

[Passed Both Houses]

SENATE, No. 2223

STATE OF NEW JERSEY

INTRODUCED JUNE 23, 1997

By Senators CARDINALE, SINAGRA, Assemblyman DiGaetano,
Assemblywomen Heck, Allen, Assemblymen Asselta, Augustine,
Bagger, Bateman, Blee, Chatzidakis, DeSopo, Geist, Gibson,
Holzapfel, LeFevre, Rooney, O'Toole and Wolfe

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

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

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

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

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

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

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

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

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

25

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

28 3. As used in this act:

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

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

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

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

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

41 "Insurance company" means:

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

- 1 b. Any medical service corporation operating pursuant to
2 P.L.1940, c.74 (C.17:48A-1 et seq.);
- 3 c. Any hospital service corporation operating pursuant to
4 P.L.1938, c.366 (C.17:48-1 et seq.);
- 5 d. Any health service corporation operating pursuant to P.L.1985,
6 c.236 (C.17:48E-1 et seq.);
- 7 e. Any dental service corporation operating pursuant to P.L.1968,
8 c.305 (C.17:48C-1 et seq.);
- 9 f. Any dental plan organization operating pursuant to P.L.1979,
10 c.478 (C.17:48D-1 et seq.);
- 11 g. Any insurance plan operating pursuant to P.L.1970, c.215
12 (C.17:29D-1);
- 13 h. The New Jersey Insurance Underwriting Association operating
14 pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.);
- 15 i. The New Jersey Automobile Full Insurance Underwriting
16 Association operating pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.)
17 and the Market Transition Facility operating pursuant to section 88 of
18 P.L.1990, c.8 (C.17:33B-11); and
- 19 j. Any risk retention group or purchasing group operating pursuant
20 to the "Liability Risk Retention Act of 1986," 15 U.S.C. §3901 et seq.
21 "Pattern" means five or more related violations of P.L.1983, c.320
22 (C.17:33A-1 et seq.). Violations are related if they involve either the
23 same victim, or same or similar actions on the part of the person or
24 practitioner charged with violating P.L.1983, c.320 (C.17:33A-1 et
25 seq.).
- 26 "Person" means a person as defined in R.S.1:1-2, and shall include,
27 unless the context otherwise requires, a practitioner.
- 28 "Principal residence" means that residence at which a person spends
29 the majority of his time. Principal residence may be an abode separate
30 and distinct from a person's domicile. Mere seasonal or weekend
31 residence within this State does not constitute principal residence
32 within this State.
- 33 "Practitioner" means a licensee of this State authorized to practice
34 medicine and surgery, psychology, chiropractic, or law or any other
35 licensee of this State whose services are compensated, directly or
36 indirectly, by insurance proceeds, or a licensee similarly licensed in
37 other states and nations or the practitioner of any nonmedical
38 treatment rendered in accordance with a recognized religious method
39 of healing.
- 40 "Producer" means an insurance producer as defined in section 2 of
41 P.L.1987, c.293 (C.17:22A-2), licensed to transact the business of
42 insurance in this State pursuant to the provisions of the "New Jersey
43 Insurance Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et
44 seq.).
- 45 "Statement" includes, but is not limited to, any application, writing,
46 notice, expression, statement, proof of loss, bill of lading, receipt,

1 invoice, account, estimate of property damage, bill for services,
2 diagnosis, prescription, hospital or physician record, X-ray, test result
3 or other evidence of loss, injury or expense.

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

5

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

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

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

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

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

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

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

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

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

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

45 c. A person or practitioner violates this act if, due to the
46 assistance, conspiracy or urging of any person or practitioner, he

1 knowingly benefits, directly or indirectly, from the proceeds derived
2 from a violation of this act.

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

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

20

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

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

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

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

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

43 b. Any person who violates any provision of P.L.1983, c.320
44 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the
45 commissioner in a court of competent jurisdiction, for a penalty of not
46 more than \$5,000 for the first violation, \$10,000 for the second

1 violation and \$15,000 for each subsequent violation. The penalty shall
2 be paid to the commissioner to be used in accordance with subsection
3 [b.] e. of this section. The court [may] shall also award court costs
4 and reasonable attorneys' fees to the commissioner.

5 c. The commissioner is authorized to assess a civil and
6 administrative penalty of not more than \$5,000 for the first violation,
7 \$10,000 for the second violation and \$15,000 for each subsequent
8 violation of any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) and
9 to order restitution to any insurance company or other person who has
10 suffered a loss as a result of a violation of P.L.1983, c.320 (C.17:33A-
11 1 et seq.). No assessment shall be levied pursuant to this subsection
12 until the violator has been notified by certified mail or personal
13 service. The notice shall contain a concise statement of facts
14 providing the basis for the determination of a violation of P.L.1983,
15 c.320 (C.17:33A-1 et seq.), the provisions of that act violated, a
16 statement of the amount of civil penalties assessed and a statement of
17 the party's right to a hearing in accordance with the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed
19 party shall have 20 calendar days from receipt of the notice within
20 which to deliver to the commissioner a written request for a hearing
21 containing an answer to the statement of facts contained in the notice.
22 After the hearing and upon a finding that a violation has occurred, the
23 commissioner may issue a final order assessing up to the amount of the
24 penalty in the notice, restitution, and costs of prosecution, including
25 attorneys' fees. If no hearing is requested, the notice shall become a
26 final order after the expiration of the 20-day period. Payment of the
27 assessment is due when a final order is issued or the notice becomes
28 a final order.

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

36 d. Nothing in this [subsection] section shall be construed to
37 prohibit the commissioner and the person or practitioner alleged to be
38 guilty of a violation of this act from entering into a written agreement
39 in which the person or practitioner does not admit or deny the charges
40 but consents to payment of the civil penalty. A consent agreement
41 may contain a provision that it shall not be used in a subsequent civil
42 or criminal proceeding relating to any violation of this act, but
43 notification thereof shall be made to a licensing authority in the same
44 manner as required pursuant to subsection c. of section 10 of
45 P.L.1983, c.320 (C.17:33A-10). The existence of a consent
46 agreement under this subsection shall not preclude any licensing

1 authority from taking appropriate administrative action against a
2 licensee over which it has regulatory authority, nor shall such a
3 consent agreement preclude referral to law enforcement for
4 consideration of criminal prosecution.

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

17 (cf: P.L.1994, c.57, s.19)

18
19 5. Section 7 of P.L.1983, c.320 (C.17:33A-7) is amended to read
20 as follows:

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

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

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

36 d. Upon receipt of notification of the filing of a claim by an insurer,
37 the commissioner may join in the action for the purpose of seeking
38 judgment for the payment of a civil penalty authorized under section
39 5 of this act. If the commissioner prevails, the court may also award
40 court costs and reasonable attorney fees actually incurred by the
41 commissioner.

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

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

45
46 6. Section 10 of P.L.1983, c.320 (C.17:33A-10) is amended to

1 read as follows:

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

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

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

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

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

38

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

41 11. Papers, documents, reports, or evidence relative to the subject
42 of an investigation under this act shall not be subject to public
43 inspection except as specifically provided in this act. The
44 commissioner shall not detain subpoenaed records after an investigation
45 is closed or, if a claim for a civil penalty is filed by the commissioner
46 pursuant to section 5 or subsection d. of section 7, upon final

1 disposition of the claim by a court of competent jurisdiction,
2 whichever shall be the later date. Subpenaed records shall be returned
3 to the persons from whom they were obtained. The commissioner
4 may, in his discretion, make relevant papers, documents, reports, or
5 evidence available to the Attorney General, an appropriate licensing
6 authority, law enforcement agencies, an insurance company or
7 insurance claimant injured by a violation of this act, consistent with the
8 purposes of this act and under such conditions as he deems
9 appropriate. Such papers, documents, reports, or evidence shall not
10 be subject to subpena, unless the commissioner consents, or until,
11 after notice to the commissioner and a hearing, a court of competent
12 jurisdiction determines that the commissioner would not be
13 unnecessarily hindered by such subpena. Division investigators and
14 insurance company fraud investigators shall not be subject to subpena
15 in civil actions by any court of this State to testify concerning any
16 matter of which they have knowledge pursuant to a pending insurance
17 fraud investigation by the division, or a pending claim for civil
18 penalties initiated by the commissioner.
19 (cf: P.L.1983, c.320, s.11)

20

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

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

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

46 c. In addition to any other penalties provided pursuant to

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

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

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

15

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

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

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

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

41

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

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

1 of such certificate, registration or license

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

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

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

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

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

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

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

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

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

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

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

32 For purposes of this act:

33 "Completed application" means the submission of all of the
34 information designated on the checklist, adopted pursuant to section
35 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
36 permit for which application is made.

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

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

40

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

43 3. Any information concerning the conduct of a physician or
44 surgeon provided to the State Board of Medical Examiners pursuant
45 to section 1 of P.L.1983, c.248 (C.45:9-19.1), section 5 of P.L.1978,
46 c.73 (C.45:1-18) or any other provision of law, is confidential pending

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

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

14

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

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

44 Failure to produce at the time of trial an insurance identification
45 card or an insurance policy which was in force for the time of
46 operation for which the offense is charged[,] creates a rebuttable

1 presumption that the person was uninsured when charged with a
2 violation of this section.

3 [Notwithstanding any provision of P.L.1972, c.197 (C.39:6B-1 et
4 seq.), any person who violates the provisions of that act, from October
5 1, 1990 through January 31, 1991, shall not be subject to any of the
6 penalties or sanctions provided for a first violation of that act if that
7 person produces at the time of trial an insurance identification card or
8 a motor vehicle liability insurance policy which is in force at the time
9 of the trial and the conviction for that person's offense would be the
10 person's first conviction for an offense under that act. The
11 Commissioner of Insurance shall appropriately promote and advertise
12 this limited time amnesty program for first-time offenses under that act
13 throughout the State.]

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

15

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

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

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

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

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

38

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

46 b. An insurer which intends to use more than one rating plan may

1 make an initial filing for additional rating plans which are based on a
2 percentage increase or decrease of the existing rate level in its current
3 rating plan.

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

12 d. Any limitation on rates established by the provisions of section
13 7 of P.L.1983, c.65 (C.17:29A-36) shall apply separately to each rate
14 level established pursuant to subsection a. of this section.

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

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

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

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

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

25
26 18. (New section) To provide for an orderly transition with
27 minimum disruption to the private passenger automobile insurance
28 market, the Commissioner of Banking and Insurance shall establish
29 rules and regulations and administrative processes that are reasonable,
30 necessary, appropriate and consistent with the provisions of sections
31 14 through 17 of this amendatory and supplementary act.

32
33 19. (New section) As used in sections 19 through 23 of this
34 amendatory and supplementary act:

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

37 "Automobile insurance urban enterprise zone" means a geographic
38 area identified and designated by the commissioner pursuant to section
39 20 of this amendatory and supplementary act.

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

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

1 "Commissioner" means the Commissioner of Banking and
2 Insurance.

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

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

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

14

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

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

41

42 21. (New section) a. The commissioner shall establish by
43 regulation standards for a qualified insurer. These standards may
44 include, but not be limited to, demonstration by the automobile insurer
45 that it has a plan to increase access to automobile insurance for
46 consumers residing in an automobile insurance urban enterprise zone;

1 demonstration by the automobile insurer that it has a plan to assist
2 newly appointed UEZ agents in developing the skills necessary to
3 manage a successful business; procedures to monitor and evaluate the
4 impact of efforts to expand services to urban areas; and materials
5 designed to assist urban consumers in understanding automobile
6 insurance coverages. For an automobile insurer doing business on a
7 direct writing basis, the standards may include, but not be limited to,
8 the insurer's marketing plans and goals for increasing its writing of
9 risks in automobile insurance urban enterprise zones. Additionally,
10 the commissioner shall consider the insurer's past performance in
11 providing automobile insurance to persons residing in automobile
12 insurance urban enterprise zones.

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

16 c. An automobile insurer that certifies to the commissioner that it
17 meets the standards established pursuant to subsection a. of this
18 section shall be considered a qualified insurer for the purposes of this
19 amendatory and supplementary act. If at any time the commissioner
20 determines that a qualified insurer fails to meet the standards
21 established pursuant to subsection a. of this section, or if the
22 commissioner determines it necessary for the protection of the public,
23 he may suspend or revoke the insurer's certification as a qualified
24 insurer. If the commissioner determines that a qualified insurer has
25 failed to meet its marketing plan and goals pursuant to this section, the
26 commissioner may suspend or revoke the insurer's certification as a
27 qualified insurer. In making this determination, the commissioner shall
28 consider the past performance of the insurer in providing automobile
29 insurance in urban areas. If an automobile insurer certifies that it
30 meets the standards for becoming a qualified insurer and it does not
31 meet those standards, that insurer shall not be a qualified insurer for
32 purposes of this amendatory and supplementary act and may, at the
33 discretion of the commissioner, be subject of a fine of not more than
34 \$25,000.

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

37

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

1 amendatory and supplementary act, and detail the provisions of any
2 limit on the number of exposures provided for in subsection b. of this
3 section.

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

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

23

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

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

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

37

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

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

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

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

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

27
28 25. Section 30 of P.L.1990, c.8 (C.17:33B-18) is amended to read
29 as follows:

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

31 (1) Provide each eligible person seeking automobile insurance
32 premium quotations for the forms or types of automobile insurance
33 coverages which are offered by all insurers represented by the agent
34 or with which the agent places risks;

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

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

41 If a UEZ agent has a contract with a qualified insurer pursuant to
42 the provisions of section 22 of P.L. , c. (C.)(now before
43 the Legislature as this bill) and the UEZ agent is unable to place an
44 otherwise eligible person with that qualified insurer because of the
45 limitation on the number of exposures imposed by that qualified
46 insurer on the UEZ agent, the UEZ agent shall be deemed to have met

1 the requirements of this subsection, provided that the limitation on the
2 number of exposures has been reached and the UEZ agent fulfills all
3 applicable regulatory requirements.

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

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

11
12 26. Section 1 of P.L.1970, c.215 (C.17:29D-1) is amended to read
13 as follows:

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

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

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

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

46 b. For rates charged to plan insureds which shall be sufficient to

1 meet the plan's expenses and the plan's losses on an incurred basis,
2 including the establishment and maintenance of actuarially sound loss
3 reserves to cover all future costs associated with the exposure;

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

8 d. That it shall not provide insurance coverage for more than 10
9 percent of the aggregate number of private passenger automobile
10 non-fleet exposures being written in the total private passenger
11 automobile insurance market in this State. The plan shall provide for
12 the cessation of the acceptance of applications or the issuance of new
13 policies at any time it reaches 10 percent of marketshare, as certified
14 by the commissioner, until such time that the commissioner certifies
15 that the plan is insuring less than 10 percent of the aggregate number
16 of private passenger automobile non-fleet exposures being written in
17 the total private passenger automobile insurance market in this State;

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

22 f. [That insurers who write automobile risks in those urban
23 territories designated by the commissioner shall receive one assigned
24 risk credit for every two voluntary risks written in those designated
25 territories; and] (Deleted by amendment, P.L. ____, c. ____.)

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

28 h. That a qualified insurer who writes automobile insurance risks
29 in those automobile insurance urban enterprise zones designated by the
30 commissioner pursuant to section 20 of P.L. ____, c. ____ (C. ____) (now
31 before the Legislature as this bill) shall receive assigned risk credits for
32 voluntary risks written in those designated automobile insurance urban
33 enterprise zones as a direct writer or through a UEZ agent or agents
34 or through any agent with whom the insurer has an in-force contract
35 as of the effective date of P.L. ____, c. ____ (now before the Legislature
36 as this bill). The commissioner shall establish by regulation the manner
37 in which any qualified automobile insurer may utilize the provisions of
38 this subsection. In no event shall that credit apply to reduce an
39 insurer's obligations under subsection i. of this section; and

40 i. (1) For a voluntary rating tier to accommodate eligible persons,
41 as defined in section 25 of P.L. 1990, c. 8 (C. 17:33B-13), residing in
42 automobile insurance urban enterprise zones, designated by the
43 commissioner pursuant to section 20 of P.L. ____, c. ____ (C. ____)(now
44 before the Legislature as this bill), to provide increased availability and
45 encourage the voluntary writing of eligible persons residing in those
46 zones;

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

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

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

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

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

44 Prior to the adoption or amendment of such rules and regulations,
45 the commissioner shall consult with such members of the insurance
46 industry as he deems appropriate. Such consultation shall be in

1 addition to any otherwise required public hearing or notice with regard
2 to the adoption or amendment of rules and regulations.

3 The governing body administering the plan shall report annually to
4 the Legislature and the Governor on the activities of the plan. The
5 report shall contain an actuarial analysis regarding the adequacy of the
6 rates for each coverage for the safeness and soundness of the plan.
7 (cf: P.L.1995, c.151, s.1)

8

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

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

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

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

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

38 c. For every two newly insured automobiles which an insurer
39 voluntarily writes in each territory during each calendar year period,
40 the insurer shall be permitted to refuse to renew insurance on one
41 additional [policy of] automobile [insurance] in that territory in excess
42 of the 2% limitation established by subsection b. of this section,
43 subject to a fair and nondiscriminatory formula developed by rule or
44 regulation of the commissioner. [For the purposes of this section,
45 "voluntarily writes" shall not include any exposure voluntarily written
46 by or assigned to an insurer to meet any quota established pursuant to

1 section 26 of P.L.1983, c.65 (C.17:30E-14).] The provisions of this
2 subsection shall only apply to an insurer whose aggregate voluntary
3 market share in an automobile insurance urban enterprise zone is
4 reasonably proportionate to the insurer's voluntary Statewide market
5 share as determined by the commissioner by regulation or in a rating
6 territory in which the insurer demonstrates growth in the aggregate
7 number of in-force exposures.

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

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

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

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

27

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

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

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

46 c. Contracts between insurance companies and agents for the

1 appointment of the agent as the representative of the company shall set
2 forth the rate of commission to be paid to the agent for each class of
3 insurance within the scope of such appointment written on all risks or
4 operations in this State, except:

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

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

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

46 e. The agency termination provisions of this act shall not apply to

1 those contracts:

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

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

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

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

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

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

32 j. The provisions of subsection b. of this section shall not apply to
33 policies written by the New Jersey Automobile Full Insurance
34 Underwriting Association established pursuant to sections 13 through
35 34 of P.L.1983, c.65 (C.17:30E-1 et seq.).

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

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

1 agent's contractual relationship with the company is being terminated
2 and the effective date of that termination; and (2) that the named
3 insured may (a) continue to renew and obtain service through the
4 terminated agent; or (b) renew the policy and obtain service through
5 another agent of the company.

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

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

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

1 this subsection and evidence in support of the company's action, shall
2 be sent by the company to the Division of Enforcement and Consumer
3 Protection in the Department of Banking and Insurance.

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

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

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

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

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

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

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

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

43 (1) Misrepresentations and false advertising of policy contracts.
44 Making, issuing, circulating, or causing to be made, issued or
45 circulated, any estimate, illustration, circular or statement
46 misrepresenting the terms of any policy issued or to be issued or the

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

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

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

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

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

45 Making any false entry in any book, report or statement of any
46 insurer with intent to deceive any agent or examiner lawfully appointed

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

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

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

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

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

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

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

45 (8) Rebates. (a) Except as otherwise expressly provided by law,
46 knowingly permitting or offering to make or making any contract of

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

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

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

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

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

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

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

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

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

- 1 (g) Compelling insureds to institute litigation to recover amounts
2 due under an insurance policy by offering substantially less than the
3 amounts ultimately recovered in actions brought by such insureds;
- 4 (h) Attempting to settle a claim for less than the amount to which
5 a reasonable man would have believed he was entitled by reference to
6 written or printed advertising material accompanying or made part of
7 an application;
- 8 (i) Attempting to settle claims on the basis of an application which
9 was altered without notice to, or knowledge or consent of the insured;
- 10 (j) Making claims payments to insureds or beneficiaries not
11 accompanied by statement setting forth the coverage under which the
12 payments are being made;
- 13 (k) Making known to insureds or claimants a policy of appealing
14 from arbitration awards in favor of insureds or claimants for the
15 purpose of compelling them to accept settlements or compromises less
16 than the amount awarded in arbitration;
- 17 (l) Delaying the investigation or payment of claims by requiring an
18 insured, claimant or the physician of either to submit a preliminary
19 claim report and then requiring the subsequent submission of formal
20 proof of loss forms, both of which submissions contain substantially
21 the same information.
- 22 (m) Failing to promptly settle claims, where liability has become
23 reasonably clear, under one portion of the insurance policy coverage
24 in order to influence settlements under other portions of the insurance
25 policy coverage;
- 26 (n) Failing to promptly provide a reasonable explanation of the
27 basis in the insurance policy in relation to the facts or applicable law
28 for denial of a claim or for the offer of a compromise settlement.
- 29 (10) Failure to maintain complaint handling procedures. Failure of
30 any person to maintain a complete record of all the complaints which
31 it has received since the date of its last examination. This record shall
32 indicate the total number of complaints, their classification by line of
33 insurance, the nature of each complaint, the disposition of these
34 complaints, and the time it took to process each complaint. For
35 purposes of this subsection, "complaint" shall mean any written
36 communication primarily expressing a grievance.
- 37 (11) The enumeration of this act of specific unfair methods of
38 competition and unfair or deceptive acts and practices in the business
39 of insurance is not exclusive or restrictive or intended to limit the
40 powers of the commissioner or any court of review under the
41 provisions of section 9 of this act.
42 (cf: P.L.1975, c.100, s.1)
- 43
- 44 30. Section 6 of P.L.1983, c.65 (C.17:29A-35) is amended to read
45 as follows:
- 46 6. a. [A merit rating accident surcharge system for private

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

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

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

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

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

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

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

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

1 the division.

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

43 (3) In addition to any other authority provided in P.L.1983, c.65
44 (C.17:29A-33 et al.), the commissioner, after consultation with the
45 Director of the Division of Motor Vehicles, is specifically authorized
46 (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in

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

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

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

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

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

26

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

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

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

1 propelled by or from such automobile.

2 "Personal injury protection coverage" means and includes:

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

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

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

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

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

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

1 Benefits payable under this section shall:

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

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

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

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

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

15

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

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

22 a. Medical expense benefit deductibles in amounts of \$500.00,
23 \$1,000.00 and \$2,500.00 for any one accident;

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

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

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

40 Insurers shall offer the options provided by subsections a. and b. of
41 this section at appropriately reduced premiums. For policies issued or
42 renewed prior to January 1, 1992, insurers shall offer the option
43 provided by subsection d. of this section at a discount of not less than
44 25% from the base rate applicable to the first \$250,000 of medical
45 expense [benefit coverage] benefits, and for policies issued or renewed
46 on or after January 1, 1992, insurers shall offer the option at an

1 appropriate discount from the base rate for the amount of medical
2 expense [benefit] benefits coverage taken.

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

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

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

31 Medical expense benefits payable in any amount between the
32 deductible selected pursuant to subsection a. of this section and
33 \$5,000.00 shall be subject to a copayment of 20%.

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

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

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

43

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

46 10. a. The Commissioner of Banking and Insurance shall, within

1 90 days after the effective date of P.L.1990, c.8 (C.17:33B-1 et al.),
2 promulgate medical fee schedules on a regional basis for the
3 reimbursement of health care providers providing services or
4 equipment for medical expense benefits for which payment is to be
5 made by an automobile insurer under personal injury protection
6 coverage pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or by an
7 insurer under medical expense benefits coverage pursuant to section
8 2 of P.L.1991, c.154 (C.17:28-1.6). These fee schedules shall be
9 promulgated on the basis of the type of service provided, and shall
10 incorporate the reasonable and prevailing fees of 75% of the
11 practitioners within the region. If, in the case of a specialist provider,
12 there are fewer than 50 specialists within a region, the fee schedule
13 shall incorporate the reasonable and prevailing fees of the specialist
14 providers on a Statewide basis. [These schedules shall be reviewed
15 biannually by the commissioner.] The commissioner may contract with
16 a proprietary purveyor of fee schedules for the maintenance of the fee
17 schedule, which shall be adjusted biennially for inflation and for the
18 addition of new medical procedures.

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

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

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

35

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

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

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

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

17 e. The commissioner shall not approve any rate change pursuant to
18 this expedited process that results in an overall increase of more than
19 3% or an increase in any single coverage of more than 5%.

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

22
23 35. Section 56 of P.L.1990, c.8 (C.17:33B-46) and section 5 of
24 P.L.1988, c.156 (C.17:29A-44) are repealed.

25
26 36. Sections 6 and 7 of P.L.1988, c.156 (C.17:29A-45 and
27 17:29A-46) are repealed.

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

35
36 38. This act shall take effect on January 1, 1998, except that
37 sections 14 through 16 and section 36 shall take effect on March 1,
38 1998 and sections 1 through 13 and sections 17, 18, 27, 33, 34, 35 and
39 37 shall take effect immediately.

40
41
42 **STATEMENT**

43
44 This bill addresses numerous aspects concerning enforcement
45 against insurance fraud. When the Commissioner of Banking and
46 Insurance determines that a person has violated the "New Jersey

1 Insurance Fraud Prevention Act," the commissioner may either bring
2 a civil action for a penalty or levy a civil administrative penalty and
3 order restitution; and may request the Attorney General to bring a
4 criminal action. The penalty for violating the "New Jersey Insurance
5 Fraud Prevention Act" remains the same, at not more than \$5,000 for
6 a first violation, not more than \$10,000 for a second violation, and not
7 more than \$15,000 for each subsequent violation.

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

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

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

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

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

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

45 The bill provides that a person who operates an automobile
46 without insurance, while drunk or with intent to injure another shall

1 have no cause of action to recover economic or noneconomic loss.

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

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

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

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

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

43 The bill authorizes the commissioner to establish standards that
44 must be met in order to qualify an insurer as eligible to participate in
45 the automobile insurance UEZ program. Those standards may include:
46 demonstration by the automobile insurer that it has a plan to increase

1 access to automobile insurance for consumers residing in an
2 automobile insurance UEZ; demonstration by the automobile insurer
3 that it has a plan to assist newly appointed UEZ agents in developing
4 the skills necessary to manage a successful business; procedures to
5 monitor and evaluate the impact of efforts to expand services to urban
6 areas; and materials designed to assist urban consumers in
7 understanding automobile insurance coverages.

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

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

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

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

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

41 The bill reaffirms the commissioner's authority to provide rates
42 in the assigned risk program that are appropriate for the small
43 percentage of drivers that are not eligible for coverage in the voluntary
44 market. Additionally, the bill reaffirms the commissioner's authority
45 to establish appropriate mechanisms for the expeditious resolution of
46 operational decisions by residual market mechanisms, subject to

1 commissioner oversight and as provided in the rules and regulations
2 promulgated pursuant to section 1 of P.L.1970, c.215 (C. 17:29D-1).
3 The current method, which has operated satisfactorily for many years
4 and is consistent with methods employed by other states' residual
5 market mechanisms, has recently been questioned by appeals to the
6 courts. The bill's reaffirmation of the authority of a governing
7 committee to administer any plan, including, but not limited to, the
8 authority to hear certain appeals, is intended to settle doubts that were
9 raised in the recent decision, Chopper Express v. Department of
10 Insurance, 293 N.J. Super. 536 (App. Div. 1996).

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

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

42 The bill leaves in place the prior approval of private passenger
43 automobile insurance rates and underwriting rules by the
44 commissioner, but provides for an expedited rate increase of no more
45 than 3% or any decrease in an insurer's average base rate for private
46 passenger automobile insurance. If the commissioner determines that

1 the filing will not produce excessive or unfairly discriminatory rates,
2 the rates shall be approved. No rate change approved in this expedited
3 process can result in an overall increase of 3% of an insurer's rates, or
4 more than 5% for any single coverage.

5 The bill repeals: the law providing that automobile insurers
6 could file rating plans for nonstandard risks in addition to those for
7 standard risks (these provisions are replaced by the tier rating
8 provisions in the bill); the law requiring the filing of a fraud prevention
9 plan by every automobile insurer (this requirement is in the bill as an
10 amendment to the current law requiring each health insurer to file a
11 fraud prevention plan), and the flex rating law.

12

13

14

15

16 Provides for tier rating and urban enterprise zones, reduces fraud and
17 nonrenewals and eliminates surcharges and flex rating in automobile
18 insurance.