their successor organizations. The remaining insurer
5 members shall be selected from insurers writing automobile insurance
6 in this State, but no insurer or group of insurers under common
7 control shall have more than one representative appointed to serve on
8 the commission.

9 c. The members of the commission shall serve for two year terms
10 and until their successors are appointed and qualified.

11 d. The commission shall elect a chairman and a vice chairman from
12 among the insurer members.

13 e. The commission shall establish a common territorial rating plan
14 pursuant to subsection a. of this section within 45 days of the effective
15 date of the regulations promulgated by the commissioner pursuant to
16 section 26 of this amendatory and supplementary act.

17

18 29. Section 7 of P.L.1983, c.65 (C.17:29A-36) is amended to read
19 as follows:

20 7. Any filing made for the purpose of automobile insurance rate
21 making shall indicate the actual rate needs of the filer; provided,
22 however, that (a) each filer's rate classification definitions, as used by
23 that filer, shall be uniform Statewide; and (b) the automobile
24 insurance rate charged an insured shall not exceed two and one-half
25 times the filer's territorial base rate for each coverage, exclusive of
26 driving record surcharges and discounts **];** and (c) the automobile
27 insurance rate for the base class in any territory for any filer shall not
28 exceed 1.35 times the filer's Statewide average base rate for each
29 coverage, exclusive of driving record surcharges and discounts**].**

30 The automobile insurance rate of an automobile whose principal
31 operator is 65 years of age or older shall not exceed one and
32 one-quarter times the Statewide average rate for principal operators
33 65 years of age or older for each coverage, exclusive of driving
34 record surcharges and discounts; provided, however, that no filer shall
35 increase rates for principal operators 65 years of age or older as a
36 result of the implementation of this section unless more than 50% of
37 its insureds are principal operators 65 years of age or older.

38 As used in this section, base rate means the automobile insurance
39 rate charged for an automobile that is not used in business and not
40 used in going to and from work, except for the going to and from
41 work distance included in the pleasure use classification of the filer,
42 and where there is no youthful operator, as defined in the filer's
43 classification system. The base rate class shall not include
44 automobiles to which discounts apply under the filer's classification
45 system, including, but not limited to, farmers' and senior citizens'
46 automobiles.

1 The provisions of this section shall be implemented after the
2 implementation of the provisions of subsection a. of section 8 of this
3 act.

4 (cf: P.L.1983, c.65, s.7)

5
6 30. Section 50 of P.L.1990, c.8 (C.17:33B-41) is amended to read
7 as follows:

8 50. a. Upon the termination of a policy of motor vehicle liability
9 insurance by cancellation for nonpayment of premium pursuant to
10 section 2 of P.L.1968, c.158 (C.17:29C-7), notice of that cancellation
11 shall be filed by the insurer with the Division of Motor Vehicles not
12 later than 30 days following the effective date of that cancellation.
13 Within 180 days of the date of enactment of P.L. , c. (now before
14 the Legislature as this bill), the division shall develop and maintain a
15 computer data base to verify compliance of owners and registrants of
16 motor vehicles with the motor vehicle liability insurance requirements
17 of section 1 of P.L.1972, c.197 (C.39:6B-1). The data base shall be
18 developed and maintained so that State and local law enforcement
19 agencies can efficiently access the data base. The data base shall be
20 funded from the Uninsured Motorist Prevention Fund established
21 pursuant to section 2 of P.L.1983, c.141 (C.39:6B-3); except that the
22 State Treasurer shall not disburse any funds to the director for the
23 costs associated with the establishment and operation of the data base
24 until the Director of the Division of Motor Vehicles certifies to the
25 satisfaction of the Treasurer that the data base is fully operational.

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

27 (a) the name, year, and driver's license number of each insured
28 owner or operator, and the address of the named insured;

29 (b) the make, year and vehicle identification number of each
30 insured vehicle; and

31 (c) the policy number, effective date and expiration date of each
32 policy.

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

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

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

43 (a) the name, date of birth, address and driver's license number of
44 all persons with current driver's licenses in this State; and

45 (b) all current motor vehicle registrations.

46 (5) The division shall, at least monthly:

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

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

6 b. The division shall notify the person whose policy was canceled
7 that, unless proof of motor vehicle liability insurance is filed with the
8 division within 30 days of the notification or some other allowable
9 circumstance exists and the division is notified of that circumstance
10 within 30 days of the notification, the sanctions and penalties of this
11 section shall apply.

12 c. If the Director of the Division of Motor Vehicles has not
13 received proof of motor vehicle liability insurance or other allowable
14 circumstances within 30 days pursuant to subsection b. of this section,
15 he shall suspend the registration of such vehicle, except that:

16 (1) Suspension shall not be made under this subsection upon the
17 basis of a cancellation of motor vehicle liability insurance if the
18 registration certificate and registration plates of the motor vehicle are
19 surrendered prior to the time at which the cancellation of insurance
20 becomes effective. Such surrender shall be made to such officers of
21 the division as the director shall direct. For the purposes of this
22 paragraph, the expiration of a registration without renewal of that
23 registration shall be deemed to be a surrender of registration as of the
24 date of expiration;

25 (2) Suspension shall not be made under this subsection upon a
26 cancellation of motor vehicle liability insurance if the vehicle has been,
27 or will be, prior to the date of that cancellation, removed from the
28 United States in North America and the Dominion of Canada for the
29 purpose of international traffic, provided that the owner of the vehicle,
30 prior to the date of that cancellation, has filed with the director a
31 statement, in a form prescribed by him, indicating that the vehicle has
32 been, or will be, so removed, and agreeing to notify the director
33 immediately upon return of the vehicle to the United States in North
34 America or the Dominion of Canada. Upon receipt of the statement
35 the director shall restrict the use of the registration to such
36 international traffic until new proof that motor vehicle liability
37 insurance has been secured for the vehicle;

38 (3) Suspension need not be made under this subsection upon the
39 basis of a cancellation of motor vehicle liability insurance if the period
40 of time during which the motor vehicle remained both registered and
41 uninsured was not greater than 15 days. The director shall promulgate
42 regulations governing the conditions under which suspension action
43 may be withheld pursuant to this paragraph.

44 d. Notwithstanding the provisions of subsection c. of this section,
45 an order of suspension may be rescinded if the registrant pays to the

1 commissioner a civil penalty in the amount of \$4 for each day up to
2 90 days for which motor vehicle liability insurance was not in effect.
3 The provisions of this subsection shall apply only once during any
4 36-month period and only if the registrant surrenders the certificate of
5 registration and registration plates to the director not more than 90
6 days from the date of cancellation of motor vehicle liability insurance
7 coverage or submits to the director proof of motor vehicle liability
8 insurance which took effect not more than 90 days from the
9 cancellation of his previous motor vehicle liability insurance.

10 e. Any motor vehicle, the registration for which has been
11 suspended pursuant to this section, shall not be registered or
12 reregistered in the name of the same registrant, or in any other name
13 where the director has reasonable grounds to believe that such
14 registration or reregistration will have the effect of defeating the
15 purposes of this section, and no other motor vehicle shall be registered
16 in the name of such person during the period of suspension.

17 f. No registration plates shall be returned to the registrant until
18 proof of motor vehicle liability insurance is submitted to the director.

19 g. If a registrant has not surrendered his certificate of registration
20 and registration plates or obtained motor vehicle liability insurance
21 within 90 days from the date of cancellation of motor vehicle liability
22 insurance, the director shall suspend the driver's license of any such
23 registrant. The suspension shall take effect on the date specified in the
24 order and shall remain in effect until termination of the suspension of
25 the registrant's registration.

26 h. The Director of the Division of Motor Vehicles shall adopt rules
27 and regulations pursuant to the "Administrative Procedure Act,"
28 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of
29 this section. The director may, by regulation, require that the
30 provisions of this section shall be applicable to the termination of
31 policies of motor vehicle liability insurance for reasons other than
32 cancellation for nonpayment of premium, including nonrenewals.
33 (cf: P.L.1990, c.8, s.50)

34
35 31. Section 1 of P.L.1970, c.215 (C.17:29D-1) is amended to read
36 as follows:

37 1. The Commissioner of Banking and Insurance may adopt, issue
38 and promulgate rules and regulations establishing a plan for the
39 providing and apportionment of insurance coverage for applicants
40 therefor who are in good faith entitled to, but are unable to procure
41 the same, through ordinary methods. Every insurer admitted to
42 transact and transacting any line, or lines, of insurance in the State of
43 New Jersey shall participate in such plan and provide insurance
44 coverage to the extent required in such rules and regulations.

45 The governing board of any plan established pursuant to the
46 commissioner's rules and regulations shall continue to exercise such

1 administrative authority, subject to the commissioner's oversight and
2 as provided in any rules and regulations promulgated pursuant to this
3 section, as is necessary to ensure the plan's efficient operation,
4 including, but not limited to, the authority to investigate complaints
5 and hear appeals from applicants, insureds, producers, servicing
6 carriers or participants about any matter pertaining to the plan's proper
7 administration, as well as the authority to appoint subcommittees to
8 hear such appeals. Any determination of an appeal by a plan's
9 governing board shall be subject to review by the commissioner on the
10 record below, and shall not be considered a contested case under the
11 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
12 seq.). The commissioner's determination shall be a final order and
13 shall be subject to review by the Superior Court.

14 Any plan established pursuant to this section to provide insurance
15 for automobiles, as defined in section 2 of P.L.1972, c.70
16 (C.39:6A-2), shall provide:

17 a. For a rating system which shall produce rates for each coverage
18 which are adequate for the safeness and soundness of the plan, and are
19 not excessive nor unfairly discriminatory with regard to risks in the
20 plan involving essentially the same hazards and expense elements,
21 which rates may be changed from time to time by a filing with the
22 commissioner in a manner and form approved by the commissioner;

23 b. For rates charged to plan insureds which shall be sufficient to
24 meet the plan's expenses and the plan's losses on an incurred basis,
25 including the establishment and maintenance of actuarially sound loss
26 reserves to cover all future costs associated with the exposure;

27 c. For a limited assignment distribution system permitting insurers
28 to enter into agreements with other mutually agreeable insurers or
29 other qualified entities to transfer their applicants and insureds under
30 such plan to such insurers or other entities;

31 d. That it shall not provide insurance coverage for more than 10
32 percent of the aggregate number of private passenger automobile
33 non-fleet exposures being written in the total private passenger
34 automobile insurance market in this State. The plan shall provide for
35 the cessation of the acceptance of applications or the issuance of new
36 policies at any time it reaches 10 percent of marketshare, as certified
37 by the commissioner, until such time that the commissioner certifies
38 that the plan is insuring less than 10 percent of the aggregate number
39 of private passenger automobile non-fleet exposures being written in
40 the total private passenger automobile insurance market in this State;

41 e. Except for risks written in automobile insurance urban enterprise
42 zones pursuant to subsection i. of this section, that it shall not provide
43 coverage to an eligible person as defined pursuant to section 25 of
44 P.L.1990, c.8 (C.17:33B-13);

45 f. (Deleted by amendment, P.L.1997, c.151.)

46 g. That the plan shall not be subsidized by any source external to

1 the plan;

2 h. That a qualified insurer who writes automobile insurance risks
3 in those automobile insurance urban enterprise zones designated by the
4 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-2)
5 shall receive assigned risk credits for voluntary risks written in those
6 designated automobile insurance urban enterprise zones as a direct
7 writer or through a UEZ agent or agents or through any agent with
8 whom the insurer has an in-force contract as of the effective date of
9 P.L.1997, c.151 (C.17:33B-64 et al.). The commissioner shall
10 establish by regulation the manner in which any qualified automobile
11 insurer may utilize the provisions of this subsection. In no event shall
12 that credit apply to reduce an insurer's obligations under subsection i.
13 of this section; and

14 i. (1) For a voluntary rating tier to accommodate eligible persons,
15 as defined in section 25 of P.L.1990, c. 8 (C.17:33B-13), residing in
16 automobile insurance urban enterprise zones, designated by the
17 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-2),
18 to provide increased availability and encourage the voluntary writing
19 of eligible persons residing in those zones;

20 (2) The rates utilized in this voluntary rating tier shall be the
21 voluntary market rates in use by the insurer to whom the risk is
22 assigned in that territory;

23 (3) The voluntary rating tier shall not provide insurance coverage
24 for more than five percent of the aggregate number of private
25 passenger automobile non-fleet exposures being written in the total
26 private passenger automobile insurance market in this State, and the
27 number of exposures written in the voluntary rating tier shall be
28 included for computing the maximum number of exposures permitted
29 to be written in the plan;

30 (4) The plan shall distribute risks submitted by qualified producers
31 to insurers authorized to write automobile insurance in this State
32 pursuant to a fair and nondiscriminatory formula established by the
33 commissioner. The formula shall provide that insurers which have,
34 and maintain, an aggregate voluntary automobile insurance
35 marketshare in automobile insurance urban enterprise zones, which is
36 reasonably equal to the insurer's voluntary Statewide marketshare
37 excluding risks written in automobile insurance urban enterprise zones,
38 shall be exempt from these distributions;

39 (5) Qualified producers may submit eligible person risks from
40 automobile insurance urban enterprise zones to the plan for coverage
41 in the voluntary rating tier. As used in this subsection i.: a "qualified
42 producer" means a UEZ agent, as defined in section 19 of P.L.1997,
43 c.151 (C.17:33C-1), who has met any limit on exposures that may be
44 written in accordance with the UEZ agent's agreement with the
45 appointing insurer pursuant to section 22 of P.L.1997, c.151
46 (C.17:33C-4); and a producer who: is duly licensed with

1 property/casualty authority for the three years immediately preceding
2 the effective date of P.L.1997, c.151 (C.17:33B-64 et al.); has no
3 affiliation with a voluntary market insurer for the placement of
4 automobile insurance; had an affiliation with a voluntary market
5 insurer for the placement of automobile insurance that was terminated
6 by the insurer in the last three years; demonstrates to the plan his
7 competency, efficiency and effectiveness in the solicitation, negotiation
8 and effectuation of automobile insurance as evidenced by any history
9 of disciplinary actions or complaints against the producer, and other
10 relevant factors; and conducts his business in an office in an
11 automobile insurance urban enterprise zone. For purposes of this
12 subsection i., "insurer" means an insurer or group of affiliated insurers
13 admitted or authorized to transact the business of automobile
14 insurance in this State;

15 (6) This subsection shall expire on **[December 31, 2000]** the first
16 day of the 61st month after the first policy using the voluntary rating
17 tier required by this subsection was issued to a risk, as certified by the
18 commissioner.

19 Prior to the adoption or amendment of such rules and regulations,
20 the commissioner shall consult with such members of the insurance
21 industry as he deems appropriate. Such consultation shall be in
22 addition to any otherwise required public hearing or notice with regard
23 to the adoption or amendment of rules and regulations.

24 The governing body administering the plan shall report annually to
25 the Legislature and the Governor on the activities of the plan. The
26 report shall contain an actuarial analysis regarding the adequacy of the
27 rates for each coverage for the safeness and soundness of the plan.

28 (cf: P.L.1997, c.151, s.26)

29

30 32. (New section) There is established in the Division of Criminal
31 Justice in the Department of Law and Public Safety the Office of the
32 Insurance Fraud Prosecutor. The Insurance Fraud Prosecutor shall be
33 appointed by, and serve at the pleasure of, the Governor with the
34 advice and consent of the Senate and be under the direction and
35 supervision of the Attorney General. Any person appointed as
36 Insurance Fraud Prosecutor shall have had prosecutorial experience,
37 including experience in the litigation of civil and criminal cases. The
38 Attorney General shall establish standards of performance for the
39 Office of Insurance Fraud Prosecutor, which shall include standards of
40 accountability.

41

42 33. (New section) The Attorney General may appoint such
43 personnel, including attorneys and clerical personnel, as necessary to
44 carry out the duties of the office. The personnel charged with
45 investigatory work in the Division of Insurance Fraud Prevention in
46 the Department of Banking and Insurance shall be transferred to the

1 Office of the Insurance Fraud Prosecutor as determined by the
2 Commissioner of Banking and Insurance and the Attorney General, in
3 accordance with a plan of reorganization, and shall become the Fraud
4 Investigatory Section of the Office of the Insurance Fraud Prosecutor.
5 Personnel transferred from the Division of Insurance Fraud Prevention
6 in the Department of Banking and Insurance to the Office of the
7 Insurance Fraud Prosecutor pursuant to this section and any such
8 reorganization plan shall be transferred with all tenure rights and any
9 rights or protections provided by Title 11A of the New Jersey Statutes
10 or other applicable statutes, as provided in section 8 of P.L.1983,
11 c.320 (C.17:33A-8), and any pension law or retirement system; and,
12 notwithstanding the provisions of section 4 of P.L.1970, c.74
13 (C.52:17B-100), or any other law, to the contrary, all supervisory and
14 investigative personnel of the Office of the Insurance Fraud Prosecutor
15 including, but not limited to, supervisory and investigative personnel
16 of the Division of Insurance Fraud Prevention transferred pursuant to
17 this section and any such reorganization plan, shall not be confidential
18 employees for the purposes of the "New Jersey Employer-Employee
19 Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.).

20

21 34. (New section) a. A section of the Office of Insurance Fraud
22 Prosecutor shall be designated to be responsible for establishing a
23 liaison and continuing communication between the office and the
24 Department of Health and Senior Services, the Department of Human
25 Services, any professional board in the Division of Consumer Affairs
26 in the Department of Law and Public Safety, the Department of
27 Banking and Insurance, the Division of State Police, every county
28 prosecutor's office, such local government units as may be necessary
29 or practicable and insurers.

30 b. The section of the office responsible for such liaison shall
31 establish procedures: (1) for receiving notice from all entities
32 enumerated in subsection a. of this section of any case in which fraud
33 is suspected or has been substantiated; (2) for receiving referrals for
34 the investigation of alleged fraud; (3) for receiving referrals for the
35 prosecution of fraud by the office; (4) for receiving and referring
36 information regarding cases, administrative or otherwise, under
37 investigation by any department or other entity to the appropriate
38 authority, and (5) for providing information to and coordinating
39 information among any referring entities on pending cases of insurance
40 fraud which are under investigation or being litigated or prosecuted.
41 The liaison section of the office shall maintain a record of every
42 referral or investigation.

43

44 35. (New section) The Insurance Fraud Prosecutor shall
45 investigate and, if warranted, prosecute, cases referred to it by
46 insurers, State agencies, or county and municipal governments. The

1 Insurance Fraud Prosecutor may assist county prosecutors in the
2 investigation and prosecution of fraud, and shall give county
3 prosecutors access to the data base maintained pursuant to section 38
4 of this amendatory and supplementary act.

5
6 36. (New section) The Attorney General shall, in consultation with
7 county prosecutors, establish a Statewide fraud enforcement policy for
8 all State and local agencies, including guidelines for the investigation
9 and prosecution of fraud, which shall include standards for detecting
10 fraud, for the investigation of alleged fraud and standards for the
11 submission of cases for prosecution. Priorities shall be established
12 among the cases referred to the office for prosecution or other
13 litigation and the office shall assist referring entities in establishing
14 priorities among investigations or cases to be disposed of by the
15 entities themselves. The Insurance Fraud Prosecutor shall prosecute
16 criminal cases, litigate civil cases as appropriate, or assist county
17 prosecutors in prosecuting criminal cases in accordance with the
18 guidelines and priorities so established.

19
20 37. (New section) Standards of performance shall be established
21 for the Fraud Investigatory Section, which shall include, but not be
22 limited to, recording the cases referred by insurers, local government
23 agencies and others which are assigned to the Fraud Investigatory
24 Section, investigating cases of alleged fraud in accordance with the
25 priorities established by the Insurance Fraud Prosecutor, recording the
26 disposition of the cases referred to the section, and making
27 recommendations to the Insurance Fraud Prosecutor as to any
28 procedural, regulatory, or statutory changes which may be necessary
29 to carry out the provisions of this amendatory and supplementary act.

30
31 38. (New section) a. The Insurance Fraud Prosecutor shall
32 maintain a data base which includes referrals, reports of fraud
33 investigations, prosecution, or litigation, and the results of such
34 proceedings, which shall include: (1) identification of the referring
35 entity; (2) type of fraud; (3) disposition of case; and (4) such other
36 data as may be necessary to the work of the office and the referring
37 entities.

38 b. The Insurance Fraud Prosecutor shall provide for the reporting
39 of claims information by insurers writing at least \$2,000,000 in direct
40 insurance premiums in any calendar year, in a standard reporting form,
41 which shall include, but shall not be limited to, information on stolen
42 vehicles, including the owners of such vehicles, information on
43 automobile accidents, including date and location of accidents, persons
44 involved in accidents, the kinds of injuries sustained in accidents and
45 treating health care providers, for the purpose of identifying patterns
46 of possible fraudulent activity, which information shall be shared with

1 county prosecutors, local law enforcement officials, and the New
2 Jersey State Police. Every insurer shall submit the data required by the
3 Insurance Fraud Prosecutor for all claims closing with payment during
4 a period established by the Insurance Fraud Prosecutor.

5
6 39. (New section) The Insurance Fraud Prosecutor shall have
7 access to all necessary information in the possession of the State or
8 local public entities, including agency inspection reports, motor vehicle
9 records and license information, individual case files, and intelligence
10 information compiled and maintained by the Division of State Police
11 in the Department of Law and Public Safety. Upon the request of the
12 Insurance Fraud Prosecutor, any insurer which has referred a case to
13 the Insurance Fraud Prosecutor, or to any county or local government
14 agency shall make all information on the case available to the Office
15 of the Insurance Fraud Prosecutor that the Insurance Fraud Prosecutor
16 shall request.

17
18 40. (New section) The Attorney General shall direct the Office of
19 the Insurance Fraud Prosecutor to:

20 a. Confer from time to time with departments or other units of
21 State government which have units which investigate fraud, in order
22 to coordinate activities, share information, and provide any assistance
23 necessary to any State agency in overseeing administrative
24 enforcement activities;

25 b. Formulate and evaluate proposals for legislative, administrative
26 and judicial initiatives to strengthen insurance fraud enforcement;

27 c. In connection with insurance fraud enforcement activities, act as
28 the liaison for the Executive Branch of government with agencies
29 involved in insurance fraud enforcement outside the Executive Branch,
30 including federal agencies and the Judiciary.

31 d. Provide an annual report to the Governor and the Legislature,
32 no later than March 1 of each year, as to the activities of the Insurance
33 Fraud Prosecutor for the preceding twelve months, including, but not
34 limited to, the number of cases referred, the number of cases
35 investigated, the number of cases in which professional licenses were
36 suspended or revoked, by type of license, the number of cases
37 prosecuted, the number of convictions procured, and the aggregate
38 amount of money collected in fines and returned in restitution to
39 insurers or others.

40
41 41. (New section) In the case of a professional licensed or
42 certified by a professional licensing board in the Division of Consumer
43 Affairs in the Department of Law and Public Safety who is guilty of
44 fraud, the Insurance Fraud Prosecutor may recommend to the
45 appropriate board a suspension or revocation of the professional
46 license.

1 42. (New section) The Insurance Fraud Prosecutor shall consider
2 the restitution of moneys to insurers and others who are defrauded as
3 a major priority, in order that policyholders may benefit from the
4 prosecution of those persons guilty of insurance fraud, and to that end,
5 any assets of any person guilty of fraud shall be subject to seizure.

6
7 43. (New section) The Insurance Fraud Prosecutor shall have
8 access to all information concerning insurance fraud enforcement
9 activities in the possession of all State departments and agencies. The
10 office shall meet on a regular basis with representatives of State
11 departments and agencies and county prosecutors to set specific goals
12 and strategies for the most effective resolution of insurance fraud
13 cases, whether by criminal, civil, or administrative enforcement action,
14 or a combination thereof.

15
16 44. (New section) Any county prosecutor may apply to the Office
17 of Insurance Fraud Prosecutor for reimbursement for activities
18 undertaken in connection with investigating and prosecuting insurance
19 fraud. The Attorney General shall allocate such funds as he deems
20 necessary from such moneys as may be appropriated for the operation
21 of the Office of Insurance Fraud Prosecutor to a fund dedicated for the
22 purpose of reimbursing county prosecutors or sharing in fines levied
23 by the Attorney General, which reimbursement or sharing may be
24 made by the Attorney General at his discretion.

25
26 45. (New section) Every state and local law enforcement agency,
27 including the New Jersey State Police, shall make available to
28 investigators employed by insurers, upon presentation of appropriate
29 identification, information from any accident report, as set forth in this
30 section, no later than 24 hours following the time of occurrence. The
31 information may include, but need not be limited to, the names and
32 addresses of the owners of the vehicles, insurance information
33 recorded on the accident report, and the names and addresses of
34 passengers in the vehicles at the time of the occurrence and, if
35 applicable, the name of any pedestrian injured in an accident. Every
36 accident report form shall contain the names and addresses of any
37 person occupying a vehicle involved in an accident, and any pedestrian
38 injured in an accident.

39
40 46. (New section) The Attorney General shall annually, on or
41 before October 1, certify to the State Treasurer an amount allocable
42 to the expenses of the Office of the Insurance Fraud Prosecutor for the
43 preceding fiscal year, which amount shall be transferred to the
44 Department of Law and Public Safety by the State Treasurer from the
45 amounts assessed and collected for the operation of the Division of
46 Insurance Fraud Prevention in the Department of Banking and

1 Insurance pursuant to section 8 of P.L.1983, c.320 (C.17:33A-8).

2

3 47. (New section) For the purposes of sections 48 through 61 of
4 this amendatory and supplementary act:

5 "Commissioner" means the Commissioner of Banking and
6 Insurance;

7 "Claim" means any claim filed under a policy of insurance issued
8 pursuant to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any
9 policy of life or health insurance issued pursuant to Title 17 of the
10 Revised Statutes or Title 17B of the New Jersey Statutes;

11 "Insurance" means any contract of direct insurance written pursuant
12 to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any policy of
13 life or health insurance issued pursuant to Title 17 of the Revised
14 Statutes or Title 17B of the New Jersey Statutes;

15 "Ombudsman" means the Insurance Claims Ombudsman appointed
16 pursuant to section 48 of this amendatory and supplementary act.

17

18 48. (New section) There is created within the Division of
19 Consumer Affairs in the Department of Law and Public Safety the
20 Office of the Insurance Claims Ombudsman. The ombudsman shall be
21 appointed by the Governor with the advice and consent of the Senate
22 and shall serve at the pleasure of the Governor during the Governor's
23 term of office. The ombudsman shall devote his entire time to the
24 duties of his office. Any vacancy occurring in the position of
25 ombudsman shall be filled in the same manner as the original
26 appointment. If the ombudsman shall be unable for any reason to
27 serve his full term of office, the Governor may designate an acting
28 ombudsman until a successor is appointed and qualified. The
29 ombudsman shall have at least a baccalaureate degree and at least
30 seven years' experience in property and casualty or life and health
31 insurance, which may include experience as a broker or an agent.

32

33 49. (New section) The ombudsman shall:

34 a. Administer and organize the work of the office and hire such
35 persons as shall be deemed necessary to effectuate his duties, subject
36 to Title 11A (Civil Service) of the New Jersey Statutes, and within the
37 limits of funds made available by the Department of Banking and
38 Insurance, in consultation with the Attorney General.

39 b. Appoint and employ any consultants, independent adjusters,
40 claims specialists, attorneys or others for the purpose of providing
41 legal and professional advice as the ombudsman may from time to time
42 require, within the limits of the funds provided therefor;

43 c. Investigate consumer complaints regarding policies of insurance,
44 including the payment of claims on policies of insurance;

45 d. Establish procedures to monitor the implementation of
46 P.L.1985, c.179 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1

1 et seq.), P.L.1982, c.95 (C.17:35C-1 et seq.) and chapter 30 of Title
2 17B of the New Jersey Statutes and investigate violations of section
3 8 of P.L.1992, c.144 (C.17:35C-11).

4 e. Respond to inquiries from consumers, including, but not limited
5 to, those regarding policy provisions and the availability of coverage;

6 f. Publish and disseminate buyers' guides and, where provided by
7 law, comparative rates; provided, however, that this shall not apply to
8 any policy of health insurance issued pursuant to P.L.1992, c.161
9 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

10 g. Review conduct of arbitrators appointed under the terms of the
11 policy to arbitrate disputes, except policies issued pursuant to
12 P.L.1972, c.70 (C.39:6A-1 et seq.)

13 h. Promulgate such rules and regulations as shall be necessary to
14 effectuate the purposes of sections 48 through 61 of this amendatory
15 and supplementary act; and

16 i. Perform such other functions as may be prescribed by this or by
17 any other law or regulation.

18

19 50. (New section) Any person who: a. has reasonable cause to
20 believe that an insurer has failed or refuses to settle a claim in
21 accordance with the provisions of the insurance contract or engaged
22 in any practice in violation of the provisions of P.L.1985, c. 179
23 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et seq.), P.L.1982,
24 c. 95 (C.17:35C-1 et seq.), chapter 30 of Title 17B of the New Jersey
25 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11); and, in the
26 case of disputed claims, b. has previously filed an appeal with the
27 insurer's internal appeals procedure established pursuant to section 55
28 of this amendatory and supplementary act, which has been adjudicated,
29 or other dispute resolution procedure established pursuant to
30 P.L.1972, c.70 (C.39:6A-1 et seq.), P.L.1997, c.192 (C.26:2S-1 et
31 seq.), sections 1 through 12 of P.L.1983, c.358 (C.39:6A-24 through
32 39:6A-35, inclusive) or sections 24 and 25 of P.L. , c.
33 (C.) (now before the Legislature as this bill) may file an
34 application with the ombudsman for a review of the claims settlement.

35

36 51. (New section) In any investigation involving a disputed claim,
37 the ombudsman may:

38 a. Investigate whether the claims settlement was appropriate and
39 in accordance with the contract;

40 b. Make the necessary inquiries and obtain such information as he
41 deems necessary;

42 c. Hold a hearing on the disputed claim;

43 d. Inspect any books or records which are relevant to the claim;

44 e. Compel any person to produce at a specific time and place, by
45 subpoena, any documents, books, records, papers, objects or other
46 evidence which he believes may relate to a claim under investigation.

1 52. (New section) The ombudsman need not investigate any
2 complaint if he determines that:

3 a. The complaint is trivial, frivolous, vexatious or not made in
4 good faith;

5 b. The complaint has been too long delayed to justify present
6 investigation;

7 c. The resources available, considering the established priorities,
8 are insufficient for an adequate investigation; or

9 d. The matter complained of is not within the investigatory
10 authority of the office.

11

12 53. (New section) The ombudsman shall maintain a central registry
13 of all claims investigations which have been disposed of and closed,
14 the nature of the investigation, findings, and recommended actions.
15 No information so compiled shall be construed to be a public record.
16 In addition, the ombudsman shall:

17 a. Report to the commissioner any evidence that an insurer has
18 established a pattern of settlement practices which would constitute an
19 unfair claims settlement practice within the meaning of P.L.1947,
20 c.379 (C.17:29B-1 et seq.) or any violations of P.L.1985, c.179
21 (C.17:23A-1 et seq.), P.L.1947, c.379 (C17:29B-1 et seq.), P.L.1982,
22 c.95 (C.17:35C-1 et seq.) chapter 30 of Title 17B of the New Jersey
23 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11);

24 b. Report to the commissioner any contract provision, including
25 any endorsements, which are unfairly discriminatory, confusing,
26 misleading or contrary to public policy, along with a recommendation
27 as to whether the policy form should be modified or withdrawn.

28

29 54. (New section) With respect to trade or marketing practices,
30 the ombudsman may:

31 a. Conduct an investigation regarding an insurer's trade practices,
32 including claims settlement practices and marketing practices;

33 b. Make the necessary inquiries and obtain such information as he
34 deems necessary;

35 c. Hold a hearing;

36 d. Inspect any books or records which may be necessary for the
37 investigation;

38 e. Compel any person to produce at a specific time and place, by
39 subpoena, any documents, books, records, papers, objects or other
40 evidence which he believes may relate to the investigation.

41 The ombudsman shall report his findings to the commissioner with
42 respect to the trade practices or marketing practices under
43 investigation.

44

45 55. (New section) Every insurer writing property and casualty
46 insurance or life insurance in this State shall establish an internal

1 appeals procedure for the adjudication of disputed claims, in
2 accordance with terms set forth by the commissioner by rule and
3 regulation or as otherwise provided by law or regulation. The
4 adjudication shall be conducted by a panel of the insurer's employees,
5 who shall be personnel other than those responsible for claims payment
6 on a day-to-day basis and shall be conducted within 10 business days
7 of the receipt of the complaint.

8
9 56. (New section) Complaints shall be filed on a form set forth by
10 the ombudsman. The office of the ombudsman shall acknowledge the
11 receipt of complaints, and advise the applicants of any action taken or
12 opinions and recommendations which may have been made by it to the
13 insurer. The ombudsman shall make recommendations to the
14 commissioner as he deems necessary, including, but not limited to:

15 a. A recommendation that a policy form or endorsement thereon
16 which he finds unfairly discriminatory, misleading or contrary to public
17 policy be modified;

18 b. A recommendation that specific rules and regulations
19 promulgated by the commissioner, including rules concerning trade
20 practices and claims settlement practices, be modified or repealed;

21 c. A recommendation that the claims settlement practices of a
22 specific insurer or insurers be further investigated by the
23 commissioner;

24 d. A recommendation that the commissioner impose penalties or
25 other sanctions against an insurer or insurers as a result of the insurer's
26 claims settlement practices.

27
28 57. (New section) Every buyer's guide which is required to be
29 provided to insureds for any line of insurance shall contain a notice
30 describing the functions of the ombudsman, the mailing address of the
31 ombudsman, and a toll-free information telephone number. The
32 ombudsman may publicize his existence, function and activities to the
33 public at large.

34
35 58. (New section) a. Any correspondence or written
36 communication from any applicant and any written material submitted
37 by an insurer shall remain confidential and shall not be part of any
38 public record, unless the parties authorize, in writing, the release of
39 the information, except for such disclosures as may be necessary to
40 enable the ombudsman to perform his duties and to support any
41 opinions or recommendations.

42 b. Any person conducting or participating in any investigation of
43 a complaint who discloses to any person, other than the office of the
44 ombudsman, or those authorized by the ombudsman to receive it, any
45 information collected during the investigation, is guilty of a disorderly
46 person's offense.

1 c. Any statement or communication made by the office of the
2 ombudsman relevant to a complaint received by the ombudsman, to
3 proceedings conducted by the ombudsman, or relating to an
4 investigation conducted by the ombudsman, which is provided to the
5 office in good faith, shall be absolutely privileged.

6 d. The ombudsman shall not be required to testify in court with
7 respect to matters held to be confidential except as the court may
8 deem necessary to enforce the provisions of sections 48 through 61 of
9 this amendatory and supplementary act.

10
11 59. (New section) Upon making his determination as to the
12 appropriate disposition of a claim, the ombudsman shall notify the
13 insurer and the claimant of his decision. The decision shall be
14 admissible in any court action or any other proceeding which is
15 instituted to determine final disposition of the claim. The ombudsman
16 may file a brief with the court in connection with an action relating to
17 the disposition of claim.

18
19 60. (New section) Any person who willfully hinders the lawful
20 actions of the ombudsman or willfully refuses to comply with his
21 lawful demands, including the demand for the inspection of records,
22 shall be subject to a penalty of not more than \$5,000. The penalty
23 shall be collected and enforced by summary proceedings pursuant to
24 "the penalty enforcement law," N.J.S.2A:58-1 et seq. Each violation
25 of sections 48 through 61 of this amendatory and supplementary act
26 shall constitute a separate offense. Notwithstanding any other
27 provision of law to the contrary, no investigation or determination
28 made by the ombudsman shall be subject to the provisions of
29 P.L.1960, c.39 (C.56:8-1 et seq.).

30
31 61. (New section) The ombudsman shall report to the Governor
32 and the Legislature on or before September 30 of each year,
33 summarizing his activities for the preceding year, documenting any
34 significant insurance industry problems with regard to claims
35 settlement practices in any line of insurance, and setting forth any
36 recommendations for statutory or regulatory change which will further
37 the State's capacity to resolve claims disputes.

38
39 62. Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended to read
40 as follows:

41 4. No insurer shall fail to renew a policy unless it shall mail or
42 deliver to the named insured, at the address shown in the policy, at
43 least 60 days' advance notice of its intention not to renew. This
44 section shall not apply:

- 45 (a) If the insurer has manifested its willingness to renew; nor
46 (b) In case of nonpayment of premium;

1 provided that, notwithstanding the failure of an insurer to comply
2 with this section, the policy shall terminate on the effective date of any
3 other insurance policy with respect to any automobile designated in
4 both policies.

5 **【If a named insured qualifies for his insurer's non-standard rate**
6 **level after having been insured at the standard rate level, the insurer**
7 **shall mail or deliver to the named insured, at the address shown in the**
8 **policy, at least 60 days' advance notice of its intention to renew at the**
9 **non-standard rate level.】**

10 Renewal of a policy shall not constitute a waiver or estoppel with
11 respect to grounds for cancellation which existed before the effective
12 date of such renewal.

13 (cf: P.L.1997, c.240, s.1)

14
15 63. (New section) a. An insurer authorized to transact or
16 transacting automobile insurance business in this State shall file with
17 the commissioner, for the commissioner's approval, an endorsement to
18 its automobile liability insurance policy which contains a "named
19 excluded driver" provision that would exclude physical damage
20 coverage on an automobile covered by an automobile liability
21 insurance policy if it is operated by the "named excluded driver." For
22 purposes of this section, "named excluded driver" means a driver in the
23 household of the named insured who is specifically identified in the
24 endorsement as a person whose operation of an automobile covered
25 under the automobile liability insurance policy at the time of an
26 accident would result in the denial of a physical damage claim for that
27 automobile.

28 b. The premium charged for the physical damage coverage on a
29 policy containing a "named excluded driver" endorsement shall not
30 reflect the claim experience or driving record of the "named excluded
31 driver" or drivers.

32 c. Election of a "named excluded driver" endorsement shall be in
33 writing and signed by the named insured on a form prescribed by the
34 commissioner. The "named excluded driver" endorsement shall
35 continue in force as to subsequent renewal or replacement policies
36 until the insurer or its authorized representative receives a properly
37 executed form electing to discontinue the endorsement.

38 d. Notwithstanding any other provision of the law to the contrary,
39 no person, including, but not limited to, an insurer or an insurance
40 producer, shall be liable in an action for damages on account of the
41 election of a "named excluded driver" endorsement.

42 e. The commissioner may promulgate rules and regulations
43 necessary to implement the provisions of this section.

44
45 64. (New section) If an insurer has a financial arrangement with
46 an auto body repair shop or other repair facility or a network of

1 facilities for the purpose of repairing vehicles covered under physical
2 damage, collision, or comprehensive coverages, the insurer shall not
3 deny a person the right to select an auto body repair shop or other
4 repair facility of his choice for repair of a covered vehicle, provided
5 that such auto body repair shop or other repair facility elected by the
6 person accepts the same terms and conditions as the shop, facility, or
7 network with which the insurer has an arrangement and agrees to
8 repair the covered vehicle at the same price.

9

10 65. (New section) a. The Commissioner of Banking and Insurance
11 may, in connection with any profits report made under P.L.1988, c.118
12 (C.17:29A-5.6 et seq.), require a review of all or part of the filing by
13 qualified independent actuary, including the elements of the filing
14 including the insurer or filer's assumptions with respect to the
15 development of losses or loss adjustment expenses developed to an
16 ultimate basis, allowance for profit and contingencies and anticipated
17 investment income.

18 b. For the purposes of this section, "qualified independent actuary"
19 means a person or firm with annual billings of at least \$5,000,000, who
20 has not worked for the insurer or filer whose filing is under review
21 during the previous three year period.

22

23 66. (New section) a. For the purposes of this section:

24 "Qualified person" means a person qualified by the Commissioner
25 of Banking and Insurance to intervene in public hearings pursuant to
26 this section;

27 "Rate filing" means a filing for a rate increase by an automobile
28 insurer writing private passenger automobile insurance in this State,
29 other than a rate filing made pursuant to any statutory change in
30 coverage provided under a policy of private passenger automobile
31 insurance.

32 b. The Commissioner of Banking and Insurance shall establish
33 standards for qualifying persons to intervene in rate filings pursuant to
34 this section. The standards shall include, but shall not necessarily be
35 limited to, requiring that any person intervening in a rate filing
36 demonstrate: (1) expertise in the insurance laws of this State; (2) an
37 understanding of the actuarial principles employed in establishing rates
38 and rating systems; (3) sufficient access to a qualified actuary and
39 sufficient expertise to conduct a technical examination of a rate filing;
40 (4) sufficient resources to intervene in the rate filing process as
41 provided herein; and (5) that the person represents the interest of
42 consumers.

43 c. The commissioner shall require such documentation as he
44 determines is necessary to qualify a person to intervene in a rate filing,
45 and may charge a fee for registration with the department as an
46 intervenor, which fee shall be payable annually.

1 d. The commissioner may remove the registration of an intervenor
2 if he determines that (1) the intervenor no longer meets the
3 qualifications, or (2) if the intervenor is convicted of a crime or loses
4 a professional license for misconduct.

5 e. If an insurer or rating organization files for a rate increase for
6 private passenger automobile insurance, the commissioner shall notify
7 the public of the proposed rate change in a newspaper or newspapers
8 of general circulation throughout the State. A qualified person may
9 request, and shall receive, a copy of the rate filing and any
10 amendments and supplements thereto and shall pay the expenses in
11 connection therewith. The qualified person may request that the
12 commissioner certify the rate filing for a hearing pursuant to section
13 14 of P.L.1944, c.27 (C:17:29A-14).

14 f. The commissioner shall establish by regulation the terms and
15 conditions under which the proceedings under this section shall be
16 conducted, including, but not limited to the supporting material which
17 shall accompany the intervention.

18 g. Upon determining that the intervenor has demonstrated that the
19 qualified person has made a substantial contribution to the adoption of
20 any order, regulation, or decision by the commissioner or a court in
21 connection with a rate filing made pursuant to this section, the
22 commissioner shall award reasonable advocacy and witness fees and
23 expenses.

24

25 67. (New section) a. Except for the plan established pursuant to
26 section 1 of P.L.1970, c.215 (C.17:29D-1), every insurer writing
27 private passenger automobile insurance in this State pursuant to
28 P.L.1972, c.70 (C.39:6A-1 et seq.) shall file rates with the
29 Commissioner of Banking and Insurance which result in:

30 (1) a reduction of at least 25% from the personal injury protection
31 territorial base rate applicable to medical expense benefits, at least
32 10% of which shall reflect a reduction in the actuarial value of the
33 medical expense benefits provided pursuant to section 4 of P.L.1972,
34 c.70 (C.39:6A-4), within the policy limits provided for in that section;

35 (2) a reduction of at least 22% in the territorial base rate for bodily
36 injury liability coverage applicable to named insureds to whom the
37 Limitation on Lawsuit Option provided for in subsection a. of section
38 8 of P.L.1972, c.70 (C.39:6A-8) applies;

39 (3) a reduction of at least 6% in the territorial base rate for
40 collision coverage which shall reflect the provisions of section 64 of
41 this amendatory and supplementary act; and

42 (4) after the reductions required pursuant to paragraphs (1), (2) and
43 (3) of this subsection have been applied, an additional aggregate
44 reduction of at least 3% in the territorial base rates for personal injury
45 protection, bodily injury, property damage, comprehensive and
46 collision coverages, as apportioned by the insurer and approved by the

1 commissioner, which reduction is attributable to the effect of the
2 enhanced insurance fraud provisions of this amendatory and
3 supplementary act and of other such laws including, but not limited to
4 P.L.1997, c.353 (C.2C:21-4.2 et seq.) and P.L.1997, c.151
5 (C.17:33B-64 et al.).

6 b. The rate filings reflecting these reductions shall apply to policies
7 issued or renewed on or after 90 days following:

8 (1) the establishment by the commissioner of basic benefits
9 required to be provided pursuant to section 4 of P.L.1972, c.70
10 (C.39:6A-4); or

11 (2) the adoption by rule of the professional boards of the
12 designation of valid diagnostic tests pursuant to the provisions of
13 section 12 of P.L. , c. (C.) (now before the Legislature as
14 this bill);

15 whichever is later.

16

17 68. Section 3 of P.L.1991, c.154 (C.17:28-1.7) is amended to read
18 as follows:

19 3. Every owner, registrant or operator of a motor bus registered or
20 principally garaged in this State and every person or organization
21 legally responsible for his acts or omissions, is hereby exempted from
22 tort liability for noneconomic loss to a passenger who has a right to
23 receive benefits under section 2 of this act as a result of bodily injury
24 arising out of the ownership, operation, maintenance or use of a motor
25 bus in this State, unless that person has sustained a personal injury
26 which results in death; dismemberment; significant disfigurement or
27 significant scarring; [a fracture]displaced fractures; loss of a fetus;
28 [permanent loss of use of a body organ, member, function or system;
29 permanent consequential limitation of use of a body organ or member;
30 significant limitation of use of a body function or system; or a
31 medically determined injury or impairment of a non-permanent nature
32 which prevents the injured person from performing substantially all of
33 the material acts which constitute that person's usual and customary
34 daily activities for not less than 90 days during the 180 days
35 immediately following the occurrence of the injury or impairment] or
36 a permanent injury within a reasonable degree of medical probability,
37 other than scarring or disfigurement. An injury shall be considered
38 permanent when the body part or organ, or both, has not healed to
39 function normally and will not heal to function normally with further
40 medical treatment. For the purposes of this subsection, "physician"
41 means a physician as defined in section 5 of P.L.1939,c.115 (C.45:9-
42 5.1).

43 In order to satisfy the provisions of this section, the plaintiff shall,
44 within 60 days following the date of the answer to the complaint by
45 the defendant, provide the defendant with a certification from the
46 licensed treating physician or a board-certified licensed physician to

1 whom the plaintiff was referred by the treating physician. The
2 certification shall state, under penalty of perjury, that the plaintiff has
3 sustained an injury described above. The certification shall be based
4 on and refer to objective clinical evidence, which may include medical
5 testing, except that any such testing shall be performed in accordance
6 with medical protocols pursuant to subsection a. of section 4 of
7 P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
8 administered in accordance with section 12 of P.L. _____, c.
9 (C. _____)(now before the Legislature as this bill). Such testing may
10 not be experimental in nature or dependent entirely upon subjective
11 patient response. The court may grant no more than one additional
12 period not to exceed 60 days to file the certification pursuant to this
13 section upon a finding of good cause.

14 A person is guilty of a crime of the fourth degree if that person
15 purposefully or knowingly makes, or causes to be made, a false,
16 fictitious, fraudulent, or misleading statement of material fact in, or
17 omits a material fact from, or causes a material fact to be omitted
18 from, any certification filed pursuant to this section. Notwithstanding
19 the provisions of subsection e. of N.J.S.2C:44-1, the court shall deal
20 with a person who has been convicted of a violation of this section by
21 imposing a sentence of imprisonment unless, having regard to the
22 character and condition of the person, the court is of the opinion that
23 imprisonment would be a serious injustice which overrides the need to
24 deter such conduct by others. If the court imposes a noncustodial or
25 probationary sentence, such sentence shall not become final for
26 10 days in order to permit the appeal of such sentence by the
27 prosecution. Nothing in this section shall preclude an indictment and
28 conviction for any other offense defined by the laws of this State. In
29 addition, any professional license held by the person shall be forfeited
30 according to the procedures established by section 4 of P.L.1997,
31 c.353 (C.2C:51-5).

32 (cf: P.L.1991, c.154, s.3)

33

34 69. Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended to read
35 as follows:

36 2. In the event medical expense benefits paid by an insurer, in
37 accordance with subsection a. of section 4 of P.L.1972, c.70
38 (C.39:6A-4) or section 4 of P.L. _____, c. _____ (C. _____)(now before the
39 Legislature as this bill), are in excess of \$75,000.00 on account of
40 personal injury to any one person in any one accident, the Unsatisfied
41 Claim and Judgment Fund shall assume such excess up to \$250,000
42 and reimburse the insurer therefor in accordance with rules and
43 regulations promulgated by the commissioner; provided, however, that
44 this provision is not intended to broaden the coverage available to
45 accidents involving uninsured or hit-and-run automobiles, to provide

1 extraterritorial coverage, or to pay excess medical expenses.

2 (cf: P.L.1990, c.8, s.14)

3

4 70. a. This act shall take effect 90 days following the
5 establishment by the Commissioner of Banking and Insurance of basic
6 benefits required to be provided pursuant to section 4 of P.L.1972,
7 c.70 (C.39:6A-4) or the adoption by rule of the professional boards of
8 the designation of valid diagnostic tests pursuant to the provisions of
9 section 12 of this act, whichever is later, except that: (1) sections 47
10 through 61 shall take effect on the 90th day after the date of
11 enactment; (2) sections 1, 12, 26 through 28, 30 through 46, 62
12 through 65 and 67 shall take effect immediately; and (3) section 29
13 shall take effect immediately and the elimination of the limit on
14 territorial base rates provided therein shall apply to policies issued or
15 renewed by an insurer on or after the effective date of the insurer's
16 territorial rating plan approved by the commissioner as provided in
17 section 27, but no later than March 1, 1999.

18 b. Prior to the effective date of any section of this act, the
19 Commissioner of Banking and Insurance may take those actions and
20 promulgate those regulations necessary to implement the provisions of
21 this act.

22

23

24

STATEMENT

25

26 This bill makes a number of substantial changes to the private
27 passenger automobile insurance system under the State's no-fault law.

28 The bill modernizes the definition section of the no-fault law,
29 modifying the 26-year old descriptions of medical expenses and
30 hospital expenses to take into account health care professions licensed
31 since that time, and setting forth a new definition of "hospital" to take
32 into account the larger number of facilities which now come under the
33 purview of the act. The bill establishes a new type of policy, the basic
34 policy, which would permit people to meet the State's mandatory
35 insurance requirement at substantially lower cost than at present, and
36 is directed toward reducing the number of uninsured drivers. This
37 policy provides for \$15,000 medical expense benefits, with benefits for
38 catastrophic injuries, as enumerated in the bill, which would permit
39 recovery up to \$250,000. The basic policy also includes \$10,000
40 bodily injury liability coverage and \$5,000 coverage for property
41 damage liability. It is anticipated that individuals purchasing this
42 policy would be those with few tangible assets to protect as well as
43 lower-income persons who cannot now purchase insurance because it
44 is unaffordable. It is likely that many drivers now driving without
45 insurance will purchase this coverage, thus ensuring that in the event
46 they are seriously injured they will be able to pay for their medical

1 bills. It is estimated that on average, this policy will cost somewhere
2 around \$475 to \$525. The bill contains a provision that prospective
3 purchasers of this coverage must be notified that purchase of the
4 policy could put their assets at risk. Drivers with full coverage who
5 are injured by someone who elects a basic policy would be covered by
6 their own personal injury protection coverage, and would collect
7 benefits for pain and suffering under their own insurance policies.

8 In order to reduce the overutilization of medical benefits under
9 automobile insurance policies, which is the principal cause of the
10 escalation in premiums in recent years, the bill establishes the standard
11 that providers are expected to use commonly accepted protocols in
12 treating patients injured in automobile accidents; while the bill does
13 not impose a rigid adherence to treatment protocols, the protocols
14 establish a baseline for determining whether unnecessary treatment is
15 taking place. Similarly, to better define standards for diagnostic
16 testing, the bill requires the professional boards in the Division of
17 Consumer Affairs to establish a list of diagnostic tests generally
18 determined to be acceptable for treatment in the respective
19 professions. This is intended to eliminate the problem of the use of
20 diagnostic tests which are not generally recognized as useful or
21 appropriate.

22 In order to reduce the number of disputes regarding medical
23 treatment, the bill provides for more specificity in the policy form
24 itself, so that it would be more similar to a health insurance policy.
25 The lack of specificity as to eligible benefits in the policy form dates
26 back to the time when no-fault policies contained unlimited medical
27 benefits and there was less need for specificity. This would not serve
28 to limit such things as the purchase of specialized vehicles for injured
29 persons or other special benefits provided in connection with personal
30 injury protection coverage which are not normally reimbursable under
31 health insurance, but would, among other things, make disputes over
32 the eligibility of benefits easier to decide by the dispute resolution
33 procedure established in the policy.

34 The bill replaces the present arbitration procedure for medical
35 expense benefits with a refined dispute resolution procedure. The
36 existing arbitration procedure, which uses part time arbitrators who
37 are also engaged in the active practice of law and who are not required
38 to set forth their decisions in writing, is generally recognized as being
39 ineffective in holding down costs. The Commissioner of Banking and
40 Insurance would establish standards of performance for a dispute
41 resolution organization and establish qualifications for full-time
42 dispute resolution professionals, similar to the system now in use in
43 New York, and decisions would have to be in writing and would have
44 value as precedent for subsequent cases. Under certain circumstances
45 set forth in the bill, any party, including the person conducting the
46 dispute resolution proceedings, could ask for a medical review for

1 questions including medical necessity or causality. The reviews would
2 be conducted by a professional medical review organization certified
3 by the commissioner. The organization could not have any affiliation
4 with an insurer or a dispute resolution organization, and the reviews
5 would be distributed on a random basis among qualified professionals
6 in the same discipline as the health care provider whose treatment is
7 under review. It is anticipated, however, that because of the enhanced
8 specificity of the insurance policy and the establishment of standard
9 treatment protocols and standards for diagnostic testing, substantially
10 fewer cases would be referred to dispute resolution.

11 The bill establishes an advisory commission, which includes public
12 members, to reconfigure the existing automobile insurance rating
13 territories. Existing territories are over 50 years old and the
14 boundaries which delineate them do not adequately reflect
15 demographic changes in the State which have occurred since they were
16 drawn. The bill establishes standards for the reconfiguration of
17 territories and permits insurers to use individual territorial
18 configurations, the territorial rating plan of another insurer, or the
19 common plan developed by the commission, subject to the approval of
20 the Commissioner of Banking and Insurance.

21 In a related provision, the bill eliminates the territorial rate cap
22 established in 1983, effective for policies issued or renewed on or after
23 the effective date of an insurer's revised territorial rating plan, but no
24 later than March 1, 1999.

25 In an effort to further combat the problem of uninsured motorists,
26 the bill requires the Division of Motor Vehicles to establish a data base
27 in order to compare, by computer matching, the motor vehicles
28 registered in this State with the motor vehicles insured in this State.
29 The data base will be funded from the Uninsured Motorist Prevention
30 Fund, but the provides that the State Treasurer shall not disburse any
31 funds to the division for the costs associated with the establishment
32 and operation of the data base until the Director of the Division of
33 Motor Vehicles certifies to the satisfaction of the Treasurer that the
34 data base is fully operational. One purpose of this data base is to
35 provide access to this information for State and local law enforcement
36 agencies. Insurers are required to provide the insurance information
37 every month to the division for the comparison. The bill provides that
38 the insurance information is to be confidential and proprietary and is
39 not a public record subject to disclosure.

40 The provision of the current law which requires the establishment
41 of a voluntary rating tier to accommodate eligible persons in
42 automobile insurance urban enterprise zones under the assigned risk
43 plan, which is set to expire on December 31, 2000, is also amended to
44 provide that it shall not expire until five years after the first policy
45 using that rating tier is issued.

46 The bill establishes an Office of Insurance Fraud Prosecutor in the

1 Division of Criminal Justice in the Department of Law and Public
2 Safety. To provide for more effective investigation and prosecution
3 of fraud than exists at the present time, the bill transfers the
4 investigatory component of the Division of Insurance Fraud Prevention
5 in the Department of Banking and Insurance to the Office of Fraud
6 Prosecutor. It also establishes a formal liaison between the Office of
7 Insurance Fraud Prosecutor and the county prosecutors, and provides
8 for the reimbursement of county prosecutors for their anti-fraud
9 activities by the Attorney General if he deems it to be warranted. The
10 Office of Insurance Fraud Prosecutor, which encompasses both
11 property and casualty and life and health insurance-related anti-fraud
12 activities, would be responsible for coordinating anti-fraud activities
13 on a Statewide basis, including State agencies.

14 The bill also establishes the Office of the Insurance Claims
15 Ombudsman in the Division of Consumer Affairs in the Department of
16 Law and Public Safety. The ombudsman would perform many of the
17 duties now performed by the Department of Banking and Insurance in
18 investigating consumer complaints against insurers. It would also
19 monitor possible violations of the insurance trade practices laws, and
20 report them to the Commissioner of Banking and Insurance. The
21 ombudsman would also be charged with publishing and disseminating
22 buyers' guides for all lines of insurance. The bill requires that all
23 insurers establish an internal procedure for the adjudication of
24 consumer complaints; this and other avenues of appeal would have to
25 be exhausted before the ombudsman would become involved in a
26 claims dispute.

27 The bill provides for the election of a "named excluded driver" on
28 automobile insurance policy forms. At present, if there is a young
29 driver in a household, insurers apply the high rating factors applicable
30 to that driver on the most expensive car in the household. This option
31 would permit the exclusion of a specific driver in the household on a
32 specified car. This would mean that the excluded driver could not
33 drive the car, but it also means that the premiums for that car would
34 be substantially lower. In the event that the excluded driver does drive
35 the car and is in an accident, no physical damage coverage (collision
36 and comprehensive) would apply to the car, and the insured would
37 have to pay the costs of repair himself. All other coverages, including
38 personal injury protection coverage and the liability coverages, would
39 continue to apply.

40 The bill contains a provision that certain portions of a filing under
41 the excess profits law could be submitted for review to an outside
42 independent actuary. These components of the excess profits filing
43 would be those upon which the judgment of the filer may be viewed as
44 subjective.

45 Finally, in order to further limit the number of lawsuits filed and
46 thereby reduce premiums for bodily injury coverage, the bill

1 completely eliminates the existing verbal threshold and substitutes a
2 new verbal threshold which is intended to eliminate some of the
3 lawsuits for minor injuries, including soft tissue injuries, which are
4 neither serious nor permanent. The new threshold would permit suits
5 in the event of death, dismemberment, significant disfigurement or
6 significant scarring, displaced fractures, loss of a fetus, or permanent
7 injuries other than significant disfigurement or significant scarring if
8 the injury is permanent to the extent that the body part or organ
9 system has not healed to function normally and will not heal to
10 function normally with further medical treatment. Certification by a
11 licensed treating physician that the body part or organ system has not
12 healed to function normally and will not heal to function normally
13 would be necessary before suit was filed. The certification would have
14 to be based on objective clinical evidence which would include medical
15 testing. Fraudulent certification by a physician could be a crime of the
16 fourth degree. No provision in this bill is intended to repeal otherwise
17 applicable case law.

18 The bill establishes terms and conditions under which a person
19 could intervene in private passenger rate filings for rate increases.
20 This provides that such intervenors must be qualified by the
21 commissioner, and that they demonstrate the capacity to intervene in
22 a rate filing with actuarial support.

23 The bill provides for a mandatory rate decrease applicable to
24 various coverages which will result in a reduction of 15% from a
25 typical policy with full coverage.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

1

April 27, 1998

SENATE BILL NO. 3

(First Reprint)

To the Senate:

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

1. Introduction

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

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

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

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

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

II. Summary and Analysis of the Bill

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

A. Revised Lawsuit Threshold

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

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

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

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

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

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

B. Anti-Fraud Measures

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

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

C. Revised Medical Testing and Arbitration Procedures

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

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

D. Affordability and Consumer Confidence

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

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

E. Territories and Rate Caps

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

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

III. Recommended Action

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

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

A. Territories and Rate Caps

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

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

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

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

B. Affordability

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

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

C. Institutional Concerns

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

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

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

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

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

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

Page 6, Section 2, Line 36: Delete "or repeated"

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

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

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

Page 9, Section 4, Line 41:

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

Page 10, Section 5, Line 15:

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

Page 10, Section 5, Line 33:

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

Page 13, Section 6, Line 9:

After "treatments" insert "diagnostic tests"

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

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

Page 15, Section 7, Line 40-43:

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

Page 15, Section 7, Line 40:

Insert new section as follows:

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

If none of the aforesaid medical expenses

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

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

Page 21, Section 11, Line 23:

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

Page 22, Section 12, Line 8:

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

Page 24, Section 15, Lines 41-43:

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

Page 26, Section 17, Line 31-42

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

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

Page 30, Section 20, Line 18:

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

Page 35, Section 24, Line 24:

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

Page 36, Section 24, Line 10-13:

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

Page 36, Section 24, Line 36:

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

Page 36, Section 24, Line 45:

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

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Page 37, Section 25, Lines 36-38:

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

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

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

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

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

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

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

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

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

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driving environments or similar mix of driving environments-,

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

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

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

The Commissioner shall establish by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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successors are appointed and qualified.

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

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

Page 44, Section 29, Line 21:

After '7."insert" "a."

Page 44, Section 29, Line 30:

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

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

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

Page 44, Section 29, Line 31:

Before "The" insert "d."

Page 44, Section 29, Line 38:

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

Page 45, Section 29, Line 1:

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

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

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

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

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

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

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

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

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

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

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

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and

(b) all current motor vehicle registrations.

(5) The division shall, at least monthly;

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

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

Page 47, Section 30, After Line 32:

Insert new sections as follows:

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

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

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

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

Page 51, Section 33, Line 20-28:

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

Page 52, Section 34, Line 1:

Delete "," and insert ";"

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

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

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

Page 57, Section 50, Line 2:

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

Page 58, Section 55, Line 16:

Delete "adjudication" and insert "review"

Page 58, Section 55, Line 19:

Delete "adjudication" and insert "review"

Page 59, Section 58, Line 6:

Delete "applicant" and insert "complainant"

Page 59, Section 58, Line 9:

After "," insert "or"

Page 59, Section 58, Line 11:

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

Page 59, Section 58, Line 14:

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

Page 59, Section 58, Line 19:

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

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Page 59, Section 58, Line 25:

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

Page 59, Section 58, Line 26:

Insert new section

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

Page 59, Section 60, Line 45:

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

Page 61, Section 64, Line 15:

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

Page 61, Section 64, Line 22:

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

Page 61, Section 64, Line 23:

Delete "an"

Page 61, Section 64, Line 24:

Before "arrangement" insert "the most generous"

Page 61, Section 64, Lines 24-25:

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

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

Page 61, Section 65, Line 30:

After "by" insert "a"

Page 61, Section 65, Lines 30-31:

Delete "including the elements of the filing"

Page 61, Section 65, Line 31:

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

Page 61, Section 66, Line 43:

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

Page 61, Section 66, Line 45:

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

Page 62, Section 66, Line 13:

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

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Page 62, Section 66, Line 37:

After "order" delete ", regulation,"

Page 62, Section 66, After Line 40:

Insert new subsections as follows:

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

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

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

Page 61, Section 64, Line 24:

Insert new sections as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 65, Section 70, Line 20:

Delete "70." insert "74."

Page 65, Section 70, Line 28:

Delete "28, 30, through"

Page 65, Section 70, Line 28:

Delete "; and (3) section 29"

Page 65, Section 70, Lines 30-34:

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

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but no later than March 1, 1999”

Respectfully,
/s/ Christine Todd Whitman
GOVERNOR

[seal]

Attest:

/s/ John J. Farmer, Jr.

Chief Counsel- to the Governor

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Pete McDonough
609-777-2600

RELEASE: April 27, 1998

Whitman Conditionally Vetoes S-3

Gov. Christie Whitman tonight issued a conditional veto of S-3, a bill that would amend New Jersey's system of automobile insurance, and recommended changes that would improve the bill.

The conditional veto would provide greater consumer choices, mandate that any changes to territorial caps be revenue neutral, establish set criteria for the delineation of new rating territories, and preserve rate caps for seniors citizens and drivers who select the basic policy.

The Governor also recommended technical changes to assist in the efficient implementation of the bill. Among those changes are locating the office of the insurance ombudsman in the Department of Banking and Insurance and maintaining the status of criminal investigators as confidential employees.

"Senate Bill Number 3 is our opportunity to end twenty- six years of frustration dealing with auto insurance that costs too much money and gives too few choices. It is our best chance to end a system that puts special interests and scam artists ahead of consumers," Gov. Whitman said.

"This conditional veto was the result of weeks of hard work by the members of both Houses and both parties. It is my hope that the veto will be immediately concurred with by the Senate and that Assembly action will soon follow," the Governor said.

"As conditionally vetoed, the bill would eliminate many of the costs inherent in our insurance system. It tightens the lawsuit threshold and clamps down on fraud by establishing peer review, medical protocols, and a fraud prosecutor.

"Importantly, the bill permits parents and others in multi-car households to significantly cut their insurance costs by specifically naming those drivers that will be permitted to use certain vehicles," she said.

Under the "named driver exclusion," for example, a youthful driver could be assigned to a car that is less expensive to insure. Currently all drivers in a household must be covered on all vehicles garaged at the home.

"The bill requires an immediate rate reduction of 15 percent for most drivers. And, as an option, the bill would allow drivers the opportunity to purchase a 'basic policy'," she said.

"The pricing of the basic policy should help to ensure that there is no reason for people to be driving without insurance in the Garden State. My conditional veto would provide that the basic policy would have optional levels of coverage, both of which will be affordable for drivers across the state," she said.

A copy of the Governor's conditional veto and the veto message is attached.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Jayne O'Connor
609-777-2600

RELEASE: May 19, 1998

Gov. Whitman Signs Law to Reduce Auto Insurance Rates

Gov. Christie Whitman today signed into law the first real reform of New Jersey's automobile insurance system in twenty-six years. The law guarantees a rate reduction of 15 percent for most drivers and provides consumers with more choices, while reducing lawsuits, addressing insurance fraud and excessive medical testing and treatment.

"New Jersey drivers have waited too long for the auto insurance problem to be fixed," said Gov. Whitman. "We have waited too long for lower rates. Today, the wait is over."

"This legislation conforms to the four conditions that the Senate President and Assembly Speaker, and I have long agreed must be part of any reform bill, the Governor said. "It will guarantee real savings on car insurance bills. It will avoid shifting costs to health insurance or loading up the dockets with more lawsuits. And, it will mean a better deal for those who deserve it-all the good drivers of our state."

The new law will achieve substantial savings by revising the state's lawsuit threshold to limit lawsuits for pain and suffering. Currently, persons choosing the verbal threshold can sue for pain and suffering for temporary, non-serious injuries. The new limitation on lawsuit option requires that injuries must be to a body part or organ, not just tissue, and must be permanent.

According to the Governor, consumers will now have the opportunity to save on their insurance costs as a result of the greater choices provided in the bill. A new basic insurance policy, available to motorists under the new law, will allow people to meet the state's mandatory insurance requirement at an estimated cost of \$350 to \$400. The basic policy is also intended to reduce the number of uninsured drivers.

Additionally, consumers will have the option to buy less personal injury protection (PIP) coverage than the \$250,000 currently required. Purchasers of the standard policy may buy PIP coverage as low as \$15,000. The default amount chosen by the majority of drivers would remain at \$250,000 and catastrophic injuries would be covered in any event in an amount not to exceed \$250,000.

The law will reduce insurance company medical costs by establishing a new PIP arbitration system that utilizes peer review and by providing treatment and testing

be in accordance with commonly accepted medical protocols.

The bill also controls premium costs with tough, new anti-fraud measures. Physicians will be required to certify the seriousness of the plaintiff's condition in every complaint in a pain and suffering lawsuit brought under the new lawsuit threshold. A fraudulent filing of a certification is punishable by imprisonment and revocation of the physician's professional license.

An Office of Fraud Prosecutor is established in the Department of Law and Public Safety. The office is given a broad mandate to investigate and prosecute insurance fraud.

The new law also requires that the existing insurance rating territories be redrawn more fairly by Jan. 1, 2000 to reflect demographic changes in the state which have occurred since the territories were drawn over 50 years ago. Redrawing the territories will eliminate the inequities presented by rating caps established in 1983. The bill preserves rate caps for senior citizens and drivers who select the basic policy.

The new law permits multi-car households to significantly cut their comprehensive and collision insurance costs by specifically naming those drivers that will be permitted to use certain vehicles.

Under the "named driver exclusion," for example, a youthful driver could be assigned to a car that is less expensive to insure. Currently, the highest-risk driver in a household is assigned to the most expensive car in the household for the purposes of setting rates.

An Office of the Insurance Claims Ombudsman in the Department of Banking and Insurance is established to investigate consumer complaints against insurers and to publish a buyer's guide for insurance consumers.

Governor Whitman thanked Senate President Donald T. DiFrancesco and Assembly Speaker Jack Collins for their efforts to pass the reform bill. "Without their courage and support, today would not have been possible," the Governor said.

S-3 and S-1051 were sponsored by Senate President Donald T. DiFrancesco (R-Union/Somerset/Morris/Middlesex) and Senator John Adler (D-Camden) and Assembly Members Christopher Bateman (R-Morris/Somerset) and Louis D. Greenwald (D-Camden).