

SENATE, No. 2260

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senators ADLER, McGREEVEY, Lesniak, Lipman, Codey,
Kenny, Sacco, Girgenti, Casey, Rice, Zane, Bryant, Baer,
MacInnes and Lynch

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) The Legislature finds and declares:

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

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

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

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

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

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 additional accessible coverage.

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

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

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

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

14 (4) update the definition of an at-fault accident and provide a
15 notification system in regard to at-fault accidents.

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

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

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

23 (3) establishing the position of Insurance Fraud Prosecutor in the
24 Department of Banking and Insurance.

25 d. That automobile insurance rates shall be reduced by 10 percent
26 effective July 1, 1997.

27

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

30 3. As used in this act:

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

33 "Commissioner" means the Commissioner of Banking and
34 Insurance.

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

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

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

43 "Insurance company" means:

44 a. Any corporation, association, partnership, reciprocal exchange,
45 interinsurer, Lloyd's insurer, fraternal benefit society or other person
46 engaged in the business of insurance pursuant to Subtitle 3 of Title 17

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

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

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

7

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 b. Any person who violates any provision of P.L.1983, c.320
46 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the

1 commissioner in a court of competent jurisdiction, for a penalty of not
2 more than \$5,000 for the first violation, \$10,000 for the second
3 violation and \$15,000 for each subsequent violation. The penalty shall
4 be paid to the commissioner to be used in accordance with subsection
5 [b.] e. of this section. The court [may] shall also award court costs
6 and reasonable attorneys' fees to the commissioner.

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

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

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

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

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

20

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

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

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

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

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

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

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

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

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

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

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

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

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

39

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

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

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

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

21

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

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

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

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

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

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

16

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

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

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

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

42

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

45 8. A board may refuse to admit a person to an examination or may
46 refuse to issue or may suspend or revoke any certificate, registration

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

33 For purposes of this act:

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

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

41

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

44 3. Any information concerning the conduct of a physician or
45 surgeon provided to the State Board of Medical Examiners pursuant
46 to section 1 of P.L.1983, c.248 (C.45:9-19.1), section 5 of P.L.1978,

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

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

15

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

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

45 Failure to produce at the time of trial an insurance identification
46 card or an insurance policy which was in force for the time of

1 operation for which the offense is charged[,] creates a rebuttable
2 presumption that the person was uninsured when charged with a
3 violation of this section.

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

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

16

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

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

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

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

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

39

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

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

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

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

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

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

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

43
44 16. (New section) Except for a plan established pursuant to
45 section 1 of P.L.1970, c.215 (C.17:29D-1), and except as otherwise
46 provided in section 17 of this amendatory and supplementary act, no

1 insurer shall charge or collect surcharges based on motor vehicle
2 violation penalty points promulgated by the Director of the Division
3 of Motor Vehicles pursuant to section 1 of P.L.1982, c.43
4 (C.39:5-30.5) or the schedule of automobile insurance eligibility points
5 promulgated by the Commissioner of Banking and Insurance pursuant
6 to section 26 of P.L.1990, c.8 (C.17:33B-14).

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

22
23 18. (New section) To provide for an orderly transition with
24 minimum disruption to the private passenger automobile insurance
25 market, the Commissioner of Banking and Insurance shall establish
26 rules and regulations and administrative processes that are reasonable,
27 necessary, appropriate and consistent with the provisions of sections
28 14 through 17 of this amendatory and supplementary act.

29
30 19. (New section) As used in sections 19 through 23 of this
31 amendatory and supplementary act:

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

34 "Automobile insurance urban enterprise zone" means a geographic
35 area identified and designated by the commissioner pursuant to section
36 20 of this amendatory and supplementary act.

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

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

44 "Commissioner" means the Commissioner of Banking and
45 Insurance.

46 "Eligible person" means an eligible person as defined in section 25

1 of P.L.1990, c.8 (C.17:33B-13).

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

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

11

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

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

38

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

1 impact of efforts to expand services to urban areas; and materials
2 designed to assist urban consumers in understanding automobile
3 insurance coverages. For an automobile insurer doing business on a
4 direct writing basis, the standards may include, but not be limited to,
5 the insurer's marketing plans and goals for increasing its writing of
6 risks in automobile insurance urban enterprise zones. Additionally,
7 the commissioner shall consider the insurer's past performance in
8 providing automobile insurance to persons residing in automobile
9 insurance urban enterprise zones.

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

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

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

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

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

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

20

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

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

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

34

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

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

44 b. No insurer shall refuse to insure, refuse to renew, or limit
45 coverage available for automobile insurance to an eligible person who
46 meets its underwriting rules as filed with and approved by the

1 commissioner in accordance with the provisions of section 7 of
2 P.L.1988, c.156 (C.17:29A-46) prior to March 1, 1998 or section 15
3 of P.L. , c. (C.) (now before the Legislature as this bill) on
4 or after March 1, 1998.

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

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

24
25 25. Section 30 of P.L.1990, c.8 (C.17:33B-18) is amended to read
26 as follows:

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

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

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

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

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

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

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

8

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

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

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

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

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

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

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

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

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

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

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

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

46 The governing body administering the plan shall report annually to

1 the Legislature and the Governor on the activities of the plan. The
2 report shall contain an actuarial analysis regarding the adequacy of the
3 rates for each coverage for the safeness and soundness of the plan.

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

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

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

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

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

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

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

1 reasonably proportionate to the insurer's voluntary Statewide market
2 share as determined by the commissioner by regulation or in a rating
3 territory in which the insurer demonstrates growth in the aggregate
4 number of in-force exposures.

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

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

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

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

24

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

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

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

43 c. Contracts between insurance companies and agents for the
44 appointment of the agent as the representative of the company shall set
45 forth the rate of commission to be paid to the agent for each class of
46 insurance within the scope of such appointment written on all risks or

1 operations in this State, except:

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

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

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

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

- 45 (1) in which the agent is paid on a salary basis without commission
- 46 or where he agrees to represent exclusively one company or to the

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

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

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

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

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

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

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

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

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

1 terminated agent; or (b) renew the policy and obtain service through
2 another agent of the company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 affairs, or, with like intent, willfully omitting to make a true entry of
2 any material fact pertaining to the business of such insurer in any
3 book, report or statement of such insurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40

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

43 6. a. [A merit rating accident surcharge system for private
44 passenger automobiles may be used in the voluntary market, by the
45 New Jersey Automobile Full Insurance Underwriting Association
46 created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), by the

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

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

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

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

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

44 If, upon written notification from the Division of Motor Vehicles,
45 mailed to the last address of record with the division, a driver fails to
46 pay a surcharge levied under this subsection, the license of the driver

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

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

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

45 All moneys collectible under this subsection b. shall be billed and
46 collected by the Division of Motor Vehicles. Of the moneys collected:

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

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

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

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

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

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

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

23

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

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

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

45 "Personal injury protection coverage" means and includes:

46 a. Medical expense benefits. Payment of reasonable medical

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

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

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

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

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

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

44 Benefits payable under this section shall:

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

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

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

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

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

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

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

19 a. Medical expense benefit deductibles in amounts of \$500.00,
20 \$1,000.00 and \$2,500.00 for any one accident;

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

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

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

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

46 Any named insured who chooses the option provided by subsection

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

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

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

28 Medical expense benefits payable in any amount between the
29 deductible selected pursuant to subsection a. of this section and
30 \$5,000.00 shall be subject to a copayment of 20%.

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

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

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

40

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

43 10. a. The Commissioner of Banking and Insurance shall, within
44 90 days after the effective date of P.L.1990, c.8 (C.17:33B-1 et al.),
45 promulgate medical fee schedules on a regional basis for the
46 reimbursement of health care providers providing services or

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

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

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

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

32

33 34. Section 26 of P.L.1990, c.8 (C.17:33B-14) is amended to read
34 as follows:

35 26. The commissioner shall, within 90 days of the effective date of
36 this act, promulgate a schedule of automobile insurance eligibility
37 points by rule or regulation adopted pursuant to the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule
39 shall assess a point valuation to driving experience related violations
40 and shall include assessments for violations of lawful speed limits
41 within such increments as determined by the commissioner, other
42 moving violations, and at-fault accidents. For the purposes of this
43 section, an "at-fault accident" means an at-fault accident which results
44 in payment by the insurer of at least a ~~[\$500]~~ \$1,000 claim, which
45 amount shall be adjusted by order of the commissioner on July 1 every
46 three years following the enactment date of P.L. ., c. (now before

1 the Legislature as this bill) to reflect the cumulative increases or
2 decreases in the components of the national Consumer Price Index,
3 U.S. City Average, deemed appropriate by the commissioner, and the
4 adjusted amount shall apply to automobile accidents occurring on or
5 after the adjustment date.

6 (cf: P.L.1990, c.8, s.26)

7

8 35. (New section) As used in sections 36 and 37 of this
9 amendatory and supplementary act:

10 "At-fault accident" means an at-fault accident as defined in section
11 26 of P.L.1990, c.8 (C.17:33B-14) and for which the operator is at
12 least proportionately responsible based on the number of vehicles
13 involved. An operator is proportionately responsible if 50 percent
14 responsible for an accident involving two vehicles; if 33 1/3 percent
15 responsible for an accident involving three vehicles; and so on. An at-
16 fault accident shall not include the following:

17 (1) An accident in which the motor vehicle owned or operated by
18 the insured or other operator insured under the policy was lawfully
19 parked;

20 (2) An accident in which the motor vehicle was struck by a hit and
21 run operator, if the accident was reported to the proper authorities
22 within 24 hours;

23 (3) An accident in connection with which the operator insured
24 under the policy was not convicted of a moving traffic violation and
25 the operator of another vehicle involved in that accident was so
26 convicted;

27 (4) Physical damage losses that are other than collision;

28 (5) An accident in which the motor vehicle was struck in the rear
29 by another vehicle and the operator insured under the policy was not
30 convicted of a moving violation in connection with the accident; or

31 (6) An accident occurring as a result of operation of any motor
32 vehicle in response to an emergency if the operator at the time of the
33 accident was responding to the call to duty as a paid or volunteer
34 member of any police or fire department, first aid or rescue squad or
35 any law enforcement agency.

36 "Insurer" means any insurer authorized or admitted to write motor
37 vehicle insurance in this State.

38

39 36. (New section) If an operator of a motor vehicle is involved in
40 an accident and it is determined that he is responsible for an at-fault
41 accident, that operator's insurer shall notify the operator within 10
42 days of that determination.

43

44 37. (New section) a. The Commissioner of Banking and Insurance
45 shall establish procedures for resolving complaints of operators who
46 believe that they have been improperly determined to be responsible

1 for an at-fault accident, including procedures for a written appeal to
2 the commissioner.

3 b. If either the insurer or the operator disagrees with a
4 determination of the commissioner under this section, the
5 commissioner, if requested to do so by either party, shall proceed to
6 hear the matter as a contested case.

7 c. No insurer shall surcharge, or increase the rates of, an insured
8 for an at-fault accident while the matter is in dispute pursuant to
9 subsection a. or b. of this section.

10

11 38. (New section) Notwithstanding the provisions of P.L.1944,
12 c.20 (C.52:17A-1 et seq.) or any other law, rule or regulation to the
13 contrary, there is created the position of Insurance Fraud Prosecutor
14 in the Department of Banking and Insurance. The Insurance Fraud
15 Prosecutor shall be appointed by and serve at the pleasure of the
16 Governor, with the advice and consent of the Senate.

17

18 39. (New section) The Insurance Fraud Prosecutor shall have
19 access to the support and resources of the Department of Banking and
20 Insurance, including, without limitation, such clerical and support staff
21 as may be necessary to discharge his responsibilities, and access to
22 those units within the Department of Law and Public Safety,
23 Department of Human Services and Department of Health and Senior
24 Services established to enforce the criminal and civil laws with respect
25 to insurance fraud.

26

27 40. (New section) a. The Insurance Fraud Prosecutor shall
28 establish a coordinated insurance fraud enforcement policy, shall
29 prosecute insurance fraud and shall oversee the prosecution of
30 enforcement actions in priority cases.

31 b. In furtherance of these responsibilities, the Insurance Fraud
32 Prosecutor shall have the following powers and obligations:

33 (1) The Insurance Fraud Prosecutor shall have access to all
34 information concerning insurance fraud enforcement which is in the
35 possession of all State agencies. Such information includes agency
36 inspection reports and license information, individual case files, and
37 intelligence information compiled and maintained by the Divisions of
38 State Police and Criminal Justice.

39 (2) The Insurance Fraud Prosecutor shall meet on a regular basis
40 with representatives of all State departments and agencies with
41 insurance fraud enforcement responsibilities: (a) to identify individual
42 matters as priority cases; (b) to set specific goals and strategies for the
43 most effective resolution of each such case, whether by criminal, civil
44 or administrative enforcement action or some combination thereof; and
45 (c) to formulate and evaluate proposals for legislative, administrative
46 and judicial initiatives to strengthen insurance fraud enforcement and

1 to further a coordinated enforcement policy.

2 (3) The Insurance Fraud Prosecutor shall prosecute insurance fraud
3 and shall oversee the processing, progress and prosecution of
4 individual priority cases. He shall work with the Directors of the
5 Divisions of Law and Criminal Justice when these matters are
6 receiving, or should receive, the attention of the Attorney General. He
7 shall also work through the heads of other departments and agencies
8 to oversee administrative enforcement activities in priority cases which
9 do not involve direct Attorney General attention.

10 (4) In connection with insurance fraud enforcement activities, the
11 Insurance Fraud Prosecutor shall act as the liaison for the Executive
12 Branch of government with agencies involved in insurance fraud
13 enforcement outside the Executive Branch, including federal agencies
14 and the judiciary.

15

16 41. (New section) All departments and agencies of State
17 government with insurance fraud enforcement responsibilities are
18 hereby directed to cooperate with and to support fully the Insurance
19 Fraud Prosecutor in the discharge of his responsibilities and
20 obligations.

21

22 42. (New section) a. The Director of the Division of Budget and
23 Accounting in the Department of the Treasury shall, on or before
24 September 1 in each year, ascertain and certify to the Commissioner
25 of Banking and Insurance the total amount of expenses incurred by the
26 State in connection with the administration of sections 39 through 43
27 of this amendatory and supplementary act during the preceding fiscal
28 year, which expenses shall include, in addition to the direct cost of
29 personal service, the cost of maintenance and operation, the cost of
30 retirement contributions made and the workers' compensation paid for
31 and on account of the position of Insurance Fraud Prosecutor, rentals
32 for space occupied in State owned or State leased buildings and all
33 other direct and indirect costs associated with the duties and
34 responsibilities of the Insurance Fraud Prosecutor.

35 b. The commissioner shall, on or before October 15 in each year,
36 apportion the amount so certified to him among all of the companies
37 writing the class or classes of insurance described in Subtitle 3 of Title
38 17 of the Revised Statutes, and Subtitle 3 of Title 17B of the New
39 Jersey Statutes, within this State in the proportion that the net
40 premiums received by each of them for such insurance written or
41 renewed on risks within this State during the calendar year
42 immediately preceding, as reported to him, bears to the sum total of
43 all such net premiums received by all companies writing that insurance
44 within the State during the year, as reported. The commissioner shall
45 certify the sum apportioned to each company on or before November
46 15 next ensuing, and to the Division of Taxation in the Department of

1 the Treasury. Each company shall pay the amount so certified as
2 apportioned to it to the Division of Taxation on or before December
3 31 next ensuing, and the sum paid shall be paid into the State Treasury
4 in reimbursement to the State for the expenses paid.

5 "Net premiums received" means gross premiums written, less return
6 premiums thereon and dividends credited or paid to policyholders.

7 c. Direct and indirect costs associated with the position of
8 Insurance Fraud Prosecutor shall be apportioned among insurance
9 companies pursuant to subsection b. of this section notwithstanding
10 the provisions of P.L.1995, c.156 (C.17:1C-20 et seq.).

11
12 43. (New section) The Insurance Fraud Prosecutor shall report to
13 the Governor after six months of service, and at reasonable and
14 appropriate intervals thereafter, as to the progress of his work and as
15 to whether any further administrative and legislative action would be
16 desirable to assist in the discharge of his duties.

17
18 44. (New section) Private passenger automobile insurance rates in
19 effect on June 30, 1997 shall be reduced by 10 percent and the reduced
20 rates shall become effective July 1, 1997.

21
22 45. Section 56 of P.L.1990, c.8 (C.17:33B-46) and section 5 of
23 P.L.1988, c.156 (C.17:29A-44) are repealed.

24
25 46. Sections 6 and 7 of P.L.1988, c.156 (C.17:29A-45 and
26 17:29A-46) are repealed.

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

34
35 48. This act shall take effect on January 1, 1998, except that:
36 sections 14 through 16 and section 46 shall take effect on March 1,
37 1998; sections 1 through 13, sections 17, 18, 27 and 33, sections 38
38 through 45 and section 47 shall take effect immediately; section 34
39 shall take effect on the 90th day following enactment and apply to
40 private passenger automobile insurance policies issued or renewed in
41 this State on or after that effective date; and sections 35 through 37
42 shall take effect on the 90th day following enactment and apply to any
43 motor vehicle accident occurring on or after that effective date.

1 STATEMENT

2

3

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

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

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

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

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

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

The fine for driving without mandatory liability insurance is

1 raised from \$300, to not less than \$300 nor more than \$1,000 for a
2 first offense, and from \$500 to up to \$5,000 for a subsequent
3 conviction.

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

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

13 The bill provides that insurers with tier rating may not adopt
14 underwriting rules which would permit a particular automobile to be
15 insured under more than one of the rating tiers. Tier rating plans filed
16 must be revenue neutral for the insurer with respect to eligible persons
17 as defined in the "Fair Automobile Insurance Reform Act of 1990," or
18 "FAIR Act." Under the bill, an insurer may take into account factors,
19 including a person's driving record characteristics appropriate for
20 underwriting and classification in formulating its underwriting rules.

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

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

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

45 The bill authorizes the commissioner to establish standards that
46 must be met in order to qualify an insurer as eligible to participate in

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

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

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

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

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

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

43 The bill reaffirms the commissioner's authority to provide rates
44 in the assigned risk program that are appropriate for the small
45 percentage of drivers that are not eligible for coverage in the voluntary
46 market. Additionally, the bill reaffirms the commissioner's authority

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

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

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

44 The bill amends the definition of "at-fault accident" to mean an
45 accident which results in payment by the insurer of at least a \$1,000
46 claim, which amount shall be adjusted by order of the Commissioner

1 of Banking and Insurance on July 1 every three years to reflect the
2 cumulative increases or decreases in components of the national
3 Consumer Price Index, U.S. City Average, deemed appropriate by the
4 commissioner.

5 The bill requires insurers to notify operators who have been
6 determined to be responsible for an at-fault motor vehicle accident
7 within 10 days of the determination. Currently, the only such notice
8 an insured normally receives is when he is surcharged for an at-fault
9 accident on his premium notice at the time of renewal. Current
10 procedure does not allow the insured to appeal a determination of fault
11 at the time it is made. The bill provides that the Commissioner of
12 Banking and Insurance establish procedures for insureds to appeal
13 such determinations of fault.

14 The bill establishes a special Insurance Fraud Prosecutor to
15 insure that perpetrators of insurance fraud are prosecuted to the fullest
16 extent of the law. Currently, many such perpetrators often avoid
17 criminal prosecution because they are channeled instead through an
18 administrative settlement process within the Department of Banking
19 and Insurance and the Department of Law and Public Safety. This bill
20 provides the resources necessary to insure that these individuals are
21 justly punished and that others are deterred from committing insurance
22 fraud offenses, which only add additional dollars to the insurance
23 premiums of all the citizens of this State.

24 The bill requires an immediate 10 percent roll back in automobile
25 insurance rates.

26 The bill repeals: the law providing that automobile insurers
27 could file rating plans for nonstandard risks in addition to those for
28 standard risks (these provisions are replaced by the tier rating
29 provisions in the bill); the law requiring the filing of a fraud prevention
30 plan by every automobile insurer (this requirement is in the bill as an
31 amendment to the current law requiring each health insurer to file a
32 fraud prevention plan), and the flex rating law.

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37 Provides for certain reforms in automobile insurance and requires a
38 10% rate roll back.