CHAPTER 151

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

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

C.17:33B-64 Findings, declarations relative to automobile insurance.

1. The Legislature finds and declares:

a. There continues to be a need to improve and expand the availability of automobile insurance in certain urban geographic areas of the State. To better serve consumers' needs and stimulate competition in these areas, it is necessary to create business opportunities aimed at increasing and promoting economic activity by establishing automobile insurance urban enterprise zones (UEZs), which will provide incentives for insurers to increase their writings in these urban centers through, among other things, the appointment of urban enterprise zone agents. To achieve that goal, the Legislature further finds:

(1) That the creation of business incentives aimed at increasing and promoting economic activity in specially designated Urban Enterprise Zones has been effectively utilized by the State in the past;

(2) That consumers located in a limited number of the State's urban centers would benefit from an increase in the number of locations at which they could secure automobile insurance;

(3) That to better serve the needs of automobile insurance consumers and stimulate competition and economic activity, access to automobile insurance needs to be expanded in certain defined urban areas of the State; and

(4) That the development of increased access to automobile insurance needs to be encouraged by establishing incentives for insurers to increase their writings in these urban centers through, among other things, the appointment of urban enterprise zone agents and the use of unused capacity in the assigned risk plan to provide additional accessible coverage.

b. Certain aspects of the current automobile insurance system are unfair and need to be reformed. To this end, it is in the public interest to:

(1) eliminate the current system of flex-rating, which guarantees insurers an increase in their rates each year regardless of need;

(2) eliminate the current surcharge system based on automobile insurance eligibility points that unfairly penalizes good drivers because of recent minor traffic infractions, and provide for a system of rating tiers to provide greater flexibility in evaluating and rating risks based on factors that more accurately reflect the driver's characteristics; and

(3) revise current provisions of the law that permit insurers to arbitrarily and unfairly nonrenew insureds without reason.

c. It is also in the public's interest to increase efforts to fight fraud that occurs in the automobile insurance system, including:

(1) toughening sanctions on insurance companies that fail to implement fraud prevention programs, and on licensed professionals and drivers who make fraudulent claims; and

(2) improving efforts to educate law enforcement and the public on how to identify fraud.

2. Section 3 of P.L.1983, c.320 (C.17:33A-3) is amended to read as follows:

C.17:33A-3 Definitions.

3. As used in this act:

"Attorney General" means the Attorney General of New Jersey or his designated representatives.

"Commissioner" means the Commissioner of Banking and Insurance.

"Director" means the Director of the Division of Insurance Fraud Prevention in the Department of Banking and Insurance.

"Division" means the Division of Insurance Fraud Prevention established by this act.

"Hospital" means any general hospital, mental hospital, convalescent home, nursing home or any other institution, whether operated for profit or not, which maintains or operates facilities for health care.

"Insurance company" means:

a. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (C.17B:17-1 et seq.);

b. Any medical service corporation operating pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.);

c. Any hospital service corporation operating pursuant to P.L.1938, c.366 (C.17:48-1 et seq.);

d. Any health service corporation operating pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.);

e. Any dental service corporation operating pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.);

f. Any dental plan organization operating pursuant to P.L.1979, c.478 (C.17:48D-1 et seq.);

g. Any insurance plan operating pursuant to P.L.1970, c.215 (C.17:29D-1);

h. The New Jersey Insurance Underwriting Association operating pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);

i. The New Jersey Automobile Full Insurance Underwriting Association operating pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) and the Market Transition Facility operating pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11); and

j. Any risk retention group or purchasing group operating pursuant to the "Liability Risk Retention Act of 1986," 15 U.S.C. §3901 et seq.

"Pattern" means five or more related violations of P.L.1983, c.320 (C.17:33A-1 et seq.). Violations are related if they involve either the same victim, or same or similar actions on the part of the person or practitioner charged with violating P.L.1983, c.320 (C.17:33A-1 et seq.).

"Person" means a person as defined in R.S.1:1-2, and shall include, unless the context otherwise requires, a practitioner.

"Principal residence" means that residence at which a person spends the majority of his time. Principal residence may be an abode separate and distinct from a person's domicile. Mere seasonal or weekend residence within this State does not constitute principal residence within this State.

"Practitioner" means a licensee of this State authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of this State whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

"Producer" means an insurance producer as defined in section 2 of P.L.1987, c.293 (C.17:22A-2), licensed to transact the business of insurance in this State pursuant to the provisions of the "New Jersey Insurance Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et seq.).

"Statement" includes, but is not limited to, any application, writing, notice, expression, statement, proof of loss, bill of lading, receipt, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X-ray, test result or other evidence of loss, injury or expense.

3. Section 4 of P.L.1983, c.320 (C.17:33A-4) is amended to read as follows:

C.17:33A-4 Violations.

4. a. A person or a practitioner violates this act if he:

(1) Presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(2) Prepares or makes any written or oral statement that is intended to be presented to any insurance company, the Unsatisfied Claim and Judgment Fund or any claimant thereof in connection with, or in support of or opposition to any claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(3) Conceals or knowingly fails to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled;

(4) Prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining:

(a) a motor vehicle insurance policy, that the person to be insured maintains a principal residence

in this State when, in fact, that person's principal residence is in a state other than this State; or

(b) an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract; or

(5) Conceals or knowingly fails to disclose any evidence, written or oral, which may be relevant to a finding that a violation of the provisions of paragraph (4) of this subsection a. has or has not occurred.

b. A person or practitioner violates this act if he knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of this act.

c. A person or practitioner violates this act if, due to the assistance, conspiracy or urging of any person or practitioner, he knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this act.

d. A person or practitioner who is the owner, administrator or employee of any hospital violates this act if he knowingly allows the use of the facilities of the hospital by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this act.

e. A person or practitioner violates this act if, for pecuniary gain, for himself or another, he directly or indirectly solicits any person or practitioner to engage, employ or retain either himself or any other person to manage, adjust or prosecute any claim or cause of action, against any person, for damages for negligence, or, for pecuniary gain, for himself or another, directly or indirectly solicits other persons to bring causes of action to recover damages for personal injuries or death, or for pecuniary gain, for himself or another, directly or indirectly solicits other persons to make a claim for personal injury protection benefits pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.); provided, however, that this subsection shall not apply to any conduct otherwise permitted by law or by rule of the Supreme Court.

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

C.17:33A-5 Remedies; penalties; fund established.

5. a. Whenever the commissioner determines that a person has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.), the commissioner may either:

(1) bring a civil action in accordance with subsection b. of this section; or

(2) levy a civil administrative penalty and order restitution in accordance with subsection c. of this section.

In addition to or as an alternative to the remedies provided in this section, the commissioner may request the Attorney General to bring a criminal action under applicable criminal statutes. Additionally, nothing in this section shall be construed to preclude the commissioner from referring the matter to appropriate state licensing authorities, including the insurance producer licensing section in the Department of Banking and Insurance, for consideration of licensing actions, including license suspension or revocation.

b. Any person who violates any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with subsection e. of this section. The court shall also award court costs and reasonable attorneys' fees to the commissioner.

c. The commissioner is authorized to assess a civil and administrative penalty of not more than $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation of any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) and to order restitution to any insurance company or other person who has suffered a loss as a result of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.). No assessment shall be levied pursuant to this subsection until the violator has been notified by certified mail or personal service. The notice shall contain a concise statement of facts providing the basis for the determination of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.), the provisions of that act violated, a statement of the amount of civil penalties assessed and a statement of the party’s right to a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed party shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing

containing an answer to the statement of facts contained in the notice. After the hearing and upon a finding that a violation has occurred, the commissioner may issue a final order assessing up to the amount of the penalty in the notice, restitution, and costs of prosecution, including attorneys' fees. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order.

Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to “the penalty enforcement law,” N.J.S.2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the provisions of the “the penalty enforcement law” in connection with P.L.1983, c.320 (C.17:33A-1 et seq.). Any penalty collected pursuant to this subsection shall be used in accordance with subsection e. of this section.

d. Nothing in this section shall be construed to prohibit the commissioner and the person or practitioner alleged to be guilty of a violation of this act from entering into a written agreement in which the person or practitioner does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may contain a provision that it shall not be used in a subsequent civil or criminal proceeding relating to any violation of this act, but notification thereof shall be made to a licensing authority in the same manner as required pursuant to subsection c. of section 10 of P.L.1983, c.320 (C.17:33A-10). The existence of a consent agreement under this subsection shall not preclude any licensing authority from taking appropriate administrative action against a licensee over which it has regulatory authority, nor shall such a consent agreement preclude referral to law enforcement for consideration of criminal prosecution.

e. The New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund (hereinafter referred to as the "fund") is established as a nonlapsing, revolving fund into which shall be deposited all revenues from the civil penalties imposed pursuant to this section. Interest received on moneys in the fund shall be credited to the fund. The fund shall be administered by the Commissioner of Banking and Insurance and shall be used to help defray the operating expenses of the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or shall be used to help defray the operating expenses of the Market Transition Facility created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).

5. Section 7 of P.L.1983, c.320 (C.17:33A-7) is amended to read as follows:

C.17:33A-7 Actions by insurance companies against violators.

7. a. Any insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction to recover compensatory damages, which shall include reasonable investigation expenses, costs of suit and attorneys fees.

b. A successful claimant under subsection a. shall recover treble damages if the court determines that the defendant has engaged in a pattern of violating this act.

c. A claimant under this section shall mail a copy of the initial claim, amended claim, counterclaims, briefs and legal memoranda to the commissioner at the time of filing of such documents with the court wherein the matter is pending. A successful claimant shall report to the commissioner, on a form prescribed by the commissioner, the amount recovered and such other information as is required by the commissioner.

d. Upon receipt of notification of the filing of a claim by an insurer, the commissioner may join in the action for the purpose of seeking judgment for the payment of a civil penalty authorized under section 5 of this act. If the commissioner prevails, the court may also award court costs and reasonable attorney fees actually incurred by the commissioner.

e. No action shall be brought by an insurance company under this section more than six years after the cause of action has accrued.

6. Section 10 of P.L.1983, c.320 (C.17:33A-10) is amended to read as follows:

C.17:33A-10 Subpena powers; violations by persons licensed by State.

10. a. If the division has reason to believe that a person has engaged in, or is engaging in, an act

or practice which violates this act, or any other relevant statute or regulation, the commissioner or his designee may administer oaths and affirmations, request or compel the attendance of witnesses or the production of documents. The commissioner may issue, or designate another to issue, subpenas to compel the attendance of witnesses and the production of books, records, accounts, papers and documents. Witnesses who are not licensees of the Department of Banking and Insurance shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State.

If a person subpenaed pursuant to this section shall neglect or refuse to obey the command of the subpena, a judge of the Superior Court may, on proof by affidavit of service of the subpena, of payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpena, issue a warrant for the arrest of said person to bring him before the judge, who is authorized to proceed against the person as for a contempt of court.

b. If matter that the division seeks to obtain by request is located outside the State, the person so required may make it available to the division or its representative to examine the matter at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

c. If (1) a practitioner, (2) an owner, administrator or employee of any hospital, (3) an insurance company, agent, broker, solicitor or adjuster, or (4) any other person licensed by a licensing authority of this State, or an agent, representative or employee of any of them is found to have violated any provision of this act, the commissioner or the Attorney General shall notify the appropriate licensing authority of the violation so that the licensing authority may take appropriate administrative action. The licensing authority shall report quarterly to the commissioner through the Division of Insurance Fraud Prevention about the status of all pending referrals.

7. Section 11 of P.L.1983, c.320 (C.17:33A-11) is amended to read as follows:

C.17:33A-11 Handling of documents, records of investigations.

11. Papers, documents, reports, or evidence relative to the subject of an investigation under this act shall not be subject to public inspection except as specifically provided in this act. The commissioner shall not detain subpenaed records after an investigation is closed or, if a claim for a civil penalty is filed by the commissioner pursuant to section 5 or subsection d. of section 7, upon final disposition of the claim by a court of competent jurisdiction, whichever shall be the later date. Subpenaed records shall be returned to the persons from whom they were obtained. The commissioner may, in his discretion, make relevant papers, documents, reports, or evidence available to the Attorney General, an appropriate licensing authority, law enforcement agencies, an insurance company or insurance claimant injured by a violation of this act, consistent with the purposes of this act and under such conditions as he deems appropriate. Such papers, documents, reports, or evidence shall not be subject to subpena, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines that the commissioner would not be unnecessarily hindered by such subpena. Division investigators and insurance company fraud investigators shall not be subject to subpena in civil actions by any court of this State to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the division, or a pending claim for civil penalties initiated by the commissioner.

8. Section 1 of P.L.1993, c.362 (C.17:33A-15) is amended to read as follows:

C.17:33A-15 Filing of plan for prevention, detection of fraudulent health, auto insurance claims.

1. a. Every insurer writing health insurance or private passenger automobile insurance in this State shall file with the commissioner a plan for the prevention and detection of fraudulent insurance applications and claims. The plan shall be deemed approved by the commissioner if not affirmatively approved or disapproved by the commissioner within 90 days of the date of filing. The commissioner may call upon the expertise of the director in his review of plans filed pursuant to this subsection. The commissioner may request such amendments to the plan as he deems necessary. Any subsequent amendments to a plan filed with and approved by the commissioner shall be submitted for filing and

deemed approved if not affirmatively approved or disapproved within 90 days from the filing date.

b. The implementation of plans filed and approved pursuant to subsection a. of this section shall be monitored by the division. The division shall promptly notify the Attorney General of any evidence of criminal activity encountered in the course of monitoring the implementation and execution of the plans. Each insurer writing health insurance or private passenger automobile insurance in this State shall report to the director on an annual basis, on January 1st of each year, on the experience in implementing its fraud prevention plan.

c. In addition to any other penalties provided pursuant to P.L.1983, c.320 (C.17:33A-1 et seq.), the commissioner may impose a penalty of up to $25,000 per violation on any insurer for: failure to submit a plan; failure to submit any amendments to an approved plan; failure to properly implement an approved plan in a reasonable manner and within a reasonable time period; failure to provide a report pursuant to subsection b. of this section; or for any other violation of the provisions of this section.

d. For the purposes of this section, "insurer" means an insurance company as defined in subsections a., b., c., d., e., and f. of section 3 of P.L.1983, c.320 (C.17:33A-3).

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

C.39:6A-15 Penalties for false and fraudulent representation.

15. In any claim or action arising under section 4 of this act wherein any person, obtains or attempts to obtain from any other person, insurance company or Unsatisfied Claim and Judgment Fund any money or other thing of value by (1) falsely or fraudulently representing that such person is entitled to benefits under section 4 or, (2) falsely and fraudulently making statements or presenting documentation in order to obtain or attempt to obtain benefits under section 4 or, (3) cooperates, conspires or otherwise acts in concert with any person seeking to falsely or fraudulently obtain, or attempt to obtain, benefits under section 4 may upon conviction be fined not more than $5,000.00, or imprisoned for not more than 3 years or both, or in the event the sum so obtained or attempted to be obtained is not more than $500.00, may upon conviction, be fined not more than $500.00, or imprisoned for not more than six months or both, as a disorderly person.

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

10. Section 8 of P.L.1978, c.73 (C.45:1-21) is amended to read as follows:

C.45:1-21 Refusal to license or renew, grounds.

8. A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license

a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;

b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

c. Has engaged in gross negligence, gross malpractice or gross incompetence;

d. Has engaged in repeated acts of negligence, malpractice or incompetence;

e. Has engaged in professional or occupational misconduct as may be determined by the board;

f. Has been convicted of any crime involving moral turpitude or any crime relating adversely to the activity regulated by the board. For the purpose of this subsection a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;

h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;

i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;

j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;

k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction.

For purposes of this act:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of permit for which application is made.

"Permit" has the same meaning as defined in section 1 of P.L.1991,c.421 (C.13:1D-101).

11. Section 3 of P.L.1983, c.248 (C.45:9-19.3) is amended to read as follows:

C.45:9-19.3 Confidentiality of information.

3. Any information concerning the conduct of a physician or surgeon provided to the State Board of Medical Examiners pursuant to section 1 of P.L.1983, c.248 (C.45:9-19.1), section 5 of P.L.1978, c.73 (C.45:1-18) or any other provision of law, is confidential pending final disposition of the inquiry or investigation by the board, except for that information required to be shared with the Division of Insurance Fraud Prevention in the Department of Banking and Insurance to comply with the provisions of section 9 of P.L.1983, c.320 (C.17:33A-9) or with any other law enforcement agency. If the result of the inquiry or investigation is a finding of no basis for disciplinary action by the board, the information shall remain confidential, except that the board may release the information to a government agency, for good cause shown, upon an order of the Superior Court after notice to the physician or surgeon who is the subject of the information and an opportunity to be heard. The application for the court order shall be placed under seal.

12. Section 2 of P.L.1972, c.197 (C.39:6B-2) is amended to read as follows:

C.39:6B-2 Penalties.

2. Any owner or registrant of a motor vehicle registered or principally garaged in this State who operates or causes to be operated a motor vehicle upon any public road or highway in this State without motor vehicle liability insurance coverage required by this act, and any operator who operates or causes a motor vehicle to be operated and who knows or should know from the attendant circumstances that the motor vehicle is without motor vehicle liability insurance coverage required by this act shall be subject, for the first offense, to a fine of not less than $300 nor more than $1,000 and a period of community service to be determined by the court, and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of one year from the date of conviction. Upon subsequent conviction, he shall be subject to a fine of up to $5,000 and shall be subject to imprisonment for a term of 14 days and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall forfeit his right to operate a motor vehicle for a period of two years from the date of his conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director. The director's discretion shall be based upon an assessment of the likelihood that the individual will operate or cause a motor vehicle to be operated in the future without the insurance coverage required by this act. A complaint for violation of this act may be made to a municipal court at any time within six months after the date of the alleged offense.

Failure to produce at the time of trial an insurance identification card or an insurance policy which was in force for the time of operation for which the offense is charged creates a rebuttable presumption that the person was uninsured when charged with a violation of this section.

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

C.39:6A-4.5 Loss of right to sue for failure to insure, for DWI, for intentional acts.

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

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

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

C.17:29A-46.1 Rating plans for auto insurance.

14. a. Every insurer transacting or proposing to transact private passenger automobile insurance may file one or more rating plans in the voluntary market. Every insurer writing private passenger automobile insurance in this State which intends to write coverage in the voluntary market using more than one rate level shall file with the commissioner the rates and underwriting rules which are applicable to each rate level.

b. An insurer which intends to use more than one rating plan may make an initial filing for additional rating plans which are based on a percentage increase or decrease of the existing rate level in its current rating plan.

c. Notwithstanding any other law to the contrary, any initial rates filed pursuant to subsection b. of this section shall be deemed to be approved if not disapproved by the commissioner within 120 days of receipt of the filing by the department. Any subsequent modification of any rate level, or any initial rate level which is not based on a percentage increase or decrease of an existing rate level as provided for in this section, shall be subject to the provisions of P.L.1944, c.27 (C.17:29A-1 et seq.).

d. Any limitation on rates established by the provisions of section 7 of P.L.1983, c.65 (C.17:29A-36) shall apply separately to each rate level established pursuant to subsection a. of this section.

C.17:29A-46.2 Underwriting rules; factors.

15. a. Insurers shall put in writing all underwriting rules applicable to each rate level utilized pursuant to section 14 of this amendatory and supplementary act. An insurer may take into account factors, including, but not limited to, driving record characteristics appropriate for underwriting and classification in formulating its underwriting rules; provided that no underwriting rule based on motor vehicle violations shall be formulated in such a manner as to assign any named insured to a rating tier other than the standard rating tier applicable to the insured's territory solely on the basis of accumulating six motor vehicle points or less. No underwriting rule shall operate in such a manner as to assign a risk to a rating plan on the basis of the territory in which the insured resides or any other factor which the commissioner finds is a surrogate for territory. An insurer which knowingly fails to transact automobile insurance consistently with its underwriting rules shall be subject to a fine of not less than $1,000 for each violation.

b. All underwriting rules applicable to each rate level as provided for in section 14 of this amendatory and supplementary act shall be filed with the commissioner and shall be subject to his prior approval. All underwriting rules shall be subject to public inspection. Insurers shall apply their underwriting rules uniformly and without exception throughout the State, so that every applicant or insured conforming with the underwriting rules will be insured or renewed, and so that every applicant not conforming with the underwriting rules will be refused insurance.

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

C.17:29A-46.3 Limitation of surcharges for motor vehicle points.

16. Except for a plan established pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1), and except as otherwise provided in section 17 of this amendatory and supplementary act, no insurer shall charge or collect surcharges based on motor vehicle violation penalty points promulgated by the Director of the Division of Motor Vehicles pursuant to section 1 of P.L.1982, c.43 (C.39:5-30.5) or the schedule of automobile insurance eligibility points promulgated by the Commissioner of Banking and Insurance pursuant to section 26 of P.L.1990, c.8 (C.17:33B-14).

C.17:29A-46.4 Initial rate filing.

17. Any initial rate filing made on or after the effective date of this section pursuant to the provisions of section 14 of this amendatory and supplementary act shall be revenue neutral by coverage based upon the insurer's current coverages and book of business with respect to eligible persons, as defined in section 25 of P.L.1990, c.8 (C.17:33B-13), insured by the insurer. In addition to the filing of revenue neutral multiple rating plans, the initial filing shall include consideration for the cost containment measures implemented pursuant to this amendatory and supplementary act. The effective rate filing of an insurer as of the effective date of this section shall continue in effect until the initial rate filing as required by this section made by that insurer has been approved by the commissioner, or is deemed approved pursuant to subsection c. of section 14 of this amendatory and supplementary act.

C.17:29A-46.5 Rules, regulations.

18. To provide for an orderly transition with minimum disruption to the private passenger automobile insurance market, the Commissioner of Banking and Insurance shall establish rules and regulations and administrative processes that are reasonable, necessary, appropriate and consistent with the provisions of sections 14 through 17 of this amendatory and supplementary act.

C.17:33C-1 Definitions relative to automobile insurance urban enterprise zone program.

19. As used in sections 19 through 23 of this amendatory and supplementary act:

"Automobile" means an automobile as defined pursuant to subsection a. of section 2 of P.L.1972, c.70 (C.39:6A-2).

"Automobile insurance urban enterprise zone" means a geographic area identified and designated by the commissioner pursuant to section 20 of this amendatory and supplementary act.

"Automobile insurance urban enterprise zone program" or "program" means an automobile insurance urban enterprise zone program established pursuant to section 20 of this amendatory and supplementary act.

"Automobile insurer" means an insurer or group of affiliated insurers admitted or authorized to transact the business of automobile insurance in this State.

"Commissioner" means the Commissioner of Banking and Insurance.

"Eligible person" means an eligible person as defined in section 25 of P.L.1990, c.8 (C.17:33B-13).

"Qualified insurer" means an automobile insurer that is a qualified insurer pursuant to section 21 of this amendatory and supplementary act.

"Urban enterprise zone agent" or "UEZ agent" means an insurance producer who is licensed pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.), is appointed by a qualified insurer to represent it in an automobile insurance urban enterprise zone under the terms of this amendatory and supplementary act and maintains a bona fide office within that automobile insurance urban enterprise zone.

C.17:33C-2 Automobile insurance urban enterprise zone program.

20. a. The commissioner shall establish in a fair and equitable manner an automobile insurance urban enterprise zone program designed to encourage greater availability of automobile insurance in certain urban areas of this State as designated pursuant to subsection b. of this section. The program shall provide for incentives that the commissioner deems necessary to encourage qualified insurers to write automobile insurance business in those areas and that adequately safeguard the interests of policyholders and the public.

b. The commissioner shall undertake a review of the availability of automobile insurance in this State and shall identify and designate as automobile insurance urban enterprise zones those urban-based geographic areas in which consumers would benefit from increased access to automobile insurance. In making this determination, the commissioner shall consider, among other things, representation by automobile insurers in those rating territories historically deemed underserved. To assist in this review, the commissioner may appoint an advisory committee composed of representatives of automobile insurers and insurance producer associations and individuals who reside in urban areas of this State. Automobile insurance urban enterprise zones designated pursuant to this section shall be defined by regulations promulgated by the commissioner. The commissioner shall conduct periodic reviews of the availability of automobile insurance throughout the State and may amend the regulations to modify the composition of designated automobile insurance urban enterprise zones for the purpose of furthering the intent of this amendatory and supplementary act.

C.17:33C-3 Standards for qualified insurer.

21. a. The commissioner shall establish by regulation standards for a qualified insurer. These standards may include, but not be limited to, demonstration by the automobile insurer that it has a plan to increase access to automobile insurance for consumers residing in an automobile insurance urban enterprise zone; demonstration by the automobile insurer that it has a plan to assist newly appointed UEZ agents in developing the skills necessary to manage a successful business; procedures to monitor and evaluate the impact of efforts to expand services to urban areas; and materials designed to assist urban consumers in understanding automobile insurance coverages. For an automobile insurer doing business on a direct writing basis, the standards may include, but not be limited to, the insurer's marketing plans and goals for increasing its writing of risks in automobile insurance urban enterprise zones. Additionally, the commissioner shall consider the insurer's past performance in providing automobile insurance to persons residing in automobile insurance urban enterprise zones.

b. An automobile insurer, which meets the applicable standards established pursuant to subsection a. of this section, may certify to the commissioner that it is a qualified insurer.

c. An automobile insurer that certifies to the commissioner that it meets the standards established pursuant to subsection a. of this section shall be considered a qualified insurer for the purposes of this amendatory and supplementary act. If at any time the commissioner determines that a qualified insurer fails to meet the standards established pursuant to subsection a. of this section, or if the commissioner determines it necessary for the protection of the public, he may suspend or revoke the insurer's certification as a qualified insurer. If the commissioner determines that a qualified insurer has failed to meet its marketing plan and goals pursuant to this section, the commissioner may suspend or revoke the insurer's certification as a qualified insurer. In making this determination, the commissioner shall consider the past performance of the insurer in providing automobile insurance in urban areas. If an automobile insurer certifies that it meets the standards for becoming a qualified insurer and it does not meet those standards, that insurer shall not be a qualified insurer for purposes of this amendatory and supplementary act and may, at the discretion of the commissioner, be subject to a fine of not more than $25,000.

d. Only qualified insurers shall be eligible to participate in the automobile insurance urban enterprise zone program.

C.17:33C-4 UEZ agents.

22. a. A qualified insurer may appoint a UEZ agent or agents. Any appointment of a UEZ agent shall comply with the provisions of section 15 of P.L.1987, c.293 (C.17:22A-15), except when there is a conflict with a provision of this amendatory and supplementary act or any regulation promulgated hereunder, this amendatory and supplementary act is controlling. An agency contract between a qualified insurer and a UEZ agent shall be in writing, set forth specific duties and responsibilities of the parties regarding the obligations imposed pursuant to this section and section 21 of this amendatory and supplementary act, and detail the provisions of any limit on the number of exposures provided for in subsection b. of this section.

b. A qualified insurer may limit the number of exposures written through a UEZ agent or in the case of a qualified insurer doing business on a direct writing basis, the qualified insurer may limit the

number of exposures written in an automobile insurance urban enterprise zone consistent with its marketing plans and goals as provided in subsection a. of section 21 of this amendatory and supplementary act. An eligible person applying for automobile insurance coverage after the limit is reached shall be advised by the UEZ agent that coverage may be available from another agent of the qualified insurer or directly from the qualified insurer if the insurer is a direct writer. Any such limit shall be imposed on an equitable and nondiscriminatory basis consistent with the provisions of subsections a. and b. of section 27 of P.L.1990, c.8 (C.17:33B-15) until the specified limit is reached.

c. The commissioner shall establish by regulation requirements that shall be satisfied if a qualified insurer limits the number of exposures written through a UEZ agent, and the manner in which a qualified insurer engaged in the business of automobile insurance on a direct writer basis may utilize the provisions of this section.

C.17:33C-5 Study on effect of territorial rating caps; report.

23. a. The commissioner shall study the effect of territorial rating caps imposed on automobile insurance rates pursuant to section 7 of P.L.1983, c.65 (C.17:29A-36). The study shall include an evaluation of the general market conditions resulting from the imposition of territorial rating caps, including, but not limited to: market availability; affordability of automobile insurance coverage; the actuarial soundness of, and statistical basis for, territorial cap systems; and the creation of competitive market conditions.

b. In conducting this study, the commissioner shall examine the rating systems in use in other highly urbanized areas of this nation.

c. The commissioner shall report his findings and recommendations within 12 months of the effective date of this amendatory and supplementary act to the Governor and the Legislature.

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

C.17:33B-15 Coverage for eligible persons; refusal to insure or renew, limitation of coverage of eligible persons prohibited.

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

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

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

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

25. Section 30 of P.L.1990, c.8 (C.17:33B-18) is amended to read as follows:

C.17:33B-18 Conditions of licensure.

30. a. A licensed insurance agent shall, as a condition of licensure:

(1) Provide each eligible person seeking automobile insurance premium quotations for the forms

or types of automobile insurance coverages which are offered by all insurers represented by the agent or with which the agent places risks;

(2) Not attempt to channel an eligible person away from an insurer or insurance coverage with the purpose or effect of avoiding an agent's obligation to submit an application or an insurer's obligation to accept an eligible person; and

(3) Upon request, submit an application of the eligible person for automobile insurance to the insurer selected by the eligible person.

If a UEZ agent has a contract with a qualified insurer pursuant to the provisions of section 22 of P.L.1997, c.151 (C.17:33C-4) and the UEZ agent is unable to place an otherwise eligible person with that qualified insurer because of the limitation on the number of exposures imposed by that qualified insurer on the UEZ agent, the UEZ agent shall be deemed to have met the requirements of this subsection, provided that the limitation on the number of exposures has been reached and the UEZ agent fulfills all applicable regulatory requirements.

b. With respect to automobile insurance, an insurer shall not penalize an agent by paying less than normal commissions or normal compensation or salary because of the expected or actual experience produced by the agent's automobile insurance business or because of the geographic location of automobile insurance business written by the agent.

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

C.17:29D-1 Rules, regulations for insurance plans; administration; requirements for auto plan.

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

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

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

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

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

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

d. That it shall not provide insurance coverage for more than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State. The plan shall provide for the cessation of the acceptance of applications or the issuance of new policies at any time it reaches 10 percent of marketshare, as

certified by the commissioner, until such time that the commissioner certifies that the plan is insuring less than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State;

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

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

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

h. That a qualified insurer who writes automobile insurance risks in those automobile insurance urban enterprise zones designated by the commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-2) shall receive assigned risk credits for voluntary risks written in those designated automobile insurance urban enterprise zones as a direct writer or through a UEZ agent or agents or through any agent with whom the insurer has an in-force contract as of the effective date of P.L.1997, c.151. The commissioner shall establish by regulation the manner in which any qualified automobile insurer may utilize the provisions of this subsection. In no event shall that credit apply to reduce an insurer's obligations under subsection i. of this section; and

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

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

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

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

(5) Qualified producers may submit eligible person risks from automobile insurance urban enterprise zones to the plan for coverage in the voluntary rating tier. As used in this subsection i.: a "qualified producer" means a UEZ agent, as defined in section 19 of P.L.1997, c.151 (C.17:33C-1), who has met any limit on exposures that may be written in accordance with the UEZ agent's agreement with the appointing insurer pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4); and a producer who: is duly licensed with property/casualty authority for the three years immediately preceding the effective date of P.L.1997, c.151 (C.17:33B-64 et al.); has no affiliation with a voluntary market insurer for the placement of automobile insurance; had an affiliation with a voluntary market insurer for the placement of automobile insurance that was terminated by the insurer in the last three years; demonstrates to the plan his competency, efficiency and effectiveness in the solicitation, negotiation and effectuation of automobile insurance as evidenced by any history of disciplinary actions or complaints against the producer, and other relevant factors; and conducts his business in an office in an automobile insurance urban enterprise zone. For purposes of this subsection i., 'insurer" means an insurer or group of affiliated insurers admitted or authorized to transact the business of automobile insurance in this State;

(6) This subsection shall expire on December 31, 2000.

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

The governing body administering the plan shall report annually to the Legislature and the Governor on the activities of the plan. The report shall contain an actuarial analysis regarding the

adequacy of the rates for each coverage for the safeness and soundness of the plan.

27. Section 26 of P.L.1988, c.119 (C.17:29C-7.1) is amended to read as follows:

C.17:29C-7.1 Refusal to renew, conditions.

26. a. Notwithstanding the provisions of section 3 of P.L.1972, c.70 (C.39:6A-3), a licensed insurer may, in accordance with subsections b. and c. of this section, refuse to renew a policy of private passenger automobile insurance that provides coverage required to be maintained pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), except that no insurer shall refuse to renew a policy pursuant to subsections b. and c. of this section:

(1) in an amount in excess of 20% of the entire private passenger automobile insurance book of business of any one producer in force with the insurer at the end of the previous calendar year. For purposes of this paragraph, "producer" means a person licensed pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.), who earned $10,000 or more from the insurer in the prior calendar year; and

(2) unless the insured or operator insured under the policy in the five years immediately preceding renewal has had at least two of the following or any combination thereof: (a) an at-fault accident; or (b) a moving violation which was assessed at least four automobile insurance eligibility points; or (c) had been required, but failed, to maintain coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4) without lapse.

b. For each calendar year period, an insurer may issue notices of intention not to renew an automobile insurance policy in the voluntary market in an amount not to exceed 2% of the total number of voluntary market automobile insurance policies of the insurer, rounded to the nearest whole number, which are in force at the end of the previous calendar year in each of the insurer's rating territories in use in this State.

c. For every two newly insured automobiles which an insurer voluntarily writes in each territory during each calendar year period, the insurer shall be permitted to refuse to renew insurance on one additional automobile in that territory in excess of the 2% limitation established by subsection b. of this section, subject to a fair and nondiscriminatory formula developed by rule or regulation of the commissioner. The provisions of this subsection shall only apply to an insurer whose aggregate voluntary market share in an automobile insurance urban enterprise zone is reasonably proportionate to the insurer's voluntary Statewide market share as determined by the commissioner by regulation or in a rating territory in which the insurer demonstrates growth in the aggregate number of in-force exposures.

d. The provisions of this section shall not apply to any cancellation made pursuant to subsection (A) of section 2 of P.L.1968, c.158 (C.17:29C-7).

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

f. Nothing in this section shall prohibit an insurer from refusing to renew, in addition to nonrenewals permitted in subsections b. and c. of this section, the policy of any insured who has: (1) provided false or misleading information in connection with any application for insurance, renewal of insurance or claim for benefits under an insurance policy; or (2) who has failed to provide, after written request by an insurer, the minimum information necessary to accurately rate the policy under terms and conditions set forth by the commissioner in regulations .

28. Section 1 of P.L.1970, c.217 (C.17:22-6.14a) is amended to read as follows:

C.17:22-6.14a Rates of commission to be set forth in contracts; exceptions; termination of contracts.

1. a. In the event that a policy is canceled by the insurer, either at its own behest or at the behest of the agent or broker of record, the unearned premium, including the unearned commission, shall be returned to the policyholder.

b. In the event that a policy of insurance, issued by the automobile insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1) or any successor thereto, is canceled by reason of nonpayment of premium to the insurer issuing the policy or nonpayment of an installment payment due pursuant to an insurance premium finance agreement, the broker of record for that policy may retain the full annual commission due thereon and, if a premium finance agreement is not involved, the effective date of cancellation of the policy shall be no earlier than 10 days prior to the last full day

for which the premium paid by the insured, net of the broker's full annual commission, would pay for coverage on a pro rata basis in accordance with rules established by the commissioner.

c. Contracts between insurance companies and agents for the appointment of the agent as the representative of the company shall set forth the rate of commission to be paid to the agent for each class of insurance within the scope of such appointment written on all risks or operations in this State, except:

(1) Reinsurance.

(2) Life insurance.

(3) Annuities.

(4) Accident and health insurance.

(5) Title insurance.

(6) Mortgage guaranty insurance.

(7) Hospital service, medical service, health service, or dental service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations.

Said rates of commission shall continue in force and effect unless changed by mutual written consent or until termination of said contract as hereinafter provided. Failure to achieve such mutual consent shall require that the agent's contract be terminated as hereinbelow provided. The rate of commission being paid on each class of insurance on the date of enactment hereof shall be deemed to be pursuant to the existing contract between agent and company.

d. Termination of any such contract for any reason other than one excluded herein shall become effective after not less than 90 days' notice in writing given by the company to the agent and the Commissioner of Banking and Insurance. No new business or changes in liability on renewal or in force business, except as provided in subsection l. of this section, shall be written by the agent for the company after notice of termination without prior written approval of the company. However, during the term of the agency contract, including the said 90-day period, the company shall not refuse to renew such business from the agent as would be in accordance with said company's current underwriting standards. The company shall, during a period of 12 months from the effective date of such termination, provided the former agent has not been replaced as the broker of record by the insured, and upon request in writing of the terminated agent, renew all contracts of insurance for such agent for said company as may be in accordance with said company's then current underwriting standards and pay to the terminated agent a commission in accordance with the agency contract in effect at the time notice of termination was issued. Said commission can be paid only to the holder of a valid New Jersey insurance producer's license. In the event any risk shall not meet the then current underwriting standards of said company, that company may decline its renewal, provided that the company shall give the terminated agent and the insured not less than 60 days' notice of its intention not to renew said contract of insurance.

e. The agency termination provisions of this act shall not apply to those contracts:

(1) in which the agent is paid on a salary basis without commission or where he agrees to represent exclusively one company or to the termination of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company moneys due to the company after his receipt of a written demand therefor, or after revocation of the agent's license by the Commissioner of Banking and Insurance; and in any such case the company shall, upon request of the insured, provided he meets the then current underwriting standards of the company, renew any contract of insurance formerly processed by the terminated agent, through an active agent, or directly pursuant to such rules and regulations as may be promulgated by the Commissioner of Banking and Insurance; or

(2) which are entered into between a qualified insurer and a UEZ agent pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4).

f. The Commissioner of Banking and Insurance, on the written complaint of any person stating that there has been a violation of this act, or when he deems it necessary without a complaint, may inquire and otherwise investigate to determine whether there has been any violation of this act.

g. All existing contracts between agent and company in effect in the State of New Jersey on the effective date of this act are subject to all provisions of this act.

h. The Commissioner of Banking and Insurance may, if he determines that a company is in unsatisfactory financial condition, exclude such company from the provisions of this act.

i. Whenever under this act it is required that the company shall renew a contract of insurance, the renewal shall be for a time period equal to one additional term of the term specified in the original contract, but in no event to be less than one year.

j. The provisions of subsection b. of this section shall not apply to policies written by the New Jersey Automobile Full Insurance Underwriting Association established pursuant to sections 13 through 34 of P.L.1983, c.65 (C.17:30E-1 et seq.).

k. The New Jersey Automobile Full Insurance Underwriting Association established pursuant to sections 13 through 34 of P.L.1983, c.65 (C.17:30E-1 et seq.), shall not be liable to pay any commission required by subsection b. of this section on any policies written by the association prior to January 1, 1986.

l. A company which terminates its contractual relationship with an agent subject to the provisions of subsection d. of this section shall, at the time of the agent's termination, with respect to insurance covering an automobile as defined in subsection a. of section 2 of P.L.1972, c.70 (C.39:6A-2), notify each named insured whose policy is serviced by the terminated agent in writing of the following: (1) that the agent's contractual relationship with the company is being terminated and the effective date of that termination; and (2) that the named insured may (a) continue to renew and obtain service through the terminated agent; or (b) renew the policy and obtain service through another agent of the company.

Notwithstanding any provision of this section to the contrary, no insurance company which has terminated its contractual relationship with an agent subject to subsection d. of this section shall, upon the expiration of any automobile insurance policy renewed pursuant to subsection d. of this section which is required to be renewed pursuant to section 3 of P.L.1972, c.70 (C.39:6A-3), refuse to renew, accept additional or replacement vehicles, refuse to provide changes in the limits of liability or refuse to service a policyholder in any other manner which is in accordance with the company's current underwriting standards, upon the written request of the agent or as otherwise provided in this section, provided the agent maintains a valid New Jersey insurance producer's license and has not been replaced as the broker of record by the insured. However, nothing in this section shall be deemed to prevent nonrenewal of an automobile insurance policy pursuant to the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1).

The company shall pay a terminated agent who continues to service policies pursuant to the provisions of this subsection a commission in an amount not less than that provided for under the agency contract in effect at the time the notice of termination was issued. A terminated agent who continues to service automobile insurance policies pursuant to this subsection shall be deemed to be an insurance broker as defined in section 2 of P.L.1987, c.293 (C.17:22A-2), and not an agent of the company, except that the terminated agent shall have the authority to bind coverage for renewals, additional or replacement vehicles, and for changed limits of liability as provided in this subsection to the same extent as an active agent for the company. The company shall provide the terminated agent with a written copy of its current underwriting guidelines during the time the agent continues to service policies pursuant to this subsection.

If a terminated agent who is continuing to service policies pursuant to the provisions of this subsection violates the written underwriting guidelines of the company in such a manner or with such frequency as to substantially affect the company's ability to underwrite or provide coverage, the company may discontinue accepting renewal and service requests from, and paying commissions to, the terminated agent; provided, however, that the company provides the terminated agent with at least 45 days' written notice which shall include a detailed explanation of the reasons for discontinuance. A copy of this notice, along with supporting documentation providing evidence that the terminated agent received proper notice of discontinuance pursuant to this subsection and evidence in support of the company's action, shall be sent by the company to the Division of Enforcement and Consumer Protection in the Department of Banking and Insurance.

The provisions of this subsection shall not apply to any policy issued by the New Jersey Automobile Full Insurance Underwriting Association created pursuant to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.).

m. A qualified insurer which terminates its contractual relationship with its UEZ agent pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4) shall terminate its relationship in accordance with the following provisions:

(1) The qualified insurer shall give the UEZ agent at least 60 days' written notice of termination. Notice of termination shall be on a form prescribed by the commissioner and shall indicate the date of termination and the reason for the termination. A copy of the notice of termination shall be sent to the commissioner.

(2) Notwithstanding the provisions of this section and section 26 of P.L.1988, c.119 (C.17:29C-7.1), a qualified insurer may refuse to renew the business written through a UEZ agent in an orderly and non-discriminatory manner over the course of at least a three-year period provided that such refusals to renew in each year shall not exceed one-third of a terminated UEZ agent's book of business on the effective date of termination of its relationship with its UEZ agent. A qualified insurer intending to refuse renewal business written by a terminated UEZ agent shall notify the commissioner prior to the date of the UEZ agent's termination.

(3) The terminated UEZ agent who continues to service automobile insurance policies shall continue to receive commissions for any renewal business pursuant to the terms of the contract in force with the qualified insurer at the time of termination, provided that the UEZ agent maintains a valid New Jersey insurance producer's license and has not been replaced as the broker of record by the insured. A terminated UEZ agent who continues to service automobile insurance policies shall be deemed to be an insurance broker and not the agent of the qualified insurer.

29. Section 4 of P.L.1947, c.379 (C.17:29B-4) is amended to read as follows:

C.17:29B-4 Unfair methods of competition, unfair, deceptive acts, practices, defined.

4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Boycott, coercion and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance, or resulting in or tending to result in unreasonable influence being exerted upon any producer that has an in-force contract as of the effective date of P.L.1997, c.151 (C.17:33B-64 et al.) for the purpose of replacing the in-force contract with a UEZ agent contract pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4).

(5) False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any

person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who was authorized by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Unfair discrimination. (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.

(c) Making or permitting any discrimination against any person or group of persons because of race, creed, color, national origin or ancestry of such person or group of persons in the issuance, withholding, extension or renewal of any policy of insurance, or in the fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor.

(d) Making or permitting discrimination in the use of any form of policy of insurance which expresses, directly or indirectly, any limitation or discrimination as to race, creed, color, national origin or ancestry or any intent to make any such limitation or discrimination.

(e) Making or permitting any unfair discrimination solely because of age in the issuance, withholding, extension or renewal of any policy or contract of automobile liability insurance or in the fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor, provided, that nothing herein shall be construed to interfere with the application of any applicable rate classification filed with and approved by the commissioner pursuant to P.L.1944, c. 27 (C.17:29A-1 to 17:29A-28), or any amendment or supplement thereof, which is in effect with respect to such policy or contract of insurance.

(8) Rebates. (a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatsoever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in clause 7 or paragraph (a) of this clause 8 shall be construed as including within the definition of discrimination or rebates any of the following practices (i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided, that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders; (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense; (iii) readjustment of the rate of premium for a group policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of

insurance thereunder, which may be made retroactive only for such policy year.

(9) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(10) Failure to maintain complaint handling procedures. Failure of any person to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance.

(11) The enumeration of this act of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or any court of review under the provisions of section 9 of this act.

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

C.17:29A-35 New Jersey Merit Rating Plan.

6. a. (Deleted by amendment, P.L.1997, c.151.)

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

(1) (a) Plan surcharges shall be levied, beginning on or after January 1, 1984, by the Division of Motor Vehicles on any driver who has accumulated, within the immediately preceding three-year period, beginning on or after February 10, 1983, six or more motor vehicle points, as provided in

Title 39 of the Revised Statutes, exclusive of any points for convictions for which surcharges are levied under paragraph (2) of this subsection; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. Surcharges shall be levied for each year in which the driver possesses six or more points. Surcharges assessed pursuant to this paragraph shall be $100.00 for six points, and $25.00 for each additional point.

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

(2) Plan surcharges shall be levied for convictions (a) under R.S.39:4-50 for violations occurring on or after February 10, 1983, and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for offenses committed in other jurisdictions of a substantially similar nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), for violations occurring on or after January 26, 1984. Except as hereinafter provided, surcharges under this paragraph shall be levied annually for a three-year period, and shall be $1,000.00 per year for each of the first two convictions, for a total surcharge of $3,000 for each conviction, and $1,500.00 per year for the third conviction occurring within a three-year period, for a total surcharge of $4,500 for the third conviction. If a driver is convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for offenses arising out of the same incident, the driver shall be assessed only one surcharge for the two offenses.

If, upon written notification from the Division of Motor Vehicles, mailed to the last address of record with the division, a driver fails to pay a surcharge levied under this subsection, the license of the driver shall be suspended forthwith until the surcharge is paid to the Division of Motor Vehicles; except that the Division of Motor Vehicles may authorize payment of the surcharge on an installment basis over a period not to exceed 12 months. If a driver fails to pay the surcharge or any installments on the surcharge, the total surcharge shall become due immediately.

The director may authorize any person to pay the surcharge levied under this section by use of a credit card, and the director is authorized to require the person to pay all costs incurred by the division in connection with the acceptance of the credit card.

In addition to any other remedy provided by law, the director is authorized to utilize the provisions of the SOIL (Setoff of Individual Liability) program established pursuant to P.L.1981, c.239 (C.54A:9-8.1 et seq.) to collect any surcharge levied under this section that is unpaid on or after the effective date of this act. As an additional remedy, the director may issue a certificate to the Clerk of the Superior Court stating that the person identified in the certificate is indebted under this surcharge law in such amount as shall be stated in the certificate. The certificate shall reference the statute under which the indebtedness arises. Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon the record of docketed judgments the name of such person as debtor; the State as creditor; the address of such person, if shown in the certificate; the amount of the debt so certified; a reference to the statute under which the surcharge is assessed, and the date of making such entries. The docketing of the entries shall have the same force and effect as a civil judgment docketed in the Superior Court, and the director shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action, but without prejudice to any right of appeal. Upon entry by the clerk of the certificate in the record of docketed judgments in accordance with this provision, interest in the amount specified by the court rules for post-judgment interest shall accrue from the date of the docketing of the certificate, however payment of the interest may be waived by the director. In the event that the surcharge remains unpaid following the issuance of the certificate of debt and the director takes any further collection action including referral of the matter to the Attorney General or his designee, the fee imposed, in lieu of the actual cost of collection, may be 20 percent of the surcharge or $200, whichever is greater. The director shall provide written notification to a driver of the proposed filing of the certificate of debt 10 days prior to the proposed filing; such notice shall be mailed to the driver's last address of record with the division.

All moneys collectible under this subsection b. shall be billed and collected by the Division of Motor Vehicles. Of the moneys collected: 10%, or the actual cost of administering the collection of the surcharge, whichever is less, shall be retained by the Division of Motor Vehicles until August 31, 1996; five percent, or the actual cost of administering the cancellation notification system established pursuant to section 50 of P.L.1990, c.8 (C.17:33B-41), whichever is less, shall be retained by the Division of Motor Vehicles until August 31, 1996; and prior to October 1, 1991, the remainder shall

be remitted to the New Jersey Automobile Full Insurance Underwriting Association and on or after October 1, 1991 until August 31, 1996, the remainder shall be remitted to the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5). Commencing on September 1, 1996, or such earlier time as the Commissioner of Banking and Insurance shall certify to the State Treasurer that amounts on deposit in the New Jersey Automobile Insurance Guaranty Fund are sufficient to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, all plan surcharges collected by the Division of Motor Vehicles under this subsection b. shall be remitted to the Division of Motor Vehicles Surcharge Fund for transfer to the Market Transition Facility Revenue Fund, as provided in section 12 of P.L.1994, c.57 (C.34:1B-21.12), for the purposes of section 4 of P.L.1994, c.57 (C.34:1B-21.4) until such a time as all the Market Transition Facility bonds, notes and obligations issued pursuant to that section 4 of that act and the costs thereof are discharged and no longer outstanding. From the date of certification by the Commissioner of Banking and Insurance that the moneys collectible under this subsection are no longer needed to fund the association or at such a time as all Market Transition Facility bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding moneys collectible under this subsection shall, subject to appropriation, be remitted to the New Jersey Property-Liability Insurance Guaranty Association created pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used for payment of any loans made by that association to the New Jersey Automobile Insurance Guaranty Fund pursuant to paragraph (10) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such payments shall be subject to and dependent upon appropriation by the State Legislature.

(3) In addition to any other authority provided in P.L.1983, c.65 (C.17:29A-33 et al.), the commissioner, after consultation with the Director of the Division of Motor Vehicles, is specifically authorized (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in accordance with paragraph (1)(a) of this subsection, surcharges for motor vehicle violations or convictions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes, or (c) to reduce the number of points for which surcharges may be assessed below the level provided in paragraph (1)(a) of this subsection, except that the dollar amount of all surcharges levied under the New Jersey Merit Rating Plan shall be uniform on a Statewide basis for each filer, without regard to classification or territory. Surcharges adopted by the commissioner on or after January 1, 1984 for motor vehicle violations or convictions for which motor vehicle points are not assessable under Title 39 of the Revised Statutes shall not be retroactively applied but shall take effect on the date of the New Jersey Register in which notice of adoption appears or the effective date set forth in that notice, whichever is later.

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

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

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

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

C.39:6A-4 Personal injury protection coverage, regardless of fault.

4. Personal injury protection coverage, regardless of fault.

Every automobile liability insurance policy, issued or renewed on or after January 1, 1991, insuring an automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of ownership, operation, maintenance or use of an automobile shall provide personal injury protection coverage, as defined hereinbelow, under provisions approved by the Commissioner of Banking and Insurance, for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustained bodily injury as a result of an accident while occupying, entering into, alighting from or using an

automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile, to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with the permission of the named insured, and to pedestrians, sustaining bodily injury caused by the named insured's automobile or struck by an object propelled by or from such automobile.

"Personal injury protection coverage" means and includes:

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

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

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

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

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

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

Benefits payable under this section shall:

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

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

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

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

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

C.39:6A-4.3 Personal injury protection coverage options.

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

a. Medical expense benefit deductibles in amounts of $500.00, $1,000.00 and $2,500.00 for any

one accident;

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

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

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

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

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

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

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

Medical expense benefits payable in any amount between the deductible selected pursuant to subsection a. of this section and $5,000.00 shall be subject to a copayment of 20%.

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

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

33. Section 10 of P.L.1988, c.119 (C.39:6A-4.6) is amended to read as follows:

C.39:6A-4.6 Medical fee schedules.

10. a. The Commissioner of Banking and Insurance shall, within 90 days after the effective date of P.L.1990, c.8 (C.17:33B-1 et al.), promulgate medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is to be made by an automobile insurer under personal injury protection coverage

pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or by an insurer under medical expense benefits coverage pursuant to section 2 of P.L.1991, c.154 (C.17:28-1.6). These fee schedules shall be promulgated on the basis of the type of service provided, and shall incorporate the reasonable and prevailing fees of 75% of the practitioners within the region. If, in the case of a specialist provider, there are fewer than 50 specialists within a region, the fee schedule shall incorporate the reasonable and prevailing fees of the specialist providers on a Statewide basis. The commissioner may contract with a proprietary purveyor of fee schedules for the maintenance of the fee schedule, which shall be adjusted biennially for inflation and for the addition of new medical procedures.

b. The fee schedule may provide for reimbursement for appropriate services on the basis of a diagnostic-related (DRG) payment by diagnostic code where appropriate, and may establish the use of a single fee, rather than an unbundled fee, for a group of services if those services are commonly provided together. In the case of multiple procedures performed simultaneously, the fee schedule and regulations promulgated pursuant thereto may also provide for a standard fee for a primary procedure, and proportional reductions in the cost of the additional procedures.

c. No health care provider may demand or request any payment from any person in excess of those permitted by the medical fee schedules established pursuant to this section, nor shall any person be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules established pursuant to this section.

C.17:29A-46.6 Proposed alteration to rating system, expedited.

34. a. Notwithstanding section 14 of P.L.1944, c.27 (C.17:29A-14), an insurer or rating organization may elect to file a proposed alteration to its rating system pursuant to the expedited process set forth in this section when the filer requests either an increase of no more than 3% or any decrease in its Statewide average base rate for private passenger automobile insurance.

b. A filer electing to use this expedited process shall file with the commissioner that reasonable information necessary to support the rate change which the commissioner prescribes by regulation. The prescribed filing requirements shall recognize the intent of this section to provide an expedited process.

c. If the commissioner determines that the filing will not produce rates that are excessive, inadequate for the safety and soundness of the insurer, or unfairly discriminatory between risks in this State involving substantially the same hazards and expense elements, the commissioner shall approve the filing.

d. A decision on the filing shall be rendered not later that 45 days after receipt of the filing, unless the commissioner grants an extension, in which case a decision shall be rendered not later than 60 days after receipt of the filing. A filing shall be complete and received when the filing is accompanied by a certification by a qualified actuary which states that the material, data and documentation, which is part of the filing, includes the documents set forth in regulations, supports the requested rate change and is consistent with generally accepted ratemaking principles of the actuarial profession. A filing shall be deemed to be approved unless rejected or modified by the commissioner within the time provided.

e. The commissioner shall not approve any rate change pursuant to this expedited process that results in an overall increase of more than 3% or an increase in any single coverage of more than 5%.

f. An insurer shall not file more than one request for an increase in rates pursuant to this section in any twelve-month period.

Repealer.

35. Section 56 of P.L.1990, c.8 (C.17:33B-46) and section 5 of P.L.1988, c.156 (C.17:29A-44) are repealed.

Repealer.

36. Sections 6 and 7 of P.L.1988, c.156 (C.17:29A-45 and 17:29A-46) are repealed.

C.17:29A-46.7 Regulations, administrative processes.

37. The Commissioner of Banking and Insurance may promulgate regulations and other administrative processes necessary to effectuate the purposes of this amendatory and supplementary

act, including, but not limited to, procedures governing rating system filings to implement this amendatory and supplementary act.

38. This act shall take effect on January 1, 1998, except that sections 14 through 16 and section 36 shall take effect on March 1, 1998 and sections 1 through 13 and sections 17, 18, 27, 33, 34, 35 and 37 shall take effect immediately.

Approved June 30, 1997.