

SENATE, No. 2223

STATE OF NEW JERSEY

INTRODUCED JUNE 23, 1997

By Senators CARDINALE and SINAGRA

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

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

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

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

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

34 b. Certain aspects of the current automobile insurance system are

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 unfair and need to be reformed. To this end, it is in the public interest
2 to:

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

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

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

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

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

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

19

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

22 3. As used in this act:

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

25 "Commissioner" means the Commissioner of Banking and
26 Insurance.

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

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

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

35 "Insurance company" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45

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

1 as follows:

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

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

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

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

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

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

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

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

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

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

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

1 e. A person or practitioner violates this act if, for pecuniary gain,
2 for himself or another, he directly or indirectly solicits any person or
3 practitioner to engage, employ or retain either himself or any other
4 person to manage, adjust or prosecute any claim or cause of action,
5 against any person, for damages for negligence, or, for pecuniary gain,
6 for himself or another, directly or indirectly solicits other persons to
7 bring causes of action to recover damages for personal injuries or
8 death, or for pecuniary gain, for himself or another, directly or
9 indirectly solicits other persons to make a claim for personal injury
10 protection benefits pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.);
11 provided, however, that this subsection shall not apply to any conduct
12 otherwise permitted by law or by rule of the Supreme Court.
13 (cf: P.L.1995, c.132, s.1)

14

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

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

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

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

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

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

45 c. The commissioner is authorized to assess a civil and
46 administrative penalty of not more than \$5,000 for the first violation.

1 \$10,000 for the second violation and \$15,000 for each subsequent
2 violation of any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) and
3 to order restitution to any insurance company or other person who has
4 suffered a loss as a result of a violation of P.L.1983, c.320 (C.17:33A-
5 1 et seq.). No assessment shall be levied pursuant to this subsection
6 until the violator has been notified by certified mail or personal
7 service. The notice shall contain a concise statement of facts
8 providing the basis for the determination of a violation of P.L.1983,
9 c.320 (C.17:33A-1 et seq.), the provisions of that act violated, a
10 statement of the amount of civil penalties assessed and a statement of
11 the party's right to a hearing in accordance with the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed
13 party shall have 20 calendar days from receipt of the notice within
14 which to deliver to the commissioner a written request for a hearing
15 containing an answer to the statement of facts contained in the notice.
16 After the hearing and upon a finding that a violation has occurred, the
17 commissioner may issue a final order assessing up to the amount of the
18 penalty in the notice, restitution, and costs of prosecution, including
19 attorneys' fees. If no hearing is requested, the notice shall become a
20 final order after the expiration of the 20-day period. Payment of the
21 assessment is due when a final order is issued or the notice becomes
22 a final order.

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

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

45 [b.] e. The New Jersey Automobile Full Insurance Underwriting
46 Association and Market Transition Facility Auxiliary Fund (hereinafter

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

12
13 5. Section 7 of P.L.1983, c.320 (C.17:33A-7) is amended to read
14 as follows:

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

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

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

30 d. Upon receipt of notification of the filing of a claim by an insurer,
31 the commissioner may join in the action for the purpose of seeking
32 judgment for the payment of a civil penalty authorized under section
33 5 of this act. If the commissioner prevails, the court may also award
34 court costs and reasonable attorney fees actually incurred by the
35 commissioner.

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

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

39

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

42 10. a. If the division has reason to believe that a person has
43 engaged in, or is engaging in, an act or practice which violates this act,
44 or any other relevant statute or regulation, the commissioner or his
45 designee may administer oaths and affirmations, request or compel the
46 attendance of witnesses or the production of documents. The

1 commissioner may issue, or designate another to issue, subpoenas to
2 compel the attendance of witnesses and the production of books,
3 records, accounts, papers and documents. Witnesses who are not
4 licensees of the Department of Banking and Insurance shall be entitled
5 to receive the same fees and mileage as persons summoned to testify
6 in the courts of the State.

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

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

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

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

32

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

35 11. Papers, documents, reports, or evidence relative to the subject
36 of an investigation under this act shall not be subject to public
37 inspection except as specifically provided in this act. The
38 commissioner shall not detain subpoenaed records after an investigation
39 is closed or, if a claim for a civil penalty is filed by the commissioner
40 pursuant to section 5 or subsection d. of section 7, upon final
41 disposition of the claim by a court of competent jurisdiction,
42 whichever shall be the later date. Subpoenaed records shall be returned
43 to the persons from whom they were obtained. The commissioner
44 may, in his discretion, make relevant papers, documents, reports, or
45 evidence available to the Attorney General, an appropriate licensing
46 authority, law enforcement agencies, an insurance company or

1 insurance claimant injured by a violation of this act, consistent with the
2 purposes of this act and under such conditions as he deems
3 appropriate. Such papers, documents, reports, or evidence shall not
4 be subject to subpoena, unless the commissioner consents, or until,
5 after notice to the commissioner and a hearing, a court of competent
6 jurisdiction determines that the commissioner would not be
7 unnecessarily hindered by such subpoena. Division investigators and
8 insurance company fraud investigators shall not be subject to subpoena
9 in civil actions by any court of this State to testify concerning any
10 matter of which they have knowledge pursuant to a pending insurance
11 fraud investigation by the division, or a pending claim for civil
12 penalties initiated by the commissioner.

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

14

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

17 1. a. Every insurer writing health insurance or private passenger
18 automobile insurance in this State shall [, within 120 days of the
19 adoption of regulations by the commissioner pursuant to this act,] file
20 with the commissioner a plan for the prevention and detection of
21 fraudulent [health] insurance applications and claims. The plan shall
22 be deemed approved by the commissioner if not affirmatively approved
23 or disapproved by the commissioner within 90 days of the date of
24 filing. The commissioner may call upon the expertise of the director
25 in his review of plans filed pursuant to this subsection. [During the
26 90-day approval period the] The commissioner may request such
27 amendments to the plan as he deems necessary. Any subsequent
28 amendments to a plan filed with and approved by the commissioner
29 shall be submitted for filing and deemed approved if not affirmatively
30 approved or disapproved within 90 days from the filing date.

31 b. The implementation of plans filed and approved pursuant to
32 subsection a. of this section shall be monitored by the division. The
33 division shall promptly notify the Attorney General of any evidence of
34 criminal activity encountered in the course of monitoring the
35 implementation and execution of the plans. Each insurer writing
36 health insurance or private passenger automobile insurance in this
37 State shall report to the director on an annual basis, [beginning
38 January 1, 1994] on January 1st of each year, on the experience in
39 implementing its fraud prevention plan.

40 c. In addition to any other penalties provided pursuant to
41 P.L.1983, c.320 (C.17:33A-1 et seq.), the commissioner may impose
42 a penalty of up to [~~\$5,000 per day~~] \$25,000 per violation on any
43 insurer for: failure to submit a plan; failure to submit any amendments
44 to an approved plan; failure to properly implement an approved plan
45 in a reasonable manner and within a reasonable time period; failure to
46 provide a report pursuant to subsection b. of this section; or for any

1 other violation of the provisions of this section. [Any penalty imposed
2 and collected pursuant to this subsection shall be deposited in the
3 unemployment compensation fund created pursuant to R.S.43:21-9
4 and shall be dedicated exclusively to the purposes stated therein.]

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

8 (cf: P.L.1993, c.362, s.1)

9

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

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

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

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

35

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

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

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

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

- 1 c. Has engaged in gross negligence, gross malpractice or gross
2 incompetence;
- 3 d. Has engaged in repeated acts of negligence, malpractice or
4 incompetence;
- 5 e. Has engaged in professional or occupational misconduct as may
6 be determined by the board;
- 7 f. Has been convicted of any crime involving moral turpitude or
8 any crime relating adversely to the activity regulated by the board. For
9 the purpose of this subsection a plea of guilty, non vult, nolo
10 contendere or any other such disposition of alleged criminal activity
11 shall be deemed a conviction;
- 12 g. Has had his authority to engage in the activity regulated by the
13 board revoked or suspended by any other state, agency or authority
14 for reasons consistent with this section;
- 15 h. Has violated or failed to comply with the provisions of any act
16 or regulation administered by the board;
- 17 i. Is incapable, for medical or any other good cause, of discharging
18 the functions of a licensee in a manner consistent with the public's
19 health, safety and welfare;
- 20 j. Has repeatedly failed to submit completed applications, or parts
21 of, or documentation submitted in conjunction with, such applications,
22 required to be filed with the Department of Environmental Protection;
- 23 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et
24 seq.) or any insurance fraud prevention law or act of another
25 jurisdiction.

26 For purposes of this act:

27 "Completed application" means the submission of all of the
28 information designated on the checklist, adopted pursuant to section
29 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
30 permit for which application is made.

31 "Permit" has the same meaning as defined in section 1 of
32 P.L.1991,c.421 (C.13:1D-101).
33 (cf: P.L.1991, c.420, s.1)

34
35 11. Section 3 of P.L.1983, c.248 (C.45:9-19.3) is amended to read
36 as follows:

37 3. Any information concerning the conduct of a physician or
38 surgeon provided to the State Board of Medical Examiners pursuant
39 to section 1 of P.L.1983, c.248 (C.45:9-19.1), section 5 of P.L.1978,
40 c.73 (C.45:1-18) or any other provision of law, is confidential pending
41 final disposition of the inquiry or investigation by the board, except for
42 that information required to be shared with the Division of Insurance
43 Fraud Prevention in the Department of Banking and Insurance to
44 comply with the provisions of section 9 of P.L.1983, c.320 (C.17:33A-
45 9) or with any other law enforcement agency. If the result of the
46 inquiry or investigation is a finding of no basis for disciplinary action

1 by the board, the information shall remain confidential, except that the
2 board may release the information to a government agency, for good
3 cause shown, upon an order of the Superior Court after notice to the
4 physician or surgeon who is the subject of the information and an
5 opportunity to be heard. The application for the court order shall be
6 placed under seal.

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

8

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

11 2. Any owner or registrant of a motor vehicle registered or
12 principally garaged in this State who operates or causes to be operated
13 a motor vehicle upon any public road or highway in this State without
14 motor vehicle liability insurance coverage required by this act, and any
15 operator who operates or causes a motor vehicle to be operated and
16 who knows or should know from the attendant circumstances that the
17 motor vehicle is without motor vehicle liability insurance coverage
18 required by this act shall be subject, for the first offense, to a fine of
19 [\$300.00] not less than \$300 nor more than \$1,000 and a period of
20 community service to be determined by the court, and shall forthwith
21 forfeit his right to operate a motor vehicle over the highways of this
22 State for a period of one year from the date of conviction. Upon
23 subsequent conviction, he shall be subject to a fine of [\$500.00] up to
24 \$5,000 and shall be subject to imprisonment for a term of 14 days and
25 shall be ordered by the court to perform community service for a
26 period of 30 days, which shall be of such form and on such terms as
27 the court shall deem appropriate under the circumstances, and shall
28 forfeit his right to operate a motor vehicle for a period of two years
29 from the date of his conviction, and, after the expiration of said period,
30 he may make application to the Director of the Division of Motor
31 Vehicles for a license to operate a motor vehicle, which application
32 may be granted at the discretion of the director. The director's
33 discretion shall be based upon an assessment of the likelihood that the
34 individual will operate or cause a motor vehicle to be operated in the
35 future without the insurance coverage required by this act. A
36 complaint for violation of this act may be made to a municipal court
37 at any time within six months after the date of the alleged offense.

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

43 [Notwithstanding any provision of P.L.1972, c.197 (C.39:6B-1 et
44 seq.), any person who violates the provisions of that act, from October
45 1, 1990 through January 31, 1991, shall not be subject to any of the
46 penalties or sanctions provided for a first violation of that act if that

1 person produces at the time of trial an insurance identification card or
2 a motor vehicle liability insurance policy which is in force at the time
3 of the trial and the conviction for that person's offense would be the
4 person's first conviction for an offense under that act. The
5 Commissioner of Insurance shall appropriately promote and advertise
6 this limited time amnesty program for first-time offenses under that act
7 throughout the State.]

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

9

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

12 14. a. Any person who, at the time of an automobile accident
13 resulting in injuries to that person, is required but fails to maintain
14 medical expense benefits coverage mandated by section 4 of P.L.1972,
15 c.70 (C.39:6A-4) shall [: a. For the purpose of filing an action for
16 recovery of noneconomic loss, as defined in section 2 of P.L.1972,
17 c.70 (C.39:6A-2), be subject to the tort option specified in subsection
18 a. of section 8 of P.L.1972, c.70 (C.39:6A-8)] have no cause of action
19 for recovery of economic or noneconomic loss sustained as a result of
20 an accident while operating an uninsured automobile.

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

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

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

32

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

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

44 c. Notwithstanding any other law to the contrary, any initial rates
45 filed pursuant to subsection b. of this section shall be deemed to be
46 approved if not disapproved by the commissioner within 120 days of

1 receipt of the filing by the department. Any subsequent modification
2 of any rate level, or any initial rate level which is not based on a
3 percentage increase or decrease of an existing rate level as provided
4 for in this section, shall be subject to the provisions of P.L.1944, c.27
5 (C.17:29A-1 et seq.).

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

9
10 15. (New section) a. Insurers shall put in writing all underwriting
11 rules applicable to each rate level utilized pursuant to section 14 of
12 this amendatory and supplementary act. An insurer may take into
13 account factors, including, but not limited to, driving record
14 characteristics appropriate for underwriting and classification in
15 formulating its underwriting rules; provided that no underwriting rule
16 based on motor vehicle violations shall be formulated in such a manner
17 as to assign any named insured to a rating tier other than the standard
18 rating tier applicable to the insured's territory solely on the basis of
19 accumulating six motor vehicle points or less. No underwriting rule
20 shall operate in such a manner as to assign a risk to a rating plan on
21 the basis of the territory in which the insured resides or any other
22 factor which the commissioner finds is a surrogate for territory. An
23 insurer which knowingly fails to transact automobile insurance
24 consistently with its underwriting rules shall be subject to a fine of not
25 less than \$1,000 for each violation.

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

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

40
41 16. (New section) Except for a plan established pursuant to
42 section 1 of P.L.1970, c.215 (C.17:29D-1), and except as otherwise
43 provided in section 17 of this amendatory and supplementary act, no
44 insurer shall charge or collect surcharges based on motor vehicle
45 violation penalty points promulgated by the Director of the Division
46 of Motor Vehicles pursuant to section 1 of P.L.1982, c.43

1 (C.39:5-30.5) or the schedule of automobile insurance eligibility points
2 promulgated by the Commissioner of Banking and Insurance pursuant
3 to section 26 of P.L.1990, c.8 (C.17:33B-14).

4
5 17. (New section) Any initial rate filing made on or after the
6 effective date of this section pursuant to the provisions of section 14
7 of this amendatory and supplementary act shall be revenue neutral by
8 coverage based upon the insurer's current coverages and book of
9 business with respect to eligible persons, as defined in section 25 of
10 P.L.1990, c.8 (C.17:33B-13), insured by the insurer. In addition to
11 the filing of revenue neutral multiple rating plans, the initial filing shall
12 include consideration for the cost containment measures implemented
13 pursuant to this amendatory and supplementary act. The effective rate
14 filing of an insurer as of the effective date of this section shall continue
15 in effect until the initial rate filing as required by this section made by
16 that insurer has been approved by the commissioner, or is deemed
17 approved pursuant to subsection c. of section 14 of this amendatory
18 and supplementary act.

19
20 18. (New section) To provide for an orderly transition with
21 minimum disruption to the private passenger automobile insurance
22 market, the Commissioner of Banking and Insurance shall establish
23 rules and regulations and administrative processes that are reasonable,
24 necessary, appropriate and consistent with the provisions of sections
25 14 through 17 of this amendatory and supplementary act.

26
27 19. (New section) As used in sections 19 through 23 of this
28 amendatory and supplementary act:

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

31 "Automobile insurance urban enterprise zone" means a geographic
32 area identified and designated by the commissioner pursuant to section
33 20 of this amendatory and supplementary act.

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

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

41 "Commissioner" means the Commissioner of Banking and
42 Insurance.

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

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

1 act.

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

8

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

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

35

36 21. (New section) a. The commissioner shall establish by
37 regulation standards for a qualified insurer. These standards may
38 include, but not be limited to, demonstration by the automobile insurer
39 that it has a plan to increase access to automobile insurance for
40 consumers residing in an automobile insurance urban enterprise zone;
41 demonstration by the automobile insurer that it has a plan to assist
42 newly appointed UEZ agents in developing the skills necessary to
43 manage a successful business; procedures to monitor and evaluate the
44 impact of efforts to expand services to urban areas; and materials
45 designed to assist urban consumers in understanding automobile
46 insurance coverages. For an automobile insurer doing business on a

1 direct writing basis, the standards may include, but not be limited to,
2 the insurer's marketing plans and goals for increasing its writing of
3 risks in automobile insurance urban enterprise zones. Additionally,
4 the commissioner shall consider the insurer's past performance in
5 providing automobile insurance to persons residing in automobile
6 insurance urban enterprise zones.

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

10 c. An automobile insurer that certifies to the commissioner that it
11 meets the standards established pursuant to subsection a. of this
12 section shall be considered a qualified insurer for the purposes of this
13 amendatory and supplementary act. If at any time the commissioner
14 determines that a qualified insurer fails to meet the standards
15 established pursuant to subsection a. of this section, or if the
16 commissioner determines it necessary for the protection of the public,
17 he may suspend or revoke the insurer's certification as a qualified
18 insurer. If the commissioner determines that a qualified insurer has
19 failed to meet its marketing plan and goals pursuant to this section, the
20 commissioner may suspend or revoke the insurer's certification as a
21 qualified insurer. In making this determination, the commissioner shall
22 consider the past performance of the insurer in providing automobile
23 insurance in urban areas. If an automobile insurer certifies that it
24 meets the standards for becoming a qualified insurer and it does not
25 meet those standards, that insurer shall not be a qualified insurer for
26 purposes of this amendatory and supplementary act and may, at the
27 discretion of the commissioner, be subject of a fine of not more than
28 \$25,000.

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

31

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

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

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

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

17

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

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

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

31

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

34 27. a. On or after April 1, 1992, every insurer, either by one or
35 more separate rating plans filed in accordance with the provisions of
36 section 6 of P.L.1988, c.156 (C.17:29A-45) prior to March 1, 1998,
37 or section 14 of P.L. , c. , (C.) (now before the Legislature
38 as this bill) on or after March 1, 1998, or through one or more
39 affiliated insurers, shall provide automobile insurance coverage for
40 eligible persons.

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

1 or after March 1, 1998.

2 c. Notwithstanding the provisions of subsections a. and b. of this
3 section to the contrary, any qualified insurer engaged in writing
4 automobile insurance in an automobile insurance urban enterprise zone
5 pursuant to section 22 of P.L. _____, c. _____ (C. _____) (now before the
6 Legislature as this bill) may limit the number of exposures written
7 through its UEZ agent or agents, or in the case of a qualified insurer
8 doing business on a direct writing basis, the qualified insurer may limit
9 the number of exposures written in an automobile insurance urban
10 enterprise zone consistent with its marketing plans and goals as
11 provided in subsection a. of section 21 of P.L. _____, c. _____ (C. _____) (now
12 before the Legislature as this bill). Nothing in this subsection shall be
13 construed to relieve a qualified insurer from its obligation under
14 subsections a. and b. of this section to write all eligible persons
15 residing within an automobile insurance urban enterprise zone through
16 its non-UEZ agent points of access.

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

21

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

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

25 (1) Provide each eligible person seeking automobile insurance
26 premium quotations for the forms or types of automobile insurance
27 coverages which are offered by all insurers represented by the agent
28 or with which the agent places risks;

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

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

35 If a UEZ agent has a contract with a qualified insurer pursuant to
36 the provisions of section 22 of P.L. _____, c. _____ (C. _____)(now before
37 the Legislature as this bill) and the UEZ agent is unable to place an
38 otherwise eligible person with that qualified insurer because of the
39 limitation on the number of exposures imposed by that qualified
40 insurer on the UEZ agent, the UEZ agent shall be deemed to have met
41 the requirements of this subsection, provided that the limitation on the
42 number of exposures has been reached and the UEZ agent fulfills all
43 applicable regulatory requirements.

44 b. With respect to automobile insurance, an insurer shall not
45 penalize an agent by paying less than normal commissions or normal
46 compensation or salary because of the expected or actual experience

1 produced by the agent's automobile insurance business or because of
2 the geographic location of automobile insurance business written by
3 the agent.

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

5

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

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

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

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

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

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

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

- 1 such plan to such insurers or other entities;
- 2 d. That it shall not provide insurance coverage for more than 10
3 percent of the aggregate number of private passenger automobile
4 non-fleet exposures being written in the total private passenger
5 automobile insurance market in this State. The plan shall provide for
6 the cessation of the acceptance of applications or the issuance of new
7 policies at any time it reaches 10 percent of marketshare, as certified
8 by the commissioner, until such time that the commissioner certifies
9 that the plan is insuring less than 10 percent of the aggregate number
10 of private passenger automobile non-fleet exposures being written in
11 the total private passenger automobile insurance market in this State;
- 12 e. [That] Except for risks written in automobile insurance urban
13 enterprise zones pursuant to subsection i. of this section, that it shall
14 not provide coverage to an eligible person as defined pursuant to
15 section 25 of P.L.1990, c.8 (C.17:33B-13);
- 16 f. [That insurers who write automobile risks in those urban
17 territories designated by the commissioner shall receive one assigned
18 risk credit for every two voluntary risks written in those designated
19 territories; and] (Deleted by amendment, P.L. , c. .)
- 20 g. That the plan shall not be subsidized by any source external to
21 the plan;
- 22 h. That a qualified insurer who writes automobile insurance risks
23 in those automobile insurance urban enterprise zones designated by the
24 commissioner pursuant to section 20 of P.L. , c. (C.) (now
25 before the Legislature as this bill) shall receive assigned risk credits for
26 voluntary risks written in those designated automobile insurance urban
27 enterprise zones as a direct writer or through a UEZ agent or agents
28 or through any agent with whom the insurer has an in-force contract
29 as of the effective date of P.L. , c. (now before the Legislature
30 as this bill). The commissioner shall establish by regulation the manner
31 in which any qualified automobile insurer may utilize the provisions of
32 this subsection. In no event shall that credit apply to reduce an
33 insurer's obligations under subsection i. of this section; and
- 34 i. (1) For a voluntary rating tier to accommodate eligible persons,
35 as defined in section 25 of P.L. 1990, c. 8 (C. 17:33B-13), residing in
36 automobile insurance urban enterprise zones, designated by the
37 commissioner pursuant to section 20 of P.L. , c. (C.)(now
38 before the Legislature as this bill), to provide increased availability and
39 encourage the voluntary writing of eligible persons residing in those
40 zones;
- 41 (2) The rates utilized in this voluntary rating tier shall be the
42 voluntary market rates in use by the insurer to whom the risk is
43 assigned in that territory;
- 44 (3) The voluntary rating tier shall not provide insurance coverage
45 for more than five percent of the aggregate number of private
46 passenger automobile non-fleet exposures being written in the total

1 private passenger automobile insurance market in this State, and the
2 number of exposures written in the voluntary rating tier shall be
3 included for computing the maximum number of exposures permitted
4 to be written in the plan;

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

14 (5) Qualified producers may submit eligible person risks from
15 automobile insurance urban enterprise zones to the plan for coverage
16 in the voluntary rating tier. As used in this subsection i.: a "qualified
17 producer" means a UEZ agent, as defined in section 19 of P.L. ____,
18 c. (C.) (now before the Legislature as this bill), who has met any
19 limit on exposures that may be written in accordance with the UEZ
20 agent's agreement with the appointing insurer pursuant to section 22
21 of P.L. ____, c. (C.) (now before the Legislature as this bill); and
22 a producer who: is duly licensed with property/casualty authority for
23 the three years immediately preceding the effective date of P.L. ____,
24 c. (C.) (now before the Legislature as this bill); has no affiliation
25 with a voluntary market insurer for the placement of automobile
26 insurance; had an affiliation with a voluntary market insurer for the
27 placement of automobile insurance that was terminated by the insurer
28 in the last three years; demonstrates to the plan his competency,
29 efficiency and effectiveness in the solicitation, negotiation and
30 effectuation of automobile insurance as evidenced by any history of
31 disciplinary actions or complaints against the producer, and other
32 relevant factors; and conducts his business in an office in an
33 automobile insurance urban enterprise zone. For purposes of this
34 subsection i., "insurer" means an insurer or group of affiliated insurers
35 admitted or authorized to transact the business of automobile
36 insurance in this State.

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

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

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

1 rates for each coverage for the safeness and soundness of the plan.
2 (cf: P.L.1995, c.151, s.1)

3
4 27. Section 26 of P.L.1988, c.119 (C.17:29C-7.1) is amended to
5 read as follows:

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

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

19 (2) unless the insured or operator insured under the policy in the
20 five years immediately preceding renewal has had at least two of the
21 following or any combination thereof: (1) an at-fault accident; or (2)
22 a moving violation which was assessed at least four automobile
23 insurance eligibility points; or (3) had been required, but failed, to
24 maintain coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-
25 4) without lapse.

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

33 c. For every two newly insured automobiles which an insurer
34 voluntarily writes in each territory during each calendar year period,
35 the insurer shall be permitted to refuse to renew insurance on one
36 additional [policy of] automobile [insurance] in that territory in excess
37 of the 2% limitation established by subsection b. of this section,
38 subject to a fair and nondiscriminatory formula developed by rule or
39 regulation of the commissioner. [For the purposes of this section,
40 "voluntarily writes" shall not include any exposure voluntarily written
41 by or assigned to an insurer to meet any quota established pursuant to
42 section 26 of P.L.1983, c.65 (C.17:30E-14).] The provisions of this
43 subsection shall only apply to an insurer whose aggregate voluntary
44 market share in an automobile insurance urban enterprise zone is
45 reasonably proportionate to the insurer's voluntary Statewide market
46 share as determined by the commissioner by regulation or in a rating

1 territory in which the insurer demonstrates growth in the aggregate
2 number of in-force exposures.

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

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

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

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

22

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

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

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

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

46 (1) Reinsurance.

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

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

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

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

43 (1) in which the agent is paid on a salary basis without commission
44 or where he agrees to represent exclusively one company or to the
45 termination of an agent's contract for insolvency, abandonment, gross
46 and willful misconduct, or failure to pay over to the company moneys

1 due to the company after his receipt of a written demand therefor, or
2 after revocation of the agent's license by the Commissioner of Banking
3 and Insurance; and in any such case the company shall, upon request
4 of the insured, provided he meets the then current underwriting
5 standards of the company, renew any contract of insurance formerly
6 processed by the terminated agent, through an active agent, or directly
7 pursuant to such rules and regulations as may be promulgated by the
8 Commissioner of Banking and Insurance; or

9 (2) which are entered into between a qualified insurer and a UEZ
10 agent pursuant to section 22 of P.L. , c. (C.)(now before the
11 Legislature as this bill).

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

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

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

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

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

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

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

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

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

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

45 The provisions of this subsection shall not apply to any policy
46 issued by the New Jersey Automobile Full Insurance Underwriting

1 Association created pursuant to the provisions of P.L.1983, c.65
2 (C.17:30E-1 et seq.).

3 m. A qualified insurer which terminates its contractual relationship
4 with its UEZ agent pursuant to section 22 of P.L. , c. (C.)
5 (now before the Legislature as this bill) shall terminate its relationship
6 in accordance with the following provisions:

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

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

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

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

32

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

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

38 (1) Misrepresentations and false advertising of policy contracts.
39 Making, issuing, circulating, or causing to be made, issued or
40 circulated, any estimate, illustration, circular or statement
41 misrepresenting the terms of any policy issued or to be issued or the
42 benefits or advantages promised thereby or the dividends or share of
43 the surplus to be received thereon, or making any false or misleading
44 statement as to the dividends or share of surplus previously paid on
45 similar policies, or making any misleading representation or any
46 misrepresentation as to the financial condition of any insurer, or as to

1 the legal reserve system upon which any life insurer operates, or using
2 any name or title of any policy or class of policies misrepresenting the
3 true nature thereof, or making any misrepresentation to any
4 policyholder insured in any company for the purpose of inducing or
5 tending to induce such policyholder to lapse, forfeit, or surrender his
6 insurance.

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

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

24 (4) Boycott, coercion and intimidation. Entering into any
25 agreement to commit, or by any concerted action committing, any act
26 of boycott, coercion or intimidation resulting in or tending to result in
27 unreasonable restraint of, or monopoly in, the business of insurance,
28 or resulting in or tending to result in unreasonable influence being
29 exerted upon any producer that has an in-force contract as of the
30 effective date of P.L. , c. (C.)(now before the Legislature as
31 this bill) for the purpose of replacing the in-force contract with a UEZ
32 agent contract pursuant to section 22 of P.L. , c. (C.)(now
33 before the Legislature as this bill).

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

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

1 book, report or statement of such insurer.

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

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

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

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

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

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

40 (8) Rebates. (a) Except as otherwise expressly provided by law,
41 knowingly permitting or offering to make or making any contract of
42 life insurance, life annuity or accident and health insurance, or
43 agreement as to such contract other than as plainly expressed in the
44 contract issued thereon, or paying or allowing, or giving or offering to
45 pay, allow, or give, directly or indirectly, as inducement to such
46 insurance, or annuity, any rebate of premiums payable on the contract,

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

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

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

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

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

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

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

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

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

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

45 (h) Attempting to settle a claim for less than the amount to which
46 a reasonable man would have believed he was entitled by reference to

1 written or printed advertising material accompanying or made part of
2 an application;

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

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

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

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

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

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

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

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

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

38

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

41 6. a. [A merit rating accident surcharge system for private
42 passenger automobiles may be used in the voluntary market, by the
43 New Jersey Automobile Full Insurance Underwriting Association
44 created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), by the
45 Market Transition Facility created pursuant to section 88 of P.L.1990,
46 c.8 (C.17:33B-11), and by any insurance plan established to provide

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

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

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

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

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

42 If, upon written notification from the Division of Motor Vehicles,
43 mailed to the last address of record with the division, a driver fails to
44 pay a surcharge levied under this subsection, the license of the driver
45 shall be suspended forthwith until the surcharge is paid to the Division
46 of Motor Vehicles; except that the Division of Motor Vehicles may

1 authorize payment of the surcharge on an installment basis over a
2 period not to exceed 12 months. If a driver fails to pay the surcharge
3 or any installments on the surcharge, the total surcharge shall become
4 due immediately.

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

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

43 All moneys collectible under this subsection b. shall be billed and
44 collected by the Division of Motor Vehicles. Of the moneys collected:
45 10%, or the actual cost of administering the collection of the
46 surcharge, whichever is less, shall be retained by the Division of Motor

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

38 (3) In addition to any other authority provided in P.L.1983, c.65
39 (C.17:29A-33 et al.), the commissioner, after consultation with the
40 Director of the Division of Motor Vehicles, is specifically authorized
41 (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in
42 accordance with paragraph (1)(a) of this subsection, surcharges for
43 motor vehicle violations or convictions for which motor vehicle points
44 are not assessed under Title 39 of the Revised Statutes, or (c) to
45 reduce the number of points for which surcharges may be assessed
46 below the level provided in paragraph (1)(a) of this subsection, except

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

10 c. No motor vehicle violation surcharges shall be levied on an
11 automobile insurance policy issued or renewed on or after January 1,
12 1984, except in accordance with the New Jersey Merit Rating Plan,
13 and all surcharges levied thereunder shall be assessed, collected and
14 distributed in accordance with subsection b. of this section.

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

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

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

21
22 31. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended to read as
23 follows:

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

25 Every automobile liability insurance policy, issued or renewed on
26 or after January 1, 1991, insuring an automobile as defined in section
27 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability
28 imposed by law for bodily injury, death and property damage sustained
29 by any person arising out of ownership, operation, maintenance or use
30 of an automobile shall provide personal injury protection coverage, as
31 defined hereinbelow, under provisions approved by the Commissioner
32 of Banking and Insurance, for the payment of benefits without regard
33 to negligence, liability or fault of any kind, to the named insured and
34 members of his family residing in his household who sustained bodily
35 injury as a result of an accident while occupying, entering into,
36 alighting from or using an automobile, or as a pedestrian, caused by an
37 automobile or by an object propelled by or from an automobile, to
38 other persons sustaining bodily injury while occupying, entering into,
39 alighting from or using the automobile of the named insured, with the
40 permission of the named insured, and to pedestrians, sustaining bodily
41 injury caused by the named insured's automobile or struck by an object
42 propelled by or from such automobile.

43 "Personal injury protection coverage" means and includes:

44 a. Medical expense benefits. Payment of reasonable medical
45 [expenses] expense benefits in an amount not to exceed \$250,000 per
46 person per accident. In the event benefits paid by an insurer pursuant

1 to this subsection are in excess of \$75,000 on account of personal
2 injury to any one person in any one accident, such excess shall be paid
3 by the insurer in consultation with the Unsatisfied Claim and Judgment
4 Fund Board and shall be reimbursable to the insurer from the
5 Unsatisfied Claim and Judgment Fund pursuant to section 2 of
6 P.L.1977, c.310 (C.39:6-73.1).

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

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

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

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

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

42 Benefits payable under this section shall:

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

45 (2) Not be assignable, except to a provider of service benefits
46 under this section in accordance with policy terms approved by the

1 commissioner, nor subject to levy, execution, attachment or other
2 process for satisfaction of debts.

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

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

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

10

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

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

17 a. Medical expense benefit deductibles in amounts of \$500.00,
18 \$1,000.00 and \$2,500.00 for any one accident;

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

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

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

35 Insurers shall offer the options provided by subsections a. and b. of
36 this section at appropriately reduced premiums. For policies issued or
37 renewed prior to January 1, 1992, insurers shall offer the option
38 provided by subsection d. of this section at a discount of not less than
39 25% from the base rate applicable to the first \$250,000 of medical
40 expense [benefit coverage] benefits, and for policies issued or renewed
41 on or after January 1, 1992, insurers shall offer the option at an
42 appropriate discount from the base rate for the amount of medical
43 expense [benefit] benefits coverage taken.

44 Any named insured who chooses the option provided by subsection
45 d. of this section shall provide proof that he and members of his family
46 residing in his household are covered by health insurance coverage or

1 benefits in a manner and to an extent approved by the commissioner.
2 Nothing in this section shall be construed to require a health insurer,
3 health maintenance organization or governmental agency to cover
4 individuals or treatment which is not normally covered under the
5 applicable benefit contract or plan. If it is determined that an insured
6 who selected or is otherwise covered by the option provided in
7 subsection d. of this section did not have such health coverage in
8 effect at the time of an accident, medical expense benefits shall be
9 payable by the person's automobile insurer and shall be subject to any
10 deductible required by law or otherwise selected as an option pursuant
11 to subsection a. of this section, any copayment required by law and an
12 additional deductible in the amount of \$750.

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

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

26 Medical expense benefits payable in any amount between the
27 deductible selected pursuant to subsection a. of this section and
28 \$5,000.00 shall be subject to a copayment of 20%.

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

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

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

38

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

41 10. a. The Commissioner of Banking and Insurance shall, within
42 90 days after the effective date of P.L.1990, c.8 (C.17:33B-1 et al.),
43 promulgate medical fee schedules on a regional basis for the
44 reimbursement of health care providers providing services or
45 equipment for medical expense benefits for which payment is to be
46 made by an automobile insurer under personal injury protection

1 coverage pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or by an
2 insurer under medical expense benefits coverage pursuant to section
3 2 of P.L.1991, c.154 (C.17:28-1.6). These fee schedules shall be
4 promulgated on the basis of the type of service provided, and shall
5 incorporate the reasonable and prevailing fees of 75% of the
6 practitioners within the region. If, in the case of a specialist provider,
7 there are fewer than 50 specialists within a region, the fee schedule
8 shall incorporate the reasonable and prevailing fees of the specialist
9 providers on a Statewide basis. [These schedules shall be reviewed
10 biannually by the commissioner.] The commissioner may contract with
11 a proprietary purveyor of fee schedules for the maintenance of the fee
12 schedule, which shall be adjusted biennially for inflation and for the
13 addition of new medical procedures.

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

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

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

30

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

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

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

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

12 e. The commissioner shall not approve any rate change pursuant to
13 this expedited process that results in an overall increase of more than
14 3% or an increase in any single coverage of more than 5%.

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

17

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

20

21 36. Sections 6 and 7 of P.L.1988, c.156 (C.17:29A-45 and
22 17:29A-46) are repealed.

23

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

30

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

35

36

37

STATEMENT

38

39 This bill addresses numerous aspects concerning enforcement
40 against insurance fraud. When the Commissioner of Banking and
41 Insurance determines that a person has violated the "New Jersey
42 Insurance Fraud Prevention Act," the commissioner may either bring
43 a civil action for a penalty or levy a civil administrative penalty and
44 order restitution; and may request the Attorney General to bring a
45 criminal action. The penalty for violating the "New Jersey Insurance
46 Fraud Prevention Act" remains the same, at not more than \$5,000 for

1 a first violation, not more than \$10,000 for a second violation, and not
2 more than \$15,000 for each subsequent violation.

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

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

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

22 The penalty is increased from \$5,000 per day to \$25,000 per
23 violation for failure of a health insurer or automobile insurer to:
24 submit a fraud prevention plan or amendments thereto; properly
25 implement an approved plan in a reasonable manner and within a
26 reasonable time period; and file certain reports.

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

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

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

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

1 of automobile insurance eligibility points promulgated by the
2 commissioner.

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

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

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

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

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

1 areas; and materials designed to assist urban consumers in
2 understanding automobile insurance coverages.

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

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

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

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

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

36 The bill reaffirms the commissioner's authority to provide rates
37 in the assigned risk program that are appropriate for the small
38 percentage of drivers that are not eligible for coverage in the voluntary
39 market. Additionally, the bill reaffirms the commissioner's authority
40 to establish appropriate mechanisms for the expeditious resolution of
41 operational decisions by residual market mechanisms, subject to
42 commissioner oversight and as provided in the rules and regulations
43 promulgated pursuant to section 1 of P.L.1970, c.215 (C. 17:29D-1).
44 The current method, which has operated satisfactorily for many years
45 and is consistent with methods employed by other states' residual
46 market mechanisms, has recently been questioned by appeals to the

1 courts. The bill's reaffirmation of the authority of a governing
2 committee to administer any plan, including, but not limited to, the
3 authority to hear certain appeals, is intended to settle doubts that were
4 raised in the recent decision, Chopper Express v. Department of
5 Insurance, 293 N.J. Super. 536 (App. Div. 1996).

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

30 In addition, the bill amends the medical fee schedule statute to
31 provide that the commissioner may contract with a proprietary
32 purveyor of fee schedules for the maintenance of the fee schedule,
33 which shall be adjusted biennially for inflation and for the addition of
34 new medical procedures. The fee schedule may provide for
35 reimbursement for appropriate services on the basis of a diagnostic-
36 related payment by diagnostic code where appropriate.

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

46 The bill repeals: the law providing that automobile insurers

1 could file rating plans for nonstandard risks in addition to those for
2 standard risks (these provisions are replaced by the tier rating
3 provisions in the bill); the law requiring the filing of a fraud prevention
4 plan by every automobile insurer (this requirement is in the bill as an
5 amendment to the current law requiring each health insurer to file a
6 fraud prevention plan), and the flex rating law.

7

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9

10

11 Provides for tier rating and urban enterprise zones, reduces fraud and
12 nonrenewals and eliminates surcharges and flex rating in automobile
13 insurance.