

34:1B-21.1

**LEGISLATIVE HISTORY CHECKLIST**  
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"Good Drivers Protection Act"

**NJSA:** 34:1B-21.1

**LAWS OF:** 1994 **CHAPTER:** 57

**BILL NO:** S1250

**SPONSOR(S):** Cardinale

**DATE INTRODUCED:** June 13, 1994

**COMMITTEE:** **ASSEMBLY:** Appropriations

**SENATE:** Budget

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
Second reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** June 27, 1994

**SENATE:** June 20, 1994

**DATE OF APPROVAL:** June 29, 1994

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** Yes

**FISCAL NOTE:** Yes

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

See newspaper clippings--attached.

KBG:pp

[SECOND REPRINT]

SENATE, No. 1250

STATE OF NEW JERSEY

INTRODUCED JUNE 13, 1994

By Senator CARDINALE

1 AN ACT concerning the Market Transition Facility and revising  
2 various parts of statutory law.

3

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

6 1. (New section) This act shall be known and may be cited as  
7 the "Good Driver Protection Act of 1994."

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

9 a. The Market Transition Facility, created pursuant to section  
10 88 of P.L.1990, c.8 (C.17:33B-11) to serve as an interim residual  
11 market mechanism and successor to the New Jersey Automobile  
12 Full Insurance Underwriting Association created pursuant to  
13 P.L.1983, c.65 (C.17:30E-1 et seq.), ceased issuing and renewing  
14 private passenger automobile insurance policies on September 30,  
15 1992. It is expected to have an operating deficit which the  
16 facility has projected to be approximately \$1.3 billion.

17 b. The "Fair Automobile Insurance Reform Act of 1990,"  
18 P.L.1990, c.8 (C.17:33B-1 et seq.), provided that any losses  
19 sustained in the operation of the facility be apportioned to the  
20 member insurers of the facility. Subsequently, certain of these  
21 member insurers filed suit against the Commissioner of  
22 Insurance, challenging an order of the commissioner which  
23 apportioned these losses among the member insurers. Pending a  
24 resolution of the court challenge, the Superior Court has enjoined  
25 the use by the facility of the amounts paid by the member  
26 insurers in accordance with the commissioner's order; as a result,  
27 those persons with claims against the facility have not been paid.

28 c. In its present financial condition, it is likely that the  
29 facility would be declared financially impaired or insolvent under  
30 the provisions of P.L.1975, c.113 (C.17:30C-1 et seq.). Because  
31 of the interim nature of the facility, however, initiating  
32 proceedings under that law is not in the best interests of the  
33 facility's policyholders and other claimants under the policies  
34 written by it. Because of this, and given the cost of pursuing  
35 protracted litigation with member insurers over this issue, it is  
36 deemed to be in the public interest to find a means of providing  
37 the necessary money to pay the claims now pending against the  
38 facility in the most expeditious manner possible.

39 d. Moreover, to safeguard the interests of the policyholders  
40 and the public, it is deemed to be in the public interest for the  
41 Commissioner of Insurance to take immediate possession of the  
42 property and assets of the facility, in accordance with the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SCM committee amendments adopted June 16, 1994.

<sup>2</sup> Senate SBA committee amendments adopted June 16, 1994.

1 provisions of this act, and for the commissioner to evaluate and  
2 monitor the performance of those entities charged with paying  
3 claims on the facility's behalf and to make such adjustments to  
4 any executory contracts of the facility as he believes are in the  
5 best interest of the policyholders and the public, including the  
6 modification or termination of such contracts or consolidation of  
7 servicing operations.

8 3. (New section) For the purposes of sections 1 through 15 of  
9 this act:

10 "Commissioner" means the Commissioner of Insurance.

11 "Division of Motor Vehicles Surcharge Fund" or "DMV  
12 Surcharge Fund" means the fund created pursuant to section 12  
13 of this act.

14 "Market Transition Facility" or "facility" means the Market  
15 Transition Facility created pursuant to section 88 of P.L.1990,  
16 c.8 (C.17:33B-11).

17 "Market Transition Facility Revenue Fund" or "Facility  
18 Revenue Fund" means the fund created pursuant to section 7 of  
19 this act.

20 "New Jersey Economic Development Authority" or "authority"  
21 means the New Jersey Economic Development Authority created  
22 pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

23 4. (New section) The authority shall have the power to issue  
24 Market Transition Facility bonds or notes <sup>1</sup>[on behalf of the  
25 facility]<sup>1</sup> in an amount not to exceed \$750 million<sup>2</sup>, pursuant to  
26 the provisions of this act, under the powers given to it <sup>1</sup>by and<sup>1</sup>  
27 pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), for the purpose of  
28 providing funds for the payment of the current and anticipated  
29 liabilities and expenses of the facility, as such liabilities and  
30 expenses are certified by the commissioner. <sup>2</sup>Bonds issued for  
31 the purpose of refinancing previously issued bonds or notes shall  
32 not be included in the calculation of the dollar amount limitation  
33 and bonds issued for the purpose of refinancing previously issued  
34 bonds or notes shall be approved by the Joint Budget Oversight  
35 Committee prior to the refinancing.<sup>2</sup> The bonds or notes shall be  
36 secured wholly or in part by the monies in the Market Transition  
37 Facility Revenue Fund. The authority may establish a debt  
38 service reserve fund, which may be augmented or replenished  
39 from time to time from funds in the Facility Revenue Fund.

40 5. (New section) For the purpose of providing funds for  
41 payment of <sup>1</sup>[obligations] current and anticipated liabilities and  
42 expenses<sup>1</sup> of the facility, the authority shall have the power to  
43 provide for the funding or refunding of any bonds or notes, incur  
44 indebtedness, borrow money and issue bonds or notes <sup>1</sup>[on behalf  
45 the facility,]<sup>1</sup> secured in whole or in part by the monies in the  
46 Facility Revenue Fund. The bonds or notes shall be payable  
47 solely from the monies in the Facility Revenue Fund. The bonds  
48 and notes shall be authorized by resolution, which shall stipulate  
49 the manner of execution and form of the bonds, whether the  
50 bonds are in one or more series, the date or dates of issue, time  
51 or times of maturity, which shall not exceed <sup>2</sup>[40] 30<sup>2</sup> years, the  
52 rate or rates of interest payable on the bonds, the denomination  
53 or denominations in which the bonds are issued, conversion or  
54 registration privileges, the sources and medium of payment and

1 place or places of payment, and terms of redemption. The bonds  
2 may be sold at a public or private sale at a price or prices  
3 determined by the authority.

4 6. (New section) The authority may, in any resolution  
5 authorizing the issuance of the bonds or notes, pledge the Facility  
6 Revenue Fund or a portion thereof for payment of the redemption  
7 of the bonds or notes, and covenant as to the use and disposition  
8 of monies in the Facility Revenue Fund. All costs associated  
9 with the issuance of the bonds or notes by the authority for the  
10 purposes set forth in this act may be paid by the authority from  
11 the Facility Revenue Fund, which costs may include, but shall not  
12 be limited to, any costs related to the insurance of the bonds or  
13 notes, operating expenses of the authority attributable to the  
14 payment of facility <sup>1</sup>[obligations] current and anticipated  
15 liabilities and expenses<sup>1</sup>, and costs of, and any payment due  
16 under, any agreement entered into pursuant to the provisions of  
17 subsection b. of section 8 of this act. Monies in the Facility  
18 Revenue Fund shall not be used for any other project of the  
19 authority.

20 7. (New section) There is created within the authority a  
21 special nonlapsing fund, to be known as the "Market Transition  
22 Facility Revenue Fund." The Facility Revenue Fund shall consist  
23 of:

24 a. Such monies as may be transferred to the Facility Revenue  
25 Fund by the State Treasurer, upon appropriation by the  
26 Legislature, <sup>1</sup>[from monies apportioned to members of the  
27 facility for losses pursuant to the provisions of subsection d. of  
28 section 88 of P.L.1990, c.8 (C.17:33B-11)] pursuant to section 14  
29 of this act<sup>1</sup>;

30 b. <sup>1</sup>[Such monies as may be transferred to the Facility  
31 Revenue Fund by the State Treasurer, upon appropriation by the  
32 Legislature, pursuant to subsection d. of section 23 of P.L.1990,  
33 c.8 (C.17:33B-5) from monies made available by the New Jersey  
34 Property-Liability Insurance Guaranty Association created  
35 pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.);

36 c.]<sup>1</sup> Such monies as may be appropriated to the Facility  
37 Revenue Fund by the Legislature from surcharges levied pursuant  
38 to the provisions of subsection b. of section 6 of P.L.1983, c.65  
39 (C.17:29A-35) <sup>1</sup>, except that any such monies in excess of the  
40 amounts required to be used by the authority pursuant to any  
41 bond resolutions authorizing the issuance of Market Transition  
42 Facility bonds and notes and the authority's agreement with the  
43 State Treasurer authorized by section 13 of this act shall be at  
44 least annually remitted to the General Fund<sup>1</sup>;

45 <sup>1</sup>[d. Such monies as may be received from the sale of Market  
46 Transition Facility bonds or notes as provided in section 4 of this  
47 act;

48 e.] c.<sup>1</sup> Interest or other income derived from the investment  
49 of monies in the Facility Revenue Fund; and

50 <sup>1</sup>[f.] d.<sup>1</sup> Any other monies as may be deposited from time to  
51 time<sup>2</sup>, except that such monies shall not be appropriated from  
52 the General Fund<sup>2</sup>.

53 Monies in the Facility Revenue Fund shall be managed and  
54 invested by the Division of Investment in the Department of the  
55 Treasury.

1       8. (New section) a. The authority may use the monies in the  
2 Market Transition Facility Revenue Fund to pay the principal and  
3 interest and premium, if any, on the Market Transition Facility  
4 bonds or notes issued by it <sup>1</sup>[on behalf of the facility]<sup>1</sup> pursuant  
5 to section 4 of this act. The authority may create any other fund  
6 or funds by resolution of the authority which it deems necessary  
7 to further secure the Market transition Facility bonds or notes or  
8 otherwise effectuate the purposes of this act, including a fund for  
9 the deposit of the proceeds from Market Transition Facility bonds  
10 or notes provided for in section 4 of this act.

11       b. The authority may, in connection with its duties and  
12 responsibilities under this act or in connection with any duties  
13 and responsibilities provided for in P.L.1974, c.80 (C.34:1B-1 et  
14 seq.), enter into any revolving credit agreement, agreement  
15 establishing a line of credit or letter of credit, reimbursement  
16 agreement, interest rate exchange agreement, insurance  
17 contract, surety bond, commitment to purchase bonds, purchase  
18 or sale agreement, or commitments or other contracts or  
19 agreements in connection with the authorization, issuance, sale  
20 or payment of bonds.

21       c. All Market Transition Facility bonds or notes issued by the  
22 authority <sup>1</sup>[on behalf of the facility]<sup>1</sup> are deemed to be issued by  
23 a body corporate and politic of the State for an essential  
24 governmental purpose, and the interest thereon and the income  
25 derived from all funds, revenues, incomes and other monies  
26 received or to be received by the authority and pledged and  
27 available to pay or secure the payment on Market Transition  
28 Facility bonds or notes or pledged or available to pay or secure  
29 payment on such bonds or notes or interest thereon shall be  
30 exempt from all taxes levied pursuant to the provisions of Title  
31 54 of the Revised Statutes or Title 54A of the New Jersey  
32 Statutes, except for transfer inheritance and estate taxes  
33 pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

34       9. (New section) Market Transition Facility bonds and notes  
35 issued by the authority <sup>1</sup>[on behalf of the facility]<sup>1</sup> shall be  
36 special and limited obligations which are payable only from  
37 monies on deposit in the Facility Revenue Fund. Neither the  
38 members of the authority nor any other person executing the  
39 Market Transition Facility bonds or notes provided for in section  
40 4 of this act shall be liable personally with respect to payment of  
41 interest and principal on these bonds or notes or obligations of  
42 the facility. Market Transition Facility bonds, notes, or any  
43 other obligations issued pursuant to the provisions of this act  
44 shall not be a debt or liability of the State or any agency or  
45 instrumentality thereof, either legal, moral, or otherwise, and  
46 nothing contained in this act shall be construed to authorize the  
47 authority to incur any indebtedness on behalf of or in any way to  
48 obligate the State or any political subdivision, and all debt  
49 instruments issued by the authority <sup>1</sup>[on behalf of the facility]<sup>1</sup>  
50 shall contain a statement to that effect on their face.

51       10. (New section) The State hereby pledges and covenants  
52 with the holders of any Market Transition Facility bonds, notes or  
53 other obligations issued pursuant to the provisions of this act that  
54 it will not limit or alter the rights or powers vested in the

1 authority by this act, nor limit or alter the rights or powers of  
2 the State Treasurer in any manner which would jeopardize the  
3 interest of the holders or any trustee of such holders, or inhibit or  
4 prevent performance or fulfillment by the authority or the State  
5 Treasurer with respect to the terms of any agreement made with  
6 the holders of these bonds, notes, or other obligations. The State  
7 also pledges and covenants with the holders of any such bonds,  
8 notes, or obligations, that it will not act to prevent the authority  
9 from obtaining any of the revenues provided for in this act, which  
10 shall be sufficient to meet all <sup>1</sup>costs and<sup>1</sup> expenses <sup>1</sup>[of] in  
11 connection with<sup>1</sup> the issuance of such obligations, until the  
12 bonds, notes, or other obligations, together with interest thereon,  
13 are fully met and discharged or payment thereof is fully provided  
14 for, except that the failure of the State to appropriate monies for  
15 any purpose of this act shall not be deemed a violation of this  
16 section.

17 11. (New section) No later than four months following the  
18 issuance of any Market Transition Facility bonds or notes, the  
19 Department of the Treasury, in conjunction with the authority,  
20 shall provide a statement providing:

21 a. All final costs on an item by item basis associated with the  
22 issuance of the Market Transition Facility bonds or notes. This  
23 statement shall be distributed to the President of the Senate and  
24 the Speaker of the General Assembly <sup>1</sup>[and shall be published in  
25 the New Jersey Register]<sup>1</sup>. The statement shall list, as  
26 applicable, costs for:

- 27 (1) Bond counsel;
- 28 (2) Financial advisors;
- 29 (3) Paying agents and registrars;
- 30 (4) Rating agencies;
- 31 (5) Official statement printing;
- 32 (6) Bond printing;
- 33 (7) Trustees;
- 34 (8) Credit enhancement;
- 35 (9) Liquidity facility; and
- 36 (10) Miscellaneous issuance costs;

37 b. The final breakdown of the principal amount of bonds  
38 allocated to each senior manager, co-senior manager and  
39 manager participating in the bond issuance, and each  
40 underwriter's spread, broken down into the following components  
41 where applicable, and accompanied by a list of underwriter  
42 spreads from recent comparable bond issues:

- 43 (1) Management fees;
- 44 (2) Underwriting fees;
- 45 (3) Selling concessions;
- 46 (4) Underwriter's counsel; and
- 47 (5) Other costs.

48 12. (New section) There is created within the Department of  
49 the Treasury a special nonlapsing fund to be known as the  
50 "Division of Motor Vehicles Surcharge Fund," which, beginning  
51 September 1, 1996 or earlier as provided pursuant to this section,  
52 shall be comprised of <sup>1</sup>monies transferred to the DMV Surcharge  
53 Fund from the Market Transition Facility which, notwithstanding  
54 the provisions of this section to the contrary, may be

1 appropriated, immediately upon receipt from the Market  
2 Transition Facility, by the Legislature to the Facility Revenue  
3 Fund and<sup>1</sup> all monies collected pursuant to subsection b. of  
4 section 6 of P.L.1983, c.65 (C.17:29A-35) and any interest or  
5 other income earned thereon. Monies in the DMV Surcharge Fund  
6 shall be managed and invested by the Division of Investment in  
7 the Department of the Treasury. Commencing September 1,  
8 1996, or at such earlier time as may be certified by the  
9 commissioner that monies on deposit in the New Jersey  
10 Automobile Insurance Guaranty Fund created pursuant to section  
11 23 of P.L.1990, c.8 (C:17:33B-5) are sufficient to satisfy the  
12 current and anticipated financial obligations of the New Jersey  
13 Automobile Full Insurance Underwriting Association, the monies  
14 in the DMV Surcharge Fund shall be disbursed from time to time  
15 by the State Treasurer, upon appropriation by the Legislature, to  
16 the Market Transition Facility Revenue Fund, for payment of  
17 principal <sup>1</sup>[and] <sup>1</sup> interest <sup>1</sup>and premium<sup>1</sup> on the Market  
18 Transition Facility bonds or notes issued <sup>1</sup>[on behalf of the  
19 facility]<sup>1</sup> by the authority pursuant to section 4 of this act.

20 13. (New section) a. The State Treasurer and the authority <sup>1</sup>[,  
21 acting on behalf of the Market Transition Facility,]<sup>1</sup> may enter  
22 into any agreements as may be necessary to effectuate the  
23 provisions of this act, which may include, but not be limited to,  
24 procedures for the transfer of monies from the DMV Surcharge  
25 Fund to the Market Transition Facility Revenue Fund as provided  
26 for in section 12 of this act, commencing with the fiscal year  
27 beginning July 1, 1994, with respect to the terms and conditions  
28 relative to the securing of Market Transition Facility bonds,  
29 notes, and other obligations of the authority <sup>1</sup>[incurred on behalf  
30 of the facility]<sup>1</sup>, the pledge and assignment of any agreement or  
31 agreements authorized herein, or any payments to the trustees of  
32 these bondholders. <sup>1</sup>Notwithstanding any provision of P.L.1974,  
33 c.80 (C.34:1B-1 et seq.), this act or any regulation of the  
34 authority to the contrary, the authority shall be paid only such  
35 fees as shall be determined by the agreement.<sup>1</sup>

36 b. The commissioner and the authority shall also enter into an  
37 agreement relative to a procedure for the transfer of monies for  
38 the purpose of paying the <sup>1</sup>[obligations] current and anticipated  
39 liabilities and expenses<sup>1</sup> of the facility, including private  
40 passenger automobile claims and other claims against the  
41 facility. The agreement shall contain a provision that the  
42 commissioner shall certify from time to time, but not more  
43 frequently than monthly, an amount necessary to fund payments  
44 made, or anticipated to be made by or on behalf of the Market  
45 Transition Facility. The commissioner's certification shall be  
46 deemed conclusive. The authority shall cause the transfer to be  
47 made to the designated transferee within 15 days of the receipt  
48 of the commissioner's certification.

49 14. (New section) The State Treasurer shall, as soon as  
50 practicable after the effective date of this act, and upon  
51 appropriation by the Legislature, transfer to the Market  
52 Transition Facility Revenue Fund \$100 million of the monies  
53 transferred to the <sup>1</sup>[State Treasurer] DMV Surcharge Fund<sup>1</sup> by  
54 the Market Transition Facility <sup>1</sup>[pursuant to paragraph (1) of

1 subsection d. of section 88 of P.L.1990, c.8 (C.17:33B-11), which  
2 were paid to the facility by insurers as apportioned shares of  
3 losses pursuant to the provisions of that subsection d]<sup>1</sup>.

4 15. (New section) a. The commissioner shall prepare a  
5 semi-annual report for the Governor, the President of the Senate  
6 and the Speaker of the General Assembly on the financial  
7 condition of the New Jersey Automobile Full Insurance  
8 Underwriting Association, the Market Transition Facility <sup>1</sup>[,]  
9 and<sup>1</sup> the New Jersey Automobile Insurance Guaranty Fund <sup>1</sup>[and  
10 the Division of Motor Vehicles Surcharge Fund]<sup>1</sup>.

11 b. The authority shall prepare a semi-annual report for the  
12 Governor, the President of the Senate and the Speaker of the  
13 General Assembly on the receipts and disbursements of the  
14 Market Transition Facility Revenue Fund.

15 <sup>1</sup>c. The State Treasurer shall prepare a semi-annual report for  
16 the Governor, the President of the Senate and the Speaker of the  
17 General Assembly on the receipts and disbursements of the DMV  
18 Surcharge Fund.<sup>1</sup>

19 16. Section 23 of P.L.1990, c.8 (C.17:33B-5) is amended to  
20 read as follows:

21 23. a. There is hereby created within the General Treasury a  
22 special nonlapsing fund to be known as the New Jersey  
23 Automobile Insurance Guaranty Fund. The State Treasurer shall  
24 credit to the fund, in addition to any sums appropriated thereto,  
25 all monies designated in subsection b. of this section and  
26 collected pursuant to this act on and after the effective date of  
27 this 1990 amendatory and supplementary act. Monies credited to  
28 the New Jersey Automobile Insurance Guaranty Fund may be  
29 invested in the same manner as assets of the General Fund and  
30 any investment earnings on the fund shall accrue to the fund and  
31 shall be available subject to the same terms and conditions as  
32 other monies in the fund. The State Treasurer may determine the  
33 amount of earnings to be credited to the New Jersey Automobile  
34 Insurance Guaranty Fund to reflect the average rate of return on  
35 the State of New Jersey Cash Management Fund.

36 b. Monies from the following sources shall be credited by the  
37 State Treasurer to the New Jersey Automobile Insurance  
38 Guaranty Fund: the revenues attributable to the surtax imposed  
39 under section 76 of this 1990 amendatory and supplementary act  
40 (C.17:33B-49); the revenues attributable to the tax imposed on  
41 premiums earned by the New Jersey Automobile Full Insurance  
42 Underwriting Association pursuant to section 34 of P.L.1983, c.65  
43 (C.17:30E-22); that percentage of surcharges collected by the  
44 Division of Motor Vehicles on or after October 1, 1991 unless  
45 otherwise provided for, pursuant to subsection b. of section 6 of  
46 P.L.1983, c.65 (C.17:29A-35); monies collected by the Division of  
47 Motor Vehicles on or after October 1, 1991, pursuant to section  
48 68 of this 1990 amendatory and supplementary act (C.17:33B-63);  
49 monies collected by the State Board of Medical Examiners  
50 pursuant to section 63 of this 1990 amendatory and  
51 supplementary act (C.17:33B-58); monies collected by the State  
52 Board of Chiropractic Examiners pursuant to section 64 of this  
53 1990 amendatory and supplementary act (C.17:33B-59); monies  
54 collected by the State Board of Physical Therapy pursuant to



1 section 65 of this 1990 amendatory and supplementary act  
2 (C.17:33B-60); monies collected by the Division of Motor  
3 Vehicles pursuant to section 66 of this 1990 amendatory and  
4 supplementary act (C.17:33B-61); monies collected by the State  
5 Treasurer pursuant to section 67 of this 1990 amendatory and  
6 supplementary act (C.17:33B-62); loans made to the fund as  
7 provided in subsection c. of this section; and such other income as  
8 may be deposited with or otherwise made available to the New  
9 Jersey Automobile Full Insurance Underwriting Association on or  
10 after October 1, 1991, including monies deposited in the New  
11 Jersey Automobile Full Insurance Underwriting Association and  
12 Market Transition Facility Auxiliary Fund pursuant to section 5  
13 of P.L.1983, c.320 (C.17:33A-5).

14 c. (1) The fund shall borrow such monies as are made available  
15 by the New Jersey Property-Liability Insurance Guaranty  
16 Association pursuant to paragraph (10) of subsection a. of section  
17 8 of P.L.1974, c.17 (C.17:30A-8).

18 (2) The fund may, upon the approval of the Commissioner of  
19 Insurance and pursuant to terms and conditions established by  
20 him, borrow monies from any other available source.

21 d. The monies in the New Jersey Automobile Insurance  
22 Guaranty Fund, including interest earnings thereon, are  
23 specifically dedicated and shall be utilized exclusively for the  
24 costs of the purposes of satisfying the financial obligations of the  
25 New Jersey Automobile Full Insurance Underwriting Association,  
26 as provided in [this 1990 amendatory and supplementary act]  
27 P.L.1990 c.8 (C.17:33B-1 et seq.); except that: (1) no sooner than  
28 January 1, 1996 and upon certification by the commissioner that  
29 there are sufficient monies on deposit in the New Jersey  
30 Automobile Insurance Guaranty Fund to satisfy the current and  
31 anticipated financial obligations of the New Jersey Automobile  
32 Full Insurance Underwriting Association, any remaining monies,  
33 including interest earned thereon, but excluding the monies  
34 described in paragraph (2) of this subsection, may be utilized  
35 either<sup>1</sup> to satisfy the current and anticipated liabilities and  
36 expenses of the Market Transition Facility as provided pursuant  
37 to subsection f. of this section <sup>1</sup>, or, if not needed for that  
38 purpose, appropriated to the Market Transition Facility Revenue  
39 Fund for payment of principal, interest and premium, or  
40 otherwise to pay or retire Market Transition Facility bonds or  
41 notes<sup>1</sup> ; and (2) beginning on August 1, 1996 the monies made  
42 available pursuant to paragraph (1) of subsection c. of this section  
43 shall be utilized to satisfy the current and anticipated liabilities  
44 and expenses of the Market Transition Facility. Those monies are  
45 hereby appropriated for those purposes; provided, however, that  
46 those monies shall be disbursed by the State Treasurer as  
47 provided in subsection e. or f. of this section.

48 e. The trustee appointed pursuant to section 21 of this 1990  
49 amendatory and supplementary act shall prepare a written  
50 application for any disbursement of monies from the New Jersey  
51 Automobile Insurance Guaranty Fund, specifying the amount of  
52 the disbursement, the intended expenditures, and the manner in  
53 which such expenditures serve the purposes of the trustee's  
54 function and this act. The application shall be submitted to the

1 Commissioner of Insurance for approval. Upon approval by the  
2 commissioner, the application shall be forwarded to the State  
3 Treasurer for approval. Upon approval by the State Treasurer, he  
4 shall disburse monies from the New Jersey Automobile Insurance  
5 Guaranty Fund to the trustee for disbursement as provided in the  
6 approved application.

7 f. The Market Transition Facility shall prepare a written  
8 application for any disbursement of monies made available from  
9 the New Jersey Automobile Insurance Guaranty Fund, specifying  
10 the amount of the disbursement, the intended expenditures, and  
11 the manner in which such expenditures serve the purposes of the  
12 Market Transition Facility's function and the provisions of  
13 P.L. , c. 1(C. )<sup>1</sup> (now before the Legislature as this bill).  
14 Upon approval by the commissioner, the application shall be  
15 forwarded to the State Treasurer for approval. Upon approval by  
16 the State Treasurer, he shall disburse monies from the New  
17 Jersey Automobile Insurance Guaranty Fund to the Market  
18 Transition Facility for disbursement as provided in the approved  
19 application.

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

21 17. Section 88 of P.L.1990, c.8 (C.17:33B-11) is amended to  
22 read as follows:

23 88. a. There is created a Market Transition Facility to be  
24 operated by the Commissioner of Insurance pursuant to the  
25 provisions of this section. Every insurer authorized to transact  
26 automobile insurance in this State shall be a member of the  
27 facility and shall share in its profits and losses as provided by the  
28 commissioner pursuant to the provisions of subsection d. of this  
29 section.

30 b. [The commissioner shall, within 30 days of the effective  
31 date of P.L.1990, c.8 (C.17:33B-1 et al.), appoint a Market  
32 Transition Facility Advisory Board which shall be comprised of  
33 six members, one of whom shall represent member companies  
34 organized on a mutual basis, one of whom shall represent member  
35 companies organized on a stock basis, one of whom shall  
36 represent servicing carriers, one of whom shall represent  
37 insurance producers, one of whom shall be a qualified actuary and  
38 one of whom shall represent the public. Advisory board members  
39 shall serve for the duration of the facility or until such time as  
40 their successor is appointed. Advisory board members shall not  
41 be compensated for their services but shall be reimbursed by the  
42 facility for any necessary and reasonable expenses incurred in  
43 performance of their duties as members of the advisory board.]  
44 (Deleted by amendment, P.L. , c. .)

45 c. The facility shall arrange for the issuance and renewal of  
46 automobile insurance policies for the period commencing October  
47 1, 1990 and ending September 30, 1992 pursuant to a plan of  
48 operation promulgated by the commissioner [in consultation with  
49 the advisory board]. The facility shall not issue or renew any  
50 policies of automobile insurance on or after October 1, 1992. The  
51 plan shall provide:

52 (1) The applicable levels of coverage available through the  
53 facility;

54 (2) That the premiums payable on policies issued by the

1 facility shall be based on rates applicable to persons insured by  
2 the New Jersey Automobile Full Insurance Underwriting  
3 Association on September 30, 1990 but shall not incorporate the  
4 rates applicable under section 25 of P.L.1983, c.65 (C.17:30E-13)  
5 and section 22 of P.L.1988, c.119 (C.17:30E-13.1). However, the  
6 applicable rates for those insureds who do not qualify as eligible  
7 persons as provided in section 25 of P.L.1990, c.8 (C.17:33B-13)  
8 shall be those set by the plan for the provision of automobile  
9 insurance established pursuant to section 1 of P.L.1970, c.215  
10 (C.17:29D-1);

11 (3) Procedures for the filing and approval of changes in rates  
12 applicable to policies issued or renewed by the facility;

13 (4) For the issuance and renewal of automobile insurance  
14 through servicing carriers under contract with the New Jersey  
15 Automobile Full Insurance Underwriting Association pursuant to  
16 the provisions of section 24 of P.L.1983, c.65 (C.17:30E-12),  
17 utilizing, at the discretion of the commissioner, the staff of the  
18 association;

19 (5) Procedures for the depopulation of the facility which shall  
20 provide that: on or after April 1, 1991 no more than 29% of the  
21 aggregate number of private passenger non-fleet exposures  
22 written in this State shall be written by the facility and the New  
23 Jersey Automobile Full Insurance Underwriting Association  
24 created by P.L.1983, c.65 (C.17:30E-1 et seq.); on or after  
25 October 1, 1991 no more than 20% of the aggregate number of  
26 private passenger non-fleet exposures written in this State shall  
27 be written by the facility; on or after April 1, 1992 no more than  
28 10% of the aggregate number of private passenger non-fleet  
29 exposures written in this State shall be written by the facility;  
30 and on or after October 1, 1992, 0% of the aggregate number of  
31 private passenger non-fleet exposures written in this State shall  
32 be written by the facility. In establishing the quotas set forth  
33 above, the plan shall prescribe the number of voluntary market  
34 exposures which shall be written during each six-month period set  
35 forth in this paragraph in a manner consistent with the  
36 apportionment procedure established pursuant to subsection a. of  
37 section 26 of P.L.1983, c.65 (C.17:30E-14). In the event that any  
38 of the quotas established pursuant to this paragraph have not  
39 been met by the end of the applicable period, the commissioner  
40 shall direct the facility to assign the balance of the exposures  
41 needed to meet the applicable quota to member companies  
42 pursuant to the apportionment procedure. A member company  
43 which exceeds its apportionment share for any six-month period  
44 set forth in this paragraph shall receive credit for the excess  
45 against the following period's obligation. The commissioner may  
46 excuse a member company from meeting its obligations under the  
47 depopulation procedures if he determines that the company would  
48 be placed in an unsafe or unsound condition. When an exposure is  
49 assigned to a member company under this paragraph as a result of  
50 the failure of the member company to meet an applicable quota,  
51 but only in such circumstances, the following shall apply:

52 (a) When an assigned exposure is written by the member  
53 company assigned the exposure, the facility producer of record  
54 shall have the right to service that business, which shall include

1 all renewals thereof, and shall be entitled to a commission for  
2 that service in accordance with subparagraph (c) of this  
3 paragraph;

4 (b) The facility producer of record shall retain complete  
5 control, possession and ownership of all records and renewals  
6 regarding exposures assigned pursuant to this paragraph,  
7 provided, however, that the member company may maintain such  
8 records as are provided to it under the procedure established by  
9 subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14). A  
10 member company that acquires access to records pursuant to that  
11 subsection shall not share any such records with any other  
12 producer or use any such records to solicit direct renewal of the  
13 business, a change in producer of record, other insurance products  
14 or any other products;

15 (c) The facility producer of record shall be paid a commission  
16 by the member company on the business serviced by the facility  
17 producer of record pursuant to this paragraph. That commission  
18 shall be paid at a percentage rate no less than that being paid by  
19 the Market Transition Facility on July 1, 1991;

20 (d) A copy of every notice, other than bills, and including  
21 renewal declarations, change endorsements, cancellations and  
22 reinstatements, and the corresponding payment schedules  
23 included therein, correspondence, claims checks and  
24 acknowledgements, sent to an insured by a member company with  
25 respect to business covered by this paragraph, shall be sent to the  
26 facility producer of record;

27 (e) The procedure established in subparagraphs (a), (b), (c), (d),  
28 (e) and (f) of this paragraph shall be applicable only to exposures  
29 assigned to member companies in accordance with this paragraph  
30 as a result of the failure by the member company to meet an  
31 applicable quota. This paragraph shall not constitute the grant of  
32 an agency contract by the member company to the facility  
33 producer of record authorizing the facility producer of record to  
34 write new business through the member company; provided,  
35 however, that the facility producer of record shall have the  
36 authority to provide the usual and customary servicing of the  
37 business subject to this paragraph, including adding new and  
38 replacement vehicles and adding or changing coverages on the  
39 business; and

40 (f) Nothing in the paragraph shall deprive an insured of the  
41 right to designate a producer of record other than the facility  
42 producer of record. Upon that designation, the rights of the  
43 facility producer of record under this paragraph shall terminate.  
44 Notwithstanding any provision in this paragraph, the rights of the  
45 facility producer of record under this paragraph shall terminate  
46 in the event of the producer's insolvency, gross and willful  
47 misconduct, fraud or license revocation;

48 (6) A schedule for the payment of premiums on an installment  
49 basis. Any installment payment schedule for policies issued for a  
50 one year period shall provide for installment payments during a  
51 period of not less than nine months;

52 (7) That no policy issued by the facility may be cancelled for  
53 nonpayment of premium unless written notice is provided at least  
54 15 days prior to the effective date of cancellation accompanied

1 by the reason for cancellation. Notice shall be provided to the  
2 named insured and the producer of record at their last known  
3 addresses;

4 (8) [Provide for] For notification of the named insured and the  
5 producer of record at their last known addresses no later than 15  
6 days after the nonrenewal of a facility policy of such nonrenewal;  
7 and

8 (9) Such other provisions as are deemed necessary for the  
9 operation of the facility.

10 Notwithstanding the provisions of the "Administrative  
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) <sup>1</sup>[or the  
12 provisions of section 24 of P.L.1983, c.65 (C.17:30E-12)]<sup>1</sup> to the  
13 contrary, the commissioner shall amend the plan of operation to  
14 provide for an evaluation, prioritization and disbursement of  
15 claims payable by the facility. The amended plan of operation  
16 shall contain a schedule for the prioritization of the payment of  
17 claims from the facility's assets in accordance with the order in  
18 which each class of claims is set forth in subsection c. of section  
19 <sup>1</sup>[1 of P.L.1979, c.470] 26 of P.L.1975, c.113<sup>1</sup> (C.17:30C-26).  
20 Every claim in each class shall be paid in full, or adequate funds  
21 or other assets shall be set aside for such payment before the  
22 claims of the next class receive any payment, except that, if the  
23 facility is found to have insufficient funds to pay those claims,  
24 the commissioner may deny payment of claims to any class or  
25 classes. The commissioner shall issue final orders establishing  
26 the amounts and classes of claims payable from monies available  
27 to the facility, pursuant to procedures set forth in the plan of  
28 operation. These orders may be appealed to the Superior Court,  
29 Appellate Division. The commissioner may provide for the  
30 deferral of the payment of claims for noneconomic loss payable  
31 under policies issued by the facility over a period not to exceed  
32 four years. The commissioner may also provide for the deferral  
33 of other claim payments. In providing for such a deferral,  
34 consideration shall be given to the importance of paying claims  
35 for economic loss under policies issued by the facility in relation  
36 to other claims, of maintaining the facility's infrastructure in  
37 order to ensure the service and payment of claims, both pending  
38 and future, and of protecting the interests of facility  
39 policyholders.

40 The commissioner shall further amend the plan of operation to  
41 provide a procedure for the commissioner to appoint qualified  
42 claims examiners and accountants to conduct independent field  
43 examinations and claims audits of servicing carriers to determine  
44 whether the servicing carriers have followed normal and prudent  
45 industry practices in their handling of claims on behalf of the  
46 facility. These examinations and audits shall be conducted at  
47 least semi-annually, and the examiners shall provide a report to  
48 the commissioner along with any findings or recommendations  
49 which have resulted from the examinations or audits. The  
50 commissioner shall annually report to the Governor and the  
51 Legislature his finding with respect to the examinations and  
52 audits of the facility servicing carriers.

53 d. (1) The commissioner shall apportion any [profits or] losses  
54 of the facility in an amount not to exceed \$439 million among

1 member companies based on each company's apportionment  
2 share as determined for purposes of depopulation pursuant to  
3 subsection a. of section 26 of P.L.1983, c.65 (C.17:30E-14), but  
4 no apportionment shall be made after the effective date of P.L. ,  
5 c. <sup>1</sup>(C. )<sup>1</sup> (now before the Legislature as this bill). All  
6 monies paid by a member company before the effective date of  
7 P.L. , c. <sup>1</sup>(C. )<sup>1</sup> (now before the Legislature as this bill)  
8 shall be applied as a credit against such member company's  
9 apportioned share of losses. The facility is authorized to transfer  
10 up to \$100 million to the <sup>1</sup>[State Treasurer, for appropriation by  
11 the Legislature to the Market Transition Facility Revenue]  
12 Division of Motor Vehicles Surcharge<sup>1</sup> Fund <sup>1</sup>created pursuant to  
13 section 12 of P.L. , c. (C. ) (now before the Legislature as  
14 this bill)]<sup>1</sup>.

15 (2) Any amounts actually paid by a member company to the  
16 facility as payments on account or any amounts paid to the  
17 commissioner to satisfy its apportioned share for the losses of the  
18 facility shall not be <sup>1</sup>[imposed either as a surcharge or otherwise  
19 on the premium of] passed through to<sup>1</sup> any policyholder by any  
20 member company to recoup any of the amounts so paid <sup>1</sup>, except  
21 as required by subsection g. of section 2 of P.L. 1990, c. 8 (C.  
22 17:33B-2)]<sup>1</sup>.

23 e. The facility shall be subject to the provisions of P.L.1945,  
24 c.132 (C.54:18A-1 et seq.).

25 f. The commissioner shall, notwithstanding the provisions of  
26 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
27 et seq.), to the contrary, amend the plan of operation from time  
28 to time as may be necessary to effectuate the purposes of P.L. ,  
29 c. <sup>1</sup>(C. )<sup>1</sup> (now before the Legislature as this bill) or for  
30 any other purpose.

31 g. The commissioner shall undertake a review of any  
32 <sup>1</sup>executory<sup>1</sup> contract for services to the facility <sup>1</sup>[if the duration  
33 of the contract extends six months beyond the effective date of  
34 P.L. , c. (now before the Legislature as this bill)]<sup>1</sup> and may  
35 modify or terminate any such contract if the commissioner  
36 determines that modification or termination is in the best  
37 interest of the facility. Notwithstanding the provisions of  
38 P.L.1954, c.48 (C.52:34-6 et seq.) <sup>1</sup>or the provisions of section 24  
39 of P.L.1983, c.65 (C.17:30E-12)]<sup>1</sup> to the contrary, the  
40 commissioner may enter into any contract on behalf of the  
41 facility, which may include the consolidation of the servicing of  
42 the facility's policies.

43 (cf: P.L.1991, c.462, s.2)

44 18. (New section) Notwithstanding any provision of law to the  
45 contrary, no insured or other claimant under a Market Transition  
46 Facility policy shall be held personally liable for payment of any  
47 claim attributable to damages subject to a deferred payment plan  
48 implemented pursuant to subsection c. of section 88 of P.L.1990,  
49 c.8 (C.17:33B-11) until payment is made to the insured or  
50 claimant pursuant to any deferred payment.

51 19. Section 5 of P.L.1983, c.320 (C.17:33A-5) is amended to  
52 read as follows:

53 5. a. If a person or practitioner is found by a court of  
54 competent jurisdiction, pursuant to a claim initiated by the

1 commissioner, to have violated any provision of this act, the  
2 person or practitioner shall be subject to a civil penalty not to  
3 exceed \$5,000.00 for the first violation, \$10,000.00 for the second  
4 violation and \$15,000.00 for each subsequent violation. The  
5 penalty shall be paid to the commissioner to be used in  
6 accordance with subsection b. of this section. The court may also  
7 award court costs and reasonable attorney fees to the  
8 commissioner.

9 Nothing in this subsection shall be construed to prohibit the  
10 commissioner and the person or practitioner alleged to be guilty  
11 of a violation of this act from entering into a written agreement  
12 in which the person or practitioner does not admit or deny the  
13 charges but consents to payment of the civil penalty. A consent  
14 agreement may not be used in a subsequent civil or criminal  
15 proceeding relating to any violation of this act, but notification  
16 thereof shall be made to a licensing authority in the same manner  
17 as required pursuant to subsection c. of section 10 of P.L.1983,  
18 c.320 (C.17:33A-10).

19 b. The New Jersey Automobile Full Insurance Underwriting  
20 Association and Market Transition Facility Auxiliary Fund  
21 (hereinafter referred to as the "fund") is established as a  
22 nonlapsing, revolving fund into which shall be deposited all  
23 revenues from the civil penalties imposed pursuant to this  
24 section. Interest received on moneys in the fund shall be credited  
25 to the fund. The fund shall be administered by the Commissioner  
26 of Insurance and shall be used to help defray the operating  
27 expenses of the New Jersey Automobile Full Insurance  
28 Underwriting Association created pursuant to P.L.1983, c.65  
29 (C.17:30E-1 et seq.) or shall be used to help defray the  
30 operating<sup>1</sup> expenses of the Market Transition Facility created  
31 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).  
32 (cf: P.L.1991, c.331, s.3)

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

35 6. a. A merit rating accident surcharge system for private  
36 passenger automobiles may be used in the voluntary market, by  
37 the New Jersey Automobile Full Insurance Underwriting  
38 Association created pursuant to section 16 of P.L.1983, c.65  
39 (C.17:30E-4), by the Market Transition Facility created pursuant  
40 to section 88 of P.L.1990, c.8 (C.17:33B-11), and by any insurance  
41 plan established to provide private passenger automobile  
42 insurance pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1).  
43 No surcharges shall be imposed on or after the operative date of  
44 this act, unless there is an at-fault accident within a three-year  
45 period immediately preceding the effective date of coverage  
46 which results in payment by the insurer of at least a \$300.00  
47 claim. All moneys collected under this subsection shall be  
48 retained by the insurer assessing the surcharge. Accident  
49 surcharges shall be imposed for a three-year period and shall, for  
50 each filer, be uniform on a Statewide basis without regard to  
51 classification or territory.

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

1 (1) (a) Plan surcharges shall be levied, beginning on or after  
2 January 1, 1984, by the Division of Motor Vehicles on any driver  
3 who has accumulated, within the immediately preceding three  
4 year period, beginning on or after February 10, 1983, six or more  
5 motor vehicle points, as provided in Title 39 of the Revised  
6 Statutes, exclusive of any points for convictions for which  
7 surcharges are levied under paragraph (2) of this subsection;  
8 except that the allowance for a reduction of points in Title 39 of  
9 the Revised Statutes shall not apply for the purpose of  
10 determining surcharges under this paragraph. Surcharges shall be  
11 levied for each year in which the driver possesses six or more  
12 points. Surcharges assessed pursuant to this paragraph shall be  
13 not less than \$100.00 for six points, and not less than \$25.00 for  
14 each additional point. The commissioner may increase the  
15 amount of surcharges as he deems necessary to effectuate the  
16 purposes of P.L.1983, c.65 (C.17:29A-33 et al.), and may,  
17 pursuant to regulation, permit the deferral of all or part of any  
18 surcharges authorized by this subsection until the end of the  
19 policy term of an automobile insurance policy with an effective  
20 date prior to January 1, 1984, upon presentation of appropriate  
21 evidence that an insured has already paid an equivalent surcharge  
22 arising from the same motor vehicle violation or conviction.

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

24 (2) Plan surcharges shall be levied for convictions (a) under  
25 R.S.39:4-50 for violations occurring on or after February 10,  
26 1983, and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or  
27 for offenses committed in other jurisdictions of a substantially  
28 similar nature to those under R.S.39:4-50 or section 2 of  
29 P.L.1981, c.512 (C.39:4-50.4a), for violations occurring on or  
30 after January 26, 1984. Surcharges under this paragraph shall be  
31 levied annually for a three year period, and shall be not less than  
32 \$1,000.00 per year for each of the first two convictions, and not  
33 less than \$1,500.00 per year for the third conviction occurring  
34 within a three year period. If a driver is convicted under both  
35 R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for  
36 offenses arising out of the same incident, the driver shall be  
37 assessed only one surcharge for the two offenses. The  
38 commissioner may increase the amount of surcharges as he deems  
39 necessary to effectuate the purposes of P.L.1983, c.65  
40 (C.17:29A-33 et al.), and may, pursuant to regulation, permit the  
41 deferral of all or any part of these surcharges as provided in  
42 paragraph (1)(a) of this subsection.

43 If, upon written notification from the Division of Motor  
44 Vehicles, mailed to the last address of record with the division, a  
45 driver fails to pay a surcharge levied under this subsection, the  
46 license of the driver shall be suspended forthwith until the  
47 surcharge is paid to the Division of Motor Vehicles; except that  
48 upon satisfactory showing of indigency, the Division of Motor  
49 Vehicles may authorize payment of the surcharge on an  
50 installment basis over a period not to exceed 10 months.

51 For the purposes of this subparagraph, "indigency" shall be  
52 defined in rules and regulations promulgated by the Director of  
53 the Division of Motor Vehicles.

54 All moneys collectible under this subsection b. shall be billed



1 and collected by the Division of Motor Vehicles. Of the moneys  
 2 collected: 10%, or the actual cost of administering the collection  
 3 of the surcharge, whichever is less, shall be retained by the  
 4 Division of Motor Vehicles until August 31, 1996; five percent, or  
 5 the actual cost of administering the cancellation notification  
 6 system established pursuant to section 50 of P.L.1990, c.8  
 7 (C.17:33B-41), whichever is less, shall be retained by the Division  
 8 of Motor Vehicles until August 31, 1996; and prior to October 1,  
 9 1991, the remainder shall be remitted to the New Jersey  
 10 Automobile Full Insurance Underwriting Association and on or  
 11 after October 1, 1991 until August 31, 1996, the remainder shall  
 12 be remitted to the New Jersey Automobile Insurance Guaranty  
 13 Fund created pursuant to section 23 of P.L.1990, c.8  
 14 (C.17:33B-5). Commencing on September 1, 1996, or such earlier  
 15 time as the Commissioner of Insurance shall certify to the State  
 16 Treasurer that amounts on deposit in the New Jersey Automobile  
 17 Insurance Guaranty Fund are sufficient to satisfy the current and  
 18 anticipated financial obligations of the New Jersey Automobile  
 19 Full Insurance Underwriting Association, all plan surcharges  
 20 collected by the Division of Motor Vehicles under <sup>1</sup>this<sup>1</sup>  
 21 subsection b. <sup>1</sup>[of this section]<sup>1</sup> shall be remitted to the Division  
 22 of Motor Vehicles Surcharge Fund for transfer to the Market  
 23 Transition Facility Revenue Fund, as provided in section 12 of  
 24 P.L. , c. <sup>1</sup>(C. )<sup>1</sup> (now before the Legislature as this bill),  
 25 for the purposes of section 4 of P.L. , c. <sup>1</sup>(C. )<sup>1</sup> (now  
 26 before the Legislature as this bill) until such a time as all the  
 27 Market Transition Facility <sup>1</sup>[bond] bonds<sup>1</sup> , notes and obligations  
 28 issued pursuant to <sup>1</sup>that<sup>1</sup> section 4 of that act and the costs  
 29 thereof are discharged and no longer outstanding. From the date  
 30 of certification by the Commissioner of Insurance that the  
 31 monies collectible under this subsection are no longer needed to  
 32 <sup>1</sup>[(a)]<sup>1</sup> fund the association [debt] or <sup>1</sup>[(b)] satisfy the  
 33 requirements of any bond resolution of the New Jersey Economic  
 34 Development Authority authorizing the issuance of Market  
 35 Transition Facility bonds or notes] at such a time as all Market  
 36 Transition Facility bonds, notes and obligations issued pursuant to  
 37 section 4 of P.L. , c. <sup>1</sup>(C. )<sup>1</sup> (now before the Legislature  
 38 as this bill) and the costs thereof are discharged and no longer  
 39 outstanding<sup>1</sup>, monies collectible under this subsection shall <sup>1</sup>,  
 40 subject to appropriation,<sup>1</sup> be <sup>1</sup>[deposited in the General Fund  
 41 and, subject to appropriation, may be]<sup>1</sup> remitted to the New  
 42 Jersey Property-Liability Insurance Guaranty Association created  
 43 pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used  
 44 for payment of any loans made by that association to the New  
 45 Jersey Automobile Insurance Guaranty Fund pursuant to  
 46 paragraph (10) of subsection a. of section 8 of P.L.1974, c.17  
 47 (C.17:30A-8); provided that all such payments shall be subject to  
 48 and dependent upon appropriation by the State Legislature.

49 (3) In addition to any other authority provided in P.L.1983,  
 50 c.65 (C.17:29A-33 et al.), the commissioner, after consultation  
 51 with the Director of the Division of Motor Vehicles, is  
 52 specifically authorized (a) to increase the dollar amount of the  
 53 surcharges for motor vehicle violations or convictions, (b) to  
 54 impose, in accordance with paragraph (1)(a) of this subsection,

1 surcharges for motor vehicle violations or convictions for which  
2 motor vehicle points are not assessed under Title 39 of the  
3 Revised Statutes, or (c) to reduce the number of points for which  
4 surcharges may be assessed below the level provided in paragraph  
5 (1)(a) of this subsection, except that the dollar amount of all  
6 surcharges levied under the New Jersey Merit Rating Plan shall  
7 be uniform on a Statewide basis for each filer, without regard to  
8 classification or territory. Surcharges adopted by the  
9 commissioner on or after January 1, 1984 for motor vehicle  
10 violations or convictions for which motor vehicle points are not  
11 assessable under Title 39 of the Revised Statutes shall not be  
12 retroactively applied but shall take effect on the date of the New  
13 Jersey Register in which notice of adoption appears or the  
14 effective date set forth in that notice, whichever is later.

15 c. No motor vehicle violation surcharges shall be levied on an  
16 automobile insurance policy issued or renewed on or after  
17 January 1, 1984, except in accordance with the New Jersey Merit  
18 Rating Plan, and all surcharges levied thereunder shall be  
19 assessed, collected and distributed in accordance with subsection  
20 b. of this section.

21 d. (Deleted by amendment, P.L.1990, c.8.)

22 e. The Commissioner of Insurance and the Director of the  
23 Division of Motor Vehicles as may be appropriate, shall adopt any  
24 rules and regulations necessary or appropriate to effectuate the  
25 purposes of this section.

26 (cf: P.L.1990, c.8, s.35)

27 <sup>1</sup>[20.] 21.<sup>1</sup> This act shall take effect immediately <sup>1</sup>and shall  
28 expire at midnight of the 90th day after enactment if a closing of  
29 the first issue of Market Transition Facility bonds or notes has  
30 not taken place before midnight of that 90th day<sup>1</sup>.

31

32

33

34

35 Provides for the funding of the debt of the Market Transition  
36 Facility.

1 section 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such  
2 payments shall be subject to and dependent upon appropriation by  
3 the State Legislature.

4 (3) In addition to any other authority provided in P.L.1983,  
5 c.65 (C.17:29A-33 et al.), the commissioner, after consultation  
6 with the Director of the Division of Motor Vehicles, is  
7 specifically authorized (a) to increase the dollar amount of the  
8 surcharges for motor vehicle violations or convictions, (b) to  
9 impose, in accordance with paragraph (1)(a) of this subsection,  
10 surcharges for motor vehicle violations or convictions for which  
11 motor vehicle points are not assessed under Title 39 of the  
12 Revised Statutes, or (c) to reduce the number of points for which  
13 surcharges may be assessed below the level provided in paragraph  
14 (1)(a) of this subsection, except that the dollar amount of all  
15 surcharges levied under the New Jersey Merit Rating Plan shall  
16 be uniform on a Statewide basis for each filer, without regard to  
17 classification or territory. Surcharges adopted by the  
18 commissioner on or after January 1, 1984 for motor vehicle  
19 violations or convictions for which motor vehicle points are not  
20 assessable under Title 39 of the Revised Statutes shall not be  
21 retroactively applied but shall take effect on the date of the New  
22 Jersey Register in which notice of adoption appears or the  
23 effective date set forth in that notice, whichever is later.

24 c. No motor vehicle violation surcharges shall be levied on an  
25 automobile insurance policy issued or renewed on or after  
26 January 1, 1984, except in accordance with the New Jersey Merit  
27 Rating Plan, and all surcharges levied thereunder shall be  
28 assessed, collected and distributed in accordance with subsection  
29 b. of this section.

30 d. (Deleted by amendment, P.L.1990, c.8.)

31 e. The Commissioner of Insurance and the Director of the  
32 Division of Motor Vehicles as may be appropriate, shall adopt any  
33 rules and regulations necessary or appropriate to effectuate the  
34 purposes of this section.

35 (cf: P.L.1990, c.8, s.35)

36 20. This act shall take effect immediately.

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#### STATEMENT

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41 This bill, the "Good Driver Protection Act of 1994," provides  
42 for a comprehensive resolution to the Market Transition Facility  
43 (MTF) deficit. The bill protects the State's good drivers from  
44 policyholder surcharges by instituting a resolution which relies  
45 upon significant monetary contributions of the insurance industry  
46 and a redirection of the Division of Motor Vehicle bad driver  
47 surcharge revenues to financing of a bond issue to pay the claims  
48 of the facility.

49 The Fair Automobile Insurance Reform Act of 1990 (FAIR Act)  
50 provided that any losses sustained in the operation of the Market  
51 Transition Facility be apportioned among the member insurers of  
52 the facility. However, certain members have challenged an order  
53 of the Commissioner of Insurance apportioning such losses,  
54 claiming that it was never intended that insurers pay for losses

1 "knowingly" incurred by the commissioner in operating the  
2 facility. The Department of Insurance has disputed this  
3 interpretation and denied that the losses were "knowingly"  
4 incurred. The Superior Court has enjoined the use of funds paid  
5 pursuant to the commissioner's order. Consequently, claims  
6 against the facility have not been paid.

7 The bill provides for the resolution of the MTF debt by  
8 mandating that the member insurers of the Market Transition  
9 Facility pay all amounts raised to date from the monies  
10 apportioned to insurers by the provisions of the FAIR Act for the  
11 purpose of paying a part of the MTF debt. Insurers would not be  
12 permitted to recoup these moneys through policyholder  
13 surcharges.

14 The bill permits the New Jersey Economic Development  
15 Authority to issue revenue-backed bonds, the proceeds of which  
16 would be used to pay a portion of the MTF debt. The bonds would  
17 be repaid by revenue from the merit rating surcharges levied by  
18 the Division of Motor Vehicles, beginning September 1, 1996.  
19 The interest on these bonds would be capitalized for two years, as  
20 the revenue to the Market Transition Facility does not begin until  
21 September 1, 1996. These surcharges have been used historically  
22 for offsetting residual market losses. They were used originally  
23 for offsetting the operating losses of the New Jersey Automobile  
24 Full Insurance Underwriting Association (JUA); in 1990, they  
25 were specifically dedicated as part of the resolution of the JUA's  
26 deficit. This bill recognizes the historical purpose of this revenue  
27 stream by dedicating it to pay back the interest and principal on  
28 the MTF bonds.

29 The bill also requires that the 1996 and 1997 insurance industry  
30 payments made under the current law through the New Jersey  
31 Property-Liability Insurance Guaranty Association be redirected  
32 for the purpose of paying part of the financial obligations of the  
33 MTF debt.

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38 Provides for the funding of the debt of the Market Transition  
39 Facility.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1250

STATE OF NEW JERSEY

DATED: JUNE 23, 1994

The Assembly Appropriations Committee reports favorably Senate Bill No. 1250.

Senate Bill No. 1250, the "Good Driver Protection Act of 1994," provides for the payment of the Market Transition Facility (MTF) deficit, estimated to be \$1.3 billion. This bill implements the settlement agreement entered into by the Governor on behalf of the State and member insurers of the MTF in regard to the litigation.

The bill provides for the payment of the MTF deficit through various funding sources. The bill requires member insurers of the MTF to pay or turn over their apportioned share of the MTF deficit apportioned to them to date (\$439 million). Member insurers would not be permitted to pass their share of the deficit through to policyholders, except to meet the legal requirement that automobile insurers are entitled to earn an adequate rate of return through the ratemaking process.

The bill requires that the 1996 and 1997 insurance industry payments made under the current law through the New Jersey Property-Liability Insurance Guaranty Association for the deficit of the New Jersey Automobile Full Insurance Underwriting Association (JUA) be redirected for the purpose of paying part of the financial obligations of the MTF deficit (\$320 million).

The bill also allows the New Jersey Economic Development Authority (EDA) to issue MTF bonds and notes, the net proceeds of which would be used to fund a portion of the MTF deficit (\$665 million). Beginning September 1, 1996, the bonds would be repaid by revenue from surcharges levied under the New Jersey Merit Rating Plan by the Division of Motor Vehicles. The interest on these bonds would be capitalized for two years because the revenue stream does not start until September 1, 1996. The bonds issued pursuant to this bill are to be tax exempt bonds and would not be a debt or liability of the State or any agency or instrumentality thereof.

Additional monies to fund the MTF deficit will come from any resulting surplus in the JUA and from the New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund which consists of revenue from penalties levied by the Division of Insurance Fraud Prevention and which under this bill will be used to defray not only the operating expenses of the JUA but of the MTF as well.

**FISCAL IMPACT:**

Fiscal note information has not been received from the Treasurer's Office as of this date. However, information from Morgan Stanley & Co. outlines the terms of the MTF financing program in the bill and proposed by the Governor. The bond issue is secured by a projected revenue stream of driver surcharge payments which should generate annual revenues sufficient for, and probably in excess of, debt service requirements. Further security is provided by the establishment of debt service and supplemental reserve funds. Motor vehicle surcharges have been generating approximately \$110 million per year in recent years, of which about 80% was directed toward reducing JUA debt. With debt service on the MTF bonds projected to peak at approximately \$79 million annually, the surcharge amounts currently dedicated to the JUA are essentially being redirected to repayment of MTF bonds. The bill also provides for money in excess of MTF needs be annually remitted to the General Fund.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

**SENATE, No. 1250**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 16, 1994

The Senate Budget and Appropriations Committee reports without recommendation Senate Bill No. 1250 [1R] with amendments.

Senate Bill No. 1250 [1R] as amended, provides for the payment of the Market Transition Facility (MTF) deficit. The deficit for the Market Transition Facility is estimated to be \$1.3 billion.

The "Fair Automobile Insurance Reform Act of 1990," P.L.1990, c.8 (C.17:33B-1 et seq.), (FAIR Act) provided that any losses sustained in the operation of the MTF be apportioned among the member insurers of the MTF. However, certain members challenged a December 1993 cash call order of the Commissioner of Insurance apportioning such losses, claiming that it was never intended that insurers pay for losses "knowingly" incurred by the commissioner in operating the MTF. The Department of Insurance has disputed this interpretation and denied that the losses were "knowingly" incurred. In February of this year the Superior Court enjoined the use of funds paid pursuant to the commissioner's order. Consequently, claims against the MTF as of March 1, 1994 have not been paid. This bill implements the settlement agreement entered into by the Governor on behalf of the State and member insurers of the MTF in regard to the litigation.

The bill provides for the payment of the MTF deficit through various funding sources. The bill requires member insurers of the MTF to pay or turnover their apportioned share of the MTF deficit apportioned to them to date (\$439 million). Member insurers would not be permitted to pass their share of the deficit through to policyholders, except to meet the legal requirement that automobile insurers are entitled to earn an adequate rate of return through the ratemaking process.

The bill requires that the 1996 and 1997 insurance industry payments made under the current law through the New Jersey Property-Liability Insurance Guaranty Association for the deficit of the New Jersey Automobile Full Insurance Underwriting Association (JUA) be redirected for the purpose of paying part of the financial obligations of the MTF deficit (\$320 million).

The bill also allows the New Jersey Economic Development Authority (EDA) to issue MTF bonds and notes, the net proceeds of which would be used to fund a portion of the MTF deficit (\$665 million). Beginning September 1, 1996, the bonds would be repaid by revenue from surcharges levied under the New Jersey Merit Rating Plan by the Division of Motor Vehicles (\$85 million per year).

The interest on these bonds would be capitalized for two years because the revenue stream does not start until September 1, 1996. These surcharges are currently being used to offset the deficit of the JUA. The bonds issued pursuant to this bill are to be tax exempt bonds. Also, the bonds issued pursuant to this bill are not a debt or liability of the State or any agency or instrumentality thereof.

Additional monies to fund the MTF deficit will come from any resulting surplus in the JUA and from the New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund which consists of revenue from penalties levied by the Division of Insurance Fraud Prevention and which under this bill will be used to not only defray the operating expenses of the JUA but of the MTF.

The bill allows for the Commissioner of Insurance to amend the plan of operation of the MTF to prioritize the claims payable by the MTF according to a schedule established in accordance with the law which establishes the prioritization for the payment of claims by insolvent property-casualty insurers. Claims of lower priority may be denied payment if there are insufficient funds. The commissioner may provide for the deferral of the payment of claims for noneconomic loss payable under policies issued by the MTF over a period not to exceed four years and may also provide for the deferral of other claim payments. The bill provides that no insured or other claimant under a MTF policy may be held personally liable for payment of any claim attributable to damages subject to a deferred payment plan. The commissioner must review any contract for services to the MTF and may modify or terminate any such contract if it is in the best interest of the MTF. The commissioner may enter into any contract on behalf of the MTF, which may include the consolidation of the servicing of the MTF's policies.

The bill requires the full disclosure of all costs in regard to the issuance of bonds pursuant to the bill and requires a semi-annual report on the financial condition of the JUA and MTF and the various sources funding the deficits of those entities.

The bill takes effect upon enactment and will expire at midnight of the 90th day after enactment if a closing of the first issue of Market Transition Facility bonds or notes has not taken place by that time.

#### COMMITTEE AMENDMENTS

The committee amended the bill to:

- Limit the amount of the bonds or notes to be issued to \$750 million, exclude any refinancing bonds or notes from this amount and to require the approval of the Joint Budget Oversight Committee for the refinancing of any bonds or notes issued pursuant to this bill.

- Reduce the maximum maturity dates on these bonds from 40 years to 30 years.

- Prohibit any appropriation of General Fund monies to the Market Transition Facility Revenue Fund.



**FISCAL IMPACT**

The implementation of this bill will not have a negative impact on the State General Fund.

The bill requires member insurers of the MTF to pay or turn over the share of the MTF deficit apportioned to them to date. That amount is reported to be \$439 million.

The bill requires that the 1996 and 1997 insurance industry payments made under the current law through the New Jersey Property-Liability Insurance Guaranty Association for the deficit of the New Jersey Automobile Full Insurance Underwriting Association (JUA) be redirected for the purpose of paying part of the financial obligations of the MTF deficit. That amount is reported to be \$320 million.

The State Treasurer has announced that the bonds which will be issued by the Economic Development Authority pursuant to the provisions of this bill will result in net proceeds of approximately \$665 million to fund the MTF deficit.

This bill creates within the Economic Development Authority a Market Transition Facility Revenue Fund. Monies appropriated to the fund by the Legislature from surcharges levied pursuant to the provisions of subsection b. of section 6 of P.L. 1983, c. 65 (C.17:29A-35) will be deposited into the fund and used for the payment of debt service on the bonds and otherwise provide security for the bonds. It is anticipated that the annual debt service payments on the bonds will be \$85 million over a period of 15 years. In addition, the bill requires the transfer to this fund of \$100 million from the payments made by MTF member insurers for their share of the MTF deficit, as soon as practicable after the enactment date and upon appropriation by the Legislature, for deposit into reserve accounts.

LEGISLATIVE FISCAL ESTIMATE TO

[SECOND REPRINT]

SENATE, No. 1250

STATE OF NEW JERSEY

DATED: June 23, 1994

Senate Bill No. 1250 (2R) of 1994 provides for the payment of the Market Transition Facility (MTF) deficit, which is estimated at \$1.3 billion. This bill implements the settlement agreement entered into by the Governor on behalf of the State and member insurers of the MTF in regard to pending litigation concerning industry assessments to finance the deficit.

The bill provides for the payment of the MTF deficit through various funding sources. The bill requires member insurers of the MTF to pay or turnover their apportioned share of the MTF deficit apportioned to them to date (\$439 million). Member insurers would not be permitted to pass their share of the deficit through to policyholders, except to meet the legal requirement that automobile insurers are entitled to earn an adequate rate of return through the ratemaking process.

The bill requires that the 1996 and 1997 insurance industry payments made under the current law through the New Jersey Property-Liability Insurance Guaranty Association for the deficit of the New Jersey Automobile Full Insurance Underwriting Association (JUA) be redirected for the purpose of paying part of the financial obligations of the MTF deficit (\$320 million).

The bill also allows the New Jersey Economic Development Authority (EDA) to issue MTF bonds and notes, the net proceeds of which would be used to fund a portion of the MTF deficit (\$665 million). Beginning September 1, 1996, the bonds would be repaid by revenue from surcharges levied under the New Jersey Merit Rating Plan by the Division of Motor Vehicles. The interest on these bonds would be capitalized for two years because the revenue stream does not start until September 1, 1996. The bonds issued pursuant to this bill are to be tax exempt bonds and would not be a debt or liability of the State or any agency or instrumentality thereof.

Additional monies to fund the MTF deficit will come from any resulting surplus in the JUA and from the New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund, which consists of revenue from penalties levied by the Division of Insurance Fraud Prevention. Under the bill, these monies will be used to defray the operating expenses not only of the JUA but of the MTF as well.

The Department of the Treasury has not responded directly to a fiscal note request on the bill. However, materials received by the State Treasurer from Morgan Stanley & Co. provide a cogent outline of the terms and conditions of the MTF Financing Program as proposed in the bill and by the Governor. The Office of Legislative Services (OLS) used these materials in reviewing the bond issue proposal and in estimating the fiscal impacts of the entire plan to repay the MTF deficit pursuant to the bill.

The OLS notes that the bond issue is secured by a projected revenue stream of driver surcharge payments that should (absent a major change in driver behavior) generate annual revenues sufficient and probably in excess of debt service requirements. Further security is provided by the establishment of debt service and supplemental reserve funds. Finally, the proposal recommends purchasing bond insurance for the junior lien portion of the sale.

The bill makes it clear that the backing for the bonds consists only of the monies deposited in the MTF Revenue Fund (subject to appropriation) and that the faith and credit of the State of New Jersey--whether full or "moral"--are not pledged to repayment. Thus, there is no direct exposure of General Fund income with regard to securing the bonds.

Motor vehicle surcharges have been generating about \$110 million per year in recent years, about 80 percent of which has previously been directed toward reducing the JUA debt and thus not available as budgeted State revenue. With debt service on the MTF bonds projected to peak at about \$79 million annually, the surcharge amounts currently dedicated to the JUA are essentially being redirected to repayment of the MTF bonds. The portion of the surcharge that has been retained in the General Fund, primarily for the Division of Motor Vehicles, may very well continue to be available as revenue in excess of MTF needs. In fact, the bill specifically provides that all such monies in excess of the amounts needed for the bond issue shall be annually remitted to the General Fund from the MTF Revenue Fund. Moreover, should legislation such as Senate Bill No. 1148, which provides for enhanced surcharge collections, be enacted, the State will be more aggressively seeking to recover driver surcharge obligations, many of which are delinquent. If successful, this effort will further ensure that revenues which have supported the State budget will continue to be available.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.



# OFFICE OF THE GOVERNOR

## NEWS RELEASE

**CN-001**  
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**TRENTON, N.J. 08625**

**Release:** IMMEDIATE  
JUNE 30, 1994

Gov. Christie Whitman today signed legislation to eliminate the debt incurred by the Market Transition Facility (MTF) by utilizing a bond issue, substantial contributions by the insurance industry, and a projected surplus in Joint Underwriting Association (JUA) funds.

The legislation is a result of negotiations involving state officials and industry representatives to resolve the question. The effect of the legislation is to settle an ongoing court case over responsibility for settling the debt.

The bill permits the issuance of bonds through the Economic Development Authority in an amount not to exceed \$665 million. The remainder of the estimated \$1.326 billion deficit will be met through insurance industry contributions and surplus revenue from the JUA.

The law prohibits insurance companies from passing their financial liability on to policyholders.

The state bonds will be retired through the use of motor vehicle surcharges levied against drivers who have accumulated violation points. These surcharges have been in effect since 1984.

"I am pleased that the issue of the MTF debt has been resolved and, more importantly, that claims against the fund which have been pending for quite some time are now going to be paid," Whitman said. "The agreement solves a problem my Administration inherited upon assuming office and the Department of Insurance and Commissioner Drew Karpinski are to be commended for reaching this resolution."

The legislation, S-1250, was sponsored by Sen. Gerald Cardinale, R-Bergen, and in the Assembly, A-1900, it was sponsored by Assemblymen Scott Garrett, R-Sussex, and Richard Bagger, R-Middlesex.