

SENATE, No. 2091

STATE OF NEW JERSEY

INTRODUCED MAY 15, 1997

By Senator CARDINALE

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

3

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

6

7 1. (New section) The Legislature finds and declares:

8 a. Since the cost-effectiveness and efficiency of the present
9 automobile accident reparations system has eroded over time, it is
10 important to continue to identify ways to further contain costs
11 associated with the system. These cost containment measures, which
12 should help alleviate the skyrocketing costs of automobile insurance,
13 include providing alternative methods of dispute resolution involving
14 personal injury protection benefits, providing for a peer review
15 organization system to review the appropriateness or medical necessity
16 of certain medical services or treatments and modifying the medical fee
17 schedule used to reimburse health care providers.

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

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

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

34 (3) That to better serve the needs of automobile insurance

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

Matter underlined thus is new matter.

1 consumers and stimulate competition and economic activity, access to
2 automobile insurance needs to be expanded in certain defined urban
3 areas of the State; and

4 (4) That the development of increased access to automobile
5 insurance needs to be encouraged by establishing incentives for
6 insurers to increase their writings in these urban centers through,
7 among other things, the appointment of urban enterprise zone agents.

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

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

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

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

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

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

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

27 (3) reducing inappropriate or unnecessary medical treatment that
28 increases insurance costs.

29

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

32 3. As used in this act:

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

35 "Commissioner" means the Commissioner of Banking and
36 Insurance.

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

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

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

45 "Insurance company" means:

46 a. Any corporation, association, partnership, reciprocal exchange,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Insurance Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et
2 seq.).

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

8 (cf: P.L.1991, c.331, s.1)

9

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

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

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

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

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

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

35 (a) a motor vehicle insurance policy, that the person to be insured
36 [resides or is domiciled] maintains a principal residence in this State
37 when, in fact, that [person resides or is domiciled] person's principal
38 residence is in a state other than this State; or

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

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

46 b. A person or practitioner violates this act if he knowingly assists,

1 conspires with, or urges any person or practitioner to violate any of
2 the provisions of this act.

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

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

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

23 (cf: P.L.1995, c.132, s.1)

24

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

27 5. a. [If a person or practitioner is found by a court of competent
28 jurisdiction, pursuant to a claim initiated by the commissioner, to have
29 violated any provision of this act, the person or practitioner shall be
30 subject to a civil penalty not to exceed \$5,000.00 for the first
31 violation, \$10,000.00 for the second violation and \$15,000.00 for each
32 subsequent violation.] Whenever the commissioner determines that a
33 person has violated any provision of P.L.1983, c.320 (C.17:33A-1 et
34 seq.), the commissioner may either:

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

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

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

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

9 c. The commissioner is authorized to assess a civil and
10 administrative penalty of not more than \$5,000 for the first violation,
11 \$10,000 for the second violation and \$15,000 for each subsequent
12 violation of any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) and
13 to order restitution to any insurance company or other person who has
14 suffered a loss as a result of a violation of P.L.1983, c.320 (C.17:33A-
15 1 et seq.). No assessment shall be levied pursuant to this subsection
16 until the violator has been notified by certified mail or personal
17 service. The notice shall contain a concise statement of facts
18 providing the basis for the determination of a violation of P.L.1983,
19 c.320 (C.17:33A-1 et seq.), the provisions of that act violated, a
20 statement of the amount of civil penalties assessed and a statement of
21 the party's right to a hearing in accordance with the "Administrative
22 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed
23 party shall have 20 calendar days from receipt of the notice within
24 which to deliver to the commissioner a written request for a hearing
25 containing an answer to the statement of facts contained in the notice.
26 After the hearing and upon a finding that a violation has occurred, the
27 commissioner may issue a final order assessing up to the amount of the
28 penalty in the notice, restitution, and costs of prosecution, including
29 attorneys' fees. If no hearing is requested, the notice shall become a
30 final order after the expiration of the 20-day period. Payment of the
31 assessment is due when a final order is issued or the notice becomes
32 a final order.

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

40 d. Nothing in this [subsection] section shall be construed to
41 prohibit the commissioner and the person or practitioner alleged to be
42 guilty of a violation of this act from entering into a written agreement
43 in which the person or practitioner does not admit or deny the charges
44 but consents to payment of the civil penalty. A consent agreement
45 may contain a provision that it shall not be used in a subsequent civil
46 or criminal proceeding relating to any violation of this act, but

1 notification thereof shall be made to a licensing authority in the same
2 manner as required pursuant to subsection c. of section 10 of
3 P.L.1983, c.320 (C.17:33A-10). The existence of a consent
4 agreement under this subsection shall not preclude any licensing
5 authority from taking appropriate administrative action against a
6 licensee over which it has regulatory authority, nor shall such a
7 consent agreement preclude referral to law enforcement for
8 consideration of criminal prosecution.

9 [b.] e. The New Jersey Automobile Full Insurance Underwriting
10 Association and Market Transition Facility Auxiliary Fund (hereinafter
11 referred to as the "fund") is established as a nonlapsing, revolving fund
12 into which shall be deposited all revenues from the civil penalties
13 imposed pursuant to this section. Interest received on moneys in the
14 fund shall be credited to the fund. The fund shall be administered by
15 the Commissioner of Banking and Insurance and shall be used to help
16 defray the operating expenses of the New Jersey Automobile Full
17 Insurance Underwriting Association created pursuant to P.L.1983,
18 c.65 (C.17:30E-1 et seq.) or shall be used to help defray the operating
19 expenses of the Market Transition Facility created pursuant to section
20 88 of P.L.1990, c.8 (C.17:33B-11).
21 (cf: P.L.1994, c.57, s.19)

22
23 5. Section 7 of P.L.1983, c.320 (C.17:33A-7) is amended to read
24 as follows:

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

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

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

40 d. Upon receipt of notification of the filing of a claim by an insurer,
41 the commissioner may join in the action for the purpose of seeking
42 judgment for the payment of a civil penalty authorized under section
43 5 of this act. If the commissioner prevails, the court may also award
44 court costs and reasonable attorney fees actually incurred by the
45 commissioner.

46 e. No action shall be brought by an insurance company under this

1 section more than six years after the cause of action has accrued.

2 (cf: P.L.1983, c.320, s.7)

3

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

6 10. a. If the division has reason to believe that a person has
7 engaged in, or is engaging in, an act or practice which violates this act,
8 or any other relevant statute or regulation, the commissioner or his
9 designee may administer oaths and affirmations, request or compel the
10 attendance of witnesses or the production of documents. The
11 commissioner may issue, or designate another to issue, subpoenas to
12 compel the attendance of witnesses and the production of books,
13 records, accounts, papers and documents. Witnesses who are not
14 licensees of the Department of Banking and Insurance shall be entitled
15 to receive the same fees and mileage as persons summoned to testify
16 in the courts of the State.

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

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

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

41 (cf: P.L.1983, c.320, s.10)

42

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

45 11. Papers, documents, reports, or evidence relative to the subject
46 of an investigation under this act shall not be subject to public

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

23 (cf: P.L.1983, c.320, s.11)

24

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

27 1. a. Every insurer writing health insurance or private passenger
28 automobile insurance in this State shall [, within 120 days of the
29 adoption of regulations by the commissioner pursuant to this act,] file
30 with the commissioner a plan for the prevention and detection of
31 fraudulent [health] insurance applications and claims. The plan shall
32 be deemed approved by the commissioner if not affirmatively approved
33 or disapproved by the commissioner within 90 days of the date of
34 filing. The commissioner may call upon the expertise of the director
35 in his review of plans filed pursuant to this subsection. [During the
36 90-day approval period the] The commissioner may request such
37 amendments to the plan as he deems necessary. Any subsequent
38 amendments to a plan filed with and approved by the commissioner
39 shall be submitted for filing and deemed approved if not affirmatively
40 approved or disapproved within 90 days from the filing date.

41 b. The implementation of plans filed and approved pursuant to
42 subsection a. of this section shall be monitored by the division. The
43 division shall promptly notify the Attorney General of any evidence of
44 criminal activity encountered in the course of monitoring the
45 implementation and execution of the plans. Each insurer writing
46 health insurance or private passenger automobile insurance in this

1 State shall report to the director on an annual basis, [beginning
2 January 1, 1994] on January 1st of each year, on the experience in
3 implementing its fraud prevention plan.

4 c. In addition to any other penalties provided pursuant to
5 P.L.1983, c.320 (C.17:33A-1 et seq.), the commissioner may impose
6 a penalty of up to [~~\$5,000 per day~~] \$25,000 per violation on any
7 insurer for: failure to submit a plan; failure to submit any amendments
8 to an approved plan; failure to properly implement an approved plan
9 in a reasonable manner and within a reasonable time period; failure to
10 provide a report pursuant to subsection b. of this section; or for any
11 other violation of the provisions of this section. [Any penalty imposed
12 and collected pursuant to this subsection shall be deposited in the
13 unemployment compensation fund created pursuant to R.S.43:21-9
14 and shall be dedicated exclusively to the purposes stated therein.]

15 d. For the purposes of this section, "insurer" means an insurance
16 company as defined in subsections a., b., c., d., e., and f. of section 3
17 of P.L.1983, c.320 (C.17:33A-3).
18 (cf: P.L.1993, c.362, s.1)

19

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

22 15. In any claim or action arising under section 4 of this act
23 wherein any person, obtains or attempts to obtain from any other
24 person, insurance company or Unsatisfied Claim and Judgment Fund
25 any money or other thing of value by (1) falsely or fraudulently
26 representing that such person is entitled to benefits under section 4 or,
27 (2) falsely and fraudulently making statements or presenting
28 documentation in order to obtain or attempt to obtain benefits under
29 section 4 or, (3) cooperates, conspires or otherwise acts in concert
30 with any person seeking to falsely or fraudulently obtain, or attempt
31 to obtain, benefits under section 4 may upon conviction be fined not
32 more than \$5,000.00, or imprisoned for not more than 3 years or both,
33 or in the event the sum so obtained or attempted to be obtained is not
34 more than \$500.00, may upon conviction, be fined not more than
35 \$500.00, or imprisoned for not more than 6 months or both, as a
36 disorderly person.

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

44 (cf: P.L.1973, c.298, s.1)

45

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

1 follows:

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

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

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

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

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

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

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

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

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

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

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

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

36 For purposes of this act:

37 "Completed application" means the submission of all of the
38 information designated on the checklist, adopted pursuant to section
39 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
40 permit for which application is made.

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

43 (cf: P.L.1991, c.420, s.1)

44

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

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

17 (cf: P.L.1989, c.300, s.21)

18

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

21 2. Any owner or registrant of a motor vehicle registered or
22 principally garaged in this State who operates or causes to be operated
23 a motor vehicle upon any public road or highway in this State without
24 motor vehicle liability insurance coverage required by this act, and any
25 operator who operates or causes a motor vehicle to be operated and
26 who knows or should know from the attendant circumstances that the
27 motor vehicle is without motor vehicle liability insurance coverage
28 required by this act shall be subject, for the first offense, to a fine of
29 [\$300.00] not less than \$300 nor more than \$1000 and a period of
30 community service to be determined by the court, and shall forthwith
31 forfeit his right to operate a motor vehicle over the highways of this
32 State for a period of one year from the date of conviction. Upon
33 subsequent conviction, he shall be subject to a fine of [\$500.00] up to
34 \$5,000 and shall be subject to imprisonment for a term of 14 days and
35 shall be ordered by the court to perform community service for a
36 period of 30 days, which shall be of such form and on such terms as
37 the court shall deem appropriate under the circumstances, and shall
38 forfeit his right to operate a motor vehicle for a period of two years
39 from the date of his conviction, and, after the expiration of said period,
40 he may make application to the Director of the Division of Motor
41 Vehicles for a license to operate a motor vehicle, which application
42 may be granted at the discretion of the director. The director's
43 discretion shall be based upon an assessment of the likelihood that the
44 individual will operate or cause a motor vehicle to be operated in the
45 future without the insurance coverage required by this act. A
46 complaint for violation of this act may be made to a municipal court

1 at any time within six months after the date of the alleged offense.

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

7 [Notwithstanding any provision of P.L.1972, c.197 (C.39:6B-1 et
8 seq.), any person who violates the provisions of that act, from October
9 1, 1990 through January 31, 1991, shall not be subject to any of the
10 penalties or sanctions provided for a first violation of that act if that
11 person produces at the time of trial an insurance identification card or
12 a motor vehicle liability insurance policy which is in force at the time
13 of the trial and the conviction for that person's offense would be the
14 person's first conviction for an offense under that act. The
15 Commissioner of Insurance shall appropriately promote and advertise
16 this limited time amnesty program for first-time offenses under that act
17 throughout the State.]

18 (cf: P.L.1990, c.8, s.49)

19

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

22 14. a. (1) Any person who, at the time of an automobile accident
23 resulting in injuries to that person, is required but fails to maintain
24 [medical expense benefits coverage] personal injury protection
25 coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-4) shall
26 [: a. For the purpose of filing an action for recovery of noneconomic
27 loss, as defined in section 2 of P.L.1972, c.70 (C.39:6A-2), be subject
28 to the tort option specified in subsection a. of section 8 of P.L.1972,
29 c.70 (C.39:6A-8)] have no cause of action for recovery of economic
30 or noneconomic loss sustained as a result of an accident while
31 occupying, entering into, alighting from or using an automobile.

32 (2) Any person who is required to, but fails to maintain personal
33 injury protection coverage mandated by section 4 of P.L.1972, c.70
34 (C.39:6A-4) shall be liable for noneconomic loss to a person who
35 maintains that coverage, or is a person who has the right to receive
36 benefits under section 4 of P.L.1972, c.70 (C.39:6A-4),
37 notwithstanding the fact that the injured person is subject to the tort
38 option in subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

39 b. [(Deleted by amendment, P.L.1988, c.119.)] (1) Any person
40 who is convicted of, or pleads guilty to, operating a motor vehicle in
41 violation of R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a),
42 or a similar statute from any other jurisdiction, in connection with an
43 accident, shall have no cause of action for recovery of economic or
44 noneconomic loss sustained as a result of the accident.

45 (2) Notwithstanding any tort limitation established as a result
46 of the election of subsection a. of section 8 of P.L.1972, c.70

1 (C.39:6A-8) by an injured party, any person injured in an accident
2 by an operator of an automobile who is convicted of or pleads
3 guilty to a violation of R.S.39:4-50, section 2 of P.L.1981, c.512
4 (C.39:4-50.4a), or a similar statute from any other jurisdiction, shall
5 have a cause of action for recovery of noneconomic loss resulting from
6 any injuries sustained in the accident.

7 c. Any person acting with specific intent of causing injury to
8 himself or others in the operation or use of an automobile shall have
9 no cause of action for recovery of economic or noneconomic loss
10 sustained as a result of an accident arising from such conduct and shall
11 be liable for noneconomic loss to any person injured in the accident
12 notwithstanding the tort option pursuant to section 8 of
13 P.L.1972, c.70 (C.39:6A-8) that applies to the injured person.

14 (cf: P.L.1988, c.119, s.4)

15
16 14. (New section) a. Every insurer transacting or proposing to
17 transact private passenger automobile insurance may file one or more
18 rating plans in the voluntary market. Every insurer writing private
19 passenger automobile insurance in this State which intends to write
20 coverage in the voluntary market using more than one rate level shall
21 file with the commissioner the rates and underwriting rules which are
22 applicable to each rate level.

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

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

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

38
39 15. (New section) a. Insurers shall put in writing all underwriting
40 rules applicable to each rate level utilized pursuant to section 14 of
41 this amendatory and supplementary act. An insurer may take into
42 account factors, including, but not limited to, driving record
43 characteristics appropriate for underwriting and classification in
44 formulating its underwriting rules. No underwriting rule shall operate
45 in such a manner as to assign a risk to a rating plan on the basis of the
46 territory in which the insured resides or any other factor which the

1 commissioner finds is a surrogate for territory. An insurer which
2 knowingly fails to transact automobile insurance consistently with its
3 underwriting rules shall be subject to a fine of not less than \$1,000 for
4 each violation.

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

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

19

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

29

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

45

46 18. (New section) To provide for an orderly transition with

1 minimum disruption to the private passenger automobile insurance
2 market, the Commissioner of Banking and Insurance shall establish
3 rules and regulations and administrative processes that are reasonable,
4 necessary, appropriate and consistent with the provisions of sections
5 14 through 17 of this amendatory and supplementary act.

6

7 19. (New section) As used in sections 19 through 23 of this
8 amendatory and supplementary act:

9 "Commissioner" means the Commissioner of Banking and
10 Insurance;

11 "Insurer" means an insurer or group of affiliated companies
12 admitted or authorized to transact the business of private passenger
13 automobile insurance in this State and the Unsatisfied Claim and
14 Judgment Fund;

15 "Peer review organization" or "PRO" means a group of health care
16 professionals licensed in New Jersey, or any peer review organization
17 with which the Federal Health Care Financing Administration or the
18 State contracts for medical review of Medicare or medical assistance
19 services approved by the commissioner, or any independent health care
20 review company approved by the commissioner, to engage in unbiased
21 peer review for the purpose of determining the medical necessity or
22 appropriateness of treatment, services or durable medical goods
23 provided to a person injured in an automobile accident.

24 "Personal injury protection coverage" is that coverage provided for
25 in sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10).

26 "Provider of health care services" or "provider" means and shall
27 include, but not be limited to: (1) a hospital or health care facility
28 which is maintained by a state or any of its political subdivisions; (2)
29 a hospital or health care facility licensed by the Department of Health
30 and Senior Services; (3) other hospitals or health care facilities, as
31 designated by the Department of Health and Senior Services to
32 provide health care services; (4) a registered nursing home providing
33 convalescent care; (5) a nonprofit voluntary visiting nurse organization
34 providing health care services other than in a hospital; (6) hospitals or
35 other health care facilities located in other states, which are subject to
36 the supervision of those states, which if located in this State would be
37 eligible to be licensed or designated by the Department of Health and
38 Senior Services; (7) nonprofit hospital, medical or health service plans
39 of other states approved by the commissioner; (8) physicians licensed
40 to practice medicine and surgery; (9) licensed chiropractors; (10)
41 licensed dentists; (11) licensed optometrists; (12) licensed pharmacists;
42 (13) licensed chiropodists; (14) registered bio-analytical laboratories;
43 (15) licensed psychologists; (16) registered physical therapists; (17)
44 certified nurse-midwives; (18) registered professional nurses; (19)
45 licensed health maintenance organizations; and (20) providers of other
46 similar health care services or supplies as are approved by the

1 commissioner.

2

3 20. (New section) a. The commissioner shall approve an
4 application to act as a PRO if the commissioner determines that the
5 applicant complies with the standards of performance which the
6 commissioner, after consultation with the Commissioner of Health and
7 Senior Services, establishes as reasonable and necessary to provide an
8 impartial review of the medical necessity or appropriateness of
9 treatments, health care services or durable medical goods for which
10 medical expense benefits are being provided under personal injury
11 protection coverage. The standards established by the commissioner
12 shall include procedures necessary to assure the independence of the
13 review process, and shall include standards with respect to experience,
14 licensure, fees and confidentiality.

15 b. To be considered for approval as a PRO pursuant to subsection
16 a. of this section, an applicant shall:

17 (1) have a sufficient number of health care providers, by specialty,
18 to perform the medical reviews;

19 (2) use only New Jersey licensed health care providers to perform
20 the medical reviews;

21 (3) provide satisfactory evidence that the confidentiality of
22 individual medical records will be maintained;

23 (4) have procedures in effect to guarantee the fair and open
24 exchange of information and records related to reviews between the
25 provider and the PRO;

26 (5) not be owned by or controlled by an insurer. As used in this
27 paragraph, "controlled by" means the possession, direct or indirect, of
28 the power to direct or cause the direction of the management and
29 policies of a person, whether through the ownership of voting
30 securities, by contract other than a commercial contract for goods or
31 nonmanagement services, or otherwise, unless that power is the result
32 of an official position with or corporate office held by the person; and

33 (6) meet such other requirements as the commissioner may deem
34 relevant.

35 c. An approval shall be granted to a PRO for a period of five years.
36 An approved PRO shall undergo periodic examinations in accordance
37 with the standards established by the commissioner pursuant to
38 subsections a. and b. of this section. If, at any time, the commissioner
39 determines that the review procedures of an approved PRO are not
40 being carried out in an impartial and independent manner, the
41 commissioner may suspend or revoke the PRO's authority to perform
42 reviews. If the commissioner determines that a substantially
43 disproportionate number of reviews are being requested by an insurer
44 or if an insurer is requesting one particular PRO to perform a
45 substantially disproportionate number of reviews so as to give the
46 appearance that the reviews are not being carried out in an impartial

1 and independent manner, the commissioner may order the insurer to
2 reduce the number of cases being referred for review by any PRO or
3 may order the insurer to reduce the number of claims referred by the
4 insurer to a particular PRO, as applicable.

5 d. An approved PRO shall submit an annual activity report to the
6 commissioner, in a form approved by the commissioner, by January 31
7 of each year and shall establish audit procedures, which shall be
8 approved by the commissioner, to ensure compliance with statutory
9 and regulatory requirements.

10
11 21. (New section) Insurers may contract with approved peer
12 review organizations for the independent review of treatments, health
13 care services, or durable medical goods provided to any person injured
14 as a result of an automobile accident, who is receiving personal injury
15 protection coverage benefits. The independent review shall be for the
16 purpose of confirming that treatments, health care services, or durable
17 medical goods conform to the professional standards of performance
18 and are medically necessary and appropriate. When appropriate in the
19 context of its review of challenged treatments, health care services or
20 durable medical goods, a PRO may request and review a provider's
21 projected treatment plan.

22 If in the course of its review, a PRO questions whether the
23 treatments, health care services, or durable medical goods relating to
24 an injury for which reimbursement is being sought are causally related
25 to an insured event, the PRO shall notify the insurer of its
26 recommendation concerning any issue of causality. Such a
27 recommendation by a PRO shall not be determinative. An insurer may
28 deny payment on the grounds that the treatments, health care services
29 or durable medical goods relating to an injury for which
30 reimbursement is being sought are not causally related to an insured
31 event in accordance with the provisions of section 13 of P.L.1972,
32 c.70 (C.39:6A-13).

33
34 22. (New section) a. A PRO shall utilize in its independent review
35 of a challenged claim, a provider of health care services licensed in
36 New Jersey in the same profession or specialty as the provider whose
37 services are subject to review, or who is determined relative to the
38 providing of a durable medical good, the use of which is subject to
39 review. A PRO may review the medical necessity or appropriateness
40 of the use of the durable medical good regardless of whether the
41 durable medical good was prescribed by a provider.

42 b. A PRO shall establish and utilize written review procedures,
43 which shall be filed with the commissioner. A PRO shall conduct its
44 reviews in accordance with the latest medical protocols generally
45 accepted within the health care professions.

46 c. Every PRO determination shall be in writing in accordance with

1 regulations adopted by the commissioner, citing specific findings based
2 upon the clinical criteria and consistent with the written review
3 procedures on file with the commissioner.

4 d. Compensation for the services of a PRO shall be in accordance
5 with regulations promulgated by the commissioner and shall not be
6 based on a percentage or contingency fee basis.

7

8 23. (New section) a. Any referral by an insurer to a PRO shall be
9 made within 30 days of the insurer's receipt of a bill for treatment,
10 health care services, or durable medical goods. An insurer shall not be
11 required to pay the provider for services subject to a PRO review until
12 such time as there is an initial determination by the PRO, except as
13 otherwise provided in subsection d. or g. of this section. An insurer
14 shall notify a provider or injured person, as appropriate, in writing, by
15 certified mail, when a PRO referral is made and that the insurer is not
16 required to pay the provider or injured person, as appropriate, who is
17 the subject of the referral until a determination has been made by the
18 PRO. An injured person shall not be liable for payment for any
19 treatments, health care services, or durable medical goods that are
20 subject to the PRO review except as provided in paragraph (2) of
21 subsection f. of this section. A provider whose treatments, health care
22 services or durable medical goods are the subject of a PRO review
23 may request, and shall be granted, an opportunity to discuss his
24 treatments or treatment plans with the reviewer.

25 b. A PRO shall complete its review and make a determination
26 within 30 days of receipt of all requested information from the
27 provider. An insurer shall be required to notify the provider and act
28 on the PRO's initial determination within seven business days of
29 receipt of that determination.

30 c. Upon the request of the PRO performing a review, a provider
31 whose services are the subject of review shall furnish a written report
32 of the history, condition, treatment dates and costs of treatment of the
33 injured person, and shall produce and permit the inspection and
34 copying of the records regarding the history, condition, treatment
35 dates and costs of treatment and shall submit all necessary
36 documentation to establish that a challenged treatment, health care
37 service or durable medical good is commonly and customarily
38 recognized throughout the health care professions as appropriate in the
39 treatment of the particular injury for which it was ordered. The
40 insurer shall pay all reasonable costs connected therewith. In any
41 dispute regarding discovery of facts about the injured person's history,
42 condition, treatment dates and costs of treatment, or regarding a
43 mental or physical examination of the injured person, the insurer or
44 injured person may petition a court of competent jurisdiction for an
45 order resolving the dispute. The order may be entered on motion for
46 good cause shown giving notice to all persons having an interest

1 therein. The court may protect against annoyance, embarrassment or
2 oppression and may, as justice requires, enter an order compelling or
3 refusing discovery, or specifying conditions of that discovery; the
4 court may further order the payment of costs and expenses of the
5 proceeding, as justice requires.

6 d. An insurer, provider or injured person may request a
7 reconsideration of a PRO's initial determination if the request for
8 reconsideration is made within 30 days of notification of the PRO's
9 initial determination. A reconsideration shall be conducted by a PRO
10 other than the PRO that conducted the initial review. The PRO
11 reviewing the decision rendered by the initial PRO shall afford an
12 insurer, provider or injured person involved an opportunity to discuss
13 the case with the reviewer and to file any additional information which
14 was not available at the time of the initial PRO review. The PRO
15 performing the reconsideration may base its determination on
16 information from the initial determination, other information in the
17 records, or additional evidence submitted by the requesting party and
18 shall complete the reconsideration within 30 days of receipt of all
19 requested information, unless otherwise agreed to by all parties. An
20 insurer shall notify the provider and act upon the final determination
21 of the PRO conducting the reconsideration review within seven
22 business days of receipt of that determination. The costs of the
23 reconsideration shall be borne by the insurer.

24 e. When appropriate, a PRO may request an injured person to
25 submit to a mental or physical examination by an independent
26 provider, selected by the PRO, who is: not affiliated with either the
27 PRO or the insurer; licensed in the same profession or specialty as the
28 provider whose services are the subject of review; and located within
29 a reasonable proximity to the injured person's residence. The injured
30 person shall provide or make available to the independent provider any
31 pertinent medical records or medical history that the independent
32 provider deems necessary to the examination. The costs of an
33 examination requested by a PRO shall be borne by the insurer.
34 Insurers providing personal injury protection medical expense benefits
35 coverage may include reasonable provisions in their policies requiring
36 those claiming personal injury protection medical expense benefits
37 coverage to submit to mental or physical examinations requested by a
38 PRO pursuant to this subsection. Failure to submit to a mental or
39 physical examination requested by a PRO pursuant to this subsection
40 shall subject the injured person to limitations in coverage as specified
41 in the policy form for personal injury protection medical expense
42 benefits coverage as approved for use by the commissioner. In the
43 case of the Unsatisfied Claim and Judgment Fund, the commissioner
44 may promulgate rules governing the failure of an injured person to
45 submit to a mental or physical examination requested pursuant to this
46 subsection.

1 f. (1) If a PRO determines that the treatment or service was
2 medically necessary or appropriate, the insurer shall pay the provider
3 or claimant, where appropriate, the outstanding amount. If the
4 determination occurs later than 90 days following receipt of the bill,
5 the insurer shall pay the provider the outstanding amount plus interest
6 at the rate established for post-judgment interest by the Rules
7 Governing the Courts of the State of New Jersey. Interest shall accrue
8 on overdue payments as provided in subsection g. of section 5 of
9 P.L.1972, c.70 (C.39:6A-5).

10 (2) If a PRO determines that a health care provider provided
11 unnecessary medical treatments, health care services or durable
12 medical goods, or that inappropriate treatments, health care services
13 or durable medical goods were provided, the provider shall not be
14 reimbursed by the insurer for any unnecessary or inappropriate
15 treatment, service or durable medical good and shall be prohibited
16 from requiring the injured person to pay amounts so billed. If an
17 injured person purchases a durable medical good without prescription,
18 and a PRO determines, upon review, that the durable medical good is
19 unnecessary or inappropriate, the claim for that durable medical good
20 shall not be reimbursable.

21 (3) If the provider or injured person has collected a payment for a
22 treatment, medical service or durable medical good, the provider or
23 injured person shall return the amount paid, plus interest at the rate
24 established for post-judgment interest by the Rules Governing the
25 Courts of the State of New Jersey, to the insurer within 30 days of the
26 determination of the PRO pursuant to paragraph (2) of this subsection.
27 Interest on that payment shall accrue from the receipt of payment by
28 the provider or injured person. The failure of the provider to return
29 the payment shall not obligate the injured person to assume
30 responsibility for the payment for that treatment, health care service
31 or durable medical good.

32 g. Within 30 days of the date of notification of an initial or final
33 determination by a PRO, an insurer, provider or injured person may
34 seek review of the dispute by the Superior Court, Law Division. The
35 determination of the PRO shall be presumed correct and shall be
36 admissible as evidence at trial upon the request of any party involved
37 in the PRO's review. A presumption under this section may be
38 rebutted in an appropriate action only by a preponderance of the
39 evidence presented to the court showing that the PRO determination
40 was erroneous. The insurer shall not be required to pay any amount
41 in dispute until such time as the judicial proceeding is concluded. A
42 provider shall not bill an injured person to which the provisions of this
43 section apply for any medical treatment, health care services or durable
44 medical goods which are the subject of a judicial proceeding.

45

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

1 follows:

2 5. Payment of personal injury protection coverage benefits.

3 a. An insurer may require written notice to be given as soon as
4 practicable after an accident involving an automobile with respect to
5 which the policy affords personal injury protection coverage benefits
6 pursuant to this act. In the case of claims for medical expense
7 benefits, written notice shall be provided to the insurer by the treating
8 medical provider no later than 21 days following the commencement
9 of treatment. Notification required under this section shall be made in
10 accordance with regulations adopted by the Commissioner of Banking
11 and Insurance and on a form prescribed by the Commissioner of
12 Banking and Insurance. Within a reasonable time after receiving
13 notification required pursuant to this act, the insurer shall confirm to
14 the treating medical provider that its policy affords the claimant
15 personal injury protection coverage benefits as required by section 5
16 of P.L.1972, c.70 (C.39:6A-5).

17 b. For the purposes of this section, notification shall be deemed to
18 be met if a treating medical provider submits a bill or invoice to the
19 insurer for reimbursement of services within 21 days of the
20 commencement of treatment.

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

40 d. A medical provider who fails to notify the insurer within 21 days
41 and whose claim for payment has been denied by the insurer pursuant
42 to the standards established by the Commissioner of Banking and
43 Insurance may, in the discretion of a judge of the Superior Court, be
44 permitted to refile such claim provided that the insurer has not been
45 substantially prejudiced thereby. Application to the court for
46 permission to refile a claim shall be made within 14 days of notification

1 of denial of payment and shall be made upon motion based upon
2 affidavits showing sufficient reasons for the failure to notify the insurer
3 within the period of time prescribed by this act.

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

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

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

1 to this subsection, payment shall be considered overdue at the
2 expiration of the 45-day period or, if the injured person was required
3 to provide additional information to the insurer, within 10 business
4 days following receipt by the insurer of all the information requested
5 by it, whichever is later. Notwithstanding the provisions of this
6 subsection, an insurer may refer a claim or bill, as appropriate, to a
7 peer review organization pursuant to section 23 of P.L. , c.
8 (C.)(now before the Legislature as this bill), no later than 30 days
9 following the receipt of the claim or bill, and denial or reimbursement
10 of the claim shall be made in accordance with the provisions of that
11 section.

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

17 h. All overdue payments shall bear interest at the percentage of
18 interest prescribed in the Rules Governing the Courts of the State of
19 New Jersey for judgments, awards and orders for the payment of
20 money.

21 i. All automobile insurers and the Unsatisfied Claim and Judgment
22 Fund shall provide any claimant with the option of submitting a dispute
23 [under this section] to binding arbitration if the dispute arose pursuant
24 to the following provisions: subsections b., c., d. and e. of section 4
25 of P.L.1972, c.70 (C.39:6A-4); subsection b., c., d. and e. of section
26 7 of P.L.1972, c.198 (C.39:6A-86.1); additional first party coverage
27 benefits required to be offered pursuant to section 10 of P.L.1972,
28 c.70 (C.39:6A-10) or whether a submitted charge or fee is in
29 conformance with the provisions of section 10 of P.L.1988, c.119
30 (C.39:6A-4.6). Arbitration proceedings shall be administered and
31 subject to procedures [established by the American Arbitration
32 Association] approved by the commissioner which are in conformance
33 with New Jersey law and consistent with the Legislature's intent as
34 stated in section 1 of P.L. , c. (C.)(now before the
35 Legislature as this bill). If the claimant prevails in the arbitration
36 proceedings, the insurer shall pay all the costs of the proceedings,
37 including reasonable attorney's fees, to be determined in accordance
38 with [a schedule of hourly rates for services performed, to be
39 prescribed by the Supreme Court] the Rules Governing the Courts of
40 the State of New Jersey and in accordance with New Jersey Rules of
41 Professional Conduct. Disputes concerning the determination of the
42 medical necessity or appropriateness of treatments, health care
43 services or durable medical goods and disputes concerning whether a
44 treatment, health care service or durable medical good relating to an
45 injury for which reimbursement is being sought is causally related to

1 an insured event, shall not be subject to binding arbitration.

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

3

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

6 13. Discovery of facts as to personal injury protection coverage.

7 The following apply to personal injury protection coverage benefits:

8 a. Every employer shall, if a request is made by an insurer or the
9 Unsatisfied Claim and Judgment Fund providing personal injury
10 protection benefits under this act against whom a claim has been made,
11 furnish forthwith, in a form approved by the Commissioner of Banking
12 and Insurance, a signed statement of the lost earnings since the date of
13 the bodily injury and for a reasonable period before the injury, of the
14 person upon whose injury the claim is based.

15 b. Every physician, hospital, clinic or other medical institution
16 providing, before and after the bodily injury upon which a claim for
17 personal injury protection benefits is based, any products, services or
18 accommodations in relation to such bodily injury or any other injury,
19 or in relation to a condition claimed to be connected with such bodily
20 injury or any other injury, shall, if requested to do so by the insurer or
21 the Unsatisfied Claim and Judgment Fund against whom the claim has
22 been made, furnish forthwith a written report of the history, condition,
23 treatment, dates and costs of such treatment of the injured person, and
24 produce forthwith and permit the inspection and copying of his or its
25 records regarding such history, condition, treatment dates and costs of
26 treatment. The person requesting such records shall pay all reasonable
27 costs connected therewith.

28 c. The injured person shall be furnished upon demand a copy of all
29 information obtained by the insurer or the Unsatisfied Claim and
30 Judgment Fund under the provisions of this section, and shall pay a
31 reasonable charge, if required by the insurer and the Unsatisfied Claim
32 and Judgment Fund.

33 d. [Whenever] Except for medical expense benefits provided
34 pursuant to subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4),
35 subsection a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and
36 additional first party medical expense benefits coverage provided
37 pursuant to section 10 of P.L.1972, c.70 (C.39:6A-10), if there is no
38 dispute concerning whether the treatments, health care services or
39 durable medical goods related to an injury for which reimbursement is
40 being sought are causally related to an insured event, whenever the
41 mental or physical condition of an injured person covered by personal
42 injury protection is material to any claim that has been or may be made
43 for past or future personal injury protection benefits, such person shall,
44 upon request of an insurer or the Unsatisfied Claim and Judgment
45 Fund submit to mental or physical examination [by a physician or
46 physicians, or chiropractor or chiropractors. Only a licensed

1 chiropractor may determine the clinical need for further chiropractic
2 treatment by performing a chiropractic examination and this
3 determination shall not depend solely upon a review of the treating
4 chiropractor patient records in cases of denial of benefits] conducted
5 by a provider of health care services licensed in this State in the same
6 profession or specialty as the provider of health care services whose
7 services are subject to review under this section and who is located
8 within a reasonable proximity to the injured person's residence. The
9 injured person shall provide or make available to the provider any
10 pertinent medical records or medical history that the provider deems
11 necessary to the examination. The costs of any examinations
12 requested by an insurer or the Unsatisfied Claim and Judgment Fund
13 shall be borne entirely by whomever makes such request. Such
14 examination shall be conducted within the municipality of residence of
15 the injured person. If there is no qualified [physician or chiropractor]
16 provider of health care services to conduct the examination within the
17 municipality of residence of the injured person, then such examination
18 shall be conducted in an area of the closest proximity to the injured
19 person's residence. Personal injury protection insurers are authorized
20 to include reasonable provisions in personal injury protection coverage
21 policies [for mental and physical examinations of] requiring those
22 claiming personal injury protection coverage benefits to submit to
23 mental or physical examination as requested by an insurer or the
24 Unsatisfied Claim and Judgment Fund pursuant to the provisions of
25 this section. Failure to submit to a mental or physical examination
26 requested by an insurer or the Unsatisfied Claim and Judgment Fund
27 pursuant to the provisions of this section shall subject the injured
28 person to certain limitations in coverage as specified in regulations
29 promulgated by the commissioner.

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

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

46 g. In the event of any dispute regarding an insurer's or the

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

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

16

17 26. (New section) As used in section 26 through 30 of this
18 amendatory and supplementary act:

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

21 "Automobile insurance urban enterprise zone" means a geographic
22 area identified and designated by the commissioner pursuant to section
23 27 of this amendatory and supplementary act.

24 "Automobile insurance urban enterprise zone program" or
25 "program" means an automobile insurance urban enterprise zone
26 program established pursuant to section 27 of this amendatory and
27 supplementary act.

28 "Automobile insurer" means an insurer admitted or authorized to
29 transact the business of automobile insurance in this State.

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

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

34 "Qualified insurer" means an automobile insurer that is a qualified
35 insurer pursuant to section 28 of this amendatory and supplementary
36 act.

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

43

44 27. (New section) a. The commissioner shall establish in a fair
45 and equitable manner an automobile insurance urban enterprise zone
46 program designed to encourage greater availability of automobile

1 insurance in certain urban areas of this State as designated pursuant to
2 subsection b. of this section. The program shall provide for incentives
3 that the commissioner deems necessary to encourage qualified insurers
4 to increase their writing of automobile insurance business in those
5 areas and that adequately safeguard the interests of policyholders and
6 the public.

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

25

26 28. (New section) a. The commissioner shall establish by
27 regulation standards for a qualified insurer. These standards may
28 include, but not be limited to, demonstration by the automobile insurer
29 that it has a plan to increase access to automobile insurance for
30 consumers residing in an automobile insurance urban enterprise zone;
31 demonstration by the automobile insurer that it has a plan to assist
32 newly appointed UEZ agents in developing the skills necessary to
33 manage a successful business; procedures to monitor and evaluate the
34 impact of efforts to expand services to urban areas; and materials
35 designed to assist urban consumers in understanding automobile
36 insurance coverages. For an automobile insurer doing business on a
37 direct writing basis, the standards may include, but not be limited to,
38 the insurer's marketing plans and goals for increasing its writing of
39 risks in automobile insurance urban enterprise zones.

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

43 c. An automobile insurer that certifies to the commissioner that it
44 meets the standards established pursuant to subsection a. of this
45 section shall be considered a qualified insurer for the purposes of this
46 amendatory and supplementary act. If at any time the commissioner

1 determines that a qualified insurer fails to meet the standards
2 established pursuant to subsection a. of this section, or if the
3 commissioner determines it necessary for the protection of the public,
4 he may suspend or revoke the insurer's certification as a qualified
5 insurer. If the commissioner determines that a qualified insurer has
6 experienced a pattern of decreases in its in-force exposures in an
7 automobile insurance urban enterprise zone for two or more
8 consecutive years, the commissioner may suspend or revoke the
9 insurer's certification as a qualified insurer. In making this
10 determination, the commissioner shall consider the past performance
11 of the insurer in providing automobile insurance in urban areas. If an
12 automobile insurer certifies that it meets the standards for becoming
13 a qualified insurer and it does not meet those standards, that insurer
14 shall not be a qualified insurer for purposes of this amendatory and
15 supplementary act and may, at the discretion of the commissioner, be
16 subject of a fine of not more than \$25,000.

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

19

20 29. (New section) a. A qualified insurer may appoint a UEZ agent
21 or agents. Any appointment of a UEZ agent shall comply with the
22 provisions of section 15 of P.L.1987, c.293 (C.17:22A-15), except
23 when there is a conflict with a provision of this amendatory and
24 supplementary act or any regulation promulgated hereunder, this
25 amendatory and supplementary act is controlling. An agency contract
26 between a qualified insurer and a UEZ agent shall be in writing, set
27 forth specific duties and responsibilities of the parties regarding the
28 obligations imposed pursuant to this section and section 28 of this
29 amendatory and supplementary act, and detail the provisions of any
30 limit on the number of exposures provided for in subsection b. of this
31 section.

32 b. A qualified insurer may limit the number of exposures written
33 through a UEZ agent or in the case of a qualified insurer doing
34 business on a direct writing basis, the qualified insurer may limit the
35 number of exposures written in an automobile insurance urban
36 enterprise zone consistent with its marketing plans and goals as
37 provided in subsection a. of section 28 of this amendatory and
38 supplementary act. An eligible person applying for automobile
39 insurance coverage after the limit is reached shall be advised by the
40 UEZ agent that coverage may be available from another agent of the
41 qualified insurer or directly from the qualified insurer if the insurer is
42 a direct writer. Any such limit shall be imposed on an equitable and
43 nondiscriminatory basis consistent with the provisions of subsections
44 a. and b. of section 27 of P.L.1990, c.8 (C.17:33B-15) until the
45 specified limit is reached.

46 c. The commissioner shall establish by regulation requirements that

1 shall be satisfied if a qualified insurer limits the number of exposures
2 written through a UEZ agent, and the manner in which a qualified
3 insurer engaged in the business of automobile insurance on a direct
4 writer basis may utilize the provisions of this section.

5
6 30. (New section) a. The commissioner shall study the effect of
7 territorial rating caps imposed on automobile insurance rates pursuant
8 to section 7 of P.L.1983, c.65 (C.17:29A-36). The study shall include
9 an evaluation of the general market conditions resulting from the
10 imposition of territorial rating caps, including, but not limited to:
11 market availability; affordability of automobile insurance coverage; the
12 actuarial soundness of, and statistical basis for, territorial cap systems;
13 and the creation of competitive market conditions.

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

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

19
20 31. Section 27 of P.L.1990, c.8 (C.17:33B-15) is amended to read
21 as follows:

22 27. a. On or after April 1, 1992, every insurer, either by one or
23 more separate rating plans filed in accordance with the provisions of
24 section [6 of P.L.1988, c.156 (C.17:29A-45)] 14 of P.L. , c.
25 (C.) (now before the Legislature as this bill) or through one or
26 more affiliated insurers, shall provide automobile insurance coverage
27 for eligible persons.

28 b. No insurer shall refuse to insure, refuse to renew, or limit
29 coverage available for automobile insurance to an eligible person who
30 meets its underwriting rules as filed with and approved by the
31 commissioner in accordance with the provisions of section [7 of
32 P.L.1988, c.156 (C.17:29A-46)] 15 of P.L. , c. (C.) (now
33 before the Legislature as this bill).

34 c. Notwithstanding the provisions of subsections a. and b. of this
35 section to the contrary, any qualified insurer engaged in writing
36 automobile insurance in an automobile insurance urban enterprise zone
37 pursuant to section 29 of P.L. , c. (C.) (now before the
38 Legislature as this bill) may limit the number of exposures written
39 through its UEZ agent or agents, or in the case of a qualified insurer
40 doing business on a direct writing basis, the qualified insurer may limit
41 the number of exposures written in an automobile insurance urban
42 enterprise zone consistent with its marketing plans and goals as
43 provided in subsection a. of section 28 of P.L. , c. (C.) (now
44 before the Legislature as this bill). Nothing in this subsection shall be
45 construed to relieve a qualified insurer from its obligation under
46 subsections a. and b. of this section to write all eligible persons

1 residing within an automobile insurance urban enterprise zone through
2 its non-UEZ agent points of access.

3 d. The commissioner may suspend, revoke or otherwise terminate
4 the certificate of authority to transact automobile insurance business
5 in this State of any insurer who violates the provisions of this section.
6 (cf: P.L.1990, c.8, s.27)

7

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

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

11 (1) Provide each eligible person seeking automobile insurance
12 premium quotations for the forms or types of automobile insurance
13 coverages which are offered by all insurers represented by the agent
14 or with which the agent places risks;

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

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

21 If a UEZ agent has a contract with a qualified insurer pursuant to
22 the provisions of section 29 of P.L. , c. (C.)(now before
23 the Legislature as this bill) and the UEZ agent is unable to place an
24 otherwise eligible person with that qualified insurer because of the
25 limitation on the number of exposures imposed by that qualified
26 insurer on the UEZ agent, the UEZ agent shall be deemed to have met
27 the requirements of this subsection, provided that the limitation on the
28 number of exposures has been reached and the UEZ agent fulfills all
29 applicable regulatory requirements.

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

36 (cf: P.L.1990, c.8, s.30)

37

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

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

1 coverage to the extent required in such rules and regulations.

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

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

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

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

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

34 d. That it shall not provide insurance coverage for more than 10
35 percent of the aggregate number of private passenger automobile
36 non-fleet exposures being written in the total private passenger
37 automobile insurance market in this State. The plan shall provide for
38 the cessation of the acceptance of applications or the issuance of new
39 policies at any time it reaches 10 percent of marketshare, as certified
40 by the commissioner, until such time that the commissioner certifies
41 that the plan is insuring less than 10 percent of the aggregate number
42 of private passenger automobile non-fleet exposures being written in
43 the total private passenger automobile insurance market in this State;

44 e. That it shall not provide coverage to an eligible person as
45 defined pursuant to section 25 of P.L.1990, c.8 (C.17:33B-13);

46 f. [That insurers who write automobile risks in those urban

1 territories designated by the commissioner shall receive one assigned
2 risk credit for every two voluntary risks written in those designated
3 territories; and] (~~Deleted by amendment, P.L. _____, c. _____.~~)

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

6 h. That a qualified insurer who writes automobile insurance risks
7 in those automobile insurance urban enterprise zones designated by the
8 commissioner pursuant to section 27 of P.L. _____, c. _____ (C. _____) (now
9 before the Legislature as this bill) shall receive assigned risk credits for
10 voluntary risks written in those designated automobile insurance urban
11 enterprise zones as a direct writer or through a UEZ agent or agents
12 or through any agent with whom the insurer has an in-force contract
13 as of the effective date of P.L. _____, c. _____ (now before the Legislature
14 as this bill). The commissioner shall establish by regulation the manner
15 in which any qualified automobile insurer may utilize the provisions of
16 this subsection.

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

22 The governing body administering the plan shall report annually to
23 the Legislature and the Governor on the activities of the plan. The
24 report shall contain an actuarial analysis regarding the adequacy of the
25 rates for each coverage for the safeness and soundness of the plan.

26 (cf: P.L.1995, c.151, s.1)

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

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

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

43 (2) if the insured or operator insured under the policy: (a)
44 maintained private passenger automobile insurance for a period of at
45 least three years with no intervening lapse of coverage and (b) has had
46 no more than one of the following: a motor vehicle moving violation

1 in the immediately preceding three years, a paid comprehensive claim
2 in the immediately preceding three years, or an at-fault accident in the
3 immediately preceding five years.

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

11 c. [For every two newly insured automobiles which an insurer
12 voluntarily writes in each territory during each calendar year period,
13 the insurer shall be permitted to refuse to renew one additional policy
14 of automobile insurance in that territory in excess of the 2% limitation
15 established by subsection b. of this section, subject to a fair and
16 nondiscriminatory formula developed by rule or regulation of the
17 commissioner. For the purposes of this section, "voluntarily writes"
18 shall not include any exposure voluntarily written by or assigned to an
19 insurer to meet any quota established pursuant to section 26 of
20 P.L.1983, c.65 (C.17:30E-14).] (Deleted by amendment, P.L. _____,
21 c._____.)

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

25 e. [The commissioner shall monitor the implementation and
26 operation of this section and shall report his findings, including any
27 legislative proposals, to the Senate Labor, Industry and Professions
28 Committee and the Assembly Insurance Committee, or their
29 successors, within three years of the effective date of this act.]
30 (Deleted by amendment, P.L. _____, c._____.)

31 f. For every three newly insured automobiles which a qualified
32 insurer voluntarily writes in an automobile insurance urban enterprise
33 zone through its UEZ agent pursuant to section 29 of P.L. _____, c. _____
34 (C. _____) (now before the Legislature as this bill) or through any agent
35 with whom the insurer has an in-force contract as of the effective date
36 of that act, during each calendar year period, a qualified insurer shall
37 be permitted to refuse to renew insurance on two additional
38 automobiles in any rating territory except in an automobile insurance
39 urban enterprise zone. The commissioner shall establish by regulation
40 the manner in which a qualified insurer engaged in the business of
41 automobile insurance on a direct writing basis may utilize the
42 provisions of this subsection. The nonrenewal provisions of this
43 subsection shall be permitted only in rating territories in which the
44 qualified insurer experiences growth in the aggregate number of in-
45 force exposures. The commissioner shall develop and promulgate a
46 standardized reporting form which insurers shall utilize for the purpose

1 of reporting their activity pursuant to this subsection.

2 g. Nothing in this section shall prohibit an insurer from refusing to
3 renew or cancel in addition to nonrenewals permitted in subsection b.
4 and e., the policy of any insured who has: (1) provided false or
5 misleading information in connection with any application for
6 insurance, renewal of insurance or claim for benefits under an
7 insurance policy or (2) who has failed to provide, after written request
8 by an insurer, the minimum information necessary to rate accurately
9 the policy as defined by the commissioner.

10 h. An insurer may nonrenew, without limitation, any insurance
11 policy brokered by a producer from an unlicensed or unappointed third
12 party without the knowledge or approval of the insurer.

13 i. An insurer shall not nonrenew any policy of a named insured,
14 who is an eligible person pursuant to section 26 of P.L.1990, c.8
15 (C.17:33B-14) and to whom paragraph (2) of subsection a. of this
16 section applies, on the grounds that any operator in the household is
17 an ineligible person, except that the insurer may endorse the policy to
18 exclude coverage for injury caused by the ineligible person's use of any
19 vehicle insured under the policy. The commissioner shall, by
20 regulation and consistent with the intent of this section, define
21 additional circumstances in which such policy endorsements may be
22 used in lieu of non-renewal pursuant to subsections b. and e. of this
23 section.

24 (cf: P.L.1988, c.119, s.26)

25

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

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

32 b. In the event that a policy of insurance, issued by the automobile
33 insurance plan established pursuant to P.L.1970, c.215 (C.17:29D-1)
34 or any successor thereto, is canceled by reason of nonpayment of
35 premium to the insurer issuing the policy or nonpayment of an
36 installment payment due pursuant to an insurance premium finance
37 agreement, the broker of record for that policy may retain the full
38 annual commission due thereon and, if a premium finance agreement
39 is not involved, the effective date of cancellation of the policy shall be
40 no earlier than 10 days prior to the last full day for which the premium
41 paid by the insured, net of the broker's full annual commission, would
42 pay for coverage on a pro rata basis in accordance with rules
43 established by the commissioner.

44 c. Contracts between insurance companies and agents for the
45 appointment of the agent as the representative of the company shall set
46 forth the rate of commission to be paid to the agent for each class of

1 insurance within the scope of such appointment written on all risks or
2 operations in this State, except:

- 3 (1) Reinsurance.
- 4 (2) Life insurance.
- 5 (3) Annuities.
- 6 (4) Accident and health insurance.
- 7 (5) Title insurance.
- 8 (6) Mortgage guaranty insurance.
- 9 (7) Hospital service, medical service, health service, or dental
10 service corporations, investment companies, mutual benefit
11 associations, or fraternal beneficiary associations.

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

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

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

- 46 (1) in which the agent is paid on a salary basis without commission

1 or where he agrees to represent exclusively one company or to the
2 termination of an agent's contract for insolvency, abandonment, gross
3 and willful misconduct, or failure to pay over to the company moneys
4 due to the company after his receipt of a written demand therefor, or
5 after revocation of the agent's license by the Commissioner of Banking
6 and Insurance; and in any such case the company shall, upon request
7 of the insured, provided he meets the then current underwriting
8 standards of the company, renew any contract of insurance formerly
9 processed by the terminated agent, through an active agent, or directly
10 pursuant to such rules and regulations as may be promulgated by the
11 Commissioner of Banking and Insurance, or

12 (2) which are entered into between a qualified insurer and a UEZ
13 agent pursuant to section 29 of P.L. , c. (C.)(now before the
14 Legislature as this bill).

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

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

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

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

30 j. The provisions of subsection b. of this section shall not apply to
31 policies written by the New Jersey Automobile Full Insurance
32 Underwriting Association established pursuant to sections 13 through
33 34 of P.L.1983, c.65 (C.17:30E-1 et seq.).

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

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

1 insured may (a) continue to renew and obtain service through the
2 terminated agent; or (b) renew the policy and obtain service through
3 another agent of the company.

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

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

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

1 Protection in the Department of Banking and Insurance.

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

6 m. A qualified insurer which terminates its contractual relationship
7 with its UEZ agent pursuant to section 29 of P.L. , c. (C.)
8 (now before the Legislature as this bill) shall terminate its relationship
9 in accordance with the following provisions:

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

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

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

34 (cf: P.L.1989, c.129, s.1)

35

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

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

41 (1) Misrepresentations and false advertising of policy contracts.
42 Making, issuing, circulating, or causing to be made, issued or
43 circulated, any estimate, illustration, circular or statement
44 misrepresenting the terms of any policy issued or to be issued or the
45 benefits or advantages promised thereby or the dividends or share of
46 the surplus to be received thereon, or making any false or misleading

1 statement as to the dividends or share of surplus previously paid on
2 similar policies, or making any misleading representation or any
3 misrepresentation as to the financial condition of any insurer, or as to
4 the legal reserve system upon which any life insurer operates, or using
5 any name or title of any policy or class of policies misrepresenting the
6 true nature thereof, or making any misrepresentation to any
7 policyholder insured in any company for the purpose of inducing or
8 tending to induce such policyholder to lapse, forfeit, or surrender his
9 insurance.

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

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

27 (4) Boycott, coercion and intimidation. Entering into any
28 agreement to commit, or by any concerted action committing, any act
29 of boycott, coercion or intimidation resulting in or tending to result in
30 unreasonable restraint of, or monopoly in, the business of insurance,
31 or resulting in or tending to result in unreasonable influence being
32 exerted upon any producer that has an in-force contract as of the
33 effective date of P.L. , c. (C.)(now before the Legislature as
34 this bill) for the purpose of replacing the in-force contract with a UEZ
35 agent contract pursuant to section 29 of P.L. , c. (C.)(now
36 before the Legislature as this bill).

37 (5) False financial statements. Filing with any supervisory or other
38 public official, or making, publishing, disseminating, circulating or
39 delivering to any person, or placing before the public, or causing
40 directly or indirectly, to be made, published, disseminated, circulated,
41 delivered to any person, or placed before the public, any false
42 statement of financial condition of an insurer with intent to deceive.

43 Making any false entry in any book, report or statement of any
44 insurer with intent to deceive any agent or examiner lawfully appointed
45 to examine into its condition or into any of its affairs, or any public
46 official to whom such insurer is required by law to report, or who was

1 authorized by law to examine into its condition or into any of its
2 affairs, or, with like intent, willfully omitting to make a true entry of
3 any material fact pertaining to the business of such insurer in any
4 book, report or statement of such insurer.

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

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

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

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

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

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

43 (8) Rebates. (a) Except as otherwise expressly provided by law,
44 knowingly permitting or offering to make or making any contract of
45 life insurance, life annuity or accident and health insurance, or
46 agreement as to such contract other than as plainly expressed in the

1 contract issued thereon, or paying or allowing, or giving or offering to
2 pay, allow, or give, directly or indirectly, as inducement to such
3 insurance, or annuity, any rebate of premiums payable on the contract,
4 or any special favor or advantage in the dividends or other benefits
5 thereon, or any valuable consideration or inducement whatever not
6 specified in the contract; or giving, or selling, or purchasing or
7 offering to give, sell, or purchase as inducement to such insurance or
8 annuity or in connection therewith, any stocks, bonds, or other
9 securities of any insurance company or other corporation, association,
10 or partnership, or any dividends or profits accrued thereon, or
11 anything of value whatsoever not specified in the contract.

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

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

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

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

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

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

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

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

45 (g) Compelling insureds to institute litigation to recover amounts
46 due under an insurance policy by offering substantially less than the

1 amounts ultimately recovered in actions brought by such insureds;

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

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

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

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

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

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

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

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

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

40 (cf: P.L.1975, c.100, s.1)

41

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

44 6. a. [A merit rating accident surcharge system for private
45 passenger automobiles may be used in the voluntary market, by the
46 New Jersey Automobile Full Insurance Underwriting Association

1 created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), by the
2 Market Transition Facility created pursuant to section 88 of P.L.1990,
3 c.8 (C.17:33B-11), and by any insurance plan established to provide
4 private passenger automobile insurance pursuant to section 1 of
5 P.L.1970, c.215 (C.17:29D-1). No surcharges shall be imposed on or
6 after the operative date of this act, unless there is an at-fault accident
7 within a three-year period immediately preceding the effective date of
8 coverage which results in payment by the insurer of at least a \$300.00
9 claim. All moneys collected under this subsection shall be retained by
10 the insurer assessing the surcharge. Accident surcharges shall be
11 imposed for a three-year period and shall, for each filer, be uniform on
12 a Statewide basis without regard to classification or territory.]
13 (Deleted by amendment, P.L. _____, c. _____.)

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

17 (1) (a) Plan surcharges shall be levied, beginning on or after
18 January 1, 1984, by the Division of Motor Vehicles on any driver who
19 has accumulated, within the immediately preceding three-year period,
20 beginning on or after February 10, 1983, six or more motor vehicle
21 points, as provided in Title 39 of the Revised Statutes, exclusive of
22 any points for convictions for which surcharges are levied under
23 paragraph (2) of this subsection; except that the allowance for a
24 reduction of points in Title 39 of the Revised Statutes shall not apply
25 for the purpose of determining surcharges under this paragraph.
26 Surcharges shall be levied for each year in which the driver possesses
27 six or more points. Surcharges assessed pursuant to this paragraph
28 shall be \$100.00 for six points, and \$25.00 for each additional point.

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

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

45 If, upon written notification from the Division of Motor Vehicles,
46 mailed to the last address of record with the division, a driver fails to

1 pay a surcharge levied under this subsection, the license of the driver
2 shall be suspended forthwith until the surcharge is paid to the Division
3 of Motor Vehicles; except that the Division of Motor Vehicles may
4 authorize payment of the surcharge on an installment basis over a
5 period not to exceed 12 months. If a driver fails to pay the surcharge
6 or any installments on the surcharge, the total surcharge shall become
7 due immediately.

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

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

46 All moneys collectible under this subsection b. shall be billed and

1 collected by the Division of Motor Vehicles. Of the moneys collected:
2 10%, or the actual cost of administering the collection of the
3 surcharge, whichever is less, shall be retained by the Division of Motor
4 Vehicles until August 31, 1996; five percent, or the actual cost of
5 administering the cancellation notification system established pursuant
6 to section 50 of P.L.1990, c.8 (C.17:33B-41), whichever is less, shall
7 be retained by the Division of Motor Vehicles until August 31, 1996;
8 and prior to October 1, 1991, the remainder shall be remitted to the
9 New Jersey Automobile Full Insurance Underwriting Association and
10 on or after October 1, 1991 until August 31, 1996, the remainder shall
11 be remitted to the New Jersey Automobile Insurance Guaranty Fund
12 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5).
13 Commencing on September 1, 1996, or such earlier time as the
14 Commissioner of Banking and Insurance shall certify to the State
15 Treasurer that amounts on deposit in the New Jersey Automobile
16 Insurance Guaranty Fund are sufficient to satisfy the current and
17 anticipated financial obligations of the New Jersey Automobile Full
18 Insurance Underwriting Association, all plan surcharges collected by
19 the Division of Motor Vehicles under this subsection b. shall be
20 remitted to the Division of Motor Vehicles Surcharge Fund for
21 transfer to the Market Transition Facility Revenue Fund, as provided
22 in section 12 of P.L.1994, c.57 (C.34:1B-21.12), for the purposes of
23 section 4 of P.L.1994, c.57 (C.34:1B-21.4) until such a time as all the
24 Market Transition Facility bonds, notes and obligations issued
25 pursuant to that section 4 of that act and the costs thereof are
26 discharged and no longer outstanding. From the date of certification
27 by the Commissioner of Banking and Insurance that the moneys
28 collectible under this subsection are no longer needed to fund the
29 association or at such a time as all Market Transition Facility bonds,
30 notes and obligations issued pursuant to section 4 of P.L.1994, c.57
31 (C.34:1B-21.4) and the costs thereof are discharged and no longer
32 outstanding moneys collectible under this subsection shall, subject to
33 appropriation, be remitted to the New Jersey Property-Liability
34 Insurance Guaranty Association created pursuant to section 6 of
35 P.L.1974, c.17 (C.17:30A-6) to be used for payment of any loans
36 made by that association to the New Jersey Automobile Insurance
37 Guaranty Fund pursuant to paragraph (10) of subsection a. of section
38 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such payments
39 shall be subject to and dependent upon appropriation by the State
40 Legislature.

41 (3) In addition to any other authority provided in P.L.1983, c.65
42 (C.17:29A-33 et al.), the commissioner, after consultation with the
43 Director of the Division of Motor Vehicles, is specifically authorized
44 (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in
45 accordance with paragraph (1)(a) of this subsection, surcharges for
46 motor vehicle violations or convictions for which motor vehicle points

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

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

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

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

23 (cf: P.L.1994, c.64, s.1)

24

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

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

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

1 automobile.

2 Every automobile liability insurance policy, issued or renewed on
3 or after the effective date of P.L. , c. (now before the
4 Legislature as this bill), insuring an automobile as defined in section 2
5 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability
6 arising out of ownership, operation, maintenance or use of an
7 automobile shall provide personal injury protection coverage, as
8 defined hereinbelow, under provisions approved by the Commissioner
9 of Banking and Insurance, for the payment of benefits without regard
10 to negligence, liability or fault of any kind, to the named insured and
11 members of his family residing in his household who sustained bodily
12 injury as a result of an accident while occupying, entering into,
13 alighting from or using an automobile, or as a pedestrian, caused by an
14 automobile or by an object propelled by or from an automobile, except
15 as limited by section 14 of P.L.1985, c.520 (C.39:6A-4.5).

16 "Personal injury protection coverage" means and includes:

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

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

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

43 d. Death benefits. In the event of the death of an income producer
44 as a result of injuries sustained in an accident entitling such person to
45 benefits under this section, the maximum amount of benefits which
46 could have been paid to the income producer, but for his death, under

1 subsection b. of this section shall be paid to the surviving spouse, or
2 in the event there is no surviving spouse, then to the surviving
3 children, and in the event there are no surviving spouse or surviving
4 children, then to the estate of the income producer.

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

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

15 Benefits payable under this section shall:

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

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

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

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

28 (cf: P.L.1990, c.8, s.4)

29

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

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

36 a. Medical expense benefit deductibles in amounts of \$500.00,
37 \$1,000.00 and \$2,500.00 for any one accident;

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

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

41 d. For policies issued or renewed on or after January 1, 1991, the
42 option that other health insurance coverage or benefits of the insured,
43 including health care services provided by a health maintenance
44 organization and any coverage or benefits provided under any federal
45 or State program, are the primary coverage in regard to medical
46 expense benefits pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4).

1 If health insurance coverage or benefits are primary, an automobile
2 insurer providing medical expense benefits under personal injury
3 protection coverage shall be liable for reasonable medical expenses not
4 covered by the health insurance coverage or benefits up to the limit of
5 the medical expense benefit coverage. The principles of coordination
6 of benefits shall apply to personal injury protection medical expense
7 benefits coverage pursuant to this subsection.

8 Insurers shall offer the options provided by subsections a. and b. of
9 this section at appropriately reduced premiums. For policies issued or
10 renewed prior to January 1, 1992, insurers shall offer the option
11 provided by subsection d. of this section at a discount of not less than
12 25% from the base rate applicable to the first \$250,000 of medical
13 expense benefit coverage, and for policies issued or renewed on or
14 after January 1, 1992, insurers shall offer the option at an appropriate
15 discount from the base rate for the amount of medical expense benefit
16 coverage taken.

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

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

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

45 Medical expense benefits payable in any amount between the
46 deductible selected pursuant to subsection a. of this section and

1 \$5,000.00 shall be subject to a copayment of 20%.

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

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

10 (cf: P.L.1990, c.8, s.6)

11

12 40. (New Section) The provisions of section 7 of P.L.1972, c.198
13 (C.39:6-86.1) shall not apply to any person qualified to receive
14 payment under the "Unsatisfied Claim and Judgment Fund Law,"
15 P.L.1952, c.174 (C.39:6-61 et seq.), for a claim arising out of an
16 accident occurring on or after the effective date of P.L. , c. (now
17 before the Legislature as this bill).

18

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

21 10. [~~The Commissioner of Insurance shall, within~~ Commencing 90
22 days after the effective date of [~~P.L.1990, c.8 (C.17:33B-1 et al.),~~
23 ~~promulgate medical fee schedules on a regional basis for] P.L. , c.~~
24 (now before the Legislature as this bill), the reimbursement of health
25 care providers providing services or equipment for medical expense
26 benefits for which payment is to be made by an automobile insurer
27 under personal injury protection coverage pursuant to P.L.1972, c.70
28 (C.39:6A-1 et seq.), or by an insurer under medical expense benefits
29 coverage pursuant to section 2 of P.L.1991, c.154 (C.17:28-1.6) [
30 These fee schedules shall be promulgated on the basis of the type of
31 service provided, and shall incorporate the reasonable and prevailing
32 fees of 75% of the practitioners within the region. If, in the case of a
33 specialist provider, there are fewer than 50 specialists within a region,
34 the fee schedule shall incorporate the reasonable and prevailing fees of
35 the specialist providers on a Statewide basis. These schedules shall be
36 reviewed biannually by the commissioner] shall be 120 percent of: a.
37 the prevailing charge at the 75th percentile; b. the applicable fee
38 schedule, the recommended fee or the inflation index charge; or c. the
39 diagnostic-related group (DRG) payment; whichever pertains to the
40 specialty service involved, determined to be applicable in this State
41 under the Medicare program for comparable service at the time the
42 services were rendered, or the provider's usual, reasonable and
43 customary fee, whichever is less. If a prevailing charge, fee schedule,
44 recommended fee, inflation index charge or DRG payment has not
45 been calculated under the Medicare program for a particular treatment,
46 accommodation, product or service, the amount of the payment may

1 not exceed the usual amount paid to the provider for the service by
2 other payors. Upon determining that the standard set forth in this
3 section does not provide proper reimbursement in all circumstances,
4 the commissioner may by regulation promulgate a medical expense fee
5 schedule on an alternate basis. In making this determination, the
6 commissioner shall consider whether the reimbursement provided for
7 in this section appropriately implements the purpose of P.L. , c.
8 (now before the Legislature as this bill) to provide for the prompt
9 reimbursement of necessary medical expenses in a cost-effective
10 manner, and may consider other relevant factors, including, but not
11 limited to, generally accepted practices for reimbursement and the
12 special circumstances of trauma care hospitals.

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

19 (cf: P.L.1991, c.154, s.6)

20

21 42. (New section) a. A filer may use an expedited rate filing
22 procedure to file for an increase or decrease in its Statewide average
23 base rate for private passenger automobile insurance for any coverage
24 or coverages therein at any time during a calendar year, with
25 documentation supporting the increase or decrease, no later than 30
26 days prior to the effective date of the rate change, provided that the
27 increase or decrease shall not produce rates which are excessive,
28 inadequate for the safety and soundness of the insurer, and which do
29 not unfairly discriminate between risks in this State involving
30 essentially the same hazards and expense elements, provided that with
31 respect to a rate increase: (1) no filing under this section shall be
32 made by any filer which has generated excess profits during the
33 preceding year pursuant to the provisions of P.L.1988, c.118
34 (C.17:29A-5.6 et seq.); (2) no filing under this section shall be made
35 more frequently than once in any twelve-month period; and (3) the rate
36 change for any coverage or coverages shall not exceed the amount of
37 the average increase in the component of the Consumer Price Index
38 for all urban consumers, U.S. city average, which is applicable to the
39 coverage or coverages. The commissioner shall establish by regulation
40 the documentation which shall accompany the filing, which shall be
41 reasonable and in accordance with the nature of the filing, and upon
42 submission of the documentation required, the filing shall be deemed
43 complete. The rate change shall be effective on the 30th day following
44 the filing.

45 b. The commissioner may challenge a rate change made under an
46 expedited rate filing procedure implemented pursuant to subsection a.

1 of this section after the effective date of the rate change by notifying
2 the filer in writing no later than 45 days following the effective date of
3 the change. The commissioner shall hear the matter on an expedited
4 basis and shall render a final determination within four months of the
5 date of the filing. The commissioner may, for good cause, extend this
6 four-month period up to an additional three months. If the
7 commissioner reduces or rescinds a rate change as a result of a finding
8 that the rate change for any coverage or coverages is excessive or is
9 likely to produce excess profits pursuant to the provisions P.L.1988,
10 c.118 (C.17:29A-5.6 et seq.), the filer shall bear the cost of the
11 reasonable expenses of the commissioner in making his determination.

12 c. Any change in excess of the rate changes permitted by
13 subsection a. of this section shall be subject to the provisions
14 of P.L.1944, c.27 (C.17:29A-1 et seq.).

15

16 43. Section 19 of P.L.1983, c.362 (C.17:28-1.3) and sections 6 and
17 7 of P.L.1988, c.156 (C.17:29A-45 and 17:29A-46) are repealed.

18

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

21

22 45. (New section) The Commissioner of Banking and Insurance
23 may promulgate regulations and other administrative processes
24 necessary to effectuate the purposes of this amendatory and
25 supplementary act, including, but not limited to, procedures governing
26 rating system filings to implement this amendatory and supplementary
27 act.

28

29 46. This act shall take effect on January 1, 1998, except that
30 sections 1 through 13 and sections 17, 18, 34, 42, 44 and 45 shall take
31 effect immediately.

32

33

34

STATEMENT

35

36 This bill is intended to address specific problems of fraud and
37 availability in New Jersey's automobile insurance market. It includes
38 strategies to reduce costs both in the short term by eliminating
39 unnecessary medical expenses, and in the long term by attacking
40 pervasive fraud; and promotes a market fairer to consumers by
41 eliminating automobile insurance surcharges and automatic rate
42 increases, restricting arbitrary nonrenewals of good drivers and
43 promoting market access in underserved urban areas.

44 The bill recognizes the special danger posed by drunk drivers, and
45 provides that a person convicted of a drunk driving offense arising out
46 of an accident must compensate injured parties regardless of the tort

1 option chosen by the injured person. In addition, drunk drivers shall
2 have no cause of action to recover economic or noneconomic losses.
3 The bill further provides that persons who are required to purchase
4 auto insurance, but do not, be held responsible for both economic and
5 noneconomic damages regardless of the tort option chosen by injured
6 parties. Finally, the bill provides that persons using an automobile
7 intentionally to injure another should be personally responsible for
8 both economic and noneconomic damages regardless of the tort
9 option chosen by the injured party. While intentional injuries are not
10 covered by liability insurance as a matter of public policy, it is entirely
11 appropriate to prevent those committing intentional torts from
12 receiving any benefit from the tort option choices.

13 The cost containment provisions of this bill provide a better method
14 of resolving certain disputes involving PIP medical expense benefits.
15 As in present law, disputes concerning the amount payable under PIP
16 medical expense benefits, and disputes concerning PIP claims, other
17 than medical expense benefits, would continue to be settled through
18 an arbitration process, but the bill requires that the arbitration
19 procedures be approved by the Commissioner of Banking and
20 Insurance.

21 For other PIP medical expense disputes, the bill provides that
22 insurers contract with an approved peer review organization (PRO) to
23 review disputes about the appropriateness or medical necessity of a
24 treatment, medical service or durable medical equipment. The bill
25 establishes time frames within which the review process is to be
26 completed, provides for reconsideration of an initial PRO decision by
27 a PRO other than the initial PRO, and provides that the decisions of
28 PROs are subject to review by the Superior Court, Law Division. The
29 bill establishes the standard for overturning a PRO decision to be
30 “preponderance of evidence.”

31 The bill requires the Commissioner of Banking and Insurance to
32 establish standards for approval as a PRO for PIP medical expense
33 benefits claims. Those standards will include requirements with
34 respect to experience, licensure, fees, confidentiality and procedures
35 which are necessary to ensure the independence and impartiality of the
36 review process.

37 Consumer safeguards include: prohibition on PRO compensation
38 based upon a percentage or contingency basis; prohibition on insurer
39 ownership of a PRO; the commissioner’s ability to suspend or revoke
40 a PRO’s authority if the commissioner determines reviews are not
41 being carried out in an impartial and independent manner; and the
42 commissioner’s ability to order either a reduction in the number of
43 PRO reviews referred by an insurer to a specific PRO or reduction of
44 the total number of PRO reviews by an insurer, if the commissioner
45 determines that the number of PRO referrals are so disproportionate
46 that there is the appearance that the reviews are not being conducted

1 in an impartial and independent manner.

2 In addition, the bill amends the medical fee schedule statute used to
3 reimburse health care providers for treating persons covered by PIP
4 medical expense benefits, so as to tie the schedule to 120% of the
5 approved Medicare fee schedule, with certain exceptions.

6 The bill requires the commissioner to review the overall availability
7 of automobile insurance in the State and designate by regulation those
8 urban areas where increased access to automobile insurance should be
9 encouraged. These areas are to be known as automobile insurance
10 urban enterprise zones (UEZs). To assist in this review, the
11 commissioner may appoint an advisory committee composed of
12 representatives of automobile insurers, insurance producers and urban
13 area residents. The bill permits the commissioner to conduct periodic
14 reviews for the purpose of changing the designation of automobile
15 insurance UEZs in order to ensure that the automobile insurance UEZ
16 program established by this bill is being applied to the urban areas of
17 the State most in need of greater access to automobile insurance.

18 The bill authorizes the commissioner to establish standards an
19 insurer shall meet to qualify to become eligible to participate in the
20 automobile insurance UEZ program. Under the terms of the bill, a
21 qualified insurer would be eligible for certain incentives such as:
22 credits against assigned risk obligations for risks written in an
23 automobile insurance UEZ and the ability to non-renew two exposures
24 in any territory, except in an automobile insurance UEZ, for every
25 three voluntary risks written in an automobile insurance UEZ. The bill
26 also allows a qualified insurer to implement special procedures with
27 regard to agents appointed in an automobile insurance UEZ.

28 The bill also requires a comprehensive study on the effects that
29 territorial rate caps have on the availability of automobile insurance in
30 the voluntary market.

31 The bill eliminates the current system of rating private passenger
32 automobiles based on automobile insurance eligibility point surcharges,
33 which often penalizes good drivers for a recent minor driving
34 infraction, and provides instead that automobile insurers may file
35 rating systems that provide for more than one rate level or tier based
36 on a broader set of rating and underwriting criteria. It permits greater
37 flexibility in evaluating and rating risks with different rating
38 characteristics.

39 The bill provides that insurers with more than one rating plan may
40 not adopt underwriting rules which would permit a person to be
41 insured under more than one of the rating plans. Rating plans initially
42 filed must be revenue neutral for the insurer. To provide for an
43 orderly transition with minimal disruption in the automobile insurance
44 market, the bill authorizes the commissioner to promulgate
45 regulations. The bill eliminates the current "flex rate" system, which
46 now provides for automatic, annual rate increases for all automobile

1 insurers regardless of need. The bill leaves in place the prior approval
2 of private passenger automobile insurance rates and underwriting rules
3 by the commissioner.

4 The bill reaffirms the commissioner's authority to provide rates in
5 the assigned risk program that are appropriate for the small percentage
6 of drivers that are not eligible for coverage in the voluntary market.
7 Additionally, the bill reaffirms the commissioner's authority to
8 establish appropriate mechanisms for the expeditious resolution of
9 operational decisions by residual market mechanisms, subject to
10 commissioner oversight and as provided in the rules and regulations
11 promulgated pursuant to section 1 of P.L.1970, c.215 (C. 17:29D-1).
12 The current method, which has operated satisfactorily for many years
13 and is consistent with methods employed by other states' residual
14 market mechanisms, has recently been questioned by appeals to the
15 courts. The bill's reaffirmation of the authority of a governing
16 committee to administer any plan, including, but not limited to, the
17 authority to hear certain appeals, is intended to settle doubts that were
18 raised in the recent decision, Chopper Express v. Department of
19 Insurance, 293 N.J. Super. 536 (App. Div. 1996).

20 The bill eliminates the present ability of insurers to nonrenew one
21 automobile for each two newly insured automobiles in a territory.
22 This provision was originally adopted in 1988 to compensate for the
23 great increase in new business from depopulation of the residual
24 market. This provision will eliminate more than half of the
25 discretionary nonrenewal authority presently exercised by automobile
26 insurers. Additionally, the ability of automobile insurers to nonrenew
27 up to two percent of drivers in a territory is restricted by limiting the
28 pool of persons subject to nonrenewal to those with higher risk
29 characteristics and those who have committed a violation of the "New
30 Jersey Insurance Fraud Protection Act," P.L.1983, c.320 (C.17:33A-1
31 et seq.).

32 The bill provides greater flexibility to the Commissioner of Banking
33 and Insurance in determining how to proceed against reported cases
34 of fraud, and permits the imposition of penalties up to \$25,000 per
35 violation against insurers that fail to implement fraud prevention plans.
36 The bill provides for revocation of the professional licenses of certain
37 individuals when convicted of insurance fraud, and provides for the
38 revocation of the driver's license of persons convicted of insurance
39 fraud.

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44 Provides for peer review organizations, tier rating and urban enterprise
45 zones, reduces fraud and nonrenewals and eliminates surcharges and
46 flex rating in regard to automobile insurance.