

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2221

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 1997

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2221.

This bill, as amended by the committee, addresses numerous aspects concerning enforcement against insurance fraud. When the Commissioner of Banking and Insurance determines that a person has violated the "New Jersey Insurance Fraud Prevention Act," the commissioner may either bring a civil action for a penalty or levy a civil administrative penalty and order restitution; and may request the Attorney General to bring a criminal action. The penalty for violating the "New Jersey Insurance Fraud Prevention Act" remains the same, at not more than \$5,000 for a first violation, not more than \$10,000 for a second violation, and not more than \$15,000 for each subsequent violation.

An insurer damaged as the result of a violation of any provision of the "New Jersey Insurance Fraud Prevention Act" may sue to recover compensatory damages and to recover treble damages if the defendant has engaged in a pattern of violating that act. This bill provides that a pattern means five or more related violations. The bill also provides for a six-year statute of limitation on these suits.

Currently, if the commissioner or the Attorney General finds that a health care provider, insurer, insurance agent, insurance adjuster or other licensed person has violated the "New Jersey Insurance Fraud Prevention Act," the commissioner or Attorney General must notify the appropriate licensing authority of the violation. This bill provides that the licensing authority must report quarterly to the commissioner about the status of all pending referrals.

The bill allows the commissioner to release confidential documents or evidence relative to an investigation under the "New Jersey Insurance Fraud Prevention Act" to law enforcement agencies and shields insurance company fraud investigators from being subpoenaed to testify in civil actions concerning a pending fraud investigation by the Division of Insurance Fraud Prevention.

The penalty is increased from \$5,000 per day to \$25,000 per violation for failure of a health insurer or automobile insurer to submit a fraud prevention plan or amendments thereto; properly

implement an approved plan in a reasonable manner and within a reasonable time period; and file certain reports.

The bill provides for the suspension or revocation of the professional licenses of persons licensed by boards in the Division of Consumer Affairs if they violate the "New Jersey Insurance Fraud Prevention Act" or any insurance fraud prevention law of another jurisdiction, and prohibits any person who has been convicted of automobile insurance fraud from operating a motor vehicle in this State for a year. In addition, the definition of principal residence is clarified for determining rate evaders, and attorneys' fees and court costs are recoverable in additional circumstances.

The fine for driving without mandatory liability insurance is raised from \$300, to not less than \$300 nor more than \$1,000 for a first offense, and from \$500 to up to \$5,000 for a subsequent conviction.

The bill provides that a person who operates an automobile without insurance, while drunk or with intent to injure another shall have no cause of action to recover economic or noneconomic loss.

The bill terminates the current system of private passenger automobile insurance surcharges and provides that automobile insurers may file tier rating plans. The bill prohibits surcharges by automobile insurers based on either motor vehicle violation points or the schedule of automobile insurance eligibility points promulgated by the commissioner.

The bill provides that insurers with tier rating may not adopt underwriting rules which would permit a particular automobile to be insured under more than one of the rating tiers. Tier rating plans filed must be revenue neutral for the insurer with respect to eligible persons as defined in the "Fair Automobile Insurance Reform Act of 1990," or "FAIR Act." Under the bill, an insurer may take into account factors, including a person's driving record characteristics appropriate for underwriting and classification in formulating its underwriting rules, but may not assign a named insured to a rating tier, other than the standard rating tier applicable to the insured's territory, solely on the basis of having accumulated six or less motor vehicle points.

The bill allows the Personal Automobile Insurance Plan (PAIP), the residual market mechanism in New Jersey, to continue to surcharge for motor vehicle accidents and violations because it is anticipated that PAIP will not use tier rating.

To minimize disruption in the automobile insurance market, the bill authorizes the commissioner to establish reasonable administrative processes providing for a transition period between the current automobile insurance rating system and implementation of the tier rating plans established pursuant to this bill; and to promulgate any other regulations necessary to effectuate the purposes of these provisions. Tier rating would become effective on March 1, 1998.

The bill requires the commissioner to review the overall availability of automobile insurance in this State and designate by

regulation those urban-based geographic areas where increased access to automobile insurance should be encouraged. These areas are to be known as automobile insurance urban enterprise zones (UEZs). To assist in this review, the commissioner may appoint an advisory committee composed of representatives of automobile insurers, insurance producers and urban area residents. The bill permits the commissioner to conduct periodic reviews for the purpose of changing the designation of automobile insurance UEZs to ensure that the automobile insurance UEZ program established by this bill is being applied to the urban areas of the State most in need of greater access to automobile insurance.

The bill authorizes the commissioner to establish standards that must be met in order to qualify an insurer as eligible to participate in the automobile insurance UEZ program. Those standards may include: demonstration by the automobile insurer that it has a plan to increase access to automobile insurance for consumers residing in an automobile insurance UEZ; demonstration by the automobile insurer that it has a plan to assist newly appointed UEZ agents in developing the skills necessary to manage a successful business; procedures to monitor and evaluate the impact of efforts to expand services to urban areas; and materials designed to assist urban consumers in understanding automobile insurance coverages.

An automobile insurer, which meets the applicable standards, may certify to the commissioner that it is a qualified insurer, and, if at any time the commissioner determines that a qualified insurer fails to meet the standards or if the commissioner determines it necessary for the protection of the public, he may suspend or revoke the insurer's certification as a qualified insurer. If the commissioner determines that a qualified insurer has failed to meet its marketing plan and goals, the commissioner may suspend or revoke the insurer's certification as a qualified insurer. An automobile insurer which certifies that it meets the standards of certification as a qualified insurer and does not meet those standards is subject to a fine of not more than \$25,000.

A qualified insurer may appoint UEZ agents. A qualified insurer may limit the number of exposures written through a UEZ agent. The agency termination provisions of current law would not apply to UEZ agents. Instead the bill provides that a qualified insurer may terminate a UEZ agent by giving at least 60 days' written notice and may refuse to renew the business written through a UEZ agent in an orderly and nondiscriminatory manner over the course of at least a three-year period, except that refusals to renew in any one year cannot exceed one-third of a terminated UEZ agent's book of business on the effective date of the termination. The terminated UEZ agent who continues to service the existing policies would continue to receive commissions as an insurance broker.

Under the terms of the bill, a qualified insurer would be eligible for credits against assigned risk obligations for risks written in an automobile insurance UEZ.

The bill requires a comprehensive study on the effects that territorial rate caps have on the availability of automobile insurance in the voluntary market. The bill does not modify the territorial rate caps that are currently in effect.

The bill provides for the limited placement of eligible persons in the assigned risk plan with voluntary market rates for a limited period of three years from the bill's effective date.

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

The bill modifies the present ability of insurers to nonrenew one automobile for each two newly insured automobiles in a territory by limiting the application of this provision to insurers whose aggregate voluntary market share in an automobile insurance enterprise zone is reasonably proportionate to the insurer's voluntary Statewide market share as determined by the Commissioner of Banking and Insurance, or in a rating territory in which the insurer demonstrates growth in the number of in-force exposures. The ability of automobile insurers to nonrenew up to two percent of drivers in a territory and under the two for one provisions is restricted by providing that insurer may not nonrenew a policy unless the insured in the last five years has had: (1) an at-fault accident; or (2) two moving violations resulting in an aggregate of at least four automobile insurance eligibility points or one moving violation which was assessed at least five automobile insurance eligibility points; or (3) had been required, but failed, to maintain coverage mandated by section 4 of P.L.1972, c.70. (C.39:6A-4) without lapse. Additionally, an insurer may also nonrenew policies of insureds who provide false or misleading information in an application for insurance, renewal of insurance or claim for benefits under an insurance policy, or who fails to provide minimum information necessary to rate the policy accurately. The bill also provides that an insurer cannot nonrenew policies pursuant to the nonrenewal law in an amount in excess of 20% of the entire automobile insurance book of business of an insurance producer.

The bill provides that the personal injury protection (PIP)

coverage issued or renewed on or after the effective date of the bill will apply to the named insured and members of his family residing in his household and not to guests in his automobile or pedestrians (guests and pedestrians would only be covered if they have their own PIP coverage). The bill also eliminates PIP coverages for persons who qualify to receive payment under the "Unsatisfied Claims and Judgment Fund Law."

In addition, the bill amends the medical fee schedule statute to require the commissioner to promulgate, within 120 days, a fee schedule for the reimbursement of medical expense benefits as provided for in the personal injury protection policy form filed by insurers with the commissioner. The commissioner is required to assign standard diagnosis and procedure codes and to establish a reimbursement rate for each standard diagnosis and procedure code. The fee schedule may establish rates for benefits which are based on a percentile of the usual, customary and reasonable fees commonly in use and may provide for reimbursement for appropriate services on the basis of a diagnostic-related payment by diagnostic code where appropriate.

The bill leaves in place the prior approval of private passenger automobile insurance rates and underwriting rules by the commissioner, but provides for an expedited rate increase of no more than 3% or any decrease in an insurer's average base rate for private passenger automobile insurance. If the commissioner determines that the filing will not produce excessive or unfairly discriminatory rates, the rates shall be approved. No rate change approved in this expedited process can result in an overall increase of 3% of an insurer's rates, or more than 5% for any single coverage.

The bill repeals: the law which required the liability policies of commercial vehicles (trucks and automobiles), motorcycles and motorized bicycles to provide personal injury protection coverage for pedestrians; the law providing that automobile insurers could file rating plans for nonstandard risks in addition to those for standard risks (these provisions are replaced by the tier rating provisions in the bill); the law requiring the filing of a fraud prevention plan by every automobile insurer (this requirement is in the bill as an amendment to the current law requiring each health insurer to file a fraud prevention plan), and the flex rating law.