

# SENATE, No. 1051

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MAY 14, 1998

**Sponsored by:**

**Senator DONALD T. DIFRANCESCO**

**District 22 (Middlesex, Morris, Somerset and Union)**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Co-Sponsored by:**

**Assemblymen Bateman and Greenwald**

**SYNOPSIS**

Revises certain provisions of the "Automobile Insurance Cost Reduction Act."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/19/1998)**

S1051 DIFRANCESCO, ADLER

2

1 AN ACT concerning automobile insurance and amending various parts  
2 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. Section 4 of P.L. , c. (C. ) (now before the Legislature as  
8 Senate Bill No. 3 (2R) of 1998) is amended to read as follows:

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

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

**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 coverage shall be in accordance with a benefit plan provided in the  
2 policy and approved by the commissioner. The policy form, which  
3 shall be subject to the approval of the commissioner, shall set forth the  
4 benefits provided under the policy, including eligible medical  
5 treatments, diagnostic tests and services as well as such other benefits  
6 as the policy may provide. The commissioner shall set forth by  
7 regulation a statement of the basic benefits which shall be included in  
8 the policy. Medical treatments, diagnostic tests, and services provided  
9 by the policy shall be rendered in accordance with commonly accepted  
10 protocols and professional standards and practices which are  
11 commonly accepted as being beneficial for the treatment of the  
12 covered injury. Protocols and professional standards and practices  
13 which are deemed to be commonly accepted pursuant to this section  
14 shall be those recognized by national standard setting organizations,  
15 national or state professional organizations of the same discipline as  
16 the treating provider, or those designated or approved by the  
17 commissioner in consultation with the professional licensing boards in  
18 the Division of Consumer Affairs in the Department of Law and Public  
19 Safety. The commissioner, in consultation with the Commissioner of  
20 the Department of Health and Senior Services and the applicable  
21 licensing boards, may reject the use of protocols, standards and  
22 practices or lists of diagnostic tests set by any organization deemed  
23 not to have standing or general recognition by the provider community  
24 or the applicable licensing boards. Protocols shall be deemed to  
25 establish guidelines as to standard appropriate treatment and  
26 diagnostic tests for injuries sustained in automobile accidents, but the  
27 establishment of standard treatment protocols or protocols for the  
28 administration of diagnostic tests shall not be interpreted in such a  
29 manner as to preclude variance from the standard when warranted by  
30 reason of medical necessity. The policy form may provide for the  
31 precertification of certain procedures, treatments, diagnostic tests, or  
32 other services or for the purchase of durable medical goods, as  
33 approved by the commissioner, provided that the requirement for  
34 precertification shall not be unreasonable, and no precertification  
35 requirement shall apply within ten days of the insured event. The  
36 policy may provide that certain benefits provided by the policy which  
37 are in excess of the basic benefits required by the commissioner to be  
38 included in the policy may be subject to reasonable copayments in  
39 addition to the copayments provided for herein, provided that the  
40 copayments shall not be unreasonable and shall be established in such  
41 **[as]** a manner as not to serve to encourage underutilization of benefits  
42 subject to the copayments, nor encourage overutilization of benefits.  
43 The policy form shall clearly set forth any limitations on benefits or  
44 exclusions, which may include, but need not be limited to, benefits  
45 which are otherwise compensable under workers' compensation, or  
46 benefits for treatments deemed to be experimental or investigational,

1 or benefits deducted pursuant to section 6 of P.L.1972, c.70  
2 (C.39:6A-6). The commissioner may enlist the services of a benefit  
3 consultant in establishing the basic benefits level provided in this  
4 subsection, which shall be set forth by regulation no later than 120  
5 days following the enactment date of this amendatory and  
6 supplementary act. The commissioner shall not advertise for the  
7 consultant as provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-  
8 8 and 52:34-9).

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

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

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

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

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

42 No licensed insurance carrier shall refuse to renew the coverage  
43 stipulated by this section of an eligible person as defined in section 25  
44 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the  
45 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with

1 the consent of the Commissioner of Banking and Insurance.  
2 (cf: P.L. , c. , s.4 (now before the Legislature as Senate Bill No. 3  
3 (2R) of 1998))

4

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

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

8 Except as provided by section 4 of P.L. , c. (C. )(as  
9 amended by section 1 of this bill), every standard automobile liability  
10 insurance policy issued or renewed on or after the effective date of  
11 P.L. , c. (C. )(now before the Legislature as Senate Bill  
12 No. 3 (2R) of 1998) shall contain personal injury protection benefits  
13 for the payment of benefits without regard to negligence, liability or  
14 fault of any kind, to the named insured and members of his family  
15 residing in his household who sustain bodily injury as a result of an  
16 accident while occupying, entering into, alighting from or using an  
17 automobile, or as a pedestrian, caused by an automobile or by an  
18 object propelled by or from an automobile, to other persons sustaining  
19 bodily injury while occupying, entering into, alighting from or using  
20 the automobile of the named insured, with permission of the named  
21 insured, and to pedestrians sustaining bodily injury caused by the  
22 named insured's automobile or struck by an automobile or struck by an  
23 object propelled by or from that automobile.

24 "Personal injury protection coverage" means and includes:

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

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

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. Such sum shall be  
46 payable during the life of the injured person and shall be subject to an

1 amount or limit of \$5,200, on account of injury to any one person in  
2 any one accident, except that in no case shall income continuation  
3 benefits exceed the net income normally earned during the period in  
4 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 per day. Such benefits  
11 shall be payable during the life of the injured person and shall be  
12 subject to an amount or limit of \$4,380, on account of injury to any  
13 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 to such person, under subsection  
26 c., 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, on  
30 account of the death of any one person in any one accident shall be  
31 payable to the decedent's estate.

32 Benefits payable under this section shall:

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

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

39 Medical expense benefit payments shall be subject to **[a]** any  
40 deductible and any copayment which may be established as provided  
41 in the policy **[, of any]**. Upon the request of the commissioner or any  
42 party to a claim for benefits or payment for services rendered, a  
43 provider shall present adequate proof that any deductible or  
44 copayment related to that claim has not been waived or discharged by  
45 the provider.

46 No insurer or health provider providing benefits to an insured shall

1 have a right of subrogation for the amount of benefits paid pursuant  
2 to any deductible or copayment under this section.

3 (cf: P.L. , c. , s.6 (now before the Legislature as Senate Bill No. 3  
4 (2R) of 1998))

5

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

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

12 a. Medical expense benefit deductibles in amounts of \$500.00,  
13 \$1,000.00, \$2,000.00 and \$2,500.00 for any one accident;

14 b. The option to exclude all benefits offered under **subsection**  
15 subsections b., c., d., and e. of section 4;

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

17 d. For policies issued or renewed on or after January 1, 1991, the  
18 option that other health insurance coverage or benefits of the insured,  
19 including health care services provided by a health maintenance  
20 organization and any coverage or benefits provided under any federal  
21 or State program, are the primary coverage in regard to medical  
22 expense benefits pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4).  
23 If health insurance coverage or benefits are primary, an automobile  
24 insurer providing medical expense benefits under personal injury  
25 protection coverage shall be liable for reasonable medical expenses not  
26 covered by the health insurance coverage or benefits up to the limit of  
27 the medical expense **benefit** benefits coverage. The principles of  
28 coordination of benefits shall apply to personal injury protection  
29 medical expense benefits coverage pursuant to this subsection.

30 e. Medical expense benefits in amounts of \$150,000, \$75,000,  
31 \$50,000 or \$15,000 per person per accident; except that, medical  
32 expense benefits shall be paid in an amount not to exceed \$250,000 for  
33 all medically necessary treatment of permanent or significant brain  
34 injury, spinal cord injury or disfigurement or for medically necessary  
35 treatment of other permanent or significant injuries rendered at a  
36 trauma center or acute care hospital immediately following the  
37 accident and until the patient is stable, no longer requires critical care  
38 and can be safely discharged or transferred to another facility in the  
39 judgment of the attending physician. The coverage election form shall  
40 contain a statement, clearly readable and in 12-point bold type, in a  
41 form approved by the commissioner, that election of any of the  
42 aforesaid medical expense benefits options results in less coverage  
43 than the \$250,000 medical expense benefits coverage mandated prior  
44 to the effective date of **this act** P.L. , c. (now before the  
45 Legislature as Senate Bill No. 3 (2R) of 1998) .

46 If none of the aforesaid medical **expenses** expense benefits

1 options is affirmatively chosen in writing, the policy shall provide  
2 \$250,000 medical expense benefits coverage.

3 f. The insurer shall provide an appropriate reduction from the  
4 territorial base rate for personal injury protection coverage for those  
5 electing any of the options in subsections a., b., d. and e. of this  
6 section.

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

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

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

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

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

40 (cf: P.L. , c. , s.7 (now before the Legislature as Senate Bill No. 3  
41 (2R) of 1998))

42

43 4. Section 24 of P.L. , c. (C. )(now before the Legislature as  
44 Senate Bill No. 3 (2R) of 1998) is amended to read as follows:

45 24. a. Any dispute regarding the recovery of medical expense  
46 benefits or other benefits provided under personal injury protection

1 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4), or  
2 section 4 of P.L. , c. (C. ) (as amended by section 1 of this  
3 bill) arising out of the operation, ownership, maintenance or use of an  
4 automobile may be submitted to dispute resolution on the initiative of  
5 any party to the 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. , c. (C. )(as amended by section 1  
13 of this bill). The commissioner shall promulgate rules and regulations  
14 with respect to the conduct of the dispute resolution proceedings. The  
15 organization administering dispute resolution shall utilize qualified  
16 professionals who serve on a full-time basis and who meet standards  
17 of competency established by the commissioner. The commissioner  
18 shall establish standards of performance for the organization to ensure  
19 the independence and fairness of the review process, including, but not  
20 limited to, standards relative to the professional qualifications of the  
21 professionals presiding over the dispute resolution process, and  
22 standards to ensure that no conflict of interest exists which would  
23 prevent the professional from performing his duties in an impartial  
24 manner. The standards of performance shall include a requirement  
25 that the organization establish an advisory council composed of parties  
26 who are users of the dispute resolution mechanism established herein.  
27 The commissioner may contract with a consulting firm for the  
28 formulation of the standards of performance of the organization and  
29 establishment of qualifications for the persons who are to conduct the  
30 dispute resolution proceedings. The commissioner shall not advertise  
31 for bids for the consulting firm, as provided in sections 3 and 4 of  
32 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Compensation to the dispute  
33 resolution professionals shall be established by the commissioner and  
34 adjusted from time to time as appropriate, with the approval of the  
35 commissioner. In no case shall compensation be paid on a contingency  
36 basis. The organization shall establish a dispute resolution plan, which  
37 shall include procedures and rules governing the dispute resolution  
38 process and provisions for monitoring the dispute resolution process  
39 to ensure adherence to the standards of performance established by the  
40 commissioner. The plan, and any amendments thereto, shall be subject  
41 to the approval of the commissioner.

42 c. Dispute resolution proceedings under this section 24 and section  
43 25 of this amendatory and supplementary act shall include disputes  
44 arising regarding medical expense benefits provided under subsection  
45 a. of section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. ,  
46 c. (C. ) (as amended by section 1 of this bill), benefits provided

1 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70  
2 (C.39:6A-4), subsection b., c., d. or e. of section 7 of P.L.1972, c.198  
3 (C.39:6-86.1), and disputes as to additional first party coverage  
4 benefits required to be offered pursuant to section 10 of P.L.1972,  
5 c.70 (C.39:6A-10). Disputes involving medical expense benefits may  
6 include, but not necessarily be limited to, matters concerning: (1)  
7 interpretation of the insurance contract; (2) whether the treatment or  
8 health care service which is the subject of the dispute resolution  
9 proceeding is in accordance with the provisions of section 4 of  
10 P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c. (C. )  
11 (as amended by section 1 of this bill) or the terms of the policy; (3) the  
12 eligibility of the treatment or service for compensation; (4) the  
13 eligibility of the provider performing the treatment or service to be  
14 compensated under the terms of the policy or under regulations  
15 promulgated by the commissioner, including whether the person is  
16 licensed or certified to perform such treatment; (5) whether the  
17 disputed medical treatment was actually performed; (6) whether  
18 diagnostic tests performed in connection with the treatment are those  
19 recognized by the commissioner; (7) the necessity or appropriateness  
20 of consultations by other health care providers; (8) disputes involving  
21 application of and adherence to fee schedules promulgated by the  
22 commissioner; and (9) whether the treatment performed is reasonable,  
23 necessary, and compatible with the protocols provided for pursuant to  
24 P.L. , c. (C. )(now before the Legislature as Senate Bill  
25 No. 3 (2R) of 1998). The dispute resolution professionals may review  
26 the entire claims file of the insurer, subject to any confidentiality  
27 requirement established pursuant to State or federal law. All decisions  
28 of the dispute resolution professional shall be in writing, in a form  
29 prescribed by the commissioner, shall state the issues in dispute, the  
30 findings and conclusions on which the decision is based, and shall be  
31 signed by the dispute resolution professional. All decisions of a  
32 dispute resolution professional shall be binding. The dispute  
33 resolution organization shall provide for the retention of all documents  
34 used in dispute resolution proceedings under this section and section  
35 25 of this amendatory and supplementary act, including the written  
36 decision, for a period of at least five years, in a form approved by the  
37 commissioner, or for such additional time as may be established by the  
38 commissioner. The written decisions of the dispute resolution  
39 professional shall be forwarded to the commissioner, who shall  
40 establish a record of the proceedings conducted under the dispute  
41 resolution procedure, which shall be accessible to the public and may  
42 be used as guidance in subsequent dispute resolution proceedings.

43 d. With respect to disputes as to the diagnosis, the medical  
44 necessity of the treatment or diagnostic test administered to the injured  
45 person, whether the injury is causally related to the insured event or  
46 is the product of a preexisting condition, or disputes as to the

1 appropriateness of the protocols utilized by the provider, the dispute  
2 resolution professional shall, either at his option or at the request of  
3 any party to the dispute, refer the matter to a medical review  
4 organization for a determination. The determination of the medical  
5 review organization on the dispute referred shall be **[binding upon]**  
6 presumed to be correct by the dispute resolution professional, which  
7 presumption may be rebutted by a preponderance of the evidence.  
8 Should the dispute resolution professional find that the decision of the  
9 medical review organization is not correct, the reasons supporting that  
10 finding shall be set forth in the dispute resolution professional's written  
11 decision.

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

25 (cf: P.L. , c. , s. 24 (now before the Legislature as Senate Bill No.  
26 3 (2R) of 1998))

27

28 5. Section 26 of P.L. , c. (C. ) (now before the Legislature as  
29 Senate Bill No. 3 (2R) of 1998) is amended to read as follows:

30 26. Every insurer writing private passenger automobile insurance  
31 in this State and every rating organization establishing territorial rating  
32 plans on behalf of its member companies shall establish new territorial  
33 rating plans in place of the **[insurer]** insurer's or filer's territorial rating  
34 plan in effect on June 1, 1998, which shall include territorial  
35 definitions, territorial relativity factors and territorial base rates, and  
36 which are in accordance with the provisions of sections 26 through 29  
37 of this amendatory and supplementary act. The Commissioner of  
38 Banking and Insurance shall promulgate regulations establishing  
39 standards governing the establishment of new rating territories, which  
40 standards shall include, but not be limited to:

41 a. Territories shall be defined in such a manner as to recognize  
42 throughout the territorial rating plan both qualitative similarities and  
43 qualitative differences in driving environments or mix of driving  
44 environments, which may include, but not be limited to, traffic density,  
45 population density, comparative severity of loss, and the degree of  
46 homogeneity within a territory in terms of driving environments,

- 1 population, and driver classification, and the territory shall be  
2 comprised of towns or cities which are contiguous;
- 3 b. Territories shall contain a sufficient number of exposures to  
4 result in statistically credible experience, in accordance with  
5 regulations established by the commissioner, and shall be defined in a  
6 manner which minimizes the effect of variability of loss in a territory  
7 on a year-to-year basis;
- 8 c. Territory definitions shall take into account the impact of the  
9 overlapping of traffic patterns on exposure to loss, including the  
10 relative number of intraterritory trips and inter-territory trips  
11 applicable to each proposed territory, for which the commissioner shall  
12 make available to the insurer, filer, or the commission established  
13 pursuant to section 28 of this amendatory and supplementary act,  
14 appropriate information collected pursuant to the provisions of section  
15 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;
- 16 d. Territories shall be created in a manner which results in an  
17 equable distribution of exposures among territories throughout the  
18 State and no territorial rating plan shall result in territories which are  
19 arbitrary, unfairly discriminatory, significantly disproportionate in  
20 terms of the number of exposures per territory, or created in a manner  
21 which is primarily for marketing purposes rather than measuring  
22 relativity of exposure to probable loss, or created in a manner which  
23 can be used to avoid the [insurer] insurer's or filer's obligations under  
24 section 27 of P.L.1990, c.8 (C.17:33B-15);
- 25 e. Territories shall be created in a manner which does not result in  
26 disproportionate differences in territorial relativity factors or territorial  
27 base rates between contiguous territories with similar driving  
28 environments or similar mix of driving environments;
- 29 f. Factors to be considered in establishing territorial rate relativities  
30 shall include taking into account similarities or differences in driving  
31 environments or mix of driving environments, including traffic density,  
32 population density, mix of driver classifications within a territory,  
33 including classifications capped pursuant to the provisions of section  
34 7 of P.L.1983, c.65 (C.17:29A-36), comparative degree of severity  
35 of loss, and the relative number of intraterritory and inter-territory  
36 trips;
- 37 g. Territories shall be defined in a manner which does not result in  
38 unfair inter-territorial subsidization among territories with significant  
39 differences in driving environments or mix of driving environments,  
40 population density, traffic density, mix of driver classifications,  
41 including classifications capped pursuant to the provisions of section  
42 7 of P.L.1983, c.65 (C.17:29A-36) and comparative degree of severity  
43 of loss.
- 44 h. For the purpose of defining territories and establishing territorial  
45 relativity factors, loss experience allocated to any territory by an  
46 insurer or filer (1) shall take into account any recovery applicable to

1 exposures in the territory which are attributable to subrogation or any  
2 other kind of recovery by the insurer reporting the losses and (2) shall  
3 not include any loss attributable to capping of driver classifications  
4 pursuant to section 7 of P.L.1983, c.65 (C.17:29A-36).

5 The commissioner shall establish by regulation the minimum number  
6 of exposures which shall be deemed to meet the standard of being  
7 statistically credible for the purpose of defining territories.  
8 (cf: P.L. , c. , s. 26 (now before the Legislature as Senate Bill No.  
9 3 (2R) of 1998))

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

13 7. a. Any filing made for the purpose of automobile insurance rate  
14 making shall indicate the actual rate needs of the filer; provided,  
15 however, that (a) each filer's rate classification definitions, as used by  
16 that filer, shall be uniform Statewide; **[and]** (b) the automobile  
17 insurance rate charged an insured shall not exceed two and one-half  
18 times the filer's territorial base rate for each coverage, exclusive of  
19 driving record surcharges and discounts; and (c) the automobile  
20 insurance rate of the base class in any territory for any filer shall not  
21 exceed 1.35 times the filer's Statewide average base rate for each  
22 coverage, exclusive of driving record surcharges and discounts for any  
23 basic policy issued or renewed at any time and for any standard policy  
24 issued or renewed before January 1, 2000 or the 180th day following  
25 approval of the common territorial rating plan pursuant to section 28  
26 of P.L.1998, c. (C. )(now before the Legislature as Senate Bill  
27 No. 3 (2R) of 1998), whichever first occurs.

28 b. No rating plan or rate filing applicable to any policy issued or  
29 renewed on or after January 1, 2000 or the 180th day following the  
30 approval of the common territorial rating **[territory]** plan provided for  
31 in sections 27 **[through]** and 28 of P.L.1998, c. (C. )(now before  
32 the Legislature as Senate Bill No. 3 (2R) of 1998), whichever first  
33 occurs, shall be approved by the commissioner which creates territorial  
34 relativities which are significantly disproportionate to those in effect  
35 as of the effective date of P.L. , c. (C. )(now before the  
36 Legislature as Senate Bill No. 3 (2R) of 1998).

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

45 **[e.] d.** As a result of the filings made pursuant to sections 26 and  
46 27 of P.L.1998, c. (C. )(now before the Legislature as Senate Bill

1 No. 3 (2R) of 1998) and [subparagraphs] subsections a., b. and c. of  
2 this section, the filer's aggregate premium for all territories shall not  
3 exceed the filer's aggregate premium in effect prior to the date  
4 established in [subparagraph (a) of] subsection b. of this section.

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

15 The provisions of this section shall be implemented after the  
16 implementation of the provisions of subsection a. of section 8 of [this  
17 act] P.L.1983, c.65 (C. 17:29A-37).

18 (cf: P.L. , c. , s.29 (now before the Legislature as Senate Bill No.  
19 3 (2R) of 1998))

20

21 7. Section 50 of P.L.1990, c.8 (C.17:33B-41) is amended to read  
22 as follows:

23 50. a. Upon the termination of a policy of motor vehicle liability  
24 insurance by cancellation for nonpayment of premium pursuant to  
25 section 2 of P.L.1968, c.158 (C.17:29C-7), notice of that cancellation  
26 shall be filed by the insurer with the Division of Motor Vehicles not  
27 later than 30 days following the effective date of that cancellation.

28 b. The division shall notify the person whose policy was canceled  
29 that, unless proof of motor vehicle liability insurance is filed with the  
30 division within 30 days of the notification or some other allowable  
31 circumstance exists and the division is notified of that circumstance  
32 within 30 days of the notification, the sanctions and penalties of this  
33 section shall apply.

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

38 (1) Suspension shall not be made under this subsection upon the  
39 basis of a cancellation of motor vehicle liability insurance if the  
40 registration certificate and registration plates of the motor vehicle are  
41 surrendered prior to the time at which the cancellation of insurance  
42 becomes effective. Such surrender shall be made to such officers of  
43 the division as the director shall direct. For the purposes of this  
44 paragraph, the expiration of a registration without renewal of that  
45 registration shall be deemed to be a surrender of registration as of the  
46 date of expiration;

1 (2) Suspension shall not be made under this subsection upon a  
2 cancellation of motor vehicle liability insurance if the vehicle has been,  
3 or will be, prior to the date of that cancellation, removed from the  
4 United States in North America and the Dominion of Canada for the  
5 purpose of international traffic, provided that the owner of the vehicle,  
6 prior to the date of that cancellation, has filed with the director a  
7 statement, in a form prescribed by him, indicating that the vehicle has  
8 been, or will be, so removed, and agreeing to notify the director  
9 immediately upon return of the vehicle to the United States in North  
10 America or the Dominion of Canada. Upon receipt of the statement  
11 the director shall restrict the use of the registration to such  
12 international traffic until new proof that motor vehicle liability  
13 insurance has been secured for the vehicle;

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

20 d. Notwithstanding the provisions of subsection c. of this section,  
21 an order of suspension may be rescinded if the registrant pays to the  
22 commissioner a civil penalty in the amount of \$4 for each day up to 90  
23 days for which motor vehicle liability insurance was not in effect. The  
24 provisions of this subsection shall apply only once during any  
25 36-month period and only if the registrant surrenders the certificate of  
26 registration and registration plates to the director not more than 90  
27 days from the date of cancellation of motor vehicle liability insurance  
28 coverage or submits to the director proof of motor vehicle liability  
29 insurance which took effect not more than 90 days from the  
30 cancellation of his previous motor vehicle liability insurance.

31 e. Any motor vehicle, the registration for which has been  
32 suspended pursuant to this section, shall not be registered or  
33 reregistered in the name of the same registrant, or in any other name  
34 where the director has reasonable grounds to believe that such  
35 registration or reregistration will have the effect of defeating the  
36 purposes of this section, and no other motor vehicle shall be registered  
37 in the name of such person during the period of suspension.

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

40 g. If a registrant has not surrendered his certificate of registration  
41 and registration plates or obtained motor vehicle liability insurance  
42 within 90 days from the date of cancellation of motor vehicle liability  
43 insurance, the director shall suspend the driver's license of any such  
44 registrant. The suspension shall take effect on the date specified in the  
45 order and shall remain in effect until termination of the suspension of  
46 the registrant's registration.

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

8 i. Within 180 days of the effective date of this act the Division of  
9 Motor Vehicles shall develop a format for electronic reporting by  
10 insurers writing private passenger automobile insurance, to the  
11 division, on a real-time basis, information regarding the cancellation  
12 of policies of motor vehicle insurance, the issuance of new policies of  
13 motor vehicle insurance, and changes of vehicle on policies of motor  
14 vehicle insurance in force in order to verify compliance with the motor  
15 vehicle liability insurance requirements of section 1 of P.L.1972, c.197  
16 (C.39:6B-1), and the mandatory automobile insurance requirements of  
17 section 4 of P.L.1998, c. (C. ) (as amended by section 1 of this bill).  
18 Information shall be maintained by driver's license number of the  
19 named insured. Other information to be provided by insurers shall be  
20 established by the director by regulation.

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

33 k. The data base shall be funded from the Uninsured Motorist  
34 Prevention Fund established pursuant to section 2 of P.L.1983, c.141  
35 (C.39:6B-3).

36 (cf: P.L. , c. , s.30 (now before the Legislature as Senate Bill No.  
37 3 (2R) of 1998))

38  
39 8. Section 66 of P.L. , c. (C. ) (now before the Legislature  
40 as Senate Bill No. 3 (2R) of 1998) is amended to read as follows:

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

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

46 "Rate filing" means a filing for a rate increase by an automobile

1 insurer writing private passenger automobile insurance in this State,  
2 other than an expedited prior approval rate filing made pursuant to  
3 section 34 of P.L.1997, c.151 (C.17:29A-46.6) and other than a rate  
4 filing made pursuant to any statutory change in coverage provided  
5 under a policy of private passenger automobile insurance.

6 b. The Commissioner of Banking and Insurance shall establish  
7 standards for qualifying persons to intervene in rate filings pursuant to  
8 this section. The standards shall include, but shall not necessarily be  
9 limited to, requiring that any person intervening in a rate filing  
10 demonstrate: (1) expertise in the insurance laws of this State; (2) an  
11 understanding of the actuarial principles employed in establishing rates  
12 and rating systems; (3) sufficient access to a qualified actuary and  
13 sufficient expertise to conduct a technical examination of a rate filing;  
14 (4) sufficient resources to intervene in the rate filing process as  
15 provided herein; and (5) that the person represents the interest of  
16 consumers and accepts a duty of fidelity to do so.

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

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

25 e. If an insurer or rating organization files for a rate increase for  
26 private passenger automobile insurance, the commissioner shall notify  
27 the public of the proposed rate change in a newspaper or newspapers  
28 of general circulation throughout the State. A qualified person may  
29 request, and shall receive, a copy of the rate filing and any  
30 amendments and supplements thereto and shall pay the expenses in  
31 connection therewith. The qualified person may request that the  
32 commissioner certify the rate filing for a hearing pursuant to section  
33 14 of P.L.1944, c.27 (C.17:29A-14).

34 f. The commissioner shall establish by regulation the terms and  
35 conditions under which the proceedings under this section shall be  
36 conducted, including, but not limited to the supporting material which  
37 shall accompany the intervention.

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

43 h. A person commits a crime of the third degree if he solicits,  
44 accepts or agrees to accept any benefits as consideration for  
45 knowingly violating or agreeing to violate a duty of fidelity to which  
46 he is subject pursuant to this section. In addition[, ] to any disposition

1 authorized by law, the Commissioner of Banking and Insurance shall  
2 forever bar from registration as an intervenor any person convicted  
3 under this subsection.

4 i. A person commits a crime of the third degree if he confers, or  
5 offers or agrees to confer, any benefit the acceptance of which would  
6 be criminal under this section. In addition to any disposition  
7 authorized by law, the Commissioner of Banking and Insurance shall  
8 deny the rate filing of any person convicted under this subsection and  
9 the person shall be barred from filing for any rate increase for a period  
10 of one year.

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

13 (cf: P.L. , c. , s. 66 (now before the Legislature as Senate Bill  
14 No. 3 (2R) of 1998))

15  
16 9. This act shall take effect immediately upon the enactment of  
17 P.L. , c. (now before the Legislature as Senate Bill No. 3 (2R) of  
18 1998), except that sections 1 through 4 and section 8 of this act shall  
19 remain inoperative until the 90th day following the establishment by  
20 the Commissioner of Banking and Insurance of basic benefits required  
21 to be provided pursuant to section 4 of P.L. 1972, c. 70 (C. 39:6-4)  
22 or the adoption by rule of the professional boards of the designation  
23 of valid diagnostic tests pursuant to the provisions of section 12 of  
24 P.L. , c. (C. )(now before the Legislature as Senate Bill No. 3  
25 (2R) of 1998), whichever is later.

26

27

28

#### STATEMENT

29

30 This bill amends certain provisions of the "Automobile Insurance  
31 Cost Reduction Act," P.L. , c. , now pending before the Legislature  
32 as Senate Bill No. 3 (2R) of 1998. In some cases, the amendments are  
33 technical in nature, to correct or clarify the provisions of the bill as  
34 amended by the Governor's conditional veto; in other cases, the  
35 amendments make substantive changes or clarifications to the bill's  
36 provisions, namely:

37 1. The bill amends the current version of the dispute resolution  
38 procedure to modify the weight which should be given to a  
39 determination of a medical review organization. Instead of the  
40 medical review organization's determination being binding upon the  
41 dispute resolution professional, it will be presumed to be correct,  
42 which presumption may be rebutted by a preponderance of the  
43 evidence. Further, should the dispute resolution professional find that  
44 the determination of the medical review organization is not correct,  
45 the reasons supporting that finding shall be set forth in the dispute  
46 resolution professional's written decision.

**S1051 DIFRANCESCO, ADLER**

20

1       2. Amendments made to the statute concerning rate "caps" by the  
2 Governor's conditional veto message are modified to clarify that the  
3 existing 1.35 cap on an insurer's rate for the base class in any territory  
4 will remain in effect for the new basic policy authorized by Senate Bill  
5 No. 3 (2R). Other internal technical amendments are made to this  
6 section as well.