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"Auto reform measure signed", 6-10-2003 The Record, pA5

"New law revamps NJ auto coverage", 6-10-2003 Philadelphia Inquirer, p.A1

"McGreevey touts insurance reform's strong measure", 6-10-2003 Star Ledger, p.69

"Law's aim is to rev up auto insurance competition", 6-10-2003 The Times, p.A12

"McGreevey signs law easing the rules for auto insurers", 6-10-2003 New York Times, p.B5

"Insurance reforms signed into law", 6-10-2003 Home New Tribune, pA1

§1 - C.17:30A-2.1
§6 - C.17:30A-6.1
§7 - C.39:6-64c
§35 - C.39:6-86.7
§§43,44 -
C.17:29A-52
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sections

(Corrected Copy)

P.L. 2003, CHAPTER 89, *approved June 9, 2003*

Senate Committee Substitute for

Senate, No. 63

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) With respect to sections 2 through 34 of this
8 act, the Legislature finds and declares that:

9 a. The Unsatisfied Claim and Judgment Fund, created pursuant to
10 P.L.1952, c.174 (C.39:6-61 et seq.) currently serves a dual purpose:
11 its original intent to pay the claims of victims of hit and run or
12 uninsured motor vehicle accidents in certain circumstances, and a
13 subsequent objective to reimburse private passenger automobile
14 insurers when medical expense benefits payments exceed \$75,000 per
15 person per accident.

16 b. When the Unsatisfied Claim and Judgment Fund was charged
17 with reimbursing an insurer for medical expense benefits in excess of
18 \$75,000 per person per accident, the amount of medical expense
19 benefits provided on a per person, per accident basis was unlimited.
20 However, insurers are required at present to provide medical expense
21 benefits only up to \$250,000 per person per accident. Prospective
22 elimination of the reimbursement function of the Unsatisfied Claim and
23 Judgment Fund for medical expense benefits in excess of \$75,000 per
24 person for an injury suffered in an accident covered by a policy issued
25 or renewed on or after January 1, 2004 is deemed appropriate.
26 Insurers would continue to be reimbursed for medical benefits in
27 excess of \$75,000 per person per accident for injuries suffered in
28 accidents covered by policies issued or renewed prior to January 1,
29 2004.

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 c. Since all motor vehicle liability policies issued in this State,
2 except basic automobile insurance policies, include coverage for the
3 payment of all or part of the sums which a person insured thereunder
4 shall be legally entitled to recover as compensatory damages from
5 owners or operators of uninsured motor vehicles (other than hit and
6 run motor vehicles), the number of third party claims made against the
7 Unsatisfied Claim and Judgment Fund is not substantial. It would be
8 more efficient to have these claims administered by the New Jersey
9 Property-Liability Insurance Guaranty Association, established
10 pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.).

11 d. The New Jersey Automobile Full Insurance Underwriting
12 Association, created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.)
13 and the Market Transition Facility, created pursuant to section 88 of
14 P.L.1990, c.8 (C.17:33B-11) have both ceased issuing private
15 passenger automobile insurance policies and are currently in run off,
16 operating only to process the remaining claims against them.
17 Currently, the funding for the claims payment and other operational
18 activities of the New Jersey Automobile Full Insurance Underwriting
19 Association and the Market Transition Facility is primarily provided
20 by the New Jersey Automobile Insurance Guaranty Fund, created
21 pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5). However,
22 existing statutes do not state how the consolidation or runoff
23 operations of these entities will be handled. Administrative and
24 operational efficiencies would result from consolidating these entities
25 and transferring the claims handling and other administrative duties of
26 these entities to the New Jersey Property-Liability Insurance Guaranty
27 Association.

28 e. Based upon recent financial and actuarial analysis, it is
29 anticipated that the value of all residual New Jersey Automobile Full
30 Insurance Underwriting Association and Market Transition Facility
31 assets, including the balances in the New Jersey Automobile Insurance
32 Guaranty Fund, to be transferred to the New Jersey Property-Liability
33 Insurance Guaranty Association will be adequate to allow the
34 association to discharge all remaining obligations of the New Jersey
35 Automobile Full Insurance Underwriting Association and Market
36 Transition Facility which are now to be administered by the
37 association. Since no asset shortfall is projected, no additional
38 assessment or other revenue generating powers are being conferred
39 upon the association at this time with respect to such remaining
40 obligations.

41 f. It is in the public interest to authorize the transfer and
42 consolidation of compatible operations of the Unsatisfied Claim and
43 Judgment Fund, the New Jersey Automobile Full Insurance
44 Underwriting Association, and the Market Transition Facility to the
45 New Jersey Property-Liability Insurance Guaranty Association.

46 g. Following transfer to the New Jersey Property-Liability

1 Insurance Guaranty Association by the Unsatisfied Claim and
2 Judgment Fund of all its management, administrative and claim
3 functions, the Unsatisfied Claim and Judgment Fund shall continue to
4 exist as a separate legal entity subject to the provisions of P.L. ,
5 c. (C.)(now before the Legislature as this bill).

6 h. The New Jersey Property-Liability Insurance Guaranty
7 Association will run off the remaining policyholder claim obligations
8 of the New Jersey Automobile Full Insurance Underwriting
9 Association and Market Transition Facility. The New Jersey Property-
10 Liability Insurance Guaranty Association will also run off the
11 obligations of the Unsatisfied Claim and Judgment Fund pursuant to
12 section 2 of P.L.1977, c.310 (C.39:6-73.1) and take over all
13 governance, administrative and financial functions of the Unsatisfied
14 Claim and Judgment Fund, including the claim payment function.

15 i. As part of the consolidation being accomplished by P.L. ,
16 c. (C.)(now before the Legislature as this bill), the New Jersey
17 Property-Liability Insurance Guaranty Association is formally
18 designated as a servicing facility for several statutory entities for which
19 it currently provides administrative services and also for the
20 Unsatisfied Claim and Judgment Fund which, pursuant to P.L. ,
21 c. (C.)(now before the Legislature as this bill), is transferring
22 specified functions to the New Jersey Property-Liability Insurance
23 Guaranty Association. The association is also authorized to serve,
24 either by designation or by contract, as a servicing facility for other
25 entities which may be recommended by the association's board of
26 directors and approved by the commissioner.

27 j. This act is not intended to abrogate in any way the settlement
28 agreement entered into by the State and member insurers of the
29 Market Transition Facility in June, 1994.

30

31 2. Section 2 of P.L.1974, c.17 (C.17:30A-2) is amended to read
32 as follows:

33 2. a. The purpose of this act is to provide a mechanism for the
34 payment of covered claims under certain insurance policies, to avoid
35 excessive delay in payment, to avoid financial loss to claimants or
36 policyholders because of the insolvency of an insurer, to assist in the
37 detection and prevention of insurer insolvencies, [and] to provide an
38 association to assess the cost of such protection among insurers, and
39 to provide a mechanism to run off, manage, administer and pay claims
40 asserted against the Unsatisfied Claim and Judgment Fund, created
41 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey
42 Automobile Full Insurance Underwriting Association, created pursuant
43 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition
44 Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-
45 11).

46 b. This act shall apply to all kinds of direct insurance, except life

1 insurance, accident and health insurance, workers' compensation
2 insurance, title insurance, annuities, surety bonds, credit insurance,
3 mortgage guaranty insurance, municipal bond coverage, fidelity
4 insurance, investment return assurance, ocean marine insurance[,] and
5 pet health insurance[, and insurance provided by the Motor Vehicle
6 Liability Security Fund, established pursuant to P.L.1952, c.175
7 (C.39:6-92 et seq.), until funds comprising said fund are declared
8 exhausted by the commissioner].

9 (cf: P.L.1987, c.377, s.4)

10
11 3. Section 6 of P.L.1974, c.17 (C.17:30A-6) is amended to read
12 as follows:

13 6. There is created a private, nonprofit, unincorporated, legal
14 entity to be known as the New Jersey Property-Liability Insurance
15 Guaranty Association. All insurers defined as member insurers in
16 subsection 5 f. shall be and remain members of the association as a
17 condition of their authority to transact insurance in this State. The
18 association shall perform its functions under a plan of operation
19 established and approved under section 9 and shall exercise its powers
20 through a board of directors established under section 7.

21 The association is also authorized and shall have all of the powers
22 necessary and appropriate for the management and administration of
23 the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund,
24 in accordance with the provisions of the "New Jersey Surplus Lines
25 Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et
26 seq.).

27 The association is also authorized and shall have all of the powers
28 necessary and appropriate for the management and administration of
29 the affairs of, and the payment of valid claims asserted against: the
30 Unsatisfied Claim and Judgment Fund, created pursuant to the
31 provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey
32 Automobile Full Insurance Underwriting Association, created pursuant
33 to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the
34 Market Transition Facility created pursuant to the provisions of
35 section 88 of P.L.1990, c.8 (C.17:33B-11).

36 (cf: P.L.1984, c.101, s.15)

37
38 4. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to read
39 as follows:

40 8. a. The association shall:

41 (1) Be obligated to the extent of the covered claims against an
42 insolvent insurer incurred, in the case of private passenger automobile
43 insurance, prior to or after the determination of insolvency, but before
44 the policy expiration date or the date upon which the insured replaces
45 the policy or causes its cancellation, or in the case of insurance other
46 than private passenger automobile insurance, covered claims against

1 such insolvent insurer incurred prior to or 90 days after the
2 determination of insolvency, or before the policy expiration date if less
3 than 90 days after said determination, or before the insured replaces
4 the policy or causes its cancellation, if he does so within 90 days of the
5 determination, but such obligation shall include only that amount of
6 each covered claim which is less than \$300,000.00 and subject to any
7 applicable deductible contained in the policy, except that the
8 \$300,000.00 limitation shall not apply to a covered claim arising out
9 of insurance coverage mandated by section 4 of P.L.1972, c.70
10 (C.39:6A-4). In the case of benefits payable under subsection a. of
11 section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable
12 for payment of benefits in an amount not to exceed ~~[\$75,000.00]~~ the
13 amount set forth in section 4 of P.L.1972, c.70 (C.39:6A-4).
14 **[Benefits paid in excess of such amount shall be recoverable by the**
15 **association from the Unsatisfied Claim and Judgment Fund pursuant**
16 **to the provisions of section 2 of P.L.1977, c.310 (C.39:6-73.1).]** In
17 no event shall the association be obligated to a policyholder or
18 claimant in an amount in excess of the limits of liability stated in the
19 policy of the insolvent insurer from which the claim arises;

20 (2) Be deemed the insurer to the extent of its obligation on the
21 covered claims and to such extent shall have all rights, duties, and
22 obligations of the insolvent insurer as if the insurer had not become
23 insolvent;

24 (3) Assess member insurers in amounts necessary to pay:

25 (a) The ~~[obligation]~~ obligations of the association under
26 ~~[paragraph]~~ paragraphs (1) ~~and (11)~~ of this subsection;

27 (b) The expenses of handling covered claims;

28 (c) The cost of examinations under section 13; and

29 (d) Other expenses authorized by this act, excluding expenses
30 incurred by the association pursuant to paragraphs (9) and (10) of this
31 subsection.

32 The assessments of each member insurer shall be in the proportion
33 that the net direct written premiums of the member insurer for the
34 calendar year preceding the assessment bears to the net direct written
35 premiums of all member insurers for the calendar year preceding the
36 assessment.

37 Each member insurer shall be notified of the assessment not later
38 than 30 days before it is due. No member insurer of the association
39 may be assessed pursuant to this paragraph (3) in any year in an
40 amount greater than 2% of that member insurer's net direct written
41 premiums for the calendar year preceding the assessment with regard
42 to the association's obligation to pay covered claims and related
43 expenses arising under coverages issued by insolvent insurers pursuant
44 to P.L.1974, c.17 (C.17:30A-1 et seq.).

45 The association may, subject to the approval of the commissioner,
46 exempt, abate or defer, in whole or in part, the assessment of any

1 member insurer, if the assessment would cause the member insurer's
2 financial statement to reflect amounts of capital or surplus less than
3 the minimum amounts required for a certificate of authority by any
4 jurisdiction in which the member insurer is authorized to transact
5 insurance. In the event an assessment against a member insurer is
6 exempted, abated, or deferred, in whole or in part, because of the
7 limitations set forth in this section, the amount by which such
8 assessment is exempted, abated, or deferred shall be assessed against
9 the other member insurers in a manner consistent with the basis for
10 assessments set forth in this section. If the maximum assessment,
11 together with the other assets of the association, does not provide in
12 any one year an amount sufficient to carry out the responsibilities of
13 the association, the necessary additional funds shall be assessed as
14 soon thereafter as it is permitted by this act. Each member insurer
15 serving as a servicing facility may set off against any assessment,
16 authorized payments made on covered claims and expenses incurred
17 in the payment of such claims by such member insurer;

18 (4) Investigate claims brought against the association and adjust,
19 compromise, settle, and pay covered claims to the extent of the
20 association's obligation and deny all other claims and may review
21 settlements, releases and judgments to which the insolvent insurer or
22 its insureds were parties to determine the extent to which such
23 settlements, releases and judgments may be properly contested;

24 (5) Notify such persons as the commissioner directs under
25 paragraph (1) of subsection b. of section 10 of P.L.1974, c.17
26 (C.17:30A-10);

27 (6) Handle claims through its employees or through one or more
28 insurers or other persons designated as servicing facilities. Designation
29 of a servicing facility is subject to the approval of the commissioner,
30 but such designation may be declined by a member insurer. The
31 association is designated as a servicing facility for the administration
32 of claim obligations of: (a) the New Jersey Surplus Lines Insurance
33 Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance
34 Association; and (c) the Unsatisfied Claim and Judgment Fund. The
35 association may also be designated or may contract as a servicing
36 facility for any other entity which may be recommended by the
37 association's board of directors and approved by the commissioner;

38 (7) Reimburse each servicing facility for obligations of the
39 association paid by the facility and for expenses incurred by the facility
40 while handling claims on behalf of the association and shall pay the
41 other expenses of the association authorized by this act;

42 (8) Make loans to the New Jersey Surplus Lines Insurance
43 Guaranty Fund [in accordance with the provisions of the "New Jersey
44 Surplus Lines Insurance Guaranty Fund Act," P.L.1984, c.101
45 (C.17:22-6.70 et al.)] and the Unsatisfied Claim and Judgment Fund
46 is such amounts and on such terms as the board of directors may

1 determine are necessary or appropriate to effectuate the purposes of
2 P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) in
3 accordance with the plan of operation; provided, however, no such
4 loan transaction shall be authorized to the extent the federal tax
5 exemption of the association would be withdrawn or the association
6 would otherwise incur any federal tax or penalty as a result of such
7 transaction;

8 (9) Assess member insurers in amounts necessary to make loans
9 pursuant to paragraph (10) of this subsection. The estimated
10 assessments of each member insurer shall be in the proportion that the
11 net direct written premiums of the member insurer for the calendar
12 year preceding the assessment bears to the net direct written premiums
13 of all member insurers for the calendar year preceding the assessment
14 with actual assessments adjusted in the succeeding year based on the
15 proportion that the assessed member insurer's net direct written
16 premiums in the year of assessment bears to the net direct written
17 premiums of all member insurers for that year.

18 (a) For the purposes of this paragraph, "net direct written
19 premiums" shall not include medical malpractice liability insurance
20 premiums paid to member insurers to which an additional charge has
21 been applied for deposit in the New Jersey Medical Malpractice
22 Reinsurance Recovery Fund as provided in the "Medical Malpractice
23 Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the
24 regulations promulgated pursuant thereto.

25 (b) In the event that the commissioner certifies that loans in
26 amounts less than \$160 million per calendar year as provided in
27 paragraph (10) of this subsection will satisfy the current and
28 anticipated financial obligations of the Market Transition Facility,
29 without reference to the amount of funds remaining from the sale of
30 the Market Transition Facility Senior Lien Revenue Bonds, a member
31 insurer, and all of its affiliates as defined in subsection a. of section 1
32 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced
33 assessment pursuant to this paragraph if the member insurer and all
34 such affiliates: (i) did not issue or renew a policy of private passenger
35 automobile insurance in this State on or after January 1, 1973; (ii)
36 were not assessed as members of the Market Transition Facility as
37 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii)
38 had not relinquished voluntarily any expectation they may have had for
39 the repayment of loans made pursuant to paragraph (10) of this
40 subsection, as provided by paragraph (2) of subsection b. of section 6
41 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or
42 settlement agreement approved by any court of competent jurisdiction,
43 on or before the effective date of this 1995 amendatory act. The
44 reduced assessment of such members shall be equal to their
45 proportionate share of the difference between the amount certified by
46 the commissioner and the total of the assessment of all other insurers

1 subject to such assessment. If the amount of such difference is zero
2 or less, the reduced assessment shall be zero;

3 (10) Make loans in the amount of \$160 million per calendar year,
4 beginning in calendar year 1990, or upon certification by the
5 commissioner, as provided by paragraph (b) of subsection (9) of this
6 section, that lesser amounts will satisfy the current and anticipated
7 financial obligations of the Market Transition Facility, such lesser
8 amounts as may be collected pursuant to paragraph (9) of this
9 subsection, to the New Jersey Automobile Insurance Guaranty Fund
10 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except
11 that no loan shall be made pursuant to this paragraph after December
12 31, 1997. In no event shall member insurers subject to assessments
13 have their financial obligation increased due to reductions granted
14 pursuant to paragraph (9) of this subsection;

15 (11) Reimburse an insurer for medical expense benefits in excess
16 of \$75,000 per person per accident as provided in section 2 of
17 P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an
18 automobile insurance policy issued prior to January 1, 2004;

19 (12) Undertake all of the management, administrative, and claims
20 activities of the Unsatisfied Claim and Judgment Fund, created
21 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey
22 Automobile Full Insurance Underwriting Association, created pursuant
23 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition
24 Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-
25 11).

26 b. The association may:

27 (1) Employ or retain such persons as are necessary to handle
28 claims and perform such other duties of the association;

29 (2) Borrow and separately account for funds from any source,
30 including, but not limited to, the New Jersey Surplus Lines Insurance
31 Guaranty Fund and the Unsatisfied Claim and Judgment Fund, in such
32 amounts and on such terms, as the board of directors may determine
33 are necessary or appropriate to effectuate the purpose of this act in
34 accordance with the plan of operation; provided, however, no such
35 borrowing transaction shall be authorized to the extent the federal tax
36 exemption of the association would be withdrawn or the association
37 would otherwise incur any federal tax or penalty as a result of such
38 transaction;

39 (3) Sue or be sued;

40 (4) Negotiate and become a party to such contracts as are
41 necessary to carry out the purpose of this act;

42 (5) Perform such other acts as are necessary or proper to
43 effectuate the purpose of this act;

44 (6) Refund to the member insurers in proportion of the
45 contribution of each member insurer that amount by which the assets
46 exceed the liabilities if, at the end of any calendar year, the board of

1 directors finds that the assets of the association exceed the liabilities,
2 as estimated by the board of directors for the coming year.

3 (cf: P.L.1995, c.396, s.1)

4

5 5. Section 9 of P.L.1974, c.17 (C.17:30A-9) is amended to read
6 as follows:

7 9. a. (1) The association shall submit to the commissioner a plan
8 of operation and any amendments thereto necessary or suitable to
9 assure the fair, reasonable, and equitable administration of the
10 association. The plan of operation and any amendments thereto shall
11 become effective upon approval in writing by the commissioner;

12 (2) If the association fails to submit a plan of operation acceptable
13 to the commissioner within 90 days following the effective date of this
14 act, or if at any time thereafter the association fails to submit an
15 acceptable amendment to the plan, the commissioner shall, after
16 notice and hearing adopt and promulgate such reasonable rules as are
17 necessary or advisable to effectuate the provisions of this act. Such
18 rules shall continue in force until modified by the commissioner or
19 superseded by a plan submitted by the association and approved by
20 the commissioner.

21 b. All member insurers shall comply with the plan of operation.

22 c. The plan of operation shall:

23 (1) Establish the procedures whereby all the powers and duties of
24 the association under section 8 of this act will be performed;

25 (2) Establish procedures for handling assets of the association;

26 (3) Establish the amount and method of reimbursing members of
27 the board of directors under section 7 of this act;

28 (4) Establish procedures by which claims may be filed with the
29 association and establish acceptable forms of proof of covered claims.
30 Notice of claims to the receiver or liquidator of the insolvent insurer
31 shall be deemed notice to the association or its agent and a list of such
32 claims shall be periodically submitted to the association by the receiver
33 or liquidator;

34 (5) Establish regular places and times for meetings of the board of
35 directors;

36 (6) Establish procedures for records to be kept in all financial
37 transactions of the association, its agents, and the board of directors;

38 (7) Provide that any member insurer aggrieved by any final action
39 or decision of the association may appeal to the commissioner within
40 30 days after the action or decision;

41 (8) Establish the procedures whereby selections for the board of
42 directors will be submitted to the commissioner;

43 (9) Contain additional provisions necessary or proper for the
44 execution of the powers and duties of the association;

45 (10) Establish procedures for the transition and consolidation of
46 compatible functions of the Unsatisfied Claim and Judgment Fund, the

1 New Jersey Automobile Full Insurance Underwriting Association and
2 the Market Transition Facility in order to eliminate redundant
3 operational activities and promote greater efficiencies in claims
4 handling and other operations:

5 (11) Establish procedures as necessary or proper to finance the
6 operation of and account for receipts and disbursements as well as
7 other financial transactions involving the Unsatisfied Claim and
8 Judgment Fund, the New Jersey Automobile Full Insurance
9 Underwriting Association and the Market Transition Facility:

10 (12) Create such advisory boards as necessary or proper to assist
11 in the administration and management of the operations of the
12 Unsatisfied Claim and Judgment Fund.

13 d. The plan of operation may provide that any or all powers and
14 duties of the association except those under sections 8a.(3) and 8b.(2),
15 are delegated to a corporation, association, or other organization
16 which performs or will perform functions similar to those of this
17 association, or its equivalent. Such a corporation, association or
18 organization shall be reimbursed as a servicing facility would be
19 reimbursed and shall be paid for its performance of the functions of
20 the association. A delegation under this subsection shall take effect
21 only with the approval of both the board of directors and the
22 commissioner, and may be made only to a corporation, association, or
23 organization which extends protection not substantially less favorable
24 and effective than that provided by this act.

25 (cf: P.L.1974, c.17, s. 9)

26
27 6. (New section) a. Notwithstanding the provisions of any other
28 law to the contrary, all of the functions, powers and duties of the New
29 Jersey Automobile Full Insurance Underwriting Association, created
30 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market
31 Transition Facility, created pursuant to section 88 of P.L.1990, c.8
32 (C.17:33B-11), shall be transferred to the New Jersey Property-
33 Liability Insurance Guaranty Association, established pursuant to
34 P.L.1974, c.17 (C.17:30A-1 et seq.).

35 b. Notwithstanding the provisions of any other law to the
36 contrary, the commissioner shall provide for the liquidation of the
37 policyholder liabilities and an orderly transfer and transition of the
38 operations, functions, powers and duties, including all the remaining
39 assets and policyholder liabilities of the New Jersey Automobile Full
40 Insurance Underwriting Association, created pursuant to P.L.1983,
41 c.65 (C.17:30E-1 et seq.), and the Market Transition Facility, created
42 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), to the New
43 Jersey Property-Liability Insurance Guaranty Association.

44 c. Notwithstanding the provisions of any other law to the
45 contrary, all balances in the New Jersey Automobile Insurance
46 Guaranty Fund created pursuant to section 23 of P.L.1990, c.8

1 (C.17:33B-5) are hereby transferred to the New Jersey Property-
2 Liability Insurance Guaranty Association.

3 d. Notwithstanding any other law to the contrary, the
4 commissioner may in his discretion provide for the liquidation of the
5 liabilities and an orderly transition of the operations, functions, powers
6 and duties of the Unsatisfied Claim and Judgment Fund, created
7 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.) regarding its
8 obligations pursuant to section 2 of P.L.1977, c.310 (C.39:6-73.1) to
9 the New Jersey Property-Liability Insurance Guaranty Association.

10 e. Notwithstanding any other law to the contrary, the
11 commissioner may in his discretion by order determine when the status
12 as separate legal entities of the New Jersey Automobile Full Insurance
13 Underwriting Association and the Market Transition Facility may be
14 terminated.

15

16 7. (New section) The Unsatisfied Claim and Judgment Fund
17 Board in the Department of Banking and Insurance, established
18 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), is hereby abolished
19 and all its functions, powers and duties, along with the Unsatisfied
20 Claim and Judgment Fund, including all its assets, liabilities and
21 balances, are transferred from the Department of Banking and
22 Insurance to the New Jersey Property-Liability Insurance Guaranty
23 Association, established pursuant to P.L.1974, c.17 (C.17:30A-1 et
24 seq.). Wherever in any law, rule or regulation, reference is made to
25 the Unsatisfied Claim and Judgment Fund Board, the same shall mean
26 and refer to the New Jersey Property-Liability Insurance Guaranty
27 Association.

28

29 8. Section 2 of P.L.1954, c.174 (C.39:6-62) is amended to read
30 as follows:

31 2. Definitions. As used in this act:

32 ["Executive director" means the official designated by and serving
33 at the pleasure of the commissioner to administer to and be in charge
34 of the Unsatisfied Claim and Judgment Fund and who shall be
35 responsible to the Unsatisfied Claim and Judgment Fund Board.

36 "Treasurer" means the State Treasurer of New Jersey acting as the
37 custodian of the Unsatisfied Claim and Judgment Fund.]

38 "Association" means the New Jersey Property-Liability Insurance
39 Guaranty Association created pursuant to P.L.1974, c.17 (C.17:30A-1
40 et seq.).

41 "Commissioner" means the Commissioner of Banking and
42 Insurance.

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

45 ["Unsatisfied Claim and Judgment Fund Board" or "Board" means
46 the board created in section 4 of this act.]

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

14 "Uninsured motor vehicle" means a motor vehicle as to which there
15 is not in force a liability policy meeting the requirements of section 3
16 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,
17 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
18 of a certificate of self-insurance under said law, but shall not include
19 a motor vehicle with a policy in force which is insured pursuant to
20 section 4 of P.L.1998, c.21 (C.39:6A-3.1).

21 "Person" includes natural persons, firms, copartnerships,
22 associations and corporations.

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

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

31 ["Registration license year" means the period beginning June 1,
32 1956, and ending May 31, 1957, and each subsequent 12-month
33 period, beginning June 1 and ending the following May 31.]

34 (cf: P.L.1998, c.21, s.21)

35

36 9. Section 3 of P.L.1952, c.174 (C. 39:6-63) is amended to read
37 as follows:

38 3. For the purpose of creating and maintaining the fund:

39 (a) (Deleted by amendment, P.L.1968, c.323, s.3.)

40 (b) (Deleted by amendment, P.L.1968, c.323, s.3.)

41 (c) (Deleted by amendment, P.L.1968, c.323, s.3.)

42 (d) [On December 30 in each year, the commissioner shall
43 calculate the probable amount which will be needed to carry out the
44 provisions of this act during the ensuing registration license year. In
45 such calculation, he shall take into consideration the amount presently
46 reserved for pending claims, anticipated payments from the fund

1 during said year, anticipated payments from the fund for medical
2 expenses to be made pursuant to section 2 of P.L.1977, c.310
3 (C.39:6-73.1), during the two years after said year, anticipated
4 amounts to be reserved for claims pending during said year, amounts
5 transferred to the Division of Motor Vehicles pursuant to section 28
6 of P.L.1952, c.174 (C.39:6-88) and the desirability of maintaining a
7 surplus over and above such anticipated payments and present and
8 anticipated reserves, such surplus not to exceed the amount actually
9 paid from the fund during the 12 full calendar months immediately
10 preceding the date of calculation. Such probable amount which will
11 be needed to carry out the provisions of this act shall be assessed
12 against insurers for such year's contributions to the fund. Such
13 probable amount needed shall be initially apportioned on an estimated
14 basis among such insurers in the proportion that the net direct written
15 premiums of each bear to the aggregate net direct written premiums
16 of all insurers, including the New Jersey Automobile Full Insurance
17 Underwriting Association, created pursuant to P.L.1983, c.65
18 (C.17:30E-1 et seq.), and the Market Transition Facility created
19 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), during the
20 preceding calendar year as shown by the records of the commissioner
21 as an estimate. Each insurer shall pay the sum so assessed to the
22 treasurer on or before March 31, next following. Such estimated sum
23 shall be subject to adjustment on March 31 next following payment
24 based upon the proportion that the net direct written premiums of each
25 insurer bear to the aggregate net direct written premiums of all
26 insurers, including the New Jersey Automobile Full Insurance
27 Underwriting Association created pursuant to P.L.1983, c.65
28 (C.17:30E-1 et seq.), and the Market Transition Facility created
29 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), during the
30 year the estimated assessment was paid as shown by the records of the
31 commissioner.] Commencing on or before December 30, 2003, and on
32 or before December 30 in each year thereafter, the association shall
33 calculate the probable amount which will be needed to carry out its
34 responsibilities under section 35 of P.L. , c. (C.)(now before
35 the Legislature as this bill), section 9 of P.L.1952, c.174 (C.39:6-69)
36 and section 7 of P.L.1972, c.198 (C.39:6-86.1) during the ensuing
37 year. In that calculation, the association shall take into consideration
38 the amount presently reserved for pending claims, anticipated
39 payments from the fund during that year and during the two years after
40 that year, anticipated amounts to be reserved for claims pending during
41 that year, and the desirability of maintaining a surplus over and above
42 those anticipated payments and present and anticipated reserves, which
43 surplus shall not exceed the amount actually paid from the fund during
44 the 12 full calendar months immediately preceding the date of
45 calculation. The probable amount needed to carry out the provisions
46 of this section shall be assessed against insurers for that year's

1 contribution to the fund.

2 (e) [Whenever any of the provisions of this act concerning the
3 method and sources of assessments on insurers, including the New
4 Jersey Automobile Full Insurance Underwriting Association, created
5 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market
6 Transition Facility created pursuant to section 88 of P.L.1990, c.8
7 (C.17:33B-11), the maximum amounts payable from the fund,
8 eligibility or qualifications of claimants, or amounts to be deducted
9 from payments made from the fund are amended by law, between
10 January 1 and April 30 in any year, the commissioner may, if he deems
11 it necessary, rescind any assessment on insurers, including the New
12 Jersey Automobile Full Insurance Underwriting Association, created
13 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) and the Market
14 Transition Facility created pursuant to section 88 of P.L.1990, c.8
15 (C.17:33B-11), made on December 30 of the preceding year. He shall
16 then, within 15 days of the adoption of such amendment, recalculate
17 the probable amount which will be needed to carry out the provisions
18 of this act during the ensuing registration license year, in accordance
19 with the provisions of subsection (d) of this section. If, in his
20 judgment, the estimated balance of the fund at the beginning of the
21 next registration license year will be insufficient to meet such needs,
22 he shall determine the contributions of insurers, if any, in accordance
23 with the provisions of subsection (d) of this section. In the event of
24 a rescission and reassessment subsequent to March 1 in any year,
25 insurers shall pay the sum so assessed, if any, to the treasurer within
26 90 days of the date of such assessment.] Whenever any of the
27 provisions concerning the method and sources of assessments on
28 insurers, the maximum amounts payable from the fund, eligibility or
29 qualifications of claimants, or amounts to be deducted from payments
30 made from the fund are amended by law, the association may, if the
31 association deems it necessary, rescind any assessment on insurers.
32 The association shall then, within 30 days of the adoption of such
33 amendment, recalculate the probable amount which will be needed to
34 carry out the provisions of P.L. , c. (C.) (now before the
35 Legislature as this bill) during the ensuing fiscal year, in accordance
36 with the provisions of subsection (d) of this section. If, in the
37 judgment of the association, the estimated balance of the fund at the
38 beginning of the next year will be sufficient to meet those needs, the
39 association shall determine the contributions of insurers, if any, in
40 accordance with the provisions of subsection (d) of this section.

41 (cf: P.L.1990, c.8, s.85)

42

43 10. Section 18 of P.L.1955, c.1 (C.39:6-64.1) is amended to read
44 as follows:

45 18. a. The [board] association may from time to time, adopt[,]
46 and amend [and enforce all reasonable rules and regulations] a plan

1 of operation, subject to the approval of the commissioner, necessary
2 or desirable [in its opinion] in connection with its functions, duties
3 and responsibilities in administering this act.

4 [Notwithstanding the provisions of P.L.1944, c.20 (C.52:17A-1 et
5 seq.), the board, with the approval of the Attorney General, shall have
6 the power to engage the services of such attorneys and other persons
7 as may be deemed necessary or desirable for the purpose of suing for,
8 enforcing, collecting and taking any other action for the collection of
9 moneys due to the commissioner or treasurer on any right, claim,
10 agreement, judgment, assignment and other obligation arising out of
11 the application of this act. After repayment to the commissioner or
12 treasurer of all sums paid from the fund and all moneys due to the
13 commissioner and treasurer on any one claim, agreement, judgment,
14 assignment or other obligation, the commissioner or treasurer may
15 assign to the original claimant, judgment creditor or other person
16 entitled thereto all of the right, title and interest that the commissioner
17 or treasurer has in and to the balance due upon such obligation. Any
18 attorney so engaged shall not be deemed an employee of the board or
19 the State of New Jersey, shall not be subject to the Civil Service laws
20 as contained in Title 11 of the Revised Statutes of New Jersey and
21 shall not have any right to continued employment in such capacity.
22 The compensation of an attorney so engaged for services so rendered
23 shall be deemed an expense of the board under section 4 of the act and
24 shall be paid out of the moneys recovered on the obligation in
25 connection with which the services were rendered, upon such terms as
26 may be authorized by the board with the approval of the Attorney
27 General.] The plan of operation shall provide that the Unsatisfied
28 Claim and Judgment Fund may (1) borrow and separately account for
29 moneys from any source, including, but not limited to, the New Jersey
30 Property-Liability Insurance Guaranty Association and the New Jersey
31 Surplus Lines Insurance Guaranty Fund, in such amounts and on such
32 terms as the board of directors may determine, are necessary or
33 appropriate and (2) make loans, in such amounts and on such terms as
34 the board of directors may determine are necessary or appropriate, to
35 the New Jersey Property-Liability Insurance Guaranty Association and
36 the New Jersey Surplus Lines Insurance Guaranty Fund.

37 b. There shall be no liability on the part of and no cause of action
38 of any nature shall arise against the association, its agents, employees,
39 or the commissioner or his designees for any action taken by them in
40 the performance of their powers and duties under P.L. c. (C.)
41 (now before the Legislature as this bill).

42 (cf: P.L.1985, c.148, s.6)

43
44 11. Section 5 of P.L.1952, c.174 (C.39:6-65) is amended to read
45 as follows:

46 5. Any qualified person, or the personal representative of such

1 person, who suffers damages resulting from bodily injury or death or
2 damage to property arising out of the ownership, maintenance or use
3 of a motor vehicle in this State on or after April 1, 1955, and whose
4 damages may be satisfied in whole or in part from the fund, shall,
5 except in cases in which the claim is asserted by actions brought under
6 section 18 of this act pursuant to section 19 of this act, within [90]
7 180 days after the accident, as a condition precedent to the right
8 thereafter to apply for payment from the fund, give notice to the
9 [board] association, the form and contents of which shall be
10 prescribed by the [board] association, of his intention to make a
11 claim thereon for such damages if otherwise uncollectible; provided,
12 any such qualified person may, in lieu of giving said notice within said
13 time, make proof to the court on the hearing of the application for the
14 payment of a judgment (a) that he was physically incapable of giving
15 said notice within said period and that he gave said notice within [90]
16 180 days after he became physically capable to do so or in the event
17 he did not become so capable, that a notice was given on his behalf
18 within a reasonable period, or (b) that he gave notice to the [board]
19 association within 15 days of receiving notice that an insurer had
20 disclaimed on a policy of insurance so as to remove or withdraw
21 liability insurance coverage for his claim against a person or persons
22 who allegedly caused him to suffer damages. A copy of the complaint
23 shall be furnished to the [board] association if an action has
24 theretofore been brought for the enforcement of such claim. Such
25 person shall also notify the [board] association of any action
26 thereafter instituted for the enforcement of such claim within 15 days
27 after the institution thereof and such notice shall be accompanied by
28 a copy of the complaint.

29 The Director of the Division of Motor Vehicles is hereby
30 authorized and empowered, the provisions of any other law relating to
31 the confidential nature of any reports or information furnished to or
32 filed with the division notwithstanding, to furnish to the [board]
33 association upon its request, for such use, utilization and purposes as
34 the [board] association may deem reasonably appropriate to
35 administer this act and discharge its functions hereunder, any reports
36 or information filed by any person or persons claiming benefits under
37 the provisions of this act, that the director has with regard to any
38 accident, and any operator or owner of a motor vehicle involved in any
39 accident, and as to any automobile or motor vehicle liability insurance
40 or bond carried by an operator or owner of any motor vehicle.

41 (cf: P.L.1985, c.148, s.7)

42

43 12. Section 7 of P.L.1952, c.174 (C.39:6-67) is amended to read
44 as follows:

45 7. The [insurer to whom any action has been assigned]
46 association may through counsel enter an appearance on behalf of the
47 defendant, file a defense, appear at the trial or take such other steps as

1 it may deem appropriate on the behalf and in the name of the
2 defendant, and may thereupon, on the behalf and in the name of the
3 defendant, conduct his defense, take recourse to any appropriate
4 method of review on behalf of, and in the name of, the defendant, and
5 all such acts shall be deemed to be the acts of such defendant;
6 provided, however, that nothing contained herein shall deprive the
7 defendant of the right to also employ his own counsel and defend the
8 action. All expense incurred by [such insurer] the association in
9 connection with any review prosecuted or defended by it from a
10 judgment rendered in such action, including its attorneys' fees in
11 connection therewith, shall be borne by the fund [, and its attorneys'
12 fees in connection therewith, unless agreed to between the board and
13 the attorney, shall be subject to approval by the court].

14 (cf: P.L.1968, c.323, s.4)

15

16 13. Section 8 of P.L.1952, c.174 (C.39:6-68) is amended to read
17 as follows:

18 8. In any case in which [an insurer] the association has assumed
19 under this act, the defense of any action, the defendant shall
20 co-operate with [such insurer] the association in the defense of such
21 action. In the event of his failure to do so, [such insurer] the
22 association may apply to the court for an order directing such
23 co-operation.

24 (cf: P.L.1952, c.174 s.8)

25

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

28 9. When any qualified person recovers a valid judgment in any
29 court of competent jurisdiction in this State against any other person,
30 who was the operator or owner of a motor vehicle, for injury to, death
31 of, any person or persons, or a similar valid judgment in such court
32 against such a defendant for an amount in excess of \$500.00, exclusive
33 of interest and costs, for damage to property, except property of
34 others in charge of such operator or owner or such operator's or
35 owner's employees, arising out of the ownership, maintenance or use
36 of the motor vehicle in this State on or after April 1, 1955, and any
37 amount remains unpaid thereon in the case of a judgment for bodily
38 injury or death, or any amount in excess of \$500.00 remains unpaid
39 thereon in case of a judgment for damage to property, such judgment
40 creditor may, upon the termination of all proceedings, including
41 reviews and appeals in connection with such judgment, file a verified
42 claim in the court in which the judgment was entered, and upon 10
43 days' written notice to the [board] association may apply to the court
44 for an order directing payment out of the fund, of the amount unpaid
45 upon such judgment for bodily injury or death, which does not exceed,
46 or upon such judgment for damage to property, which exceeds the sum

1 of \$500.00 and does not exceed--

2 (a) The maximum amount or limit of \$15,000.00, exclusive of
3 interest and costs, on account of injury to, or death of, one person, in
4 any one accident, and

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

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

11 (cf: P.L.1988, c.119, s.15)

12

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

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

18 (a) He is not a person covered with respect to such injury or death
19 by any workers' compensation law, or the personal representative of
20 such a person,

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

23 (c) He was not at the time of the accident a person (1) operating
24 or riding in a motor vehicle which he had stolen or participated in
25 stealing or (2) operating or riding in a motor vehicle without the
26 permission of the owner, and is not the personal representative of such
27 a person,

28 (d) He was not at the time of the accident, the owner or registrant
29 of an uninsured motor vehicle, or was not operating a motor vehicle
30 in violation of an order of suspension or revocation,

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

32 (f) The judgment debtor at the time of the accident was not
33 insured under a policy of automobile liability insurance under the terms
34 of which the insurer is liable to pay in whole or in part the amount of
35 the judgment,

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

39 (h) He has caused to be issued a writ of execution upon said
40 judgment and the sheriff or officer executing the same has made a
41 return showing that no personal or real property of the judgment
42 debtor, liable to be levied upon in satisfaction of the judgment, could
43 be found or that the amount realized on the sale of them or of such of
44 them as were found, under said execution, was insufficient to satisfy
45 the judgment, stating the amount so realized and the balance remaining
46 due on the judgment after application thereon of the amount realized,

1 (i) He has caused the judgment debtor to make discovery under
2 oath, pursuant to law, concerning his personal property and as to
3 whether such judgment debtor was at the time of the accident insured
4 under any policy or policies of insurance described in subsection (f) of
5 this section,

6 (j) He has made all reasonable searches and inquiries to ascertain
7 whether the judgment debtor is possessed of personal or real property
8 or other assets, liable to be sold or applied in satisfaction of the
9 judgment,

10 (k) By such search he has discovered no personal or real property
11 or other assets, liable to be sold or applied or that he has discovered
12 certain of them, describing them, owned by the judgment debtor and
13 liable to be so sold and applied and that he has taken all necessary
14 action and proceedings for the realization thereof and that the amount
15 thereby realized was insufficient to satisfy the judgment, stating the
16 amount so realized and the balance remaining due on the judgment
17 after application of the amount realized,

18 (l) The application is not made by or on behalf of any insurer by
19 reason of the existence of a policy of insurance, whereby the insurer
20 is liable to pay, in whole or in part, the amount of the judgment and
21 that no part of the amount to be paid out of the fund is sought in lieu
22 of making a claim or receiving a payment which is payable by reason
23 of the existence of such a policy of insurance and that no part of the
24 amount so sought will be paid to an insurer to reimburse or otherwise
25 indemnify the insurer in respect of any amount paid or payable by the
26 insurer by reason of the existence of such a policy of insurance,

27 (m) Whether or not he has recovered a judgment in an action
28 against any other person against whom he has a cause of action in
29 respect of his damages for bodily injury or death or damage to
30 property arising out of the accident and what amounts, if any, he has
31 received by way of payments upon the judgment, or by way of
32 settlement of such cause of action, in whole or in part, from or on
33 behalf of such other person,

34 (n) In order to recover for noneconomic loss, as defined in section
35 2 of P.L.1972, c.70 (C.39:6A-2) for accidents to which the benefits of
36 sections 7 and 10 of P.L.1972, c.198 (C.39:6-86.1 and C.39:6-86.4)
37 apply, the injured person shall have sustained an injury described in
38 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

39 Whenever the applicant satisfies the court that it is not possible to
40 comply with one or more of the requirements enumerated in
41 subsections (h) and (I) of this section and that the applicant has taken
42 all reasonable steps to collect the amount of the judgment or the
43 unsatisfied part thereof and has been unable to collect the same, the
44 court may dispense with the necessity for complying with such
45 requirements.

46 The [board or any insurer to which the action has been assigned]

1 association may appear and be heard on application and show cause
2 why the order should not be made.

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

4

5 16. Section 11 of P.L.1952, c.174 (C.39:6-71) is amended to read
6 as follows:

7 11. The court shall make an order directed to the [treasurer]
8 association requiring [him] the association to make payment from the
9 fund of such sum, if any, as it shall find to be payable upon said claim,
10 pursuant to the provisions of and in accordance with the limitations
11 contained in this act, if the court is satisfied, upon the hearing:

12 (a) Of the truth of all matters required to be shown by the
13 applicant by section 10,

14 (b) That the applicant has fully pursued and exhausted all remedies
15 available to him for recovering damages against all persons mentioned
16 in subparagraph (m) of section 10 by

17 (1) Commencing action against all such persons against whom the
18 applicant might reasonably be considered as having a cause of action
19 in respect of such damages and prosecuting every such action in good
20 faith to judgment and

21 (2) Taking all reasonable steps available to him to collect on every
22 judgment so obtained and by applying the proceeds of any judgment
23 or recovery so obtained towards satisfaction of the amount due upon
24 the judgment for payment of which the claim is made.

25 Any amount which the plaintiff has received or can collect by way
26 of payments upon the judgment or by way of settlement of the cause
27 of action, in whole or in part, from or on behalf of any person other
28 than the judgment debtor, described in subparagraph (m) of section 10,
29 shall be deducted from the amount due upon the judgment for payment
30 of which claim is made.

31 (cf: P.L.1958, c.98, s.2)

32

33 17. Section 12 of P.L.1952, c.174 (C.39:6-72) is amended to read
34 as follows:

35 12. (a) In any action against an operator or owner of a motor
36 vehicle for injury to or death of any person or for damage to property
37 arising out of the ownership, maintenance or use of said vehicle in this
38 State on or after April 1, 1955, pending in any court of competent
39 jurisdiction in this State, the plaintiff may upon notice to the [board]
40 association file a verified petition with the court alleging:

41 (1) the matters set forth in subparagraphs (a), (b), (c), (d), (e) and
42 (f) of section 10;

43 (2) that the petition is not presented on behalf of an insurer under
44 circumstances set forth in subparagraph (1) of section 10;

45 (3) that he has entered into an agreement with the defendant to
46 settle all claims set forth in the complaint in said action and the

1 amount proposed to be paid to him pursuant thereto;

2 (4) that the said proposed settlement has been entered into with
3 and by the consent of the Superior Court and approved by the
4 **[executive director of the fund] association**;

5 (5) that the defendant has executed and delivered to the **[board]**
6 **association** a verified statement of his financial condition;

7 (6) that a judgment against the defendant would be uncollectible;

8 (7) that the defendant has undertaken in writing to repay to the
9 **[treasurer] association** the sum that he would be required to pay
10 under such settlement, and has executed a confession of judgment in
11 connection therewith.

12 If the court be satisfied of the truth of the allegations in said
13 petition and of the fairness of such proposed settlement, it may enter
14 an order approving the same and directing the **[treasurer] association**,
15 upon receipt of the undertaking and confession of judgment mentioned
16 in subparagraph (7) of this section, to make payment to the plaintiff of
17 the amount agreed to be accepted.

18 (b) **[An insurer to whom a claim has been assigned] The**
19 **association** may settle any claim **[involving the payment of less than**
20 **\$5,000.00 with the approval of the executive director of the fund or**
21 **any claim involving payment of \$5,000.00 or more with the approval**
22 **of the board]**, without court approval, if satisfied:

23 (1) that the claimant is not a person of the character described in
24 subparagraphs (a), (b), (c), (d), (e) and (f) of section 10;

25 (2) that the settlement is not made on behalf of an insurer under
26 circumstances set forth in subparagraph (e) of section 10; and

27 (3) that a judgment against the owner or operator of the motor
28 vehicle involved in the accident would be uncollectible, and that such
29 owner or operator has consented to such settlement, executed and
30 delivered to the **[board] association** a verified statement of his
31 financial condition and undertaken in writing to repay to the
32 **[treasurer] association** the sum to be paid under the settlement, and
33 executed a confession of judgment in connection therewith. **[Any**
34 **settlement so made shall be certified by the board to the treasurer, who**
35 **shall, upon receipt of said undertaking to repay and confession of**
36 **judgment, make the required payment to claimant out of the fund.]**

37 (cf: P.L.1985, c.148, s.8)

38

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

41 13. Except with respect to medical expense benefits paid pursuant
42 to section 2 of P.L.1977, c.310 (C.39:6-73.1), no order shall be made
43 for the payment and the **[treasurer] association** shall make no
44 payment, out of the fund, of

45 (a) Any claim for damage to property for less than \$500.00,

1 (b) The first \$500.00 of any judgment for damage to property or
2 of the unsatisfied portion thereof, or

3 (c) The unsatisfied portion of any judgment which, after deducting
4 \$500.00 therefrom if the judgment is for damage to property, exceeds

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

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

12 (3) the maximum amount or limit of \$5,000.00, exclusive of
13 interest and costs, for damage to property in any one accident;
14 provided, that such maximum amounts shall be reduced by any amount
15 received or recovered as specified in subsection (m) of section 10.

16 (d) Any claim for damage to property which includes any sum
17 greater than the difference between said maximum amounts and the
18 sum of \$500.00, and any amount paid out of the fund in excess of the
19 amount so authorized may be recovered by the [treasurer] association
20 in an action brought to [him] it against the person receiving the same.
21 (cf: P.L.1988, c.119, s.16)

22
23 19. Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended to read
24 as follows:

25 2. In the event medical expense benefits paid by an insurer, in
26 accordance with subsection a. of section 4 of P.L.1972, c.70
27 (C.39:6A-4) or section 4 of P.L.1998, c.21 (C.39:6A-3.1), are in
28 excess of \$75,000.00 on account of personal injury to any one person
29 in any one accident covered under a policy issued prior to January 1,
30 2004, the Unsatisfied Claim and Judgment Fund shall assume the
31 following: a. the entire excess for a medical expense benefits claim
32 covered under a policy issued before January 1, 1991; and b. such
33 excess up to \$250,000 for a medical expense benefits claim covered
34 under a policy issued on or after January 1, 1991 and the Unsatisfied
35 Claim and Judgment Fund shall reimburse the insurer therefor in
36 accordance with rules and regulations promulgated by the
37 commissioner; provided, however, that this provision is not intended
38 to broaden the coverage available to accidents involving uninsured or
39 hit-and-run automobiles, to provide extraterritorial coverage, or to pay
40 excess medical expenses.

41 The Unsatisfied Claim and Judgment Fund shall cease to reimburse
42 an insurer for medical expense benefits under this section for injuries
43 covered under a policy issued on or after January 1, 2004.

44 (cf: P.L.1998, c.21, s.69)

45
46 20. Section 14 of P.L.1952, c.174 (C.39:6-74) is amended to read

1 as follows:

2 14. No claim shall be allowed and ordered to be paid out of the
3 fund if the court shall find, upon the hearing for the allowance of the
4 claim, that it is founded upon a judgment which was entered by default
5 unless (1) the claimant shall have complied with the requirements of
6 section 5, and (2) prior to the entry of such judgment the [board]
7 association shall have been given notice of intention to enter the
8 judgment and file a claim thereon against the fund and shall have been
9 afforded an opportunity to take such action as it shall deem advisable
10 [under section 15].

11 If the court, upon a hearing for the allowance of any claim against
12 the fund, finds that it was a claim which was not assigned by the
13 [board to an insurer in accordance with section 6] association for
14 defense, or that the action upon such claim was not fully and fairly
15 defended, or that the judgment thereon was entered upon the consent
16 or with the agreement of the defendant, the court shall allow such
17 claim but shall order it to be paid only in such sum as the court shall
18 determine to be justly due and payable out of the fund, on the basis of
19 the actual amount of damages for which the defendant was liable to
20 the plaintiff under the cause of action, upon which the judgment was
21 rendered and reduced by any amount received from any person
22 mentioned in subparagraph (m) of section 10, notwithstanding that the
23 judgment is for a greater amount.

24 (cf: P.L.1955, c.1, s.7)

25

26 21. Section 17 of P.L.1952, c.174 (C.39:6-77) is amended to read
27 as follows:

28 17. Assignment of judgments to commissioner. The [treasurer]
29 association shall not pay any sum from the fund, in compliance with an
30 order made for that purpose, in any case in which the claim is founded
31 upon a judgment, except a judgment obtained against the
32 [commissioner] association under this act, until the applicant assigns
33 the judgment to the [commissioner] association and, thereupon, the
34 [commissioner] association shall be deemed to have all the rights of
35 the judgment creditor under the judgment and shall enforce and collect
36 the same for the full amount thereof with interest and costs and if more
37 money is collected upon any such judgment than the amount paid out
38 of the fund, the [commissioner] association shall pay the balance,
39 after reimbursing the fund, to the judgment creditor. Upon assignment
40 of a judgment to the [commissioner] association the [board]
41 association may[, on behalf of the commissioner] enter into agreement
42 with the defendant for reimbursement of the fund by lump sum or
43 installment payments, including waiver of interest and subordination
44 of the lien of the judgment where the same is determined to be
45 advantageous in obtaining reimbursement of payments made by the

1 fund. Any such agreement may be annexed to an application for a
2 court order made pursuant to section 27(b).

3 (cf: P.L.1985, c.148, s.10)

4

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

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

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

21 (b) The claimant is not a person covered with respect to such
22 injury or death by any workers' compensation law, or the personal
23 representative of such a person,

24 (c) The claimant was not at the time of the accident the owner or
25 registrant of an uninsured motor vehicle, or was not operating a motor
26 vehicle in violation of an order of suspension or revocation,

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

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

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

39 (cf: P.L.1985, c.148, s.11)

40

41 23. Section 19 of P.L.1952, c.174 (C.39:6-79) is amended to read
42 as follows:

43 19. When in an action in respect to the death of, or personal injury
44 to, any person, arising out of the ownership, maintenance or use of a
45 motor vehicle in this State on or after April 1, 1955, judgment is
46 rendered for the defendant on the sole ground that such death or

1 personal injury was occasioned by a motor vehicle--

2 (a) The identity of which, and of the owner and operator of which,
3 has not been established, or

4 (b) Which was in the possession of some person other than the
5 owner or his agent without the consent of the owner and the identity
6 of the operator has not been established, such cause shall be stated in
7 the judgment and the plaintiff in such action may within [three
8 months] 180 days from the date of the entry of such judgment bring
9 an action upon said cause of action against the [commissioner]
10 association in the manner provided in section 18.

11 (cf: P.L.1985, c.148, s.12)

12

13 24. Section 20 of P.L.1952, c.174 (C.39:6-80) is amended to read
14 as follows:

15 20. Impleading [commissioner] association in "hit-and-run" cases.
16 When an action has been commenced in respect of the death or injury
17 of any person arising out of the ownership, maintenance or use of a
18 motor vehicle in this State on or after April 1, 1955, the plaintiff shall
19 be entitled to make the [commissioner] association a party thereto if
20 the provisions of section 18 or 19 shall apply in any such case, and the
21 plaintiff has made the application and the court has entered the order
22 provided for in section 18.

23 (cf: P.L.1985, c.148, s.13)

24

25 25. Section 21 of P.L.1952, c.174 (C.39:6-81) is amended to read
26 as follows:

27 21. Defense of such actions by [commissioner] association. In
28 any action brought under sections 18 and 19 of this act, the
29 [commissioner] association may appear [by counsel for the insurer to
30 whom such action has been assigned]. [He] The association shall for
31 all purposes of the action be deemed to be the defendant. [He] The
32 association shall have available to [him] it any and all defenses which
33 would have been available to said operator or owner or both if the
34 action had been brought against them or either of them and process
35 upon them or either of them had been duly served within this State,
36 but [he] the association shall be entitled to defend in all cases without
37 asserting any specific facts.

38 (cf: P.L.1985, c.148, s.14)

39

40 26. Section 22 of P.L.1952, c.174 (C.39:6-82) is amended to read
41 as follows:

42 22. Settlement of actions against the [commissioner] association.
43 In any action brought against the [commissioner] association pursuant
44 to an order by the court entered in accordance with the provisions of
45 section 18, the plaintiff may file a verified petition alleging that he has

1 entered into an agreement with the [board] association to settle all
2 claims set forth in the complaint in said action and the amount
3 proposed to be paid to him pursuant thereto. If the court be satisfied
4 of the fairness of such proposed settlement, it may enter an order
5 approving such settlement and enter a judgment against the
6 [commissioner] association for the amount so agreed to be paid
7 thereunder.

8 (cf: P.L.1985, c.148, s.15)

9

10 27. Section 23 of P.L.1952, c.174 (C.39:6-83) is amended to read
11 as follows:

12 23. Credits against judgment. A judgment against the
13 [commissioner] association shall be reduced by any amounts which
14 such plaintiff has received from any person mentioned in subparagraph
15 (m) of section 10.

16 (cf: P.L.1985, c.148, s.16)

17

18 28. Section 24 of P.L.1952, c.174 (C.39:6-84) is amended to read
19 as follows:

20 24. When a judgment is obtained against the [commissioner]
21 association, in an action brought under this act, upon the
22 determination of all proceedings including appeals and reviews, the
23 court shall make an order directed to the [treasurer] association
24 directing [him] it to pay out of the fund to the plaintiff in the action
25 the amount thereof which does not exceed \$15,000.00, exclusive of
26 interest and costs, on account of injury to, or death of, one person
27 and, subject to such limits for the death of, or injury to, any one
28 person, does not exceed \$30,000.00, exclusive of interest and costs,
29 on account of the injury to, or death of, more than one person, in any
30 one accident, provided that such maximum amount shall be reduced by
31 any amount received or recovered by the plaintiff as specified in
32 subparagraph (m) of section 10.

33 (cf: P.L.1985, c.148, s.17)

34

35 29. Section 25 of P.L.1952, c.174 (C.39:6-85) is amended to read
36 as follows:

37 25. Subrogation. When judgment has been obtained against the
38 [commissioner] association in an action brought under this act, the
39 [commissioner] association shall, upon payment from the fund of the
40 amount of the judgment to the extent provided in this act, be
41 subrogated to the cause of action of the judgment creditor against the
42 operator and owner of the motor vehicle by which the accident was
43 occasioned and shall bring an action against either or both of such
44 persons for the amount of the damage sustained by the judgment
45 creditor when and in the event that the identity of either or both of
46 such persons shall be established, and shall recover the same out of

1 any funds which would be payable in respect to the death or injury
2 under any policy of insurance, which was in force at the time of the
3 accident and in event that more is recovered and collected in any such
4 action than the amount paid out of the fund by reason of the judgment,
5 the [treasurer] association shall pay the balance, after reimbursing the
6 fund, to the judgment creditor.

7 (cf: P.L.1985, c.148, s.18)

8

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

11 7. When any person qualified to receive payments under the
12 provisions of the "Unsatisfied Claim and Judgment Fund Law" suffers
13 bodily injury or death as a pedestrian, as defined in section 2 of
14 P.L.1972, c.70 (C.39:6A-2), caused by a motor vehicle, including an
15 automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2), and
16 a motorcycle, or by an object propelled therefrom, or arising out of an
17 accident while occupying, entering into, alighting from, or using an
18 automobile, registered or principally garaged in this State for which
19 personal injury protection benefits under the "New Jersey Automobile
20 Reparation Reform Act," P.L.1972, c.70 (C.39:6A-1 et seq.), or
21 section 19 of P.L.1983, c.362 (C.17:28-1.3), would be payable to such
22 person if personal injury protection coverage were in force and the
23 damages resulting from such accident or death are not satisfied due to
24 the personal injury protection coverage not being in effect with respect
25 to such accident, or when a pedestrian suffers bodily injury as
26 provided by section 35 of P.L. .c. (C.) (now before the
27 Legislature as this bill) then in such event the Unsatisfied Claim and
28 Judgment Fund shall provide, under the following conditions, the
29 following benefits:

30 a. Medical expenses benefits. Payment of all [reasonable] medical
31 expense benefits in accordance with a benefits plan, subject to the
32 approval of the commissioner, for reasonable, necessary and
33 appropriate treatment and provision of services in an amount not
34 exceeding \$250,000 per person per accident. In the event of death,
35 payment shall be made to the estate of the decedent. The benefits plan
36 shall set forth the benefits provided by the Unsatisfied Claim and
37 Judgment Fund, including eligible medical treatments, diagnostic tests
38 and services as well as such other benefits as the Unsatisfied Claim and
39 Judgment Fund may provide.

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

43 b. Income continuation benefits. The payment of the loss of
44 income of an income producer as a result of bodily injury disability,
45 subject to a maximum weekly payment of \$100.00. Such sums shall
46 be payable during the life of the injured person and shall be subject to

1 an amount or limit of \$5,200.00, on account of injury to any one
2 person in any one accident, except that in no case shall income
3 continuation benefits exceed the net income normally earned during
4 the period in which the benefits are payable.

5 c. Essential services benefits. Payment of essential services
6 benefits to an injured person shall be made in reimbursement of
7 necessary and reasonable expenses incurred for such substitute
8 essential services ordinarily performed by the injured person for
9 himself, his family and members of the family residing in the
10 household, subject to an amount or limit of \$12.00 per day. Such
11 benefits shall be payable during the life of the injured person and shall
12 be subject to an amount or limit of \$4,380.00, on account of injury to
13 any one person in any one accident.

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

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

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

32 Provided, however, that no benefits shall be paid under this section
33 unless the person applying for benefits has demonstrated that he is not
34 disqualified by reason of the provisions of subsection (a), (c), (d) or
35 (l) of section 10 of P.L.1952, c.174 (C.39:6-70), or any other
36 provision of law.

37 (cf: P.L.1990, c.8, s.101)

38

39 31. Section 12 of P.L.1972, c.198 (C.39:6-86.6) is amended to
40 read as follows:

41 12. The [commissioner] association shall be entitled to recover on
42 behalf of the Unsatisfied Claim and Judgment Fund for all payments
43 made by it pursuant to sections 7 and 10 of this act, regardless of fault,
44 from any person who owned or operated the automobile involved in
45 the accident and whose failure to have the required insurance coverage
46 in effect at the time of the accident resulted in the payment of personal

1 injury protection benefits. If the identity of the owner and operator is
2 not ascertained until after personal injury protection benefits have been
3 paid then the [commissioner] association shall be entitled to recover
4 for such payments, regardless of fault, from the operator if he was
5 driving without the owner's permission or from the operator and the
6 owner if he was driving with the owner's permission or, in either case,
7 from the insurer if there is an insurance policy providing personal
8 injury protection benefits that was in effect at the time of the accident
9 with respect to such automobile.

10 The [commissioner] association is authorized to bring an action,
11 which shall be a summary proceeding, in the Superior Court to reduce
12 the right provided by this section to judgment.

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

14
15 32. Section 27 of P.L.1952, c.174 (C.39:6-87) is amended to read
16 as follows:

17 27. Registration, etc. not restored until fund is reimbursed. Where
18 the license or privileges of any person, or the registration of a motor
19 vehicle registered in his name, has been suspended or cancelled under
20 the Motor Vehicle Security-Responsibility Law of this State, and the
21 [treasurer] association has paid from the fund any amount in
22 settlement of a claim or towards satisfaction of a judgment against that
23 person, or for the payment of personal injury protection benefits as
24 provided in section 7 and section 10 of this act, the cancellation or
25 suspension shall not be removed, nor the license, privileges, or
26 registration restored, nor shall any new license or privilege be issued
27 or granted to, or registration be permitted to be made by, that person
28 until he has

29 (a) Repaid in full to the [treasurer] association the amount so
30 paid by him together with interest thereon at 8% per annum from the
31 date of such payment; and

32 (b) Satisfied all requirements of said Motor Vehicle
33 Security-Responsibility Law in respect of giving proof of ability to
34 respond in damages for future accidents, provided, that the court in
35 which such judgment was rendered may, upon 10 days' notice to the
36 [board] association, make an order permitting payment of the amount
37 of such person's indebtedness to the fund, to be made in installments,
38 or in the event the fund makes personal injury protection benefit
39 payments, such person and the fund by agreement may provide for
40 repayment to the fund to be made in installments, and in such case,
41 such person's driver's license, or his driving privileges, or registration
42 certificate, if the same have been suspended or revoked, or have
43 expired, may be restored or renewed and shall remain in effect unless
44 and until such person defaults in making any installment payment
45 specified in such order. In the event of any such default, the Director
46 of the Division of Motor Vehicles shall upon notice of such default

1 suspend such person's driver's license, or driving privileges or
2 registration certificate until the amount of his indebtedness to the fund
3 has been paid in full.

4 (cf: P.L.1985, c.148, s.20)

5

6 33. Section 28 of P.L.1952, c.174 (C.39:6-88) is amended to read
7 as follows:

8 28. Fund to be held in trust. All sums received by the [treasurer]
9 association pursuant to any of the provisions of this act shall become
10 part of the fund, and shall be held by the [treasurer] association in
11 trust for the carrying out of the purposes of this act and for the
12 payment of the cost of administering this act [, and for the payment
13 of the costs of the Division of Motor Vehicles of implementing the
14 New Jersey Merit Rating Plan pursuant to section 6 of P.L.1983, c.65
15 (C.17:29A-35). The Director of the Division of Motor Vehicles shall
16 certify to the treasurer the amount necessary to implement the New
17 Jersey Merit Rating Plan pursuant to that section, and the treasurer
18 shall thereupon disburse that amount from the fund. Moneys
19 transferred to the Division of Motor Vehicles pursuant to this section
20 shall be repaid, with interest at the prevailing rate as determined by the
21 board, out of sums appropriated to the Division of Motor Vehicles
22 from surcharges assessed in accordance with the New Jersey Merit
23 Rating Plan established pursuant to section 6 of P.L.1983, c.65
24 (C.17:29A-35). Said fund may be invested and reinvested in the same
25 manner as other State funds and shall be disbursed according to the
26 order of the treasurer, as custodian of the fund].

27 (cf: P.L.1985, c.148, s.21)

28

29 34. Section 30 of P.L.1952, c.174 (C.39:6-90) is amended to read
30 as follows:

31 30. Any person and any agent or servant of such person, who
32 knowingly files with the fund [, board or treasurer,] or [any] the
33 association or either of them, any notice, statement or other document
34 required under this act, which is false or untrue or contains any
35 material misstatement of fact shall be subject to a [fine of not less than
36 one hundred dollars (\$100.00), nor more than five hundred dollars
37 (\$500.00), or imprisonment for not more than thirty days, at the
38 discretion of the court] penalty as provided in section 5 of P.L.1983,
39 c.320 (C.17:33A-5) and damages as provided in section 7 of P.L.1983,
40 c.320 (C.17:33A-7).

41 (cf: P.L.1952, c.174, s.30)

42

43 35. (New section) The Unsatisfied Claim and Judgment Fund
44 created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.) shall provide
45 personal injury protection benefits pursuant to section 7 of P.L.1972,
46 c.198 (C.39:6-86.1) to a pedestrian sustaining bodily injury in this

1 State caused by an automobile, other than to a named insured or a
2 member of the named insured's family residing in his household, if that
3 pedestrian is entitled to personal injury protection coverage under an
4 automobile insurance policy.

5
6 36. Section 4 of P.L.1998, c.21 (C.39:6A-3.1) is amended to read
7 as follows:

8 4. As an alternative to the mandatory coverages provided in
9 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), any
10 owner or registered owner of an automobile registered or principally
11 garaged in this State may elect a basic automobile insurance policy
12 providing the following coverage:

13 a. Personal injury protection coverage, for the payment of benefits
14 without regard to negligence, liability or fault of any kind, to the
15 named insured and members of his family residing in his household,
16 who sustained bodily injury as a result of an accident while occupying,
17 entering into, alighting from or using an automobile, or as a
18 pedestrian, caused by an automobile or by an object propelled by or
19 from an automobile, and to other persons sustaining bodily injury
20 while occupying, entering into, alighting from or using the automobile
21 of the named insured, with the permission of the named insured[, and
22 to pedestrians sustaining bodily injury caused by the named insured's
23 automobile or struck by an object propelled by or from such
24 automobile]. "Personal injury protection coverage" issued pursuant
25 to this section means and includes payment of medical expense
26 benefits, as provided in the policy and approved by the commissioner,
27 for the reasonable and necessary treatment of bodily injury in an
28 amount not to exceed \$15,000 per person per accident; except that,
29 medical expense benefits shall be paid in an amount not to exceed
30 \$250,000: (1) for all medically necessary treatment of permanent or
31 significant brain injury, spinal cord injury or disfigurement or (2) for
32 medically necessary treatment of other permanent or significant
33 injuries rendered at a trauma center or acute care hospital immediately
34 following the accident and until the patient is stable, no longer requires
35 critical care and can be safely discharged or transferred to another
36 facility in the judgment of the attending physician. In the event
37 benefits paid by an insurer pursuant to this subsection are in excess of
38 \$75,000 on account of personal injury to any one person in any one
39 accident covered by a policy issued or renewed prior to January 1,
40 2004, such excess shall be paid by the insurer [in consultation with the
41 Unsatisfied Claim and Judgment Fund Board] and shall be
42 reimbursable to the insurer from the Unsatisfied Claim and Judgment
43 Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-73.1). Benefits
44 provided under basic coverage shall be in accordance with a benefit
45 plan provided in the policy and approved by the commissioner. The
46 policy form, which shall be subject to the approval of the

1 commissioner, shall set forth the benefits provided under the policy,
2 including eligible medical treatments, diagnostic tests and services as
3 well as such other benefits as the policy may provide. The
4 commissioner shall set forth by regulation a statement of 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. The
17 commissioner, in consultation with the Commissioner of the
18 Department of Health and Senior Services and the applicable licensing
19 boards, may reject the use of protocols, standards and practices or lists
20 of diagnostic tests set by any organization deemed not to have
21 standing or general recognition by the provider community or the
22 applicable licensing boards. Protocols shall be deemed to establish
23 guidelines as to standard appropriate treatment and diagnostic tests for
24 injuries sustained in automobile accidents, but the establishment of
25 standard treatment protocols or protocols for the administration of
26 diagnostic tests shall not be interpreted in such a manner as to
27 preclude variance from the standard when warranted by reason of
28 medical necessity. The policy form may provide for the
29 precertification of certain procedures, treatments, diagnostic tests, or
30 other services or for the purchase of durable medical goods, as
31 approved by the commissioner, provided that the requirement for
32 precertification shall not be unreasonable, and no precertification
33 requirement shall apply within ten days of the insured event. The
34 policy may provide that certain benefits provided by the policy which
35 are in excess of the basic benefits required by the commissioner to be
36 included in the policy may be subject to reasonable copayments in
37 addition to the copayments provided for herein, provided that the
38 copayments shall not be unreasonable and shall be established in such
39 a manner as not to serve to encourage underutilization of benefits
40 subject to the copayments, nor encourage overutilization of benefits.
41 The policy form shall clearly set forth any limitations on benefits or
42 exclusions, which may include, but need not be limited to, benefits
43 which are otherwise compensable under workers' compensation, or
44 benefits for treatments deemed to be experimental or investigational,
45 or benefits deducted pursuant to section 6 of P.L.1972, c.70
46 (C.39:6A-6). The commissioner may enlist the services of a benefit

1 consultant in establishing the basic benefits level provided in this
2 subsection, which shall be set forth by regulation no later than 120
3 days following the enactment date of this amendatory and
4 supplementary act. The commissioner shall not advertise for the
5 consultant as provided in sections 3 and 4 of P.L.1954, c.48
6 (C.52:34-8 and 52:34-9).

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

17 Notwithstanding the provisions of P.L.2003, c.18, physical therapy
18 treatment shall not be reimbursable as medical expense benefits
19 pursuant to this subsection unless rendered by a licensed physical
20 therapist pursuant to a referral from a licensed physician, dentist,
21 podiatrist or chiropractor within the scope of their respective
22 practices.

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

34 If a named insured has elected the basic automobile insurance
35 policy option and an immediate family member or members or relatives
36 resident in his household have one or more policies with the coverages
37 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and
38 39:6A-4), the provisions of section 12 of P.L.1983, c.362
39 (C.39:6A-4.2) shall apply.

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

46 No licensed insurance carrier shall refuse to renew the coverage

1 stipulated by this section of an eligible person as defined in section 25
2 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
3 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
4 the consent of the Commissioner of Banking and Insurance.
5 (cf: P.L.2003, c.18, s.26)

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

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

10 Except as provided by section 45 of P.L. _____, c. _____ (C. _____)(now
11 before the Legislature as this bill) and section 4 of P.L.1998, c.21
12 (C.39:6A-3.1), every standard automobile liability insurance policy
13 issued or renewed on or after the effective date of P.L.1998, c.21
14 (C.39:6A-1.1 et al.) shall contain personal injury protection benefits
15 for the payment of benefits without regard to negligence, liability or
16 fault of any kind, to the named insured and members of his family
17 residing in his household who sustain bodily injury as a result of an
18 accident while occupying, entering into, alighting from or using an
19 automobile, or as a pedestrian, caused by an automobile or by an
20 object propelled by or from an automobile, and to other persons
21 sustaining bodily injury while occupying, entering into, alighting from
22 or using the automobile of the named insured, with permission of the
23 named insured [, and to pedestrians sustaining bodily injury caused by
24 the named insured's automobile or struck by an automobile or struck
25 by an object propelled by or from that automobile].

26 "Personal injury protection coverage" means and includes:

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

1 covered injury. Protocols and professional standards and practices and
2 lists of valid diagnostic tests which are deemed to be commonly
3 accepted pursuant to this section shall be those recognized by national
4 standard setting organizations, national or state professional
5 organizations of the same discipline as the treating provider, or those
6 designated or approved by the commissioner in consultation with the
7 professional licensing boards in the Division of Consumer Affairs in
8 the Department of Law and Public Safety. The commissioner, in
9 consultation with the Commissioner of the Department of Health and
10 Senior Services and the applicable licensing boards, may reject the use
11 of protocols, standards and practices or lists of diagnostic tests set by
12 any organization deemed not to have standing or general recognition
13 by the provider community or the applicable licensing boards.
14 Protocols shall be deemed to establish guidelines as to standard
15 appropriate treatment and diagnostic tests for injuries sustained in
16 automobile accidents, but the establishment of standard treatment
17 protocols or protocols for the administration of diagnostic tests shall
18 not be interpreted in such a manner as to preclude variance from the
19 standard when warranted by reason of medical necessity. The policy
20 form may provide for the precertification of certain procedures,
21 treatments, diagnostic tests, or other services or for the purchase of
22 durable medical goods, as approved by the commissioner, provided
23 that the requirement for precertification shall not be unreasonable, and
24 no precertification requirement shall apply within ten days of the
25 insured event. The policy may provide that certain benefits provided
26 by the policy which are in excess of the basic benefits required by the
27 commissioner to be included in the policy may be subject to reasonable
28 copayments in addition to the copayments provided for pursuant to
29 subsection e. of this section, provided that the copayments shall not be
30 unreasonable and shall be established in such a manner as not to serve
31 to encourage underutilization of benefits subject to the copayments,
32 nor encourage overutilization of benefits. The policy form shall clearly
33 set forth any limitations on benefits or exclusions, which may include,
34 but need not be limited to, benefits which are otherwise compensable
35 under workers' compensation, or benefits for treatments deemed to be
36 experimental or investigational, or benefits deducted pursuant to
37 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may
38 enlist the services of a benefit consultant in establishing the basic
39 benefits level provided in this subsection, which shall be set forth by
40 regulation no later than 120 days following the enactment date of
41 P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall not
42 advertise for bids for the consultant as provided in sections 3 and 4 of
43 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

44 Notwithstanding the provisions of P.L.2003, c.18, physical therapy
45 treatment shall not be reimbursable as medical expense benefits
46 pursuant to this subsection unless rendered by a licensed physical

1 therapist pursuant to a referral from a licensed physician, dentist,
2 podiatrist or chiropractor within the scope of their respective
3 practices.

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

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

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

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

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

39 Benefits payable under this section shall:

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

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

46 Medical expense benefit payments shall be subject to any

1 deductible and any copayment which may be established as provided
2 in the policy. Upon the request of the commissioner or any party to
3 a claim for benefits or payment for services rendered, a provider shall
4 present adequate proof that any deductible or copayment related to
5 that claim has not been waived or discharged by the provider.

6 No insurer or health provider providing benefits to an insured shall
7 have a right of subrogation for the amount of benefits paid pursuant
8 to any deductible or copayment under this section.
9 (cf: P.L.2003, c.18, s.27).

10
11 38. Section 27 of P.L.1990, c.8 (C.17:33B-15) is amended to read
12 as follows:

13 27. a. On or after April 1, 1992, every insurer, either by one or
14 more separate rating plans filed in accordance with the provisions of
15 section 6 of P.L.1988, c.156 (C.17:29A-45) prior to March 1, 1998,
16 or section 14 of P.L.1997, c.151 (C.17:29A-46.1) on or after March
17 1, 1998, or through one or more affiliated insurers, shall provide
18 automobile insurance coverage for eligible persons. This subsection
19 shall become inoperative on January 1, 2009.

20 b. No insurer shall refuse to insure, refuse to renew, or limit
21 coverage available for automobile insurance to an eligible person who
22 meets its underwriting rules as filed with and approved by the
23 commissioner in accordance with the provisions of section 7 of
24 P.L.1988, c.156 (C.17:29A-46) prior to March 1, 1998 or section 15
25 of P.L.1997, c.151 (C.17:29A-46.2) on or after March 1, 1998. This
26 subsection shall become inoperative on January 1, 2009.

27 c. Notwithstanding the provisions of subsections a. and b. of this
28 section to the contrary, any qualified insurer engaged in writing
29 automobile insurance in an automobile insurance urban enterprise zone
30 pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4) may limit the
31 number of exposures written through its UEZ agent or agents, or in
32 the case of a qualified insurer doing business on a direct writing basis,
33 the qualified insurer may limit the number of exposures written in an
34 automobile insurance urban enterprise zone consistent with its
35 marketing plans and goals as provided in subsection a. of section 21
36 of P.L.1997, c.151 (C.17:33C-3). Nothing in this subsection shall be
37 construed to relieve a qualified insurer from its obligation under
38 subsections a. and b. of this section to write all eligible persons
39 residing within an automobile insurance urban enterprise zone through
40 its non-UEZ agent points of access.

41 d. (1) Notwithstanding the provisions of subsections a. and b. of
42 this section to the contrary, an insurer may file underwriting rules by
43 which it may refuse to issue or limit coverage available for automobile
44 insurance in any rating territory to an eligible person if the insurer has
45 increased its aggregate number of private passenger automobile non-
46 fleet exposures in the rating territory during the previous year: by 5%

1 during the one year period beginning January 1, 2004; by 4% during
2 the one year period beginning January 1, 2005; by 3% during the one
3 year period beginning January 1, 2006; by 2% during the one year
4 period beginning January 1, 2007; and by 1% during the one year
5 period beginning January 1, 2008, provided further that an insurer may
6 file with the commissioner for a lower percentage growth standard
7 than that listed in this subsection and the commissioner shall approve
8 such a filing if he finds that the insurer does not have the financial and
9 business resources to accommodate growth statewide at a higher
10 percentage than that proposed in the filing.

11 (2) Underwriting rules filed pursuant to this subsection shall
12 provide that the rules are activated only upon the filing with the
13 commissioner of a proper certification. The certification shall be by
14 an officer of the insurer attesting to the aggregate number of private
15 passenger automobile non-fleet exposures in each rating territory on
16 June 30 and December 31 of the preceding year and clearly identify
17 any rating territory in which the insurer has met the percentage growth
18 standard established by this subsection. Such underwriting rules shall
19 be operational in the identified territory on the first day of the second
20 calendar month after the end of the calendar six month period in which
21 the percentage growth standard has been met. Such underwriting rules
22 shall be operational in an identified territory for a period of six months,
23 unless prior to their expiration, an officer of the insurer files a
24 certification with the commissioner attesting that the percentage
25 growth standard in an identified territory continues to be met.

26 (3) Notwithstanding any provision of this section to the contrary,
27 the commissioner may make operative the provisions of subsections a.
28 and b. of this section only by order finding one of the following
29 circumstances:

30 (a) The commissioner determines, after a hearing, that a
31 competitive market does not exist among insurers authorized to write
32 private passenger automobile insurance in this State, which
33 determination shall only be made pursuant to subsection f. of this
34 section, provided, however, that there shall be a rebuttable
35 presumption that a competitive market exists among insurers
36 authorized to write private passenger automobile insurance in this
37 State if the plan established pursuant to P.L.1970, c.215 (C.17:29D-1)
38 is insuring less than 10% of the aggregate number of private passenger
39 automobile non-fleet exposures being written in the total private
40 passenger automobile insurance market in this State.

41 (b) The commissioner certifies that the plan established pursuant
42 to P.L.1970, c.215 (C.17:29D-1) is insuring 10% or more of the
43 aggregate number of private passenger automobile non-fleet exposures
44 being written in the total private passenger automobile insurance
45 market in this State.

46 (4) Any order issued by the commissioner that makes operative

1 the provisions of subsections a. and b. of this section may limit the
2 form of policies to which the order applies and shall establish a
3 maximum increase in an insurer's aggregate number of private
4 passenger automobile non-fleet exposures to which the order applies,
5 which increase shall not exceed the maximum limit set forth in
6 paragraph (1) of this subsection d.

7 (5) An eligible person denied or refused renewal of automobile
8 insurance in a rating territory by an insurer granted relief pursuant to
9 this subsection shall be advised by the insurer that coverage may be
10 available from another insurer or that coverage is available from the
11 plan established pursuant to P.L.1970, c.215 (C.17:29D-1). The
12 commissioner shall establish by regulation the form and content of the
13 notice to be provided to such an eligible person.

14 (6) The provisions of this subsection d. shall not reduce an
15 insurer's obligation to renew policies pursuant to section 26 of
16 P.L.1988, c.119 (C.17:29C-7.1).

17 e. The commissioner may suspend, revoke or otherwise terminate
18 the certificate of authority to transact automobile insurance business
19 in this State of any insurer who violates the provisions of this section.

20 f. (1) A determination that a competitive market for private
21 passenger automobile insurance does not exist may be made by the
22 commissioner, after notice and hearing, based on two or more of the
23 factors set forth in paragraph (2) of this subsection. A hearing under
24 this subsection shall be held consistent with the rulemaking provisions
25 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52.14B-1
26 et seq.), except that an order by the commissioner pursuant to this
27 subsection shall include specific finding of fact and be supported by
28 clear and convincing evidence. Any ruling that finds that competition
29 does not exist within the market for automobile insurance shall include
30 specific findings regarding: (a) the actions the State and the
31 commissioner have taken to return the market to a competitive market;
32 and (b) an explanation regarding why those actions have failed to
33 return the market to a competitive market. A ruling pursuant to this
34 subsection shall expire one year after issued unless rescinded earlier by
35 the commissioner or unless the commissioner renews the ruling after
36 a hearing and a finding as to continued lack of a reasonable degree of
37 competition.

38 (2) The following factors shall be considered by the commissioner
39 for purposes of determining if a reasonable degree of competition does
40 not exist in a particular line of private passenger automobile insurance:

41 (a) The number of insurers or groups of affiliated insurers actively
42 engaged in providing coverage in the market, taking into account the
43 specialization traditionally associated with the line of insurance;

44 (b) Measures of market concentration and changes of market
45 concentration over time, including, but not limited to, the Herfindahl-
46 Hirschman Index (HHI) and the United States Department of Justice

1 merger guidelines for an unconcentrated market;

2 (c) Ease of entry and exit and the existence of financial or
3 economic barriers that could prevent new insurers from entering the
4 market;

5 (d) The extent to which any insurer or group of affiliated insurers
6 controls all or a dominant portion of the market and has actively
7 sought to prevent competition;

8 (e) Whether the total number of insurers writing the line of
9 insurance in this State is sufficient to provide multiple options;

10 (f) The availability of insurance coverage to consumers in the
11 voluntary market; and

12 (g) The opportunities available to consumers in the market to
13 acquire pricing and other consumer information.

14 (3) The commissioner shall monitor, and take all reasonable
15 actions to maintain, the degree and continued existence of competition
16 in this State on an on-going basis. In doing so, the commissioner may
17 utilize existing relevant information, analytical systems and other
18 sources, or rely on any combination thereof. Monitoring activities may
19 be conducted internally within the department, in cooperation with
20 other state insurance departments, through outside contractors and in
21 any other manner determined appropriate by the commissioner.

22 (cf: P.L.1997, c.151, s.24)

23

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

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

34 The governing board of any plan established pursuant to the
35 commissioner's rules and regulations shall continue to exercise such
36 administrative authority, subject to the commissioner's oversight and
37 as provided in any rules and regulations promulgated pursuant to this
38 section, as is necessary to ensure the plan's efficient operation,
39 including, but not limited to, the authority to investigate complaints
40 and hear appeals from applicants, insureds, producers, servicing
41 carriers or participants about any matter pertaining to the plan's proper
42 administration, as well as the authority to appoint subcommittees to
43 hear such appeals. Any determination of an appeal by a plan's
44 governing board shall be subject to review by the commissioner on the
45 record below, and shall not be considered a contested case under the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.). The commissioner's determination shall be a final order and
2 shall be subject to review by the Superior Court.

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

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

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

16 c. For a limited assignment distribution system permitting insurers
17 to enter into agreements with other mutually agreeable insurers or
18 other qualified entities to transfer their applicants and insureds under
19 such plan to such insurers or other entities, including applicants and
20 insureds who may be covered by special automobile insurance policies
21 issued pursuant to section 45 of P.L. , c. (C.) (now before the
22 Legislature as this bill);

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

34 e. Except for risks written in automobile insurance urban
35 enterprise zones pursuant to subsection i., or risks written pursuant to
36 subsection j. of this section, that it shall not provide coverage to an
37 eligible person as defined pursuant to section 25 of P.L.1990, c.8
38 (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 ; and meets such other
6 requirements as may be established by the commissioner by regulation.

7 For purposes of this subsection i., "insurer" means an insurer or group
8 of affiliated insurers admitted or authorized to transact the business of
9 automobile insurance in this State;

10 (6) This subsection shall expire on the first day of the [61st] 97th
11 month after the first policy using the voluntary rating tier required by
12 this subsection was issued to a risk, as certified by the commissioner;

13 j. For a voluntary rating tier to accommodate eligible persons, as
14 defined in section 25 of P.L.1990, c.8 (C.17:33B-13), denied or
15 refused renewal of automobile insurance in a rating territory by an
16 insurer granted relief pursuant to subsection d. of section 27 of
17 P.L.1990, c.8 (C.17:33B-15);

18 k. That an insurer granted relief pursuant to subsection d. of
19 section 27 of P.L.1990, c.8 (C.17:33B-15) shall receive assigned risk
20 credits for voluntary risks written in excess of the percentage growth
21 standard established by that subsection d. The commissioner shall
22 establish by regulation the manner in which such an insurer may utilize
23 the provisions of this subsection. In no event shall that credit apply to
24 reduce an insurer's obligations under subsection i. of this section; and

25 l. That an insurer granted relief pursuant to subsection d. of
26 section 27 of P.L.1990, c.8 (C.17:33B-15) shall also receive assigned
27 risk credits for the voluntary first renewal of an eligible person written
28 pursuant to subsection j. of this section.

29 Prior to the adoption or amendment of such rules and regulations,
30 the commissioner shall consult with such members of the insurance
31 industry as he deems appropriate. Such consultation shall be in
32 addition to any otherwise required public hearing or notice with regard
33 to the adoption or amendment of rules and regulations.

34 The governing body administering the plan shall report annually to
35 the Legislature and the Governor on the activities of the plan. The
36 report shall contain an actuarial analysis regarding the adequacy of the
37 rates for each coverage for the safeness and soundness of the plan.

38 (cf: P.L.1998, c.21, s.31)

39
40 40. Section 15 of P.L.1997, c.151 (C.17:29A-46.2) is amended to
41 read as follows:

42 15. a. Insurers shall put in writing all underwriting rules
43 applicable to each rate level utilized pursuant to section 14 of [this
44 amendatory and supplementary act] P.L.1997, c.151 (C.17:29A-46.1).

45 An insurer may take into account factors, including, but not limited to,
46 driving record characteristics appropriate for underwriting and

1 classification in formulating its underwriting rules; provided that no
2 underwriting rule based on motor vehicle violations shall be
3 formulated in such a manner as to assign any named insured to a rating
4 tier other than the standard rating tier applicable to the insured's
5 territory solely on the basis of accumulating ~~[six]~~ four motor vehicle
6 points or less. No underwriting rule shall operate in such a manner as
7 to assign a risk to a rating plan on the basis of the territory in which
8 the insured resides or any other factor which the commissioner finds
9 is a surrogate for territory. An insurer which knowingly fails to
10 transact automobile insurance consistently with its underwriting rules
11 shall be subject to a fine of not less than \$1,000 for each violation.

12 b. All underwriting rules applicable to each rate level as provided
13 for in section 14 of ~~[this amendatory and supplementary act]~~
14 P.L.1997, c.151 (C.17:29A-46.1) shall be filed with the commissioner
15 and shall be subject to his prior approval. All underwriting rules shall
16 be subject to public inspection. ~~[Insurers]~~ Except as provided in
17 subsection d. of section 27 of P.L.1990, c.8 (C.17:33B-15), insurers
18 shall apply their underwriting rules uniformly and without exception
19 throughout the State, so that every applicant or insured conforming
20 with the underwriting rules will be insured or renewed, and so that
21 every applicant not conforming with the underwriting rules will be
22 refused insurance.

23 c. An insurer with more than one rating plan for private passenger
24 automobile insurance policies providing identical coverages shall not
25 adopt underwriting rules which would permit a person to be insured
26 for private passenger automobile insurance under more than one of the
27 rating plans.

28 d. An insurer that revises its underwriting rules with respect to the
29 assignment of insureds to rating tiers based on the number of
30 accumulated motor vehicle points, as provided by subsection a. of this
31 section, as amended by P.L. c. (C.)(now before the
32 Legislature as this bill), shall certify to the commissioner that the
33 revised rule will produce rates that are revenue neutral based upon the
34 insurer's current coverages and book of business.

35 (cf: P.L.1997, c.151, s.15)

36

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

39 14. a. With regard to all property and casualty lines, a filer may,
40 from time to time, alter, supplement, or amend its rates, rating
41 systems, or any part thereof, by filing with the commissioner copies of
42 such alterations, supplements, or amendments, together with a
43 statement of the reason or reasons for such alteration, supplement, or
44 amendment, in a manner and with such information as may be required
45 by the commissioner. If such alteration, supplement, or amendment
46 shall have the effect of increasing or decreasing rates, the

1 commissioner shall determine whether the rates as altered thereby are
2 reasonable, adequate, and not unfairly discriminatory. If the
3 commissioner shall determine that the rates as so altered are not
4 unreasonably high, or inadequate, or unfairly discriminatory, he shall
5 make an order approving them. If he shall find that the rates as altered
6 are unreasonable, inadequate, or unfairly discriminatory, he shall issue
7 an order disapproving such alteration, supplement or amendment.

8 b. (Deleted by amendment, P.L.1984, c.1.)

9 c. If an insurer or rating organization files a proposed alteration,
10 supplement or amendment to its private passenger automobile
11 insurance rating system, or any part thereof, the commissioner shall
12 transmit the filing to the appropriate office in the Division of
13 Insurance, which office shall issue a preliminary determination within
14 90 days of receipt of a rate filing, except that the commissioner may,
15 for good cause, extend the time for a preliminary determination by not
16 more than 30 days. The preliminary determination shall set forth the
17 basis for accepting, rejecting or modifying the rates as filed. A copy of
18 the preliminary determination shall be provided to the filer and other
19 interested parties. Unless the filer or other interested party requests
20 a hearing, the commissioner may adopt the preliminary determination
21 as final within 30 days of the preliminary determination. If a hearing
22 is requested, it shall proceed on an expedited basis in accordance with
23 the provisions of this section. If a preliminary determination is not
24 made within the time provided, a filing shall be transmitted to the
25 Office of Administrative Law for a hearing and the commissioner shall
26 adopt the determination of the administrative law judge as a final
27 decision on the filing.

28 For filings other than private passenger automobile, if an insurer or
29 rating organization files a proposed alteration, supplement or
30 amendment to its rating system, or any part thereof, which would
31 result in a change in rates, the commissioner may, or upon the request
32 of the filer or the appropriate [division or] office in the [Department]
33 Division of Insurance shall, certify the matter for a hearing. The
34 hearing shall, at the commissioner's discretion, be conducted by
35 himself, by a person appointed by the commissioner pursuant to
36 section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of
37 Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.),
38 as a contested case. The following requirements shall apply to the
39 hearing:

40 (1) The hearing shall commence within 30 days of the date of the
41 request or decision that a hearing is to be held. The hearing shall be
42 held on consecutive working days, except that the commissioner may,
43 for good cause, waive the consecutive working day requirement. If
44 the hearing is conducted by an administrative law judge, the
45 administrative law judge shall submit his findings and
46 recommendations to the commissioner within 30 days of the close of

1 the hearing. The commissioner may, for good cause, extend the time
2 within which the administrative law judge shall submit his findings and
3 recommendations by not more than 30 days. A decision shall be
4 rendered by the commissioner not later than 60 days, or, if he has
5 granted a 30 day extension, not later than 90 days, from the close of
6 the hearing. A filing shall be deemed to be approved unless rejected
7 or modified by the commissioner within the time period provided
8 herein.

9 (2) The commissioner, or the Director of the Office of
10 Administrative Law, as appropriate, shall notify all interested parties,
11 including the appropriate [division or] office in the [Department]
12 Division of Insurance on behalf of insurance consumers, of the date set
13 for commencement of the hearing, on the date of the filing of the
14 request for a hearing, or within 10 days of the decision that a hearing
15 is to be held.

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

18 (4) The commissioner may promulgate rules and regulations (a)
19 to establish standards for the submission of proposed filings,
20 amendments, additions, deletions and alterations to the rating system
21 of filers, which may include forms to be submitted by each filer; and
22 (b) making such other provisions as he deems necessary for effective
23 implementation of this act.

24 d. (Deleted by amendment, P.L.1984, c.1.)

25 e. [In order to meet, as closely as possible, the deadlines in
26 section 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of
27 available optional automobile insurance coverages pursuant to section
28 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
29 (C.39:6A-8), and to implement these coverages, the commissioner may
30 require the use of rates, fixed by him in advance of any hearing, for
31 deductible, exclusion, setoff and tort limitation options, on an interim
32 basis, subject to a hearing and to a provision for subsequent
33 adjustment of the rates, by means of a debit, credit or refund
34 retroactive to the effective date of the interim rates. The public hearing
35 on initial rates applicable to the coverages available under section 13
36 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
37 (C.39:6A-8) shall not be limited by the provisions of subsection c. of
38 this section governing changes in previously approved rates or rating
39 systems.] (Deleted by amendment, P.L. , c. .)

40 (cf: P.L.1994, c.58, s.43)

41

42 42. Section 34 of P.L.1997, c.151 (C.17:29A-46.6) is amended to
43 read as follows:

44 34. a. Notwithstanding section 14 of P.L.1944, c.27
45 (C.17:29A-14), an insurer, affiliated group of insurers or rating
46 organization may elect to file a proposed alteration to its rating system

1 pursuant to the expedited process set forth in this section when the
2 filer requests either an increase of no more than ~~[3%]~~ 7% or any
3 decrease in its Statewide average base rate for private passenger
4 automobile insurance.

5 b. A filer electing to use this expedited process shall file with the
6 commissioner that reasonable information and calculations necessary
7 to support the rate change which the commissioner prescribes by
8 regulation. The prescribed filing requirements shall recognize the
9 intent of this section to provide an expedited process that will not
10 produce rates that are excessive, inadequate for the safety and
11 soundness of the insurer, or unfairly discriminatory between risks in
12 the State involving substantially the same hazards and expense
13 elements.

14 c. If the commissioner determines that the filing ~~[will not produce~~
15 ~~rates that are excessive, inadequate for the safety and soundness of the~~
16 ~~insurer, or unfairly discriminatory between risks in this State involving~~
17 ~~substantially the same hazards and expense elements]~~ includes all the
18 information and calculations required to support the rate change, the
19 commissioner shall approve the filing.

20 d. A decision on ~~[the]~~ a filing requesting an increase of up to 3%
21 shall be rendered not later [that 45] than 30 days after receipt of the
22 filing, unless the commissioner grants an extension, in which case a
23 decision shall be rendered not later than [60] 45 days after receipt of
24 the filing. A decision on a filing requesting an increase of more than
25 3%, but not more than 7%, shall be rendered not less than 45 days
26 after receipt of the filing, unless the commissioner grants an extension,
27 in which case a decision shall be rendered not later than 60 days after
28 receipt of the filing. A filing shall be complete and received when the
29 filing is accompanied by a certification by a qualified actuary which
30 states that the material, data and documentation, which is part of the
31 filing, includes the documents set forth in regulations, supports the
32 requested rate change and is consistent with generally accepted
33 ratemaking principles of the actuarial profession. A filing shall be
34 deemed to be approved unless rejected or modified by the
35 commissioner within the time provided.

36 e. The commissioner shall not approve any rate change pursuant
37 to this expedited process that results in an overall increase of more
38 than ~~[3%]~~ 7% or an increase in any single coverage of more than
39 ~~[5%]~~ 10%.

40 f. An insurer shall not file more than one request for an increase
41 in rates pursuant to this section in any twelve-month period, provided
42 that this limitation shall not apply to a filing for an overall reduction
43 in rates or prohibit a filing to recover an overall reduction in rates, or
44 to a filing reflecting a statutory change in coverage.

45 g. An insurer not using this expedited process in a 12-month
46 period may elect to file a proposed alteration to its rating system that

1 will result in a rate change of not more than double the increase
2 permitted pursuant to subsection e. of this section if the filing complies
3 with subsections b. and c. of this section and is made not more than
4 once within a twenty-four month period.

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

6
7 43. (New section) a. Every insurer writing private passenger
8 automobile insurance in this State shall provide each insured at least
9 annually and each applicant upon receipt of initial application with an
10 Automobile Insurance Consumer Bill of Rights. The Automobile
11 Insurance Consumer Bill of Rights shall contain information that the
12 Commissioner of Banking and Insurance establishes by regulation as
13 necessary, relevant or appropriate to improve the understanding of the
14 rights and responsibilities of consumers and insurers regarding
15 automobile insurance.

16 b. To further assist consumers in evaluating an automobile insurer,
17 the commissioner shall develop and disseminate an Automobile
18 Insurance Report Card. Those insurers with more than 50,000
19 insured private passenger automobiles writing private passenger
20 automobile insurance in this State shall maintain and submit annually
21 to the commissioner customer satisfaction data. The commissioner
22 shall establish by regulation the methodology and criteria to be used
23 in collecting the customer satisfaction data, including, but not limited
24 to, the use of a survey. This data, including consumer complaint ratios
25 and other relevant consumer information designated by the
26 commissioner, shall be included in the Automobile Insurance Report
27 Card. The Automobile Insurance Report Card shall be available on the
28 official website of the Department of Banking and Insurance, and shall
29 be updated annually.

30 c. Every insurer writing private passenger automobile insurance
31 in this State shall also provide each new applicant seeking automobile
32 insurance and each insured upon request, with three premium
33 scenarios demonstrating the effect of different coverage choices. The
34 commissioner shall establish by regulation the types of coverage
35 examples for which insurers shall provide premium scenarios and the
36 time in which such scenarios shall be provided.

37 d. If the commissioner finds, after notice and hearing, that an
38 insurer has a pattern and practice of failing to provide any of the
39 information required by this section, the commissioner may, after
40 notice and hearing, order the payment of a penalty not to exceed
41 \$1,000 for each offense. Each instance of a failure to provide
42 information to an insured, an applicant or the commissioner, as the
43 case may be, shall be a separate offense and subject to assessment of
44 a separate penalty. Penalties assessed pursuant to this section shall be
45 collected by the commissioner pursuant to the "Penalty Enforcement
46 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

1 44. (New section) a. The Department of Banking and Insurance
2 shall publish on its official website, to the extent practicable, as the
3 case may be: (1) notice of all filings for consumer insurance rate
4 increases; (2) all requests for hearing dates for such increases; and (3)
5 the date or dates a hearing is to be held. Publication on the website
6 shall take place within three business days of the applicable notice of
7 filing, request for hearing, and date or dates of hearings.

8 b. If an insurer or rating organization files for a consumer
9 insurance overall rate increase, the insurer or rating organization shall,
10 in conjunction with such filing, notify the public of the proposed rate
11 change; except, however, the filer is not required to notify the public
12 of the proposed rate change if the rate increase pertains to: (1) an
13 expedited prior approval rate filing made pursuant to either section 34
14 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409
15 (C.17:36-5.35); (2) rating system changes made pursuant to sections
16 14 through 18 and section 34 of P.L.1997, c.151 (C.17:29A-46.1 et
17 seq.), or (3) a rate filing made pursuant to any statutory change in
18 coverage provided under a policy of private passenger automobile
19 insurance.

20 c. (1) For insurers, that notice shall be communicated through
21 regular or electronic mail to the named policy holders who use the
22 products and services subject to the overall rate increase, within 10
23 business days after the applicable filing and shall conform to a form
24 prescribed by the Department of Banking and Insurance pursuant to
25 regulations.

26 (2) For rating organizations, the notice shall be communicated in
27 a form and manner prescribed by the commissioner by regulation.

28 d. For purposes of this section, “consumer insurance rate
29 increases” means prior approval rate increases for: personal lines
30 property casualty coverages; or Medicare supplemental coverages.

31
32 45. (New section) a. In order to assist certain low income
33 individuals in this State and encourage their greater compliance in
34 satisfying the mandatory private passenger automobile insurance
35 requirements, the Legislature intends to establish a special automobile
36 insurance policy. The special automobile insurance policy shall be
37 offered only to individuals who qualify for and are actively covered by
38 designated government subsidized programs in the State. For the
39 purpose of this section, “eligible low income individual” means an
40 individual who meets the income criteria established by the
41 commissioner by regulation. In setting the low income criteria, the
42 commissioner shall limit availability to those persons eligible and
43 enrolled in the federal Medicaid program.

44 b. As an additional option to the mandatory coverage provided in
45 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) or the
46 alternative covered provided in section 4 of P.L.1998, c.21 (C.39:6A-

1 3.1), an owner or registered owner of an automobile registered or
2 principally garaged in this State, who is an eligible low income
3 individual, may elect a special automobile insurance policy providing
4 the following coverage:

5 (1) Emergency personal injury protection coverage, for the
6 payment of benefits without regard to negligence, liability or fault of
7 any kind, only to the named insured and dependent members of his
8 family, as defined by the federal Medicaid program, residing in his
9 household, who sustain bodily injury as a result of an accident while
10 occupying, entering into, alighting from or using an automobile, or as
11 a pedestrian, caused by an automobile or by an object propelled by or
12 from an automobile, and to other persons sustaining bodily injury
13 while occupying, entering into, alighting from or using the automobile
14 of the named insured, with the permission of the named insured.
15 “Emergency personal injury protection coverage” issued pursuant to
16 this section means and includes only payment of treatment for
17 emergency care in an amount not to exceed \$250,000 per person per
18 accident. “Emergency care” means all medically necessary treatment
19 of a traumatic injury or a medical condition manifesting itself by acute
20 symptoms of sufficient severity such that absence of immediate
21 attention could reasonably be expected to result in: death; serious
22 impairment to bodily functions; or serious dysfunction of a bodily
23 organ or part. Such emergency care shall include all medically
24 necessary care immediately following an automobile accident,
25 including, but not limited to, immediate pre-hospitalization care,
26 transportation to a hospital or trauma center, emergency room care,
27 surgery, critical and acute care. Emergency care extends during the
28 period of initial hospitalization until the patient is discharged from
29 acute care by the attending physician. Emergency care shall be
30 presumed when medical care is initiated at a hospital within 120 hours
31 of the accident. “Emergency personal injury protection coverage”
32 shall also include all medically necessary treatment of permanent or
33 significant brain injury, spinal cord injury or disfigurement after the
34 patient is discharged from acute care. In the event benefits paid by an
35 insurer pursuant to this subsection are in excess of \$75,000 on account
36 of bodily injury to any one person in any one accident covered by a
37 policy issued or renewed prior to January 1, 2004, that excess shall be
38 paid by the insurer and shall be reimbursable to the insurer from the
39 Unsatisfied Claim and Judgment Fund pursuant to section 2 of
40 P.L.1977, c.310 (C.39:6-73.1);

41 (2) Death benefit in the amount of \$10,000;

42 (3) The tort option provided in subsection a. of section 8 of
43 P.L.1972, c.70 (C.39:6A-8) shall apply to every named insured and
44 any other person to whom the special automobile insurance policy
45 applies.

46 c. A special automobile insurance policy shall not provide liability,

1 collision, comprehensive, uninsured or underinsured motorist
2 coverage.

3 d. The policy form for special automobile insurance policies shall
4 be subject to the approval of the Commissioner of Banking and
5 Insurance and shall clearly and conspicuously set forth the limitations
6 on benefits provided under the policy.

7 e. The commissioner shall approve the rating system to be used for
8 a special automobile insurance policy, which shall be administered by
9 the plan created pursuant to section 1 of P.L.1970, c.215 (C.17:29D-
10 1), to provide a uniform Statewide rate to be utilized by all insurers
11 providing coverage through a special automobile insurance policy. The
12 rate established by the commissioner shall be sufficient to reimburse
13 the insurer for the cost of writing the policy and an amount set by the
14 commissioner to be forwarded to the Unsatisfied Claim and Judgment
15 Fund to offset claims paid by the Unsatisfied Claim and Judgment
16 Fund. The commissioner may adjust the rate annually.

17 f. Special automobile insurance policies shall be assigned to
18 insurers pursuant to the apportionment methodology of the plan
19 created pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1). The
20 number of policies assigned pursuant to this subsection shall not be
21 included in the determination of a competitive market pursuant to
22 subsection d. of section 27 of P.L.1990, c.8 (C.17:33B-15).

23

24 46. Section 5 of P.L.1998, c.21 (C.39:6A-3.2) is amended to read
25 as follows:

26 5. a. All automobile insurance policies issued or renewed on or
27 after the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall be
28 issued or renewed including at least the coverages required pursuant
29 to sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless
30 the named insured elects a basic automobile insurance policy pursuant
31 to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or, after the effective
32 date of P.L. , c. (C.)(now before the Legislature as this bill), a
33 special automobile insurance policy pursuant to section 45 of P.L. ,
34 c. (C.)(now before the Legislature as this bill). Election of a basic
35 automobile insurance policy or a special automobile insurance policy
36 shall be in writing and signed by the named insured on the coverage
37 selection form required by section 17 of P.L.1983, c.362
38 (C.39:6A-23). The coverage [election] selection form shall contain
39 a statement, clearly readable and in 12-point bold type, in a form
40 approved by the commissioner, that: (1) election of a basic automobile
41 insurance policy will result in less coverage than the \$250,000 medical
42 expense benefits coverage mandated prior to the effective date of [this
43 act] P.L.1998, c.21 (C.39:6A-1.1 et al.); or (2) election of a special
44 automobile insurance policy will result in coverage only for emergency
45 care. Furthermore, the coverage election form shall contain a
46 statement, clearly readable and in 12-point bold type, in a form

1 approved by the commissioner, that election of a special automobile
2 insurance policy, or a basic automobile insurance policy without the
3 optional \$10,000 liability coverage provided for in section 4 of
4 P.L.1998, c.21 (C.39:6A-3.1) may subject the named insured to a
5 claim or judgment for noneconomic loss which is not covered by the
6 basic or special automobile insurance policy, and which may place his
7 assets at risk, and in the event the named insured is sued, the insurer
8 shall not provide legal counsel.

9 b. The insurance coverages provided for in section 4 of P.L.1998,
10 c.21 (C.39:6A-3.1) shall be offered by every insurer which writes
11 insurance coverages pursuant to sections 3 and 4 of P.L.1972, c.70
12 (C.39:6A-3 and 39:6A-4) for a period of five years after the effective
13 date of P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall
14 require every company writing such insurance coverage to report to
15 him annually during that five-year period as to the number of policies
16 written pursuant to this subsection in the previous year, the number of
17 policies with the coverage offered pursuant to section 4 of P.L.1972,
18 c.70 (C.39:6A-4) which have been converted to policies with the
19 coverage offered pursuant to section 4 of P.L.1998, c.21
20 (C.39:6A-3.1) and any other information the commissioner may
21 require such as, but not limited to, the age of the policyholders and the
22 territories in which the policyholders reside. The commissioner shall
23 then report to the Governor and the Legislature regarding the
24 acceptance of the basic automobile insurance policy by the automobile
25 insurance consumers of this State annually for the first four years the
26 basic policy is sold. On or before January 1, 2003, the commissioner
27 shall make a final, cumulative report which shall include
28 recommendations as to the continuation of the basic policy to the
29 Governor and the Legislature.

30 c. The insurance coverages provided for in section 45 of P.L. , c.
31 (C.)(now before the Legislature as this bill) shall be offered or
32 provided pursuant to subsection f. of that section for a period of five
33 years after the effective date of P.L. , c. (C.)(now before the
34 Legislature as this bill). On or before January 1, 2008, the
35 commissioner shall make a final report which shall include
36 recommendations as to the continuation of the special policy to the
37 Governor and the Legislature.

38 (cf: P.L.1998, c.21, s.5)

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

42 14. a. Any person who, at the time of an automobile accident
43 resulting in injuries to that person, is required but fails to maintain
44 medical expense benefits coverage mandated by section 4 of P.L.1972,
45 c.70 (C.39:6A-4) [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
46 section 45 of P.L. , c. (C.)(now before the Legislature as this

1 bill) shall have no cause of action for recovery of economic or
2 noneconomic loss sustained as a result of an accident while operating
3 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.1998, c.21, s.8)

15

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

18 5. Payment of personal injury protection coverage benefits.

19 a. An insurer may require written notice to be given as soon as
20 practicable after an accident involving an automobile with respect to
21 which the policy affords personal injury protection coverage benefits
22 payable under a standard automobile insurance policy pursuant to
23 section 4 of P.L.1972, c.70 (C.34:6A-4) [~~or~~], medical expense
24 benefits payable under a basic automobile insurance policy pursuant to
25 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency care medical
26 expense benefits payable under a special automobile insurance policy
27 pursuant to section 45 of P.L. ,c. (C.)(now before the
28 Legislature as this bill). In the case of claims for medical expense
29 benefits under [~~either policy~~] any of those policies, written notice
30 shall be provided to the insurer by the treating health care provider no
31 later than 21 days following the commencement of treatment.
32 Notification required under this section shall be made in accordance
33 with regulations adopted by the Commissioner of Banking and
34 Insurance and on a form prescribed by the Commissioner of Banking
35 and Insurance. Within a reasonable time after receiving notification
36 required pursuant to this act, the insurer shall confirm to the treating
37 health care provider that its policy affords the claimant personal injury
38 protection coverage benefits as required by section 4 of P.L.1972, c.70
39 (C.39:6A-4) [~~or~~], medical expense benefits pursuant to section 4 of
40 P.L.1998, c.21 (C.39:6A-3.1) or emergency care medical expense
41 benefits payable under a special automobile insurance policy pursuant
42 to section 45 of P.L. ,c. (C.)(now before the Legislature as this
43 bill).

44 b. For the purposes of this section, notification shall be deemed to
45 be met if a treating health care provider submits a bill or invoice to the
46 insurer for reimbursement of services within 21 days of the

1 commencement of treatment.

2 c. In the event that notification is not made by the treating health
3 care provider within 21 days following the commencement of
4 treatment, the insurer shall reserve the right to deny, in accordance
5 with regulations established by the Commissioner of Banking and
6 Insurance, payment of the claim and the treating health care provider
7 shall be prohibited from seeking any payment directly from the insured.
8 In establishing the standards for denial of payment, the Commissioner
9 of Banking and Insurance shall consider the length of delay in
10 notification, the severity of the treating health care provider's failure
11 to comply with the notification provisions of this act based upon the
12 potential adverse impact to the public and whether or not the provider
13 has engaged in a pattern of noncompliance with the notification
14 provisions of this act. In establishing the regulations necessary to
15 effectuate the purposes of this subsection, the Commissioner of
16 Banking and Insurance shall define specific instances where the
17 sanctions permitted pursuant to this subsection shall not apply. Such
18 instances may include, but not be limited to, a treating medical
19 provider's failure to provide notification to the insurer as required by
20 this act due to the insured's medical condition during the time period
21 within which notification is required.

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

32 e. (Deleted by amendment, P.L.1998, c.21.)

33 f. In instances when multiple treating health care providers render
34 services in connection with emergency care, the Commissioner of
35 Banking and Insurance shall designate, through regulation, a process
36 whereby notification by one treating health care provider to the insurer
37 shall be deemed to meet the notification requirements of all the
38 treating health care providers who render services in connection with
39 emergency care.

40 g. Personal injury protection coverage benefits pursuant to section
41 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
42 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency
43 care medical expense benefits payable under a special automobile
44 insurance policy pursuant to section 45 of P.L. , c. (C.) (now
45 before the Legislature as this bill) shall be overdue if not paid within
46 60 days after the insurer is furnished written notice of the fact of a

1 covered loss and of the amount of same. If such written notice is not
2 furnished to the insurer as to the entire claim, any partial amount
3 supported by written notice is overdue if not paid within 60 days after
4 such written notice is furnished to the insurer. Any part or all of the
5 remainder of the claim that is subsequently supported by written notice
6 is overdue if not paid within 60 days after such written notice is
7 furnished to the insurer; provided, however, that any payment shall not
8 be deemed overdue where, within 60 days of receipt of notice of the
9 claim, the insurer notifies the claimant or his representative in writing
10 of the denial of the claim or the need for additional time, not to exceed
11 45 days, to investigate the claim, and states the reasons therefor. The
12 written notice stating the need for additional time to investigate the
13 claim shall set forth the number of the insurance policy against which
14 the claim is made, the claim number, the address of the office handling
15 the claim and a telephone number, which is toll free or can be called
16 collect, or is within the claimant's area code. Written notice to the
17 organization administering dispute resolution pursuant to sections 24
18 and 25 of P.L.1998, c.21 (C.39:6A-5.1 and C.39:6A-5.2) shall satisfy
19 the notice request for additional time to investigate a claim pursuant
20 to this subsection. For the purpose of determining interest charges in
21 the event the injured party prevails in a subsequent proceeding where
22 an insurer has elected a 45-day extension pursuant to this subsection,
23 payment shall be considered overdue at the expiration of the 45-day
24 period or, if the injured person was required to provide additional
25 information to the insurer, within 10 business days following receipt
26 by the insurer of all the information requested by it, whichever is later.

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

32 h. All overdue payments shall bear interest at the percentage of
33 interest prescribed in the Rules Governing the Courts of the State of
34 New Jersey for judgments, awards and orders for the payment of
35 money.

36 i. All automobile insurers and the Unsatisfied Claim and Judgment
37 Fund shall provide any claimant with the option of submitting a dispute
38 under this section to dispute resolution pursuant to sections 24 and 25
39 of P.L.1998, c.21 (C.39:6A-5.1 and C.39:6A-5.2).

40 (cf: P.L.1998, c.21, s.23)

41

42 49. Section 24 of P.L.1998, c.21 (C.39:6A-5.1) is amended to
43 read as follows:

44 24. a. Any dispute regarding the recovery of medical expense
45 benefits or other benefits provided under personal injury protection
46 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4), [or]

1 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L. _____,
2 c. _____(now before the Legislature as this bill) arising out of the
3 operation, ownership, maintenance or use of an automobile may be
4 submitted to dispute resolution on the initiative of any party to the
5 dispute, as hereinafter provided.

6 b. The Commissioner of Banking and Insurance shall designate an
7 organization, and for that purpose may, at his discretion, advertise for
8 proposals, for the purpose of administering dispute resolution
9 proceedings regarding medical expense benefits and other benefits
10 provided under personal injury protection pursuant to section 4 of
11 P.L.1972, c.70 (C.39:6A-4) [or], medical expense benefits coverage
12 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency
13 care medical expense benefits pursuant to section 45 of P.L. _____, c. _____
14 (C. _____)(now before the Legislature as this bill). The commissioner
15 shall promulgate rules and regulations with respect to the conduct of
16 the dispute resolution proceedings. The organization administering
17 dispute resolution shall utilize qualified professionals who serve on a
18 full-time basis and who meet standards of competency established by
19 the commissioner. The commissioner shall establish standards of
20 performance for the organization to ensure the independence and
21 fairness of the review process, including, but not limited to, standards
22 relative to the professional qualifications of the professionals presiding
23 over the dispute resolution process, and standards to ensure that no
24 conflict of interest exists which would prevent the professional from
25 performing his duties in an impartial manner. The standards of
26 performance shall include a requirement that the organization establish
27 an advisory council composed of parties who are users of the dispute
28 resolution mechanism established herein. The commissioner may
29 contract with a consulting firm for the formulation of the standards of
30 performance of the organization and establishment of qualifications for
31 the persons who are to conduct the dispute resolution proceedings.
32 The commissioner shall not advertise for bids for the consulting firm,
33 as provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and
34 52:34-9). Compensation to the dispute resolution professionals shall
35 be established by the commissioner and adjusted from time to time as
36 appropriate, with the approval of the commissioner. In no case shall
37 compensation be paid on a contingency basis. The organization shall
38 establish a dispute resolution plan, which shall include procedures and
39 rules governing the dispute resolution process and provisions for
40 monitoring the dispute resolution process to ensure adherence to the
41 standards of performance established by the commissioner. The plan,
42 and any amendments thereto, shall be subject to the approval of the
43 commissioner.

44 c. Dispute resolution proceedings under this section 24 and
45 section 25 of this amendatory and supplementary act shall include
46 disputes arising regarding medical expense benefits provided under

1 subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4) [or], section
2 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L. _____, c. _____
3 (C. _____)(now before the Legislature as this bill), benefits provided
4 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70
5 (C.39:6A-4), subsection b., c., d. or e. of section 7 of P.L.1972, c.198
6 (C.39:6-86.1), and disputes as to additional first party coverage
7 benefits required to be offered pursuant to section 10 of P.L.1972,
8 c.70 (C.39:6A-10). Disputes involving medical expense benefits may
9 include, but not necessarily be limited to, matters concerning: (1)
10 interpretation of the insurance contract; (2) whether the treatment or
11 health care service which is the subject of the dispute resolution
12 proceeding is in accordance with the provisions of section 4 of
13 P.L.1972, c.70 (C.39:6A-4) [or], section 4 of P.L.1998, c.21
14 (C.39:6A-3.1) or section 45 of P.L. _____, c. _____ (C. _____)(now before the
15 Legislature as this bill) or the terms of the policy; (3) the eligibility of
16 the treatment or service for compensation; (4) the eligibility of the
17 provider performing the treatment or service to be compensated under
18 the terms of the policy or under regulations promulgated by the
19 commissioner, including whether the person is licensed or certified to
20 perform such treatment; (5) whether the disputed medical treatment
21 was actually performed; (6) whether diagnostic tests performed in
22 connection with the treatment are those recognized by the
23 commissioner; (7) the necessity or appropriateness of consultations by
24 other health care providers; (8) disputes involving application of and
25 adherence to fee schedules promulgated by the commissioner; and (9)
26 whether the treatment performed is reasonable, necessary, and
27 compatible with the protocols provided for pursuant to P.L.1998, c.21
28 (C.39:6A-1.1 et al.). The dispute resolution professionals may review
29 the entire claims file of the insurer, subject to any confidentiality
30 requirement established pursuant to State or federal law. All decisions
31 of the dispute resolution professional shall be in writing, in a form
32 prescribed by the commissioner, shall state the issues in dispute, the
33 findings and conclusions on which the decision is based, and shall be
34 signed by the dispute resolution professional. All decisions of a
35 dispute resolution professional shall be binding. The dispute
36 resolution organization shall provide for the retention of all documents
37 used in dispute resolution proceedings under this section and section
38 25 of this amendatory and supplementary act, including the written
39 decision, for a period of at least five years, in a form approved by the
40 commissioner, or for such additional time as may be established by the
41 commissioner. The written decisions of the dispute resolution
42 professional shall be forwarded to the commissioner, who shall
43 establish a record of the proceedings conducted under the dispute
44 resolution procedure, which shall be accessible to the public and may
45 be used as guidance in subsequent dispute resolution proceedings.

46 d. With respect to disputes as to the diagnosis, the medical

1 necessity of the treatment or diagnostic test administered to the injured
2 person, whether the injury is causally related to the insured event or
3 is the product of a preexisting condition, or disputes as to the
4 appropriateness of the protocols utilized by the provider, the dispute
5 resolution professional shall, either at his option or at the request of
6 any party to the dispute, refer the matter to a medical review
7 organization for a determination. The determination of the medical
8 review organization on the dispute referred shall be presumed to be
9 correct by the dispute resolution professional, which presumption may
10 be rebutted by a preponderance of the evidence. Should the dispute
11 resolution professional find that the decision of the medical review
12 organization is not correct, the reasons supporting that finding shall be
13 set forth in the dispute resolution professional's written decision.

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

27 (cf: P.L.1998, c.22, s.4)

28

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

31 6. Collateral Source. The benefits provided in sections 4 and 10
32 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], the medical
33 expense benefits provided in section 4 of P.L.1998, c.21
34 (C.39:6A-3.1) and the benefits provided in section 45 of P.L. , c.
35 (C.)(now before the Legislature as this bill) shall be payable as loss
36 accrues, upon written notice of such loss and without regard to
37 collateral sources, except that benefits, collectible under workers'
38 compensation insurance, employees' temporary disability benefit
39 statutes, Medicare provided under federal law, and benefits, in fact
40 collected, that are provided under federal law to active and retired
41 military personnel shall be deducted from the benefits collectible under
42 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
43 the medical expense benefits provided in section 4 of P.L.1998, c.21
44 (C.39:6A-3.1) and the benefits provided in section 45 of P.L. , c.
45 (C.)(now before the Legislature as this bill).

46 If an insurer has paid those benefits and the insured is entitled to,

1 but has failed to apply for, workers' compensation benefits or
2 employees' temporary disability benefits, the insurer may immediately
3 apply to the provider of workers' compensation benefits or of
4 employees' temporary disability benefits for a reimbursement of any
5 benefits pursuant to sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
6 and 39:6A-10) [or], medical expense benefits pursuant to section 4 of
7 P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to section 45 of
8 P.L. , c. (C.)(now before the Legislature as this bill) it has paid.
9 cf: P.L.1998, c.21, s.9

10

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

13 7. Exclusions. a. Insurers may exclude a person from benefits
14 under sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10)
15 [and], medical expense benefits provided in section 4 of P.L.1998,
16 c.21 (C.39:6A-3.1) and benefits provided in section 45 of P.L. ,
17 c. (C.)(now before the Legislature as this bill) if that person's
18 conduct contributed to his personal injuries or death occurred in any
19 of the following ways:

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

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

24 b. An insurer may also exclude from the benefits provided in
25 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
26 the medical expense benefits provided in section 4 of P.L.1998, c.21
27 (C.39:6A-3.1) and benefits provided in section 45 of P.L. , c.
28 (C.)(now before the Legislature as this bill) any person having
29 incurred injuries or death, who, at the time of the accident:

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

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

35 (3) was a person other than the named insured or a member of the
36 named insured's family residing in his household, if that person is
37 entitled to coverage under section 4 or section 10 of P.L.1972, c.70
38 (C.39:6A-4 or 39:6A-10), or both, [or] section 4 of P.L.1998, c.21
39 (C.39:6A-3.1) or section 45 of P.L. , c. (C.)(now before the
40 Legislature as this bill), as a named insured or member of the named
41 insured's family residing in his household under the terms of another
42 policy; or

43 (4) was a member of the named insured's family residing in the
44 named insured's household, if that person is entitled to coverage under
45 section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or
46 both, [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of

1 P.L. , c. (C.)(now before the Legislature as this bill) as a named
2 insured under the terms of another policy.

3 (cf: P.L.1998, c.21, s.10)

4

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

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

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

12 a. Limitation on lawsuit option. Every owner, registrant, operator
13 or occupant of an automobile to which section 4 of P.L.1972, c.70
14 (C.39:6A-4), personal injury protection coverage, [or] section 4 of
15 P.L.1998, c.21 (C.39:6A-3.1), medical expense benefits coverage, or
16 section 45 of P.L. , c. (C.)(now before the Legislature as this
17 bill) regardless of fault, applies, and every person or organization
18 legally responsible for his acts or omissions, is hereby exempted from
19 tort liability for noneconomic loss to a person who is subject to this
20 subsection and who is either a person who is required to maintain
21 personal injury protection coverage pursuant to section 4 of P.L.1972,
22 c.70 (C.39:6A-4) [or], medical expense benefits pursuant to section
23 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to section 45
24 of P.L. , c. (C.)(now before the Legislature as this bill), or is
25 a person who has a right to receive benefits under section 4 of
26 P.L.1972, c.70 (C.39:6A-4) [or], section 4 of P.L.1998, c.21
27 (C.39:6A-3.1) or section 45 of P.L. , c. (C.)(now before the
28 Legislature as this bill), as a result of bodily injury, arising out of the
29 ownership, operation, maintenance or use of such automobile in this
30 State, unless that person has sustained a bodily injury which results in
31 death; dismemberment; significant disfigurement or significant
32 scarring; displaced fractures; loss of a fetus; or a permanent injury
33 within a reasonable degree of medical probability, other than scarring
34 or disfigurement. An injury shall be considered permanent when the
35 body part or organ, or both, has not healed to function normally and
36 will not heal to function normally with further medical treatment. For
37 the purposes of this subsection, "physician" means a physician as
38 defined in section 5 of P.L.1939, c.115 (C.45:9-5.1).

39 In order to satisfy the tort option provisions of this subsection, the
40 plaintiff shall, within 60 days following the date of the answer to the
41 complaint by the defendant, provide the defendant with a certification
42 from the licensed treating physician or a board-certified licensed
43 physician to whom the plaintiff was referred by the treating physician.
44 The certification shall state, under penalty of perjury, that the plaintiff
45 has sustained an injury described above. The certification shall be
46 based on and refer to objective clinical evidence, which may include

1 medical testing, except that any such testing shall be performed in
2 accordance with medical protocols pursuant to subsection a. of section
3 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
4 administered in accordance with section 12 of P.L.1998, c.21
5 (C.39:6A-4.7). Such testing may not be experimental in nature or
6 dependent entirely upon subjective patient response. The court may
7 grant no more than one additional period not to exceed 60 days to file
8 the certification pursuant to this subsection upon a finding of good
9 cause.

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

28 b. No limitation on lawsuit option. As an alternative to the basic
29 tort option specified in subsection a. of this section, every owner,
30 registrant, operator, or occupant of an automobile to which section 4
31 of P.L.1972, c.70 (C.39:6A-4), personal injury protection coverage,
32 [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1), medical expense
33 benefits coverage, or section 45 of P.L. , c. (C.)(now before the
34 Legislature as this bill), regardless of fault, applies, and every person
35 or organization legally responsible for his acts or omissions, shall be
36 liable for noneconomic loss to a person who is subject to this
37 subsection and who is either a person who is required to maintain the
38 coverage mandated by P.L.1972, c.70 (C.39:6A-1 et seq.) or is a
39 person who has a right to receive benefits under section 4 of that act
40 (C.39:6A-4), as a result of bodily injury, arising out of the ownership,
41 operation, maintenance or use of such automobile in this State.

42 The tort option provisions of subsection b. of this section shall also
43 apply to the right to recover for noneconomic loss of any person
44 eligible for benefits pursuant to section 4 of P.L.1972, c.70
45 (C.39:6A-4) [or], section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
46 section 45 of P.L. , c. (C.)(now before the Legislature as this

1 bill) but who is not required to maintain personal injury protection
2 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) [or],
3 medical expense benefits coverage pursuant to section 4 of P.L.1998,
4 c.21 (C.39:6A-3.1) or benefits pursuant to section 45 of P.L. , c. (C.)
5 (now before the Legislature as this bill) and is not an immediate
6 family member, as defined in section 14.1 of P.L.1983, c.362
7 (C.39:6A-8.1), under a standard automobile insurance policy or basic
8 automobile insurance policy.

9 The tort option provisions of subsection a. of this section shall also
10 apply to any person subject to section 14 of P.L.1985, c.520
11 (C.39:6A-4.5) and to every named insured and any other person to
12 whom the benefits of the special automobile insurance policy provided
13 in section 45 of P.L. , c. (C.)(now before the Legislature as
14 this bill) or the medical expense benefits of the basic automobile
15 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1)
16 apply whether or not the person has elected the optional \$10,000
17 liability coverage insuring against loss resulting from liability imposed
18 by law for bodily injury or death provided for in subsection c. of
19 section 4 of P.L.1998, c.21 (C.39:6A-3.1).

20 The tort option provisions of subsections a. and b. of this section
21 as provided in this 1998 amendatory and supplementary act shall apply
22 to automobile insurance policies issued or renewed on or after the
23 effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) and as otherwise
24 provided by law.

25 (cf: P.L.1998, c.21, s.11)

26

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

29 20. An insurer, health maintenance organization or governmental
30 agency paying benefits pursuant to subsection a., b. or d. of section 13
31 of P.L.1983, c.362 (C.39:6A-4.3) [or], personal injury protection
32 benefits in accordance with section 4 or section 10 of P.L.1972, c.70
33 (C.39:6A-4 or 39:6A-10) [or], medical expense benefits pursuant to
34 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to
35 section 45 of P.L. , c. (C.)(now before the Legislature as this
36 bill), as a result of an accident occurring within this State, shall, within
37 two years of the filing of the claim, have the right to recover the
38 amount of payments from any tortfeasor who was not, at the time of
39 the accident, required to maintain personal injury protection or medical
40 expense benefits coverage, other than for pedestrians, under the laws
41 of this State, including personal injury protection coverage required to
42 be provided in accordance with section 18 of P.L.1985, c.520
43 (C.17:28-1.4), or although required did not maintain personal injury
44 protection or medical expense benefits coverage at the time of the
45 accident. In the case of an accident occurring in this State involving
46 an insured tortfeasor, the determination as to whether an insurer,

1 health maintenance organization or governmental agency is legally
2 entitled to recover the amount of payments and the amount of
3 recovery, including the costs of processing benefit claims and
4 enforcing rights granted under this section, shall be made against the
5 insurer of the tortfeasor, and shall be by agreement of the involved
6 parties or, upon failing to agree, by arbitration.

7 (cf: P.L.1998, c.21, s.13)

8

9 54. 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
12 liable to pay benefits under sections 4 and 10 of P.L.1972, c.70
13 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
14 policy for the same bodily injury, or death, of any one person, the
15 maximum amount payable shall be as specified in those sections 4 and
16 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], section 4 of
17 P.L.1998, c.21 (C.39:6A-3.1) and section 45 of P.L. , c. (C.)
18 (now before the Legislature as this bill), respectively, if additional first
19 party coverage applies and any insurer paying the benefits shall be
20 entitled to recover from each of the other insurers, only by
21 inter-company arbitration or inter-company agreement, an equitable
22 pro-rata share of the benefits paid.

23 (cf: P.L.1998, c.21, s.15)

24

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

27 12. Inadmissibility of evidence of losses collectible under personal
28 injury protection coverage. Except as may be required in an action
29 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),
30 evidence of the amounts collectible or paid under a standard
31 automobile insurance policy pursuant to sections 4 and 10 of
32 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], amounts collectible
33 or paid for medical expense benefits under a basic automobile
34 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1)
35 and amounts collectible or paid for benefits under a special automobile
36 insurance policy pursuant to section 45 of P.L. , c. (C.)(now
37 before the Legislature as this bill), to an injured person, including the
38 amounts of any deductibles, copayments or exclusions, including
39 exclusions 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
3 benefits under a basic automobile insurance policy pursuant to section
4 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits under a special
5 automobile insurance policy pursuant to section 45 of P.L. , c.
6 (C.)(now before the Legislature as this bill) to the injured person,
7 nor shall they speculate as to the amount of benefits paid or payable
8 by a health insurer, health maintenance organization or governmental
9 agency under subsection d. of section 13 of P.L.1983, c.362
10 (C.39:6A-4.3).

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

14 (cf: P.L.1998, c.21, s.16)

15

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

18 13. Discovery of facts as to personal injury protection coverage.
19 The following apply to personal injury protection coverage benefits
20 payable under a standard automobile insurance policy pursuant to
21 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
22 medical expense benefits payable under a basic automobile insurance
23 policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) and
24 benefits payable under a special automobile insurance policy pursuant
25 to section 45 of P.L. , c. (C.)(now before the Legislature as this
26 bill):

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

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

1 regarding such history, condition, treatment dates and costs of
2 treatment. The person requesting such records shall pay all reasonable
3 costs connected therewith.

4 c. The injured person shall be furnished upon demand a copy of all
5 information obtained by the insurer or the Unsatisfied Claim and
6 Judgment Fund under the provisions of this section, and shall pay a
7 reasonable charge, if required by the insurer and the Unsatisfied Claim
8 and Judgment Fund.

9 d. Whenever the mental or physical condition of an injured person
10 covered by personal injury protection under a standard automobile
11 insurance policy or medical expense benefits under a basic automobile
12 insurance policy is material to any claim that has been or may be made
13 for such past or future personal injury protection benefits or medical
14 expense benefits, such person shall, upon request of an insurer or the
15 Unsatisfied Claim and Judgment Fund submit to mental or physical
16 examination conducted by a health care provider licensed in this State
17 in the same profession or specialty as the health care provider whose
18 services are subject to review under this section and who is located
19 within a reasonable proximity to the injured person's residence. The
20 injured person shall provide or make available to the provider any
21 pertinent medical records or medical history that the provider deems
22 necessary to the examination. The costs of any examinations
23 requested by an insurer or the Unsatisfied Claim and Judgment Fund
24 shall be borne entirely by whomever makes such request. Such
25 examination shall be conducted within the municipality of residence of
26 the injured person. If there is no qualified health care provider to
27 conduct the examination within the municipality of residence of the
28 injured person, then such examination shall be conducted in an area of
29 the closest proximity to the injured person's residence. Insurers
30 providing personal injury protection coverage under a standard
31 automobile insurance policy or medical expense benefits under a basic
32 automobile insurance policy are authorized to include reasonable
33 provisions requiring those claiming personal injury protection
34 coverage benefits or medical expense benefits to submit to mental or
35 physical examination as requested by an insurer or the Unsatisfied
36 Claim and Judgment Fund pursuant to the provisions of this section.
37 Failure to submit to a mental or physical examination requested by an
38 insurer or the Unsatisfied Claim and Judgment Fund pursuant to the
39 provisions of this section shall subject the injured person to certain
40 limitations in coverage as specified in regulations promulgated by the
41 commissioner.

42 e. If requested by the person examined, a party causing an
43 examination to be made, shall deliver to him a copy of every written
44 report concerning the examination rendered by an examining health
45 care provider, at least one of which reports must set out his findings
46 and conclusions in detail. After such request and delivery, the party

1 causing the examination to be made is entitled upon request to receive
2 from the person examined every written report available to him, or his
3 representative, concerning any examination, previously or thereafter
4 made of the same mental or physical condition.

5 f. The injured person, upon reasonable request by the insurer or
6 the Unsatisfied Claim and Judgment Fund, shall sign all forms,
7 authorizations or releases for information, approved by the
8 Commissioner of Banking and Insurance, which may be necessary to
9 the discovery of the above facts, in order to reasonably prove the
10 injured person's losses.

11 g. In the event of any dispute regarding an insurer's or the
12 Unsatisfied Claim and Judgment Fund's or an injured person's right as
13 to the discovery of facts about the injured person's earnings or about
14 his history, condition, treatment, dates and costs of such treatment, or
15 the submission of such injured person to a mental or physical
16 examination subject to the provisions of this section, the insurer,
17 Unsatisfied Claim and Judgment Fund or the injured person may
18 petition a court of competent jurisdiction for an order resolving the
19 dispute and protecting the rights of all parties. The order may be
20 entered on motion for good cause shown giving notice to all persons
21 having an interest therein. Such court may protect against annoyance,
22 embarrassment or oppression and may as justice requires, enter an
23 order compelling or refusing discovery, or specifying conditions of
24 such discovery; the court may further order the payment of costs and
25 expenses of the proceeding, as justice requires.

26 (cf: P.L.1998, c.21, s.17)

27

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

30 11. a. Every action for the payment of benefits payable under a
31 standard automobile insurance policy pursuant to sections 4 and 10 of
32 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [~~or~~], medical expense
33 benefits payable under a basic automobile insurance policy pursuant to
34 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits payable under
35 a special automobile insurance policy pursuant to section 45 of P.L. .
36 c. (C.) (now before the Legislature as this bill), except an action
37 by a decedent's estate, shall be commenced not later than two years
38 after the injured person or survivor suffers a loss or incurs an expense
39 and either knows or in the exercise of reasonable diligence should
40 know that the loss or expense was caused by the accident, or not later
41 than four years after the accident whichever is earlier, provided,
42 however, that if benefits have been paid before then an action for
43 further benefits may be commenced not later than two years after the
44 last payment of benefits.

45 b. Every action by a decedent's estate for the payment of benefits
46 provided under a standard automobile insurance policy pursuant to

1 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [or],
2 medical expense benefits provided under a basic automobile insurance
3 policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
4 benefits payable under a special automobile insurance policy pursuant
5 to section 45 of P.L. , c. (C.)(now before the Legislature as
6 this bill), shall be commenced not later than two years after death or
7 four years after the accident from which death results, whichever is
8 earlier, provided, however, that if benefits had been paid to the
9 decedent prior to his death then an action may be commenced not later
10 than two years after his death or four years after the last payment of
11 benefits, whichever is earlier, provided, further, that if the decedent's
12 estate has received benefits before then an action for further benefits
13 shall be commenced not later than two years from the last payment of
14 benefits.

15 (cf: P.L.1998, c.21, s.18)

16

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

19 15. In any claim or action arising for benefits payable under a
20 standard automobile insurance policy under section 4 of P.L.1972,
21 c.70 (C.39:6A-4) [or], any claim or action arising for medical expense
22 benefits payable under a basic automobile insurance policy under
23 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or any claim or action
24 arising for benefits payable under a special automobile insurance policy
25 pursuant to section 45 of P.L. , c. (C.)(now before the
26 Legislature as this bill) wherein any person obtains or attempts to
27 obtain from any other person, insurance company or Unsatisfied Claim
28 and Judgment Fund any money or other thing of value by (1) falsely or
29 fraudulently representing that such person is entitled to such benefits;
30 (2) falsely and fraudulently making statements or presenting
31 documentation in order to obtain or attempt to obtain such benefits;
32 or (3) cooperates, conspires or otherwise acts in concert with any
33 person seeking to falsely or fraudulently obtain, or attempt to obtain,
34 such benefits may upon conviction be fined not more than \$5,000.00,
35 or imprisoned for not more than three years or both, or in the event
36 the sum so obtained or attempted to be obtained is not more than
37 \$500.00, may upon conviction, be fined not more than \$500.00, or
38 imprisoned for not more than six months or both, as a disorderly
39 person.

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

47 (cf: P.L.1998, c.21, s.19)

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

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

12 (1) 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 (2) 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, under provisions approved by the Commissioner of Banking
19 and Insurance, for payment of all or part of the sums which the insured
20 or his legal representative shall be legally entitled to recover as
21 damages from the operator or owner of an uninsured motor vehicle,
22 or hit and run motor vehicle, as defined in section 18 of P.L.1952,
23 c.174 (C.39:6-78), because of bodily injury, sickness or disease,
24 including death resulting therefrom, sustained by the insured, caused
25 by accident and arising out of the ownership, maintenance, operation
26 or use of such uninsured or hit and run motor vehicle anywhere within
27 the United States or Canada; except that uninsured motorist coverage
28 shall provide that in order to recover for non-economic loss, as defined
29 in section 2 of P.L.1972, c.70 (C.39:6A-2), for accidents to which the
30 benefits of section 4 (C.39:6A-4) of that act apply, the tort option
31 elected pursuant to section 8 (C.39:6A-8) of that act shall apply to
32 that injured person.

33 All motor vehicle liability policies, except basic automobile
34 insurance policies, shall also include coverage for the payment of all
35 or part of the sums which persons insured thereunder shall be legally
36 entitled to recover as damages from owners or operators of uninsured
37 motor vehicles, other than hit and run motor vehicles, because of
38 injury to or destruction to the personal property of such insured, with
39 a limit in the aggregate for all insureds involved in any one accident of
40 \$5,000.00, and subject, for each insured, to an exclusion of the first
41 \$500.00 of such damages.

42 b. Uninsured and underinsured motorist coverage shall be
43 provided as an option by an insurer to the named insured electing a
44 standard automobile insurance policy up to at least the following
45 limits: \$250,000.00 each person and \$500,000.00 each accident for
46 bodily injury; \$100,000.00 each accident for property damage or

1 \$500,000.00 single limit, subject to an exclusion of the first \$500.00
2 of such damage to property for each accident, except that the limits for
3 uninsured and underinsured motorist coverage shall not exceed the
4 insured's motor vehicle liability policy limits for bodily injury and
5 property damage, respectively.

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

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

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

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

43 (2) "uninsured motor vehicle" means:

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

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

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

10 (d) an automobile covered by a special automobile insurance
11 policy pursuant to section 45 of P.L. , c. (C.)(now before the
12 Legislature as this bill).

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

26 (cf: P.L.1998, c.21, s.71)

27
28 60. Section 1 of P.L.1972, c.197 (C.39:6B-1) is amended to read
29 as follows:

30 1. a. Every owner or registered owner of a motor vehicle
31 registered or principally garaged in this State shall maintain motor
32 vehicle liability insurance coverage, under provisions approved by the
33 Commissioner of Banking and Insurance, insuring against loss
34 resulting from liability imposed by law for bodily injury, death and
35 property damage sustained by any person arising out of the ownership,
36 maintenance, operation or use of a motor vehicle wherein such
37 coverage shall be at least in: (1) an amount or limit of \$15,000.00,
38 exclusive of interest and costs, on account of injury to, or death of,
39 one person, in any one accident; and (2) an amount or limit, subject to
40 such limit for any one person so injured or killed, of \$30,000.00,
41 exclusive of interest and costs, on account of injury to or death of,
42 more than one person, in any one accident; and (3) an amount or limit
43 of \$5,000.00, exclusive of interest and costs, for damage to property
44 in any one accident.

45 b. Notwithstanding the provisions of subsection a. of this section,
46 an owner or registered owner of an automobile, as defined in section

1 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
 2 State may satisfy the requirements of subsection a. of this section by
 3 maintaining a basic automobile insurance policy containing coverages
 4 provided pursuant to subsections a. and b. of section 4 of P.L.1998,
 5 c.21 (C.39:6A-3.1).

6 c. Notwithstanding the provisions of subsection a. of this section,
 7 an owner or registered owner of an automobile, as defined in section
 8 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
 9 State may satisfy the requirements of subsection a. of this section by
 10 maintaining a special automobile insurance policy containing coverages
 11 provided pursuant to subsection b. of section 45 of P.L. _____, c. _____
 12 (C. _____) (now before the Legislature as this bill).

13 (cf: P.L.1998, c.21, s.20)

14
 15 61. Section 2 of P.L.1968, c.158 (C.17:29C-7) is amended to read
 16 as follows:

17 2. (A) A notice of cancellation of a policy shall be effective only
 18 if it is based on one or more of the following reasons:

19 (a) Nonpayment of premium or nonpayment of a residual market
 20 equalization charge imposed pursuant to the provisions of section 20
 21 of P.L.1983, c.65 (C.17:30E-8); or

22 (b) The driver's license or motor vehicle registration of the named
 23 insured or of any other operator who either resides in the same
 24 household or customarily operates an automobile insured under the
 25 policy has been under suspension or revocation during the policy
 26 period or, if the policy is a renewal, during its policy period; or

27 (c) Knowingly providing materially false or misleading information
 28 in connection with any application for insurance, renewal of insurance
 29 or claim for benefits under an insurance policy; or

30 (d) The insurer determines, within 60 days of issuance of the
 31 policy, that the named insurer does not meet the approved
 32 underwriting rules of the insured then in effect.

33 (B) [This section shall not apply to any policy or coverage which
 34 has been in effect less than 60 days at the time notice of cancellation
 35 is mailed or delivered by the insurer unless it is a renewal policy.]

36 (Deleted by amendment, P.L. _____, c. _____.)

37 (C) [Modification of automobile physical damage coverage by the
 38 inclusion of a deductible not exceeding \$100.00 shall not be deemed
 39 a cancellation of the coverage or of the policy.] (Deleted by
 40 amendment, P.L. _____, c. _____.)

41 (D) This section shall not apply to nonrenewal.

42 (E) Nothing in this section shall be interpreted to limit the ability
 43 of an insurer to void a policy ab initio as otherwise provided by law.

44 (F) The commissioner shall adopt rules and regulations necessary
 45 or appropriate to effectuate the purposes of this section.

46 (cf: P.L.1988, c.119, s.27)

1 62. Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended to read
2 as follows:

3 4. No insurer shall fail to renew a policy unless it shall mail or
4 deliver to the named insured, at the address shown in the policy, at
5 least 60 days' advance notice of its intention not to renew, except that
6 the commissioner may extend the advance notice period up to an
7 additional 30 days by regulation. This section shall not apply:

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

9 (b) In case of nonpayment of premium;

10 provided that, notwithstanding the failure of an insurer to comply
11 with this section, the policy shall terminate on the effective date of any
12 other insurance policy with respect to any automobile designated in
13 both policies.

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

17 (cf: P.L.1998, c.21, s.62)

18

19 63. Section 25 of P.L.1990, c.8 (C.17:33B-13) is amended to read
20 as follows:

21 25. As used in sections 25 through 33 of this 1990 amendatory
22 and supplementary act:

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

25 "Automobile insurance" means insurance for an automobile
26 including coverage for bodily injury liability and property damage
27 liability, comprehensive and collision coverages, uninsured and
28 underinsured motorist coverage, personal injury protection coverage,
29 additional personal injury protection coverage and any other
30 automobile insurance required by law.

31 "Commissioner" means the Commissioner of Banking and
32 Insurance.

33 "Declination" means:

34 a. Refusal by an insurance agent to submit an application on behalf
35 of an applicant to any of the insurers represented by the agent;

36 b. Refusal by an insurer to issue an automobile insurance policy to
37 an eligible person upon receipt of an application for automobile
38 insurance;

39 c. The offer of automobile insurance coverage with less favorable
40 terms or conditions than those requested by an eligible person; or

41 d. The refusal by an insurer or agent to provide, upon the request
42 of an eligible person, an application form or other means of making an
43 application or request for automobile insurance coverage.

44 "Automobile insurance eligibility points" means points calculated
45 under the schedule promulgated by the commissioner pursuant to
46 section 26 of this act.

1 "Eligible person" means a person who is an owner or registrant of
2 an automobile registered in this State or who holds a valid New Jersey
3 driver's license to operate an automobile, but does not include any
4 person:

5 a. Who, during the three-year period immediately preceding
6 application for, or renewal of, an automobile insurance policy has been
7 convicted pursuant to R.S.39:4-50 or section 2 of P.L.1981, c.512
8 (C.39:4-50.4a), or for an offense of a substantially similar nature
9 committed in another jurisdiction; has been convicted of a crime of the
10 first, second or third degree resulting from the use of a motor vehicle;
11 or has been convicted of theft of a motor vehicle;

12 b. Whose driver's license to operate an automobile is under
13 suspension or revocation;

14 c. Who has been convicted, within the five-year period
15 immediately preceding application for or renewal of a policy of
16 automobile insurance, of fraud or intent to defraud involving an
17 insurance claim or an application for insurance; or who has been
18 successfully denied, within the immediately preceding five years,
19 payment by an insurer of a claim in excess of \$1,000 under an
20 automobile insurance policy, if there was evidence of fraud or intent
21 to defraud involving the automobile insurance claim or application;

22 d. Whose policy of automobile insurance has been canceled
23 because of nonpayment of premium or financed premium within the
24 immediately preceding two-year period, unless the premium due on a
25 policy for which application has been made is paid in full before
26 issuance or renewal of the policy;

27 e. Who fails to obtain or maintain membership or qualification for
28 membership in a club, group, or organization, if membership is a
29 uniform requirement of the insurer as a condition of providing
30 insurance, and if the dues or charges, if any, or other conditions for
31 membership or qualifications for membership are applied uniformly
32 throughout this State, are not expressed as a percentage of the
33 insurance premium, and do not vary with respect to the rating
34 classification of the member or potential member except for the
35 purpose of offering a membership fee to family units. Membership
36 fees, if applicable, may vary in accordance with the amount or type of
37 coverage if the purchase of additional coverage, either as to type or
38 amount, is not a condition for reduction of dues or fees;

39 f. Whose driving record for the three year period immediately
40 preceding application for or renewal of a policy of automobile
41 insurance has an accumulation of automobile insurance eligibility
42 points as determined under the schedule promulgated by the
43 commissioner pursuant to section 26 of this act; **[or]**

44 g. Who possesses such other risk factors as determined to be
45 relevant by rule or regulation of the commissioner; or

46 h. Who, during the three-year period immediately preceding

1 application for, or renewal of, an automobile insurance policy, has
2 knowingly provided materially false or misleading information in
3 connection with an application for insurance, renewal of insurance or
4 claim for benefits under an insurance policy.

5 "Insurance agent" or "agent" means an insurance agent as defined
6 by subsection f. of section 2 of P.L.1987, c.293 (C.17:22A-2) and
7 shall also include an insurance broker as defined by subsection g. of
8 section 2 of P.L.1987, c.293 (C.17:22A-2) who has a brokerage
9 relationship with an insurer.

10 "Insurer" means any insurer authorized or admitted to write
11 automobile insurance in this State, but does not include the New
12 Jersey Automobile Full Insurance Underwriting Association created
13 pursuant to sections 13 through 34 of P.L.1983, c.65 (C.17:30E-1 et
14 seq.) or any residual market mechanism implemented pursuant to
15 section 1 of P.L.1970, c.215 (C.17:29D-1).

16 (cf: P.L.1990, c.8, s.25)

17

18 64. Section 26 of P.L.1990, c.8 (C.17:33B-14) is amended to read
19 as follows:

20 26. The commissioner shall, within 90 days of the effective date
21 of this act, promulgate a schedule of automobile insurance eligibility
22 points by rule or regulation adopted pursuant to the "Administrative
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule
24 shall assess a point valuation to driving experience related violations
25 and shall include assessments for violations of lawful speed limits
26 within such increments as determined by the commissioner, other
27 moving violations, and at-fault accidents. For the purposes of this
28 section, an "at-fault accident," occurring before the effective date of
29 P.L. , c. (C.)(now before the Legislature as this bill), means an
30 at-fault accident which results in payment by the insurer of at least a
31 \$500 claim and for accidents occurring on or after the effective date
32 of P.L. , c. (C.)(now before the Legislature as this bill), means
33 an at-fault accident which results in payment by the insurer of at least
34 a \$1,000 claim, which amount may be adjusted in \$100 or \$250
35 increments periodically by order of the commissioner no more
36 frequently than every 36 months, as the commissioner deems
37 appropriate, to reflect the cumulative increases or decreases in the
38 components of the Consumer Price Index, All Urban Consumers (CPI-
39 U) for the Northeast Region, and the adjusted amount shall apply to
40 automobile accidents occurring at least 120 days after the effective
41 date of the adjustment; except that an at-fault accident shall not mean
42 an accident occurring as a result of operation of any motor vehicle in
43 response to a medical emergency if the operator at the time of the
44 accident was a physician responding to the medical emergency.

45 (cf: P.L.1997, c.381, s.1)

1 65. Section 10 of P.L.1983, c.65 (C.17:29A-39) is amended to
2 read as follows:

3 10. a. [Every] Unless the named insured selects a lower
4 deductible amount, every private passenger automobile insurance
5 policy providing collision and comprehensive coverages, issued or
6 renewed on or after the effective date of this act, shall provide a
7 deductible in a minimum amount of \$500.00 each for collision and
8 comprehensive coverages, [unless the named insured selects a lower
9 deductible amount] except for policies issued on or after the effective
10 date of this section, that deductible amount shall be \$750 each for
11 collision and comprehensive coverages. The minimum deductible
12 established by this subsection shall apply to all policies providing
13 collision and comprehensive coverages unless the named insured
14 provides otherwise in writing on a form approved by the
15 commissioner.

16 b. The commissioner shall promulgate rules and regulations
17 requiring insurers to offer a range of deductibles up to at least
18 \$2,000.00 for private passenger automobile collision and
19 comprehensive coverages, which upper range may be adjusted in \$100
20 or \$250 increments periodically by order of the commissioner no more
21 frequently than every 36 months, as the commissioner deems
22 appropriate, to reflect the cumulative increases or decreases, since the
23 deductibles were last set, in the components of the Consumer Price
24 Index, All Urban Consumers (CPI-U) for the Northeast Region.
25 (cf: P.L.1988, c.119, s.33)
26

27 66. Section 16 of P.L.1974, c.17 (C.17:30A-16) is amended to
28 read as follows:

29 16. a. The commissioner shall adopt rules permitting member
30 insurers to recoup over a reasonable length of time, a sum reasonably
31 calculated to recoup assessments paid by the member insurer pursuant
32 to paragraph (3) of subsection a. of section 8 of P.L.1974, c.17
33 (C.17:30A-8) by way of a surcharge on premiums charged for
34 insurance policies to which this act applies. The amount of any
35 surcharge shall be determined by the commissioner. The commissioner
36 may permit an insurer to omit collection of the surcharge from its
37 insureds when the expense of collecting the surcharge would exceed
38 the amount of the surcharge, provided that nothing in this subsection
39 shall relieve the insurer of its obligation to remit the amount of
40 surcharge otherwise collectible.

41 b. No member insurer shall impose a surcharge on the premiums
42 of any policy to recoup assessments paid pursuant to paragraph (9) of
43 subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8).

44 c. Members shall recoup assessments paid by member insurers
45 pursuant to paragraph (11) of section 8 of P.L.1974, c.17 (C.17:30A-
46 8) by way of a surcharge on premiums charged for insurance policies

1 to which this act applies. Members shall recoup these assessments
2 within two years of the date they are paid. The commissioner may
3 permit an insurer to omit collection of the surcharge from its insureds
4 when the expense of collecting the surcharge would exceed the
5 amount of the surcharge, provided that nothing in this subsection shall
6 relieve the insurer of its obligation to remit the amount of the
7 surcharge otherwise collectible.

8 (cf: P.L.1990, c.8, s.75)

9
10 67. Section 1 of P.L.1988, c.118 (C.17:29A-5.6) is amended to
11 read as follows:

12 1. As used in this act:

13 a. "Actual investment income" means that portion of income
14 generated by investment of policyholder-supplied funds. Policyholder-
15 supplied funds are the assets that offset the insurer's total New Jersey
16 private passenger automobile insurance unearned premium and loss
17 reserves without regard to whether those funds came from private
18 passenger automobile insurance policyholders or other policyholders
19 or were from policyholder funds from the last seven calendar years or
20 earlier years.

21 b. "Actuarial gain" means the remainder obtained by subtracting
22 the allowance for profit and contingencies from underwriting income,
23 which remainder may be positive or negative.

24 c. "AIRE charges" and "AIRE compensation" mean, respectively,
25 amounts paid to or received from the New Jersey Automobile
26 Insurance Risk Exchange pursuant to section 16 of P.L.1983, c.362
27 (C.39:6A-22).

28 d. "Anticipated investment income" means the amount obtained by
29 multiplying earned premium by the percentage of premium
30 representing investment income and used in the insurer's approved rate
31 filings or filings made pursuant to section 29 of P.L.1988, c.119
32 (C.17:29A-42), during the period of the three calendar-accident years
33 being calculated, to calculate the allowance for profit and
34 contingencies.

35 e. "Calendar-accident year" means the period from January 1 to
36 December 31, during which, in the appropriate context:

37 (1) premium or investment income was earned;

38 (2) expenses were incurred; or

39 (3) accidents occurred which resulted in losses, loss adjustment
40 expenses or AIRE compensation.

41 f. "Car year" means the unit of exposure equivalent to the insuring
42 of one automobile for 12 months, two automobiles for six months
43 each, three automobiles for four months each, and so forth.

44 g. "Commissioner" means the Commissioner of Banking and
45 Insurance.

46 h. "Development adjustment," for a given calendar-accident year,

- 1 means the difference obtained by subtracting:
- 2 (1) The sum of
- 3 (a) Losses and loss adjustment expenses for that calendar-accident
- 4 year, developed to an ultimate basis and evaluated as of March 31 of
- 5 the year preceding the year in which the profits report required by
- 6 section 2 of this act is due; plus
- 7 (b) AIRE compensation for that calendar-accident year, developed
- 8 to an ultimate basis and evaluated as of March 31 of the year in which
- 9 the profits report is due; from
- 10 (2) The sum of
- 11 (a) Losses and loss adjustment expenses for that calendar-accident
- 12 year, developed to an ultimate basis and evaluated as of March 31 of
- 13 the year in which the profits report is due; plus
- 14 (b) AIRE compensation for that calendar-accident year, developed
- 15 to an ultimate basis and evaluated as of March 31 of the year
- 16 preceding the year in which the profits report is due.
- 17 i. "Excess investment income" means the remainder obtained by
- 18 subtracting the anticipated investment income from the actual
- 19 investment income earned by the insurer, which remainder may be
- 20 positive or negative.
- 21 j. "Insurer" means an entity authorized or admitted to transact
- 22 private passenger automobile insurance business in New Jersey [, but
- 23 does not include the New Jersey Automobile Full Insurance
- 24 Underwriting Association created pursuant to P.L.1983, c.65
- 25 (C.17:30E-1 et seq.)].
- 26 k. "Private passenger automobile insurance business" means direct
- 27 insurance on private passenger automobiles as defined in subsection a.
- 28 of section 2 of P.L.1972, c.70 (C.39:6A-2), excluding personal excess
- 29 liability insurance and insurance on commercial vehicles.
- 30 l. "Total actuarial gain" means the sum of the actuarial gains for
- 31 the [three] seven calendar-accident years immediately preceding the
- 32 due date of the profits report required by section 2 of this act, less the
- 33 development adjustments submitted at the option of the insurer for the
- 34 calendar-accident years beginning with the [seventh] eleventh
- 35 calendar-accident year immediately preceding the due date of the
- 36 profits report and ending with the [fourth] eighth calendar-accident
- 37 year immediately preceding the due date of the profits report.
- 38 m. "Underwriting income" means the remainder obtained by
- 39 subtracting the sum of all losses developed to an ultimate basis, all loss
- 40 adjustment expenses developed to an ultimate basis, and all other
- 41 expenses exclusive of UCJF assessments, from the sum of premiums
- 42 earned and AIRE compensation developed to an ultimate basis, which
- 43 remainder may be positive or negative.
- 44 n. "UCJF assessments" means amounts paid by insurers to the
- 45 Unsatisfied Claim and Judgment Fund pursuant to section 3 of
- 46 P.L.1952, c.174 (C.39:6-63).

1 o. "UCJF reimbursements" means amounts received by an insurer
2 from the Unsatisfied Claim and Judgment Fund as a result of excess
3 medical expense benefit payments by the insurer pursuant to section
4 2 of P.L.1977, c.310 (C.39:6-73.1).

5 (cf: P.L.1988, c.118, s.1)

6
7 68. Section 2 of P.L.1988, c.118 (C.17:29A-5.7) is amended to
8 read as follows:

9 2. a. Each insurer, except those exempt from filing pursuant to
10 section 6 of this act, shall annually file with the commissioner, on or
11 before July 1 of each year, a profits report containing the information
12 and calculations required by this section. The information shall be
13 provided with respect to the insurer's New Jersey private passenger
14 automobile insurance business separately for each of the following
15 coverages and for all these coverages combined:

16 (1) Personal injury protection, including all options;

17 (2) Bodily injury liability, reported at total limits;

18 (3) Other liability, consisting of property damage liability and
19 uninsured and underinsured motorist coverages, all reported at total
20 limits;

21 (4) Physical damage, consisting of comprehensive and collision
22 coverages, including all deductibles.

23 A separate profits report shall be filed for each insurer and each
24 insurer in an insurance holding company system. Each insurance
25 holding company system shall file a separate combined profits report
26 for all insurers in its system. The excess profits computation for an
27 insurance holding company system shall be performed on its combined
28 profits report, except that the commissioner may order an adjustment
29 in the combined profits report if in his judgment, upon examining each
30 insurer's profits report in the insurance holding company system, one
31 or more of the insurers in that system are excessively subsidizing other
32 insurers in that system.

33 b. The profits report shall contain the following information [for
34 each of the seven most recent calendar-accident years, with an
35 evaluation date as of March 31 of the year in which the profits report
36 is due], in a manner and for a time period as prescribed by the
37 commissioner by regulation:

38 (1) Losses paid;

39 (2) Losses developed to an ultimate basis;

40 (3) Loss adjustment expenses paid;

41 (4) Loss adjustment expenses developed to an ultimate basis;

42 (5) AIRE compensation received; and

43 (6) AIRE compensation developed to an ultimate basis.

44 c. The profits report shall contain the following information for
45 the calendar-accident year ending December 31 immediately preceding
46 the date the profits report is due:

- 1 (1) Premiums written;
- 2 (2) Premiums earned;
- 3 (3) ~~[Other]~~ All other expenses, itemized separately as follows:
 - 4 (a) ~~[Commissions]~~ All commissions and all brokerage fees;
 - 5 (b) ~~[Taxes]~~ All taxes, all licenses and all fees;
 - 6 (c) All AIRE charges;
 - 7 (d) All UCJF ~~[assessment]~~ assessments;
 - 8 (e) ~~[Other]~~ All other acquisition costs and all general expenses;
 - 9 (f) ~~[Policyholder]~~ All policyholder dividends incurred by the
10 insurer, including any excess profits refunded or credited to
11 policyholders;
 - 12 (g) The net of all catastrophe reinsurance premiums incurred to
13 unaffiliated catastrophe reinsurers and all sums paid or owed by
14 unaffiliated catastrophe reinsurers for losses that occurred during the
15 calendar-accident year, subject to such substantiation of expense as the
16 commissioner may require;
 - 17 (h) All expenses incurred for the services of a limited assignment
18 distribution carrier pursuant to subsection c. of section 1 of P.L.1970,
19 c.215 (C.17:29D-1);
- 20 (4) Allowance for profit and contingencies, calculated by
21 multiplying the premiums earned by the profit and contingency factors
22 authorized for use with the insurer's approved rate filings, which profit
23 and contingency factors shall be based on the insurer's targeted rate of
24 return, method of doing business, the cost of capital and other relevant
25 economic considerations of the insurer;
- 26 (5) Anticipated investment income;
- 27 (6) Actual investment income; and
- 28 (7) UCJF reimbursements received.
- 29 d. The profits report shall include a clear and explicit calculation
30 of each of the following items, in a manner and for a time period as
31 prescribed by the commissioner by regulation:
 - 32 (1) Underwriting income ~~[for each of the three calendar-accident~~
33 ~~years immediately preceding the date of the profits report]~~;
 - 34 (2) Actuarial gain ~~[for each of the three calendar-accident years~~
35 ~~immediately preceding the date of the profits report]~~;
 - 36 (3) Excess investment income ~~[for each of the three~~
37 ~~calendar-accident years immediately preceding the date of the profits~~
38 ~~report]~~;
 - 39 (4) Development adjustment ~~[for each of the four~~
40 ~~calendar-accident years specified in subsection l. of section 1 of this~~
41 ~~act]~~;
 - 42 (5) Total actuarial gain; and
 - 43 (6) Excess profits.
- 44 (cf: P.L.1988, c.118, s.2)

1 69. Section 3 of P.L.1988, c.118 (C.17:29A-5.8) is amended to
2 read as follows:

3 3. Excess profits shall exist if for the ~~[three]~~ seven
4 calendar-accident years immediately preceding the date the profits
5 report is due, the sum of an insurer's total actuarial gain and excess
6 investment income for all private passenger automobile coverages
7 combined exceeds 2.5 percent of earned premiums, except that the
8 effect of a negative excess investment income shall be limited in the
9 computation of excess profits, at the discretion of the commissioner,
10 which discretion shall be exercised pursuant to a standard on the
11 investment of policyholder-supplied funds pursuant to regulations
12 promulgated by the commissioner not later than April 1 of the year in
13 which excess profits reports are filed.

14 (cf: P.L.1988, c.118, s.3)

15

16 70. Section 2 of P.L.1972, c.200 (C.39:3-29.1) is amended to read
17 as follows:

18 2. The Commissioner of Banking and Insurance shall, after
19 consultation with the Director of the Division of Motor Vehicles,
20 promulgate rules and regulations concerning the issuance, design and
21 content of the insurance identification cards required by this act.

22 The rules and regulations shall contain provisions designed to deter
23 and detect counterfeit or fraudulent insurance identification cards.

24 (cf: P.L.1972, c.200, s.2)

25

26 71. (New section) With respect to sections 72 through 74 of
27 P.L. c. (C.) (now before the Legislature as this bill), the
28 Legislature finds and declares:

29 a. Insurance fraud is inimical to public safety, welfare and order
30 within the State of New Jersey. Insurance fraud is pervasive and
31 expensive, costing consumers and businesses millions of dollars in
32 direct and indirect losses each year. Insurance fraud increases
33 insurance premiums, to the detriment of individual policyholders, small
34 businesses, large corporations and governmental entities. All New
35 Jerseyans ultimately bear the societal burdens and costs caused by
36 those who commit insurance fraud.

37 b. The problem of insurance fraud must be confronted aggressively
38 by facilitating the detection, investigation and prosecution of such
39 misconduct, as well as by reducing its occurrence and achieving
40 deterrence through the implementation of measures that more precisely
41 target specific conduct constituting insurance fraud.

42 c. To enable more efficient prosecution of criminally culpable
43 persons who knowingly commit or assist or conspire with others in
44 committing fraud against insurance companies, it is necessary to
45 establish a crime of "insurance fraud" to directly and comprehensively
46 criminalize this type of harmful conduct, with substantial criminal

1 penalties to punish wrongdoers and to appropriately deter others from
2 such illicit activity.

3 d. In addition to criminal penalties, in order to maintain the public
4 trust and ensure the integrity of professional licensees and certificate-
5 holders who by virtue of their professions are involved in insurance
6 transactions, it is appropriate to provide civil remedial provisions
7 governing license or certificate forfeiture and suspension tailored to
8 this new crime of insurance fraud and other criminal insurance-related
9 activities.

10 e. To enhance the State's ability to detect insurance fraud, which
11 will lead to more productive investigations and, ultimately, more
12 successful criminal prosecutions, it is appropriate to provide members
13 of the public with significant incentives to come forward when they
14 may have reasonable suspicions or knowledge of a person or persons
15 committing insurance fraud. The establishment of an Insurance Fraud
16 Detection Reward Program will enable the Insurance Fraud Prosecutor
17 to obtain information which may lead to the arrest, prosecution and
18 conviction of persons or entities who have committed insurance-
19 related fraud.

20

21 72. (New section) As used in sections 73 and 74 of P.L. , c.
22 (C.) (now before the Legislature as this bill), unless the context
23 otherwise requires, the following words and terms shall have the
24 following meanings:

25 "Insurance company" means any person, company, corporation,
26 unincorporated association, partnership, professional corporation,
27 agency of government and any other entity authorized or permitted to
28 do business in New Jersey, subject to regulation by the State, or
29 incorporated or organized under the laws of any other state of the
30 United States or of any foreign nation or of any province or territory
31 thereof, to indemnify another against loss, damage, risk or liability
32 arising from a contingent or unknown event. "Insurance company"
33 includes, but is not limited to, an insurance company as that term is
34 defined in section 3 of P.L.1983, c.320 (C.17:33A-3), self-insurer, re-
35 insurer, reciprocal exchange, inter-insurer, hospital, medical or health
36 service corporation, health maintenance organization, surety, assigned
37 risk plan, joint insurance fund, and any other entity legally engaged in
38 the business of insurance as authorized or permitted by the State of
39 New Jersey, including but not limited to any such entity incorporated
40 or organized under the laws of any other state of the United States or
41 of any foreign nation or of any province or territory thereof.

42 "Insurance policy" means the instrument, in writing, electronically
43 or in any other form, in which are set forth the terms of any certificate
44 of insurance, binder of coverage, contract of insurance or contract of
45 re-insurance, issued by an insurance company, including, but not
46 limited to, a State-assigned risk plan, plan of indemnity protection

1 provided by or on behalf of a joint insurance fund or benefit plan,
2 motor club service plan, or guaranty bond, surety bond, cash bond or
3 any other alternative to insurance authorized or permitted by the State
4 of New Jersey.

5 "Insurance transaction" means a transaction by, between, or among
6 (1) an insurance company and (2) an insured, claimant, applicant for
7 insurance, public adjuster, insurance professional, practitioner as
8 defined by section 2 of P.L.1997, c.353 (C.2C:21-4.2), attorney, or
9 any person who acts on behalf of any of the foregoing for the purpose
10 of obtaining insurance or reinsurance, calculating insurance premiums,
11 submitting a claim, negotiating or adjusting a claim, or otherwise
12 obtaining insurance, self insurance, or reinsurance, or obtaining the
13 benefits or annuities thereof or therefrom.

14 "Premium finance transaction" means a transaction involving or
15 related to insurance premium financing which is subject to the
16 "Insurance Premium Finance Company Act," P.L.1968, c.221
17 (C.17:16D-1 et seq.).

18

19 73. (New section) a. A person is guilty of the crime of insurance
20 fraud if that person knowingly makes, or causes to be made, a false,
21 fictitious, fraudulent, or misleading statement of material fact in, or
22 omits a material fact from, or causes a material fact to be omitted
23 from, any record, bill, claim or other document, in writing,
24 electronically, orally or in any other form, that a person attempts to
25 submit, submits, causes to be submitted, or attempts to cause to be
26 submitted as part of, in support of or opposition to or in connection
27 with: (1) a claim for payment, reimbursement or other benefit
28 pursuant to an insurance policy, or from an insurance company or the
29 "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174
30 (C.39:6-61 et seq.); (2) an application to obtain or renew an insurance
31 policy; (3) any payment made or to be made in accordance with the
32 terms of an insurance policy or premium finance transaction; or (4) an
33 affidavit, certification, record or other document used in any insurance
34 or premium finance transaction.

35 b. Insurance fraud constitutes a crime of the second degree if the
36 person knowingly commits five or more acts of insurance fraud,
37 including acts of health care claims fraud pursuant to section 2 of
38 P.L.1997, c.353 (C.2C:21-4.2) and if the aggregate value of property,
39 services or other benefit wrongfully obtained or sought to be obtained
40 is at least \$1,000. Otherwise, insurance fraud is a crime of the third
41 degree. Each act of insurance fraud shall constitute an additional,
42 separate and distinct offense, except that five or more separate acts
43 may be aggregated for the purpose of establishing liability pursuant to
44 this subsection. Multiple acts of insurance fraud which are contained
45 in a single record, bill, claim, application, payment, affidavit,
46 certification or other document shall each constitute an additional,

1 separate and distinct offense for purposes of this subsection.

2 c. Proof that a person has signed or initialed an application, bill,
3 claim, affidavit, certification, record or other document may give rise
4 to an inference that the person has read and reviewed the application,
5 bill, claim, affidavit, certification, record or other document.

6 d. In order to promote the uniform enforcement of this act, the
7 Attorney General shall develop insurance fraud prosecution guidelines
8 and disseminate them to county prosecutors within 180 days of the
9 effective date of this act.

10 e. Nothing in this act shall preclude an indictment and conviction
11 for any other offense defined by the laws of this State.

12 f. Nothing in this act shall preclude an assignment judge from
13 dismissing a prosecution of insurance fraud if the assignment judge
14 determines, pursuant to N.J.S.2C:2-11, the conduct charged to be a de
15 minimus infraction.

16

17 74. (New section) a. There is established within the Office of the
18 Insurance Fraud Prosecutor an Insurance Fraud Detection Reward
19 Program, to be funded from surcharges imposed pursuant to section
20 53 of P.L.2002, c.34 (C.17:33A-5.1) and supplemented as necessary
21 and appropriate by amounts budgeted for the operation of the office.

22 b. A member of the public who has knowledge of or who believes
23 that an act of health care claims fraud, insurance fraud or any other
24 criminal offense involving or related to an insurance transaction is
25 being or has been committed may provide the Insurance Fraud
26 Prosecutor with a report or information pertinent to that knowledge
27 or belief and may provide additional information that the Insurance
28 Fraud Prosecutor requests.

29 c. The Insurance Fraud Prosecutor shall maintain a 24-hour toll-
30 free insurance fraud hotline to receive information from members of
31 the public who have knowledge of or who believe that an act of health
32 care claims fraud, insurance fraud or any other criminal offense
33 involving or related to an insurance transaction is being or has been
34 committed.

35 d. The Attorney General, through the Insurance Fraud Prosecutor,
36 is authorized to pay a reward of up to \$25,000 to persons providing
37 information leading to the arrest, prosecution and conviction of
38 persons or entities who have committed health care claims fraud,
39 insurance fraud or any other criminal offense related to an insurance
40 transaction. Only a single reward amount may be paid by the
41 Insurance Fraud Prosecutor for claims arising out of the same
42 transaction or occurrence, regardless of the number of persons
43 arrested, prosecuted and convicted and regardless of the number of
44 persons submitting claims for the reward. The reward may be divided
45 and disbursed among more than one person in amounts determined by
46 the Insurance Fraud Prosecutor, in accordance with the provisions of

1 this subsection. The decision of the Insurance Fraud Prosecutor as to
2 the person or persons entitled to the reward shall be final unless the
3 reward recipients shall disagree, in which event, the matter shall be
4 referred to the Attorney General whose decision shall be final and shall
5 not be subject to judicial review.

6 e. Any person acting in good faith who provides information in
7 accordance with subsection b. of this section shall have immunity from
8 any liability, civil or criminal, that might otherwise be incurred or
9 imposed as a result of such act.

10 f. The Attorney General shall promulgate and adopt rules and
11 regulations which set forth the reward program application and
12 approval process, including the criteria against which claims shall be
13 evaluated, the basis for determining specific reward amounts, and the
14 manner of reward disbursement. Applications for rewards authorized
15 by this section must be submitted in accordance with rules established
16 by the Attorney General.

17

18 75. Section 3 of P.L.1997, c.353 (C.2C:21-4.3) is amended to
19 read as follows:

20 3. a. A practitioner is guilty of a crime of the second degree if
21 that person knowingly commits health care claims fraud in the course
22 of providing professional services. In addition to all other criminal
23 penalties allowed by law, a person convicted under this subsection may
24 be subject to a fine of up to five times the pecuniary benefit obtained
25 or sought to be obtained.

26 b. A practitioner is guilty of a crime of the third degree if that
27 person recklessly commits health care claims fraud in the course of
28 providing professional services. In addition to all other criminal
29 penalties allowed by law, a person convicted under this subsection may
30 be subject to a fine of up to five times the pecuniary benefit obtained
31 or sought to be obtained.

32 c. A person, who is not a practitioner subject to the provisions of
33 subsection a. or b. of this section, is guilty of a crime of the third
34 degree if that person knowingly commits health care claims fraud. A
35 person, who is not a practitioner subject to the provisions of
36 subsection a. or b. of this section, is guilty of a crime of the second
37 degree if that person knowingly commits five or more acts of health
38 care claims fraud and the aggregate pecuniary benefit obtained or
39 sought to be obtained is at least \$1,000. In addition to all other
40 criminal penalties allowed by law, a person convicted under this
41 subsection may be subject to a fine of up to five times the pecuniary
42 benefit obtained or sought to be obtained.

43 d. A person, who is not a practitioner subject to the provisions of
44 subsection a. or b. of this section, is guilty of a crime of the fourth
45 degree if that person recklessly commits health care claims fraud. In
46 addition to all other criminal penalties allowed by law, a person

1 convicted under this subsection may be subject to a fine of up to five
2 times the pecuniary benefit obtained or sought to be obtained.

3 e. Each act of health care claims fraud shall constitute an
4 additional, separate and distinct offense, except that five or more
5 separate acts may be aggregated for the purpose of establishing
6 liability pursuant to subsection c. of this section. Multiple acts of
7 health care claims fraud which are contained in a single record, bill,
8 claim, application, payment, affidavit, certification or other document
9 shall each constitute an additional, separate and distinct offense for
10 purposes of this section.

11 f. (1) The falsity, fictitiousness, fraudulence or misleading nature
12 of a statement may be inferred by the trier of fact in the case of a
13 practitioner who attempts to submit, submits, causes to be submitted,
14 or attempts to cause to be submitted, any record, bill, claim or other
15 document for treatment or procedure without the practitioner, or an
16 associate of the practitioner, having performed an assessment of the
17 physical or mental condition of the patient or client necessary to
18 determine the appropriate course of treatment.

19 (2) The falsity, fictitiousness, fraudulence or misleading nature of
20 a statement may be inferred by the trier of fact in the case of a
21 person who attempts to submit, submits, causes to be submitted, or
22 attempts to cause to be submitted any record, bill, claim or other
23 document for more treatments or procedures than can be performed
24 during the time in which the treatments or procedures were
25 represented to have been performed.

26 (3) Proof that a practitioner has signed or initialed a record, bill,
27 claim or other document gives rise to an inference that the
28 practitioner has read and reviewed that record, bill, claim or other
29 document.

30 g. In order to promote the uniform enforcement of this act, the
31 Attorney General shall develop health care claims fraud prosecution
32 guidelines and disseminate them to the county prosecutors within 120
33 days of the effective date of this act.

34 h. For the purposes of this section, a person acts recklessly with
35 respect to a material element of an offense when he consciously
36 disregards a substantial and unjustifiable risk that the material element
37 exists or will result from his conduct. The risk must be of such a
38 nature and degree that, considering the nature and purpose of the
39 actor's conduct and the circumstances known to him, its disregard
40 involves a gross deviation from the standard of conduct that a
41 reasonable person would observe in the actor's situation.

42 i. (1) Nothing in this act shall preclude an indictment and
43 conviction for any other offense defined by the laws of this State.

44 (2) Nothing in this act shall preclude an assignment judge from
45 dismissing a prosecution of health care claims fraud if the assignment
46 judge determines, pursuant to N.J.S.2C:2-11, the conduct charged to

1 be a de minimis infraction.

2 (cf: P.L.1997, c.353, s.3)

3

4 76. Section 4 of P.L.1997, c.353 (C.2C:51-5) is amended to read
5 as follows:

6 4. a. (1) A practitioner convicted of health care claims fraud
7 pursuant to subsection a. of section 3 of P.L.1997, c.353
8 (C.2C:21-4.3) or a substantially similar crime under the laws of
9 another state or the United States shall forfeit his license and be
10 forever barred from the practice of the profession unless the court
11 finds that such license forfeiture would be a serious injustice which
12 overrides the need to deter such conduct by others and in such case
13 the court shall determine an appropriate period of license suspension
14 which shall be for a period of not less than one year. If the court does
15 not permanently forfeit such license pursuant to this paragraph, the
16 sentence shall not become final for 10 days in order to permit the
17 appeal of such sentence by the prosecution.

18 (2) Upon a first conviction of health care claims fraud pursuant to
19 subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
20 substantially similar crime under the laws of another state or the
21 United States, a practitioner shall have his license suspended and be
22 barred from the practice of the profession for a period of at least one
23 year.

24 (3) Upon a second conviction of health care claims fraud pursuant
25 to subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
26 substantially similar crime under the laws of another state or the
27 United States, a practitioner shall forfeit his license and be forever
28 barred from the practice of the profession.

29 (4) A person convicted of second degree insurance fraud pursuant
30 to section 73 of P.L. , c. (C.) (now before the Legislature as this
31 bill) or a substantially similar crime under the laws of another state or
32 the United States who holds a license or certificate of authority or
33 qualification to engage in the practice of a profession, occupation,
34 trade, or vocation or business, including but not limited to a
35 practitioner as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2),
36 shall forfeit that license or certificate and be forever barred from the
37 practice of that profession, occupation, trade, vocation or business if
38 the act or acts of insurance fraud were related to or performed while
39 engaged in the practice of that profession, occupation, trade, vocation
40 or business, unless the court finds that such license or certificate
41 forfeiture would be a serious injustice which overrides the need to
42 deter such conduct by others and in that case the court shall determine
43 an appropriate period of license or certificate suspension which shall
44 be for a period of not less than one year. If the court does not
45 permanently forfeit such license or certificate pursuant to this
46 paragraph, the sentence shall not become final for 10 days in order to

1 permit the appeal of that sentence by the prosecution.

2 (5) A person convicted of third degree insurance fraud pursuant
3 to section 73 of P.L. , c. (C.) (now before the Legislature as this
4 bill) or a substantially similar crime under the laws of another state or
5 the United States who holds a license or certificate of authority or
6 qualification to engage in the practice of a profession, occupation,
7 trade, vocation or business, including but not limited to a practitioner
8 as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall have
9 his license or certificate suspended and be barred from the practice of
10 that profession, occupation, trade, vocation or business for a period of
11 at least one year if the act or acts of insurance fraud were related to or
12 performed while engaged in the practice of that profession,
13 occupation, trade, vocation or business.

14 (6) Upon a second conviction of third degree insurance fraud
15 pursuant to section 73 of P.L. , c. (C.) (now before the
16 Legislature as this bill) or a substantially similar crime under the laws
17 of another state or the United States which meets the criteria of
18 paragraph (2) of this subsection, a person shall forfeit his license or
19 certificate and be forever barred from the practice of that profession,
20 occupation, trade, vocation or business.

21 (7) Upon application of the county prosecutor or the Attorney
22 General, a person convicted of any crime of the second degree or
23 above enumerated in chapter 20 or 21 of Title 2C of the New Jersey
24 Statutes or a substantially similar crime under the laws of another state
25 or the United States who holds a license or certificate or authority or
26 qualification to engage in the practice of a profession, occupation,
27 trade, vocation or business, including a practitioner as defined in
28 section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall forfeit such license
29 or certificate and be forever barred from the practice of that
30 profession, occupation, trade, vocation or business if the act or acts
31 underlying the conviction involved or were related to an insurance
32 transaction as defined in section 72 of P.L. , c. (C.) (now before
33 the Legislature as this bill) and touched upon or were performed while
34 engaged in the practice of that profession, occupation, trade, vocation
35 or business, unless the court finds that the license or certificate
36 forfeiture would be a serious injustice which overrides the need to
37 deter such conduct by others and in that case the court shall determine
38 an appropriate period of license or certificate suspension which shall
39 be for a period of not less than one year. If the court does not
40 permanently forfeit that license or certificate pursuant to this
41 paragraph, the sentence shall not become final for 10 days in order to
42 permit the appeal of that sentence by the prosecution.

43 (8) Upon application of the county prosecutor or the Attorney
44 General, a person convicted of any crime of the third degree
45 enumerated in chapter 20 or 21 of Title 2C of the New Jersey Statutes
46 or a substantially similar crime under the laws of another state or the

1 United States who holds a license or certificate of authority or
2 qualification to engage in the practice of a profession, occupation,
3 trade, vocation or business, including but not limited to a practitioner
4 as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall have
5 his license or certificate suspended and be barred from the practice of
6 that profession, occupation, trade, vocation or business for a period of
7 at least one year if the act or acts underlying the conviction involved
8 or were related to an insurance transaction as defined in section 73 of
9 P.L. , c. (C.) (now before the Legislature as this bill) and
10 touched upon or were performed while engaged in the practice of that
11 profession, occupation, trade, vocation or business.

12 b. A court of this State shall enter an order of license or certificate
13 forfeiture or suspension pursuant to subsection a. of this section:

14 (1) Immediately upon a finding of guilt by the trier of fact or a
15 plea of guilty entered in any court of this State; or

16 (2) Upon application of the county prosecutor or the Attorney
17 General, when the license or certificate forfeiture or suspension is
18 made pursuant to paragraph (4) of subsection a. of this section or is
19 based upon a conviction of an offense under the laws of another state
20 or of the United States. An order of license or certificate forfeiture or
21 suspension pursuant to this paragraph shall be effective as of the date
22 the person is found guilty by the trier of fact or pleads guilty to the
23 offense.

24 This application may also be made in the alternative by the
25 Attorney General to the appropriate licensing agency.

26 The court shall provide notice of the forfeiture or suspension to the
27 appropriate licensing agency within 10 days of the date an order of
28 forfeiture or suspension is entered.

29 c. No court shall grant a stay of an order of license or certificate
30 forfeiture or suspension pending appeal of a conviction or forfeiture
31 or suspension order unless the court is clearly convinced that there is
32 a substantial likelihood of success on the merits. If the conviction is
33 reversed or the order of license or certificate forfeiture or suspension
34 is overturned, the court shall provide notice of reinstatement to the
35 appropriate licensing agency within 10 days of the date of the order of
36 reinstatement. The license or certificate shall be restored, in
37 accordance with applicable procedures, unless the appropriate
38 licensing agency determines to suspend or revoke the license or
39 certificate.

40 d. In any case in which the issue of license or certificate forfeiture
41 or suspension is not raised in a court of this State at the time of a
42 finding of guilt, entry of a guilty plea or sentencing, a license or
43 certificate forfeiture or suspension required by this section may be
44 ordered by a court or by the appropriate licensing agency of this State
45 upon application of the county prosecutor or the Attorney General or
46 upon application of the appropriate licensing agency having authority

1 to revoke or suspend the professional's license or certificate. The fact
2 that a court has declined to order license or certificate forfeiture or
3 suspension shall not preclude the appropriate licensing agency having
4 authority to revoke or suspend the professional's license or certificate
5 from seeking to do so on the ground that the conduct giving rise to the
6 conviction demonstrates that the person is unfit to hold the license or
7 certificate or is otherwise liable for an offense as specified in section
8 of P.L.1978, c.73 (C.45:1-21).

9 e. If the Supreme Court of the State of New Jersey issues Rules
10 of Court pursuant to this act, the Supreme Court may revoke the
11 license to practice law of any attorney who has been convicted, under
12 the laws of this State, of health care claims fraud pursuant to section
13 3 of P.L.1997, c.353 (C.2C:21-4.3), or an offense which, if committed
14 in this State, would constitute health care claims fraud, insurance fraud
15 pursuant to section 73 of P.L. , c. (C.) (now before the
16 Legislature as this bill), or an offense which, if committed in this State,
17 would constitute insurance fraud.

18 f. Nothing in this section shall be construed to prevent or limit the
19 appropriate licensing agency or any other party from taking any other
20 action permitted by law against the practitioner.
21 (cf: P.L.1997, c.353, s.4)

22

23 77. Section 5 of P.L.1997, c.353 (C.2C:52-27.1) is amended to
24 read as follows:

25 5. a. If an order of expungement of records of conviction under
26 the provisions of chapter 52 of Title 2C of the New Jersey Statutes is
27 granted by the court to a person convicted of health care claims fraud
28 in which the court had ordered the offender's professional license or
29 certificate be forfeited and the person be forever barred from the
30 practice of the profession, occupation, trade, vocation or business
31 pursuant to [paragraph (1) of] subsection a. of section 4 of P.L.1997,
32 c.353 (C.2C:51-5), the person may petition the court for an order to
33 rescind the court's order of debarment if the person can demonstrate
34 that the person is sufficiently rehabilitated.

35 b. If an order to rescind the court's order of debarment is granted,
36 the person granted the order may apply to be licensed or certified to
37 practice the profession, occupation, trade, vocation or business from
38 which the offender was barred.

39 (cf: P.L.1997, c.353, s.5)

40

41 78. R.S.39:3-29 is amended to read as follows:

42 39:3-29. The driver's license, the registration certificate of a motor
43 vehicle and an insurance identification card shall be in the possession
44 of the driver or operator at all times when he is in charge of a motor
45 vehicle on the highways of this State.

46 The driver or operator shall exhibit his driver's license and an

1 insurance identification card, and the holder of a registration certificate
2 or the operator or driver of a motor vehicle for which a registration
3 certificate has been issued, whether or not the holder, driver or
4 operator is a resident of this State, shall also exhibit the registration
5 certificate, when requested so to do by a police officer or judge, while
6 in the performance of the duties of his office, and shall write his name
7 in the presence of the officer, so that the officer may thereby determine
8 the identity of the licensee and at the same time determine the
9 correctness of the registration certificate, as it relates to the
10 registration number and number plates of the motor vehicle for which
11 it was issued; and the correctness of the evidence of a policy of
12 insurance, as it relates to the coverage of the motor vehicle for which
13 it was issued.

14 Any person violating this section shall be subject to a fine [not
15 exceeding \$100.00] of \$150, of which \$25 shall be deposited in the
16 Uninsured Motorist Prevention Fund established by section 2 of
17 P.L.1983, c.141 (C.39:6B-3).

18 If a person charged with a violation of this section can exhibit his
19 driver's license, insurance identification card and registration
20 certificate, which were valid on the day he was charged, to the judge
21 of the municipal court before whom he is summoned to answer to the
22 charge, such judge may dismiss the charge. However, the judge may
23 impose court costs.

24 (cf: P.L.1983, c.403, s.10)

25

26 79. (New section) a. Upon the issuance of a summons for failing
27 to possess or exhibit an insurance identification card in violation of
28 R.S.39:3-29, the violator or registrant shall have 24 hours from the
29 time of the citation to provide the issuing law enforcement agency with
30 the insurance identification card, or other satisfactory proof of
31 insurance. Failure to provide the insurance identification card or other
32 satisfactory proof of insurance within the 24 hour time frame shall
33 result in the issuance of a warrant for the immediate impoundment of
34 the vehicle that was being operated when the summons was issued. A
35 motor vehicle impounded pursuant to the provisions of this subsection
36 shall be removed to a storage space or garage. The registrant shall be
37 responsible for the cost of the removal and storage of the impounded
38 motor vehicle.

39 b. (1) If the registrant fails to claim a motor vehicle impounded
40 pursuant to subsection a. of this section and pay the reasonable costs
41 of removal and storage by midnight of the 30th day following
42 impoundment, along with a fine of \$100 to cover the administrative
43 costs of the municipality wherein the violation occurred, and after a
44 hearing, the municipality may sell the motor vehicle at public auction.
45 The municipality shall give notice of the sale by certified mail to the
46 registrant of the motor vehicle and to the holder of any security

1 interest filed with the Director of the Division of Motor Vehicles, and
2 by publication in a form to be prescribed by the director by one
3 insertion, at least five days before the date of the sale, in one or more
4 newspapers published in this State and circulating in the municipality
5 in which the motor vehicle has been impounded.

6 (2) At any time prior to the sale, the registrant or other person
7 entitled to the motor vehicle may reclaim possession of it upon
8 providing satisfactory proof of motor vehicle liability insurance
9 coverage and payment of the reasonable costs of removal and storage
10 of the motor vehicle and any outstanding fines or penalties; provided,
11 however, if the other person entitled to the motor vehicle is a lessor or
12 the holder of a lien on the motor vehicle, he may reclaim the motor
13 vehicle without payment. In such cases, the registrant shall be liable
14 for all outstanding costs, fines and penalties, and the municipality shall
15 have a lien against the property and income of that registrant for the
16 total amount of those outstanding costs, fines and penalties.

17 (3) Any proceeds obtained from the sale of a motor vehicle at
18 public auction pursuant to paragraph (1) of this subsection in excess
19 of the amount owed to the municipality for the reasonable costs of
20 removal and storage of the motor vehicle and any outstanding fines or
21 penalties shall be returned to the registrant of the vehicle.

22

23 80. Section 2 of P.L.1983. c.141 (C.39:6B-3) is amended to read
24 as follows:

25 2. The Uninsured Motorist Prevention Fund (hereinafter referred
26 to as the "fund") is established as a nonlapsing, revolving fund into
27 which shall be deposited all revenues from the fines imposed pursuant
28 to section 2 of P.L.1972, c.197 (C.39:6B-2) and \$25 from each fine
29 imposed pursuant to R.S.39:3-29. Interest received on moneys in the
30 fund shall be credited to the fund. The fund shall be administered by
31 the Division of Motor Vehicles in the Department of [Law and Public
32 Safety] Transportation. Moneys in the fund shall be allocated and
33 used for the purpose of the administrative expenses of the fund and
34 enforcement of the compulsory motor vehicle insurance law, P.L.1972,
35 c.197 (C.39:6B-1 et seq.) by the Division of Motor Vehicles.

36 (cf: P.L.1983, c.141, s.2)

37

38 81. Section 5 of P.L.1984, c.101 (C.17:22-6.74) is amended to
39 read as follows:

40 5. a. The fund shall:

41 (1) Be obligated to the extent of the covered claims against an
42 insolvent insurer incurred prior to or 30 days after the determination
43 of insolvency, or before the policy expiration date, if less than 30 days
44 after that determination, or before the policyholder replaces the policy
45 or causes its cancellation, if he does so within 30 days of the
46 determination. The fund's obligation for covered claims shall not be

1 greater than \$300,000.00 per occurrence, subject to any applicable
2 deductible contained in the policy. The commissioner may adjust the
3 fund's obligations for covered claims based on the moneys available in
4 the fund. In no event shall the fund be obligated to a policyholder or
5 claimant in excess of the limits of liability of the insolvent insurer
6 stated in the policy from which the claim arises;

7 (2) Be deemed the insurer to the extent of its obligation on the
8 covered claims and to such extent shall have all rights, duties, and
9 obligations of the insolvent insurer as if the insurer had not become
10 insolvent;

11 (3) Assess member insurers in accordance with section 6 of this
12 act in amounts necessary to pay:

13 (a) Obligations of the fund under paragraph (1) of this subsection,

14 (b) Expenses of handling covered claims,

15 (c) Any other expenses incurred in the implementation of the
16 provisions of this act;

17 (4) Investigate claims brought against the fund; and adjust,
18 compromise, settle, and pay covered claims to the extent of the fund's
19 obligation; and deny all other claims; and may review settlements,
20 releases and judgments to which the insolvent insurer or its
21 policyholders were parties to determine the extent to which the
22 settlements, releases and judgments may be properly contested;

23 (5) Notify those persons as the commissioner directs under section
24 8 of this act;

25 (6) Handle claims through the association's employees or
26 representatives, or through one or more insurers or other persons
27 designated as servicing facilities;

28 (7) Pay the other expenses of the association in administering the
29 provisions of this act; and

30 (8) Within 60 days of enactment of P.L.2002, c.30 (C.17:22-6.70a
31 et al.), transfer to the General Fund any and all moneys in excess of
32 \$40,000,000 in the fund as of June 24, 2002.

33 b. The fund may:

34 (1) Sue or be sued;

35 (2) Negotiate and become a party to those contracts which are
36 necessary to carry out the purpose of this act;

37 (3) Perform those other acts which are necessary or appropriate
38 to effectuate the purpose of this act;

39 (4) (Deleted by amendment, P.L.2002, c.30.)

40 (5) With the approval of the commissioner, borrow and separately
41 account for moneys from any source, including but not limited to the
42 New Jersey Property-Liability Insurance Guaranty Association and the
43 Unsatisfied Claim and Judgment Fund, [in accordance with subsection
44 b. of section 6 of P.L.1984, c.101 (C.17:22-6.75), as may be
45 necessary] in such amounts and on such terms as the New Jersey
46 Property-Liability Insurance Guaranty Association may determine are

1 necessary or appropriate to effectuate the purposes of [that act,
2 except that the use of the proceeds of any loans shall be limited to the
3 payment of covered claims, including claim adjustment expenses]
4 P.L. , c. (C.)(now before the Legislature as this bill) in
5 accordance with the association's plan of operation; and
6 (6) Make loans, in such amounts and on such terms as the
7 association may determine are necessary or appropriate, to the New
8 Jersey Property-Liability Insurance Guaranty Association in
9 accordance with the provisions of the "New Jersey Property-Liability
10 Insurance Guaranty Association Act," P.L.1974, c.17 (C.17:30A-1 et
11 seq.) and the "Unsatisfied Claim and Judgment Fund Law," P.L.1952,
12 c.174 (C.39:6-61 et seq.).
13 (cf: P.L.2002, c.30, s.5)
14

15 82. Section 7 of P.L.1988, c.118 (C.17:29A-5.12) is amended to
16 read as follows:

17 7. If the commissioner finds that an insurer has excess profits, the
18 insurer shall establish, subject to the approval of the commissioner, a
19 fair, practicable, and nondiscriminatory plan for the refund or credit of
20 the excess profits to such group or groups of policyholders [of the
21 excess profits] as the commissioner may determine to be reasonable
22 in consideration of the insurer's financial and business circumstances.
23 (cf: P.L.1988, c.118, s.7)
24

25 83. R.S.17:17-10 is amended to read as follows:

26 17:17-10. a. When satisfied that a company has complied with all
27 the requirements of this subtitle to entitle it to engage in business and
28 that the proposed methods of operation of the company are not such
29 as would render its operation hazardous to the public or its
30 policyholders, the commissioner shall issue to the company a
31 certificate authorizing it to commence business, specifying in the
32 certificate the particular kind or kinds of insurance it is authorized to
33 transact. The commissioner may refuse to issue a certificate of
34 authority if he finds that any of the company's directors or officers has
35 been convicted of a crime involving fraud, dishonesty, or like moral
36 turpitude or that said persons are not persons of good character and
37 integrity. No company shall transact the business for which it is
38 incorporated until it has received the certificate from the
39 commissioner. If any company fails to obtain the certificate of
40 authority within one year from the date of the certificate of the
41 Attorney General to its certificate of incorporation, as provided in
42 R.S.17:17-5, the company shall, ipso facto, be dissolved and its
43 certificate of incorporation be null and void.

44 b. No company licensed to transact insurance business in this State
45 pursuant to chapter 17 of Title 17 of the Revised Statutes may
46 surrender its certificate of authority or discontinue writing or renewing

1 any kind or kinds of insurance specified in the certificate, except in
2 accordance with [a plan to be] an informational filing submitted [by
3 the company and approved by] to the commissioner, which [plan]
4 filing shall [provide for an orderly withdrawal from the market and for
5 the minimization of the impact of the surrender of the certificate or the
6 discontinuance of the writing or renewing of any kind or kinds of
7 insurance upon the public generally and upon the company's
8 policyholders in this State. No surrender or discontinuance shall
9 become effective until the approved plan has been complied with. In
10 reviewing a plan for withdrawal submitted by the company, the
11 commissioner shall consider, and may require as a condition of
12 approval, whether some or all other certificates of authority issued
13 pursuant to chapter 17 or 32 of Title 17 of the Revised Statutes held
14 by the company or by other companies within the same holding
15 company system as the company submitting the plan shall be required
16 to be surrendered. The provisions of this subsection shall apply to any
17 request for withdrawal, surrender or discontinuance filed on or after
18 January 25, 1990] be subject to the following provisions regarding any
19 withdrawals:

20 (1) the company shall send a notice to policyholders of the
21 proposed withdrawal no later than thirty days following the submission
22 of the informational filing to the commissioner, which shall state that
23 the insurer intends to withdraw and has filed its intention to withdraw
24 with the commissioner, the terms of the withdrawal, including the date
25 of the proposed commencement of nonrenewal of policies, and the
26 proposed duration of the nonrenewal of the company's book of
27 business;

28 (2) nonrenewals shall not commence prior to one calendar year
29 and ninety days following the submission of the informational filing;

30 (3) the company shall send a notice of nonrenewal to every
31 policyholder (a) no later than one calendar year preceding the date of
32 nonrenewal and (b) a subsequent notice of nonrenewal in accordance
33 with any time limit otherwise established by law for that line of
34 insurance;

35 (4) nonrenewals shall take place in a manner so as to be applicable
36 to all insureds on an equitable basis with respect to risk classification
37 and territorial or other form of rating factor, and shall be effectuated
38 at a uniform rate over a period not exceeding three calendar years,
39 commencing with the date established in paragraph (2) of this
40 subsection; provided, however, that if more than one company files for
41 withdrawal for the same line of business and the companies, in the
42 aggregate, write more than 25% of the market share for that line of
43 business, the commissioner may extend the period of withdrawal
44 provided for herein to five years.

45 The commissioner's authority with respect to withdrawals as
46 provided for herein shall be limited to enforcing compliance with this

1 subsection and enforcing the terms of the withdrawal plan proposed in
2 the informational filing.

3 c. Upon receiving the informational filing provided for in
4 subsection b. of this section, the commissioner shall consider, and may
5 require as a condition of approval, whether some or all of the
6 company's other certificates of authority issued pursuant to Title 17 of
7 the Revised Statutes held by the company or other companies within
8 the same holding company system as the company submitting the plan
9 shall be required to be surrendered.

10 d. Notwithstanding the provisions of subsection b. of this section,
11 if the company finds a replacement carrier for the business that will not
12 be renewed as the result of the withdrawal either prior to or after the
13 date of the informational filing, the insurer may apply to the
14 commissioner for approval to transfer the business to a replacement
15 carrier or carriers. If the commissioner approves the replacement
16 carrier or carriers, notwithstanding the provisions of paragraphs (1),
17 (2), and (3) of subsection b. of this section, the notice of nonrenewal
18 shall be in compliance with the time limits provided by law for that line
19 of insurance, and the company shall offer every insured coverage with
20 the replacement carrier prior to the effective date of the nonrenewal.
21 The commissioner shall not withhold approval of a replacement carrier
22 or carriers if that insurer is authorized to do business in the same line
23 of business in New Jersey and has the financial and business capability
24 to write and service the business being transferred to it by the
25 withdrawing company. The commissioner shall approve or disapprove
26 the replacement carrier or carriers within 60 days of (1) the date of the
27 filing by both the withdrawing insurer requesting approval of a
28 replacement carrier or carrier or (2) the filing by the replacement
29 carrier or carriers requesting to be a replacement carrier, whichever is
30 later.

31 e. Notwithstanding the provisions of subsection b. of this section,
32 the commissioner may waive the requirements of paragraph (2) of that
33 subsection, and the one-year nonrenewal notice of paragraph (3) of
34 that subsection, as well as the three year minimum nonrenewal period
35 provided in paragraph (4) of that subsection if the commissioner
36 deems a waiver to be necessary to protect the solvency of the insurer
37 making the informational filing or if the commissioner deems the
38 withdrawal to have a limited impact on the market.

39 (cf: P.L.1990, c.8, s.71)

40
41 84. Section 72 of P.L.1990, c.8 (C.17:33B-30) is amended to read
42 as follows:

43 72. a. An insurance company of another state or foreign country
44 authorized under chapter 32 of Title 17 of the Revised Statutes to
45 transact insurance business in this State may surrender to the
46 commissioner its certificate of authority and thereafter cease to

1 transact insurance in this State, or discontinue the writing or renewal
2 of [one or more kinds of] private passenger automobile insurance
3 specified in the certificate of authority only after the submission of [a
4 plan which provides for an orderly withdrawal from the market and a
5 minimization of the impact of the surrender or discontinuance on the
6 public generally and on the company's policyholders in this State. The
7 plan shall be approved by the commissioner before the withdrawal or
8 discontinuance takes effect. In reviewing a plan for withdrawal under
9 this section, the commissioner shall consider, and may require as a
10 condition of approval, whether some or all other certificates of
11 authority issued pursuant to chapter 17 or 32 of Title 17 of the
12 Revised Statutes held by the company or by other companies in the
13 same holding company as the company submitting the plan should be
14 surrendered. The certificate of authority of the company shall be
15 deemed to continue in effect until the provisions of the approved plan
16 have been carried out. The provisions of this section shall apply to any
17 request for withdrawal, surrender or discontinuance filed on or after
18 January 25, 1990] an informational filing submitted to the
19 commissioner, which filing shall be subject to the following provisions:

20 (1) the company shall send a notice to policyholders of the
21 proposed withdrawal no later than thirty days following the submission
22 of the informational filing to the commissioner, which shall state that
23 the insurer intends to withdraw and has filed its intention to withdraw
24 with the commissioner, the terms of the withdrawal, including the date
25 of the proposed commencement of nonrenewal of policies, and the
26 proposed duration of the nonrenewal of the company's book of
27 business;

28 (2) nonrenewals shall not commence prior to one calendar year
29 and ninety days following the submission of the informational filing;

30 (3) the company shall send a notice of nonrenewal to every
31 policyholder (a) no later than one calendar year preceding the date of
32 nonrenewal and (b) a subsequent notice of nonrenewal in accordance
33 with any time limit otherwise established by law for that line of
34 insurance;

35 (4) nonrenewals shall take place in a manner so as to be applicable
36 to all insureds on an equitable basis with respect to risk classification
37 and territorial or other form of rating factor, and shall be effectuated
38 at a uniform rate over a period not exceeding three calendar years,
39 commencing with the date established in paragraph (2) of this
40 subsection; provided, however, that if more than one company files for
41 withdrawal for the same line of business and the companies, in the
42 aggregate, write more than 25% of the market share for that line of
43 business, the commissioner may extend the period of withdrawal
44 provided for herein to five years.

45 The commissioner's authority with respect to withdrawals as
46 provided for herein shall be limited to enforcing compliance with this

1 subsection and enforcing the terms of the withdrawal plan proposed in
2 the informational filing.

3 b. Upon receiving the informational filing provided for in
4 subsection a. of this section, the commissioner shall consider, and may
5 require as a condition of approval, whether some or all of the
6 company's other certificates of authority issued pursuant to Title 17 of
7 the Revised Statutes held by the company or other companies within
8 the same holding company system as the company submitting the plan
9 shall be required to be surrendered.

10 c. Notwithstanding the provisions of subsection a. of this section,
11 if the company finds a replacement carrier for the business that will not
12 be renewed as the result of the withdrawal either prior to or after the
13 date of the informational filing, the insurer may apply to the
14 commissioner for approval to transfer the business to a replacement
15 carrier or carriers. If the commissioner approves the replacement
16 carrier or carriers, notwithstanding the provisions of paragraphs (1),
17 (2), and (3) of subsection a. of this section, the notice of nonrenewal
18 shall be in compliance with the time limits provided by law for that line
19 of insurance, and the company shall offer every insured coverage with
20 the replacement carrier prior to the effective date of the nonrenewal.
21 The commissioner shall not withhold approval of a replacement carrier
22 or carriers if that insurer is authorized to do business in the same line
23 of business in New Jersey and has the financial and business capability
24 to write and service the business being transferred to it by the
25 withdrawing company. The commissioner shall approve or disapprove
26 the replacement carrier or carriers within 60 days of (1) the date of the
27 filing by both the withdrawing insurer requesting approval of a
28 replacement carrier or carrier or (2) the filing by the replacement
29 carrier or carriers requesting to be a replacement carrier, whichever is
30 later.

31 d. Notwithstanding the provisions of subsection a. of this section,
32 the commissioner may waive the requirements of paragraph (2) of that
33 subsection, and the one-year nonrenewal notice of paragraph (3) of
34 that subsection, as well as the three year minimum nonrenewal period
35 provided in paragraph (4) of that subsection if the commissioner
36 deems a waiver to be necessary to protect the solvency of the insurer
37 making the informational filing or if the commissioner deems the
38 withdrawal to have a limited impact on the market.

39 (cf: P.L.1990, c.8, s.72)

40

41 85. The following are repealed:

42 a. Sections 4, 6, 15, 29 and 31 of P.L.1952, c.174 (C.39:6-64,
43 39:6-66, 39:6-75, 39:6-89 and 39:6-91);

44 b. Sections 1 and 2 of P.L.1985, c.148 (C.39:6-64a and 39:6-64b)

45 c. Section 23 of P.L.1990, c.8 (C.17:33B-5)

1 86. This act shall take effect immediately, except that section 38
2 shall take effect on January 1, 2004, section 45 shall take effect on the
3 earlier of the 120th day next following enactment or the adoption of
4 regulations by the Commissioner of Banking and Insurance to
5 implement that section, section 65 shall take effect upon the adoption
6 of regulations by the Commissioner of Banking and Insurance, sections
7 83 and 84 shall take effect on January 1, 2007, and section 79 shall
8 take effect on 365th day next following enactment.

9

10

11

12

13 _____

14 Makes various changes to the automobile insurance laws; consolidates
15 administrative functions relative to automobile insurance; provides for
 insurance fraud reforms.

SENATE, No. 63

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:
Senator RONALD L. RICE
District 28 (Essex)

SYNOPSIS

Requires publication of information concerning automobile insurance rate increases.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT requiring publication of information concerning automobile
2 insurance rate increases and amending P.L.1998, c.21.

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

6
7 1. Section 66 of P.L.1998, c.21 (C.17:29A-46.8) is amended to
8 read as follows:

9 66. a. For the purposes of this section:

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

14 "Rate filing" means a filing for a rate increase by an automobile
15 insurer writing private passenger automobile insurance in this State,
16 other than an expedited prior approval rate filing made pursuant to
17 section 34 of P.L.1997, c.151 (C.17:29A-46.6) and other than a rate
18 filing made pursuant to any statutory change in coverage provided
19 under a policy of private passenger automobile insurance.

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

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

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

39 e. If an insurer or rating organization files for a rate increase for
40 private passenger automobile insurance, the commissioner shall notify
41 the public of the proposed rate change in a newspaper or newspapers
42 of general circulation throughout the State and include the name of the
43 insurer, the average percentage increase of the proposed rate change,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 a list of the municipalities with affected insureds and the number of
2 affected insureds in each municipality. This notification shall also
3 include the name, address and telephone number of a qualified person,
4 if any, and the name, address and telephone number of an appropriate
5 office in the Division of Insurance in the Department of Banking and
6 Insurance for affected insureds to contact. A qualified person may
7 request, and shall receive, a copy of the rate filing and any
8 amendments and supplements thereto and shall pay the expenses in
9 connection therewith. The qualified person may request that the
10 commissioner certify the rate filing for a hearing pursuant to section
11 14 of P.L.1944, c.27 (C.17:29A-14).

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

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

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

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

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

37 (cf: P.L.1998, c.22, s.8)

38

39 2. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill requires the Department of Banking and Insurance to
45 publish in a paper with Statewide distribution the name of an
46 automobile insurer filing for a rate increase, the amount of that

S63 RICE

4

1 increase, a list of the municipalities with insureds affected by that
2 increase and the number of such insureds in each municipality. In
3 addition, the notification must contain the name, address and telephone
4 number of an intervenor, if any, and of an appropriate office in the
5 Division of Insurance in the Department of Banking and Insurance for
6 affected insureds to contact.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 63**

STATE OF NEW JERSEY

DATED: MARCH 17, 2003

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 63.

This bill, a Senate Committee Substitute for Senate, No. 63, provides a comprehensive set of solutions to the automobile insurance availability and affordability challenges facing insurers, consumers and regulators in New Jersey.

First, the bill consolidates several administrative functions relative to automobile insurance claims which are currently handled separately within the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) to eliminate redundancies and inefficiencies. The bill eliminates the Unsatisfied Claim and Judgment Fund Board and transfers all of its functions, powers and duties, along with the Unsatisfied Claim and Judgment Fund, to PLIGA. Additionally, the administration of the claims runoffs of the New Jersey Automobile Full Insurance Underwriting Association ("JUA") and the Market Transition Facility ("MTF") are transferred to PLIGA as well.

The bill eliminates one of the two main purposes of the Unsatisfied Claim and Judgment Fund (UCJF). The UCJF currently pays claims for hit and run or uninsured accidents in certain cases and reimburses insurers when medical expense benefits exceed \$75,000 per person per accident. The reimbursement to insurers for medical claims in excess of \$75,000 is eliminated for policies issued on or after January 1, 2004. According to the bill's findings, this elimination is appropriate because, when the UCJF was first charged with reimbursing insurers in this way, the amount of medical benefits provided was unlimited. Now, however, insurers are required to provide medical expense benefits only up to \$250,000 per person, per accident. At the same time the bill eliminates this reimbursement, it requires the UCJF to accept responsibility for personal injury protection (PIP) benefits for pedestrians who are injured by an automobile and are not named insureds or resident relatives of a policyholder. Also, as part of these consolidations and reforms, UCJF assessments on insurers for 2003 are eliminated. In addition, PLIGA becomes the servicing facility for the administration of claim obligations of the New Jersey Surplus Lines Insurance Guaranty Fund and the New Jersey Medical

Malpractice Reinsurance Association.

Next, the bill amends the "take-all-comers" provisions of the law, which under the provisions of the bill will be eliminated on January 1, 2009, to allow an insurer to qualify for an exemption from those provisions in any territory in which it has increased its business by a "percentage growth standard" established by the bill. The growth standard starts at 5% in the first year and declines 1% a year until it is phased out after 5 years. During the phase-out, insurers that have exceeded the territorial growth limit may utilize alternate underwriting rules for the acceptance of new business. The bill provides for a rolling one year review of the insurer's growth, which may entitle the insurer to use alternate underwriting rules for a period of six months. For example, if an insurer had 1,000 automobiles insured in a territory on December 31, 2002, it would use its alternate underwriting rules beginning January 1, 2004 if it insured in excess of 1,050 automobiles on December 31, 2003. It could continue to use the alternate rule on July 1, 2004 if its insured automobiles exceeded by five percent the number insured on June 30, 2003. Finally, on January 1, 2005, the insurer could continue to use the alternate rules if on December 31, 2004 it exceeded the number of insured automobiles on December 31, 2003 by four percent. Any eligible person denied coverage because the insurer has an exemption may receive coverage through the Personal Automobile Insurance Plan (PAIP or the "assigned risk plan") or may seek coverage from another insurer. The PAIP plan of operation would establish a voluntary rating tier to accommodate these drivers. The Commissioner of Banking and Insurance retains the authority to suspend the exemption if there is a noncompetitive market, which is presumed if PAIP risks reach 10%. Insurers qualifying for this exemption also will receive assigned risk credits from PAIP and will continue to qualify for the 2 for 1 non-renewal allowance. Also, as part of these changes, the bill extends the "sunset provision" for the operation of the automobile insurance urban enterprise zone (UEZ) voluntary rating tier under PAIP for an additional three years, so that the program will now operate for a total of eight years from the time of its inception, rather than the current five.

The bill amends the "tier rating" provisions to allow insurers to assign insureds to a rating tier other than the standard tier upon the accumulation of more than 4 motor vehicle points. The current maximum an insured may have in a standard rating tier is 6. This amendment requires that insurers' rates remain revenue neutral if they reassign risks pursuant to this change.

The bill amends the prior approval rate filing provision to build in a time line for regulatory action on automobile insurance rate requests so as to ensure efficiency. Specifically, upon receiving a filing, the Commissioner of Banking and Insurance is required to issue a Preliminary Determination within 90 days. The commissioner may extend the deadline by 30 days for good cause. The Preliminary

Determination must include the basis for the decision to accept, reject or modify the request. Unless the filer or an interested party requests a hearing, the commissioner may adopt the Preliminary Determination as a Final Decision within 30 days. If a hearing is requested, it will proceed on an expedited basis. If the commissioner fails to take action within the prescribed time frames, the filing will be transmitted to the Office of Administrative Law for a hearing and the commissioner must adopt the finding of the administrative law judge as the final decision.

The bill also makes changes with respect to the expedited rate filing procedures afforded automobile insurers. It raises the ceiling for rate increases pursuant to expedited filings from 3% to 7% for the overall rate and from 5% to 10% for any single coverage. An insurer not using the expedited process in any year may elect to submit an expedited filing increasing rates by not more than twice those amounts in the subsequent year, so long as not more than one filing is made in any 24-month period. Procedurally, the bill provides that the commissioner must render a decision on an expedited filing within 30 days for a filing requesting up to 3% and within 45 days for a filing requesting more than 3% but not more than 7%, with a 15-day extension if necessary. It also changes the test for approval from a subjective to an objective one, by requiring that the resulting rates shall not be excessive, inadequate or unfairly discriminatory between similar risks, as is the case with prior approval rate filings.

This bill contains provisions that simplify the procedures an insurer may use to withdraw from selling a particular type of insurance or to withdraw from the State. Insurers may make an informational filing with the commissioner and establish an orderly plan for nonrenewing outstanding policies to limit disruption in the market. These provisions go into effect on January 1, 2007.

New provisions in the bill seek to better educate consumers by requiring companies to notify new and existing customers of their rights, as determined by the commissioner, providing them with premium calculations and advising them of rate increases, other than expedited filings. Insureds and applicants will receive an "Automobile Insurance Consumer Bill of Rights." The commissioner shall develop and disseminate an "Automobile Insurance Report Card," which shall be available on the official website for the Department of Banking and Insurance (DOBI). DOBI shall also publish information on its website concerning all consumer insurance rate increase requests filed, including all personal lines property/casualty coverages and Medicare supplemental coverages. The commissioner is authorized to impose penalties on an insurer which fails to provide any of the information required by these new provisions.

In the interest of availability, the bill creates a new policy option with very limited benefits that will only be available to low income drivers who qualify for the federal Medicaid program. The policy will be priced by the commissioner and will include medical expense benefits for emergency and catastrophic care only, and a \$10,000

death benefit. Covered persons will be precluded from having liability or physical damage coverage and will be subject to the verbal threshold. Vehicles covered by a special policy will be considered uninsured for purposes of uninsured motorist coverage under other policies. The technical amendments necessary to accommodate the new special policy are included in the bill as well.

Additional underwriting and cancellation changes are also accomplished by the bill. The bill allows cancellation of insureds who have knowingly provided materially false or misleading information in connection with any application, renewal or claim for benefits under a policy and classifies them as ineligible for purposes of writing in the voluntary market. With respect to cancellations, the commissioner is given the discretion to extend, by regulation, the time required for advance notice of a cancellation of an insured's policy by an insurer from the current 60 days to up to 90 days. It also increases the threshold for at fault accidents from \$500 to \$1,000 and allows the commissioner to increase or decrease the threshold to reflect changes in the Consumer Price Index. The bill also raises the minimum deductible from \$500 to \$750 for new policies and allows the commissioner to adjust the deductibles for collision and comprehensive coverage to reflect increases or decreases in the CPI.

New Jersey's excess profits law is amended to extend the "look back" period from three to seven years to take into account fluctuations in the market over a longer period of time.

Insurance fraud reforms are also incorporated in the bill. First, it requires insurance ID cards to be designed in such a way as to deter and detect counterfeit or fraudulent cards.

Secondly, the bill adds a new crime of insurance fraud to the criminal code. A person is guilty of the crime of insurance fraud if that person knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, any record, bill, claim or other document, in writing, electronically, orally or otherwise, in support of or opposition to or in connection with: an insurance claim, reimbursement or other benefit; an application to obtain or renew an insurance policy; any payment made under an insurance policy or through a premium finance transaction; or an affidavit, certification, record or other document used in any insurance or premium finance transaction. Insurance fraud constitutes a crime of the second degree if the person knowingly commits five or more acts of insurance fraud and if the aggregate value of property, services or other benefit wrongfully obtained is at least \$1,000. Otherwise, insurance fraud is a crime of the third degree. In addition to criminal penalties, the bill provides for sanctions on the licenses held by health care providers who commit insurance fraud in order to maintain the public trust and ensure the integrity of those professions. A person convicted of second degree insurance fraud who holds a license or certificate of authority to engage in a profession or occupation shall forfeit that license and be

forever barred from the practice of that profession or occupation. A person convicted of third degree insurance fraud shall have his license suspended and be barred from practice for at least one year. Additional convictions can result in forfeiture and convictions for certain other crimes of the second and third degree may also have such consequences under the bill's amendments to existing laws. Other amendments make accommodation for these provisions under the existing health care claims fraud law.

There is also established within the Office of the Insurance Fraud Prosecutor an Insurance Fraud Detection Reward Program, to be funded from surcharges imposed under a new provision of the "New Jersey Insurance Fraud Prevention Act." A member of the public who has knowledge of or who believes that an act of health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction is being or has been committed may provide the Insurance Fraud Prosecutor with a report or information pertinent to that knowledge or belief and may provide additional information that the Insurance Fraud Prosecutor requests. The Insurance Fraud Prosecutor shall maintain a 24-hour toll-free insurance fraud hotline to receive information from individuals who have such knowledge. The Attorney General, through the Insurance Fraud Prosecutor, is authorized to pay a reward of up to \$25,000 to persons providing information leading to the arrest, prosecution and conviction of persons or entities who have committed insurance fraud.

Finally, this bill revises the laws concerning uninsured motor vehicles by requiring the recipient of a citation for failing to possess or exhibit an insurance identification card pursuant to R.S.39:3-29, or registrant, to produce the insurance identification card or other satisfactory proof of liability insurance coverage to the law enforcement agency issuing the citation within 24 hours. Failure to provide the insurance identification card or other satisfactory proof of insurance within 24 hours shall result in the issuance of a warrant to impound the motor vehicle being operated when the summons was issued. Vehicles impounded pursuant to the bill could not be released until proof of valid motor vehicle insurance is presented to the impounding law enforcement agency, and all costs, penalties and fines are paid. The bill provides a procedure for an impounded vehicle to be sold at public auction should the vehicle not be claimed. The bill also increases the fine for a violation of R.S.39:3-29 from \$100 to \$150 and requires \$25 of each fine to be deposited into the Uninsured Motorist Prevention Fund. Monies in the fund are dedicated for the enforcement of the compulsory motor vehicle insurance law.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 63**

STATE OF NEW JERSEY

DATED: MAY 5, 2003

The Assembly Banking and Insurance Committee reports favorably the Senate Committee Substitute for Senate, No. 63.

This bill, a Senate Committee Substitute for Senate, No. 63, provides a comprehensive set of solutions to the automobile insurance availability and affordability challenges facing insurers, consumers and regulators in New Jersey.

First, the bill consolidates several administrative functions relative to automobile insurance claims which are currently handled separately within the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) to eliminate redundancies and inefficiencies. The bill eliminates the Unsatisfied Claim and Judgment Fund Board and transfers all of its functions, powers and duties, along with the Unsatisfied Claim and Judgment Fund, to PLIGA. Additionally, the administration of the claims runoffs of the New Jersey Automobile Full Insurance Underwriting Association ("JUA") and the Market Transition Facility ("MTF") are transferred to PLIGA as well.

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The committee also reported an Assembly Committee Substitute for Assembly, No. 2625, which is identical to this bill.

ASSEMBLY, No. 2625

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 28, 2002

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Co-Sponsored by:

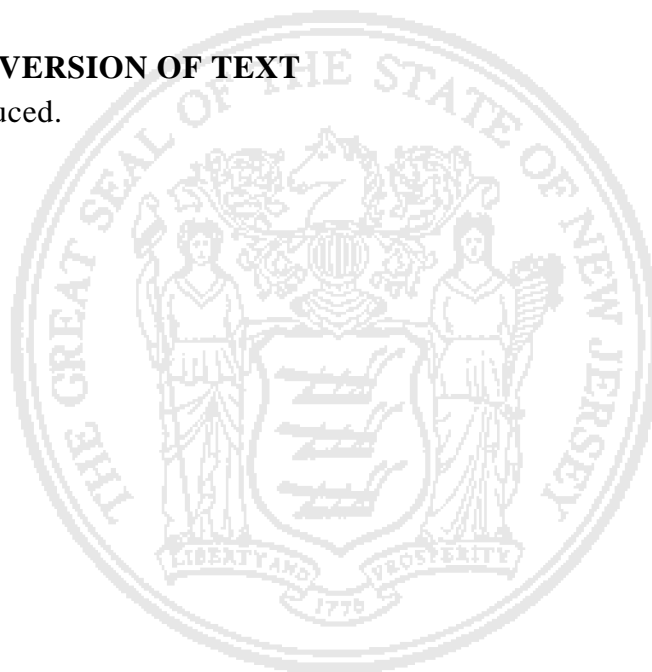
**Assemblywoman Cruz-Perez, Assemblymen Guear, Ahearn, Cryan,
Edwards, Biondi, R.Smith, Connors, Merkt, Wolfe, DeCroce, Pennacchio,
Barnes, Diegnan and S.Kean**

SYNOPSIS

"New Jersey Automobile Insurance Competition and Choice Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/6/2003)

1 AN ACT concerning the regulation of the business of automobile
2 insurance and revising various parts of the 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) This act shall be known and may be cited as the
8 "New Jersey Automobile Insurance Competition and Choice Act."

9

10 2. (New section) The Legislature finds and declares:

11 a. The existence of a vibrant, competitive private passenger
12 automobile insurance market in New Jersey is clearly in the best
13 interests of the State;

14 b. Numerous insurance companies have left New Jersey in recent
15 years and many other major insurers refuse to do business in our State,
16 thus denying consumers the substantial benefits of a competitive
17 automobile insurance market;

18 c. The private passenger automobile insurance regulatory system
19 in New Jersey has long been characterized by numerous challenges and
20 repeated efforts to address the difficulties associated with this line of
21 insurance;

22 d. The Legislature has, from time to time, enacted various
23 regulatory controls on the business of automobile insurance that, at the
24 time of their enactment, were designed to address specific problems
25 existing at the time of the enactments;

26 e. Many of these legislative controls have outlived their utility and
27 the cumulative effect of their continuation is a regulatory system that
28 stifles competition and has resulted in fewer and fewer automobile
29 insurers doing business in the State;

30 f. The reduction in the number of automobile insurers doing
31 business in the State has resulted in fewer choices for consumers and
32 reduced competition, and any further reduction in insurers will
33 jeopardize the availability of automobile insurance for the public and
34 will undermine the continued economic development of the State;

35 g. The further diminution in the number of automobile insurers will
36 have an adverse effect on the availability of other lines of insurance;

37 h. The best interests of consumers will be served by encouraging
38 existing insurers to remain in New Jersey and new insurers to do
39 business in the State;

40 i. The Legislature has determined that a modernized regulatory
41 system that promotes robust competition among insurers will better
42 serve the needs and interests of consumers;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 j. This Legislature finds and declares that a competitive
2 marketplace is the most effective and efficient regulator of insurance
3 for consumers and that an informed and willing buyer purchasing a
4 product from a capable and willing seller is the optimal economic
5 model for the insurance marketplace;

6 k. An effective, competitive marketplace must enhance the role that
7 well-informed consumers play in the competitive marketplace and
8 should therefore provide timely and accurate information as to price,
9 solvency and market conduct, so that consumers can enjoy the full
10 benefits of the marketplace; and

11 l. The promotion of a competitive marketplace should not diminish
12 the ability of the State to protect policyholders and the public
13 generally from unfair insurance practices and it is therefore essential
14 that the State retain the necessary regulatory authority to protect
15 consumers and insure that the competitive market fairly and adequately
16 serves consumers.

17

18 3. (New section) a. There is established in the Department of
19 Banking and Insurance the Commission for the Advancement of
20 Insurance Competition. The commission shall consist of 13 members
21 as follows:

22 (1) Four public members, one member to be appointed by the
23 President of the Senate, one member to be appointed by the Minority
24 Leader of the Senate, one member to be appointed by the Speaker of
25 the General Assembly, and one member to be appointed by the
26 Minority Leader of the General Assembly;

27 (2) The Commissioner of Banking and Insurance, who shall serve
28 ex-officio;

29 (3) The Chief Executive Officer and Secretary of the New Jersey
30 Commerce and Economic Growth Commission;

31 (4) Seven members appointed by the Governor, as follows: a
32 member of the New Jersey academic community with expertise in
33 economics or business management; a representative of the Insurance
34 Council of New Jersey; a representative of the National Association of
35 Independent Insurers; a representative American Insurance
36 Association; a representative of the Alliance of American Insurers; and
37 two members who shall be licensed insurance producers authorized to
38 transact personal lines insurance, including homeowners, private
39 passenger non-fleet automobile, or property insurance for personal,
40 family or household needs;

41 b. The members of the commission shall serve for two-year terms
42 and until their successors are appointed and qualified. Any vacancy in
43 the membership of the commission shall be filled for the unexpired
44 term in the same manner as provided for the original appointment.

45 c. The commission shall annually elect from among its insurance
46 industry members a chair and vice-chair. The commission shall meet

1 at least two times a year and may hold additional meetings as
2 necessary to discharge its duties.

3 d. Members of the commission shall be compensated and
4 reimbursed for actual expenses reasonably incurred in the performance
5 of their official duties and provided with office and meeting facilities
6 and personnel required for the proper conduct of the commission's
7 business.

8 e. Among its duties and responsibilities, the commission shall:

9 (1) Assist the Commissioner of Banking and Insurance in the study
10 and review of the availability of personal lines insurance in this State;

11 (2) Identify and analyze barriers to personal lines insurance
12 companies doing business in the State and formulate incentives to
13 encourage insurers to do business in the State;

14 (3) Monitor the competitiveness of the personal lines insurance
15 marketplace and engage in review and development activities as
16 necessary to enhance competition among insurers and otherwise
17 effectuate the purposes of this act;

18 (4) Make recommendations to the commissioner, as it deems
19 necessary and appropriate, to develop and encourage a stable
20 insurance marketplace, facilitate competition, and empower
21 consumers; and

22 (5) Annually file a report and recommendations by September 1st
23 of each year with the commissioner on the state of the personal lines
24 insurance marketplace.

25 f. The commission shall organize upon appointment of its members
26 and shall expire on December 31, 2006.

27

28 4. (New section) a. The Commissioner of Banking and Insurance
29 shall implement a consumer information system regarding personal
30 lines insurance, which includes homeowners, private passenger non-
31 fleet automobile, and property insurance for personal, family or
32 household needs, that:

33 (1) Recognizes and enhances the role well-informed consumers
34 play in the competitive marketplace;

35 (2) Collects and disseminates relevant information to consumers in
36 order to enhance their ability to make informed choices in their
37 purchase of insurance products;

38 (3) Promotes competition among insurers; and

39 (4) Protects policyholders and the public from unfair market
40 practices of insurers.

41 b. The commissioner shall develop, or cause to be developed, and
42 utilize, a consumer information system to provide and disseminate
43 price information, solvency information, consumer complaint ratios
44 and other relevant information on a readily available basis to
45 purchasers of personal lines insurance and which shall include the
46 following:

1 (1) A compilation of representative rating examples, for each rating
2 territory where applicable, for all insurers writing personal lines
3 insurance;

4 (2) A compilation and explanation of commonly used insurance
5 rating factors;

6 (3) Advisory materials on how consumers can improve their
7 insurance rating factors, make informed insurance purchases, and make
8 cost-saving choices;

9 (4) A single, uniform measure for consumer complaints and a
10 complaint ratio for each company per state;

11 (5) Standardized solvency information;

12 (6) A point of contact for each insurer for the purpose of obtaining
13 quotations for insurance; and

14 (7) Other relevant information.

15 c. The consumer information system may be developed by the
16 department, in cooperation with other state insurance departments,
17 through outside contractors or in any other appropriate manner. To
18 the extent deemed necessary and appropriate by the commissioner,
19 insurers, advisory organizations, statistical agents and other persons
20 or organizations involved in conducting the business of personal lines
21 insurance in this State shall cooperate in the development and
22 utilization of a consumer information system and to increase the
23 amount of competition in the State. To the extent practical, the
24 commissioner shall utilize existing standardized measurements of the
25 relevant information provided to consumers, and may eliminate any
26 aspect of the system that becomes redundant or unnecessary as the
27 result of general availability through alternate sources.

28 d. Each insurer providing personal lines insurance for the consumer
29 information system shall provide the rating examples to the
30 commissioner in a format to be established by regulation that will
31 facilitate the comparison of the information by consumers, provided
32 that the commissioner shall not require insurers to provide more than
33 five rating examples per territory.

34

35 5. (New section) For the purposes of sections 6 through 14 of
36 P.L. , c. (C.) (now before the Legislature as this bill):

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

39 "Automobile insurance" means insurance for an automobile,
40 including coverage for bodily injury liability and property damage
41 liability, comprehensive and collision coverages, uninsured and
42 underinsured motorist coverage, personal injury protection coverage,
43 additional personal injury protection coverage and any other
44 automobile insurance required by law.

45 "Classification system" or "classification" means the process of
46 grouping risks with similar risk characteristics so that differences in

1 costs may be recognized.

2 "Commissioner" means the Commissioner of Banking and
3 Insurance.

4 "Competitive market" means any market except those that have
5 been found to be non-competitive pursuant to section 7 of P.L. , c.
6 (C.) (now before the Legislature as this bill).

7 "Department" means the Department of Banking and Insurance.

8 "Excessive" means a rate in a non-competitive market that is likely
9 to produce a long-term profit that is unreasonably high for the
10 insurance provided.

11 "Expenses" means that portion of a rate attributable to acquisition,
12 field supervision, collection expenses, general expenses, taxes, licenses
13 and fees.

14 "Inadequate" means a rate which is unreasonably low for the
15 automobile insurance provided and: (1) the continued use of which
16 endangers the solvency of the insurers using it; or (2) will have the
17 effect of substantially lessening competition or creating a monopoly in
18 any market.

19 "Loss adjustment expense" means the expenses incurred by the
20 insurer in the course of settling claims.

21 "Market" is the Statewide interaction between buyers and sellers in
22 the procurement of a line of insurance coverage pursuant to the
23 provisions of P.L. , c. (C.) (now before the Legislature as
24 this bill).

25 "Non-competitive market" means a market that is subject to a ruling
26 pursuant to section 7 of P.L. , c. (C.) (now before the
27 Legislature as this bill), that a reasonable degree of competition does
28 not exist. For the purposes of this act, residual market mechanisms
29 are non-competitive markets.

30 "Prospective loss cost" means that portion of a rate that does not
31 include provisions for expenses, other than loss adjustment expenses
32 or profit, and is based on historical aggregate losses and loss
33 adjustment expenses adjusted through development to their ultimate
34 value and projected through trending to a future point in time.

35 "Rate" means that cost of insurance per exposure unit whether
36 expressed as a single number or as a prospective loss cost with an
37 adjustment to account for the treatment of expenses, profit and
38 individual insurer variation in loss experience, prior to any application
39 of individual risk variations based on loss or expense considerations,
40 and does not include minimum premiums.

41 "Residual market mechanism" means an arrangement, either
42 voluntary or mandated by law, involving participation by insurers in
43 the equitable apportionment of risks among insurers for insurance
44 which may be afforded applicants who are unable to obtain insurance
45 through ordinary methods.

1 "Supplementary rate information" means any manual or plan of
2 rates, classification, rating schedule, minimum premium, policy fee,
3 rating rule and any other similar information needed to determine an
4 applicable rate in effect or to be in effect.

5 "Supporting information" means: (1) the experience and judgment
6 of the filer and the experience or data of other insurers or
7 organizations relied upon by the filer; (2) the interpretation of any
8 statistical data relied upon by the filer; (3) a description of methods
9 used in making the rates; and (4) other similar information relied upon
10 by the filer.

11 "Trending" means any procedure for projecting losses to the
12 average date of loss, or premiums or exposures to the average date of
13 writing, for the period during which the policies are to be effective.

14 "Unfairly discriminatory" means a rate that cannot be actuarially
15 justified. The term does not refer to rates that produce differences in
16 premiums for policyholders with like loss exposures, but different
17 expenses, or like expenses but different loss exposures, so long as the
18 rate reflects such differences with reasonable accuracy.

19
20 6. (New section) The provisions of sections 5 through 14 of
21 P.L. , c. (C.) (now before the Legislature as this bill) shall
22 apply to all types of automobile insurance written on risks in this State
23 by any insurer licensed or authorized to do business in this State.

24
25 7. (New section) a. A competitive market for automobile
26 insurance is presumed to exist unless the commissioner, after notice
27 and hearing, determines by clear and convincing evidence, that a
28 reasonable degree of competition does not exist within that market
29 based on two or more of the factors set forth in subsection b. of this
30 section and issues a ruling to that effect.

31 A ruling issued pursuant to this section shall expire one year after
32 issue unless rescinded earlier by the commissioner or unless the
33 commissioner renews the ruling after a hearing and a finding as to
34 continued lack of a reasonable degree of competition. Any ruling that
35 renews the finding that competition does not exist within the market
36 for automobile insurance shall include findings regarding: (1) the
37 action the State and the commissioner have taken to return the market
38 to a competitive market; and (2) an explanation regarding why those
39 actions have failed to return the market to a competitive market.

40 b. The following factors shall be considered by the commissioner
41 for purposes of determining if a reasonable degree of competition does
42 not exist in a particular line of automobile insurance:

43 (1) The number of insurers or groups of affiliated insurers actively
44 engaged in providing coverage in the market, taking into account the
45 specialization traditionally associated with the line of insurance;

1 (2) Measures of market concentration and changes of market
2 concentration over time, including, but not limited to, the Herfindahl-
3 Hirschman Index (HHI) and the United States Department of Justice
4 merger guidelines for an unconcentrated market;

5 (3) Ease of entry and exit and the existence of financial or
6 economic barriers that could prevent new insurers from entering the
7 market;

8 (4) The extent to which any insurer or group of affiliated insurers
9 controls all or a dominant portion of the market and has actively
10 sought to prevent competition;

11 (5) Whether the total number of insurers writing the line of
12 insurance in this State is sufficient to provide multiple options;

13 (6) The availability of insurance coverage to consumers in the
14 market; and

15 (7) The opportunities available to consumers in the market to
16 acquire pricing and other consumer information.

17 c. The commissioner shall monitor, and take all reasonable actions
18 to maintain, the degree and continued existence of competition in this
19 State on an on-going basis. In doing so, the commissioner may utilize
20 existing relevant information, analytical systems and other sources, or
21 rely on any combination thereof. Monitoring activities may be
22 conducted internally within the department, in cooperation with other
23 state insurance departments, through outside contractors and in any
24 other manner determined appropriate by the commissioner.

25

26 8. (New section) a. Rates for automobile insurance shall not be
27 excessive, inadequate or unfairly discriminatory as determined in
28 accordance with the provisions of sections 5 through 14 of P.L. ,
29 c. (C.) (now before the Legislature as this bill).

30 (1) No rate in a competitive market shall be considered excessive.

31 (2) No rate in a competitive market shall be considered unfairly
32 discriminatory unless it classifies risk on the basis of race, color, creed
33 or national origin. Risks may be classified in any way except that no
34 risk shall be classified on the basis of race, color, creed or national
35 origin. A rate is not unfairly discriminatory if it averages broadly
36 among persons insured under a group, franchise or blanket policy, or
37 a mass marketing plan.

38 b. In determining whether rates in a non-competitive market are
39 excessive, inadequate or unfairly discriminatory, the commissioner may
40 consider the following:

41 (1) Basic rate factors. Due consideration shall be given to past and
42 prospective loss costs and expense experience within and outside of
43 this State, to catastrophe hazards and contingencies, to events or
44 trends within and outside of this State, to dividends or savings to
45 policyholders, members or subscribers, and to all other factors and
46 judgments deemed relevant by the insurer.

1 (2) Classification. Risks may be grouped by classifications for the
2 establishment of rates and minimum premiums. Classification rates
3 may be modified for individual risks in accordance with rating plans or
4 schedules which establish standards for measuring probable variations
5 in hazards or expenses, or both.

6 (3) Expenses. The expense provision shall reflect the operating
7 methods of the insurer and its own past expense experience and
8 anticipated future expenses.

9 (4) Contingencies and profits. The rates may contain a provision
10 for contingencies and a provision for a reasonable underwriting profit,
11 and may reflect investment income directly attributable to unearned
12 premium and loss reserves.

13 (5) Other relevant factors. Any other factors available at the time
14 of hearing may be considered.

15
16 9. (New section) a. If the commissioner determines that competition
17 does not exist in the automobile insurance market and issues a ruling
18 to that effect pursuant to section 7 of P.L. , c. (C.) (now
19 before the Legislature as this bill), the rates applicable to insurance
20 sold in that market shall be regulated in accordance with the provisions
21 of this section and sections 8, 10 and 11 of P.L. , c. (C.) (now
22 before the Legislature as this bill) applicable to non-competitive
23 markets.

24 b. Any rate filing in effect at the time the commissioner determines
25 that competition does not exist pursuant to section 7 of P.L. , c.
26 (C.) (now before the Legislature as this bill) shall be deemed to be
27 in compliance with the laws of this State unless disapproved pursuant
28 to the procedures and rating standards contained in this section and
29 sections 8, 10 and 11 of P.L. , c. (C.) (now before the
30 Legislature as this bill) applicable to non-competitive markets.

31 c. Any insurer having a rate filing in effect at the time the
32 commissioner determines that competition does not exist pursuant to
33 section 7 of P.L. , c. (C.) (now before the Legislature as this
34 bill) may be required to furnish supporting information within 30 days
35 of a written request by the commissioner.

36 d. Any rate filing that results in an overall increase for the filer of
37 more than 10% in any twelve-month period shall be treated in
38 accordance with the provisions of sections 8, 10 and 11 of P.L. ,
39 c. (C.) (now before the Legislature as this bill) applicable to
40 non-competitive markets as if the filing was a filing in a non-
41 competitive market.

42
43 10. (New section) a. (1) For an automobile insurance rate filing
44 in a competitive market, every insurer shall file with the commissioner
45 all rates and supplementary rate information to be used in this State no
46 later than 30 days after the effective date of the rate.

1 (2) For an automobile insurance rate filing in a non-competitive
2 market, every insurer shall either file under the provisions of section
3 34 of P.L. 1997, c.51 (C.17:29A-46.6) and have the filing governed
4 entirely by those provisions or file under the provisions of sections 5
5 through 14 of P.L. , c. (C.) (now before the Legislature as
6 this bill) with the commissioner all rates, supplementary rate
7 information and supporting information at least 30 days before the
8 proposed effective date of the rate and have the filing governed by
9 these provisions. The commissioner may give written notice, within
10 30 days of receipt of the filing, that the commissioner needs additional
11 time, not to exceed 30 days from the date of the notice, to consider the
12 filing. Upon written application of the insurer, the commissioner may
13 authorize rates to be effective before the expiration of the waiting
14 period or an extension thereof. A filing shall be deemed to meet the
15 requirements of sections 5 through 14 of P.L. , c. (C.)
16 (now before the Legislature as this bill) and shall become effective,
17 unless disapproved pursuant to section 11 of P.L. , c. (C.)
18 (now before the Legislature as this bill) by the commissioner, before
19 the expiration of the waiting period or an extension thereof.

20 (3) The filing shall be deemed in compliance with the filing
21 provisions of this section unless the commissioner informs the insurer
22 within 10 days after receipt of the filing as to what supplementary rate
23 information or supporting information is required to complete the
24 filing.

25 (4) Residual market mechanisms may file residual market rates.

26 b. An insurer may file its rates pursuant to this section by either
27 filing its final rates or by filing a multiplier that will be applied to all of
28 its existing rates.

29 c. Except for information that is trade secret, confidential, or
30 proprietary, all rates, supplementary rate information and any
31 supporting information filed pursuant to sections 5 through 14 of
32 P.L. , c. (C.) (now before the Legislature as this bill) shall
33 be open to public inspection on:

34 (1) The later on the date filed or the filing's effective date, if
35 subject to paragraph (1) of subsection a. of this section; or

36 (2) Upon filing, if subject to paragraph (2) of subsection a. of this
37 section.

38 Copies may be obtained from the commissioner upon request and
39 upon payment of a reasonable fee.

40 d. Notwithstanding any other provisions of this section to the
41 contrary, upon written application of the insurer, stating the reason
42 therefore, a rate in excess of or below that otherwise applicable may
43 be used on any specific risk.

44

45 11. (New section) a. The commissioner shall disapprove a rate
46 filed pursuant to section 10 of P.L. , c. (C.) (now before the

1 Legislature as this bill) in a competitive market only if the
2 commissioner finds pursuant to subsection b. of this section that the
3 rate is inadequate or unfairly discriminatory pursuant to subsection a.
4 of section 8 of P.L. , c. (C.) (now before the Legislature
5 as this bill).

6 The commissioner may disapprove a rate filed pursuant to section
7 10 of P.L. , c. (C.) (now before the Legislature as this bill)
8 for use in a non-competitive market only if the commissioner finds that
9 the rate is excessive, inadequate or unfairly discriminatory.

10 b. Prior to the expiration of the waiting period, or an extension
11 thereof, of a filing made pursuant to section 10 of P.L. , c.
12 (C.) (now before the Legislature as this bill), the commissioner
13 may disapprove, by written order, rates filed pursuant to that section,
14 without a hearing. The order shall specify in what respect the filing
15 fails to meet the requirements of sections 5 through 14 of P.L. , c.
16 (C.) (now before the Legislature as this bill). Any insurer whose
17 rates are disapproved pursuant to this section shall be given a hearing
18 upon written request made within 30 days of disapproval.

19 If, at any time, the commissioner finds that a rate applicable to
20 automobile insurance sold in a non-competitive market is excessive,
21 inadequate or unfairly discriminatory, the commissioner may, after a
22 hearing held upon not less than 20 days after written notice, issue an
23 order disapproving the rate. The disapproval order shall not affect any
24 contract or policy made or issued prior to the effective date set forth
25 in the order. A policyholder may cancel a policy containing a
26 disapproved rate without penalty.

27 If, at any time, the commissioner finds that a rate applicable to
28 automobile insurance sold in a competitive market is inadequate or
29 unfairly discriminatory, the commissioner may issue an order
30 disapproving the rate. The disapproval order shall not affect any
31 contract or policy made or issued prior to the effective date set forth
32 in the order.

33 c. If the commissioner disapproves a rate pursuant to subsection b.
34 of this section, the commissioner shall issue an order within 30 days of
35 the close of any hearing specifying in what respect the rate fails to
36 meet the requirements of sections 5 through 14 of P.L. , c.
37 (C.) (now before the Legislature as this bill). The order shall
38 state an effective date no sooner than 60 days after the date of the
39 order when the use of that rate shall be discontinued and that the
40 insurer shall have the option to use its rates that were in force at the
41 time the now disapproved rate filing was made or the rates that the
42 commissioner specifies in the order that would meet the requirements
43 of sections 5 through 14 of P.L. , c. (C.) (now before the
44 Legislature as this bill). This order shall not affect any contract or
45 policy made or issued prior to the effective date set forth in the order.
46 A policyholder may cancel a policy containing a disapproved rate

1 without penalty.

2 d. If an order of disapproval is appealed pursuant to section 13 of
3 P.L. , c. (C.) (now before the Legislature as this bill), the
4 insurer may implement the disapproved rate upon notification to the
5 court, in which case any excess of the disapproved rate over, at the
6 insurer's option, either its rates that were in force at the time the now
7 disapproved rate filing was made or the rates that the commissioner
8 specifies in the order that would meet the requirements of the act shall
9 be placed in a reserve escrow account established by the insurer. The
10 court shall have control over the disbursement of funds from the
11 reserve escrow account. Funds shall be distributed as determined by
12 the court in its final order, except that de minimus refunds to
13 policyholders shall not be required.

14

15 12. (New section) a. The commissioner may impose, after notice
16 and hearing, a penalty for violations of sections 5 through 14 of the
17 provisions of P.L. , c. (C.) (now before the Legislature as
18 this bill) determined in accordance with section 23 of P.L.1944, c.27
19 (C.17:29A-23).

20 b. Technical violations arising from systems or computer errors of
21 the same type shall be treated as a single violation. In the event of an
22 overcharge, if the insurer makes restitution including payment of
23 interest, no penalty shall be imposed.

24 c. The commissioner may suspend or revoke the license of any
25 insurer which fails to comply with an order of the commissioner within
26 the time prescribed by the order, or any extension thereof which the
27 commissioner may grant.

28 d. The commissioner may determine when a suspension of license
29 shall become effective and the period of that suspension, which the
30 commissioner may modify or rescind in any reasonable manner.

31 e. No penalty shall be imposed and no license shall be suspended
32 or revoked except upon a written order of the commissioner, stating
33 his findings, made after notice and hearing.

34

35 13. (New section) Any order, ruling, finding, decision or other act
36 of the commissioner made pursuant to the provisions of sections 5
37 through 14 of P.L. , c. (C.) (now before the Legislature as
38 this bill) shall be subject to judicial review in accordance with the
39 Rules Governing the Courts of New Jersey. No action shall be
40 brought against an insurer alleging that a rate subject to sections 5
41 through 14 of P.L. , c. (C.) (now before the Legislature as
42 this bill) that the insurer is charging is contrary to law unless that
43 person files a complaint with the commissioner requesting a hearing
44 under section 11 of P.L. , c. (C.) (now before the Legislature
45 as this bill) and appeals any adverse order arising from that hearing to
46 the courts in accordance with the Rules Governing the Courts of New

1 Jersey.

2 14. (New section) a. All notices rendered pursuant to the
3 provisions of sections 5 through 14 of P.L. , c. (C.) (now
4 before the Legislature as this bill) shall be in writing and shall state
5 clearly the nature and purpose of the hearing. All relevant facts,
6 statutes and rules shall be specified so that the parties are fully
7 informed of the scope of the hearing, including specific allegations, if
8 any. If a hearing is required, all notices shall designate a hearing date
9 at least 14 days from the date of the notice, unless this minimum notice
10 period is waived.

11 b. All hearings pursuant to the provisions sections of 5 through 14
12 of P.L. , c. (C.) (now before the Legislature as this bill) shall
13 be conducted in accordance with the provisions of the "Administrative
14 Procedure Act" P.L.1968, c.410 (C.52:14B-1 et seq.), to the extent
15 those provisions are consistent with the procedural requirements
16 contained in sections of 5 through 14 of P.L. , c. (C.) (now
17 before the Legislature as this bill), except as expressly modified herein.

18

19 15. Section 34 of P.L.1997, c.151 (C.17:29A-46.6) is amended to
20 read as follows:

21 34. a. [Notwithstanding] On or after the effective date of
22 P.L. , c. (C.) (now before the Legislature as this bill) and until
23 January 1, 2006, notwithstanding section 14 of P.L.1944, c.27
24 (C.17:29A- 14), an insurer or rating organization may elect to file a
25 proposed alteration to its rating system pursuant to the [expedited] a
26 file and use process set forth in this section when the filer requests
27 either an increase of no more than [3%] 10% prior to January 1, 2006
28 or any decrease in its Statewide average base rate prior to January 1,
29 2006, for private passenger automobile insurance.

30 b. A filer electing to use this [expedited] file and use process shall
31 file with the commissioner that reasonable information necessary to
32 support the rate change which the commissioner prescribes by
33 regulation and a proposed effective date for the rates which shall be at
34 least 60 days after the date of the filing. The prescribed filing
35 requirements shall recognize the intent of this section to provide [an
36 expedited] a file and use process and shall not require any information
37 not required by a filing pursuant to section 14 of P.L.1944, c.27
38 (C.17:29A-14).

39 c. [If the commissioner] Notwithstanding the provisions of the
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.), or any other provision of law to the contrary, the commissioner
42 may disapprove the filing on a prospective basis only, if an
43 administrative law judge has determined, after opportunity for a
44 contested case hearing, that the filing will [not] produce rates that are
45 excessive, inadequate for the safety and soundness of the insurer, or
46 unfairly discriminatory between risks in this State involving

1 substantially the same hazards and expense elements [approve the
2 filing].

3 d. [A decision on the filing shall be rendered not later than 45 days
4 after receipt of the filing, unless the commissioner grants an extension,
5 in which case a decision shall be rendered not later than 60 days after
6 receipt of the filing. A filing shall be complete and received when the
7 filing is accompanied by a certification by a qualified actuary which
8 states that the material, data and documentation, which is part of the
9 filing, includes the documents set forth in regulations, supports the
10 requested rate change and is consistent with generally accepted
11 ratemaking principles of the actuarial profession. A filing shall be
12 deemed to be approved unless rejected or modified by the
13 commissioner within the time provided.] A filer may use the rates
14 proposed in the rate filing on the proposed effective date of the filing.
15 The filer may continue to use those rates until and unless the rates are
16 disapproved by the commissioner pursuant to subsection c. of this
17 section. Any such disapproval shall be prospective only. The order of
18 disapproval shall contain an effective date of not less than 60 days
19 after the effective date of the disapproval order.

20 e. The [commissioner shall not approve] filer shall not file any rate
21 change pursuant to this [expedited] file and use process that results
22 in an overall increase of more than [3% or an increase in any single
23 coverage of more than 5%] 10% prior to January 1, 2006. In
24 addition, a file and use rate change shall include the changes in rates
25 resulting from the changes in the territorial rate cap established
26 pursuant to section 7 of P.L.1983, c.65 (C.17:29A-36) as provided in
27 section 17 of this amendatory and supplementary act. The change in
28 rates resulting from the changes in the territorial rate cap alone shall
29 be revenue neutral for the filer.

30 f. [An] Prior to January 1, 2006, an insurer shall not [file more
31 than one request for an increase in rates] implement any rate increases
32 pursuant to this section which combine to produce increases of more
33 than 10% overall in any [twelve-month period] one calendar year.

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

35

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

38 14. a. With regard to all property and casualty lines, a filer may,
39 from time to time, alter, supplement, or amend its rates, rating
40 systems, or any part thereof, by filing with the commissioner copies of
41 such alterations, supplements, or amendments, together with a
42 statement of the reason or reasons for such alteration, supplement, or
43 amendment, in a manner and with such information as may be required
44 by the commissioner. If such alteration, supplement, or amendment
45 shall have the effect of increasing or decreasing rates, the

1 commissioner shall determine whether the rates as altered thereby are
2 reasonable, adequate, and not unfairly discriminatory. If the
3 commissioner shall determine that the rates as so altered are not
4 unreasonably high, or inadequate, or unfairly discriminatory, he shall
5 make an order approving them. If he shall find that the rates as altered
6 are unreasonable, inadequate, or unfairly discriminatory, he shall issue
7 an order disapproving such alteration, supplement or amendment.
8 With respect to a filing for private passenger automobile insurance
9 rates, the commissioner shall issue an order of approval or disapproval
10 within 60 days of the date that the filing was made, otherwise the filing
11 shall be deemed approved and the insurer may implement the rates for
12 policyholders as set forth in the filing.

13 b. (Deleted by amendment, P.L.1984, c.1.)

14 c. If an insurer or rating organization files a proposed alteration,
15 supplement or amendment to its rating system, or any part thereof,
16 which would result in a change in rates, the commissioner [may, or]
17 upon the request of the filer [or the appropriate division or office in
18 the Department of Insurance] shall, certify the matter for a hearing.
19 The hearing shall, at the commissioner's discretion, be conducted by
20 himself, by a person appointed by the commissioner pursuant to
21 section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of
22 Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.),
23 as a contested case. The following requirements shall apply to the
24 hearing:

25 (1) The hearing shall commence within 30 days of the date of the
26 request or decision that a hearing is to be held. The hearing shall be
27 held on consecutive working days, except that the commissioner may,
28 for good cause, waive the consecutive working day requirement. If the
29 hearing is conducted by an administrative law judge, the administrative
30 law judge shall submit his findings and recommendations to the
31 commissioner within 30 days of the close of the hearing. The
32 commissioner may, for good cause, extend the time within which the
33 administrative law judge shall submit his findings and
34 recommendations by not more than 30 days. A decision shall be
35 rendered by the commissioner not later than 60 days, or, if he has
36 granted a 30 day extension, not later than 90 days, from the close of
37 the hearing. A filing shall be deemed to be approved unless rejected or
38 modified by the commissioner within the time period provided herein.

39 (2) The commissioner, or the Director of the Office of
40 Administrative Law, as appropriate, shall notify all interested parties,
41 including the appropriate division or office in the Department of
42 Banking and Insurance on behalf of insurance consumers, of the date
43 set for commencement of the hearing, on the date of the filing of the
44 request for a hearing, or within 10 days of the decision that a hearing
45 is to be held.

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

3 (4) The commissioner may promulgate rules and regulations (a) to
4 establish standards for the submission of proposed filings,
5 amendments, additions, deletions and alterations to the rating system
6 of filers, which may include forms to be submitted by each filer; and
7 (b) making such other provisions as he deems necessary for effective
8 implementation of this act.

9 d. (Deleted by amendment, P.L.1984, c.1.)

10 e. [In order to meet, as closely as possible, the deadlines in section
11 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of
12 available optional automobile insurance coverages pursuant to section
13 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
14 (C.39:6A-8), and to implement these coverages, the commissioner may
15 require the use of rates, fixed by him in advance of any hearing, for
16 deductible, exclusion, set off and tort limitation options, on an interim
17 basis, subject to a hearing and to a provision for subsequent
18 adjustment of the rates, by means of a debit, credit or refund
19 retroactive to the effective date of the interim rates. The public hearing
20 on initial rates applicable to the coverages available under section 13
21 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
22 (C.39:6A-8) shall not be limited by the provisions of subsection c. of
23 this section governing changes in previously approved rates or rating
24 systems.] (Deleted by amendment, P.L. _____, c. ____.)
25 (cf: P.L.1994, c.58, s.43)

26

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

29 7. a. Any filing made for the purpose of automobile insurance rate
30 making shall indicate the actual rate needs of the filer; provided,
31 however, that (a) each filer's rate classification definitions, as used by
32 that filer, shall be uniform Statewide; (b) the automobile insurance rate
33 charged an insured shall not exceed [two] three and one-half times the
34 filer's territorial base rate for each coverage, exclusive of driving
35 record surcharges and discounts; and (c) the automobile insurance rate
36 of the base class in any territory for each coverage, exclusive of
37 driving record surcharges and discounts for any filer shall not exceed
38 1.35 times the filer's [Statewide average] base rate in that territory for
39 each coverage [exclusive of driving record surcharges and discounts
40 for any basic policy issued or renewed at any time and for any standard
41 policy issued or renewed before January 1, 2000 or the 180th day
42 following approval of the common territorial rating plan pursuant to
43 section 28 of P.L.1998, c.21 (C.17:29A-50), whichever first occurs]
44 that was in effect for the twelve month period immediately preceding
45 the effective date of any rating plan filed on or after January 1, 2003.
46 The provisions of this subsection shall expire on January 1, 2006.

1 b. [No rating plan or rate filing applicable to any policy issued or
2 renewed on or after January 1, 2000 or the 180th day following the
3 approval of the common territorial rating plan provided for in sections
4 27 and 28 of P.L.1998, c.21 (C.17:29A-49 and 17:29A-50), whichever
5 first occurs, shall be approved by the commissioner which creates
6 territorial relativities which are significantly disproportionate to those
7 in effect as of the effective date of P.L.1998, c.21 (C.39:6A-1.1 et
8 al.).] (Deleted by amendment, P.L. c.)

9 c. The automobile insurance rate of an automobile whose principal
10 operator is 65 years of age or older shall not exceed one and one-
11 quarter times the Statewide average rate for principal operators 65
12 years of age or older for each coverage, exclusive of driving record
13 surcharges and discounts; provided, however, that no filer shall
14 increase rates for principal operators 65 years of age or older as a
15 result of the implementation of this section unless more than 50% of
16 its insureds are principal operators 65 years of age or older.

17 d. [As a result of the filings made pursuant to sections 26 and 27
18 of P.L. 1998, c. 21 (C.17:29A-48 and 17:29A- 49) and subsections a.,
19 b. and c. of this section, the filer's aggregate premium for all territories
20 shall not exceed the filer's aggregate premium in effect prior to the
21 date established in subsection b. of this section.] (Deleted by
22 amendment, P.L. , c.)

23 As used in this section, base rate means the automobile insurance
24 rate charged for an automobile that is not used in business and not
25 used in going to and from work, except for the going to and from
26 work distance included in the pleasure use classification of the filer,
27 and where there is no youthful operator, as defined in the filer's
28 classification system. The base rate class shall not include automobiles
29 to which discounts apply under the filer's classification system,
30 including, but not limited to, farmers' and senior citizens' automobiles
31 or any discount from a standard rate provided for in the filer's tier
32 rating system.

33 The provisions of this section shall be implemented after the
34 implementation of the provisions of subsection a. of section 8 of
35 P.L.1983, c.65 (C.17:29A-37).

36 (cf: P.L.1998, c.22, s.6)

37

38 18. Section 26 of P.L.1998, c. 21 (C.17:29A-48) is amended to
39 read as follows:

40 26. a. Every insurer writing private passenger automobile insurance
41 in this State and every rating organization establishing territorial rating
42 plans on behalf of its member companies shall establish new territorial
43 rating plans in place of the insurer's or filer's territorial rating plan in
44 effect on June 1, 1998, which shall include territorial definitions,
45 territorial relativity factors and territorial base rates, and which are in
46 accordance with the provisions of sections 26 through 29 of this

1 amendatory and supplementary act. The Commissioner of Banking and
2 Insurance shall promulgate regulations establishing standards
3 governing the establishment of new rating territories, which standards
4 shall include, but not be limited to:

5 [a.] (1) Territories shall be defined in such a manner as to
6 recognize throughout the territorial rating plan both qualitative
7 similarities and qualitative differences in driving environments or mix
8 of driving environments, which may include, but not be limited to,
9 traffic density, population density, comparative severity of loss, and
10 the degree of homogeneity within a territory in terms of driving
11 environments, population, and driver classification, and the territory
12 shall be comprised of towns or cities which are contiguous;

13 [b.] (2) Territories shall contain a sufficient number of exposures
14 to result in statistically credible experience, in accordance with
15 regulations established by the commissioner, and shall be defined in a
16 manner which minimizes the effect of variability of loss in a territory
17 on a year-to-year basis;

18 [c.] (3) Territory definitions shall take into account the impact of
19 the overlapping of traffic patterns on exposure to loss, including the
20 relative number of intraterritory trips and inter-territory trips
21 applicable to each proposed territory, for which the commissioner shall
22 make available to the insurer, filer, or the commission established
23 pursuant to section 28 of this amendatory and supplementary act,
24 appropriate information collected pursuant to the provisions of section
25 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

26 [d.] (4) Territories shall be created in a manner which results in an
27 equitable distribution of exposures among territories throughout the
28 State and no territorial rating plan shall result in territories which are
29 arbitrary, unfairly discriminatory, significantly disproportionate in
30 terms of the number of exposures per territory, or created in a manner
31 which is primarily for marketing purposes rather than measuring
32 relativity of exposure to probable loss, or created in a manner which
33 can be used to avoid the insurer's or filer's obligations under section 27
34 of P.L.1990, c.8 (C.17:33B- 15);

35 [e.] (5) Territories shall be created in a manner which does not
36 result in disproportionate differences in territorial relativity factors or
37 territorial base rates between contiguous territories with similar
38 driving environments or similar mix of driving environments;

39 [f.] (6) Factors to be considered in establishing territorial rate
40 relativities shall include taking into account similarities or differences
41 in driving environments or mix of driving environments, including
42 traffic density, population density, mix of driver classifications within
43 a territory, including classifications capped pursuant to the provisions
44 of section 7 of P.L.1983, c.65 (C.17:29A-36), comparative degree of
45 severity of loss, and the relative number of intraterritory and inter-
46 territory trips;

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

8 [h.] (8) For the purpose of defining territories and establishing
9 territorial relativity factors, loss experience allocated to any territory
10 by an insurer or filer [(1)] (a) shall take into account any recovery
11 applicable to exposures in the territory which are attributable to
12 subrogation or any other kind of recovery by the insurer reporting the
13 losses and [(2)] (b) shall not include any loss attributable to capping
14 of driver classifications pursuant to section 7 of P.L.1983, c.65
15 (C.17:29A-36).

16 The commissioner shall establish by regulation the minimum number
17 of exposures which shall be deemed to meet the standard of being
18 statistically credible for the purpose of defining territories.

19 b. All insurers shall file a revised territorial rating plan by
20 January 1, 2003 regardless of whether the regulations referred to in
21 subsection a. of this section have been adopted. If those regulations
22 have not been adopted by July 1, 2002 or a territorial rating plan
23 pursuant to section 28 of P.L.1998, c.21 (C.17:29A-50) has not been
24 established by July 1, 2002, the insurer's revised territorial rating plan
25 shall be filed pursuant to section 34 of P.L.1997, c.151 (C.17:29A-
26 46.6) and governed by its provisions. If the regulations referred to in
27 subsection a. of this section have been adopted and a revised territorial
28 rating plan has been established by July 1, 2002, then the insurer's
29 territorial rating plan shall be subject to the provisions of section 27 of
30 P.L.1998, c.21 (C.17:29A-49).

31 (cf: P.L.1998, c.22, s.5)

32

33 19. (New section) a. On or after January 1, 2006, no insurer shall
34 decline a policy of automobile insurance based on race, color, creed,
35 national origin, age, gender, marital status or sexual orientation.

36 b. For the purposes of this section:

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

39 "Automobile insurance" means insurance for an automobile
40 including coverage for bodily injury liability and property damage
41 liability, comprehensive and collision coverages, uninsured and
42 underinsured motorist coverage, personal injury protection coverage,
43 additional personal injury protection coverage and any other
44 automobile insurance required by law.

45 "Decline" means:

1 (1) Refusal by an insurance producer to submit an application on
2 behalf of an applicant to any of the insurers represented by the
3 producer;

4 (2) Refusal by an insurer to issue an automobile insurance policy
5 to a person upon receipt of an application for automobile insurance;

6 (3) The offer of automobile insurance coverage with less favorable
7 terms or conditions than those requested by the person, except that the
8 charging of a higher rate or premium pursuant to a filed rating plan
9 shall not constitute a declination;

10 (4) The refusal by an insurer or producer to provide, upon the
11 request of a person, an application form or other means of making an
12 application or request for automobile insurance coverage; or

13 (5) The cancellation or nonrenewal of an automobile insurance
14 policy.

15 "Insurance producer" means an insurance producer as defined in
16 section 3 of P.L.2001, c.210 (C.17:22A-28).

17 "Insurer" means any insurer authorized or admitted to write
18 automobile insurance in this State, but does not include any residual
19 market mechanism implemented pursuant to section 1 of P.L.1970,
20 c.215 (C.17:29D-1).

21

22 20. Section 25 of P.L.1990, c.8 (C.17:33B-13) is amended to read
23 as follows:

24 25. As used in section 25 through 33 of this 1990 amendatory and
25 supplementary act:

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

28 "Automobile insurance" means insurance for an automobile
29 including coverage for bodily injury liability and property damage
30 liability, comprehensive and collision coverages, uninsured and
31 underinsured motorist coverage, personal injury protection coverage,
32 additional personal injury protection coverage and any other
33 automobile insurance required by law.

34 "Commissioner" means the Commissioner of Banking and
35 Insurance.

36 "Declination" means:

37 a. Refusal by an insurance agent to submit an application on behalf
38 of an applicant to any of the insurers represented by the agent;

39 b. Refusal by an insurer to issue an automobile insurance policy to
40 an eligible person upon receipt of an application for automobile
41 insurance;

42 c. The offer of automobile insurance coverage with less favorable
43 terms or conditions than those requested by an eligible person; or

44 d. The refusal by an insurer or agent to provide, upon the request
45 of an eligible person, an application form or other means of making an
46 application or request for automobile insurance coverage.

1 "Automobile insurance eligibility points" means points calculated
2 under the schedule promulgated by the commissioner pursuant to
3 section 26 of this act.

4 "Eligible person" means a person who is an owner or registrant of
5 an automobile registered in this State or who holds a valid New Jersey
6 driver's license to operate an automobile, but does not include any
7 person:

8 a. Who, during the [~~three-year~~] five-year period immediately
9 preceding application for, or renewal of, an automobile insurance
10 policy has been convicted pursuant to R.S.39:4- 50 or section 2 of
11 P.L.1981, c.512 (C.39:4-50.4a), or for an offense of a substantially
12 similar nature committed in another jurisdiction; has been convicted of
13 a crime of the first, second or third degree resulting from the use of a
14 motor vehicle; or has been convicted of theft of a motor vehicle,
15 except that for policies issued prior to the effective date of P.L. _____,
16 c. (C. _____) (now before the Legislature as this bill), the applicable
17 period shall be three years;

18 b. Whose driver's license to operate an automobile is under
19 suspension or revocation;

20 c. Who has been convicted, within the five-year period immediately
21 preceding application for or renewal of a policy of automobile
22 insurance, of fraud or intent to defraud involving an insurance claim
23 or an application for insurance; or who has been successfully denied,
24 within the immediately preceding five years, payment by an insurer of
25 a claim in excess of \$1,000 under an automobile insurance policy, if
26 there was evidence of fraud or intent to defraud involving the
27 automobile insurance claim or application;

28 d. Whose policy of automobile insurance has been canceled
29 because of nonpayment of premium or financed premium within the
30 immediately preceding two-year period, unless the premium due on a
31 policy for which application has been made is paid in full before
32 issuance or renewal of the policy;

33 e. Who fails to obtain or maintain membership or qualification for
34 membership in a club, group, or organization, if membership is a
35 uniform requirement of the insurer as a condition of providing
36 insurance, and if the dues or charges, if any, or other conditions for
37 membership or qualifications for membership are applied uniformly
38 throughout this State, are not expressed as a percentage of the
39 insurance premium, and do not vary with respect to the rating
40 classification of the member or potential member except for the
41 purpose of offering a membership fee to family units. Membership
42 fees, if applicable, may vary in accordance with the amount or type of
43 coverage if the purchase of additional coverage, either as to type or
44 amount, is not a condition for reduction of dues or fees;

45 f. Whose driving record for the [~~three~~] five year period
46 immediately preceding application for or renewal of a policy of

1 automobile insurance has an accumulation of automobile insurance
2 eligibility points as determined under the schedule promulgated by the
3 commissioner pursuant to section 26 of this act [or], except that for
4 policies issued prior to the effective date of P.L. , c. (C.)
5 (now before the Legislature as this bill), the applicable period shall be
6 three years;

7 g. Who possesses such other risk factors as determined to be
8 relevant by rule or regulation of the commissioner; or

9 h. After December 31, 2005, who has been unable to
10 obtain automobile insurance from at least two insurers at rates not
11 exceeding those applicable to the residual market, and who certifies
12 that fact on a form approved by the commissioner.

13 "Insurance agent" or "agent" means an insurance agent as defined
14 by subsection f. of section 2 of P.L.1987, c.293 (C.17:22A-2) and
15 shall also include an insurance broker as defined by subsection g. of
16 section 2 of P.L.1987, c.293 (C.17:22A-2) who has a brokerage
17 relationship with an insurer or an insurance producer as defined in
18 section 3 of P.L.2001, c.210 (C.17:22A-28).

19 "Insurer" means any insurer authorized or admitted to write
20 automobile insurance in this State, but does not include [the New
21 Jersey Automobile Full Insurance Underwriting Association created
22 pursuant to sections 13 through 34 of P.L. 1983, c. 65 (C.17:30E-1 et
23 seq.) or] any residual market mechanism implemented pursuant to
24 section 1 of P.L.1970, c.215 (C.17:29D-1).
25 (cf: P.L.1990, c.8, s.25)

26
27 21. Section 26 of P.L.1990, c.8 (C.17:33B-14) is amended to read
28 as follows:

29 26. The commissioner shall, within 90 days of the effective date of
30 this act, promulgate a schedule of automobile insurance eligibility
31 points by rule or regulation adopted pursuant to the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule
33 shall assess a point valuation to driving experience related violations
34 and shall include assessments for violations of lawful speed limits
35 within such increments as determined by the commissioner, other
36 moving violations, and at-fault accidents. For the purposes of this
37 section, an "at-fault accident" means an at-fault accident which results
38 in payment by the insurer of at least a \$500 claim; except that an at-
39 fault accident shall not mean an accident occurring as a result of
40 operation of any motor vehicle in response to a medical emergency if
41 the operator at the time of the accident was a physician responding to
42 the medical emergency. In addition to the schedule of automobile
43 insurance eligibility points adopted by the commissioner, insurers may
44 also assess automobile insurance eligibility points for any offense for
45 which the Division of Motor Vehicles assigns points pursuant to
46 section 1 of P.L.1982, c.43 (C.39:5-30.5) with the same number of

1 points assigned by the Division of Motor Vehicles to the extent those
2 offenses are not listed in the schedule of automobile insurance
3 eligibility points. Insurers may also assess three automobile insurance
4 eligibility points for each time that a policy of automobile insurance
5 has been canceled because of nonpayment of premium or financed
6 premium with a lapse of coverage of at least 30 days within the
7 immediately preceding five-year period.

8 (cf: P.L.1997, c.381, s.1)

9

10 22. Section 27 of P.L.1990, c.8 (C.17:33B-15) is amended to read
11 as follows:

12 27. On or after April 1, 1992, every insurer, either by one or more
13 separate rating plans filed in accordance with the provisions of
14 [section 6 of P.L.1988, c.156 (C.17:29A-45) prior to March 1, 1998,
15 or] section 14 of P.L.1997, c.150, (C.17:29A-46.1) on or after
16 March 1, 1998, or through one or more affiliated insurers, shall
17 provide automobile insurance coverage for eligible persons.

18 b. No insurer shall refuse to insure, refuse to renew, or limit
19 coverage available for automobile insurance to an eligible person who
20 meets its underwriting rules as filed with and approved by the
21 commissioner in accordance with the provisions of [section 7 of
22 P.L.1988, c.156 (C.17:29A-46) prior to March 1, 1998 or] section 15
23 of P.L.1997, c.150 (C.17:29A-46.2) on or after March 1, 1998.

24 c. Notwithstanding the provisions of subsections a. and b. of this
25 section to the contrary, any qualified insurer engaged in writing
26 automobile insurance in an automobile insurance urban enterprise zone
27 pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4) may limit the
28 number of exposures written through its UEZ agent or agents, or in
29 the case of a qualified insurer doing business on a direct writing basis,
30 the qualified insurer may limit the number of exposures written in an
31 automobile insurance urban enterprise zone consistent with its
32 marketing plans and goals as provided in subsection a. of section 21
33 of P.L.1997, c.151 (C.17:33C-3). Nothing in this subsection shall be
34 construed to relieve a qualified insurer from its obligation under
35 subsections a. and b. of this section to write all eligible persons
36 residing within an automobile insurance urban enterprise zone through
37 its non-UEZ agent points of access.

38 d. Notwithstanding the provisions of subsections a. and b. of this
39 section to the contrary, an insurer may refuse to insure, refuse to
40 renew, or limit coverage available for automobile insurance in any
41 rating territory to an eligible person who does not meet its
42 underwriting rules if that insurer has increased the total number of
43 automobiles it insures in that rating territory during the previous four
44 calendar quarters by 3% over the total number of automobiles it
45 insured in that territory on the last day of the month ending four
46 calendar quarters earlier. This relief from the requirement that an

1 insurer provides automobile insurance coverage to all eligible persons
2 is effective on the first day of the second calendar month after the end
3 of the calendar quarter in which the 3% standard has been reached. If
4 the total number of automobiles insured by the insurer in that rating
5 territory at the end of a subsequent calendar quarter declines to less
6 than 102.5% of the total number of automobiles insured in that
7 territory on the last day of the month ending four calendar quarters
8 earlier, then the insurer shall be subject to the provisions of
9 subsections a. and b. of this section in that rating territory beginning
10 on the first day of the second calendar month after the end of the
11 calendar quarter in which that percentage decline has been reached
12 until the end of a calendar quarter once the insurer exceeds the 3%
13 standard in that rating territory, in which case the insurer shall be
14 relieved from the eligible persons requirement effective on the first day
15 of the second calendar month after the end of the calendar quarter in
16 which the insurer once again exceeds the 3% standard in that rating
17 territory. An insurer shall report to the commissioner the total number
18 of automobiles it insures as of the last day of the month of each
19 calendar quarter by rating territory and shall, at the time of the report,
20 notify the commissioner whether the insurer is refusing to insure,
21 refusing to renew or limiting coverage for eligible persons pursuant to
22 this subsection d. The percentages set forth in this subsection d. shall
23 increase by two percentage points if the commissioner certifies that the
24 plan established pursuant to P.L.1970, c.215 (C.17:29D-1 et seq.), is
25 insuring 10 percent or more of the aggregate number of private
26 passenger automobile non-fleet exposures being written in the total
27 private passenger automobile insurance market in this State and shall
28 continue at that level until such time as the commissioner certifies that
29 the plan is insuring less than 10 percent of the aggregate number of
30 private passenger automobile non-fleet exposures being written in the
31 total private passenger automobile insurance market in this State.

32 e. The commissioner may suspend, revoke or otherwise terminate
33 the certificate of authority to transact automobile insurance business
34 in this State of any insurer who violates the provisions of this section.
35 (cf: P.L.1997, c.151, s.24)

36

37 23. Section 30 of P.L.1990, c.8 (C.17:33B-18) is amended to read
38 as follows:

39 30. [A] Except for an insurer that the agent represents which may
40 refuse to insure, refuse to renew, or limit coverage available for
41 automobile insurance to an eligible person who meets its underwriting
42 criteria as provided in subsection d. of section 27 of P.L.1990, c.8
43 (C.17:33B-15), a licensed insurance agent shall, as a condition of
44 licensure:

45 (1) Provide each eligible person seeking automobile insurance
46 premium quotations for the forms or types of automobile insurance

1 coverages which are offered by all insurers represented by the agent
2 or with which the agent places risks;

3 (2) Not attempt to channel an eligible person away from an insurer
4 or insurance coverage with the purpose or effect of avoiding an agent's
5 obligation to submit an application or an insurer's obligation to accept
6 an eligible person; and

7 (3) Upon request, submit an application of the eligible person for
8 automobile insurance to the insurer selected by the eligible person.

9 If a UEZ agent has a contract with a qualified insurer pursuant to
10 the provisions of section 22 of P.L.1997, c.151 (C.17:33C-4) and the
11 UEZ agent is unable to place an otherwise eligible person with that
12 qualified insurer because of the limitation on the number of exposures
13 imposed by that qualified insurer on the UEZ agent, the UEZ agent
14 shall be deemed to have met the requirements of this subsection,
15 provided that the limitation on the number of exposures has been
16 reached and the UEZ agent fulfills all applicable regulatory
17 requirements.

18 b. With respect to automobile insurance, an insurer shall not
19 penalize an agent by paying less than normal commissions or normal
20 compensation or salary because of the expected or actual experience
21 produced by the agent's automobile insurance business or because of
22 the geographic location of automobile insurance business written by
23 the agent.

24 (cf: P.L.1997, c.151, s.25)

25

26 24. Section 26 of P.L.1988, c.119 (C.17:29C-7.1) is amended to
27 read as follows:

28 26. a. Notwithstanding the provisions of section 3 of P.L.1972,
29 c.70 (C.39:6A- 3), a licensed insurer may, prior to January 1, 2006 in
30 accordance with the restrictions in subsections b. and c. of this section,
31 and on or after January 1, 2006 without any restrictions, refuse to
32 renew a policy of private passenger automobile insurance that provides
33 coverage required to be maintained pursuant to P.L.1972, c.70
34 (C.39:6A- 1 et seq.), except that no insurer shall refuse to renew a
35 policy pursuant to subsections b. and c. of this section[

36 (1)] in an amount in excess of 20% of the entire private passenger
37 automobile insurance book of business of any one producer in force
38 with the insurer at the end of the previous calendar year. For purposes
39 of this paragraph, "producer" means a person licensed pursuant to
40 P.L.1987, c.293 (C.17:22A- 1 et seq.) or P.L.2001, c.210 (C.17:22A-
41 26 et seq.), who earned \$10,000 or more from the insurer in the prior
42 calendar year[; and

43 (2) unless the insured or operator insured under the policy in the
44 five years immediately preceding renewal has had at least two of the
45 following or any combination thereof: (a) an at-fault accident; or (b)
46 a moving violation which was assessed at least four automobile

1 insurance eligibility points; or (c) had been required, but failed, to
2 maintain coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-
3 4) without lapse].

4 b. For each calendar year period, an insurer may issue notices of
5 intention not to renew an automobile insurance policy in the voluntary
6 market in an amount not to exceed 2% of the total number of
7 voluntary market automobile insurance policies of the insurer, rounded
8 to the nearest whole number, which are in force at the end of the
9 previous calendar year in each of the insurer's rating territories in use
10 in this State.

11 c. For every two newly insured automobiles which an insurer
12 voluntarily writes in each territory during each calendar year period,
13 the insurer shall be permitted to refuse to renew insurance on one
14 additional automobile in that territory in excess of the 2% limitation
15 established by subsection b. of this section, subject to a fair and
16 nondiscriminatory formula developed by rule or regulation of the
17 commissioner. The provisions of this subsection shall only apply to an
18 insurer whose aggregate voluntary market share in an automobile
19 insurance urban enterprise zone is reasonably proportionate to the
20 insurer's voluntary Statewide market share as determined by the
21 commissioner by regulation or in a rating territory in which the insurer
22 demonstrates growth in the aggregate number of in-force exposures.

23 d. The provisions of this section shall not apply to any cancellation
24 made pursuant to subsection (A) of section 2 of P.L.1968, c.158
25 (C.17:29C-7).

26 e. (Deleted by amendment, P.L.1997, c.151.)

27 f. Nothing in this section shall prohibit an insurer from refusing to
28 renew, in addition to nonrenewals permitted in subsections b. and c.
29 of this section, the policy of any insured who has: (1) provided false
30 or misleading information in connection with any application for
31 insurance, renewal of insurance or claim for benefits under an
32 insurance policy; or (2) who has failed to provide, after written request
33 by an insurer, the minimum information necessary to accurately rate
34 the policy under terms and conditions set forth by the commissioner in
35 regulations.

36 (cf: P.L.1997, c.151, s.27)

37

38 25. Section 1 of P.L.1988, c.118 (C.17:29A-5.6) is amended to
39 read as follows:

40 1. As used in this act:

41 a. "Actual investment income" means that portion of income
42 generated by investment of policyholder-supplied funds. Policyholder-
43 supplied funds are the assets that offset the insurer's total New Jersey
44 private passenger automobile insurance unearned premium and loss
45 reserves without regard to whether those funds came from private
46 passenger automobile insurance policyholders or other policyholders

1 or were from policyholder funds from the last five calendar years or
2 earlier years. If the actual investment income earned by the insurer for
3 any given calendar year is negative, then the insurer shall report zero
4 dollars for its actual investment income for that calendar year.

5 b. "Actuarial gain" means the remainder obtained by subtracting the
6 allowance for profit and contingencies from underwriting income,
7 which remainder may be positive or negative.

8 c. "AIRE charges" and "AIRE compensation" mean, respectively,
9 amounts paid to or received from the New Jersey Automobile
10 Insurance Risk Exchange pursuant to section 16 of P.L.1983, c.362
11 (C.39:6A-22).

12 d. "Anticipated investment income" means the amount obtained by
13 multiplying earned premium by the percentage of premium
14 representing investment income and used in the insurer's approved rate
15 filings or filings made pursuant to section 29 of P.L.1988, c.119
16 (C.17:29A-42), during the period of the three calendar-accident years
17 being calculated, to calculate the allowance for profit and
18 contingencies.

19 e. "Calendar-accident year" means the period from January 1 to
20 December 31, during which, in the appropriate context:

21 (1) premium or investment income was earned;

22 (2) expenses were incurred; or

23 (3) accidents occurred which resulted in losses, loss adjustment
24 expenses or AIRE compensation.

25 f. "Car year" means the unit of exposure equivalent to the insuring
26 of one automobile for 12 months, two automobiles for six months
27 each, three automobiles for four months each, and so forth.

28 g. "Commissioner" means the Commissioner of Banking and
29 Insurance.

30 h. "Development adjustment," for a given calendar-accident year,
31 means the difference obtained by subtracting:

32 (1) The sum of

33 (a) Losses and loss adjustment expenses for that calendar-accident
34 year, developed to an ultimate basis and evaluated as of March 31 of
35 the year preceding the year in which the profits report required by
36 section 2 of this act is due; plus

37 (b) AIRE compensation for that calendar-accident year, developed
38 to an ultimate basis and evaluated as of March 31 of the year in which
39 the profits report is due; from

40 (2) The sum of

41 (a) Losses and loss adjustment expenses for that calendar-accident
42 year, developed to an ultimate basis and evaluated as of March 31 of
43 the year in which the profits report is due; plus

44 (b) AIRE compensation for that calendar-accident year, developed
45 to an ultimate basis and evaluated as of March 31 of the year
46 preceding the year in which the profits report is due.

- 1 i. "Excess investment income" means the remainder obtained by
2 subtracting the anticipated investment income from the actual
3 investment income earned by the insurer, which remainder may be
4 positive or negative.
- 5 j. "Insurer" means an entity authorized or admitted to transact
6 private passenger automobile insurance business in New Jersey[, but
7 does not include the New Jersey Automobile Full Insurance
8 Underwriting Association created pursuant to P.L.1983, c.65
9 (C.17:30E-1 et seq.)].
- 10 k. "Private passenger automobile insurance business" means direct
11 insurance on private passenger automobiles as defined in subsection a.
12 of section 2 of P.L.1972, c.70 (C.39:6A-2), excluding personal excess
13 liability insurance and insurance on commercial vehicles.
- 14 l. "Total actuarial gain" means the sum of the actuarial gains for
15 the [~~three~~] five calendar-accident years immediately preceding the due
16 date of the profits report required by section 2 of this act, less the
17 development adjustments for the calendar-accident years beginning
18 with the [~~seventh~~] ninth calendar-accident year immediately preceding
19 the due date of the profits report and ending with the [~~fourth~~] sixth
20 calendar-accident year immediately preceding the due date of the
21 profits report.
- 22 m. "Underwriting income" means the remainder obtained by
23 subtracting the sum of all losses developed to an ultimate basis, all loss
24 adjustment expenses developed to an ultimate basis, and all other
25 expenses exclusive of UCJF assessments, from the sum of premiums
26 earned and AIRE compensation developed to an ultimate basis, which
27 remainder may be positive or negative.
- 28 n. "UCJF assessments" means amounts paid by insurers to the
29 Unsatisfied Claim and Judgment Fund pursuant to section 3 of P.L.
30 1952, c. 174 (C.39:6-63).
- 31 o. "UCJF reimbursements" means amounts received by an insurer
32 from the Unsatisfied Claim and Judgment Fund as a result of excess
33 medical expense benefit payments by the insurer pursuant to section
34 2 of P.L.1977, c.310 (C.39:6-73.1).
35 (cf: P.L.1988, c.118, s.1)
36
- 37 26. Section 2 of P.L.1988, c.118 (C.17:29A-5.7) is amended to
38 read as follows:
- 39 2. a. Each insurer, except those exempt from filing pursuant to
40 section 6 of this act, shall annually file with the commissioner, on or
41 before July 1 of each year, a profits report containing the information
42 and calculations required by this section. The information shall be
43 provided with respect to the insurer's New Jersey private passenger
44 automobile insurance business separately for each of the following
45 coverages and for all these coverages combined:

- 1 (1) Personal injury protection, including all options;
- 2 (2) Bodily injury liability, reported at total limits;
- 3 (3) Other liability, consisting of property damage liability and
- 4 uninsured and underinsured motorist coverages, all reported at total
- 5 limits;
- 6 (4) Physical damage, consisting of comprehensive and collision
- 7 coverages, including all deductibles.

8 A separate profits report shall be filed for each insurer and each
9 insurer in an insurance holding company system. Each insurance
10 holding company system shall file a separate combined profits report
11 for all insurers in its system. The excess profits computation for an
12 insurance holding company system shall be performed on its combined
13 profits report [, except that the commissioner may order an adjustment
14 in the combined profits report if in his judgment, upon examining each
15 insurer's profits report in the insurance holding company system, one
16 or more of the insurers in that system are excessively subsidizing other
17 insurers in that system].

18 b. The profits report shall contain the following information for
19 each of the [seven] nine most recent calendar-accident years, with an
20 evaluation date as of March 31 of the year in which the profits report
21 is due:

- 22 (1) Losses paid;
- 23 (2) Losses developed to an ultimate basis;
- 24 (3) Loss adjustment expenses paid;
- 25 (4) Loss adjustment expenses developed to an ultimate basis;
- 26 (5) AIRE compensation received; and
- 27 (6) AIRE compensation developed to an ultimate basis.

28 c. The profits report shall contain the following information for the
29 calendar-accident year ending December 31 immediately preceding the
30 date the profits report is due:

- 31 (1) Premiums written;
- 32 (2) Premiums earned;
- 33 (3) [Other] All other expenses, itemized separately as follows:
 - 34 (a) [Commissions] All commission and all brokerage fees;
 - 35 (b) [Taxes] All taxes, all licenses and all fees;
 - 36 (c) All AIRE charges;
 - 37 (d) All UCJF [assessment] assessments;
 - 38 (e) [Other] All other acquisition costs and all general expenses;
 - 39 (f) [Policyholder] All policyholder dividends incurred by the
 - 40 insurer, including any excess profits refunded or credited to
 - 41 policyholders;
 - 42 (g) The net of all catastrophe reinsurance premiums incurred and
 - 43 all sums paid or owed by a catastrophe reinsurer for losses that
 - 44 occurred during the calendar-accident year;

1 (4) Allowance for profit and contingencies, calculated by
2 multiplying the premiums earned by the profit and contingency factors
3 authorized for use with the insurer's approved rate filings;

4 (5) Anticipated investment income;

5 (6) Actual investment income; and

6 (7) UCJF reimbursements received.

7 d. The profits report shall include a clear and explicit calculation
8 of each of the following items;

9 (1) Underwriting income for each of the ~~[three]~~ five calendar-
10 accident years immediately preceding the date of the profits report;

11 (2) Actuarial gain for each of the ~~[three]~~ five calendar-accident
12 years immediately preceding the date of the profits report;

13 (3) Excess investment income for each of the ~~[three]~~ five calendar-
14 accident years immediately preceding the date of the profits report;

15 (4) Development adjustment for each of the four calendar-accident
16 years specified in subsection l. of section 1 of this act;

17 (5) Total actuarial gain; and

18 (6) Excess profits.

19 e. No reports shall be made covering calendar year 2006 or later,
20 unless ordered by the commissioner pursuant to section 23 of
21 P.L.1988, c.118 (C.17:29A-5.8).

22 f. This section shall expire on January 1 of the year immediately
23 following a determination by the commissioner pursuant to section 3
24 of P.L.1988, c.118 (C.17:29A-5.8) that profits for the New Jersey
25 automobile insurance market averaged for five consecutive years have
26 not exceeded the automobile insurance industry's national average by
27 2.5 percent of earned premiums for that same period.

28 (cf: P.L.1988, c.118, s.2)

29
30 27. Section 3 of P.L.1988, c.118 (C.17:29A-5.8) is amended to
31 read as follows:

32 3. a. The commissioner shall determine whether, based on external
33 standardized profit reports, profits for the New Jersey automobile
34 insurance market exceed the automobile insurance industry's national
35 average by 2.5 percent of earned premiums for each of the three most
36 recent calendar years for which the computation has been made. If the
37 reports so establish, then the commissioner shall order each insurer to
38 determine if it owes any excess profits by performing the calculation
39 in subsection b. of this section. If the external standardized profit
40 reports do not establish profits for New Jersey automobile insurance
41 business in excess of the national average by 2.5 percent of earned
42 premium, in that three year period, then no insurer shall owe any
43 excess profits and no excess profits report need be filed by any insurer
44 under section 2 of P.L.1988, c.118 (C.17:29A-5.7).

45 b. Excess profits for an insurer shall exist if for the [three] five
46 calendar-accident years immediately preceding the date the profits

1 report is due, the sum of an insurer's total actuarial gain and excess
2 investment income for all private passenger automobile coverages
3 combined exceeds 2.5 percent of earned premiums [, except that the
4 effect of a negative excess investment income shall be limited in the
5 computation of excess profits, at the discretion of the commissioner,
6 which discretion shall be exercised pursuant to a standard on the
7 investment of policyholder-supplied funds pursuant to regulations
8 promulgated by the commissioner not later than April 1 of the year in
9 which excess profits reports are filed].

10 (cf: P.L.1988, c.118, s.3)

11

12 28. R.S. 17:17-10 is amended to read as follows:

13 17:17-10. a. When satisfied that a company has complied with all
14 the requirements of this subtitle to entitle it to engage in business and
15 that the proposed methods of operation of the company are not such
16 as would render its operation hazardous to the public or its
17 policyholders, the commissioner shall issue to the company a
18 certificate authorizing it to commence business, specifying in the
19 certificate the particular kind or kinds of insurance it is authorized to
20 transact. The commissioner may refuse to issue a certificate of
21 authority if he finds that any of the company's directors or officers has
22 been convicted of a crime involving fraud, dishonesty, or like moral
23 turpitude or that said persons are not persons of good character and
24 integrity. No company shall transact the business for which it is
25 incorporated until it has received the certificate from the
26 commissioner. If any company fails to obtain the certificate of
27 authority within one year from the date of the certificate of the
28 Attorney General to its certificate of incorporation, as provided in
29 R.S.17:17-5, the company shall, ipso facto, be dissolved and its
30 certificate of incorporation be null and void.

31 b. No company licensed to transact insurance business in this State
32 pursuant to chapter 17 of Title 17 of the Revised Statutes may
33 surrender its certificate of authority or discontinue writing or renewing
34 any kind or kinds of insurance specified in the certificate, except in
35 accordance with [a plan to be] an informational filing submitted [by
36 the company and approved by] to the commissioner, which [plan]
37 filing shall [provide for an orderly withdrawal from the market and for
38 the minimization of the impact of the surrender of the certificate or the
39 discontinuance of the writing or renewing of any kind or kinds of
40 insurance upon the public generally and upon the company's
41 policyholders in this State. No surrender or discontinuance shall
42 become effective until the approved plan has been complied with. In
43 reviewing a plan for withdrawal submitted by the company, the
44 commissioner shall consider, and may require as a condition of
45 approval, whether some or all other certificates of authority issued
46 pursuant to chapter 17 or 32 of Title 17 of the Revised Statutes held

1 by the company or by other companies within the same holding
2 company system as the company submitting the plan shall be required
3 to be surrendered. The provisions of this subsection shall apply to any
4 request for withdrawal, surrender or discontinuance filed on or after
5 January 25, 1990] include the following elements for any withdrawals
6 filed on or after the effective date of P.L. , c. (C.) (now
7 before the Legislature as this bill):

8 (1) notice to policyholders, issued no later than 60 days after the
9 date of the informational filing, which notice shall state that the insurer
10 intends to withdraw and that a plan of withdrawal has been filed with
11 the commissioner;

12 (2) nonrenewals shall not be effective before the later of two years
13 after the date of the informational filing or January 1, 2007;

14 (3) the insurer shall send two notices of nonrenewal from the
15 insurer, the first at least one year prior to the date of nonrenewal, and
16 the second notice of nonrenewal in compliance with the time
17 limitations provided by law for that line of insurance.

18 Under this subsection b., the commissioner's authority is limited to
19 enforcing compliance with this subsection and enforcing the terms of
20 the withdrawal plan as stated in the informational filing and, if the
21 withdrawing insurer proposes to use a replacement carrier or carriers,
22 approving or disapproving any replacement carrier or carriers pursuant
23 to subsection c. of this section.

24 c. Notwithstanding the provisions of subsection b. of this section
25 to the contrary, if the insurer finds either before or after the date of the
26 informational filing a replacement carrier or carriers for the business
27 that will not be renewed, then the insurer may nonrenew and transfer
28 the business intended to be nonrenewed to the replacement carrier or
29 carriers subject only to the requirements that the commissioner
30 approve the replacement carrier or carriers, the nonrenewal notice be
31 in compliance with the time limits provided by law for that line of
32 insurance, and that an offer of coverage with the replacement carrier
33 or carriers be made prior to the effective date of the nonrenewal. The
34 commissioner shall not withhold his approval of a replacement carrier
35 or carriers if that insurer is authorized to do business in the relevant
36 line or lines of insurance in New Jersey and has the financial and
37 business capability to write and service the business being transferred
38 to it. The commissioner shall approve or disapprove the replacement
39 carrier or carriers within 60 days of the later of the date of the filing
40 by both the withdrawing insurer requesting approval of a replacement
41 carrier or the filing by the replacement carrier requesting to be a
42 replacement carrier.

43 d. Notwithstanding the provisions of subsection b. of this section
44 to the contrary, the commissioner may waive the requirements of
45 paragraph (2) of subsection b. of this section and the one-year
46 nonrenewal notice of paragraph (3) of subsection b. of this section if

1 the commissioner finds that a waiver is necessary to protect the
2 solvency of the insurer making the filing to withdraw.

3 (cf: P.L.1990, c.8, s.71)

4

5 29. Section 72 of P.L.1990, c.8 (C.17:33B-30) is amended to read
6 as follows:

7 72. a. An insurance company of another state or foreign country
8 authorized under chapter 32 of Title 17 of the Revised Statutes to
9 transact insurance business in this State may surrender to the
10 commissioner its certificate of authority and thereafter cease to
11 transact insurance in this State, or discontinue the writing or renewal
12 of [one or more kinds of] private passenger automobile insurance
13 specified in the certificate of authority, only after the submission of [a
14 plan which provides for an orderly withdrawal from the market and a
15 minimization of the impact of the surrender or discontinuance on the
16 public generally and on the company's policyholders in this State. The
17 plan shall be approved by the commissioner before the withdrawal or
18 discontinuance takes effect. In reviewing a plan for withdrawal under
19 this section, the commissioner shall consider, and may require as a
20 condition of approval, whether some or all other certificates of
21 authority issued pursuant to chapter 17 or 32 of Title 17 of the
22 Revised Statutes held by the company or by other companies in the
23 same holding company as the company submitting the plan should be
24 surrendered. The certificate of authority of the company shall be
25 deemed to continue in effect until the provisions of the approved plan
26 have been carried out. The provisions of this section shall apply to any
27 request for withdrawal, surrender or discontinuance filed on or after
28 January 25, 1990] an informational filing submitted to the
29 commissioner, which filing shall include the following elements for any
30 withdrawals filed on or after the effective date of P.L. , c (C.)
31 (now before the Legislature as this bill):

32 (1) notice to policyholders, issued no later than 60 days after the
33 date of the informational filing, which notice shall state that the insurer
34 intends to withdraw and that a plan of withdrawal has been filed with
35 the commissioner;

36 (2) nonrenewals shall not be effective before the later of two years
37 after the date of the informational filing or January 1, 2007;

38 (3) the insurer shall send two notices of nonrenewal from the
39 insurer, the first at least one year prior to the date of nonrenewal, and
40 the second notice of nonrenewal in compliance with the time
41 limitations provided by law for that line of insurance;

42 Under this subsection a., the commissioner's authority is limited to
43 enforcing compliance with this subsection, enforcing the terms of the
44 withdrawal plan as stated in the informational filing, and, if the
45 withdrawing insurer proposes to use a replacement carrier or carriers,
46 approving or disapproving any replacement carrier or carriers pursuant

1 to subsection b. of this section.

2 b. Notwithstanding the provisions of subsection a. of this section
3 to the contrary, if the insurer finds either before or after the date of the
4 informational filing a replacement carrier or carriers for the business
5 that will not be renewed, then the insurer may nonrenew and transfer
6 the business intended to be nonrenewed to the replacement carrier or
7 carriers subject only to the requirements that the commissioner
8 approve the replacement carrier or carriers, the nonrenewal notice be
9 in compliance with the time limits provided by law for that line of
10 insurance, and that an offer of coverage with the replacement carrier
11 or carriers be made prior to the effective date of the nonrenewal. The
12 commissioner shall not withhold his approval of a replacement carrier
13 or carriers if that insurer is authorized to do business in the relevant
14 line or lines of insurance in New Jersey and has the financial and
15 business capability to write and service the business being transferred
16 to it. The commissioner shall approve or disapprove the replacement
17 of carrier or carriers within 60 days of the later of the date of the filing
18 by both the withdrawing insurer requesting approval of a replacement
19 carrier or the filing by the replacement carrier requesting to be a
20 replacement carrier.

21 c. Notwithstanding the provisions of subsection a. of this section
22 to the contrary, the commissioner may waive the requirements of
23 paragraph (2) of subsection a. of this section and the one-year
24 nonrenewal notice of paragraph (3) of subsection a. of this section if
25 the commissioner finds that a waiver is necessary to protect the
26 solvency of the insurer making the filing to withdraw.

27 (cf: P.L.1990, c.8, s.72)

28

29 30. Section 1 of P.L.1970, c.215 (C.17:29D-1) is amended to read
30 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 shall
7 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 (C.39:6A-
10 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 proposed alterations pursuant to section 34 of P.L.1997, c.151
18 (C.17:29A-46.6), except that the 10 percent limitation set forth in
19 subsections a. and e. of that section shall be inapplicable;

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

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

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

38 e. ~~[Except]~~ Prior to January 1, 2006, except for risks written in
39 automobile insurance urban enterprise zones pursuant to subsection i.
40 of this section, that it shall not provide coverage to an eligible person
41 as defined pursuant to section 25 of P.L.1990, c.8 (C.17:33B-13);

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

43 g. That the plan shall not be subsidized by any source external to
44 the plan;

45 h. That a qualified insurer who writes automobile insurance risks
46 in those automobile insurance urban enterprise zones designated by the

1 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-
2 2) shall receive assigned risk credits for voluntary risks written in
3 those designated automobile insurance urban enterprise zones as a
4 direct writer or through a UEZ agent or agents or through any agent
5 with whom the insurer has an in-force contract as of the effective date
6 of P.L.1997, c.151 (C.17:33B-64 et al.). The commissioner shall
7 establish by regulation the manner in which any qualified automobile
8 insurer may utilize the provisions of this subsection. In no event shall
9 that credit apply to reduce an insurer's obligations under subsection i.
10 of this section; and

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

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

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

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

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

1 automobile insurance; had an affiliation with a voluntary market
2 insurer for the placement of automobile insurance that was terminated
3 by the insurer in the last three years; demonstrates to the plan his
4 competency, efficiency and effectiveness in the solicitation, negotiation
5 and effectuation of automobile insurance as evidenced by any history
6 of disciplinary actions or complaints against the producer, and other
7 relevant factors; and conducts his business in an office in an
8 automobile insurance urban enterprise zone. For purposes of this
9 subsection i., "insurer" means an insurer or group of affiliated insurers
10 admitted or authorized to transact the business of automobile
11 insurance in this State;

12 (6) This subsection shall expire on the first day of the 61st month
13 after the first policy using the voluntary rating tier required by this
14 subsection was issued to a risk, as certified by the commissioner.

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

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

24 (cf: P.L.1998, c.21, s.31)

25

26 31. Section 1 of P.L.1945, c.132 (C.54:18A-1) is amended to read
27 as follows:

28 1. (a) Every stock, mutual and assessment insurance company
29 organized or existing under any general or special law of this State,
30 hereinafter referred to as "domestic insurance company," and every
31 stock, mutual and assessment insurance company organized or existing
32 under the laws of another state or foreign country, hereinafter referred
33 to as "foreign insurance company," and transacting business in this
34 State shall annually on or before March 1, file with the Director of the
35 Division of Taxation, in the form as the director and the Commissioner
36 of Banking and Insurance may prescribe, a return under oath or
37 affirmation signed by a duly authorized officer or agent of the
38 company, containing such information as may be deemed necessary
39 and shall at the same time pay to the director an annual tax, in each
40 calendar year, in the amount specified in sections 2 and 3 of P.L.1945,
41 c.132 (C.54:28A-2 and 54:18A-3). At the same time, a duplicate
42 original of the return shall be filed with the Commissioner of Banking
43 and Insurance. The tax shall be based on net premiums on contracts of
44 insurance covering property and risks located within this State written
45 during the calendar year ending December 31 next preceding.

1 (b) Effective for calendar years ending on December 31, 1980 and
2 thereafter, every foreign insurance company subject to the provisions
3 of subsection (a) of this section, shall pay to the Director of the
4 Division of Taxation on or before March 1, 1981, and on or before
5 March 1 of each year thereafter an amount equal to one-half of the tax
6 payable under subsection (a) hereof on the company's business done
7 during the preceding calendar year. Every foreign insurance company
8 subject to the provisions of subsection (a) of this section, shall pay to
9 the Director of the Division of Taxation on or before June 1, 1989,
10 and on or before June 1 of each year thereafter an amount equal to
11 one-half of the tax payable under subsection (a) hereof on the
12 company's business done during the preceding calendar year. Each
13 such payment shall be in addition to the tax payable under subsection
14 (a) hereof and shall be considered as a partial payment of the tax which
15 will become due under subsection (a) hereof, upon the following
16 March 1.

17 (c) Effective for calendar years ending on December 31, 1981 and
18 thereafter, every domestic insurance company shall:

19 (1) On March 1, 1982, pay the tax due under subsection (a) of this
20 section based on the company's business done during the calendar year
21 1981 less any franchise tax paid to counties or municipalities in this
22 State during the calendar year 1981.

23 (2) On March 1, 1982 make an installment payment of taxes due
24 under subsection (a) of this section on the company's business done
25 during the calendar year 1982, which payment shall amount to one-half
26 of the prior year's premium tax without deduction for any franchise tax
27 paid to counties or municipalities of this State.

28 (3) On June 1, 1982 and each June 1 thereafter, make a second
29 installment payment on taxes due under subsection (a) of this section
30 on the company's business done during the current calendar year,
31 which payment shall amount to one-half of the prior year's premium
32 tax without a deduction for any franchise tax paid to counties or
33 municipalities of this State.

34 (4) On March 1, 1983 and each March 1 thereafter, pay the balance
35 of any tax due under subsection (a) of this section based on the
36 company's business during the preceding calendar year and make an
37 installment payment in an amount equal to one-half of the tax payable
38 under subsection (a) of this section on the company's business done
39 during the preceding calendar year.

40 (d) Nothing in this section requiring a partial payment of tax shall
41 be deemed to apply to premiums for fire insurance risks on
42 properties in this State paid to an insurer which is not organized under
43 the laws of this State or to premiums for marine insurance risks.

44 (e) In the calculation of the tax due in accordance with subsection
45 (a) hereof, every insurance company shall be entitled to a credit in the
46 amount of the tax paid as a partial payment in the preceding calendar

1 year and shall be entitled to the return of any amount so paid which
2 shall be found to be in excess of the total amount payable in
3 accordance with this section.

4 (f) If the franchise tax paid to counties and municipalities of this
5 State during the calendar year 1981 exceeds the amount of the tax due
6 under subsection (a) of this section, no refund or credit shall be
7 allowed.

8 (g) Effective for calendar years ending on December 31, 2005 and
9 thereafter, in the calculation of the tax due in accordance with
10 subsection (a) hereof, every insurance company shall be entitled to a
11 credit for each policy-year of automobile insurance, covering a vehicle
12 where those policies of insurance are written in a rating territory
13 whose base rates exceed the Statewide average base rates for such
14 coverages written by the company by an amount to be determined by
15 the State Treasurer, in consultation with the Commissioner of Banking
16 and Insurance, provided further that the company has provided a credit
17 or reduction in premium to the policyholder purchasing coverage in
18 those territories equivalent to the tax credit herein established. For the
19 purposes of this subsection (g), "automobile insurance" means
20 insurance for an automobile, including coverage for bodily injury
21 liability and property damage liability, comprehensive and collision
22 coverages, uninsured and underinsured motorist coverage, personal
23 injury protection coverage, additional personal injury protection
24 coverage and any other automobile insurance required by law. The
25 amount of the tax credit, and the equivalent premium credit or
26 reduction, shall be determined by regulations promulgated by the State
27 Treasurer in consultation with the commissioner, provided that no
28 company shall be required to provide premium credits or reductions to
29 any policyholder if the cumulative effect of those premium credits or
30 reductions would exceed the total premium tax obligation. The per-
31 policy tax credit shall be apportioned so that the total anticipated tax
32 credits for all insurance companies shall not exceed the total
33 anticipated premium tax less \$103,000,000. In the event a company
34 provides premium reductions or credits which in the aggregate exceed
35 the company's total premium tax obligation for the calendar year, the
36 excess shall be applied as a carry forward tax credit for the following
37 year, to be applied to the tax otherwise due under this section.

38 (cf: P.L.1989, c.81, s.1)

39

40 32. (New section) The commissioner may promulgate rules and
41 regulations in accordance with the provisions of the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to
43 effectuate the provisions of this act, however, the lack of such
44 regulations shall not delay the effective date of any provision of this
45 act.

1 33. Sections 26 and 27 of P.L.1998, c.21 (C.17:29A-48 and 49)
2 and sections 25 through 33 of P.L.1990, c.8 (C.17:33B-13 through
3 21) are repealed effective January 1, 2006.

4
5 34. (New section) Sections 1 through 4 and 15 through 33 shall
6 take effect immediately and sections 5 through 14 of this act shall take
7 effect January 1, 2006.

8
9
10 STATEMENT

11
12 This bill, the "New Jersey Automobile Insurance Competition and
13 Choice Act," seeks to move New Jersey toward a competitive
14 automobile insurance market over a period of four years. Because
15 numerous automobile insurers have ceased doing business in this State
16 in recent years and because many other major insurers refuse to do
17 business in New Jersey, the bill establishes a modernized regulatory
18 system that encourages competition among automobile insurers in
19 order to better serve the needs and interests of consumers.

20 For the transition period, from the time that the bill is enacted until
21 December 31, 2006, there is established a 13-member Commission for
22 the Advancement of Insurance Competition to: assist the
23 Commissioner of Banking and Insurance in identifying barriers to
24 automobile insurers doing business in this State; develop activities
25 necessary to encourage competition among insurers; and recommend
26 ways to facilitate competition and inform consumers.

27 During the four year transition period, the bill provides that
28 automobile insurers may file for up to a 10% rate increase 60 days in
29 advance. After the expiration of the 60-day period, the commissioner
30 may disapprove the rate on a prospective basis only, provided an
31 administrative law judge has determined that the rate filing would
32 produce rates that are excessive, inadequate for the safety and
33 soundness of the insurer, or unfairly discriminatory between risks in
34 this State involving substantially the same hazards and expense
35 elements.

36 Thereafter, the bill establishes a modernized and competitive
37 procedure which promotes price competition among automobile
38 insurers; protects policyholders and the public against adverse effects
39 of excessive, inadequate or unfairly discriminatory rates; and provides
40 necessary regulatory authority in the absence of a competitive
41 marketplace.

42 The bill provides that a competitive automobile insurance market is
43 presumed to exist unless the commissioner determines that a
44 reasonable degree of competition does not exist within the market and
45 issues a ruling to that effect. As provided in the bill, in a competitive
46 market, every automobile insurer shall file all rates and supplementary

1 materials to be used in this State no later than 30 days after the
2 effective date of the rate. The commissioner may disapprove a
3 competitive market rate only upon a finding that the rate is inadequate
4 or unfairly discriminatory. In a non-competitive market, any filing that
5 results in an overall increase of more than 10% in any 12-month period
6 must receive the prior approval of the commissioner.

7 The bill provides that automobile insurers shall file revised
8 territorial rating plans by January 1, 2003 regardless of whether the
9 commissioner has issued regulations outlining criteria for new
10 territorial maps. In addition, the current base rate cap for each
11 coverage is increased from 2.5% to 3.5%, during the four year
12 transition period, until competitive rating becomes effective.

13 Under the bill, the "take-all-comers" provisions enacted in 1990 are
14 phased out by January 1, 2006, and are replaced by barring automobile
15 insurance declinations on the basis of race, color, creed, national
16 origin, age, gender marital status or sexual orientation. During the
17 transition period, an insurer may review the prior five years of driver
18 accident and motor vehicle violation history to determine eligibility for
19 automobile insurance in the voluntary market. In addition, if an
20 insurer increases by 3% in a particular territory its total number of
21 insured private passenger automobiles, the insurer is relieved from the
22 "take-all-comers" provisions, unless the insurer's annual increase goes
23 below 2.5%. Other provisions of the bill provide that an insurer may
24 not be relieved of its "take all comers" obligations if the residual
25 market mechanism reaches its maximum level of 10% of the market,
26 in which case, an insurer would be required to increase its total
27 number of insured private passenger automobiles in a particular
28 territory by 5% before being relieved of that obligation.

29 The bill revises certain provisions pertaining to excess profits for
30 automobile insurers by establishing that excess profits shall only be
31 calculated if profits for the New Jersey automobile insurance market
32 exceed the industry's national average by 2.5% of earned premiums for
33 the prior three-year period.

34 The bill also removes certain restrictions with respect to the
35 withdrawal of automobile insurers from the State. Rather than
36 requiring the prior approval of the commissioner and the surrender of
37 other licenses if an insurer pursues a withdrawal from doing business
38 in this State, the bill provides for the informational filing of a plan of
39 withdrawal by an insurer, timely notification to policyholders, and the
40 ability to transfer its automobile insurance business to a replacement
41 insurer so long as that insurer is in a financial position to assume that
42 book of business.

43 Finally, the bill allows for a premium tax credit beginning in tax-
44 year 2005 to automobile insurers that write policies in certain
45 territories, provided, however, that the insurer has reduced premiums
46 to policyholders in that territory by an amount equivalent to the tax

1 credit.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2625**

STATE OF NEW JERSEY

DATED: MAY 5, 2003

The Assembly Banking and Insurance Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2625.

This bill, an Assembly Committee Substitute for Assembly, No. 2625, provides a comprehensive set of solutions to the automobile insurance availability and affordability challenges facing insurers, consumers and regulators in New Jersey.

First, the bill consolidates several administrative functions relative to automobile insurance claims which are currently handled separately within the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) to eliminate redundancies and inefficiencies. The bill eliminates the Unsatisfied Claim and Judgment Fund Board and transfers all of its functions, powers and duties, along with the Unsatisfied Claim and Judgment Fund, to PLIGA. Additionally, the administration of the claims runoffs of the New Jersey Automobile Full Insurance Underwriting Association ("JUA") and the Market Transition Facility ("MTF") are transferred to PLIGA as well.

The bill eliminates one of the two main purposes of the Unsatisfied Claim and Judgment Fund (UCJF). The UCJF currently pays claims for hit and run or uninsured accidents in certain cases and reimburses insurers when medical expense benefits exceed \$75,000 per person per accident. The reimbursement to insurers for medical claims in excess of \$75,000 is eliminated for policies issued on or after January 1, 2004. According to the bill's findings, this elimination is appropriate because, when the UCJF was first charged with reimbursing insurers in this way, the amount of medical benefits provided was unlimited. Now, however, insurers are required to provide medical expense benefits only up to \$250,000 per person, per accident. At the same time the bill eliminates this reimbursement, it requires the UCJF to accept responsibility for personal injury protection (PIP) benefits for pedestrians who are injured by an automobile and are not named insureds or resident relatives of a policyholder. Also, as part of these consolidations and reforms, UCJF assessments on insurers for 2003 are eliminated. In addition, PLIGA becomes the servicing facility for the administration of claim obligations of the New Jersey Surplus Lines Insurance Guaranty Fund and the New Jersey Medical

Malpractice Reinsurance Association.

Next, the bill amends the "take-all-comers" provisions of the automobile insurance law, which under the provisions of the bill will be eliminated on January 1, 2009, to allow an insurer to qualify for an exemption from those provisions in any territory in which it has increased its business by a "percentage growth standard" established by the bill. The growth standard starts at 5% in the first year and declines 1% a year until it is phased out after 5 years. During the phase-out, insurers that have exceeded the territorial growth limit may utilize alternate underwriting rules for the acceptance of new business. The bill provides for a rolling one year review of the insurer's growth, which may entitle the insurer to use alternate underwriting rules for a period of six months. For example, if an insurer had 1,000 automobiles insured in a territory on December 31, 2002, it would use its alternate underwriting rules beginning January 1, 2004 if it insured in excess of 1,050 automobiles on December 31, 2003. It could continue to use the alternate rule on July 1, 2004 if its insured automobiles exceeded by five percent the number insured on June 30, 2003. Finally, on January 1, 2005, the insurer could continue to use the alternate rules if on December 31, 2004 it exceeded the number of insured automobiles on December 31, 2003 by four percent. Any eligible person denied coverage because the insurer has an exemption may receive coverage through the Personal Automobile Insurance Plan (PAIP or the "assigned risk plan") or may seek coverage from another insurer. The PAIP plan of operation would establish a voluntary rating tier to accommodate these drivers. The Commissioner of Banking and Insurance retains the authority to suspend the exemption if there is a noncompetitive market, which is presumed if PAIP risks reach 10%. Insurers qualifying for this exemption also will receive assigned risk credits from PAIP and will continue to qualify for the 2 for 1 non-renewal allowance. Also, as part of these changes, the bill extends the "sunset provision" for the operation of the automobile insurance urban enterprise zone (UEZ) voluntary rating tier under PAIP for an additional three years, so that the program will now operate for a total of eight years from the time of its inception, rather than the current five.

The bill amends the "tier rating" provisions to allow insurers to assign insureds to a rating tier other than the standard tier upon the accumulation of more than 4 motor vehicle points. The current maximum an insured may have in a standard rating tier is 6. This amendment requires that insurers' rates remain revenue neutral if they reassign risks pursuant to this change.

The bill amends the prior approval rate filing provision to build in a time line for regulatory action on automobile insurance rate requests so as to ensure efficiency. Specifically, upon receiving a filing, the Commissioner of Banking and Insurance is required to issue a Preliminary Determination within 90 days. The commissioner may extend the deadline by 30 days for good cause. The Preliminary

Determination must include the basis for the decision to accept, reject or modify the request. Unless the filer or an interested party requests a hearing, the commissioner may adopt the Preliminary Determination as a Final Decision within 30 days. If a hearing is requested, it will proceed on an expedited basis. If the commissioner fails to take action within the prescribed time frames, the filing will be transmitted to the Office of Administrative Law for a hearing and the commissioner must adopt the finding of the administrative law judge as the final decision.

The bill also makes changes with respect to the expedited rate filing procedures afforded automobile insurers. It raises the ceiling for rate increases pursuant to expedited filings from 3% to 7% for the overall rate and from 5% to 10% for any single coverage. An insurer not using the expedited process in any year may elect to submit an expedited filing increasing rates by not more than twice those amounts in the subsequent year, so long as not more than one filing is made in any 24-month period. Procedurally, the bill provides that the commissioner must render a decision on an expedited filing within 30 days for a filing requesting up to 3% and within 45 days for a filing requesting more than 3% but not more than 7%, with a 15-day extension if necessary. It also changes the test for approval from a subjective to an objective one, by requiring that the resulting rates shall not be excessive, inadequate or unfairly discriminatory between similar risks, as is the case with prior approval rate filings.

This bill contains provisions that simplify the procedures an insurer may use to withdraw from selling a particular type of insurance or to withdraw from the State. Insurers may make an informational filing with the commissioner and establish an orderly plan for nonrenewing outstanding policies to limit disruption in the market. These provisions go into effect on January 1, 2007.

New provisions in the bill seek to better educate consumers by requiring companies to notify new and existing customers of their rights, as determined by the commissioner, providing them with premium calculations and advising them of rate increases, other than expedited filings. Insureds and applicants will receive an "Automobile Insurance Consumer Bill of Rights." The commissioner shall develop and disseminate an "Automobile Insurance Report Card," which shall be available on the official website for the Department of Banking and Insurance (DOBI). DOBI shall also publish information on its website concerning all consumer insurance rate increase requests filed, including all personal lines property/casualty coverages and Medicare supplemental coverages. The commissioner is authorized to impose penalties on an insurer which fails to provide any of the information required by these new provisions.

In the interest of availability, the bill creates a new policy option with very limited benefits that will only be available to low income drivers who qualify for the federal Medicaid program. The policy will be priced by the commissioner and will include medical expense benefits for emergency and catastrophic care only, and a \$10,000

death benefit. Covered persons will be precluded from having liability or physical damage coverage and will be subject to the verbal threshold. Vehicles covered by a special policy will be considered uninsured for purposes of uninsured motorist coverage under other policies. The technical amendments necessary to accommodate the new special policy are included in the bill as well.

Additional underwriting and cancellation changes are also accomplished by the bill. The bill allows cancellation of insureds who have knowingly provided materially false or misleading information in connection with any application, renewal or claim for benefits under a policy and classifies them as ineligible for purposes of writing in the voluntary market. With respect to cancellations, the commissioner is given the discretion to extend, by regulation, the time required for advance notice of a cancellation of an insured's policy by an insurer from the current 60 days to up to 90 days. It also increases the threshold for at fault accidents from \$500 to \$1,000 and allows the commissioner to increase or decrease the threshold to reflect changes in the Consumer Price Index. The bill also raises the minimum deductible from \$500 to \$750 for new policies and allows the commissioner to adjust the deductibles for collision and comprehensive coverage to reflect increases or decreases in the CPI.

New Jersey's excess profits law is amended to extend the "look back" period from three to seven years to take into account fluctuations in the market over a longer period of time.

Insurance fraud reforms are also incorporated in the bill. First, it requires insurance ID cards to be designed in such a way as to deter and detect counterfeit or fraudulent cards.

Secondly, the bill adds a new crime of insurance fraud to the criminal code. A person is guilty of the crime of insurance fraud if that person knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, any record, bill, claim or other document, in writing, electronically, orally or otherwise, in support of or opposition to or in connection with: an insurance claim, reimbursement or other benefit; an application to obtain or renew an insurance policy; any payment made under an insurance policy or through a premium finance transaction; or an affidavit, certification, record or other document used in any insurance or premium finance transaction. Insurance fraud constitutes a crime of the second degree if the person knowingly commits five or more acts of insurance fraud and if the aggregate value of property, services or other benefit wrongfully obtained is at least \$1,000. Otherwise, insurance fraud is a crime of the third degree. In addition to criminal penalties, the bill provides for sanctions on the licenses held by health care providers who commit insurance fraud in order to maintain the public trust and ensure the integrity of those professions. A person convicted of second degree insurance fraud who holds a license or certificate of authority to engage in a profession or occupation shall forfeit that license and be

forever barred from the practice of that profession or occupation. A person convicted of third degree insurance fraud shall have his license suspended and be barred from practice for at least one year. Additional convictions can result in forfeiture and convictions for certain other crimes of the second and third degree may also have such consequences under the bill's amendments to existing laws. Other amendments make accommodation for these provisions under the existing health care claims fraud law.

There is also established within the Office of the Insurance Fraud Prosecutor an Insurance Fraud Detection Reward Program, to be funded from surcharges imposed under a new provision of the "New Jersey Insurance Fraud Prevention Act." A member of the public who has knowledge of or who believes that an act of health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction is being or has been committed may provide the Insurance Fraud Prosecutor with a report or information pertinent to that knowledge or belief and may provide additional information that the Insurance Fraud Prosecutor requests. The Insurance Fraud Prosecutor shall maintain a 24-hour toll-free insurance fraud hotline to receive information from individuals who have such knowledge. The Attorney General, through the Insurance Fraud Prosecutor, is authorized to pay a reward of up to \$25,000 to persons providing information leading to the arrest, prosecution and conviction of persons or entities who have committed insurance fraud.

Finally, this bill revises the laws concerning uninsured motor vehicles by requiring the recipient of a citation for failing to possess or exhibit an insurance identification card pursuant to R.S.39:3-29, or registrant, to produce the insurance identification card or other satisfactory proof of liability insurance coverage to the law enforcement agency issuing the citation within 24 hours. Failure to provide the insurance identification card or other satisfactory proof of insurance within 24 hours shall result in the issuance of a warrant to impound the motor vehicle being operated when the summons was issued. Vehicles impounded pursuant to the bill could not be released until proof of valid motor vehicle insurance is presented to the impounding law enforcement agency, and all costs, penalties and fines are paid. The bill provides a procedure for an impounded vehicle to be sold at public auction should the vehicle not be claimed. The bill also increases the fine for a violation of R.S.39:3-29 from \$100 to \$150 and requires \$25 of each fine to be deposited into the Uninsured Motorist Prevention Fund. Monies in the fund are dedicated for the enforcement of the compulsory motor vehicle insurance law.

As reported by the committee, this bill is identical to the Senate Committee Substitute for Senate, No. 63, which was also reported today.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2625

STATE OF NEW JERSEY
210th LEGISLATURE

ADOPTED MAY 5, 2003

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Co-Sponsored by:

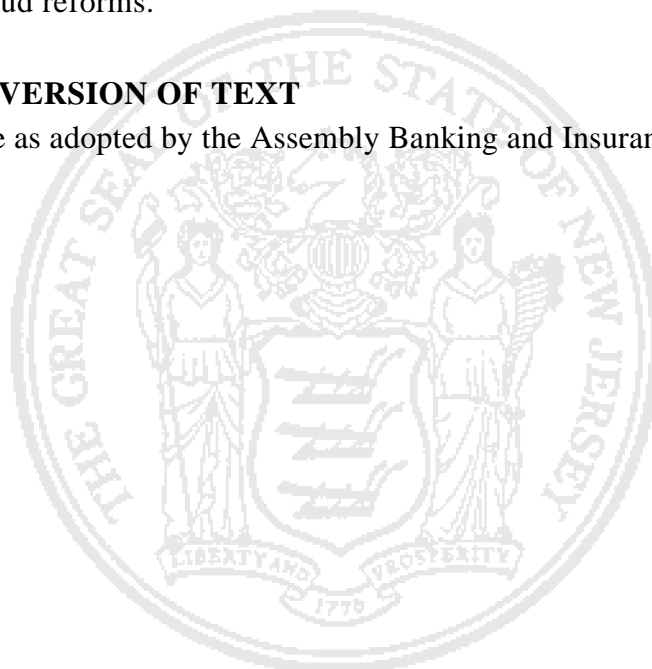
**Assemblywoman Cruz-Perez, Assemblymen Guear, Ahearn, Cryan,
Edwards, Biondi, R.Smith, Conners, Merkt, Wolfe, Pennacchio, Barnes,
Diegnan, Eagler, Assemblywoman Greenstein, Assemblyman McKeon and
Assemblywoman Stender**

SYNOPSIS

Makes various changes to the automobile insurance laws; consolidates administrative functions relative to automobile insurance; provides for insurance fraud reforms.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Banking and Insurance Committee.



(Sponsorship Updated As Of: 5/16/2003)

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) With respect to sections 2 through 34 of this
8 act, the Legislature finds and declares that:

9 a. The Unsatisfied Claim and Judgment Fund, created pursuant to
10 P.L.1952, c.174 (C.39:6-61 et seq.) currently serves a dual purpose:
11 its original intent to pay the claims of victims of hit and run or
12 uninsured motor vehicle accidents in certain circumstances, and a
13 subsequent objective to reimburse private passenger automobile
14 insurers when medical expense benefits payments exceed \$75,000 per
15 person per accident.

16 b. When the Unsatisfied Claim and Judgment Fund was charged
17 with reimbursing an insurer for medical expense benefits in excess of
18 \$75,000 per person per accident, the amount of medical expense
19 benefits provided on a per person, per accident basis was unlimited.
20 However, insurers are required at present to provide medical expense
21 benefits only up to \$250,000 per person per accident. Prospective
22 elimination of the reimbursement function of the Unsatisfied Claim and
23 Judgment Fund for medical expense benefits in excess of \$75,000 per
24 person for an injury suffered in an accident covered by a policy issued
25 or renewed on or after January 1, 2004 is deemed appropriate.
26 Insurers would continue to be reimbursed for medical benefits in
27 excess of \$75,000 per person per accident for injuries suffered in
28 accidents covered by policies issued or renewed prior to January 1,
29 2004.

30 c. Since all motor vehicle liability policies issued in this State,
31 except basic automobile insurance policies, include coverage for the
32 payment of all or part of the sums which a person insured thereunder
33 shall be legally entitled to recover as compensatory damages from
34 owners or operators of uninsured motor vehicles (other than hit and
35 run motor vehicles), the number of third party claims made against the
36 Unsatisfied Claim and Judgment Fund is not substantial. It would be
37 more efficient to have these claims administered by the New Jersey
38 Property-Liability Insurance Guaranty Association, established
39 pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.).

40 d. The New Jersey Automobile Full Insurance Underwriting
41 Association, created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.)
42 and the Market Transition Facility, created pursuant to section 88 of
43 P.L.1990, c.8 (C.17:33B-11) have both ceased issuing private

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 passenger automobile insurance policies and are currently in run off,
2 operating only to process the remaining claims against them.
3 Currently, the funding for the claims payment and other operational
4 activities of the New Jersey Automobile Full Insurance Underwriting
5 Association and the Market Transition Facility is primarily provided
6 by the New Jersey Automobile Insurance Guaranty Fund, created
7 pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5). However,
8 existing statutes do not state how the consolidation or runoff
9 operations of these entities will be handled. Administrative and
10 operational efficiencies would result from consolidating these entities
11 and transferring the claims handling and other administrative duties of
12 these entities to the New Jersey Property-Liability Insurance Guaranty
13 Association.

14 e. Based upon recent financial and actuarial analysis, it is
15 anticipated that the value of all residual New Jersey Automobile Full
16 Insurance Underwriting Association and Market Transition Facility
17 assets, including the balances in the New Jersey Automobile Insurance
18 Guaranty Fund, to be transferred to the New Jersey Property-Liability
19 Insurance Guaranty Association will be adequate to allow the
20 association to discharge all remaining obligations of the New Jersey
21 Automobile Full Insurance Underwriting Association and Market
22 Transition Facility which are now to be administered by the
23 association. Since no asset shortfall is projected, no additional
24 assessment or other revenue generating powers are being conferred
25 upon the association at this time with respect to such remaining
26 obligations.

27 f. It is in the public interest to authorize the transfer and
28 consolidation of compatible operations of the Unsatisfied Claim and
29 Judgment Fund, the New Jersey Automobile Full Insurance
30 Underwriting Association, and the Market Transition Facility to the
31 New Jersey Property-Liability Insurance Guaranty Association.

32 g. Following transfer to the New Jersey Property-Liability
33 Insurance Guaranty Association by the Unsatisfied Claim and
34 Judgment Fund of all its management, administrative and claim
35 functions, the Unsatisfied Claim and Judgment Fund shall continue to
36 exist as a separate legal entity subject to the provisions of P.L. ,
37 c. (C.)(now before the Legislature as this bill).

38 h. The New Jersey Property-Liability Insurance Guaranty
39 Association will run off the remaining policyholder claim obligations
40 of the New Jersey Automobile Full Insurance Underwriting
41 Association and Market Transition Facility. The New Jersey Property-
42 Liability Insurance Guaranty Association will also run off the
43 obligations of the Unsatisfied Claim and Judgment Fund pursuant to
44 section 2 of P.L.1977, c.310 (C.39:6-73.1) and take over all
45 governance, administrative and financial functions of the Unsatisfied
46 Claim and Judgment Fund, including the claim payment function.

1 i. As part of the consolidation being accomplished by P.L. ,
2 c. (C.)(now before the Legislature as this bill), the New Jersey
3 Property-Liability Insurance Guaranty Association is formally
4 designated as a servicing facility for several statutory entities for which
5 it currently provides administrative services and also for the
6 Unsatisfied Claim and Judgment Fund which, pursuant to P.L. ,
7 c. (C.)(now before the Legislature as this bill), is transferring
8 specified functions to the New Jersey Property-Liability Insurance
9 Guaranty Association. The association is also authorized to serve,
10 either by designation or by contract, as a servicing facility for other
11 entities which may be recommended by the association's board of
12 directors and approved by the commissioner.

13 j. This act is not intended to abrogate in any way the settlement
14 agreement entered into by the State and member insurers of the
15 Market Transition Facility in June, 1994.

16

17 2. Section 2 of P.L.1974, c.17 (C.17:30A-2) is amended to read
18 as follows:

19 2. a. The purpose of this act is to provide a mechanism for the
20 payment of covered claims under certain insurance policies, to avoid
21 excessive delay in payment, to avoid financial loss to claimants or
22 policyholders because of the insolvency of an insurer, to assist in the
23 detection and prevention of insurer insolvencies, [and] to provide an
24 association to assess the cost of such protection among insurers, and
25 to provide a mechanism to run off, manage, administer and pay claims
26 asserted against the Unsatisfied Claim and Judgment Fund, created
27 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey
28 Automobile Full Insurance Underwriting Association, created pursuant
29 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition
30 Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-
31 11).

32 b. This act shall apply to all kinds of direct insurance, except life
33 insurance, accident and health insurance, workers' compensation
34 insurance, title insurance, annuities, surety bonds, credit insurance,
35 mortgage guaranty insurance, municipal bond coverage, fidelity
36 insurance, investment return assurance, ocean marine insurance[,] and
37 pet health insurance[, and insurance provided by the Motor Vehicle
38 Liability Security Fund, established pursuant to P.L.1952, c.175
39 (C.39:6-92 et seq.), until funds comprising said fund are declared
40 exhausted by the commissioner].

41 (cf: P.L.1987, c.377, s.4)

42

43 3. Section 6 of P.L.1974, c.17 (C.17:30A-6) is amended to read
44 as follows:

45 6. There is created a private, nonprofit, unincorporated, legal
46 entity to be known as the New Jersey Property-Liability Insurance

1 Guaranty Association. All insurers defined as member insurers in
2 subsection 5 f. shall be and remain members of the association as a
3 condition of their authority to transact insurance in this State. The
4 association shall perform its functions under a plan of operation
5 established and approved under section 9 and shall exercise its powers
6 through a board of directors established under section 7.

7 The association is also authorized and shall have all of the powers
8 necessary and appropriate for the management and administration of
9 the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund,
10 in accordance with the provisions of the "New Jersey Surplus Lines
11 Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et
12 seq.).

13 The association is also authorized and shall have all of the powers
14 necessary and appropriate for the management and administration of
15 the affairs of, and the payment of valid claims asserted against: the
16 Unsatisfied Claim and Judgment Fund, created pursuant to the
17 provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey
18 Automobile Full Insurance Underwriting Association, created pursuant
19 to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the
20 Market Transition Facility created pursuant to the provisions of
21 section 88 of P.L.1990, c.8 (C.17:33B-11).

22 (cf: P.L.1984, c.101, s.15)

23

24 4. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to read
25 as follows:

26 8. a. The association shall:

27 (1) Be obligated to the extent of the covered claims against an
28 insolvent insurer incurred, in the case of private passenger automobile
29 insurance, prior to or after the determination of insolvency, but before
30 the policy expiration date or the date upon which the insured replaces
31 the policy or causes its cancellation, or in the case of insurance other
32 than private passenger automobile insurance, covered claims against
33 such insolvent insurer incurred prior to or 90 days after the
34 determination of insolvency, or before the policy expiration date if less
35 than 90 days after said determination, or before the insured replaces
36 the policy or causes its cancellation, if he does so within 90 days of the
37 determination, but such obligation shall include only that amount of
38 each covered claim which is less than \$300,000.00 and subject to any
39 applicable deductible contained in the policy, except that the
40 \$300,000.00 limitation shall not apply to a covered claim arising out
41 of insurance coverage mandated by section 4 of P.L.1972, c.70
42 (C.39:6A-4). In the case of benefits payable under subsection a. of
43 section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable
44 for payment of benefits in an amount not to exceed **[\$75,000.00]** the
45 amount set forth in section 4 of P.L.1972, c.70 (C.39:6A-4).

46 **[Benefits paid in excess of such amount shall be recoverable by the**

1 association from the Unsatisfied Claim and Judgment Fund pursuant
2 to the provisions of section 2 of P.L.1977, c.310 (C.39:6-73.1).] In
3 no event shall the association be obligated to a policyholder or
4 claimant in an amount in excess of the limits of liability stated in the
5 policy of the insolvent insurer from which the claim arises;

6 (2) Be deemed the insurer to the extent of its obligation on the
7 covered claims and to such extent shall have all rights, duties, and
8 obligations of the insolvent insurer as if the insurer had not become
9 insolvent;

10 (3) Assess member insurers in amounts necessary to pay:

11 (a) The ~~[obligation]~~ obligations of the association under
12 ~~[paragraph]~~ paragraphs (1) ~~and (11)~~ of this subsection;

13 (b) The expenses of handling covered claims;

14 (c) The cost of examinations under section 13; and

15 (d) Other expenses authorized by this act, excluding expenses
16 incurred by the association pursuant to paragraphs (9) and (10) of this
17 subsection.

18 The assessments of each member insurer shall be in the proportion
19 that the net direct written premiums of the member insurer for the
20 calendar year preceding the assessment bears to the net direct written
21 premiums of all member insurers for the calendar year preceding the
22 assessment.

23 Each member insurer shall be notified of the assessment not later
24 than 30 days before it is due. No member insurer of the association
25 may be assessed pursuant to this paragraph (3) in any year in an
26 amount greater than 2% of that member insurer's net direct written
27 premiums for the calendar year preceding the assessment with regard
28 to the association's obligation to pay covered claims and related
29 expenses arising under coverages issued by insolvent insurers pursuant
30 to P.L.1974, c.17 (C.17:30A-1 et seq.).

31 The association may, subject to the approval of the commissioner,
32 exempt, abate or defer, in whole or in part, the assessment of any
33 member insurer, if the assessment would cause the member insurer's
34 financial statement to reflect amounts of capital or surplus less than
35 the minimum amounts required for a certificate of authority by any
36 jurisdiction in which the member insurer is authorized to transact
37 insurance. In the event an assessment against a member insurer is
38 exempted, abated, or deferred, in whole or in part, because of the
39 limitations set forth in this section, the amount by which such
40 assessment is exempted, abated, or deferred shall be assessed against
41 the other member insurers in a manner consistent with the basis for
42 assessments set forth in this section. If the maximum assessment,
43 together with the other assets of the association, does not provide in
44 any one year an amount sufficient to carry out the responsibilities of
45 the association, the necessary additional funds shall be assessed as
46 soon thereafter as it is permitted by this act. Each member insurer

1 serving as a servicing facility may set off against any assessment,
2 authorized payments made on covered claims and expenses incurred
3 in the payment of such claims by such member insurer;

4 (4) Investigate claims brought against the association and adjust,
5 compromise, settle, and pay covered claims to the extent of the
6 association's obligation and deny all other claims and may review
7 settlements, releases and judgments to which the insolvent insurer or
8 its insureds were parties to determine the extent to which such
9 settlements, releases and judgments may be properly contested;

10 (5) Notify such persons as the commissioner directs under
11 paragraph (1) of subsection b. of section 10 of P.L.1974, c.17
12 (C.17:30A-10);

13 (6) Handle claims through its employees or through one or more
14 insurers or other persons designated as servicing facilities. Designation
15 of a servicing facility is subject to the approval of the commissioner,
16 but such designation may be declined by a member insurer. The
17 association is designated as a servicing facility for the administration
18 of claim obligations of: (a) the New Jersey Surplus Lines Insurance
19 Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance
20 Association; and (c) the Unsatisfied Claim and Judgment Fund. The
21 association may also be designated or may contract as a servicing
22 facility for any other entity which may be recommended by the
23 association's board of directors and approved by the commissioner;

24 (7) Reimburse each servicing facility for obligations of the
25 association paid by the facility and for expenses incurred by the facility
26 while handling claims on behalf of the association and shall pay the
27 other expenses of the association authorized by this act;

28 (8) Make loans to the New Jersey Surplus Lines Insurance
29 Guaranty Fund [in accordance with the provisions of the "New Jersey
30 Surplus Lines Insurance Guaranty Fund Act," P.L.1984, c.101
31 (C.17:22-6.70 et al.)] and the Unsatisfied Claim and Judgment Fund
32 is such amounts and on such terms as the board of directors may
33 determine are necessary or appropriate to effectuate the purposes of
34 P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) in
35 accordance with the plan of operation; provided, however, no such
36 loan transaction shall be authorized to the extent the federal tax
37 exemption of the association would be withdrawn or the association
38 would otherwise incur any federal tax or penalty as a result of such
39 transaction;

40 (9) Assess member insurers in amounts necessary to make loans
41 pursuant to paragraph (10) of this subsection. The estimated
42 assessments of each member insurer shall be in the proportion that the
43 net direct written premiums of the member insurer for the calendar
44 year preceding the assessment bears to the net direct written premiums
45 of all member insurers for the calendar year preceding the assessment
46 with actual assessments adjusted in the succeeding year based on the

1 proportion that the assessed member insurer's net direct written
2 premiums in the year of assessment bears to the net direct written
3 premiums of all member insurers for that year.

4 (a) For the purposes of this paragraph, "net direct written
5 premiums" shall not include medical malpractice liability insurance
6 premiums paid to member insurers to which an additional charge has
7 been applied for deposit in the New Jersey Medical Malpractice
8 Reinsurance Recovery Fund as provided in the "Medical Malpractice
9 Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the
10 regulations promulgated pursuant thereto.

11 (b) In the event that the commissioner certifies that loans in
12 amounts less than \$160 million per calendar year as provided in
13 paragraph (10) of this subsection will satisfy the current and
14 anticipated financial obligations of the Market Transition Facility,
15 without reference to the amount of funds remaining from the sale of
16 the Market Transition Facility Senior Lien Revenue Bonds, a member
17 insurer, and all of its affiliates as defined in subsection a. of section 1
18 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced
19 assessment pursuant to this paragraph if the member insurer and all
20 such affiliates: (i) did not issue or renew a policy of private passenger
21 automobile insurance in this State on or after January 1, 1973; (ii)
22 were not assessed as members of the Market Transition Facility as
23 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii)
24 had not relinquished voluntarily any expectation they may have had for
25 the repayment of loans made pursuant to paragraph (10) of this
26 subsection, as provided by paragraph (2) of subsection b. of section 6
27 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or
28 settlement agreement approved by any court of competent jurisdiction,
29 on or before the effective date of this 1995 amendatory act. The
30 reduced assessment of such members shall be equal to their
31 proportionate share of the difference between the amount certified by
32 the commissioner and the total of the assessment of all other insurers
33 subject to such assessment. If the amount of such difference is zero
34 or less, the reduced assessment shall be zero;

35 (10) Make loans in the amount of \$160 million per calendar year,
36 beginning in calendar year 1990, or upon certification by the
37 commissioner, as provided by paragraph (b) of subsection (9) of this
38 section, that lesser amounts will satisfy the current and anticipated
39 financial obligations of the Market Transition Facility, such lesser
40 amounts as may be collected pursuant to paragraph (9) of this
41 subsection, to the New Jersey Automobile Insurance Guaranty Fund
42 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except
43 that no loan shall be made pursuant to this paragraph after December
44 31, 1997. In no event shall member insurers subject to assessments
45 have their financial obligation increased due to reductions granted
46 pursuant to paragraph (9) of this subsection;

1 (11) Reimburse an insurer for medical expense benefits in excess
2 of \$75,000 per person per accident as provided in section 2 of
3 P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an
4 automobile insurance policy issued prior to January 1, 2004;

5 (12) Undertake all of the management, administrative, and claims
6 activities of the Unsatisfied Claim and Judgment Fund, created
7 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey
8 Automobile Full Insurance Underwriting Association, created pursuant
9 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition
10 Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-
11 11).

12 b. The association may:

13 (1) Employ or retain such persons as are necessary to handle
14 claims and perform such other duties of the association;

15 (2) Borrow and separately account for funds from any source,
16 including, but not limited to, the New Jersey Surplus Lines Insurance
17 Guaranty Fund and the Unsatisfied Claim and Judgment Fund, in such
18 amounts and on such terms, as the board of directors may determine
19 are necessary or appropriate to effectuate the purpose of this act in
20 accordance with the plan of operation; provided, however, no such
21 borrowing transaction shall be authorized to the extent the federal tax
22 exemption of the association would be withdrawn or the association
23 would otherwise incur any federal tax or penalty as a result of such
24 transaction;

25 (3) Sue or be sued;

26 (4) Negotiate and become a party to such contracts as are
27 necessary to carry out the purpose of this act;

28 (5) Perform such other acts as are necessary or proper to
29 effectuate the purpose of this act;

30 (6) Refund to the member insurers in proportion of the
31 contribution of each member insurer that amount by which the assets
32 exceed the liabilities if, at the end of any calendar year, the board of
33 directors finds that the assets of the association exceed the liabilities,
34 as estimated by the board of directors for the coming year.

35 (cf: P.L.1995, c.396, s.1)

36
37 5. Section 9 of P.L.1974, c.17 (C.17:30A-9) is amended to read
38 as follows:

39 9. a. (1) The association shall submit to the commissioner a plan
40 of operation and any amendments thereto necessary or suitable to
41 assure the fair, reasonable, and equitable administration of the
42 association. The plan of operation and any amendments thereto shall
43 become effective upon approval in writing by the commissioner;

44 (2) If the association fails to submit a plan of operation acceptable
45 to the commissioner within 90 days following the effective date of this
46 act, or if at any time thereafter the association fails to submit an

1 acceptable amendment to the plan, the commissioner shall, after
2 notice and hearing adopt and promulgate such reasonable rules as are
3 necessary or advisable to effectuate the provisions of this act. Such
4 rules shall continue in force until modified by the commissioner or
5 superseded by a plan submitted by the association and approved by
6 the commissioner.

7 b. All member insurers shall comply with the plan of operation.

8 c. The plan of operation shall:

9 (1) Establish the procedures whereby all the powers and duties of
10 the association under section 8 of this act will be performed;

11 (2) Establish procedures for handling assets of the association;

12 (3) Establish the amount and method of reimbursing members of
13 the board of directors under section 7 of this act;

14 (4) Establish procedures by which claims may be filed with the
15 association and establish acceptable forms of proof of covered claims.
16 Notice of claims to the receiver or liquidator of the insolvent insurer
17 shall be deemed notice to the association or its agent and a list of such
18 claims shall be periodically submitted to the association by the receiver
19 or liquidator;

20 (5) Establish regular places and times for meetings of the board of
21 directors;

22 (6) Establish procedures for records to be kept in all financial
23 transactions of the association, its agents, and the board of directors;

24 (7) Provide that any member insurer aggrieved by any final action
25 or decision of the association may appeal to the commissioner within
26 30 days after the action or decision;

27 (8) Establish the procedures whereby selections for the board of
28 directors will be submitted to the commissioner;

29 (9) Contain additional provisions necessary or proper for the
30 execution of the powers and duties of the association;

31 (10) Establish procedures for the transition and consolidation of
32 compatible functions of the Unsatisfied Claim and Judgment Fund, the
33 New Jersey Automobile Full Insurance Underwriting Association and
34 the Market Transition Facility in order to eliminate redundant
35 operational activities and promote greater efficiencies in claims
36 handling and other operations;

37 (11) Establish procedures as necessary or proper to finance the
38 operation of and account for receipts and disbursements as well as
39 other financial transactions involving the Unsatisfied Claim and
40 Judgment Fund, the New Jersey Automobile Full Insurance
41 Underwriting Association and the Market Transition Facility;

42 (12) Create such advisory boards as necessary or proper to assist
43 in the administration and management of the operations of the
44 Unsatisfied Claim and Judgment Fund.

45 d. The plan of operation may provide that any or all powers and
46 duties of the association except those under sections 8a.(3) and 8b.(2),

1 are delegated to a corporation, association, or other organization
2 which performs or will perform functions similar to those of this
3 association, or its equivalent. Such a corporation, association or
4 organization shall be reimbursed as a servicing facility would be
5 reimbursed and shall be paid for its performance of the functions of
6 the association. A delegation under this subsection shall take effect
7 only with the approval of both the board of directors and the
8 commissioner, and may be made only to a corporation, association, or
9 organization which extends protection not substantially less favorable
10 and effective than that provided by this act.

11 (cf: P.L.1974, c.17, s.9)

12

13 6. (New section) a. Notwithstanding the provisions of any other
14 law to the contrary, all of the functions, powers and duties of the New
15 Jersey Automobile Full Insurance Underwriting Association, created
16 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market
17 Transition Facility, created pursuant to section 88 of P.L.1990, c.8
18 (C.17:33B-11), shall be transferred to the New Jersey Property-
19 Liability Insurance Guaranty Association, established pursuant to
20 P.L.1974, c.17 (C.17:30A-1 et seq.).

21 b. Notwithstanding the provisions of any other law to the contrary,
22 the commissioner shall provide for the liquidation of the policyholder
23 liabilities and an orderly transfer and transition of the operations,
24 functions, powers and duties, including all the remaining assets and
25 policyholder liabilities of the New Jersey Automobile Full Insurance
26 Underwriting Association, created pursuant to P.L.1983, c.65
27 (C.17:30E-1 et seq.), and the Market Transition Facility, created
28 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), to the New
29 Jersey Property-Liability Insurance Guaranty Association.

30 c. Notwithstanding the provisions of any other law to the contrary,
31 all balances in the New Jersey Automobile Insurance Guaranty Fund
32 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5) are
33 hereby transferred to the New Jersey Property-Liability Insurance
34 Guaranty Association.

35 d. Notwithstanding any other law to the contrary, the
36 commissioner may in his discretion provide for the liquidation of the
37 liabilities and an orderly transition of the operations, functions, powers
38 and duties of the Unsatisfied Claim and Judgment Fund, created
39 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.) regarding its
40 obligations pursuant to section 2 of P.L.1977, c.310 (C.39:6-73.1) to
41 the New Jersey Property-Liability Insurance Guaranty Association.

42 e. Notwithstanding any other law to the contrary, the
43 commissioner may in his discretion by order determine when the status
44 as separate legal entities of the New Jersey Automobile Full Insurance
45 Underwriting Association and the Market Transition Facility may be
46 terminated.

1 7. (New section) The Unsatisfied Claim and Judgment Fund
2 Board in the Department of Banking and Insurance, established
3 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), is hereby abolished
4 and all its functions, powers and duties, along with the Unsatisfied
5 Claim and Judgment Fund, including all its assets, liabilities and
6 balances, are transferred from the Department of Banking and
7 Insurance to the New Jersey Property-Liability Insurance Guaranty
8 Association, established pursuant to P.L.1974, c.17 (C.17:30A-1 et
9 seq.). Wherever in any law, rule or regulation, reference is made to
10 the Unsatisfied Claim and Judgment Fund Board, the same shall mean
11 and refer to the New Jersey Property-Liability Insurance Guaranty
12 Association.

13

14 8. Section 2 of P.L.1954, c.174 (C.39:6-62) is amended to read
15 as follows:

16 2. Definitions. As used in this act:

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

21 "Treasurer" means the State Treasurer of New Jersey acting as the
22 custodian of the Unsatisfied Claim and Judgment Fund.]

23 "Association" means the New Jersey Property-Liability Insurance
24 Guaranty Association created pursuant to P.L.1974, c.17 (C.17:30A-1
25 et seq.).

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

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

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

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

45 "Uninsured motor vehicle" means a motor vehicle as to which there
46 is not in force a liability policy meeting the requirements of section 3

1 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,
2 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
3 of a certificate of self-insurance under said law, but shall not include
4 a motor vehicle with a policy in force which is insured pursuant to
5 section 4 of P.L.1998, c.21 (C.39:6A-3.1).

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
11 written on policies, insuring against legal liability for bodily injury or
12 death and for damage to property arising out of the ownership,
13 operation or maintenance of motor vehicles, which are principally
14 garaged in this State, less return premiums thereon and dividends paid
15 to 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.1998, c.21, s.21)

20

21 9. Section 3 of P.L.1952, c.174 (C.39:6-63) is amended to read
22 as follows:

23 3. For the purpose of creating and maintaining the fund:

24 (a) (Deleted by amendment, P.L.1968, c.323, s.3.)

25 (b) (Deleted by amendment, P.L.1968, c.323, s.3.)

26 (c) (Deleted by amendment, P.L.1968, c.323, s.3.)

27 (d) [On December 30 in each year, the commissioner shall
28 calculate the probable amount which will be needed to carry out the
29 provisions of this act during the ensuing registration license year. In
30 such calculation, he shall take into consideration the amount presently
31 reserved for pending claims, anticipated payments from the fund
32 during said year, anticipated payments from the fund for medical
33 expenses to be made pursuant to section 2 of P.L.1977, c.310
34 (C.39:6-73.1), during the two years after said year, anticipated
35 amounts to be reserved for claims pending during said year, amounts
36 transferred to the Division of Motor Vehicles pursuant to section 28
37 of P.L.1952, c.174 (C.39:6-88) and the desirability of maintaining a
38 surplus over and above such anticipated payments and present and
39 anticipated reserves, such surplus not to exceed the amount actually
40 paid from the fund during the 12 full calendar months immediately
41 preceding the date of calculation. Such probable amount which will
42 be needed to carry out the provisions of this act shall be assessed
43 against insurers for such year's contributions to the fund. Such
44 probable amount needed shall be initially apportioned on an estimated
45 basis among such insurers in the proportion that the net direct written
46 premiums of each bear to the aggregate net direct written premiums

1 of all insurers, including the New Jersey Automobile Full Insurance
2 Underwriting Association, created pursuant to P.L.1983, c.65
3 (C.17:30E-1 et seq.), and the Market Transition Facility created
4 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), during the
5 preceding calendar year as shown by the records of the commissioner
6 as an estimate. Each insurer shall pay the sum so assessed to the
7 treasurer on or before March 31, next following. Such estimated sum
8 shall be subject to adjustment on March 31 next following payment
9 based upon the proportion that the net direct written premiums of each
10 insurer bear to the aggregate net direct written premiums of all
11 insurers, including the New Jersey Automobile Full Insurance
12 Underwriting Association created pursuant to P.L.1983, c.65
13 (C.17:30E-1 et seq.), and the Market Transition Facility created
14 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), during the
15 year the estimated assessment was paid as shown by the records of the
16 commissioner.] Commencing on or before December 30, 2003, and on
17 or before December 30 in each year thereafter, the association shall
18 calculate the probable amount which will be needed to carry out its
19 responsibilities under section 35 of P.L. , c. (C.)(now before
20 the Legislature as this bill), section 9 of P.L.1952, c.174 (C.39:6-69)
21 and section 7 of P.L.1972, c.198 (C.39:6-86.1) during the ensuing
22 year. In that calculation, the association shall take into consideration
23 the amount presently reserved for pending claims, anticipated
24 payments from the fund during that year and during the two years after
25 that year, anticipated amounts to be reserved for claims pending during
26 that year, and the desirability of maintaining a surplus over and above
27 those anticipated payments and present and anticipated reserves, which
28 surplus shall not exceed the amount actually paid from the fund during
29 the 12 full calendar months immediately preceding the date of
30 calculation. The probable amount needed to carry out the provisions
31 of this section shall be assessed against insurers for that year's
32 contribution to the fund.

33 (e) [Whenever any of the provisions of this act concerning the
34 method and sources of assessments on insurers, including the New
35 Jersey Automobile Full Insurance Underwriting Association, created
36 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market
37 Transition Facility created pursuant to section 88 of P.L.1990, c.8
38 (C.17:33B-11), the maximum amounts payable from the fund,
39 eligibility or qualifications of claimants, or amounts to be deducted
40 from payments made from the fund are amended by law, between
41 January 1 and April 30 in any year, the commissioner may, if he deems
42 it necessary, rescind any assessment on insurers, including the New
43 Jersey Automobile Full Insurance Underwriting Association, created
44 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) and the Market
45 Transition Facility created pursuant to section 88 of P.L.1990, c.8
46 (C.17:33B-11), made on December 30 of the preceding year. He shall

1 then, within 15 days of the adoption of such amendment, recalculate
2 the probable amount which will be needed to carry out the provisions
3 of this act during the ensuing registration license year, in accordance
4 with the provisions of subsection (d) of this section. If, in his
5 judgment, the estimated balance of the fund at the beginning of the
6 next registration license year will be insufficient to meet such needs,
7 he shall determine the contributions of insurers, if any, in accordance
8 with the provisions of subsection (d) of this section. In the event of
9 a rescission and reassessment subsequent to March 1 in any year,
10 insurers shall pay the sum so assessed, if any, to the treasurer within
11 90 days of the date of such assessment.] Whenever any of the
12 provisions concerning the method and sources of assessments on
13 insurers, the maximum amounts payable from the fund, eligibility or
14 qualifications of claimants, or amounts to be deducted from payments
15 made from the fund are amended by law, the association may, if the
16 association deems it necessary, rescind any assessment on insurers.
17 The association shall then, within 30 days of the adoption of such
18 amendment, recalculate the probable amount which will be needed to
19 carry out the provisions of P.L. , c. (C.) (now before the
20 Legislature as this bill) during the ensuing fiscal year, in accordance
21 with the provisions of subsection (d) of this section. If, in the
22 judgment of the association, the estimated balance of the fund at the
23 beginning of the next year will be sufficient to meet those needs, the
24 association shall determine the contributions of insurers, if any, in
25 accordance with the provisions of subsection (d) of this section.
26 (cf: P.L.1990, c.8, s.85)

27

28 10. Section 18 of P.L.1955, c.1 (C.39:6-64.1) is amended to read
29 as follows:

30 18. a. The [board] association may from time to time, adopt[,]
31 and amend [and enforce all reasonable rules and regulations] a plan
32 of operation, subject to the approval of the commissioner, necessary
33 or desirable [in its opinion] in connection with its functions, duties
34 and responsibilities in administering this act.

35 [Notwithstanding the provisions of P.L.1944, c.20 (C.52:17A-1 et
36 seq.), the board, with the approval of the Attorney General, shall have
37 the power to engage the services of such attorneys and other persons
38 as may be deemed necessary or desirable for the purpose of suing for,
39 enforcing, collecting and taking any other action for the collection of
40 moneys due to the commissioner or treasurer on any right, claim,
41 agreement, judgment, assignment and other obligation arising out of
42 the application of this act. After repayment to the commissioner or
43 treasurer of all sums paid from the fund and all moneys due to the
44 commissioner and treasurer on any one claim, agreement, judgment,
45 assignment or other obligation, the commissioner or treasurer may
46 assign to the original claimant, judgment creditor or other person

1 entitled thereto all of the right, title and interest that the commissioner
2 or treasurer has in and to the balance due upon such obligation. Any
3 attorney so engaged shall not be deemed an employee of the board or
4 the State of New Jersey, shall not be subject to the Civil Service laws
5 as contained in Title 11 of the Revised Statutes of New Jersey and
6 shall not have any right to continued employment in such capacity.
7 The compensation of an attorney so engaged for services so rendered
8 shall be deemed an expense of the board under section 4 of the act and
9 shall be paid out of the moneys recovered on the obligation in
10 connection with which the services were rendered, upon such terms as
11 may be authorized by the board with the approval of the Attorney
12 General.] The plan of operation shall provide that the Unsatisfied
13 Claim and Judgment Fund may (1) borrow and separately account for
14 moneys from any source, including, but not limited to, the New Jersey
15 Property-Liability Insurance Guaranty Association and the New Jersey
16 Surplus Lines Insurance Guaranty Fund, in such amounts and on such
17 terms as the board of directors may determine, are necessary or
18 appropriate and (2) make loans, in such amounts and on such terms as
19 the board of directors may determine are necessary or appropriate, to
20 the New Jersey Property-Liability Insurance Guaranty Association and
21 the New Jersey Surplus Lines Insurance Guaranty Fund.

22 b. There shall be no liability on the part of and no cause of action
23 of any nature shall arise against the association, its agents, employees,
24 or the commissioner or his designees for any action taken by them in
25 the performance of their powers and duties under P.L. c. (C.)
26 (now before the Legislature as this bill).

27 (cf: P.L.1985, c.148, s.6)

28

29 11. Section 5 of P.L.1952, c.174 (C.39:6-65) is amended to read
30 as follows:

31 5. Any qualified person, or the personal representative of such
32 person, who suffers damages resulting from bodily injury or death or
33 damage to property arising out of the ownership, maintenance or use
34 of a motor vehicle in this State on or after April 1, 1955, and whose
35 damages may be satisfied in whole or in part from the fund, shall,
36 except in cases in which the claim is asserted by actions brought under
37 section 18 of this act pursuant to section 19 of this act, within [90]
38 180 days after the accident, as a condition precedent to the right
39 thereafter to apply for payment from the fund, give notice to the
40 [board] association, the form and contents of which shall be
41 prescribed by the [board] association, of his intention to make a
42 claim thereon for such damages if otherwise uncollectible; provided,
43 any such qualified person may, in lieu of giving said notice within said
44 time, make proof to the court on the hearing of the application for the
45 payment of a judgment (a) that he was physically incapable of giving
46 said notice within said period and that he gave said notice within [90]

1 180 days after he became physically capable to do so or in the event
2 he did not become so capable, that a notice was given on his behalf
3 within a reasonable period, or (b) that he gave notice to the [board]
4 association within 15 days of receiving notice that an insurer had
5 disclaimed on a policy of insurance so as to remove or withdraw
6 liability insurance coverage for his claim against a person or persons
7 who allegedly caused him to suffer damages. A copy of the complaint
8 shall be furnished to the [board] association if an action has
9 theretofore been brought for the enforcement of such claim. Such
10 person shall also notify the [board] association of any action
11 thereafter instituted for the enforcement of such claim within 15 days
12 after the institution thereof and such notice shall be accompanied by
13 a copy of the complaint.

14 The Director of the Division of Motor Vehicles is hereby
15 authorized and empowered, the provisions of any other law relating to
16 the confidential nature of any reports or information furnished to or
17 filed with the division notwithstanding, to furnish to the [board]
18 association upon its request, for such use, utilization and purposes as
19 the [board] association may deem reasonably appropriate to
20 administer this act and discharge its functions hereunder, any reports
21 or information filed by any person or persons claiming benefits under
22 the provisions of this act, that the director has with regard to any
23 accident, and any operator or owner of a motor vehicle involved in any
24 accident, and as to any automobile or motor vehicle liability insurance
25 or bond carried by an operator or owner of any motor vehicle.

26 (cf: P.L.1985, c.148, s.7)

27

28 12. Section 7 of P.L.1952, c.174 (C.39:6-67) is amended to read
29 as follows:

30 7. The [insurer to whom any action has been assigned]
31 association may through counsel enter an appearance on behalf of the
32 defendant, file a defense, appear at the trial or take such other steps as
33 it may deem appropriate on the behalf and in the name of the
34 defendant, and may thereupon, on the behalf and in the name of the
35 defendant, conduct his defense, take recourse to any appropriate
36 method of review on behalf of, and in the name of, the defendant, and
37 all such acts shall be deemed to be the acts of such defendant;
38 provided, however, that nothing contained herein shall deprive the
39 defendant of the right to also employ his own counsel and defend the
40 action. All expense incurred by [such insurer] the association in
41 connection with any review prosecuted or defended by it from a
42 judgment rendered in such action, including its attorneys' fees in
43 connection therewith, shall be borne by the fund [, and its attorneys'
44 fees in connection therewith, unless agreed to between the board and
45 the attorney, shall be subject to approval by the court].

46 (cf: P.L.1968, c.323, s.4)

1 13. Section 8 of P.L.1952, c.174 (C.39:6-68) is amended to read
2 as follows:

3 8. In any case in which [an insurer] the association has assumed
4 under this act, the defense of any action, the defendant shall
5 co-operate with [such insurer] the association in the defense of such
6 action. In the event of his failure to do so, [such insurer] the
7 association may apply to the court for an order directing such
8 co-operation.

9 (cf: P.L.1952, c.174 s.8)

10
11 14. Section 9 of P.L.1952, c.174 (C.39:6-69) is amended to read
12 as follows:

13 9. When any qualified person recovers a valid judgment in any
14 court of competent jurisdiction in this State against any other person,
15 who was the operator or owner of a motor vehicle, for injury to, death
16 of, any person or persons, or a similar valid judgment in such court
17 against such a defendant for an amount in excess of \$500.00, exclusive
18 of interest and costs, for damage to property, except property of
19 others in charge of such operator or owner or such operator's or
20 owner's employees, arising out of the ownership, maintenance or use
21 of the motor vehicle in this State on or after April 1, 1955, and any
22 amount remains unpaid thereon in the case of a judgment for bodily
23 injury or death, or any amount in excess of \$500.00 remains unpaid
24 thereon in case of a judgment for damage to property, such judgment
25 creditor may, upon the termination of all proceedings, including
26 reviews and appeals in connection with such judgment, file a verified
27 claim in the court in which the judgment was entered, and upon 10
28 days' written notice to the [board] association may apply to the court
29 for an order directing payment out of the fund, of the amount unpaid
30 upon such judgment for bodily injury or death, which does not exceed,
31 or upon such judgment for damage to property, which exceeds the sum
32 of \$500.00 and does not exceed--

33 (a) The maximum amount or limit of \$15,000.00, exclusive of
34 interest and costs, on account of injury to, or death of, one person, in
35 any one accident, and

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

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

42 (cf: P.L.1988, c.119, s.15)

43
44 15. Section 10 of P.L.1952, c.174 (C.39:6-70) is amended to read
45 as follows:

46 10. Hearing on application for payment of judgment. The court

1 shall proceed upon such application, in a summary manner, and, upon
2 the hearing thereof, the applicant shall be required to show:

3 (a) He is not a person covered with respect to such injury or death
4 by any workers' compensation law, or the personal representative of
5 such a person,

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

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

13 (d) He was not at the time of the accident, the owner or registrant
14 of an uninsured motor vehicle, or was not operating a motor vehicle
15 in violation of an order of suspension or revocation,

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

17 (f) The judgment debtor at the time of the accident was not
18 insured under a policy of automobile liability insurance under the terms
19 of which the insurer is liable to pay in whole or in part the amount of
20 the judgment,

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

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

32 (i) He has caused the judgment debtor to make discovery under
33 oath, pursuant to law, concerning his personal property and as to
34 whether such judgment debtor was at the time of the accident insured
35 under any policy or policies of insurance described in subsection (f) of
36 this section,

37 (j) He has made all reasonable searches and inquiries to ascertain
38 whether the judgment debtor is possessed of personal or real property
39 or other assets, liable to be sold or applied in satisfaction of the
40 judgment,

41 (k) By such search he has discovered no personal or real property
42 or other assets, liable to be sold or applied or that he has discovered
43 certain of them, describing them, owned by the judgment debtor and
44 liable to be so sold and applied and that he has taken all necessary
45 action and proceedings for the realization thereof and that the amount
46 thereby realized was insufficient to satisfy the judgment, stating the

1 amount so realized and the balance remaining due on the judgment
2 after application of the amount realized,

3 (l) The application is not made by or on behalf of any insurer by
4 reason of the existence of a policy of insurance, whereby the insurer
5 is liable to pay, in whole or in part, the amount of the judgment and
6 that no part of the amount to be paid out of the fund is sought in lieu
7 of making a claim or receiving a payment which is payable by reason
8 of the existence of such a policy of insurance and that no part of the
9 amount so sought will be paid to an insurer to reimburse or otherwise
10 indemnify the insurer in respect of any amount paid or payable by the
11 insurer by reason of the existence of such a policy of insurance,

12 (m) Whether or not he has recovered a judgment in an action
13 against any other person against whom he has a cause of action in
14 respect of his damages for bodily injury or death or damage to
15 property arising out of the accident and what amounts, if any, he has
16 received by way of payments upon the judgment, or by way of
17 settlement of such cause of action, in whole or in part, from or on
18 behalf of such other person,

19 (n) In order to recover for noneconomic loss, as defined in section
20 2 of P.L.1972, c.70 (C.39:6A-2) for accidents to which the benefits of
21 sections 7 and 10 of P.L.1972, c.198 (C.39:6-86.1 and C.39:6-86.4)
22 apply, the injured person shall have sustained an injury described in
23 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

24 Whenever the applicant satisfies the court that it is not possible to
25 comply with one or more of the requirements enumerated in
26 subsections (h) and (I) of this section and that the applicant has taken
27 all reasonable steps to collect the amount of the judgment or the
28 unsatisfied part thereof and has been unable to collect the same, the
29 court may dispense with the necessity for complying with such
30 requirements.

31 The [board or any insurer to which the action has been assigned]
32 association may appear and be heard on application and show cause
33 why the order should not be made.

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

35

36 16. Section 11 of P.L.1952, c.174 (C.39:6-71) is amended to read
37 as follows:

38 11. The court shall make an order directed to the [treasurer]
39 association requiring [him] the association to make payment from the
40 fund of such sum, if any, as it shall find to be payable upon said claim,
41 pursuant to the provisions of and in accordance with the limitations
42 contained in this act, if the court is satisfied, upon the hearing:

43 (a) Of the truth of all matters required to be shown by the
44 applicant by section 10,

45 (b) That the applicant has fully pursued and exhausted all remedies
46 available to him for recovering damages against all persons mentioned

1 in subparagraph (m) of section 10 by

2 (1) Commencing action against all such persons against whom the
3 applicant might reasonably be considered as having a cause of action
4 in respect of such damages and prosecuting every such action in good
5 faith to judgment and

6 (2) Taking all reasonable steps available to him to collect on every
7 judgment so obtained and by applying the proceeds of any judgment
8 or recovery so obtained towards satisfaction of the amount due upon
9 the judgment for payment of which the claim is made.

10 Any amount which the plaintiff has received or can collect by way
11 of payments upon the judgment or by way of settlement of the cause
12 of action, in whole or in part, from or on behalf of any person other
13 than the judgment debtor, described in subparagraph (m) of section 10,
14 shall be deducted from the amount due upon the judgment for payment
15 of which claim is made.

16 (cf: P.L.1958, c.98, s.2)

17

18 17. Section 12 of P.L.1952, c.174 (C.39:6-72) is amended to read
19 as follows:

20 12. (a) In an action against an operator or owner of a motor
21 vehicle for injury to or death of any person or for damage to property
22 arising out of the ownership, maintenance or use of said vehicle in this
23 State on or after April 1, 1955, pending in any court of competent
24 jurisdiction in this State, the plaintiff may upon notice to the [board]
25 association file a verified petition with the court alleging:

26 (1) the matters set forth in subparagraphs (a), (b), (c), (d), (e) and
27 (f) of section 10;

28 (2) that the petition is not presented on behalf of an insurer under
29 circumstances set forth in subparagraph (1) of section 10;

30 (3) that he has entered into an agreement with the defendant to
31 settle all claims set forth in the complaint in said action and the
32 amount proposed to be paid to him pursuant thereto;

33 (4) that the said proposed settlement has been entered into with
34 and by the consent of the Superior Court and approved by the
35 [executive director of the fund] association;

36 (5) that the defendant has executed and delivered to the [board]
37 association a verified statement of his financial condition;

38 (6) that a judgment against the defendant would be uncollectible;

39 (7) that the defendant has undertaken in writing to repay to the
40 [treasurer] association the sum that he would be required to pay
41 under such settlement, and has executed a confession of judgment in
42 connection therewith.

43 If the court be satisfied of the truth of the allegations in said
44 petition and of the fairness of such proposed settlement, it may enter
45 an order approving the same and directing the [treasurer] association,
46 upon receipt of the undertaking and confession of judgment mentioned

1 in subparagraph (7) of this section, to make payment to the plaintiff of
2 the amount agreed to be accepted.

3 (b) [An insurer to whom a claim has been assigned] The
4 association may settle any claim [involving the payment of less than
5 \$5,000.00 with the approval of the executive director of the fund or
6 any claim involving payment of \$5,000.00 or more with the approval
7 of the board], without court approval, if satisfied:

8 (1) that the claimant is not a person of the character described in
9 subparagraphs (a), (b), (c), (d), (e) and (f) of section 10;

10 (2) that the settlement is not made on behalf of an insurer under
11 circumstances set forth in subparagraph (e) of section 10; and

12 (3) that a judgment against the owner or operator of the motor
13 vehicle involved in the accident would be uncollectible, and that such
14 owner or operator has consented to such settlement, executed and
15 delivered to the [board] association a verified statement of his
16 financial condition and undertaken in writing to repay to the
17 [treasurer] association the sum to be paid under the settlement, and
18 executed a confession of judgment in connection therewith. [Any
19 settlement so made shall be certified by the board to the treasurer, who
20 shall, upon receipt of said undertaking to repay and confession of
21 judgment, make the required payment to claimant out of the fund.]

22 (cf: P.L.1985, c.148, s.8)

23

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

26 13. Except with respect to medical expense benefits paid pursuant
27 to section 2 of P.L.1977, c.310 (C.39:6-73.1), no order shall be made
28 for the payment and the [treasurer] association shall make no
29 payment, out of the fund, of

30 (a) Any claim for damage to property for less than \$500.00,

31 (b) The first \$500.00 of any judgment for damage to property or
32 of the unsatisfied portion thereof, or

33 (c) The unsatisfied portion of any judgment which, after deducting
34 \$500.00 therefrom if the judgment is for damage to property, exceeds

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

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

42 (3) the maximum amount or limit of \$5,000.00, exclusive of
43 interest and costs, for damage to property in any one accident;
44 provided, that such maximum amounts shall be reduced by any amount
45 received or recovered as specified in subsection (m) of section 10.

46 (d) Any claim for damage to property which includes any sum

1 greater than the difference between said maximum amounts and the
2 sum of \$500.00, and any amount paid out of the fund in excess of the
3 amount so authorized may be recovered by the [treasurer] association
4 in an action brought to [him] it against the person receiving the same.
5 (cf: P.L.1988, c.119, s.16)

6
7 19. Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended to read
8 as follows:

9 2. In the event medical expense benefits paid by an insurer, in
10 accordance with subsection a. of section 4 of P.L.1972, c.70
11 (C.39:6A-4) or section 4 of P.L.1998, c.21 (C.39:6A-3.1), are in
12 excess of \$75,000.00 on account of personal injury to any one person
13 in any one accident covered under a policy issued prior to January 1,
14 2004, the Unsatisfied Claim and Judgment Fund shall assume the
15 following: a. the entire excess for a medical expense benefits claim
16 covered under a policy issued before January 1, 1991; and b. such
17 excess up to \$250,000 for a medical expense benefits claim covered
18 under a policy issued on or after January 1, 1991 and the Unsatisfied
19 Claim and Judgment Fund shall reimburse the insurer therefor in
20 accordance with rules and regulations promulgated by the
21 commissioner; provided, however, that this provision is not intended
22 to broaden the coverage available to accidents involving uninsured or
23 hit-and-run automobiles, to provide extraterritorial coverage, or to pay
24 excess medical expenses.

25 The Unsatisfied Claim and Judgment Fund shall cease to reimburse
26 an insurer for medical expense benefits under this section for injuries
27 covered under a policy issued on or after January 1, 2004.

28 (cf: P.L.1998, c.21, s.69)

29
30 20. Section 14 of P.L.1952, c.174 (C.39:6-74) is amended to read
31 as follows:

32 14. No claim shall be allowed and ordered to be paid out of the
33 fund if the court shall find, upon the hearing for the allowance of the
34 claim, that it is founded upon a judgment which was entered by default
35 unless (1) the claimant shall have complied with the requirements of
36 section 5, and (2) prior to the entry of such judgment the [board]
37 association shall have been given notice of intention to enter the
38 judgment and file a claim thereon against the fund and shall have been
39 afforded an opportunity to take such action as it shall deem advisable
40 [under section 15].

41 If the court, upon a hearing for the allowance of any claim against
42 the fund, finds that it was a claim which was not assigned by the
43 [board to an insurer in accordance with section 6] association for
44 defense, or that the action upon such claim was not fully and fairly
45 defended, or that the judgment thereon was entered upon the consent
46 or with the agreement of the defendant, the court shall allow such

1 claim but shall order it to be paid only in such sum as the court shall
2 determine to be justly due and payable out of the fund, on the basis of
3 the actual amount of damages for which the defendant was liable to
4 the plaintiff under the cause of action, upon which the judgment was
5 rendered and reduced by any amount received from any person
6 mentioned in subparagraph (m) of section 10, notwithstanding that the
7 judgment is for a greater amount.

8 (cf: P.L.1955, c.1, s.7)

9
10 21. Section 17 of P.L.1952, c.174 (C.39:6-77) is amended to read
11 as follows:

12 17. Assignment of judgments to commissioner. The [treasurer]
13 association shall not pay any sum from the fund, in compliance with an
14 order made for that purpose, in any case in which the claim is founded
15 upon a judgment, except a judgment obtained against the
16 [commissioner] association under this act, until the applicant assigns
17 the judgment to the [commissioner] association and, thereupon, the
18 [commissioner] association shall be deemed to have all the rights of
19 the judgment creditor under the judgment and shall enforce and collect
20 the same for the full amount thereof with interest and costs and if more
21 money is collected upon any such judgment than the amount paid out
22 of the fund, the [commissioner] association shall pay the balance,
23 after reimbursing the fund, to the judgment creditor. Upon assignment
24 of a judgment to the [commissioner] association the [board]
25 association may[, on behalf of the commissioner] enter into agreement
26 with the defendant for reimbursement of the fund by lump sum or
27 installment payments, including waiver of interest and subordination
28 of the lien of the judgment where the same is determined to be
29 advantageous in obtaining reimbursement of payments made by the
30 fund. Any such agreement may be annexed to an application for a
31 court order made pursuant to section 27(b).

32 (cf: P.L.1985, c.148, s.10)

33
34 22. Section 18 of P.L.1952, c.174 (C.39:6-78) is amended to read
35 as follows:

36 18. When the death of, or personal injury to, any person arises out
37 of ownership, maintenance or use of a motor vehicle in this State on
38 or after April 1, 1955, but the identity of the motor vehicle and of the
39 operator and owner thereof cannot be ascertained or it is established
40 that the motor vehicle was, at the time said accident occurred, in the
41 possession of some person other than the owner without the owner's
42 consent and that the identity of such person cannot be ascertained, any
43 qualified person who would have a cause of action against the
44 operator or owner or both in respect to such death or personal injury
45 may bring an action therefor against the [commissioner] association
46 in any court of competent jurisdiction, but no judgment against the

1 [commissioner] association shall be entered in such an action unless
2 the court is satisfied, upon the hearing of the action, that--

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

4 (b) The claimant is not a person covered with respect to such
5 injury or death by any workers' compensation law, or the personal
6 representative of such a person,

7 (c) The claimant was not at the time of the accident the owner or
8 registrant of an uninsured motor vehicle, or was not operating a motor
9 vehicle in violation of an order of suspension or revocation,

10 (d) The claimant has a cause of action against the operator or
11 owner of such motor vehicle or against the operator who was
12 operating the motor vehicle without the consent of the owner of the
13 motor vehicle,

14 (e) All reasonable efforts have been made to ascertain the identity
15 of the motor vehicle and of the owner and operator thereof and either
16 that the identity of the motor vehicle and the owner and operator
17 thereof cannot be established, or that the identity of the operator, who
18 was operating the motor vehicle without the owner's consent, cannot
19 be established,

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

22 (cf: P.L.1985, c.148, s.11)

23

24 23. Section 19 of P.L.1952, c.174 (C.39:6-79) is amended to read
25 as follows:

26 19. When in an action in respect to the death of, or personal injury
27 to, any person, arising out of the ownership, maintenance or use of a
28 motor vehicle in this State on or after April 1, 1955, judgment is
29 rendered for the defendant on the sole ground that such death or
30 personal injury was occasioned by a motor vehicle--

31 (a) The identity of which, and of the owner and operator of which,
32 has not been established, or

33 (b) Which was in the possession of some person other than the
34 owner or his agent without the consent of the owner and the identity
35 of the operator has not been established, such cause shall be stated in
36 the judgment and the plaintiff in such action may within [three
37 months] 180 days from the date of the entry of such judgment bring
38 an action upon said cause of action against the [commissioner]
39 association in the manner provided in section 18.

40 (cf: P.L.1985, c.148, s.12)

41

42 24. Section 20 of P.L.1952, c.174 (C.39:6-80) is amended to read
43 as follows:

44 20. Impleading [commissioner] association in "hit-and-run" cases.
45 When an action has been commenced in respect of the death or injury
46 of any person arising out of the ownership, maintenance or use of a

1 motor vehicle in this State on or after April 1, 1955, the plaintiff shall
2 be entitled to make the [commissioner] association a party thereto if
3 the provisions of section 18 or 19 shall apply in any such case, and the
4 plaintiff has made the application and the court has entered the order
5 provided for in section 18.

6 (cf: P.L.1985, c.148, s.13)

7

8 25. Section 21 of P.L.1952, c.174 (C.39:6-81) is amended to read
9 as follows:

10 21. Defense of such actions by [commissioner] association. In
11 any action brought under sections 18 and 19 of this act, the
12 [commissioner] association may appear [by counsel for the insurer to
13 whom such action has been assigned]. [He] The association shall for
14 all purposes of the action be deemed to be the defendant. [He] The
15 association shall have available to [him] it any and all defenses which
16 would have been available to said operator or owner or both if the
17 action had been brought against them or either of them and process
18 upon them or either of them had been duly served within this State,
19 but [he] the association shall be entitled to defend in all cases without
20 asserting any specific facts.

21 (cf: P.L.1985, c.148, s.14)

22

23 26. Section 22 of P.L.1952, c.174 (C.39:6-82) is amended to read
24 as follows:

25 22. Settlement of actions against the [commissioner] association.
26 In any action brought against the [commissioner] association pursuant
27 to an order by the court entered in accordance with the provisions of
28 section 18, the plaintiff may file a verified petition alleging that he has
29 entered into an agreement with the [board] association to settle all
30 claims set forth in the complaint in said action and the amount
31 proposed to be paid to him pursuant thereto. If the court be satisfied
32 of the fairness of such proposed settlement, it may enter an order
33 approving such settlement and enter a judgment against the
34 [commissioner] association for the amount so agreed to be paid
35 thereunder.

36 (cf: P.L.1985, c.148, s.15)

37

38 27. Section 23 of P.L.1952, c.174 (C.39:6-83) is amended to read
39 as follows:

40 23. Credits against judgment. A judgment against the
41 [commissioner] association shall be reduced by any amounts which
42 such plaintiff has received from any person mentioned in subparagraph
43 (m) of section 10.

44 (cf: P.L.1985, c.148, s.16)

1 28. Section 24 of P.L.1952, c.174 (C.39:6-84) is amended to read
2 as follows:

3 24. When a judgment is obtained against the [commissioner]
4 association, in an action brought under this act, upon the
5 determination of all proceedings including appeals and reviews, the
6 court shall make an order directed to the [treasurer] association
7 directing [him] it to pay out of the fund to the plaintiff in the action
8 the amount thereof which does not exceed \$15,000.00, exclusive of
9 interest and costs, on account of injury to, or death of, one person
10 and, subject to such limits for the death of, or injury to, any one
11 person, does not exceed \$30,000.00, exclusive of interest and costs,
12 on account of the injury to, or death of, more than one person, in any
13 one accident, provided that such maximum amount shall be reduced by
14 any amount received or recovered by the plaintiff as specified in
15 subparagraph (m) of section 10.

16 (cf: P.L.1985, c.148, s.17)

17

18 29. Section 25 of P.L.1952, c.174 (C.39:6-85) is amended to read
19 as follows:

20 25. Subrogation. When judgment has been obtained against the
21 [commissioner] association in an action brought under this act, the
22 [commissioner] association shall, upon payment from the fund of the
23 amount of the judgment to the extent provided in this act, be
24 subrogated to the cause of action of the judgment creditor against the
25 operator and owner of the motor vehicle by which the accident was
26 occasioned and shall bring an action against either or both of such
27 persons for the amount of the damage sustained by the judgment
28 creditor when and in the event that the identity of either or both of
29 such persons shall be established, and shall recover the same out of
30 any funds which would be payable in respect to the death or injury
31 under any policy of insurance, which was in force at the time of the
32 accident and in event that more is recovered and collected in any such
33 action than the amount paid out of the fund by reason of the judgment,
34 the [treasurer] association shall pay the balance, after reimbursing the
35 fund, to the judgment creditor.

36 (cf: P.L.1985, c.148, s.18)

37

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

40 7. When any person qualified to receive payments under the
41 provisions of the "Unsatisfied Claim and Judgment Fund Law" suffers
42 bodily injury or death as a pedestrian, as defined in section 2 of
43 P.L.1972, c.70 (C.39:6A-2), caused by a motor vehicle, including an
44 automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2), and
45 a motorcycle, or by an object propelled therefrom, or arising out of an
46 accident while occupying, entering into, alighting from, or using an

1 automobile, registered or principally garaged in this State for which
2 personal injury protection benefits under the "New Jersey Automobile
3 Reparation Reform Act," P.L.1972, c.70 (C.39:6A-1 et seq.), or
4 section 19 of P.L.1983, c.362 (C.17:28-1.3), would be payable to such
5 person if personal injury protection coverage were in force and the
6 damages resulting from such accident or death are not satisfied due to
7 the personal injury protection coverage not being in effect with respect
8 to such accident, or when a pedestrian suffers bodily injury as
9 provided by section 35 of P.L. _____, c. _____ (C. _____) (now before the
10 Legislature as this bill) then in such event the Unsatisfied Claim and
11 Judgment Fund shall provide, under the following conditions, the
12 following benefits:

13 a. Medical expenses benefits. Payment of all [reasonable] medical
14 expense benefits in accordance with a benefits plan, subject to the
15 approval of the commissioner, for reasonable, necessary and
16 appropriate treatment and provision of services in an amount not
17 exceeding \$250,000 per person per accident. In the event of death,
18 payment shall be made to the estate of the decedent. The benefits plan
19 shall set forth the benefits provided by the Unsatisfied Claim and
20 Judgment Fund, including eligible medical treatments, diagnostic tests
21 and services as well as such other benefits as the Unsatisfied Claim and
22 Judgment Fund may provide.

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

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

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

43 d. Death benefits. In the event of the death of an income producer
44 as a result of injuries sustained in an accident entitling such person to
45 benefits under this section, the maximum amount of benefits which
46 could have been paid to the income producer, but for his death, under

1 subsection b. of this section shall be paid to the surviving spouse, or
2 in the event there is no surviving spouse, then to the surviving
3 children, and in the event there are no surviving spouse or surviving
4 children, then to the estate of the income producer.

5 In the event of the death of one performing essential services as a
6 result of injuries sustained in an accident entitling such person to
7 benefits under subsection c. of this section, the maximum amount of
8 benefits which could have been paid such person, under subsection c.,
9 shall be paid to the person incurring the expense of providing such
10 essential services.

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

15 Provided, however, that no benefits shall be paid under this section
16 unless the person applying for benefits has demonstrated that he is not
17 disqualified by reason of the provisions of subsection (a), (c), (d) or
18 (l) of section 10 of P.L.1952, c.174 (C.39:6-70), or any other
19 provision of law.

20 (cf: P.L.1990, c.8, s.101)

21

22 31. Section 12 of P.L.1972, c.198 (C.39:6-86.6) is amended to
23 read as follows:

24 12. The [commissioner] association shall be entitled to recover on
25 behalf of the Unsatisfied Claim and Judgment Fund for all payments
26 made by it pursuant to sections 7 and 10 of this act, regardless of fault,
27 from any person who owned or operated the automobile involved in
28 the accident and whose failure to have the required insurance coverage
29 in effect at the time of the accident resulted in the payment of personal
30 injury protection benefits. If the identity of the owner and operator is
31 not ascertained until after personal injury protection benefits have been
32 paid then the [commissioner] association shall be entitled to recover
33 for such payments, regardless of fault, from the operator if he was
34 driving without the owner's permission or from the operator and the
35 owner if he was driving with the owner's permission or, in either case,
36 from the insurer if there is an insurance policy providing personal
37 injury protection benefits that was in effect at the time of the accident
38 with respect to such automobile.

39 The [commissioner] association is authorized to bring an action,
40 which shall be a summary proceeding, in the Superior Court to reduce
41 the right provided by this section to judgment.

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

43

44 32. Section 27 of P.L.1952, c.174 (C.39:6-87) is amended to read
45 as follows:

46 27. Registration, etc. not restored until fund is reimbursed. Where

1 the license or privileges of any person, or the registration of a motor
2 vehicle registered in his name, has been suspended or cancelled under
3 the Motor Vehicle Security-Responsibility Law of this State, and the
4 [treasurer] association has paid from the fund any amount in
5 settlement of a claim or towards satisfaction of a judgment against that
6 person, or for the payment of personal injury protection benefits as
7 provided in section 7 and section 10 of this act, the cancellation or
8 suspension shall not be removed, nor the license, privileges, or
9 registration restored, nor shall any new license or privilege be issued
10 or granted to, or registration be permitted to be made by, that person
11 until he has

12 (a) Repaid in full to the [treasurer] association the amount so
13 paid by him together with interest thereon at 8% per annum from the
14 date of such payment; and

15 (b) Satisfied all requirements of said Motor Vehicle
16 Security-Responsibility Law in respect of giving proof of ability to
17 respond in damages for future accidents, provided, that the court in
18 which such judgment was rendered may, upon 10 days' notice to the
19 [board] association, make an order permitting payment of the amount
20 of such person's indebtedness to the fund, to be made in installments,
21 or in the event the fund makes personal injury protection benefit
22 payments, such person and the fund by agreement may provide for
23 repayment to the fund to be made in installments, and in such case,
24 such person's driver's license, or his driving privileges, or registration
25 certificate, if the same have been suspended or revoked, or have
26 expired, may be restored or renewed and shall remain in effect unless
27 and until such person defaults in making any installment payment
28 specified in such order. In the event of any such default, the Director
29 of the Division of Motor Vehicles shall upon notice of such default
30 suspend such person's driver's license, or driving privileges or
31 registration certificate until the amount of his indebtedness to the fund
32 has been paid in full.

33 (cf: P.L.1985, c.148, s.20)

34

35 33. Section 28 of P.L.1952, c.174 (C.39:6-88) is amended to read
36 as follows:

37 28. Fund to be held in trust. All sums received by the [treasurer]
38 association pursuant to any of the provisions of this act shall become
39 part of the fund, and shall be held by the [treasurer] association in
40 trust for the carrying out of the purposes of this act and for the
41 payment of the cost of administering this act [, and for the payment
42 of the costs of the Division of Motor Vehicles of implementing the
43 New Jersey Merit Rating Plan pursuant to section 6 of P.L.1983, c.65
44 (C.17:29A-35). The Director of the Division of Motor Vehicles shall
45 certify to the treasurer the amount necessary to implement the New
46 Jersey Merit Rating Plan pursuant to that section, and the treasurer

1 shall thereupon disburse that amount from the fund. Moneys
2 transferred to the Division of Motor Vehicles pursuant to this section
3 shall be repaid, with interest at the prevailing rate as determined by the
4 board, out of sums appropriated to the Division of Motor Vehicles
5 from surcharges assessed in accordance with the New Jersey Merit
6 Rating Plan established pursuant to section 6 of P.L.1983, c.65
7 (C.17:29A-35). Said fund may be invested and reinvested in the same
8 manner as other State funds and shall be disbursed according to the
9 order of the treasurer, as custodian of the fund].

10 (cf: P.L.1985, c.148, s.21)

11

12 34. Section 30 of P.L.1952, c.174 (C.39:6-90) is amended to read
13 as follows:

14 30. Any person and any agent or servant of such person, who
15 knowingly files with the fund [, board or treasurer,] or [any] the
16 association or either of them, any notice, statement or other document
17 required under this act, which is false or untrue or contains any
18 material misstatement of fact shall be subject to a [fine of not less than
19 one hundred dollars (\$100.00), nor more than five hundred dollars
20 (\$500.00), or imprisonment for not more than thirty days, at the
21 discretion of the court] penalty as provided in section 5 of P.L.1983,
22 c.320 (C.17:33A-5) and damages as provided in section 7 of P.L.1983,
23 c.320 (C.17:33A-7).

24 (cf: P.L.1952, c.174, s.30)

25

26 35. (New section) The Unsatisfied Claim and Judgment Fund
27 created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.) shall provide
28 personal injury protection benefits pursuant to section 7 of P.L.1972,
29 c.198 (C.39:6-86.1) to a pedestrian sustaining bodily injury in this
30 State caused by an automobile, other than to a named insured or a
31 member of the named insured's family residing in his household, if that
32 pedestrian is entitled to personal injury protection coverage under an
33 automobile insurance policy.

34

35 36. Section 4 of P.L.1998, c.21 (C.39:6A-3.1) is amended to read
36 as follows:

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

42 a. Personal injury protection coverage, for the payment of benefits
43 without regard to negligence, liability or fault of any kind, to the
44 named insured and members of his family residing in his household,
45 who sustained bodily injury as a result of an accident while occupying,
46 entering into, alighting from or using an automobile, or as a

1 pedestrian, caused by an automobile or by an object propelled by or
2 from an automobile, and to other persons sustaining bodily injury
3 while occupying, entering into, alighting from or using the automobile
4 of the named insured, with the permission of the named insured[, and
5 to pedestrians sustaining bodily injury caused by the named insured's
6 automobile or struck by an object propelled by or from such
7 automobile]. "Personal injury protection coverage" issued pursuant
8 to this section means and includes payment of medical expense
9 benefits, as provided in the policy and approved by the commissioner,
10 for the reasonable and necessary treatment of bodily injury in an
11 amount not to exceed \$15,000 per person per accident; except that,
12 medical expense benefits shall be paid in an amount not to exceed
13 \$250,000: (1) for all medically necessary treatment of permanent or
14 significant brain injury, spinal cord injury or disfigurement or (2) for
15 medically necessary treatment of other permanent or significant
16 injuries rendered at a trauma center or acute care hospital immediately
17 following the accident and until the patient is stable, no longer requires
18 critical care and can be safely discharged or transferred to another
19 facility in the judgment of the attending physician. In the event
20 benefits paid by an insurer pursuant to this subsection are in excess of
21 \$75,000 on account of personal injury to any one person in any one
22 accident covered by a policy issued or renewed prior to January 1,
23 2004, such excess shall be paid by the insurer [in consultation with the
24 Unsatisfied Claim and Judgment Fund Board] and shall be
25 reimbursable to the insurer from the Unsatisfied Claim and Judgment
26 Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-73.1). Benefits
27 provided under basic coverage shall be in accordance with a benefit
28 plan provided in the policy and approved by the commissioner. The
29 policy form, which shall be subject to the approval of the
30 commissioner, shall set forth the benefits provided under the policy,
31 including eligible medical treatments, diagnostic tests and services as
32 well as such other benefits as the policy may provide. The
33 commissioner shall set forth by regulation a statement of the basic
34 benefits which shall be included in the policy. Medical treatments,
35 diagnostic tests, and services provided by the policy shall be rendered
36 in accordance with commonly accepted protocols and professional
37 standards and practices which are commonly accepted as being
38 beneficial for the treatment of the covered injury. Protocols and
39 professional standards and practices which are deemed to be
40 commonly accepted pursuant to this section shall be those recognized
41 by national standard setting organizations, national or state
42 professional organizations of the same discipline as the treating
43 provider, or those designated or approved by the commissioner in
44 consultation with the professional licensing boards in the Division of
45 Consumer Affairs in the Department of Law and Public Safety. The
46 commissioner, in consultation with the Commissioner of the

1 Department of Health and Senior Services and the applicable licensing
2 boards, may reject the use of protocols, standards and practices or lists
3 of diagnostic tests set by any organization deemed not to have
4 standing or general recognition by the provider community or the
5 applicable licensing boards. Protocols shall be deemed to establish
6 guidelines as to standard appropriate treatment and diagnostic tests for
7 injuries sustained in automobile accidents, but the establishment of
8 standard treatment protocols or protocols for the administration of
9 diagnostic tests shall not be interpreted in such a manner as to
10 preclude variance from the standard when warranted by reason of
11 medical necessity. The policy form may provide for the
12 precertification of certain procedures, treatments, diagnostic tests, or
13 other services or for the purchase of durable medical goods, as
14 approved by the commissioner, provided that the requirement for
15 precertification shall not be unreasonable, and no precertification
16 requirement shall apply within ten days of the insured event. The
17 policy may provide that certain benefits provided by the policy which
18 are in excess of the basic benefits required by the commissioner to be
19 included in the policy may be subject to reasonable copayments in
20 addition to the copayments provided for herein, provided that the
21 copayments shall not be unreasonable and shall be established in such
22 a manner as not to serve to encourage underutilization of benefits
23 subject to the copayments, nor encourage overutilization of benefits.
24 The policy form shall clearly set forth any limitations on benefits or
25 exclusions, which may include, but need not be limited to, benefits
26 which are otherwise compensable under workers' compensation, or
27 benefits for treatments deemed to be experimental or investigational,
28 or benefits deducted pursuant to section 6 of P.L.1972, c.70
29 (C.39:6A-6). The commissioner may enlist the services of a benefit
30 consultant in establishing the basic benefits level provided in this
31 subsection, which shall be set forth by regulation no later than 120
32 days following the enactment date of this amendatory and
33 supplementary act. The commissioner shall not advertise for the
34 consultant as provided in sections 3 and 4 of P.L.1954, c.48
35 (C.52:34-8 and 52:34-9).

36 Medical expense benefits payable under this subsection shall not be
37 assignable, except to a provider of service benefits, in accordance with
38 policy terms approved by the commissioner, nor shall they be subject
39 to levy, execution, attachment or other process for satisfaction of
40 debts. Medical expense benefits payable in accordance with this
41 subsection may be subject to a deductible and copayments as provided
42 for in the policy, if any. No insurer or provider providing service
43 benefits to an insured shall have a right of subrogation for the amount
44 of benefits paid pursuant to any deductible or copayment under this
45 section.

46 Notwithstanding the provisions of P.L.2003, c.18, physical therapy

1 treatment shall not be reimbursable as medical expense benefits
2 pursuant to this subsection unless rendered by a licensed physical
3 therapist pursuant to a referral from a licensed physician, dentist,
4 podiatrist or chiropractor within the scope of their respective
5 practices.

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

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

17 If a named insured has elected the basic automobile insurance
18 policy option and an immediate family member or members or relatives
19 resident in his household have one or more policies with the coverages
20 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and
21 39:6A-4), the provisions of section 12 of P.L.1983, c.362
22 (C.39:6A-4.2) shall apply.

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

29 No licensed insurance carrier shall refuse to renew the coverage
30 stipulated by this section of an eligible person as defined in section 25
31 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
32 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
33 the consent of the Commissioner of Banking and Insurance.
34 (cf: P.L.2003, c.18, s.26)

35

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

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

39 Except as provided by section 45 of P.L. _____, c. (C. _____)(now
40 before the Legislature as this bill) and section 4 of P.L.1998, c.21
41 (C.39:6A-3.1), every standard automobile liability insurance policy
42 issued or renewed on or after the effective date of P.L.1998, c.21
43 (C.39:6A-1.1 et al.) shall contain personal injury protection benefits
44 for the payment of benefits without regard to negligence, liability or
45 fault of any kind, to the named insured and members of his family
46 residing in his household who sustain bodily injury as a result of an

1 accident while occupying, entering into, alighting from or using an
2 automobile, or as a pedestrian, caused by an automobile or by an
3 object propelled by or from an automobile, and to other persons
4 sustaining bodily injury while occupying, entering into, alighting from
5 or using the automobile of the named insured, with permission of the
6 named insured [, and to pedestrians sustaining bodily injury caused by
7 the named insured's automobile or struck by an automobile or struck
8 by an object propelled by or from that automobile].

9 "Personal injury protection coverage" means and includes:

10 a. Payment of medical expense benefits in accordance with a
11 benefit plan provided in the policy and approved by the commissioner,
12 for reasonable, necessary, and appropriate treatment and provision of
13 services to persons sustaining bodily injury, in an amount not to
14 exceed \$250,000 per person per accident. In the event benefits paid
15 by an insurer pursuant to this subsection are in excess of \$75,000 on
16 account of bodily injury to any one person in any one accident, that
17 excess shall be paid by the insurer [in consultation with the Unsatisfied
18 Claim and Judgment Fund Board] and shall be reimbursable to the
19 insurer from the Unsatisfied Claim and Judgment Fund pursuant to
20 section 2 of P.L.1977, c.310 (C.39:6-73.1). The policy form, which
21 shall be subject to the approval of the commissioner, shall set forth the
22 benefits provided under the policy, including eligible medical
23 treatments, diagnostic tests and services as well as such other benefits
24 as the policy may provide. The commissioner shall set forth by
25 regulation a statement of the basic benefits which shall be included in
26 the policy. Medical treatments, diagnostic tests, and services provided
27 by the policy shall be rendered in accordance with commonly accepted
28 protocols and professional standards and practices which are
29 commonly accepted as being beneficial for the treatment of the
30 covered injury. Protocols and professional standards and practices and
31 lists of valid diagnostic tests which are deemed to be commonly
32 accepted pursuant to this section shall be those recognized by national
33 standard setting organizations, national or state professional
34 organizations of the same discipline as the treating provider, or those
35 designated or approved by the commissioner in consultation with the
36 professional licensing boards in the Division of Consumer Affairs in
37 the Department of Law and Public Safety. The commissioner, in
38 consultation with the Commissioner of the Department of Health and
39 Senior Services and the applicable licensing boards, may reject the use
40 of protocols, standards and practices or lists of diagnostic tests set by
41 any organization deemed not to have standing or general recognition
42 by the provider community or the applicable licensing boards.
43 Protocols shall be deemed to establish guidelines as to standard
44 appropriate treatment and diagnostic tests for injuries sustained in
45 automobile accidents, but the establishment of standard treatment
46 protocols or protocols for the administration of diagnostic tests shall

1 not be interpreted in such a manner as to preclude variance from the
2 standard when warranted by reason of medical necessity. The policy
3 form may provide for the precertification of certain procedures,
4 treatments, diagnostic tests, or other services or for the purchase of
5 durable medical goods, as approved by the commissioner, provided
6 that the requirement for precertification shall not be unreasonable, and
7 no precertification requirement shall apply within ten days of the
8 insured event. The policy may provide that certain benefits provided
9 by the policy which are in excess of the basic benefits required by the
10 commissioner to be included in the policy may be subject to reasonable
11 copayments in addition to the copayments provided for pursuant to
12 subsection e. of this section, provided that the copayments shall not be
13 unreasonable and shall be established in such a manner as not to serve
14 to encourage underutilization of benefits subject to the copayments,
15 nor encourage overutilization of benefits. The policy form shall clearly
16 set forth any limitations on benefits or exclusions, which may include,
17 but need not be limited to, benefits which are otherwise compensable
18 under workers' compensation, or benefits for treatments deemed to be
19 experimental or investigational, or benefits deducted pursuant to
20 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may
21 enlist the services of a benefit consultant in establishing the basic
22 benefits level provided in this subsection, which shall be set forth by
23 regulation no later than 120 days following the enactment date of
24 P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall not
25 advertise for bids for the consultant as provided in sections 3 and 4 of
26 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

27 Notwithstanding the provisions of P.L.2003, c.18, physical therapy
28 treatment shall not be reimbursable as medical expense benefits
29 pursuant to this subsection unless rendered by a licensed physical
30 therapist pursuant to a referral from a licensed physician, dentist,
31 podiatrist or chiropractor within the scope of their respective
32 practices.

33 b. Income continuation benefits. The payment of the loss of
34 income of an income producer as a result of bodily injury disability,
35 subject to a maximum weekly payment of \$100. Such sum shall be
36 payable during the life of the injured person and shall be subject to an
37 amount or limit of \$5,200, on account of injury to any one person in
38 any one accident, except that in no case shall income continuation
39 benefits exceed the net income normally earned during the period in
40 which the benefits are payable.

41 c. Essential services benefits. Payment of essential services
42 benefits to an injured person shall be made in reimbursement of
43 necessary and reasonable expenses incurred for such substitute
44 essential services ordinarily performed by the injured person for
45 himself, his family and members of the family residing in the
46 household, subject to an amount or limit of \$12 per day. Such benefits

1 shall be payable during the life of the injured person and shall be
2 subject to an amount or limit of \$4,380, on account of injury to any
3 one person in any one accident.

4 d. Death benefits. In the event of the death of an income producer
5 as a result of injuries sustained in an accident entitling such person to
6 benefits under this section, the maximum amount of benefits which
7 could have been paid to the income producer, but for his death, under
8 subsection b. of this section shall be paid to the surviving spouse, or
9 in the event there is no surviving spouse, then to the surviving
10 children, and in the event there are no surviving spouse or surviving
11 children, then to the estate of the income producer.

12 In the event of the death of one performing essential services as a
13 result of injuries sustained in an accident entitling such person to
14 benefits under subsection c. of this section, the maximum amount of
15 benefits which could have been paid to such person, under subsection
16 c., shall be paid to the person incurring the expense of providing such
17 essential services.

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

22 Benefits payable under this section shall:

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

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

29 Medical expense benefit payments shall be subject to any
30 deductible and any copayment which may be established as provided
31 in the policy. Upon the request of the commissioner or any party to
32 a claim for benefits or payment for services rendered, a provider shall
33 present adequate proof that any deductible or copayment related to
34 that claim has not been waived or discharged by the provider.

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

38 (cf: P.L.2003, c.18, s.27).

39

40 38. Section 27 of P.L.1990, c.8 (C.17:33B-15) is amended to read
41 as follows:

42 27. a. On or after April 1, 1992, every insurer, either by one or
43 more separate rating plans filed in accordance with the provisions of
44 section 6 of P.L.1988, c.156 (C.17:29A-45) prior to March 1, 1998,
45 or section 14 of P.L.1997, c.151 (C.17:29A-46.1) on or after March
46 1, 1998, or through one or more affiliated insurers, shall provide

1 automobile insurance coverage for eligible persons. This subsection
2 shall become inoperative on January 1, 2009.

3 b. No insurer shall refuse to insure, refuse to renew, or limit
4 coverage available for automobile insurance to an eligible person who
5 meets its underwriting rules as filed with and approved by the
6 commissioner in accordance with the provisions of section 7 of
7 P.L.1988, c.156 (C.17:29A-46) prior to March 1, 1998 or section 15
8 of P.L.1997, c.151 (C.17:29A-46.2) on or after March 1, 1998. This
9 subsection shall become inoperative on January 1, 2009.

10 c. Notwithstanding the provisions of subsections a. and b. of this
11 section to the contrary, any qualified insurer engaged in writing
12 automobile insurance in an automobile insurance urban enterprise zone
13 pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4) may limit the
14 number of exposures written through its UEZ agent or agents, or in
15 the case of a qualified insurer doing business on a direct writing basis,
16 the qualified insurer may limit the number of exposures written in an
17 automobile insurance urban enterprise zone consistent with its
18 marketing plans and goals as provided in subsection a. of section 21
19 of P.L.1997, c.151 (C.17:33C-3). Nothing in this subsection shall be
20 construed to relieve a qualified insurer from its obligation under
21 subsections a. and b. of this section to write all eligible persons
22 residing within an automobile insurance urban enterprise zone through
23 its non-UEZ agent points of access.

24 d. (1) Notwithstanding the provisions of subsections a. and b. of
25 this section to the contrary, an insurer may file underwriting rules by
26 which it may refuse to issue or limit coverage available for automobile
27 insurance in any rating territory to an eligible person if the insurer has
28 increased its aggregate number of private passenger automobile non-
29 fleet exposures in the rating territory during the previous year: by 5%
30 during the one year period beginning January 1, 2004; by 4% during
31 the one year period beginning January 1, 2005; by 3% during the one
32 year period beginning January 1, 2006; by 2% during the one year
33 period beginning January 1, 2007; and by 1% during the one year
34 period beginning January 1, 2008, provided further that an insurer may
35 file with the commissioner for a lower percentage growth standard
36 than that listed in this subsection and the commissioner shall approve
37 such a filing if he finds that the insurer does not have the financial and
38 business resources to accommodate growth statewide at a higher
39 percentage than that proposed in the filing.

40 (2) Underwriting rules filed pursuant to this subsection shall
41 provide that the rules are activated only upon the filing with the
42 commissioner of a proper certification. The certification shall be by
43 an officer of the insurer attesting to the aggregate number of private
44 passenger automobile non-fleet exposures in each rating territory on
45 June 30 and December 31 of the preceding year and clearly identify
46 any rating territory in which the insurer has met the percentage growth

1 standard established by this subsection. Such underwriting rules shall
2 be operational in the identified territory on the first day of the second
3 calendar month after the end of the calendar six month period in which
4 the percentage growth standard has been met. Such underwriting rules
5 shall be operational in an identified territory for a period of six months,
6 unless prior to their expiration, an officer of the insurer files a
7 certification with the commissioner attesting that the percentage
8 growth standard in an identified territory continues to be met.

9 (3) Notwithstanding any provision of this section to the contrary,
10 the commissioner may make operative the provisions of subsections a.
11 and b. of this section only by order finding one of the following
12 circumstances:

13 (a) The commissioner determines, after a hearing, that a
14 competitive market does not exist among insurers authorized to write
15 private passenger automobile insurance in this State, which
16 determination shall only be made pursuant to subsection f. of this
17 section, provided, however, that there shall be a rebuttable
18 presumption that a competitive market exists among insurers
19 authorized to write private passenger automobile insurance in this
20 State if the plan established pursuant to P.L.1970, c.215 (C.17:29D-1)
21 is insuring less than 10% of the aggregate number of private passenger
22 automobile non-fleet exposures being written in the total private
23 passenger automobile insurance market in this State.

24 (b) The commissioner certifies that the plan established pursuant
25 to P.L.1970, c.215 (C.17:29D-1) is insuring 10% or more of the
26 aggregate number of private passenger automobile non-fleet exposures
27 being written in the total private passenger automobile insurance
28 market in this State.

29 (4) Any order issued by the commissioner that makes operative
30 the provisions of subsections a. and b. of this section may limit the
31 form of policies to which the order applies and shall establish a
32 maximum increase in an insurer's aggregate number of private
33 passenger automobile non-fleet exposures to which the order applies,
34 which increase shall not exceed the maximum limit set forth in
35 paragraph (1) of this subsection d..

36 (5) An eligible person denied or refused renewal of automobile
37 insurance in a rating territory by an insurer granted relief pursuant to
38 this subsection shall be advised by the insurer that coverage may be
39 available from another insurer or that coverage is available from the
40 plan established pursuant to P.L.1970, c.215 (C.17:29D-1). The
41 commissioner shall establish by regulation the form and content of the
42 notice to be provided to such an eligible person.

43 (6) The provisions of this subsection d. shall not reduce an
44 insurer's obligation to renew policies pursuant to section 26 of
45 P.L.1988, c.119 (C.17:29C-7.1).

46 e. The commissioner may suspend, revoke or otherwise terminate

1 the certificate of authority to transact automobile insurance business
2 in this State of any insurer who violates the provisions of this section.

3 f. (1) A determination that a competitive market for private
4 passenger automobile insurance does not exist may be made by the
5 commissioner, after notice and hearing, based on two or more of the
6 factors set forth in paragraph (2) of this subsection. A hearing under
7 this subsection shall be held consistent with the rulemaking provisions
8 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52.14B-1
9 et seq.), except that an order by the commissioner pursuant to this
10 subsection shall include specific finding of fact and be supported by
11 clear and convincing evidence. Any ruling that finds that competition
12 does not exist within the market for automobile insurance shall include
13 specific findings regarding: (a) the actions the State and the
14 commissioner have taken to return the market to a competitive market;
15 and (b) an explanation regarding why those actions have failed to
16 return the market to a competitive market. A ruling pursuant to this
17 subsection shall expire one year after issued unless rescinded earlier by
18 the commissioner or unless the commissioner renews the ruling after
19 a hearing and a finding as to continued lack of a reasonable degree of
20 competition.

21 (2) The following factors shall be considered by the commissioner
22 for purposes of determining if a reasonable degree of competition does
23 not exist in a particular line of private passenger automobile insurance:

24 (a) The number of insurers or groups of affiliated insurers actively
25 engaged in providing coverage in the market, taking into account the
26 specialization traditionally associated with the line of insurance;

27 (b) Measures of market concentration and changes of market
28 concentration over time, including, but not limited to, the Herfindahl-
29 Hirschman Index (HHI) and the United States Department of Justice
30 merger guidelines for an unconcentrated market;

31 (c) Ease of entry and exit and the existence of financial or
32 economic barriers that could prevent new insurers from entering the
33 market;

34 (d) The extent to which any insurer or group of affiliated insurers
35 controls all or a dominant portion of the market and has actively
36 sought to prevent competition;

37 (e) Whether the total number of insurers writing the line of
38 insurance in this State is sufficient to provide multiple options;

39 (f) The availability of insurance coverage to consumers in the
40 voluntary market; and

41 (g) The opportunities available to consumers in the market to
42 acquire pricing and other consumer information.

43 (3) The commissioner shall monitor, and take all reasonable
44 actions to maintain, the degree and continued existence of competition
45 in this State on an on-going basis. In doing so, the commissioner may
46 utilize existing relevant information, analytical systems and other

1 sources, or rely on any combination thereof. Monitoring activities may
2 be conducted internally within the department, in cooperation with
3 other state insurance departments, through outside contractors and in
4 any other manner determined appropriate by the commissioner.

5 (cf: P.L.1997, c.151, s.24)

6
7 39. Section 1 of P.L.1970, c.215 (C.17:29D-1) is amended to read
8 as follows:

9 1. The Commissioner of Banking and Insurance may adopt, issue
10 and promulgate rules and regulations establishing a plan for the
11 providing and apportionment of insurance coverage for applicants
12 therefor who are in good faith entitled to, but are unable to procure
13 the same, through ordinary methods. Every insurer admitted to
14 transact and transacting any line, or lines, of insurance in the State of
15 New Jersey shall participate in such plan and provide insurance
16 coverage to the extent required in such rules and regulations.

17 The governing board of any plan established pursuant to the
18 commissioner's rules and regulations shall continue to exercise such
19 administrative authority, subject to the commissioner's oversight and
20 as provided in any rules and regulations promulgated pursuant to this
21 section, as is necessary to ensure the plan's efficient operation,
22 including, but not limited to, the authority to investigate complaints
23 and hear appeals from applicants, insureds, producers, servicing
24 carriers or participants about any matter pertaining to the plan's proper
25 administration, as well as the authority to appoint subcommittees to
26 hear such appeals. Any determination of an appeal by a plan's
27 governing board shall be subject to review by the commissioner on the
28 record below, and shall not be considered a contested case under the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.). The commissioner's determination shall be a final order and
31 shall be subject to review by the Superior Court.

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

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

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

45 c. For a limited assignment distribution system permitting insurers
46 to enter into agreements with other mutually agreeable insurers or

1 other qualified entities to transfer their applicants and insureds under
2 such plan to such insurers or other entities, including applicants and
3 insureds who may be covered by special automobile insurance policies
4 issued pursuant to section 45 of P.L. , c. (C.) (now before the
5 Legislature as this bill);

6 d. That it shall not provide insurance coverage for more than 10
7 percent of the aggregate number of private passenger automobile
8 non-fleet exposures being written in the total private passenger
9 automobile insurance market in this State. The plan shall provide for
10 the cessation of the acceptance of applications or the issuance of new
11 policies to eligible persons at any time it reaches 10 percent of
12 marketshare, as certified by the commissioner, until such time that the
13 commissioner certifies that the plan is insuring less than 10 percent of
14 the aggregate number of private passenger automobile non-fleet
15 exposures being written in the total private passenger automobile
16 insurance market in this State;

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

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

23 g. That the plan shall not be subsidized by any source external to
24 the plan;

25 h. That a qualified insurer who writes automobile insurance risks
26 in those automobile insurance urban enterprise zones designated by the
27 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-2)
28 shall receive assigned risk credits for voluntary risks written in those
29 designated automobile insurance urban enterprise zones as a direct
30 writer or through a UEZ agent or agents or through any agent with
31 whom the insurer has an in-force contract as of the effective date of
32 P.L.1997, c.151(C.17:33B-64 et al.). The commissioner shall establish
33 by regulation the manner in which any qualified automobile insurer
34 may utilize the provisions of this subsection. In no event shall that
35 credit apply to reduce an insurer's obligations under subsection I. of
36 this section; **[and]**

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

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

46 (3) The voluntary rating tier shall not provide insurance coverage

1 for more than five percent of the aggregate number of private
2 passenger automobile non-fleet exposures being written in the total
3 private passenger automobile insurance market in this State, and the
4 number of exposures written in the voluntary rating tier shall be
5 included for computing the maximum number of exposures permitted
6 to be written in the plan;

7 (4) The plan shall distribute risks submitted by qualified producers
8 to insurers authorized to write automobile insurance in this State
9 pursuant to a fair and nondiscriminatory formula established by the
10 commissioner. The formula shall provide that insurers which have,
11 and maintain, an aggregate voluntary automobile insurance
12 marketshare in automobile insurance urban enterprise zones, which is
13 reasonably equal to the insurer's voluntary Statewide marketshare
14 excluding risks written in automobile insurance urban enterprise zones,
15 shall be exempt from these distributions;

16 (5) Qualified producers may submit eligible person risks from
17 automobile insurance urban enterprise zones to the plan for coverage
18 in the voluntary rating tier. As used in this subsection i.: a "qualified
19 producer" means a UEZ agent, as defined in section 19 of P.L.1997,
20 c.151 (C.17:33C-1), who has met any limit on exposures that may be
21 written in accordance with the UEZ agent's agreement with the
22 appointing insurer pursuant to section 22 of P.L.1997, c.151
23 (C.17:33C-4); and a producer who: is duly licensed with
24 property/casualty authority for the three years immediately preceding
25 the effective date of P.L.1997, c.151 (C.17:33B-64 et al.); has no
26 affiliation with a voluntary market insurer for the placement of
27 automobile insurance; had an affiliation with a voluntary market
28 insurer for the placement of automobile insurance that was terminated
29 by the insurer in the last three years; demonstrates to the plan his
30 competency, efficiency and effectiveness in the solicitation, negotiation
31 and effectuation of automobile insurance as evidenced by any history
32 of disciplinary actions or complaints against the producer, and other
33 relevant factors; [and] conducts his business in an office in an
34 automobile insurance urban enterprise zone ; and meets such other
35 requirements as may be established by the commissioner by regulation.
36 For purposes of this subsection i., "insurer" means an insurer or group
37 of affiliated insurers admitted or authorized to transact the business of
38 automobile insurance in this State;

39 (6) This subsection shall expire on the first day of the [61st] 97th
40 month after the first policy using the voluntary rating tier required by
41 this subsection was issued to a risk, as certified by the commissioner;

42 j. For a voluntary rating tier to accommodate eligible persons, as
43 defined in section 25 of P.L.1990, c.8 (C.17:33B-13), denied or
44 refused renewal of automobile insurance in a rating territory by an
45 insurer granted relief pursuant to subsection d. of section 27 of
46 P.L.1990, c.8 (C.17:33B-15);

1 k. That an insurer granted relief pursuant to subsection d. of
2 section 27 of P.L.1990, c.8 (C.17:33B-15) shall receive assigned risk
3 credits for voluntary risks written in excess of the percentage growth
4 standard established by that subsection d. The commissioner shall
5 establish by regulation the manner in which such an insurer may utilize
6 the provisions of this subsection. In no event shall that credit apply to
7 reduce an insurer's obligations under subsection i. of this section; and

8 l. That an insurer granted relief pursuant to subsection d. of
9 section 27 of P.L.1990, c.8 (C.17:33B-15) shall also receive assigned
10 risk credits for the voluntary first renewal of an eligible person written
11 pursuant to subsection j. of this section.

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

17 The governing body administering the plan shall report annually to
18 the Legislature and the Governor on the activities of the plan. The
19 report shall contain an actuarial analysis regarding the adequacy of the
20 rates for each coverage for the safeness and soundness of the plan.
21 (cf: P.L.1998, c.21, s.31)

22
23 40. Section 15 of P.L.1997, c.151 (C.17:29A-46.2) is amended to
24 read as follows:

25 15. a. Insurers shall put in writing all underwriting rules
26 applicable to each rate level utilized pursuant to section 14 of [this
27 amendatory and supplementary act] P.L.1997, c.151 (C.17:29A-46.1).
28 An insurer may take into account factors, including, but not limited to,
29 driving record characteristics appropriate for underwriting and
30 classification in formulating its underwriting rules; provided that no
31 underwriting rule based on motor vehicle violations shall be
32 formulated in such a manner as to assign any named insured to a rating
33 tier other than the standard rating tier applicable to the insured's
34 territory solely on the basis of accumulating [six] four motor vehicle
35 points or less. No underwriting rule shall operate in such a manner as
36 to assign a risk to a rating plan on the basis of the territory in which
37 the insured resides or any other factor which the commissioner finds
38 is a surrogate for territory. An insurer which knowingly fails to
39 transact automobile insurance consistently with its underwriting rules
40 shall be subject to a fine of not less than \$1,000 for each violation.

41 b. All underwriting rules applicable to each rate level as provided
42 for in section 14 of [this amendatory and supplementary act]
43 P.L.1997, c.151 (C.17:29A-46.1) shall be filed with the commissioner
44 and shall be subject to his prior approval. All underwriting rules shall
45 be subject to public inspection. [Insurers] Except as provided in
46 subsection d. of section 27 of P.L.1990, c.8 (C.17:33B-15), insurers

1 shall apply their underwriting rules uniformly and without exception
2 throughout the State, so that every applicant or insured conforming
3 with the underwriting rules will be insured or renewed, and so that
4 every applicant not conforming with the underwriting rules will be
5 refused insurance.

6 c. An insurer with more than one rating plan for private passenger
7 automobile insurance policies providing identical coverages shall not
8 adopt underwriting rules which would permit a person to be insured
9 for private passenger automobile insurance under more than one of the
10 rating plans.

11 d. An insurer that revises its underwriting rules with respect to the
12 assignment of insureds to rating tiers based on the number of
13 accumulated motor vehicle points, as provided by subsection a. of this
14 section, as amended by P.L. _____ c. _____ (C. _____)(now before the
15 Legislature as this bill), shall certify to the commissioner that the
16 revised rule will produce rates that are revenue neutral based upon the
17 insurer's current coverages and book of business.

18 (cf: P.L.1997, c.151, s.15)

19

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

22 14. a. With regard to all property and casualty lines, a filer may,
23 from time to time, alter, supplement, or amend its rates, rating
24 systems, or any part thereof, by filing with the commissioner copies of
25 such alterations, supplements, or amendments, together with a
26 statement of the reason or reasons for such alteration, supplement, or
27 amendment, in a manner and with such information as may be required
28 by the commissioner. If such alteration, supplement, or amendment
29 shall have the effect of increasing or decreasing rates, the
30 commissioner shall determine whether the rates as altered thereby are
31 reasonable, adequate, and not unfairly discriminatory. If the
32 commissioner shall determine that the rates as so altered are not
33 unreasonably high, or inadequate, or unfairly discriminatory, he shall
34 make an order approving them. If he shall find that the rates as altered
35 are unreasonable, inadequate, or unfairly discriminatory, he shall issue
36 an order disapproving such alteration, supplement or amendment.

37 b. (Deleted by amendment, P.L.1984, c.1.)

38 c. If an insurer or rating organization files a proposed alteration,
39 supplement or amendment to its private passenger automobile
40 insurance rating system, or any part thereof, the commissioner shall
41 transmit the filing to the appropriate office in the Division of
42 Insurance, which office shall issue a preliminary determination within
43 90 days of receipt of a rate filing, except that the commissioner may,
44 for good cause, extend the time for a preliminary determination by not
45 more than 30 days. The preliminary determination shall set forth the
46 basis for accepting, rejecting or modifying the rates as filed. A copy of

1 the preliminary determination shall be provided to the filer and other
2 interested parties. Unless the filer or other interested party requests
3 a hearing, the commissioner may adopt the preliminary determination
4 as final within 30 days of the preliminary determination. If a hearing
5 is requested, it shall proceed on an expedited basis in accordance with
6 the provisions of this section. If a preliminary determination is not
7 made within the time provided, a filing shall be transmitted to the
8 Office of Administrative Law for a hearing and the commissioner shall
9 adopt the determination of the administrative law judge as a final
10 decision on the filing.

11 For filings other than private passenger automobile, if an insurer or
12 rating organization files a proposed alteration, supplement or
13 amendment to its rating system, or any part thereof, which would
14 result in a change in rates, the commissioner may, or upon the request
15 of the filer or the appropriate [division or] office in the [Department]
16 Division of Insurance shall, certify the matter for a hearing. The
17 hearing shall, at the commissioner's discretion, be conducted by
18 himself, by a person appointed by the commissioner pursuant to
19 section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of
20 Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.),
21 as a contested case. The following requirements shall apply to the
22 hearing:

23 (1) The hearing shall commence within 30 days of the date of the
24 request or decision that a hearing is to be held. The hearing shall be
25 held on consecutive working days, except that the commissioner may,
26 for good cause, waive the consecutive working day requirement. If
27 the hearing is conducted by an administrative law judge, the
28 administrative law judge shall submit his findings and
29 recommendations to the commissioner within 30 days of the close of
30 the hearing. The commissioner may, for good cause, extend the time
31 within which the administrative law judge shall submit his findings and
32 recommendations by not more than 30 days. A decision shall be
33 rendered by the commissioner not later than 60 days, or, if he has
34 granted a 30 day extension, not later than 90 days, from the close of
35 the hearing. A filing shall be deemed to be approved unless rejected
36 or modified by the commissioner within the time period provided
37 herein.

38 (2) The commissioner, or the Director of the Office of
39 Administrative Law, as appropriate, shall notify all interested parties,
40 including the appropriate [division or] office in the [Department]
41 Division of Insurance on behalf of insurance consumers, of the date set
42 for commencement of the hearing, on the date of the filing of the
43 request for a hearing, or within 10 days of the decision that a hearing
44 is to be held.

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

1 (4) The commissioner may promulgate rules and regulations (a)
2 to establish standards for the submission of proposed filings,
3 amendments, additions, deletions and alterations to the rating system
4 of filers, which may include forms to be submitted by each filer; and
5 (b) making such other provisions as he deems necessary for effective
6 implementation of this act.

7 d. (Deleted by amendment, P.L.1984, c.1.)

8 e. [In order to meet, as closely as possible, the deadlines in
9 section 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of
10 available optional automobile insurance coverages pursuant to section
11 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
12 (C.39:6A-8), and to implement these coverages, the commissioner may
13 require the use of rates, fixed by him in advance of any hearing, for
14 deductible, exclusion, setoff and tort limitation options, on an interim
15 basis, subject to a hearing and to a provision for subsequent
16 adjustment of the rates, by means of a debit, credit or refund
17 retroactive to the effective date of the interim rates. The public hearing
18 on initial rates applicable to the coverages available under section 13
19 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
20 (C.39:6A-8) shall not be limited by the provisions of subsection c. of
21 this section governing changes in previously approved rates or rating
22 systems.] (Deleted by amendment, P.L. __, c. __.)
23 (cf: P.L.1994, c.58, s.43)
24

25 42. Section 34 of P.L.1997, c.151 (C.17:29A-46.6) is amended to
26 read as follows:

27 34. a. Notwithstanding section 14 of P.L.1944, c.27
28 (C.17:29A-14), an insurer, affiliated group of insurers or rating
29 organization may elect to file a proposed alteration to its rating system
30 pursuant to the expedited process set forth in this section when the
31 filer requests either an increase of no more than ~~[3%]~~ 7% or any
32 decrease in its Statewide average base rate for private passenger
33 automobile insurance.

34 b. A filer electing to use this expedited process shall file with the
35 commissioner that reasonable information and calculations necessary
36 to support the rate change which the commissioner prescribes by
37 regulation. The prescribed filing requirements shall recognize the
38 intent of this section to provide an expedited process that will not
39 produce rates that are excessive, inadequate for the safety and
40 soundness of the insurer, or unfairly discriminatory between risks in
41 the State involving substantially the same hazards and expense
42 elements.

43 c. If the commissioner determines that the filing ~~[will not produce~~
44 ~~rates that are excessive, inadequate for the safety and soundness of the~~
45 ~~insurer, or unfairly discriminatory between risks in this State involving~~
46 ~~substantially the same hazards and expense elements]~~ includes all the

1 information and calculations required to support the rate change, the
2 commissioner shall approve the filing.

3 d. A decision on ~~[the] a filing requesting an increase of up to 3%~~
4 shall be rendered not later ~~[that 45] than 30~~ days after receipt of the
5 filing, unless the commissioner grants an extension, in which case a
6 decision shall be rendered not later than ~~[60] 45~~ days after receipt of
7 the filing. A decision on a filing requesting an increase of more than
8 3%, but not more than 7%, shall be rendered not less than 45 days
9 after receipt of the filing, unless the commissioner grants an extension,
10 in which case a decision shall be rendered not later than 60 days after
11 receipt of the filing. A filing shall be complete and received when the
12 filing is accompanied by a certification by a qualified actuary which
13 states that the material, data and documentation, which is part of the
14 filing, includes the documents set forth in regulations, supports the
15 requested rate change and is consistent with generally accepted
16 ratemaking principles of the actuarial profession. A filing shall be
17 deemed to be approved unless rejected or modified by the
18 commissioner within the time provided.

19 e. The commissioner shall not approve any rate change pursuant
20 to this expedited process that results in an overall increase of more
21 than ~~[3%] 7%~~ or an increase in any single coverage of more than
22 ~~[5%] 10%~~.

23 f. An insurer shall not file more than one request for an increase
24 in rates pursuant to this section in any twelve-month period, provided
25 that this limitation shall not apply to a filing for an overall reduction
26 in rates or prohibit a filing to recover an overall reduction in rates, or
27 to a filing reflecting a statutory change in coverage.

28 g. An insurer not using this expedited process in a 12-month
29 period may elect to file a proposed alteration to its rating system that
30 will result in a rate change of not more than double the increase
31 permitted pursuant to subsection e. of this section if the filing complies
32 with subsections b. and c. of this section and is made not more than
33 once within a twenty-four month period.

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

35

36 43. (New section) a. Every insurer writing private passenger
37 automobile insurance in this State shall provide each insured at least
38 annually and each applicant upon receipt of initial application with an
39 Automobile Insurance Consumer Bill of Rights. The Automobile
40 Insurance Consumer Bill of Rights shall contain information that the
41 Commissioner of Banking and Insurance establishes by regulation as
42 necessary, relevant or appropriate to improve the understanding of the
43 rights and responsibilities of consumers and insurers regarding
44 automobile insurance.

45 b. To further assist consumers in evaluating an automobile insurer,
46 the commissioner shall develop and disseminate an Automobile

1 Insurance Report Card. Those insurers with more than 50,000
2 insured private passenger automobiles writing private passenger
3 automobile insurance in this State shall maintain and submit annually
4 to the commissioner customer satisfaction data. The commissioner
5 shall establish by regulation the methodology and criteria to be used
6 in collecting the customer satisfaction data, including, but not limited
7 to, the use of a survey. This data, including consumer complaint ratios
8 and other relevant consumer information designated by the
9 commissioner, shall be included in the Automobile Insurance Report
10 Card. The Automobile Insurance Report Card shall be available on the
11 official website of the Department of Banking and Insurance, and shall
12 be updated annually.

13 c. Every insurer writing private passenger automobile insurance
14 in this State shall also provide each new applicant seeking automobile
15 insurance and each insured upon request, with three premium
16 scenarios demonstrating the effect of different coverage choices. The
17 commissioner shall establish by regulation the types of coverage
18 examples for which insurers shall provide premium scenarios and the
19 time in which such scenarios shall be provided.

20 d. If the commissioner finds, after notice and hearing, that an
21 insurer has a pattern and practice of failing to provide any of the
22 information required by this section, the commissioner may, after
23 notice and hearing, order the payment of a penalty not to exceed
24 \$1,000 for each offense. Each instance of a failure to provide
25 information to an insured, an applicant or the commissioner, as the
26 case may be, shall be a separate offense and subject to assessment of
27 a separate penalty. Penalties assessed pursuant to this section shall be
28 collected by the commissioner pursuant to the "Penalty Enforcement
29 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

30
31 44. (New section) a. The Department of Banking and Insurance
32 shall publish on its official website, to the extent practicable, as the
33 case may be: (1) notice of all filings for consumer insurance rate
34 increases; (2) all requests for hearing dates for such increases; and (3)
35 the date or dates a hearing is to be held. Publication on the website
36 shall take place within three business days of the applicable notice of
37 filing, request for hearing, and date or dates of hearings.

38 b. If an insurer or rating organization files for a consumer
39 insurance overall rate increase, the insurer or rating organization shall,
40 in conjunction with such filing, notify the public of the proposed rate
41 change; except, however, the filer is not required to notify the public
42 of the proposed rate change if the rate increase pertains to: (1) an
43 expedited prior approval rate filing made pursuant to either section 34
44 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409
45 (C.17:36-5.35); (2) rating system changes made pursuant to sections
46 14 through 18 and section 34 of P.L.1997, c.151 (C.17:29A-46.1 et

1 seq.),or (3) a rate filing made pursuant to any statutory change in
2 coverage provided under a policy of private passenger automobile
3 insurance.

4 c. (1) For insurers, that notice shall be communicated through
5 regular or electronic mail to the named policy holders who use the
6 products and services subject to the overall rate increase, within 10
7 business days after the applicable filing and shall conform to a form
8 prescribed by the Department of Banking and Insurance pursuant to
9 regulations.

10 (2) For rating organizations, the notice shall be communicated in
11 a form and manner prescribed by the commissioner by regulation.

12 d. For purposes of this section, “consumer insurance rate
13 increases” means prior approval rate increases for: personal lines
14 property casualty coverages; or Medicare supplemental coverages.

15
16 45. (New section) a. In order to assist certain low income
17 individuals in this State and encourage their greater compliance in
18 satisfying the mandatory private passenger automobile insurance
19 requirements, the Legislature intends to establish a special automobile
20 insurance policy. The special automobile insurance policy shall be
21 offered only to individuals who qualify for and are actively covered by
22 designated government subsidized programs in the State. For the
23 purpose of this section, “eligible low income individual” means an
24 individual who meets the income criteria established by the
25 commissioner by regulation. In setting the low income criteria, the
26 commissioner shall limit availability to those persons eligible and
27 enrolled in the federal Medicaid program.

28 b. As an additional option to the mandatory coverage provided in
29 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) or the
30 alternative covered provided in section 4 of P.L.1998, c.21 (C.39:6A-
31 3.1), an owner or registered owner of an automobile registered or
32 principally garaged in this State, who is an eligible low income
33 individual, may elect a special automobile insurance policy providing
34 the following coverage:

35 (1) Emergency personal injury protection coverage, for the
36 payment of benefits without regard to negligence, liability or fault of
37 any kind, only to the named insured and dependent members of his
38 family, as defined by the federal Medicaid program, residing in his
39 household, who sustain bodily injury as a result of an accident while
40 occupying, entering into, alighting from or using an automobile, or as
41 a pedestrian, caused by an automobile or by an object propelled by or
42 from an automobile, and to other persons sustaining bodily injury
43 while occupying, entering into, alighting from or using the automobile
44 of the named insured, with the permission of the named insured.
45 “Emergency personal injury protection coverage” issued pursuant to
46 this section means and includes only payment of treatment for

1 emergency care in an amount not to exceed \$250,000 per person per
2 accident. "Emergency care" means all medically necessary treatment
3 of a traumatic injury or a medical condition manifesting itself by acute
4 symptoms of sufficient severity such that absence of immediate
5 attention could reasonably be expected to result in: death; serious
6 impairment to bodily functions; or serious dysfunction of a bodily
7 organ or part. Such emergency care shall include all medically
8 necessary care immediately following an automobile accident,
9 including, but not limited to, immediate pre-hospitalization care,
10 transportation to a hospital or trauma center, emergency room care,
11 surgery, critical and acute care. Emergency care extends during the
12 period of initial hospitalization until the patient is discharged from
13 acute care by the attending physician. Emergency care shall be
14 presumed when medical care is initiated at a hospital within 120 hours
15 of the accident. "Emergency personal injury protection coverage"
16 shall also include all medically necessary treatment of permanent or
17 significant brain injury, spinal cord injury or disfigurement after the
18 patient is discharged from acute care. In the event benefits paid by an
19 insurer pursuant to this subsection are in excess of \$75,000 on account
20 of bodily injury to any one person in any one accident covered by a
21 policy issued or renewed prior to January 1, 2004, that excess shall be
22 paid by the insurer and shall be reimbursable to the insurer from the
23 Unsatisfied Claim and Judgment Fund pursuant to section 2 of
24 P.L.1977, c.310 (C.39:6-73.1);

25 (2) Death benefit in the amount of \$10,000;

26 (3) The tort option provided in subsection a. of section 8 of
27 P.L.1972, c.70 (C.39:6A-8) shall apply to every named insured and
28 any other person to whom the special automobile insurance policy
29 applies.

30 c. A special automobile insurance policy shall not provide liability,
31 collision, comprehensive, uninsured or underinsured motorist
32 coverage.

33 d. The policy form for special automobile insurance policies shall
34 be subject to the approval of the Commissioner of Banking and
35 Insurance and shall clearly and conspicuously set forth the limitations
36 on benefits provided under the policy.

37 e. The commissioner shall approve the rating system to be used for
38 a special automobile insurance policy, which shall be administered by
39 the plan created pursuant to section 1 of P.L.1970, c.215 (C.17:29D-
40 1), to provide a uniform Statewide rate to be utilized by all insurers
41 providing coverage through a special automobile insurance policy. The
42 rate established by the commissioner shall be sufficient to reimburse
43 the insurer for the cost of writing the policy and an amount set by the
44 commissioner to be forwarded to the Unsatisfied Claim and Judgment
45 Fund to offset claims paid by the Unsatisfied Claim and Judgment
46 Fund. The commissioner may adjust the rate annually.

1 f. Special automobile insurance policies shall be assigned to
2 insurers pursuant to the apportionment methodology of the plan
3 created pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1). The
4 number of policies assigned pursuant to this subsection shall not be
5 included in the determination of a competitive market pursuant to
6 subsection d. of section 27 of P.L.1990, c.8 (C.17:33B-15).

7
8 46. Section 5 of P.L.1998, c.21 (C.39:6A-3.2) is amended to read
9 as follows:

10 5. a. All automobile insurance policies issued or renewed on or
11 after the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall be
12 issued or renewed including at least the coverages required pursuant
13 to sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless
14 the named insured elects a basic automobile insurance policy pursuant
15 to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or, after the effective
16 date of P.L. , c. (C.)(now before the Legislature as this bill), a
17 special automobile insurance policy pursuant to section 45 of P.L. ,
18 c. (C.)(now before the Legislature as this bill). Election of a basic
19 automobile insurance policy or a special automobile insurance policy
20 shall be in writing and signed by the named insured on the coverage
21 selection form required by section 17 of P.L.1983, c.362
22 (C.39:6A-23). The coverage [election] selection form shall contain
23 a statement, clearly readable and in 12-point bold type, in a form
24 approved by the commissioner, that: (1) election of a basic automobile
25 insurance policy will result in less coverage than the \$250,000 medical
26 expense benefits coverage mandated prior to the effective date of [this
27 act] P.L.1998, c.21 (C.39:6A-1.1 et al.); or (2) election of a special
28 automobile insurance policy will result in coverage only for emergency
29 care. Furthermore, the coverage election form shall contain a
30 statement, clearly readable and in 12-point bold type, in a form
31 approved by the commissioner, that election of a special automobile
32 insurance policy, or a basic automobile insurance policy without the
33 optional \$10,000 liability coverage provided for in section 4 of
34 P.L.1998, c.21 (C.39:6A-3.1) may subject the named insured to a
35 claim or judgment for noneconomic loss which is not covered by the
36 basic or special automobile insurance policy, and which may place his
37 assets at risk, and in the event the named insured is sued, the insurer
38 shall not provide legal counsel.

39 b. The insurance coverages provided for in section 4 of P.L.1998,
40 c.21 (C.39:6A-3.1) shall be offered by every insurer which writes
41 insurance coverages pursuant to sections 3 and 4 of P.L.1972, c.70
42 (C.39:6A-3 and 39:6A-4) for a period of five years after the effective
43 date of P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall
44 require every company writing such insurance coverage to report to
45 him annually during that five-year period as to the number of policies
46 written pursuant to this subsection in the previous year, the number of

1 policies with the coverage offered pursuant to section 4 of P.L.1972,
2 c.70 (C.39:6A-4) which have been converted to policies with the
3 coverage offered pursuant to section 4 of P.L.1998, c.21
4 (C.39:6A-3.1) and any other information the commissioner may
5 require such as, but not limited to, the age of the policyholders and the
6 territories in which the policyholders reside. The commissioner shall
7 then report to the Governor and the Legislature regarding the
8 acceptance of the basic automobile insurance policy by the automobile
9 insurance consumers of this State annually for the first four years the
10 basic policy is sold. On or before January 1, 2003, the commissioner
11 shall make a final, cumulative report which shall include
12 recommendations as to the continuation of the basic policy to the
13 Governor and the Legislature.

14 c. The insurance coverages provided for in section 45 of P.L. , c.
15 (C.)(now before the Legislature as this bill) shall be offered or
16 provided pursuant to subsection f. of that section for a period of five
17 years after the effective date of P.L. , c. (C.)(now before the
18 Legislature as this bill). On or before January 1, 2008, the
19 commissioner shall make a final report which shall include
20 recommendations as to the continuation of the special policy to the
21 Governor and the Legislature.

22 (cf: P.L.1998, c.21, s.5)

23

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

26 14. a. Any person who, at the time of an automobile accident
27 resulting in injuries to that person, is required but fails to maintain
28 medical expense benefits coverage mandated by section 4 of P.L.1972,
29 c.70 (C.39:6A-4) [or], section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
30 section 45 of P.L. , c. (C.)(now before the Legislature as this
31 bill) shall have no cause of action for recovery of economic or
32 noneconomic loss sustained as a result of an accident while operating
33 an uninsured automobile.

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

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

44 (cf: P.L.1998, c.21, s.8)

45

46 48. Section 5 of P.L.1972, c.70 (C.39:6A-5) is amended to read

1 as follows:

2 5. Payment of personal injury protection coverage benefits.

3 a. An insurer may require written notice to be given as soon as
4 practicable after an accident involving an automobile with respect to
5 which the policy affords personal injury protection coverage benefits
6 payable under a standard automobile insurance policy pursuant to
7 section 4 of P.L.1972, c.70 (C.34:6A-4) [or], medical expense
8 benefits payable under a basic automobile insurance policy pursuant to
9 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency care medical
10 expense benefits payable under a special automobile insurance policy
11 pursuant to section 45 of P.L. ,c. (C.)(now before the
12 Legislature as this bill). In the case of claims for medical expense
13 benefits under [either policy] any of those policies, written notice
14 shall be provided to the insurer by the treating health care provider no
15 later than 21 days following the commencement of treatment.
16 Notification required under this section shall be made in accordance
17 with regulations adopted by the Commissioner of Banking and
18 Insurance and on a form prescribed by the Commissioner of Banking
19 and Insurance. Within a reasonable time after receiving notification
20 required pursuant to this act, the insurer shall confirm to the treating
21 health care provider that its policy affords the claimant personal injury
22 protection coverage benefits as required by section 4 of P.L.1972, c.70
23 (C.39:6A-4) [or], medical expense benefits pursuant to section 4 of
24 P.L.1998, c.21 (C.39:6A-3.1) or emergency care medical expense
25 benefits payable under a special automobile insurance policy pursuant
26 to section 45 of P.L. ,c. (C.)(now before the Legislature as this
27 bill).

28 b. For the purposes of this section, notification shall be deemed to
29 be met if a treating health care provider submits a bill or invoice to the
30 insurer for reimbursement of services within 21 days of the
31 commencement of treatment.

32 c. In the event that notification is not made by the treating health
33 care provider within 21 days following the commencement of
34 treatment, the insurer shall reserve the right to deny, in accordance
35 with regulations established by the Commissioner of Banking and
36 Insurance, payment of the claim and the treating health care provider
37 shall be prohibited from seeking any payment directly from the insured.
38 In establishing the standards for denial of payment, the Commissioner
39 of Banking and Insurance shall consider the length of delay in
40 notification, the severity of the treating health care provider's failure
41 to comply with the notification provisions of this act based upon the
42 potential adverse impact to the public and whether or not the provider
43 has engaged in a pattern of noncompliance with the notification
44 provisions of this act. In establishing the regulations necessary to
45 effectuate the purposes of this subsection, the Commissioner of
46 Banking and Insurance shall define specific instances where the

1 sanctions permitted pursuant to this subsection shall not apply. Such
2 instances may include, but not be limited to, a treating medical
3 provider's failure to provide notification to the insurer as required by
4 this act due to the insured's medical condition during the time period
5 within which notification is required.

6 d. A health care provider who fails to notify the insurer within 21
7 days and whose claim for payment has been denied by the insurer
8 pursuant to the standards established by the Commissioner of Banking
9 and Insurance may, in the discretion of a judge of the Superior Court,
10 be permitted to refile such claim provided that the insurer has not been
11 substantially prejudiced thereby. Application to the court for
12 permission to refile a claim shall be made within 14 days of notification
13 of denial of payment and shall be made upon motion based upon
14 affidavits showing sufficient reasons for the failure to notify the insurer
15 within the period of time prescribed by this act.

16 e. (Deleted by amendment, P.L.1998, c.21.)

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

24 g. Personal injury protection coverage benefits pursuant to section
25 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
26 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency
27 care medical expense benefits payable under a special automobile
28 insurance policy pursuant to section 45 of P.L. , c. (C.) (now
29 before the Legislature as this bill) shall be overdue if not paid within
30 60 days after the insurer is furnished written notice of the fact of a
31 covered loss and of the amount of same. If such written notice is not
32 furnished to the insurer as to the entire claim, any partial amount
33 supported by written notice is overdue if not paid within 60 days after
34 such written notice is furnished to the insurer. Any part or all of the
35 remainder of the claim that is subsequently supported by written notice
36 is overdue if not paid within 60 days after such written notice is
37 furnished to the insurer; provided, however, that any payment shall not
38 be deemed overdue where, within 60 days of receipt of notice of the
39 claim, the insurer notifies the claimant or his representative in writing
40 of the denial of the claim or the need for additional time, not to exceed
41 45 days, to investigate the claim, and states the reasons therefor. The
42 written notice stating the need for additional time to investigate the
43 claim shall set forth the number of the insurance policy against which
44 the claim is made, the claim number, the address of the office handling
45 the claim and a telephone number, which is toll free or can be called
46 collect, or is within the claimant's area code. Written notice to the

1 organization administering dispute resolution pursuant to sections 24
2 and 25 of P.L.1998, c.21 (C.39:6A-5.1 and C.39:6A-5.2) shall satisfy
3 the notice request for additional time to investigate a claim pursuant
4 to this subsection. For the purpose of determining interest charges in
5 the event the injured party prevails in a subsequent proceeding where
6 an insurer has elected a 45-day extension pursuant to this subsection,
7 payment shall be considered overdue at the expiration of the 45-day
8 period or, if the injured person was required to provide additional
9 information to the insurer, within 10 business days following receipt
10 by the insurer of all the information requested by it, whichever is later.

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

16 h. All overdue payments shall bear interest at the percentage of
17 interest prescribed in the Rules Governing the Courts of the State of
18 New Jersey for judgments, awards and orders for the payment of
19 money.

20 i. All automobile insurers and the Unsatisfied Claim and Judgment
21 Fund shall provide any claimant with the option of submitting a dispute
22 under this section to dispute resolution pursuant to sections 24 and 25
23 of P.L.1998, c.21 (C.39:6A-5.1 and C.39:6A-5.2).
24 (cf: P.L.1998, c.21, s.23)

25
26 49. Section 24 of P.L.1998, c.21 (C.39:6A-5.1) is amended to
27 read as follows:

28 24. a. Any dispute regarding the recovery of medical expense
29 benefits or other benefits provided under personal injury protection
30 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4), [or]
31 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L. _____,
32 c. (C. _____)(now before the Legislature as this bill) arising out of the
33 operation, ownership, maintenance or use of an automobile may be
34 submitted to dispute resolution on the initiative of any party to the
35 dispute, as hereinafter provided.

36 b. The Commissioner of Banking and Insurance shall designate an
37 organization, and for that purpose may, at his discretion, advertise for
38 proposals, for the purpose of administering dispute resolution
39 proceedings regarding medical expense benefits and other benefits
40 provided under personal injury protection pursuant to section 4 of
41 P.L.1972, c.70 (C.39:6A-4) [or], medical expense benefits coverage
42 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency
43 care medical expense benefits pursuant to section 45 of P.L. _____, c. _____
44 (C. _____)(now before the Legislature as this bill). The commissioner
45 shall promulgate rules and regulations with respect to the conduct of
46 the dispute resolution proceedings. The organization administering

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

28 c. Dispute resolution proceedings under this section 24 and
29 section 25 of this amendatory and supplementary act shall include
30 disputes arising regarding medical expense benefits provided under
31 subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4) [or], section
32 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L. _____, c. _____
33 (C. _____)(now before the Legislature as this bill), benefits provided
34 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70
35 (C.39:6A-4), subsection b., c., d. or e. of section 7 of P.L.1972, c.198
36 (C.39:6-86.1), and disputes as to additional first party coverage
37 benefits required to be offered pursuant to section 10 of P.L.1972,
38 c.70 (C.39:6A-10). Disputes involving medical expense benefits may
39 include, but not necessarily be limited to, matters concerning: (1)
40 interpretation of the insurance contract; (2) whether the treatment or
41 health care service which is the subject of the dispute resolution
42 proceeding is in accordance with the provisions of section 4 of
43 P.L.1972, c.70 (C.39:6A-4) [or], section 4 of P.L.1998, c.21
44 (C.39:6A-3.1) or section 45 of P.L. _____, c. _____ (C. _____)(now before the
45 Legislature as this bill) or the terms of the policy; (3) the eligibility of
46 the treatment or service for compensation; (4) the eligibility of the

1 provider performing the treatment or service to be compensated under
2 the terms of the policy or under regulations promulgated by the
3 commissioner, including whether the person is licensed or certified to
4 perform such treatment; (5) whether the disputed medical treatment
5 was actually performed; (6) whether diagnostic tests performed in
6 connection with the treatment are those recognized by the
7 commissioner; (7) the necessity or appropriateness of consultations by
8 other health care providers; (8) disputes involving application of and
9 adherence to fee schedules promulgated by the commissioner; and (9)
10 whether the treatment performed is reasonable, necessary, and
11 compatible with the protocols provided for pursuant to P.L.1998, c.21
12 (C.39:6A-1.1 et al.). The dispute resolution professionals may review
13 the entire claims file of the insurer, subject to any confidentiality
14 requirement established pursuant to State or federal law. All decisions
15 of the dispute resolution professional shall be in writing, in a form
16 prescribed by the commissioner, shall state the issues in dispute, the
17 findings and conclusions on which the decision is based, and shall be
18 signed by the dispute resolution professional. All decisions of a
19 dispute resolution professional shall be binding. The dispute
20 resolution organization shall provide for the retention of all documents
21 used in dispute resolution proceedings under this section and section
22 25 of this amendatory and supplementary act, including the written
23 decision, for a period of at least five years, in a form approved by the
24 commissioner, or for such additional time as may be established by the
25 commissioner. The written decisions of the dispute resolution
26 professional shall be forwarded to the commissioner, who shall
27 establish a record of the proceedings conducted under the dispute
28 resolution procedure, which shall be accessible to the public and may
29 be used as guidance in subsequent dispute resolution proceedings.

30 d. With respect to disputes as to the diagnosis, the medical
31 necessity of the treatment or diagnostic test administered to the injured
32 person, whether the injury is causally related to the insured event or
33 is the product of a preexisting condition, or disputes as to the
34 appropriateness of the protocols utilized by the provider, the dispute
35 resolution professional shall, either at his option or at the request of
36 any party to the dispute, refer the matter to a medical review
37 organization for a determination. The determination of the medical
38 review organization on the dispute referred shall be presumed to be
39 correct by the dispute resolution professional, which presumption may
40 be rebutted by a preponderance of the evidence. Should the dispute
41 resolution professional find that the decision of the medical review
42 organization is not correct, the reasons supporting that finding shall be
43 set forth in the dispute resolution professional's written decision.

44 e. Any person submitting a matter to the dispute resolution
45 process established herein may submit for review all or a portion of a
46 disputed treatment or treatments or a dispute regarding a diagnostic

1 test or tests or a dispute regarding the providing of services or durable
2 medical goods. Any portion of a treatment or diagnostic test or
3 service which is not under review shall be reimbursed in accordance
4 with the provisions of section 5 of P.L.1972, c.70 (C.39:6A-5). If the
5 dispute resolution proceeding results in a determination that all or part
6 of a treatment or treatments, diagnostic test or tests or service
7 performed, or durable medical goods provided are medically necessary
8 and appropriate, reimbursement shall be made with interest payable in
9 accordance with the provisions of section 5 of P.L.1972, c.70
10 (C.39:6A-5).

11 (cf: P.L.1998, c.22, s.4)

12

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

15 6. Collateral Source. The benefits provided in sections 4 and 10
16 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], the medical
17 expense benefits provided in section 4 of P.L.1998, c.21
18 (C.39:6A-3.1) and the benefits provided in section 45 of P.L. , c.
19 (C.)(now before the Legislature as this bill) shall be payable as loss
20 accrues, upon written notice of such loss and without regard to
21 collateral sources, except that benefits, collectible under workers'
22 compensation insurance, employees' temporary disability benefit
23 statutes, Medicare provided under federal law, and benefits, in fact
24 collected, that are provided under federal law to active and retired
25 military personnel shall be deducted from the benefits collectible under
26 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
27 the medical expense benefits provided in section 4 of P.L.1998, c.21
28 (C.39:6A-3.1) and the benefits provided in section 45 of P.L. , c.
29 (C.)(now before the Legislature as this bill).

30 If an insurer has paid those benefits and the insured is entitled to,
31 but has failed to apply for, workers' compensation benefits or
32 employees' temporary disability benefits, the insurer may immediately
33 apply to the provider of workers' compensation benefits or of
34 employees' temporary disability benefits for a reimbursement of any
35 benefits pursuant to sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
36 and 39:6A-10) [or], medical expense benefits pursuant to section 4 of
37 P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to section 45 of
38 P.L. , c. (C.)(now before the Legislature as this bill) it has paid.
39 (cf: P.L.1998, c.21, s.9)

40

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

43 7. Exclusions. a. Insurers may exclude a person from benefits
44 under sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10)
45 [and], medical expense benefits provided in section 4 of P.L.1998,
46 c.21 (C.39:6A-3.1) and benefits provided in section 45 of P.L. ,

1 c. (C.)(now before the Legislature as this bill) if that person's
 2 conduct contributed to his personal injuries or death occurred in any
 3 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
 7 to himself or others.

8 b. An insurer may also exclude from the benefits provided in
 9 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
 10 the medical expense benefits provided in section 4 of P.L.1998, c.21
 11 (C.39:6A-3.1) and benefits provided in section 45 of P.L. , c.
 12 (C.)(now before the Legislature as this bill) any person having
 13 incurred injuries or death, who, at the time of the accident:

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

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

19 (3) was a person other than the named insured or a member of the
 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.1998, c.21
 23 (C.39:6A-3.1) or section 45 of P.L. , c. (C.)(now before the
 24 Legislature as this bill), as a named insured or member of the named
 25 insured's family residing in his household under the terms of another
 26 policy; or

27 (4) was a member of the named insured's family residing in the
 28 named insured's household, if that person is entitled to coverage under
 29 section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or
 30 both, [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of
 31 P.L. , c. (C.)(now before the Legislature as this bill) as a named
 32 insured under the terms of another policy.

33 (cf: P.L.1998, c.21, s.10)

34

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

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

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

42 a. Limitation on lawsuit option. Every owner, registrant, operator
 43 or occupant of an automobile to which section 4 of P.L.1972, c.70
 44 (C.39:6A-4), personal injury protection coverage, [or] section 4 of
 45 P.L.1998, c.21 (C.39:6A-3.1), medical expense benefits coverage, or
 46 section 45 of P.L. , c. (C.)(now before the Legislature as this

1 bill) regardless of fault, applies, and every person or organization
2 legally responsible for his acts or omissions, is hereby exempted from
3 tort liability for noneconomic loss to a person who is subject to this
4 subsection and who is either a person who is required to maintain
5 personal injury protection coverage pursuant to section 4 of P.L.1972,
6 c.70 (C.39:6A-4) [or], medical expense benefits pursuant to section
7 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to section 45
8 of P.L. , c. (C.)(now before the Legislature as this bill), or is
9 a person who has a right to receive benefits under section 4 of
10 P.L.1972, c.70 (C.39:6A-4) [or], section 4 of P.L.1998, c.21
11 (C.39:6A-3.1) or section 45 of P.L. , c. (C.)(now before the
12 Legislature as this bill), as a result of bodily injury, arising out of the
13 ownership, operation, maintenance or use of such automobile in this
14 State, unless that person has sustained a bodily injury which results in
15 death; dismemberment; significant disfigurement or significant
16 scarring; displaced fractures; loss of a fetus; or a permanent injury
17 within a reasonable degree of medical probability, other than scarring
18 or disfigurement. An injury shall be considered permanent when the
19 body part or organ, or both, has not healed to function normally and
20 will not heal to function normally with further medical treatment. For
21 the purposes of this subsection, "physician" means a physician as
22 defined in section 5 of P.L.1939, c.115 (C.45:9-5.1).

23 In order to satisfy the tort option provisions of this subsection, the
24 plaintiff shall, within 60 days following the date of the answer to the
25 complaint by the defendant, provide the defendant with a certification
26 from the licensed treating physician or a board-certified licensed
27 physician to whom the plaintiff was referred by the treating physician.
28 The certification shall state, under penalty of perjury, that the plaintiff
29 has sustained an injury described above. The certification shall be
30 based on and refer to objective clinical evidence, which may include
31 medical testing, except that any such testing shall be performed in
32 accordance with medical protocols pursuant to subsection a. of section
33 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
34 administered in accordance with section 12 of P.L.1998, c.21
35 (C.39:6A-4.7). Such testing may not be experimental in nature or
36 dependent entirely upon subjective patient response. The court may
37 grant no more than one additional period not to exceed 60 days to file
38 the certification pursuant to this subsection upon a finding of good
39 cause.

40 A person is guilty of a crime of the fourth degree if that person
41 purposefully or knowingly makes, or causes to be made, a false,
42 fictitious, fraudulent, or misleading statement of material fact in, or
43 omits a material fact from, or causes a material fact to be omitted
44 from, any certification filed pursuant to this subsection.
45 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-1, the
46 court shall deal with a person who has been convicted of a violation

1 of this subsection by imposing a sentence of imprisonment unless,
2 having regard to the character and condition of the person, the court
3 is of the opinion that imprisonment would be a serious injustice which
4 overrides the need to deter such conduct by others. If the court
5 imposes a noncustodial or probationary sentence, such sentence shall
6 not become final for 10 days in order to permit the appeal of such
7 sentence by the prosecution. Nothing in this subsection a. shall
8 preclude an indictment and conviction for any other offense defined by
9 the laws of this State. In addition, any professional license held by the
10 person shall be forfeited according to the procedures established by
11 section 4 of P.L.1997, c.353 (C.2C:51-5); or

12 b. No limitation on lawsuit option. As an alternative to the basic
13 tort option specified in subsection a. of this section, every owner,
14 registrant, operator, or occupant of an automobile to which section 4
15 of P.L.1972, c.70 (C.39:6A-4), personal injury protection coverage,
16 [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1), medical expense
17 benefits coverage, or section 45 of P.L. , c. (C.)(now before the
18 Legislature as this bill), regardless of fault, applies, and every person
19 or organization legally responsible for his acts or omissions, shall be
20 liable for noneconomic loss to a person who is subject to this
21 subsection and who is either a person who is required to maintain the
22 coverage mandated by P.L.1972, c.70 (C.39:6A-1 et seq.) or is a
23 person who has a right to receive benefits under section 4 of that act
24 (C.39:6A-4), as a result of bodily injury, arising out of the ownership,
25 operation, maintenance or use of such automobile in this State.

26 The tort option provisions of subsection b. of this section shall also
27 apply to the right to recover for noneconomic loss of any person
28 eligible for benefits pursuant to section 4 of P.L.1972, c.70
29 (C.39:6A-4) [or], section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
30 section 45 of P.L. , c. (C.)(now before the Legislature as this
31 bill) but who is not required to maintain personal injury protection
32 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) [or],
33 medical expense benefits coverage pursuant to section 4 of P.L.1998,
34 c.21 (C.39:6A-3.1) or benefits pursuant to section 45 of P.L. , c.
35 (C.)(now before the Legislature as this bill) and is not an immediate
36 family member, as defined in section 14.1 of P.L.1983, c.362
37 (C.39:6A-8.1), under a standard automobile insurance policy or basic
38 automobile insurance policy.

39 The tort option provisions of subsection a. of this section shall also
40 apply to any person subject to section 14 of P.L.1985, c.520
41 (C.39:6A-4.5) and to every named insured and any other person to
42 whom the benefits of the special automobile insurance policy provided
43 in section 45 of P.L. , c. (C.)(now before the Legislature as
44 this bill) or the medical expense benefits of the basic automobile
45 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1)
46 apply whether or not the person has elected the optional \$10,000

1 liability coverage insuring against loss resulting from liability imposed
2 by law for bodily injury or death provided for in subsection c. of
3 section 4 of P.L.1998, c.21 (C.39:6A-3.1).

4 The tort option provisions of subsections a. and b. of this section
5 as provided in this 1998 amendatory and supplementary act shall apply
6 to automobile insurance policies issued or renewed on or after the
7 effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) and as otherwise
8 provided by law.

9 (cf: P.L.1998, c.21, s.11)

10

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

13 20. An insurer, health maintenance organization or governmental
14 agency paying benefits pursuant to subsection a., b. or d. of section 13
15 of P.L.1983, c.362 (C.39:6A-4.3) [or], personal injury protection
16 benefits in accordance with section 4 or section 10 of P.L.1972, c.70
17 (C.39:6A-4 or 39:6A-10) [or], medical expense benefits pursuant to
18 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to
19 section 45 of P.L. , c. (C.)(now before the Legislature as this
20 bill), as a result of an accident occurring within this State, shall, within
21 two years of the filing of the claim, have the right to recover the
22 amount of payments from any tortfeasor who was not, at the time of
23 the accident, required to maintain personal injury protection or medical
24 expense benefits coverage, other than for pedestrians, under the laws
25 of this State, including personal injury protection coverage required to
26 be provided in accordance with section 18 of P.L.1985, c.520
27 (C.17:28-1.4), or although required did not maintain personal injury
28 protection or medical expense benefits coverage at the time of the
29 accident. In the case of an accident occurring in this State involving
30 an insured tortfeasor, the determination as to whether an insurer,
31 health maintenance organization or governmental agency is legally
32 entitled to recover the amount of payments and the amount of
33 recovery, including the costs of processing benefit claims and
34 enforcing rights granted under this section, shall be made against the
35 insurer of the tortfeasor, and shall be by agreement of the involved
36 parties or, upon failing to agree, by arbitration.

37 (cf: P.L.1998, c.21, s.13)

38

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

41 11. Contribution among insurers. If two or more insurers are
42 liable to pay benefits under sections 4 and 10 of P.L.1972, c.70
43 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
44 policy for the same bodily injury, or death, of any one person, the
45 maximum amount payable shall be as specified in those sections 4 and
46 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], section 4 of

1 P.L.1998, c.21 (C.39:6A-3.1) and section 45 of P.L. , c. (C.)
2 (now before the Legislature as this bill), respectively, if additional first
3 party coverage applies and any insurer paying the benefits shall be
4 entitled to recover from each of the other insurers, only by
5 inter-company arbitration or inter-company agreement, an equitable
6 pro-rata share of the benefits paid.
7 (cf: P.L.1998, c.21, s.15)

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

11 12. Inadmissibility of evidence of losses collectible under personal
12 injury protection coverage. Except as may be required in an action
13 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),
14 evidence of the amounts collectible or paid under a standard
15 automobile insurance policy pursuant to sections 4 and 10 of
16 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], amounts collectible
17 or paid for medical expense benefits under a basic automobile
18 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1)
19 and amounts collectible or paid for benefits under a special automobile
20 insurance policy pursuant to section 45 of P.L. , c. (C.)(now
21 before the Legislature as this bill), to an injured person, including the
22 amounts of any deductibles, copayments or exclusions, including
23 exclusions pursuant to subsection d. of section 13 of P.L.1983, c.362
24 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action
25 for recovery of damages for bodily injury by such injured person.

26 The court shall instruct the jury that, in arriving at a verdict as to
27 the amount of the damages for noneconomic loss to be recovered by
28 the injured person, the jury shall not speculate as to the amount of the
29 medical expense benefits paid or payable by an automobile insurer
30 under personal injury protection coverage payable under a standard
31 automobile insurance policy pursuant to sections 4 and 10 of
32 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [or], medical expense
33 benefits under a basic automobile insurance policy pursuant to section
34 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits under a special
35 automobile insurance policy pursuant to section 45 of P.L. , c.
36 (C.)(now before the Legislature as this bill) to the injured person,
37 nor shall they speculate as to the amount of benefits paid or payable
38 by a health insurer, health maintenance organization or governmental
39 agency under subsection d. of section 13 of P.L.1983, c.362
40 (C.39:6A-4.3).

41 Nothing in this section shall be construed to limit the right of
42 recovery, against the tortfeasor, of uncompensated economic loss
43 sustained by the injured party.
44 (cf: P.L.1998, c.21, s.16)

45
46 56. Section 13 of P.L.1972, c.70 (C.39:6A-13) is amended to read

1 as follows:

2 13. Discovery of facts as to personal injury protection coverage.
3 The following apply to personal injury protection coverage benefits
4 payable under a standard automobile insurance policy pursuant to
5 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
6 medical expense benefits payable under a basic automobile insurance
7 policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) and
8 benefits payable under a special automobile insurance policy pursuant
9 to section 45 of P.L. , c. (C.)(now before the Legislature as this
10 bill):

11 a. Every employer shall, if a request is made by an insurer or the
12 Unsatisfied Claim and Judgment Fund providing personal injury
13 protection benefits under a standard automobile insurance policy or
14 medical expense benefits payable under a basic automobile insurance
15 policy against whom a claim has been made, furnish forthwith, in a
16 form approved by the Commissioner of Banking and Insurance, a
17 signed statement of the lost earnings since the date of the bodily injury
18 and for a reasonable period before the injury, of the person upon
19 whose injury the claim is based.

20 b. Every physician, hospital, or other health care provider
21 providing, before and after the bodily injury upon which a claim for
22 personal injury protection benefits or medical expense benefits is
23 based, any products, services or accommodations in relation to such
24 bodily injury or any other injury, or in relation to a condition claimed
25 to be connected with such bodily injury or any other injury, shall, if
26 requested to do so by the insurer or the Unsatisfied Claim and
27 Judgment Fund against whom the claim has been made, furnish
28 forthwith a written report of the history, condition, treatment, dates
29 and costs of such treatment of the injured person, and produce
30 forthwith and permit the inspection and copying of his or its records
31 regarding such history, condition, treatment dates and costs of
32 treatment. The person requesting such records shall pay all reasonable
33 costs connected therewith.

34 c. The injured person shall be furnished upon demand a copy of all
35 information obtained by the insurer or the Unsatisfied Claim and
36 Judgment Fund under the provisions of this section, and shall pay a
37 reasonable charge, if required by the insurer and the Unsatisfied Claim
38 and Judgment Fund.

39 d. Whenever the mental or physical condition of an injured person
40 covered by personal injury protection under a standard automobile
41 insurance policy or medical expense benefits under a basic automobile
42 insurance policy is material to any claim that has been or may be made
43 for such past or future personal injury protection benefits or medical
44 expense benefits, such person shall, upon request of an insurer or the
45 Unsatisfied Claim and Judgment Fund submit to mental or physical
46 examination conducted by a health care provider licensed in this State

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

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

35 f. The injured person, upon reasonable request by the insurer or
36 the 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.1998, c.21, s.17)

11

12 57. 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 payable under a
15 standard automobile insurance policy pursuant to sections 4 and 10 of
16 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [or], medical expense
17 benefits payable under a basic automobile insurance policy pursuant to
18 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits payable under
19 a special automobile insurance policy pursuant to section 45 of P.L. ,
20 c. (C.)(now before the Legislature as this bill), except an action
21 by a decedent's estate, shall be commenced not later than two years
22 after the injured person or survivor suffers a loss or incurs an expense
23 and either knows or in the exercise of reasonable diligence should
24 know that the loss or expense was caused by the accident, or not later
25 than four years after the accident whichever is earlier, provided,
26 however, that if benefits have been paid before then an action for
27 further benefits may be commenced not later than two years after the
28 last payment of benefits.

29 b. Every action by a decedent's estate for the payment of benefits
30 provided under a standard automobile insurance policy pursuant to
31 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [or],
32 medical expense benefits provided under a basic automobile insurance
33 policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
34 benefits payable under a special automobile insurance policy pursuant
35 to section 45 of P.L. , c. (C.)(now before the Legislature as
36 this bill), shall be commenced not later than two years after death or
37 four years after the accident from which death results, whichever is
38 earlier, provided, however, that if benefits had been paid to the
39 decedent prior to his death then an action may be commenced not later
40 than two years after his death or four years after the last payment of
41 benefits, whichever is earlier, provided, further, that if the decedent's
42 estate has received benefits before then an action for further benefits
43 shall be commenced not later than two years from the last payment of
44 benefits.

45 (cf: P.L.1998, c.21, s.18)

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

3 15. In any claim or action arising for benefits payable under a
4 standard automobile insurance policy under section 4 of P.L.1972,
5 c.70 (C.39:6A-4) [~~or~~], any claim or action arising for medical expense
6 benefits payable under a basic automobile insurance policy under
7 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or any claim or action
8 arising for benefits payable under a special automobile insurance policy
9 pursuant to section 45 of P.L. _____, c. _____ (C. _____)(now before the
10 Legislature as this bill) wherein any person obtains or attempts to
11 obtain from any other person, insurance company or Unsatisfied Claim
12 and Judgment Fund any money or other thing of value by (1) falsely or
13 fraudulently representing that such person is entitled to such benefits;
14 (2) falsely and fraudulently making statements or presenting
15 documentation in order to obtain or attempt to obtain such benefits;
16 or (3) cooperates, conspires or otherwise acts in concert with any
17 person seeking to falsely or fraudulently obtain, or attempt to obtain,
18 such benefits may upon conviction be fined not more than \$5,000.00,
19 or imprisoned for not more than three years or both, or in the event
20 the sum so obtained or attempted to be obtained is not more than
21 \$500.00, may upon conviction, be fined not more than \$500.00, or
22 imprisoned for not more than six months or both, as a disorderly
23 person.

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

31 (cf: P.L.1998, c.21, s.19)

32

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

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

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

1 (2) an amount or limit, subject to such limit for any one person so
2 injured or killed, of \$30,000.00, exclusive of interest and costs, on
3 account of injury to or death of more than one person, in any one
4 accident, under provisions approved by the Commissioner of Banking
5 and Insurance, for payment of all or part of the sums which the insured
6 or his legal representative shall be legally entitled to recover as
7 damages from the operator or owner of an uninsured motor vehicle,
8 or hit and run motor vehicle, as defined in section 18 of P.L.1952,
9 c.174 (C.39:6-78), because of bodily injury, sickness or disease,
10 including death resulting therefrom, sustained by the insured, caused
11 by accident and arising out of the ownership, maintenance, operation
12 or use of such uninsured or hit and run motor vehicle anywhere within
13 the United States or Canada; except that uninsured motorist coverage
14 shall provide that in order to recover for non-economic loss, as defined
15 in section 2 of P.L.1972, c.70 (C.39:6A-2), for accidents to which the
16 benefits of section 4 (C.39:6A-4) of that act apply, the tort option
17 elected pursuant to section 8 (C.39:6A-8) of that act shall apply to
18 that injured person.

19 All motor vehicle liability policies, except basic automobile
20 insurance policies, shall also include coverage for the payment of all
21 or part of the sums which persons insured thereunder shall be legally
22 entitled to recover as damages from owners or operators of uninsured
23 motor vehicles, other than hit and run motor vehicles, because of
24 injury to or destruction to the personal property of such insured, with
25 a limit in the aggregate for all insureds involved in any one accident of
26 \$5,000.00, and subject, for each insured, to an exclusion of the first
27 \$500.00 of such damages.

28 b. Uninsured and underinsured motorist coverage shall be
29 provided as an option by an insurer to the named insured electing a
30 standard automobile insurance policy up to at least the following
31 limits: \$250,000.00 each person and \$500,000.00 each accident for
32 bodily injury; \$100,000.00 each accident for property damage or
33 \$500,000.00 single limit, subject to an exclusion of the first \$500.00
34 of such damage to property for each accident, except that the limits for
35 uninsured and underinsured motorist coverage shall not exceed the
36 insured's motor vehicle liability policy limits for bodily injury and
37 property damage, respectively.

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

41 c. Uninsured and underinsured motorist coverage provided for in
42 this section shall not be increased by stacking the limits of coverage of
43 multiple motor vehicles covered under the same policy of insurance
44 nor shall these coverages be increased by stacking the limits of
45 coverage of multiple policies available to the insured. If the insured
46 had uninsured motorist coverage available under more than one policy,

1 any recovery shall not exceed the higher of the applicable limits of the
2 respective coverages and the recovery shall be prorated between the
3 applicable coverages as the limits of each coverage bear to the total of
4 the limits.

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

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

29 (2) "uninsured motor vehicle" means:

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

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

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

42 (d) an automobile covered by a special automobile insurance
43 policy pursuant to section 45 of P.L. , c. (C.)(now before the
44 Legislature as this bill).

45 "Uninsured motor vehicle" shall not include an automobile covered
46 by a basic automobile insurance policy; an underinsured motor vehicle;

1 a motor vehicle owned by or furnished for the regular use of the
2 named insured or any resident of the same household; a self-insurer
3 within the meaning of any financial responsibility or similar law of the
4 state in which the motor vehicle is registered or principally garaged;
5 a motor vehicle which is owned by the United States or Canada, or a
6 state, political subdivision or agency of those governments or any of
7 the foregoing; a land motor vehicle or trailer operated on rails or
8 crawler treads; a motor vehicle used as a residence or stationary
9 structure and not as a vehicle; or equipment or vehicles designed for
10 use principally off public roads, except while actually upon public
11 roads.

12 (cf: P.L.1998, c.21, s.71)

13

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

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

31 b. Notwithstanding the provisions of subsection a. of this section,
32 an owner or registered owner of an automobile, as defined in section
33 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
34 State may satisfy the requirements of subsection a. of this section by
35 maintaining a basic automobile insurance policy containing coverages
36 provided pursuant to subsections a. and b. of section 4 of P.L.1998,
37 c.21 (C.39:6A-3.1).

38 c. Notwithstanding the provisions of subsection a. of this section,
39 an owner or registered owner of an automobile, as defined in section
40 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
41 State may satisfy the requirements of subsection a. of this section by
42 maintaining a special automobile insurance policy containing coverages
43 provided pursuant to subsection b. of section 45 of P.L. _____, c. _____
44 (C. _____) (now before the Legislature as this bill).

45 (cf: P.L.1998, c.21, s.20)

1 61. Section 2 of P.L.1968, c.158 (C.17:29C-7) is amended to read
2 as follows:

3 2. (A) A notice of cancellation of a policy shall be effective only
4 if it is based on one or more of the following reasons:

5 (a) Nonpayment of premium or nonpayment of a residual market
6 equalization charge imposed pursuant to the provisions of section 20
7 of P.L.1983, c.65 (C.17:30E-8); or

8 (b) The driver's license or motor vehicle registration of the named
9 insured or of any other operator who either resides in the same
10 household or customarily operates an automobile insured under the
11 policy has been under suspension or revocation during the policy
12 period or, if the policy is a renewal, during its policy period; or

13 (c) Knowingly providing materially false or misleading information
14 in connection with any application for insurance, renewal of insurance
15 or claim for benefits under an insurance policy; or

16 (d) The insurer determines, within 60 days of issuance of the
17 policy, that the named insurer does not meet the approved
18 underwriting rules of the insured then in effect.

19 (B) [This section shall not apply to any policy or coverage which
20 has been in effect less than 60 days at the time notice of cancellation
21 is mailed or delivered by the insurer unless it is a renewal policy.]
22 (Deleted by amendment, P.L. ., c. .)

23 (C) [Modification of automobile physical damage coverage by the
24 inclusion of a deductible not exceeding \$100.00 shall not be deemed
25 a cancellation of the coverage or of the policy.] (Deleted by
26 amendment, P.L. .c. .)

27 (D) This section shall not apply to nonrenewal.

28 (E) Nothing in this section shall be interpreted to limit the ability
29 of an insurer to void a policy ab initio as otherwise provided by law.

30 (F) The commissioner shall adopt rules and regulations necessary
31 or appropriate to effectuate the purposes of this section.

32 (cf: P.L.1988, c.119, s.27)

33

34 62. Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended to read
35 as follows:

36 4. No insurer shall fail to renew a policy unless it shall mail or
37 deliver to the named insured, at the address shown in the policy, at
38 least 60 days' advance notice of its intention not to renew, except that
39 the commissioner may extend the advance notice period up to an
40 additional 30 days by regulation. This section shall not apply:

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

42 (b) In case of nonpayment of premium;

43 provided that, notwithstanding the failure of an insurer to comply
44 with this section, the policy shall terminate on the effective date of any
45 other insurance policy with respect to any automobile designated in
46 both policies.

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

4 (cf: P.L.1998, c.21, s.62)

5
6 63. Section 25 of P.L.1990, c.8 (C.17:33B-13) is amended to read
7 as follows:

8 25. As used in sections 25 through 33 of this 1990 amendatory
9 and supplementary act:

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

12 "Automobile insurance" means insurance for an automobile
13 including coverage for bodily injury liability and property damage
14 liability, comprehensive and collision coverages, uninsured and
15 underinsured motorist coverage, personal injury protection coverage,
16 additional personal injury protection coverage and any other
17 automobile insurance required by law.

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Declination" means:

21 a. Refusal by an insurance agent to submit an application on behalf
22 of an applicant to any of the insurers represented by the agent;

23 b. Refusal by an insurer to issue an automobile insurance policy to
24 an eligible person upon receipt of an application for automobile
25 insurance;

26 c. The offer of automobile insurance coverage with less favorable
27 terms or conditions than those requested by an eligible person; or

28 d. The refusal by an insurer or agent to provide, upon the request
29 of an eligible person, an application form or other means of making an
30 application or request for automobile insurance coverage.

31 "Automobile insurance eligibility points" means points calculated
32 under the schedule promulgated by the commissioner pursuant to
33 section 26 of this act.

34 "Eligible person" means a person who is an owner or registrant of
35 an automobile registered in this State or who holds a valid New Jersey
36 driver's license to operate an automobile, but does not include any
37 person:

38 a. Who, during the three-year period immediately preceding
39 application for, or renewal of, an automobile insurance policy has been
40 convicted pursuant to R.S.39:4-50 or section 2 of P.L.1981, c.512
41 (C.39:4-50.4a), or for an offense of a substantially similar nature
42 committed in another jurisdiction; has been convicted of a crime of the
43 first, second or third degree resulting from the use of a motor vehicle;
44 or has been convicted of theft of a motor vehicle;

45 b. Whose driver's license to operate an automobile is under
46 suspension or revocation;

1 c. Who has been convicted, within the five-year period
2 immediately preceding application for or renewal of a policy of
3 automobile insurance, of fraud or intent to defraud involving an
4 insurance claim or an application for insurance; or who has been
5 successfully denied, within the immediately preceding five years,
6 payment by an insurer of a claim in excess of \$1,000 under an
7 automobile insurance policy, if there was evidence of fraud or intent
8 to defraud involving the automobile insurance claim or application;

9 d. Whose policy of automobile insurance has been canceled
10 because of nonpayment of premium or financed premium within the
11 immediately preceding two-year period, unless the premium due on a
12 policy for which application has been made is paid in full before
13 issuance or renewal of the policy;

14 e. Who fails to obtain or maintain membership or qualification for
15 membership in a club, group, or organization, if membership is a
16 uniform requirement of the insurer as a condition of providing
17 insurance, and if the dues or charges, if any, or other conditions for
18 membership or qualifications for membership are applied uniformly
19 throughout this State, are not expressed as a percentage of the
20 insurance premium, and do not vary with respect to the rating
21 classification of the member or potential member except for the
22 purpose of offering a membership fee to family units. Membership
23 fees, if applicable, may vary in accordance with the amount or type of
24 coverage if the purchase of additional coverage, either as to type or
25 amount, is not a condition for reduction of dues or fees;

26 f. Whose driving record for the three year period immediately
27 preceding application for or renewal of a policy of automobile
28 insurance has an accumulation of automobile insurance eligibility
29 points as determined under the schedule promulgated by the
30 commissioner pursuant to section 26 of this act; [or]

31 g. Who possesses such other risk factors as determined to be
32 relevant by rule or regulation of the commissioner; or

33 h. Who, during the three-year period immediately preceding
34 application for, or renewal of, an automobile insurance policy, has
35 knowingly provided materially false or misleading information in
36 connection with an application for insurance, renewal of insurance or
37 claim for benefits under an insurance policy.

38 "Insurance agent" or "agent" means an insurance agent as defined
39 by subsection f. of section 2 of P.L.1987, c.293 (C.17:22A-2) and
40 shall also include an insurance broker as defined by subsection g. of
41 section 2 of P.L.1987, c.293 (C.17:22A-2) who has a brokerage
42 relationship with an insurer.

43 "Insurer" means any insurer authorized or admitted to write
44 automobile insurance in this State, but does not include the New
45 Jersey Automobile Full Insurance Underwriting Association created
46 pursuant to sections 13 through 34 of P.L.1983, c.65 (C.17:30E-1 et

1 seq.) or any residual market mechanism implemented pursuant to
2 section 1 of P.L.1970, c.215 (C.17:29D-1).
3 (cf: P.L.1990, c.8, s.25)

4
5 64. Section 26 of P.L.1990, c.8 (C.17:33B-14) is amended to read
6 as follows:

7 26. The commissioner shall, within 90 days of the effective date
8 of this act, promulgate a schedule of automobile insurance eligibility
9 points by rule or regulation adopted pursuant to the "Administrative
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule
11 shall assess a point valuation to driving experience related violations
12 and shall include assessments for violations of lawful speed limits
13 within such increments as determined by the commissioner, other
14 moving violations, and at-fault accidents. For the purposes of this
15 section, an "at-fault accident," occurring before the effective date of
16 P.L. , c. (C.)(now before the Legislature as this bill), means an
17 at-fault accident which results in payment by the insurer of at least a
18 \$500 claim and for accidents occurring on or after the effective date
19 of P.L. , c. (C.)(now before the Legislature as this bill), means
20 an at-fault accident which results in payment by the insurer of at least
21 a \$1,000 claim, which amount may be adjusted in \$100 or \$250
22 increments periodically by order of the commissioner no more
23 frequently than every 36 months, as the commissioner deems
24 appropriate, to reflect the cumulative increases or decreases in the
25 components of the Consumer Price Index, All Urban Consumers (CPI-
26 U) for the Northeast Region, and the adjusted amount shall apply to
27 automobile accidents occurring at least 120 days after the effective
28 date of the adjustment; except that an at-fault accident shall not mean
29 an accident occurring as a result of operation of any motor vehicle in
30 response to a medical emergency if the operator at the time of the
31 accident was a physician responding to the medical emergency.

32 (cf: P.L.1997, c.381, s.1)

33

34 65. Section 10 of P.L.1983, c.65 (C.17:29A-39) is amended to
35 read as follows:

36 10. a. **[Every]** Unless the named insured selects a lower
37 deductible amount, every private passenger automobile insurance
38 policy providing collision and comprehensive coverages, issued or
39 renewed on or after the effective date of this act, shall provide a
40 deductible in a minimum amount of \$500.00 each for collision and
41 comprehensive coverages, **[unless the named insured selects a lower**
42 **deductible amount]** except for policies issued on or after the effective
43 date of this section, that deductible amount shall be \$750 each for
44 collision and comprehensive coverages. The minimum deductible
45 established by this subsection shall apply to all policies providing
46 collision and comprehensive coverages unless the named insured

1 provides otherwise in writing on a form approved by the
2 commissioner.

3 b. The commissioner shall promulgate rules and regulations
4 requiring insurers to offer a range of deductibles up to at least
5 \$2,000.00 for private passenger automobile collision and
6 comprehensive coverages, which upper range may be adjusted in \$100
7 or \$250 increments periodically by order of the commissioner no more
8 frequently than every 36 months, as the commissioner deems
9 appropriate, to reflect the cumulative increases or decreases, since the
10 deductibles were last set, in the components of the Consumer Price
11 Index, All Urban Consumers (CPI-U) for the Northeast Region.
12 (cf: P.L.1988, c.119, s.33)

13

14 66. Section 16 of P.L.1974, c.17 (C.17:30A-16) is amended to
15 read as follows:

16 16. a. The commissioner shall adopt rules permitting member
17 insurers to recoup over a reasonable length of time, a sum reasonably
18 calculated to recoup assessments paid by the member insurer pursuant
19 to paragraph (3) of subsection a. of section 8 of P.L.1974, c.17
20 (C.17:30A-8) by way of a surcharge on premiums charged for
21 insurance policies to which this act applies. The amount of any
22 surcharge shall be determined by the commissioner. The commissioner
23 may permit an insurer to omit collection of the surcharge from its
24 insureds when the expense of collecting the surcharge would exceed
25 the amount of the surcharge, provided that nothing in this subsection
26 shall relieve the insurer of its obligation to remit the amount of
27 surcharge otherwise collectible.

28 b. No member insurer shall impose a surcharge on the premiums
29 of any policy to recoup assessments paid pursuant to paragraph (9) of
30 subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8).

31 c. Members shall recoup assessments paid by member insurers
32 pursuant to paragraph (11) of section 8 of P.L.1974, c.17 (C.17:30A-
33 8) by way of a surcharge on premiums charged for insurance policies
34 to which this act applies. Members shall recoup these assessments
35 within two years of the date they are paid. The commissioner may
36 permit an insurer to omit collection of the surcharge from its insureds
37 when the expense of collecting the surcharge would exceed the
38 amount of the surcharge, provided that nothing in this subsection shall
39 relieve the insurer of its obligation to remit the amount of the
40 surcharge otherwise collectible.

41 (cf: P.L.1990, c.8, s.75)

42

43 67. Section 1 of P.L.1988, c.118 (C.17:29A-5.6) is amended to
44 read as follows:

45 1. As used in this act:

46 a. "Actual investment income" means that portion of income

1 generated by investment of policyholder-supplied funds. Policyholder-
2 supplied funds are the assets that offset the insurer's total New Jersey
3 private passenger automobile insurance unearned premium and loss
4 reserves without regard to whether those funds came from private
5 passenger automobile insurance policyholders or other policyholders
6 or were from policyholder funds from the last seven calendar years or
7 earlier years.

8 b. "Actuarial gain" means the remainder obtained by subtracting
9 the allowance for profit and contingencies from underwriting income,
10 which remainder may be positive or negative.

11 c. "AIRE charges" and "AIRE compensation" mean, respectively,
12 amounts paid to or received from the New Jersey Automobile
13 Insurance Risk Exchange pursuant to section 16 of P.L.1983, c.362
14 (C.39:6A-22).

15 d. "Anticipated investment income" means the amount obtained by
16 multiplying earned premium by the percentage of premium
17 representing investment income and used in the insurer's approved rate
18 filings or filings made pursuant to section 29 of P.L.1988, c.119
19 (C.17:29A-42), during the period of the three calendar-accident years
20 being calculated, to calculate the allowance for profit and
21 contingencies.

22 e. "Calendar-accident year" means the period from January 1 to
23 December 31, during which, in the appropriate context:

24 (1) premium or investment income was earned;

25 (2) expenses were incurred; or

26 (3) accidents occurred which resulted in losses, loss adjustment
27 expenses or AIRE compensation.

28 f. "Car year" means the unit of exposure equivalent to the insuring
29 of one automobile for 12 months, two automobiles for six months
30 each, three automobiles for four months each, and so forth.

31 g. "Commissioner" means the Commissioner of Banking and
32 Insurance.

33 h. "Development adjustment," for a given calendar-accident year,
34 means the difference obtained by subtracting:

35 (1) The sum of

36 (a) Losses and loss adjustment expenses for that calendar-accident
37 year, developed to an ultimate basis and evaluated as of March 31 of
38 the year preceding the year in which the profits report required by
39 section 2 of this act is due; plus

40 (b) AIRE compensation for that calendar-accident year, developed
41 to an ultimate basis and evaluated as of March 31 of the year in which
42 the profits report is due; from

43 (2) The sum of

44 (a) Losses and loss adjustment expenses for that calendar-accident
45 year, developed to an ultimate basis and evaluated as of March 31 of
46 the year in which the profits report is due; plus

1 (b) AIRE compensation for that calendar-accident year, developed
2 to an ultimate basis and evaluated as of March 31 of the year
3 preceding the year in which the profits report is due.

4 i. "Excess investment income" means the remainder obtained by
5 subtracting the anticipated investment income from the actual
6 investment income earned by the insurer, which remainder may be
7 positive or negative.

8 j. "Insurer" means an entity authorized or admitted to transact
9 private passenger automobile insurance business in New Jersey [, but
10 does not include the New Jersey Automobile Full Insurance
11 Underwriting Association created pursuant to P.L.1983, c.65
12 (C.17:30E-1 et seq.)].

13 k. "Private passenger automobile insurance business" means direct
14 insurance on private passenger automobiles as defined in subsection a.
15 of section 2 of P.L.1972, c.70 (C.39:6A-2), excluding personal excess
16 liability insurance and insurance on commercial vehicles.

17 l. "Total actuarial gain" means the sum of the actuarial gains for
18 the [three] seven calendar-accident years immediately preceding the
19 due date of the profits report required by section 2 of this act, less the
20 development adjustments submitted at the option of the insurer for the
21 calendar-accident years beginning with the [seventh] eleventh
22 calendar-accident year immediately preceding the due date of the
23 profits report and ending with the [fourth] eighth calendar-accident
24 year immediately preceding the due date of the profits report.

25 m. "Underwriting income" means the remainder obtained by
26 subtracting the sum of all losses developed to an ultimate basis, all loss
27 adjustment expenses developed to an ultimate basis, and all other
28 expenses exclusive of UCJF assessments, from the sum of premiums
29 earned and AIRE compensation developed to an ultimate basis, which
30 remainder may be positive or negative.

31 n. "UCJF assessments" means amounts paid by insurers to the
32 Unsatisfied Claim and Judgment Fund pursuant to section 3 of
33 P.L.1952, c.174 (C.39:6-63).

34 o. "UCJF reimbursements" means amounts received by an insurer
35 from the Unsatisfied Claim and Judgment Fund as a result of excess
36 medical expense benefit payments by the insurer pursuant to section
37 2 of P.L.1977, c.310 (C.39:6-73.1).

38 (cf: P.L.1988, c.118, s.1)

39
40 68. Section 2 of P.L.1988, c.118 (C.17:29A-5.7) is amended to
41 read as follows:

42 2. a. Each insurer, except those exempt from filing pursuant to
43 section 6 of this act, shall annually file with the commissioner, on or
44 before July 1 of each year, a profits report containing the information
45 and calculations required by this section. The information shall be
46 provided with respect to the insurer's New Jersey private passenger

1 automobile insurance business separately for each of the following
2 coverages and for all these coverages combined:

- 3 (1) Personal injury protection, including all options;
- 4 (2) Bodily injury liability, reported at total limits;
- 5 (3) Other liability, consisting of property damage liability and
6 uninsured and underinsured motorist coverages, all reported at total
7 limits;
- 8 (4) Physical damage, consisting of comprehensive and collision
9 coverages, including all deductibles.

10 A separate profits report shall be filed for each insurer and each
11 insurer in an insurance holding company system. Each insurance
12 holding company system shall file a separate combined profits report
13 for all insurers in its system. The excess profits computation for an
14 insurance holding company system shall be performed on its combined
15 profits report, except that the commissioner may order an adjustment
16 in the combined profits report if in his judgment, upon examining each
17 insurer's profits report in the insurance holding company system, one
18 or more of the insurers in that system are excessively subsidizing other
19 insurers in that system.

20 b. The profits report shall contain the following information [for
21 each of the seven most recent calendar-accident years, with an
22 evaluation date as of March 31 of the year in which the profits report
23 is due], in a manner and for a time period as prescribed by the
24 commissioner by regulation:

- 25 (1) Losses paid;
- 26 (2) Losses developed to an ultimate basis;
- 27 (3) Loss adjustment expenses paid;
- 28 (4) Loss adjustment expenses developed to an ultimate basis;
- 29 (5) AIRE compensation received; and
- 30 (6) AIRE compensation developed to an ultimate basis.

31 c. The profits report shall contain the following information for
32 the calendar-accident year ending December 31 immediately preceding
33 the date the profits report is due:

- 34 (1) Premiums written;
- 35 (2) Premiums earned;
- 36 (3) ~~[Other]~~ All other expenses, itemized separately as follows:
 - 37 (a) ~~[Commissions]~~ All commissions and all brokerage fees;
 - 38 (b) ~~[Taxes]~~ All taxes, all licenses and all fees;
 - 39 (c) All AIRE charges;
 - 40 (d) All UCJF ~~[assessment]~~ assessments;
 - 41 (e) ~~[Other]~~ All other acquisition costs and all general expenses;
 - 42 (f) ~~[Policyholder]~~ All policyholder dividends incurred by the
43 insurer, including any excess profits refunded or credited to
44 policyholders;
 - 45 (g) The net of all catastrophe reinsurance premiums incurred to
46 unaffiliated catastrophe reinsurers and all sums paid or owed by

1 unaffiliated catastrophe reinsurers for losses that occurred during the
2 calendar-accident year, subject to such substantiation of expense as the
3 commissioner may require;

4 (h) All expenses incurred for the services of a limited assignment
5 distribution carrier pursuant to subsection c. of section 1 of P.L.1970,
6 c.215 (C.17:29D-1);

7 (4) Allowance for profit and contingencies, calculated by
8 multiplying the premiums earned by the profit and contingency factors
9 authorized for use with the insurer's approved rate filings, which profit
10 and contingency factors shall be based on the insurer's targeted rate of
11 return, method of doing business, the cost of capital and other relevant
12 economic considerations of the insurer;

13 (5) Anticipated investment income;

14 (6) Actual investment income; and

15 (7) UCJF reimbursements received.

16 d. The profits report shall include a clear and explicit calculation
17 of each of the following items, in a manner and for a time period as
18 prescribed by the commissioner by regulation:

19 (1) Underwriting income [for each of the three calendar-accident
20 years immediately preceding the date of the profits report];

21 (2) Actuarial gain [for each of the three calendar-accident years
22 immediately preceding the date of the profits report];

23 (3) Excess investment income [for each of the three
24 calendar-accident years immediately preceding the date of the profits
25 report];

26 (4) Development adjustment [for each of the four
27 calendar-accident years specified in subsection l. of section 1 of this
28 act];

29 (5) Total actuarial gain; and

30 (6) Excess profits.

31 (cf: P.L.1988, c.118, s.2)

32

33 69. Section 3 of P.L.1988, c.118 (C.17:29A-5.8) is amended to
34 read as follows:

35 3. Excess profits shall exist if for the [three] seven
36 calendar-accident years immediately preceding the date the profits
37 report is due, the sum of an insurer's total actuarial gain and excess
38 investment income for all private passenger automobile coverages
39 combined exceeds 2.5 percent of earned premiums, except that the
40 effect of a negative excess investment income shall be limited in the
41 computation of excess profits, at the discretion of the commissioner,
42 which discretion shall be exercised pursuant to a standard on the
43 investment of policyholder-supplied funds pursuant to regulations
44 promulgated by the commissioner not later than April 1 of the year in
45 which excess profits reports are filed.

1 (cf: P.L.1988, c.118, s.3)

2 70. Section 2 of P.L.1972, c.200 (C.39:3-29.1) is amended to read
3 as follows:

4 2. The Commissioner of Banking and Insurance shall, after
5 consultation with the Director of the Division of Motor Vehicles,
6 promulgate rules and regulations concerning the issuance, design and
7 content of the insurance identification cards required by this act.

8 The rules and regulations shall contain provisions designed to deter
9 and detect counterfeit or fraudulent insurance identification cards.

10 (cf: P.L.1972, c.200, s.2)

11

12 71. (New section) With respect to sections 72 through 74 of
13 P.L. c. (C.) (now before the Legislature as this bill), the
14 Legislature finds and declares:

15 a. Insurance fraud is inimical to public safety, welfare and order
16 within the State of New Jersey. Insurance fraud is pervasive and
17 expensive, costing consumers and businesses millions of dollars in
18 direct and indirect losses each year. Insurance fraud increases
19 insurance premiums, to the detriment of individual policyholders, small
20 businesses, large corporations and governmental entities. All New
21 Jerseyans ultimately bear the societal burdens and costs caused by
22 those who commit insurance fraud.

23 b. The problem of insurance fraud must be confronted aggressively
24 by facilitating the detection, investigation and prosecution of such
25 misconduct, as well as by reducing its occurrence and achieving
26 deterrence through the implementation of measures that more precisely
27 target specific conduct constituting insurance fraud.

28 c. To enable more efficient prosecution of criminally culpable
29 persons who knowingly commit or assist or conspire with others in
30 committing fraud against insurance companies, it is necessary to
31 establish a crime of "insurance fraud" to directly and comprehensively
32 criminalize this type of harmful conduct, with substantial criminal
33 penalties to punish wrongdoers and to appropriately deter others from
34 such illicit activity.

35 d. In addition to criminal penalties, in order to maintain the public
36 trust and ensure the integrity of professional licensees and certificate-
37 holders who by virtue of their professions are involved in insurance
38 transactions, it is appropriate to provide civil remedial provisions
39 governing license or certificate forfeiture and suspension tailored to
40 this new crime of insurance fraud and other criminal insurance-related
41 activities.

42 e. To enhance the State's ability to detect insurance fraud, which
43 will lead to more productive investigations and, ultimately, more
44 successful criminal prosecutions, it is appropriate to provide members
45 of the public with significant incentives to come forward when they
46 may have reasonable suspicions or knowledge of a person or persons

1 committing insurance fraud. The establishment of an Insurance Fraud
2 Detection Reward Program will enable the Insurance Fraud Prosecutor
3 to obtain information which may lead to the arrest, prosecution and
4 conviction of persons or entities who have committed insurance-
5 related fraud.

6

7 72. (New section) As used in sections 73 and 74 of P.L. , c.
8 (C.) (now before the Legislature as this bill), unless the context
9 otherwise requires, the following words and terms shall have the
10 following meanings:

11 "Insurance company" means any person, company, corporation,
12 unincorporated association, partnership, professional corporation,
13 agency of government and any other entity authorized or permitted to
14 do business in New Jersey, subject to regulation by the State, or
15 incorporated or organized under the laws of any other state of the
16 United States or of any foreign nation or of any province or territory
17 thereof, to indemnify another against loss, damage, risk or liability
18 arising from a contingent or unknown event. "Insurance company"
19 includes, but is not limited to, an insurance company as that term is
20 defined in section 3 of P.L.1983, c.320 (C.17:33A-3), self-insurer, re-
21 insurer, reciprocal exchange, inter-insurer, hospital, medical or health
22 service corporation, health maintenance organization, surety, assigned
23 risk plan, joint insurance fund, and any other entity legally engaged in
24 the business of insurance as authorized or permitted by the State of
25 New Jersey, including but not limited to any such entity incorporated
26 or organized under the laws of any other state of the United States or
27 of any foreign nation or of any province or territory thereof.

28 "Insurance policy" means the instrument, in writing, electronically
29 or in any other form, in which are set forth the terms of any certificate
30 of insurance, binder of coverage, contract of insurance or contract of
31 re-insurance, issued by an insurance company, including, but not
32 limited to, a State-assigned risk plan, plan of indemnity protection
33 provided by or on behalf of a joint insurance fund or benefit plan,
34 motor club service plan, or guaranty bond, surety bond, cash bond or
35 any other alternative to insurance authorized or permitted by the State
36 of New Jersey.

37 "Insurance transaction" means a transaction by, between, or among
38 (1) an insurance company and (2) an insured, claimant, applicant for
39 insurance, public adjuster, insurance professional, practitioner as
40 defined by section 2 of P.L.1997, c.353 (C.2C:21-4.2), attorney, or
41 any person who acts on behalf of any of the foregoing for the purpose
42 of obtaining insurance or reinsurance, calculating insurance premiums,
43 submitting a claim, negotiating or adjusting a claim, or otherwise
44 obtaining insurance, self insurance, or reinsurance, or obtaining the
45 benefits or annuities thereof or therefrom.

46 "Premium finance transaction" means a transaction involving or

1 related to insurance premium financing which is subject to the
2 "Insurance Premium Finance Company Act," P.L.1968, c.221
3 (C.17:16D-1 et seq.).

4
5 73. (New section) a. A person is guilty of the crime of insurance
6 fraud if that person knowingly makes, or causes to be made, a false,
7 fictitious, fraudulent, or misleading statement of material fact in, or
8 omits a material fact from, or causes a material fact to be omitted
9 from, any record, bill, claim or other document, in writing,
10 electronically, orally or in any other form, that a person attempts to
11 submit, submits, causes to be submitted, or attempts to cause to be
12 submitted as part of, in support of or opposition to or in connection
13 with: (1) a claim for payment, reimbursement or other benefit
14 pursuant to an insurance policy, or from an insurance company or the
15 "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174
16 (C.39:6-61 et seq.); (2) an application to obtain or renew an insurance
17 policy; (3) any payment made or to be made in accordance with the
18 terms of an insurance policy or premium finance transaction; or (4) an
19 affidavit, certification, record or other document used in any insurance
20 or premium finance transaction.

21 b. Insurance fraud constitutes a crime of the second degree if the
22 person knowingly commits five or more acts of insurance fraud,
23 including acts of health care claims fraud pursuant to section 2 of
24 P.L.1997, c.353 (C.2C:21-4.2) and if the aggregate value of property,
25 services or other benefit wrongfully obtained or sought to be obtained
26 is at least \$1,000. Otherwise, insurance fraud is a crime of the third
27 degree. Each act of insurance fraud shall constitute an additional,
28 separate and distinct offense, except that five or more separate acts
29 may be aggregated for the purpose of establishing liability pursuant to
30 this subsection. Multiple acts of insurance fraud which are contained
31 in a single record, bill, claim, application, payment, affidavit,
32 certification or other document shall each constitute an additional,
33 separate and distinct offense for purposes of this subsection.

34 c. Proof that a person has signed or initialed an application, bill,
35 claim, affidavit, certification, record or other document may give rise
36 to an inference that the person has read and reviewed the application,
37 bill, claim, affidavit, certification, record or other document.

38 d. In order to promote the uniform enforcement of this act, the
39 Attorney General shall develop insurance fraud prosecution guidelines
40 and disseminate them to county prosecutors within 180 days of the
41 effective date of this act.

42 e. Nothing in this act shall preclude an indictment and conviction
43 for any other offense defined by the laws of this State.

44 f. Nothing in this act shall preclude an assignment judge from
45 dismissing a prosecution of insurance fraud if the assignment judge
46 determines, pursuant to N.J.S.2C:2-11, the conduct charged to be a de

1 minimus infraction.

2

3 74. (New section) a. There is established within the Office of the
4 Insurance Fraud Prosecutor an Insurance Fraud Detection Reward
5 Program, to be funded from surcharges imposed pursuant to section
6 53 of P.L.2002, c.34 (C.17:33A-5.1) and supplemented as necessary
7 and appropriate by amounts budgeted for the operation of the office.

8 b. A member of the public who has knowledge of or who believes
9 that an act of health care claims fraud, insurance fraud or any other
10 criminal offense involving or related to an insurance transaction is
11 being or has been committed may provide the Insurance Fraud
12 Prosecutor with a report or information pertinent to that knowledge
13 or belief and may provide additional information that the Insurance
14 Fraud Prosecutor requests.

15 c. The Insurance Fraud Prosecutor shall maintain a 24-hour toll-
16 free insurance fraud hotline to receive information from members of
17 the public who have knowledge of or who believe that an act of health
18 care claims fraud, insurance fraud or any other criminal offense
19 involving or related to an insurance transaction is being or has been
20 committed.

21 d. The Attorney General, through the Insurance Fraud Prosecutor,
22 is authorized to pay a reward of up to \$25,000 to persons providing
23 information leading to the arrest, prosecution and conviction of
24 persons or entities who have committed health care claims fraud,
25 insurance fraud or any other criminal offense related to an insurance
26 transaction. Only a single reward amount may be paid by the
27 Insurance Fraud Prosecutor for claims arising out of the same
28 transaction or occurrence, regardless of the number of persons
29 arrested, prosecuted and convicted and regardless of the number of
30 persons submitting claims for the reward. The reward may be divided
31 and disbursed among more than one person in amounts determined by
32 the Insurance Fraud Prosecutor, in accordance with the provisions of
33 this subsection. The decision of the Insurance Fraud Prosecutor as to
34 the person or persons entitled to the reward shall be final unless the
35 reward recipients shall disagree, in which event, the matter shall be
36 referred to the Attorney General whose decision shall be final and shall
37 not be subject to judicial review.

38 e. Any person acting in good faith who provides information in
39 accordance with subsection b. of this section shall have immunity from
40 any liability, civil or criminal, that might otherwise be incurred or
41 imposed as a result of such act.

42 f. The Attorney General shall promulgate and adopt rules and
43 regulations which set forth the reward program application and
44 approval process, including the criteria against which claims shall be
45 evaluated, the basis for determining specific reward amounts, and the
46 manner of reward disbursement. Applications for rewards authorized

1 by this section must be submitted in accordance with rules established
2 by the Attorney General.

3

4 75. Section 3 of P.L.1997, c.353 (C.2C:21-4.3) is amended to
5 read as follows:

6 3. a. A practitioner is guilty of a crime of the second degree if
7 that person knowingly commits health care claims fraud in the course
8 of providing professional services. In addition to all other criminal
9 penalties allowed by law, a person convicted under this subsection may
10 be subject to a fine of up to five times the pecuniary benefit obtained
11 or sought to be obtained.

12 b. A practitioner is guilty of a crime of the third degree if that
13 person recklessly commits health care claims fraud in the course of
14 providing professional services. In addition to all other criminal
15 penalties allowed by law, a person convicted under this subsection may
16 be subject to a fine of up to five times the pecuniary benefit obtained
17 or sought to be obtained.

18 c. A person, who is not a practitioner subject to the provisions of
19 subsection a. or b. of this section, is guilty of a crime of the third
20 degree if that person knowingly commits health care claims fraud. A
21 person, who is not a practitioner subject to the provisions of
22 subsection a. or b. of this section, is guilty of a crime of the second
23 degree if that person knowingly commits five or more acts of health
24 care claims fraud and the aggregate pecuniary benefit obtained or
25 sought to be obtained is at least \$1,000. In addition to all other
26 criminal penalties allowed by law, a person convicted under this
27 subsection may be subject to a fine of up to five times the pecuniary
28 benefit obtained or sought to be obtained.

29 d. A person, who is not a practitioner subject to the provisions of
30 subsection a. or b. of this section, is guilty of a crime of the fourth
31 degree if that person recklessly commits health care claims fraud. In
32 addition to all other criminal penalties allowed by law, a person
33 convicted under this subsection may be subject to a fine of up to five
34 times the pecuniary benefit obtained or sought to be obtained.

35 e. Each act of health care claims fraud shall constitute an
36 additional, separate and distinct offense, except that five or more
37 separate acts may be aggregated for the purpose of establishing
38 liability pursuant to subsection c. of this section. Multiple acts of
39 health care claims fraud which are contained in a single record, bill,
40 claim, application, payment, affidavit, certification or other document
41 shall each constitute an additional, separate and distinct offense for
42 purposes of this section.

43 f. (1) The falsity, fictitiousness, fraudulence or misleading nature
44 of a statement may be inferred by the trier of fact in the case of a
45 practitioner who attempts to submit, submits, causes to be submitted,
46 or attempts to cause to be submitted, any record, bill, claim or other

1 document for treatment or procedure without the practitioner, or an
2 associate of the practitioner, having performed an assessment of the
3 physical or mental condition of the patient or client necessary to
4 determine the appropriate course of treatment.

5 (2) The falsity, fictitiousness, fraudulence or misleading nature of
6 a statement may be inferred by the trier of fact in the case of a
7 person who attempts to submit, submits, causes to be submitted, or
8 attempts to cause to be submitted any record, bill, claim or other
9 document for more treatments or procedures than can be performed
10 during the time in which the treatments or procedures were
11 represented to have been performed.

12 (3) Proof that a practitioner has signed or initialed a record, bill,
13 claim or other document gives rise to an inference that the
14 practitioner has read and reviewed that record, bill, claim or other
15 document.

16 g. In order to promote the uniform enforcement of this act, the
17 Attorney General shall develop health care claims fraud prosecution
18 guidelines and disseminate them to the county prosecutors within 120
19 days of the effective date of this act.

20 h. For the purposes of this section, a person acts recklessly with
21 respect to a material element of an offense when he consciously
22 disregards a substantial and unjustifiable risk that the material element
23 exists or will result from his conduct. The risk must be of such a
24 nature and degree that, considering the nature and purpose of the
25 actor's conduct and the circumstances known to him, its disregard
26 involves a gross deviation from the standard of conduct that a
27 reasonable person would observe in the actor's situation.

28 i. (1) Nothing in this act shall preclude an indictment and
29 conviction for any other offense defined by the laws of this State.

30 (2) Nothing in this act shall preclude an assignment judge from
31 dismissing a prosecution of health care claims fraud if the assignment
32 judge determines, pursuant to N.J.S.2C:2-11, the conduct charged to
33 be a de minimis infraction.

34 (cf: P.L.1997, c.353, s.3)

35

36 76. Section 4 of P.L.1997, c.353 (C.2C:51-5) is amended to read
37 as follows:

38 4. a. (1) A practitioner convicted of health care claims fraud
39 pursuant to subsection a. of section 3 of P.L.1997, c.353
40 (C.2C:21-4.3) or a substantially similar crime under the laws of
41 another state or the United States shall forfeit his license and be
42 forever barred from the practice of the profession unless the court
43 finds that such license forfeiture would be a serious injustice which
44 overrides the need to deter such conduct by others and in such case
45 the court shall determine an appropriate period of license suspension
46 which shall be for a period of not less than one year. If the court does

1 not permanently forfeit such license pursuant to this paragraph, the
2 sentence shall not become final for 10 days in order to permit the
3 appeal of such sentence by the prosecution.

4 (2) Upon a first conviction of health care claims fraud pursuant to
5 subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
6 substantially similar crime under the laws of another state or the
7 United States, a practitioner shall have his license suspended and be
8 barred from the practice of the profession for a period of at least one
9 year.

10 (3) Upon a second conviction of health care claims fraud pursuant
11 to subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
12 substantially similar crime under the laws of another state or the
13 United States, a practitioner shall forfeit his license and be forever
14 barred from the practice of the profession.

15 (4) A person convicted of second degree insurance fraud pursuant
16 to section 73 of P.L. , c. (C.) (now before the Legislature as this
17 bill) or a substantially similar crime under the laws of another state or
18 the United States who holds a license or certificate of authority or
19 qualification to engage in the practice of a profession, occupation,
20 trade, or vocation or business, including but not limited to a
21 practitioner as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2),
22 shall forfeit that license or certificate and be forever barred from the
23 practice of that profession, occupation, trade, vocation or business if
24 the act or acts of insurance fraud were related to or performed while
25 engaged in the practice of that profession, occupation, trade, vocation
26 or business, unless the court finds that such license or certificate
27 forfeiture would be a serious injustice which overrides the need to
28 deter such conduct by others and in that case the court shall determine
29 an appropriate period of license or certificate suspension which shall
30 be for a period of not less than one year. If the court does not
31 permanently forfeit such license or certificate pursuant to this
32 paragraph, the sentence shall not become final for 10 days in order to
33 permit the appeal of that sentence by the prosecution.

34 (5) A person convicted of third degree insurance fraud pursuant
35 to section 73 of P.L. , c. (C.) (now before the Legislature as this
36 bill) or a substantially similar crime under the laws of another state or
37 the United States who holds a license or certificate of authority or
38 qualification to engage in the practice of a profession, occupation,
39 trade, vocation or business, including but not limited to a practitioner
40 as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall have
41 his license or certificate suspended and be barred from the practice of
42 that profession, occupation, trade, vocation or business for a period of
43 at least one year if the act or acts of insurance fraud were related to or
44 performed while engaged in the practice of that profession,
45 occupation, trade, vocation or business.

46 (6) Upon a second conviction of third degree insurance fraud

1 pursuant to section 73 of P.L. , c. (C.) (now before the
2 Legislature as this bill) or a substantially similar crime under the laws
3 of another state or the United States which meets the criteria of
4 paragraph (2) of this subsection, a person shall forfeit his license or
5 certificate and be forever barred from the practice of that profession,
6 occupation, trade, vocation or business.

7 (7) Upon application of the county prosecutor or the Attorney
8 General, a person convicted of any crime of the second degree or
9 above enumerated in chapter 20 or 21 of Title 2C of the New Jersey
10 Statutes or a substantially similar crime under the laws of another state
11 or the United States who holds a license or certificate or authority or
12 qualification to engage in the practice of a profession, occupation,
13 trade, vocation or business, including a practitioner as defined in
14 section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall forfeit such license
15 or certificate and be forever barred from the practice of that
16 profession, occupation, trade, vocation or business if the act or acts
17 underlying the conviction involved or were related to an insurance
18 transaction as defined in section 72 of P.L. , c. (C.) (now before
19 the Legislature as this bill) and touched upon or were performed while
20 engaged in the practice of that profession, occupation, trade, vocation
21 or business, unless the court finds that the license or certificate
22 forfeiture would be a serious injustice which overrides the need to
23 deter such conduct by others and in that case the court shall determine
24 an appropriate period of license or certificate suspension which shall
25 be for a period of not less than one year. If the court does not
26 permanently forfeit that license or certificate pursuant to this
27 paragraph, the sentence shall not become final for 10 days in order to
28 permit the appeal of that sentence by the prosecution.

29 (8) Upon application of the county prosecutor or the Attorney
30 General, a person convicted of any crime of the third degree
31 enumerated in chapter 20 or 21 of Title 2C of the New Jersey Statutes
32 or a substantially similar crime under the laws of another state or the
33 United States who holds a license or certificate of authority or
34 qualification to engage in the practice of a profession, occupation,
35 trade, vocation or business, including but not limited to a practitioner
36 as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall have
37 his license or certificate suspended and be barred from the practice of
38 that profession, occupation, trade, vocation or business for a period of
39 at least one year if the act or acts underlying the conviction involved
40 or were related to an insurance transaction as defined in section 73 of
41 P.L. , c. (C.) (now before the Legislature as this bill) and
42 touched upon or were performed while engaged in the practice of that
43 profession, occupation, trade, vocation or business.

44 b. A court of this State shall enter an order of license or certificate
45 forfeiture or suspension pursuant to subsection a. of this section:

46 (1) Immediately upon a finding of guilt by the trier of fact or a

1 plea of guilty entered in any court of this State; or

2 (2) Upon application of the county prosecutor or the Attorney
3 General, when the license or certificate forfeiture or suspension is
4 made pursuant to paragraph (4) of subsection a. of this section or is
5 based upon a conviction of an offense under the laws of another state
6 or of the United States. An order of license or certificate forfeiture or
7 suspension pursuant to this paragraph shall be effective as of the date
8 the person is found guilty by the trier of fact or pleads guilty to the
9 offense.

10 This application may also be made in the alternative by the
11 Attorney General to the appropriate licensing agency.

12 The court shall provide notice of the forfeiture or suspension to the
13 appropriate licensing agency within 10 days of the date an order of
14 forfeiture or suspension is entered.

15 c. No court shall grant a stay of an order of license or certificate
16 forfeiture or suspension pending appeal of a conviction or forfeiture
17 or suspension order unless the court is clearly convinced that there is
18 a substantial likelihood of success on the merits. If the conviction is
19 reversed or the order of license or certificate forfeiture or suspension
20 is overturned, the court shall provide notice of reinstatement to the
21 appropriate licensing agency within 10 days of the date of the order of
22 reinstatement. The license or certificate shall be restored, in
23 accordance with applicable procedures, unless the appropriate
24 licensing agency determines to suspend or revoke the license or
25 certificate.

26 d. In any case in which the issue of license or certificate forfeiture
27 or suspension is not raised in a court of this State at the time of a
28 finding of guilt, entry of a guilty plea or sentencing, a license or
29 certificate forfeiture or suspension required by this section may be
30 ordered by a court or by the appropriate licensing agency of this State
31 upon application of the county prosecutor or the Attorney General or
32 upon application of the appropriate licensing agency having authority
33 to revoke or suspend the professional's license or certificate. The fact
34 that a court has declined to order license or certificate forfeiture or
35 suspension shall not preclude the appropriate licensing agency having
36 authority to revoke or suspend the professional's license or certificate
37 from seeking to do so on the ground that the conduct giving rise to the
38 conviction demonstrates that the person is unfit to hold the license or
39 certificate or is otherwise liable for an offense as specified in section
40 8 of P.L.1978, c.73 (C.45:1-21).

41 e. If the Supreme Court of the State of New Jersey issues Rules
42 of Court pursuant to this act, the Supreme Court may revoke the
43 license to practice law of any attorney who has been convicted, under
44 the laws of this State, of health care claims fraud pursuant to section
45 3 of P.L.1997, c.353 (C.2C:21-4.3), or an offense which, if committed
46 in this State, would constitute health care claims fraud, insurance fraud

1 pursuant to section 73 of P.L. , c. (C.) (now before the
2 Legislature as this bill), or an offense which, if committed in this State,
3 would constitute insurance fraud.

4 f. Nothing in this section shall be construed to prevent or limit the
5 appropriate licensing agency or any other party from taking any other
6 action permitted by law against the practitioner.

7 (cf: P.L.1997, c.353, s.4)

8

9 77. Section 5 of P.L.1997, c.353 (C.2C:52-27.1) is amended to
10 read as follows:

11 5. a. If an order of expungement of records of conviction under
12 the provisions of chapter 52 of Title 2C of the New Jersey Statutes is
13 granted by the court to a person convicted of health care claims fraud
14 in which the court had ordered the offender's professional license or
15 certificate be forfeited and the person be forever barred from the
16 practice of the profession, occupation, trade, vocation or business
17 pursuant to [paragraph (1) of] subsection a. of section 4 of P.L.1997,
18 c.353 (C.2C:51-5), the person may petition the court for an order to
19 rescind the court's order of debarment if the person can demonstrate
20 that the person is sufficiently rehabilitated.

21 b. If an order to rescind the court's order of debarment is granted,
22 the person granted the order may apply to be licensed or certified to
23 practice the profession, occupation, trade, vocation or business from
24 which the offender was barred.

25 (cf: P.L.1997, c.353, s.5)

26

27 78. R.S.39:3-29 is amended to read as follows:

28 39:3-29. The driver's license, the registration certificate of a motor
29 vehicle and an insurance identification card shall be in the possession
30 of the driver or operator at all times when he is in charge of a motor
31 vehicle on the highways of this State.

32 The driver or operator shall exhibit his driver's license and an
33 insurance identification card, and the holder of a registration certificate
34 or the operator or driver of a motor vehicle for which a registration
35 certificate has been issued, whether or not the holder, driver or
36 operator is a resident of this State, shall also exhibit the registration
37 certificate, when requested so to do by a police officer or judge, while
38 in the performance of the duties of his office, and shall write his name
39 in the presence of the officer, so that the officer may thereby determine
40 the identity of the licensee and at the same time determine the
41 correctness of the registration certificate, as it relates to the
42 registration number and number plates of the motor vehicle for which
43 it was issued; and the correctness of the evidence of a policy of
44 insurance, as it relates to the coverage of the motor vehicle for which
45 it was issued.

46 Any person violating this section shall be subject to a fine [not

1 exceeding \$100.00] of \$150, of which \$25 shall be deposited in the
2 Uninsured Motorist Prevention Fund established by section 2 of
3 P.L.1983, c.141 (C.39:6B-3).

4 If a person charged with a violation of this section can exhibit his
5 driver's license, insurance identification card and registration
6 certificate, which were valid on the day he was charged, to the judge
7 of the municipal court before whom he is summoned to answer to the
8 charge, such judge may dismiss the charge. However, the judge may
9 impose court costs.

10 (cf: P.L.1983, c.403, s.10)

11

12 79. (New section) a. Upon the issuance of a summons for failing
13 to possess or exhibit an insurance identification card in violation of
14 R.S.39:3-29, the violator or registrant shall have 24 hours from the
15 time of the citation to provide the issuing law enforcement agency with
16 the insurance identification card, or other satisfactory proof of
17 insurance. Failure to provide the insurance identification card or other
18 satisfactory proof of insurance within the 24 hour time frame shall
19 result in the issuance of a warrant for the immediate impoundment of
20 the vehicle that was being operated when the summons was issued. A
21 motor vehicle impounded pursuant to the provisions of this subsection
22 shall be removed to a storage space or garage. The registrant shall be
23 responsible for the cost of the removal and storage of the impounded
24 motor vehicle.

25 b. (1) If the registrant fails to claim a motor vehicle impounded
26 pursuant to subsection a. of this section and pay the reasonable costs
27 of removal and storage by midnight of the 30th day following
28 impoundment, along with a fine of \$100 to cover the administrative
29 costs of the municipality wherein the violation occurred, and after a
30 hearing, the municipality may sell the motor vehicle at public auction.
31 The municipality shall give notice of the sale by certified mail to the
32 registrant of the motor vehicle and to the holder of any security
33 interest filed with the Director of the Division of Motor Vehicles, and
34 by publication in a form to be prescribed by the director by one
35 insertion, at least five days before the date of the sale, in one or more
36 newspapers published in this State and circulating in the municipality
37 in which the motor vehicle has been impounded.

38 (2) At any time prior to the sale, the registrant or other person
39 entitled to the motor vehicle may reclaim possession of it upon
40 providing satisfactory proof of motor vehicle liability insurance
41 coverage and payment of the reasonable costs of removal and storage
42 of the motor vehicle and any outstanding fines or penalties; provided,
43 however, if the other person entitled to the motor vehicle is a lessor or
44 the holder of a lien on the motor vehicle, he may reclaim the motor
45 vehicle without payment. In such cases, the registrant shall be liable
46 for all outstanding costs, fines and penalties, and the municipality shall

1 have a lien against the property and income of that registrant for the
2 total amount of those outstanding costs, fines and penalties.

3 (3) Any proceeds obtained from the sale of a motor vehicle at
4 public auction pursuant to paragraph (1) of this subsection in excess
5 of the amount owed to the municipality for the reasonable costs of
6 removal and storage of the motor vehicle and any outstanding fines or
7 penalties shall be returned to the registrant of the vehicle.

8

9 80. Section 2 of P.L.1983, c.141 (C.39:6B-3) is amended to read
10 as follows:

11 2. The Uninsured Motorist Prevention Fund (hereinafter referred
12 to as the "fund") is established as a nonlapsing, revolving fund into
13 which shall be deposited all revenues from the fines imposed pursuant
14 to section 2 of P.L.1972, c.197 (C.39:6B-2) and \$25 from each fine
15 imposed pursuant to R.S.39:3-29. Interest received on moneys in the
16 fund shall be credited to the fund. The fund shall be administered by
17 the Division of Motor Vehicles in the Department of [Law and Public
18 Safety] Transportation. Moneys in the fund shall be allocated and
19 used for the purpose of the administrative expenses of the fund and
20 enforcement of the compulsory motor vehicle insurance law, P.L.1972,
21 c.197 (C.39:6B-1 et seq.) by the Division of Motor Vehicles.

22 (cf: P.L.1983, c.141, s.2)

23

24 81. Section 5 of P.L.1984, c.101 (C.17:22-6.74) is amended to
25 read as follows:

26 5. a. The fund shall:

27 (1) Be obligated to the extent of the covered claims against an
28 insolvent insurer incurred prior to or 30 days after the determination
29 of insolvency, or before the policy expiration date, if less than 30 days
30 after that determination, or before the policyholder replaces the policy
31 or causes its cancellation, if he does so within 30 days of the
32 determination. The fund's obligation for covered claims shall not be
33 greater than \$300,000.00 per occurrence, subject to any applicable
34 deductible contained in the policy. The commissioner may adjust the
35 fund's obligations for covered claims based on the moneys available in
36 the fund. In no event shall the fund be obligated to a policyholder or
37 claimant in excess of the limits of liability of the insolvent insurer
38 stated in the policy from which the claim arises;

39 (2) Be deemed the insurer to the extent of its obligation on the
40 covered claims and to such extent shall have all rights, duties, and
41 obligations of the insolvent insurer as if the insurer had not become
42 insolvent;

43 (3) Assess member insurers in accordance with section 6 of this
44 act in amounts necessary to pay:

45 (a) Obligations of the fund under paragraph (1) of this subsection,

46 (b) Expenses of handling covered claims,

- 1 (c) Any other expenses incurred in the implementation of the
2 provisions of this act;
- 3 (4) Investigate claims brought against the fund; and adjust,
4 compromise, settle, and pay covered claims to the extent of the fund's
5 obligation; and deny all other claims; and may review settlements,
6 releases and judgments to which the insolvent insurer or its
7 policyholders were parties to determine the extent to which the
8 settlements, releases and judgments may be properly contested;
- 9 (5) Notify those persons as the commissioner directs under section
10 8 of this act;
- 11 (6) Handle claims through the association's employees or
12 representatives, or through one or more insurers or other persons
13 designated as servicing facilities;
- 14 (7) Pay the other expenses of the association in administering the
15 provisions of this act; and
- 16 (8) Within 60 days of enactment of P.L.2002, c.30 (C.17:22-6.70a
17 et al.), transfer to the General Fund any and all moneys in excess of
18 \$40,000,000 in the fund as of June 24, 2002.
- 19 b. The fund may:
- 20 (1) Sue or be sued;
- 21 (2) Negotiate and become a party to those contracts which are
22 necessary to carry out the purpose of this act;
- 23 (3) Perform those other acts which are necessary or appropriate
24 to effectuate the purpose of this act;
- 25 (4) (Deleted by amendment, P.L.2002, c.30.)
- 26 (5) With the approval of the commissioner, borrow and separately
27 account for moneys from any source, including but not limited to the
28 New Jersey Property-Liability Insurance Guaranty Association and the
29 Unsatisfied Claim and Judgment Fund, [in accordance with subsection
30 b. of section 6 of P.L.1984, c.101 (C.17:22-6.75), as may be
31 necessary] in such amounts and on such terms as the New Jersey
32 Property-Liability Insurance Guaranty Association may determine are
33 necessary or appropriate to effectuate the purposes of [that act,
34 except that the use of the proceeds of any loans shall be limited to the
35 payment of covered claims, including claim adjustment expenses]
36 P.L. , c. (C.)(now before the Legislature as this bill) in
37 accordance with the association's plan of operation; and
- 38 (6) Make loans, in such amounts and on such terms as the
39 association may determine are necessary or appropriate, to the New
40 Jersey Property-Liability Insurance Guaranty Association in
41 accordance with the provisions of the "New Jersey Property-Liability
42 Insurance Guaranty Association Act," P.L.1974, c.17 (C.17:30A-1 et
43 seq.) and the "Unsatisfied Claim and Judgment Fund Law," P.L.1952,
44 c.174 (C.39:6-61 et seq.).
- 45 (cf: P.L.2002, c.30, s.5)
- 46

1 82. Section 7 of P.L.1988, c.118 (C.17:29A-5.12) is amended to
2 read as follows:

3 7. If the commissioner finds that an insurer has excess profits, the
4 insurer shall establish, subject to the approval of the commissioner, a
5 fair, practicable, and nondiscriminatory plan for the refund or credit of
6 the excess profits to such group or groups of policyholders [of the
7 excess profits] as the commissioner may determine to be reasonable
8 in consideration of the insurer's financial and business circumstances.
9 (cf: P.L.1988, c.118, s.7)

10

11 83. R.S.17:17-10 is amended to read as follows:

12 17:17-10. a. When satisfied that a company has complied with all
13 the requirements of this subtitle to entitle it to engage in business and
14 that the proposed methods of operation of the company are not such
15 as would render its operation hazardous to the public or its
16 policyholders, the commissioner shall issue to the company a
17 certificate authorizing it to commence business, specifying in the
18 certificate the particular kind or kinds of insurance it is authorized to
19 transact. The commissioner may refuse to issue a certificate of
20 authority if he finds that any of the company's directors or officers has
21 been convicted of a crime involving fraud, dishonesty, or like moral
22 turpitude or that said persons are not persons of good character and
23 integrity. No company shall transact the business for which it is
24 incorporated until it has received the certificate from the
25 commissioner. If any company fails to obtain the certificate of
26 authority within one year from the date of the certificate of the
27 Attorney General to its certificate of incorporation, as provided in
28 R.S.17:17-5, the company shall, ipso facto, be dissolved and its
29 certificate of incorporation be null and void.

30 b. No company licensed to transact insurance business in this State
31 pursuant to chapter 17 of Title 17 of the Revised Statutes may
32 surrender its certificate of authority or discontinue writing or renewing
33 any kind or kinds of insurance specified in the certificate, except in
34 accordance with [a plan to be] an informational filing submitted [by
35 the company and approved by] to the commissioner, which [plan]
36 filing shall [provide for an orderly withdrawal from the market and for
37 the minimization of the impact of the surrender of the certificate or the
38 discontinuance of the writing or renewing of any kind or kinds of
39 insurance upon the public generally and upon the company's
40 policyholders in this State. No surrender or discontinuance shall
41 become effective until the approved plan has been complied with. In
42 reviewing a plan for withdrawal submitted by the company, the
43 commissioner shall consider, and may require as a condition of
44 approval, whether some or all other certificates of authority issued
45 pursuant to chapter 17 or 32 of Title 17 of the Revised Statutes held
46 by the company or by other companies within the same holding

1 company system as the company submitting the plan shall be required
2 to be surrendered. The provisions of this subsection shall apply to any
3 request for withdrawal, surrender or discontinuance filed on or after
4 January 25, 1990] be subject to the following provisions regarding any
5 withdrawals:

6 (1) the company shall send a notice to policyholders of the
7 proposed withdrawal no later than thirty days following the submission
8 of the informational filing to the commissioner, which shall state that
9 the insurer intends to withdraw and has filed its intention to withdraw
10 with the commissioner, the terms of the withdrawal, including the date
11 of the proposed commencement of nonrenewal of policies, and the
12 proposed duration of the nonrenewal of the company's book of
13 business;

14 (2) nonrenewals shall not commence prior to one calendar year
15 and ninety days following the submission of the informational filing;

16 (3) the company shall send a notice of nonrenewal to every
17 policyholder (a) no later than one calendar year preceding the date of
18 nonrenewal and (b) a subsequent notice of nonrenewal in accordance
19 with any time limit otherwise established by law for that line of
20 insurance;

21 (4) nonrenewals shall take place in a manner so as to be applicable
22 to all insureds on an equitable basis with respect to risk classification
23 and territorial or other form of rating factor, and shall be effectuated
24 at a uniform rate over a period not exceeding three calendar years,
25 commencing with the date established in paragraph (2) of this
26 subsection; provided, however, that if more than one company files for
27 withdrawal for the same line of business and the companies, in the
28 aggregate, write more than 25% of the market share for that line of
29 business, the commissioner may extend the period of withdrawal
30 provided for herein to five years.

31 The commissioner's authority with respect to withdrawals as
32 provided for herein shall be limited to enforcing compliance with this
33 subsection and enforcing the terms of the withdrawal plan proposed in
34 the informational filing.

35 c. Upon receiving the informational filing provided for in
36 subsection b. of this section, the commissioner shall consider, and may
37 require as a condition of approval, whether some or all of the
38 company's other certificates of authority issued pursuant to Title 17 of
39 the Revised Statutes held by the company or other companies within
40 the same holding company system as the company submitting the plan
41 shall be required to be surrendered.

42 d. Notwithstanding the provisions of subsection b. of this section,
43 if the company finds a replacement carrier for the business that will not
44 be renewed as the result of the withdrawal either prior to or after the
45 date of the informational filing, the insurer may apply to the
46 commissioner for approval to transfer the business to a replacement

1 carrier or carriers. If the commissioner approves the replacement
2 carrier or carriers, notwithstanding the provisions of paragraphs (1),
3 (2), and (3) of subsection b. of this section, the notice of nonrenewal
4 shall be in compliance with the time limits provided by law for that line
5 of insurance, and the company shall offer every insured coverage with
6 the replacement carrier prior to the effective date of the nonrenewal.
7 The commissioner shall not withhold approval of a replacement carrier
8 or carriers if that insurer is authorized to do business in the same line
9 of business in New Jersey and has the financial and business capability
10 to write and service the business being transferred to it by the
11 withdrawing company. The commissioner shall approve or disapprove
12 the replacement carrier or carriers within 60 days of (1) the date of the
13 filing by both the withdrawing insurer requesting approval of a
14 replacement carrier or carrier or (2) the filing by the replacement
15 carrier or carriers requesting to be a replacement carrier, whichever is
16 later.

17 e. Notwithstanding the provisions of subsection b. of this section,
18 the commissioner may waive the requirements of paragraph (2) of that
19 subsection, and the one-year nonrenewal notice of paragraph (3) of
20 that subsection, as well as the three year minimum nonrenewal period
21 provided in paragraph (4) of that subsection if the commissioner
22 deems a waiver to be necessary to protect the solvency of the insurer
23 making the informational filing or if the commissioner deems the
24 withdrawal to have a limited impact on the market.

25 (cf: P.L.1990, c.8, s.71)

26

27 84. Section 72 of P.L.1990, c.8 (C.17:33B-30) is amended to read
28 as follows:

29 72. a. An insurance company of another state or foreign country
30 authorized under chapter 32 of Title 17 of the Revised Statutes to
31 transact insurance business in this State may surrender to the
32 commissioner its certificate of authority and thereafter cease to
33 transact insurance in this State, or discontinue the writing or renewal
34 of [one or more kinds of] private passenger automobile insurance
35 specified in the certificate of authority only after the submission of [a
36 plan which provides for an orderly withdrawal from the market and a
37 minimization of the impact of the surrender or discontinuance on the
38 public generally and on the company's policyholders in this State. The
39 plan shall be approved by the commissioner before the withdrawal or
40 discontinuance takes effect. In reviewing a plan for withdrawal under
41 this section, the commissioner shall consider, and may require as a
42 condition of approval, whether some or all other certificates of
43 authority issued pursuant to chapter 17 or 32 of Title 17 of the
44 Revised Statutes held by the company or by other companies in the
45 same holding company as the company submitting the plan should be
46 surrendered. The certificate of authority of the company shall be

1 deemed to continue in effect until the provisions of the approved plan
2 have been carried out. The provisions of this section shall apply to any
3 request for withdrawal, surrender or discontinuance filed on or after
4 January 25, 1990] an informational filing submitted to the
5 commissioner, which filing shall be subject to the following provisions:

6 (1) the company shall send a notice to policyholders of the
7 proposed withdrawal no later than thirty days following the submission
8 of the informational filing to the commissioner, which shall state that
9 the insurer intends to withdraw and has filed its intention to withdraw
10 with the commissioner, the terms of the withdrawal, including the date
11 of the proposed commencement of nonrenewal of policies, and the
12 proposed duration of the nonrenewal of the company's book of
13 business;

14 (2) nonrenewals shall not commence prior to one calendar year
15 and ninety days following the submission of the informational filing;

16 (3) the company shall send a notice of nonrenewal to every
17 policyholder (a) no later than one calendar year preceding the date of
18 nonrenewal and (b) a subsequent notice of nonrenewal in accordance
19 with any time limit otherwise established by law for that line of
20 insurance;

21 (4) nonrenewals shall take place in a manner so as to be applicable
22 to all insureds on an equitable basis with respect to risk classification
23 and territorial or other form of rating factor, and shall be effectuated
24 at a uniform rate over a period not exceeding three calendar years,
25 commencing with the date established in paragraph (2) of this
26 subsection; provided, however, that if more than one company files for
27 withdrawal for the same line of business and the companies, in the
28 aggregate, write more than 25% of the market share for that line of
29 business, the commissioner may extend the period of withdrawal
30 provided for herein to five years.

31 The commissioner's authority with respect to withdrawals as
32 provided for herein shall be limited to enforcing compliance with this
33 subsection and enforcing the terms of the withdrawal plan proposed in
34 the informational filing.

35 b. Upon receiving the informational filing provided for in
36 subsection a. of this section, the commissioner shall consider, and may
37 require as a condition of approval, whether some or all of the
38 company's other certificates of authority issued pursuant to Title 17 of
39 the Revised Statutes held by the company or other companies within
40 the same holding company system as the company submitting the plan
41 shall be required to be surrendered.

42 c. Notwithstanding the provisions of subsection a. of this section,
43 if the company finds a replacement carrier for the business that will not
44 be renewed as the result of the withdrawal either prior to or after the
45 date of the informational filing, the insurer may apply to the
46 commissioner for approval to transfer the business to a replacement

1 carrier or carriers. If the commissioner approves the replacement
2 carrier or carriers, notwithstanding the provisions of paragraphs (1),
3 (2), and (3) of subsection a. of this section, the notice of nonrenewal
4 shall be in compliance with the time limits provided by law for that line
5 of insurance, and the company shall offer every insured coverage with
6 the replacement carrier prior to the effective date of the nonrenewal.
7 The commissioner shall not withhold approval of a replacement carrier
8 or carriers if that insurer is authorized to do business in the same line
9 of business in New Jersey and has the financial and business capability
10 to write and service the business being transferred to it by the
11 withdrawing company. The commissioner shall approve or disapprove
12 the replacement carrier or carriers within 60 days of (1) the date of the
13 filing by both the withdrawing insurer requesting approval of a
14 replacement carrier or carrier or (2) the filing by the replacement
15 carrier or carriers requesting to be a replacement carrier, whichever is
16 later.

17 d. Notwithstanding the provisions of subsection a. of this section,
18 the commissioner may waive the requirements of paragraph (2) of that
19 subsection, and the one-year nonrenewal notice of paragraph (3) of
20 that subsection, as well as the three year minimum nonrenewal period
21 provided in paragraph (4) of that subsection if the commissioner
22 deems a waiver to be necessary to protect the solvency of the insurer
23 making the informational filing or if the commissioner deems the
24 withdrawal to have a limited impact on the market.

25 (cf: P.L.1990, c.8, s.72)

26

27 85. The following are repealed:

28 a. Sections 4, 6, 15, 29 and 31 of P.L.1952, c.174 (C.39:6-64,
29 39:6-66, 39:6-75, 39:6-89 and 39:6-91);

30 b. Sections 1 and 2 of P.L.1985, c.148 (C.39:6-64a and 39:6-64b)

31 c. Section 23 of P.L.1990, c.8 (C.17:33B-5)

32

33 86. This act shall take effect immediately, except that section 38
34 shall take effect on January 1, 2004, section 45 shall take effect on the
35 earlier of the 120th day next following enactment or the adoption of
36 regulations by the Commissioner of Banking and Insurance to
37 implement that section, section 65 shall take effect upon the adoption
38 of regulations by the Commissioner of Banking and Insurance, sections
39 83 and 84 shall take effect on January 1, 2007, and section 79 shall
40 take effect on 365th day next following enactment.





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McGreevey Signs Groundbreaking Auto Insurance Reforms

Measures promote competition and choice, boost consumer protections, fight fraud and put downward pressure on rates

(TRENTON) – Governor James E. McGreevey today signed a landmark auto insurance reform package that will change the way auto insurance companies operate in New Jersey, making coverage more accessible and affordable for the safe, responsible driver.

The comprehensive legislation, which was endorsed by the Coalition Against Insurance Fraud and AAA-MidAtlantic, includes the nation’s toughest penalties for auto insurance fraud, expanded consumer protections, innovative methods for trimming the ranks of uninsured motorists, and steps to put downward pressure on rates for good drivers.

“Our reforms fight fraud, get uninsured drivers off the roads, create competition, and reward those with the best driving records,” said McGreevey. “More importantly, our reforms deliver on a promise I made long ago—good drivers shouldn’t pay for bad drivers.”

“It’s the unpredictable nature of the New Jersey marketplace that has discouraged insurers from coming here and caused rating agencies to look unfavorably on our market,” said Banking and Insurance Commissioner Holly C. Bakke. “With this legislation, we New Jersey have the opportunity to change the market for the benefit of consumers.”

Governor McGreevey thanked bill sponsors Assemblyman Louis Greenwald, D-Cherry Hill, Senator Ronald L. Rice, D-Newark, and other key legislators for their efforts. The legislation cleared its final hurdle May 15 with a 77-0 Assembly vote.

"The auto insurance market in New Jersey has far more wrong with it than just high insurance rates," said Senator Rice, D-Essex, Democratic Chairman of the Senate Community and Urban Affairs Committee. "As the market stands now, consumers have little warning when it comes to rate increases, are forced to pay for those who cheat the system through insurance fraud, and some drivers, with relatively clean driving records, can't even get insurance. It says something about the poor condition of the auto insurance when good drivers cannot get insurance."

"The automobile insurance system is flawed and in desperate need of an overhaul," said Senator Baer, D-Bergen, the Democratic Chairman of the Senate Commerce Committee. "Drivers have been waiting for a measure of relief from the auto insurance crisis in our State for decades. They have been calling for reform, and our bill goes a long way towards providing that reform, and making the auto insurance system better for New Jersey."

"The changes we are making will put New Jersey motorists in the driver's seat for a healthier, more-stable auto insurance market," said Assemblyman Lou Greenwald. "The long-term goal is to improve the auto insurance marketplace through greater competition that will ultimately provide savings for consumers. This law is designed to simplify the regulatory process and provide incentives for insurers to do business in the state."

good drivers won't pay for bad drivers:

The legislation phases out the "Take All Comers" law that has contributed to the poor financial condition of several carriers by forcing them to insure drivers with bad records. In addition, new options are available to those who previously found car insurance unattainable. By creating a friendly climate for insurers, good drivers receiving the best possible rates.

- Drivers with more than six points – equal to three speeding tickets – will pay more.
- Drivers with four points or fewer will pay less.
- A Dollar a Day policy will accommodate low-income drivers with an affordable, minimum level of coverage as an alternative to driving uninsured. Those eligible for Medicaid will receive medical coverage-only policy at a cost of \$365 a year.
- Uninsured motorists will face the certainty of having their cars impounded.

MORE COMPANIES, MORE COMPETITION

Regulatory reforms will improve the regulatory marketplace to attract new companies and retain the companies that are already here and encourage those companies to further invest in New Jersey's auto insurance marketplace.

- The package is designed to reward companies for being more efficient.
- Provide incentives for companies that invest in New Jersey or add agents, specifically in urban areas.
- Revamp the excess profits rule to smooth out the financial effects of good years and bad years.
- Spell out strict deadlines for rate decisions. Deadlines not met, move immediately to an administrative law judge. This effects rate requests and speeds-up the application process for those wanting to enter the market.

MORE CONSUMER PROTECTIONS AND CHOICE:

Consumer protections in this bill were developed through discussions with real drivers across the State. The issue and problems observed are directly reflected in a new Consumer Bill of Rights, a Consumer Report Card and a [Buyer's Guide](#) that spells out for drivers the most appropriate and properly priced level of coverage.

- Insurance companies and agents will be required to give drivers three coverage scenarios at different prices, so that consumers buy the right coverage for them, not necessarily the most expensive coverage.
- Require insurance carriers to notify policyholders when they ask for a rate increase.
- Carriers will no longer be allowed to cancel coverage for a customer whose bill is mailed on time but received by the company a few days late.
- Plans include new Web-based shopping tools.
- Additionally, a proposed rule would put an end to drivers having their policies cancelled for simply not mailing their payment on time.

ZERO TOLERANCE FOR FRAUD:

Drivers who commit fraud will pay higher rates and companies will be allowed to cancel policies that were obtained through false information.

- Create a new crime of insurance fraud with mandatory penalties.
- Drivers who lie on applications will go to the high-risk pool so honest drivers can pay less.
- Licenses will be revoked for medical providers who commit fraud.

- New rewards for reporting fraud. Up to \$25,000 depending on the severity of the case.

The bill's fraud provisions were called the "toughest and broadest in the nation," by the Coalition Against Insurance Fraud.

"Our experience has proven that the most successful anti-fraud programs involve a partnership among government, citizens and insurance companies – all of whom have a stake in fraud prevention. This legislation speaks loudly to such a partnership," said Dennis Jay, the Coalition's executive director, in offering the endorsement.

Photos and audio and video clips from Governor McGreevey's press conferences are available on the Governor's web page at <http://www.state.nj.us/governor/>. Links are located in the Governor's Newsroom section of the page.

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