

SENATE, No. 2310

STATE OF NEW JERSEY

INTRODUCED DECEMBER 1, 1997

By Senator KYRILLOS

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) a. This act shall be known and may be cited as
8 the "Automobile Insurance Cost Reduction Act."

9 b. Whereas, while New Jersey's automobile insurance no-fault law,
10 which was enacted twenty-five years ago, has provided many benefits
11 to New Jersey residents in that it has provided medical benefits and
12 wage replacement benefits to those injured in automobile accidents
13 without regard to fault; and

14 Whereas, the medical expenses paid by no-fault policies over those
15 years amount to billions of dollars, which would otherwise have been
16 paid by health insurers and employers, thus raising the cost of health
17 insurance for everyone; and

18 Whereas, while medical benefits under no-fault insurance were
19 initially unlimited, the high cost of such expansive benefits proved to
20 be prohibitive, and the Legislature found it necessary to circumscribe
21 these benefits, beginning in 1990, when this process was begun by
22 establishing a ceiling of \$250,000 on no-fault medical benefits; and

23 Whereas, the high frequency of medical expense claims under
24 personal injury protection benefits, caused in part by the
25 overutilization of medical benefits, continues to contribute to the
26 escalating cost of automobile insurance, necessitating the imposition
27 of further controls on the use of those benefits and a reduction in the
28 cost of contesting the eligibility of medical expenses for
29 reimbursement, thus reducing the rate of premium increases for those
30 benefits; and

31 Whereas, the Legislature believes that it is good public policy to
32 offer motorists the ability to further circumscribe their right to sue for
33 pain and suffering in return for premium savings, while permitting
34 those persons who desire a somewhat more liberal right to sue and are

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

Matter underlined thus is new matter.

1 willing to pay the somewhat higher costs associated with that right the
2 ability to have the same access to the courts which they have at
3 present; and

4 Whereas, the high cost of automobile insurance in New Jersey has
5 presented a significant problem for many lower-income residents of the
6 State, many of whom have been forced to drop their coverage in
7 violation of the State's mandatory motor vehicle insurance laws; and

8 Whereas, the Legislature believes that the State's automobile
9 insurance law should be modified in such a manner as to give all
10 motorists the option to reduce their coverage to meet their needs, thus
11 lowering their premium costs, while at the same time maintaining their
12 right to sue when they are injured through the negligence of others;
13 and

14 Whereas, the Legislature also believes in the importance of
15 maintaining the right of individuals to protect themselves against loss,
16 to the extent necessary to meet their individual needs and by the most
17 economical means possible, through the purchase of coverage insuring
18 against injuries or damage to property by individuals who are
19 uninsured or who do not have coverage which is adequate to cover the
20 cost of an accident; and

21 Whereas, to meet these goals, this legislation provides for the
22 creation of two basic insurance coverage options, a standard policy
23 and a mini policy, provides for cost containment through the
24 establishment of a peer review system for medical claims, raises the
25 basic reimbursement rates for wage loss and other services provided
26 under personal injury protection coverage, provides for an additional
27 threshold for suits for pain and suffering, eliminates mandatory
28 uninsured motorist coverage, and creates a new uninsured motorist
29 coverage to pay for economic loss only, at reduced rates.

30

31 2. Section 2 of P.L.1972, c.70 (C.39:6A-2) is amended to read as
32 follows:

33 2. As used in this act:

34 a. "Automobile" means a private passenger automobile of a private
35 passenger or station wagon type that is owned or hired and is neither
36 used as a public or livery conveyance for passengers nor rented to
37 others with a driver; and a motor vehicle with a pickup body, a
38 delivery sedan, a van, or a panel truck or a camper type vehicle used
39 for recreational purposes owned by an individual or by husband and
40 wife who are residents of the same household, not customarily used
41 in the occupation, profession or business of the insured other than
42 farming or ranching. An automobile owned by a farm family
43 copartnership or corporation, which is principally garaged on a farm
44 or ranch and otherwise meets the definitions contained in this section,
45 shall be considered a private passenger automobile owned by two or
46 more relatives resident in the same household.

1 b. "Essential services" means those services performed not for
2 income which are ordinarily performed by an individual for the care
3 and maintenance of such individual's family or family household.

4 c. "Income" means salary, wages, tips, commissions, fees and
5 other earnings derived from work or employment.

6 d. "Income producer" means a person who, at the time of the
7 accident causing personal injury or death, was in an occupational
8 status, earning or producing income.

9 e. "Medical expenses" means [expenses for medical treatment,
10 surgical treatment, dental treatment, professional nursing services,
11 hospital expenses, rehabilitation services, X-ray and other diagnostic
12 services, prosthetic devices, ambulance services, medication and other
13 reasonable and necessary expenses resulting from the treatment
14 prescribed by persons licensed to practice medicine and surgery
15 pursuant to R.S.45:9-1 et seq., dentistry pursuant to R.S.45:6-1 et
16 seq., psychology pursuant to P.L.1966, c. 282 (C.45:14B-1 et seq.) or
17 chiropractic pursuant to P.L.1953, c. 233 (C.45:9-41.1 et seq.) or]
18 reasonable and necessary expenses for treatment or services as
19 provided by the policy, including medical, surgical and diagnostic
20 services and hospital expenses, provided by a health care provider
21 licensed or certified by the State, and reasonable and necessary
22 expenses for ambulance services, medication and other services as may
23 be provided for in the policy. "Medical expenses" shall include
24 treatment or services by persons similarly licensed in other states and
25 nations [or] , as well as any nonmedical remedial treatment rendered
26 in accordance with a recognized religious method of healing.

27 f. "Hospital expenses" means [:

28 (1) The cost of a semiprivate room, based on rates customarily
29 charged by the institution in which the recipient of benefits is confined;

30 (2) The cost of board, meals and dietary services;

31 (3) The cost of other hospital services, such as operating room;
32 medicines, drugs, anesthetics; treatments with X-ray, radium and
33 other radioactive substances; laboratory tests, surgical dressings and
34 supplies; and other medical care and treatment rendered by the
35 hospital;

36 (4) The cost of treatment by a physiotherapist;

37 (5) The cost of medical supplies, such as prescribed drugs and
38 medicines; blood and blood plasma; artificial limbs and eyes; surgical
39 dressings, casts, splints, trusses, braces, crutches; rental of
40 wheelchair, hospital bed or iron lung; oxygen and rental of equipment
41 for its administration] the cost of treatment and services, as provided
42 in the policy, by a licensed and accredited acute care facility which
43 engages primarily in providing diagnosis, treatment and care of sick
44 and injured persons on an inpatient or outpatient basis; the cost of
45 covered treatment and services provided by an extended care facility
46 which provides room and board and skilled nursing care 24 hours a

1 day and which is recognized by the administrators of the federal
2 Medicare program as an extended care facility; and the cost of covered
3 services at an ambulatory surgical facility supervised by a physician
4 licensed in this State or in another jurisdiction and recognized by the
5 Commissioner of Health and Senior Services, any other facility
6 licensed, certified or recognized by the Commissioner of Health and
7 Senior Services or by another jurisdiction in which it is located.

8 g. "Named insured" means the person or persons identified as the
9 insured in the policy and, if an individual, his or her spouse, if the
10 spouse is named as a resident of the same household, except that if the
11 spouse ceases to be a resident of the household of the named insured,
12 coverage shall be extended to the spouse for the full term of any
13 policy period in effect at the time of the cessation of residency.

14 h. "Pedestrian" means any person who is not occupying, entering
15 into, or alighting from a vehicle propelled by other than muscular
16 power and designed primarily for use on highways, rails and tracks.

17 i. "Noneconomic loss" means pain, suffering and inconvenience.

18 j. "Motor vehicle" means a motor vehicle as defined in R.S.
19 39:1-1, exclusive of an automobile as defined in subsection a. of this
20 section.

21 k. "Standard automobile insurance policy" means an automobile
22 insurance policy with at least the coverage required pursuant to
23 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4).

24 l. "Mini automobile insurance policy" means an automobile
25 insurance policy pursuant to section 4 of P.L. , c. (C.)(now
26 before the Legislature as this bill).

27 (cf: P.L.1983, c.362, s.6)

28

29 3. Section 3 of P.L.1972, c.70 (C.39:6A-3) is amended to read as
30 follows:

31 3. Compulsory automobile insurance coverage; limits. [Every]
32 Except as provided by section 4 of P.L. , c. (C.)(now
33 before the Legislature as this bill), every owner or registered owner of
34 an automobile registered or principally garaged in this State shall
35 maintain automobile liability insurance coverage, under provisions
36 approved by the Commissioner of Banking and Insurance, insuring
37 against loss resulting from liability imposed by law for bodily injury,
38 death and property damage sustained by any person arising out of the
39 ownership, maintenance, operation or use of an automobile wherein
40 such coverage shall be at least in:

41 a. an amount or limit of \$15,000.00, exclusive of interest and
42 costs, on account of injury to, or death of, one person, in any one
43 accident; and

44 b. an amount or limit, subject to such limit for any one person so
45 injured or killed, of \$30,000.00, exclusive of interest and costs, on
46 account of injury to or death of, more than one person, in any one

1 accident; and

2 c. an amount or limit of \$5,000.00, exclusive of interest and costs,
3 for damage to property in any one accident.

4 No licensed insurance carrier shall refuse to renew the required
5 coverage stipulated by this act of an eligible person as defined in
6 section 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with
7 the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or
8 with the consent of the Commissioner of Banking and Insurance.
9 (cf: P.L.1990, c.8, s.3)

10

11 4. (New section) As an alternative to the mandatory coverages
12 provided in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-
13 4), any owner or registered owner of an automobile registered or
14 principally garaged in this State may elect a "mini" automobile
15 insurance policy providing the following coverage:

16 a. Personal injury protection coverage, for the payment of benefits
17 without regard to negligence, liability or fault of any kind, to the
18 named insured and members of his family residing in his household,
19 who sustained bodily injury as a result of an accident while occupying,
20 entering into, alighting from or using an automobile, or as a
21 pedestrian, caused by an automobile or by an object propelled by or
22 from an automobile, to other persons sustaining bodily injury while
23 occupying, entering into, alighting from or using the automobile of the
24 named insured, with the permission of the named insured, and to
25 pedestrians sustaining bodily injury caused by the named insured's
26 automobile or struck by an object propelled by or from such
27 automobile. "Personal injury protection coverage" issued pursuant to
28 this section means and includes payment of medical expense benefits,
29 as provided in the policy and approved by the commissioner, for the
30 reasonable and necessary treatment of bodily injury in an amount not
31 to exceed \$10,000 per person per accident. Medical expense benefits
32 payable under this subsection shall not be assignable, except to a
33 provider of service benefits, in accordance with policy terms approved
34 by the commissioner, nor shall they be subject to levy, execution,
35 attachment or other process for satisfaction of debts. Medical expense
36 benefits payable in accordance with this subsection shall be subject to
37 a deductible of \$250, and copayments as provided for in the policy, if
38 any. No insurer or provider providing service benefits to an insured
39 shall have a right of subrogation for the amount of benefits paid
40 pursuant to any deductible or copayment under this section.

41 b. Liability insurance coverage insuring against loss resulting from
42 liability imposed by law for property damage sustained by any person
43 arising out of the ownership, maintenance, operation or use of an
44 automobile in an amount or limit of \$5,000, exclusive of interest and
45 costs, for damage to property in any one accident.

46 A mini automobile insurance policy shall apply to the named insured

1 and any immediate family member residing in the named insured's
2 household. If a named insured has elected the mini automobile
3 insurance policy option and an immediate family member or members
4 or relatives resident in his household have one or more policies with
5 the coverages provided for in sections 3 and 4 of P.L.1972, c.70
6 (C.39:6A-3 and 39:6A-4), the provisions of section 12 of P.L.1983,
7 c.362 (C.39:6A-4.2) shall apply.

8 Every named insured and any other person to whom the mini
9 automobile insurance policy applies shall be subject to the tort option
10 provided in subsection a. of Section 8 of P.L.1972, c.70 (C.39:6A-8).

11 No licensed insurance carrier shall refuse to renew the coverage
12 stipulated by this section of an eligible person as defined in section 25
13 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
14 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
15 the consent of the Commissioner of Banking and Insurance.

16
17 5. (New section) a. All automobile insurance policies issued or
18 renewed on or after the effective date of P.L. , c. (C.)(now
19 before the Legislature as this bill) shall be issued or renewed including
20 at least the coverages required pursuant to sections 3 and 4 of
21 P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless the named insured
22 elects a mini automobile insurance policy pursuant to section 4 of
23 P.L. , c. (C.)(now before the Legislature as this bill).
24 Election of a mini automobile insurance policy shall be in writing and
25 signed by the named insured on the coverage selection form required
26 by section 17 of P.L.1983, c.362 (c.39:6A-23). The coverage election
27 form shall contain a statement, clearly readable and in bold type, in a
28 form approved by the commissioner, that election of a mini automobile
29 insurance policy may subject the named insured to a claim or judgment
30 for noneconomic loss which is not covered by the mini automobile
31 insurance policy, and which may place his assets at risk.

32 b. The insurance coverages provided for in section 4 of P.L. , c.
33 (C.)(now before the Legislature as this bill) shall be offered by
34 every insurer which writes insurance coverages pursuant to sections
35 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4).

36
37 6. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended to read as
38 follows:

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

40 [Every automobile liability insurance policy, issued or renewed on
41 or after January 1, 1991, insuring an automobile as defined in section
42 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability
43 imposed by law for bodily injury, death and property damage sustained
44 by any person arising out of ownership, operation, maintenance or use
45 of an automobile shall provide personal injury protection coverage, as
46 defined hereinbelow, under provisions approved by the Commissioner

1 of Banking and Insurance, for the payment of benefits without regard
2 to negligence, liability or fault of any kind, to the named insured and
3 members of his family residing in his household who sustained bodily
4 injury as a result of an accident while occupying, entering into,
5 alighting from or using an automobile, or as a pedestrian, caused by an
6 automobile or by an object propelled by or from an automobile, to
7 other persons sustaining bodily injury while occupying, entering into,
8 alighting from or using the automobile of the named insured, with the
9 permission of the named insured, and to pedestrians, sustaining bodily
10 injury caused by the named insured's automobile or struck by an object
11 propelled by or from such automobile.

12 "Personal injury protection coverage" means and includes:

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

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

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

39 d. Death benefits. In the event of the death of an income producer
40 as a result of injuries sustained in an accident entitling such person to
41 benefits under this section, the maximum amount of benefits which
42 could have been paid to the income producer, but for his death, under
43 subsection b. of this section shall be paid to the surviving spouse, or
44 in the event there is no surviving spouse, then to the surviving
45 children, and in the event there are no surviving spouse or surviving
46 children, then to the estate of the income producer.

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

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

11 Benefits payable under this section shall:

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

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

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

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

24 Except as provided by section 4 of P.L. , c. (C.)(now
25 before the Legislature as this bill), every standard automobile liability
26 insurance policy issued or renewed on or after the effective date of
27 P.L. , c. (C.)(now before the Legislature as this bill) shall
28 contain personal injury protection coverage, for the payment of
29 benefits without regard to negligence, liability or fault of any kind, to
30 the named insured and members of his family residing in his household,
31 who sustained bodily injury as a result of an accident while occupying,
32 entering into, alighting from or using an automobile, or as a
33 pedestrian, caused by an automobile or by an object propelled by or
34 from an automobile, to other persons sustaining bodily injury while
35 occupying, entering into, alighting from or using the automobile of the
36 named insured, with permission of the named insured, and to
37 pedestrians, sustaining bodily injury caused by the named insured's
38 automobile or struck by an object propelled by or from that
39 automobile. "Personal injury protection coverage" means and
40 includes:

41 a. Payment of medical expense benefits, as provided in the policy
42 and approved by the commissioner, for the reasonable and necessary
43 treatment of bodily injury in an amount not to exceed \$250,000 per
44 person per accident. In the event benefits paid by an insurer pursuant
45 to this subsection are in excess of \$75,000 on account of bodily injury
46 to any one person in any one accident, that excess shall be paid by the

1 insurer in consultation with Unsatisfied Claim and Judgment Fund
2 Board and shall be reimbursable to the insurer from the Unsatisfied
3 Claim and Judgment Fund pursuant to section 2 of P.L.1977, c.310
4 (C.39:6-73.1);

5 b. Payment of the loss of income of an income producer as a result
6 of bodily injury disability, subject to a maximum weekly payment of
7 \$200. The sum shall be payable during the life of the injured person
8 and shall be subject to an amount or limit of \$10,400, on account of
9 injury to any one person in any one accident, except that in no case
10 shall income continuation benefits exceed the net income normally
11 earned during the period in which the benefits are payable;

12 c. Payment of benefits for essential services to an injured person
13 for the reimbursement of reasonable and necessary expenses incurred
14 for the substitution of essential services ordinarily performed by the
15 injured person for himself, his family and members of the family
16 residing in the household, subject to an amount or limit of \$20 per day.
17 The benefits shall be payable during the life of the injured person and
18 shall be subject to an amount or limit of \$6,300, on account of injury
19 to any one person in any one accident;

20 d. Payment of death benefits in the event of the death of an income
21 producer as a result of injuries sustained in an accident entitling that
22 person to benefits under this section. The maximum amount of income
23 continuation benefits which could have been paid to the income
24 producer pursuant to subsection b. of this section, but for his death,
25 shall be paid to the surviving spouse, or in the event there is no
26 surviving spouse, then to the surviving children, and in the event there
27 are no surviving spouse or children, then to the estate of the income
28 producer; and, in the event of the death of one performing essential
29 services as a result of injuries sustained in an accident entitling that
30 person to benefits under subsection c. of this section, death benefits
31 shall be paid to the person incurring the expense of providing the
32 essential services;

33 e. Payment of all reasonable funeral, burial and cremation
34 expenses, subject to a maximum benefit of \$1,500, on account of the
35 death of any one person in any one accident, payable to the decedent's
36 estate.

37 Benefits payable under this section shall be subject to any option
38 elected by the named insured pursuant to section 13 of P.L.1983,
39 c.362 (C.39:6A-4.3), and shall not be assignable, except to a provider
40 of service benefits, in accordance with policy terms approved by the
41 commissioner, nor shall they be subject to levy, execution, attachment
42 or other process for satisfaction of debts.

43 Medical expense benefits payable in accordance with subsection a.
44 of this section shall be subject to a deductible of \$250 as well as any
45 copayments provided in the policy. No insurer or health care provider
46 providing benefits to an insured shall have a right of subrogation for

1 the amount of benefits paid pursuant to any deductible or copayment.
2 (cf: P.L.1997, c.151, s.31)

3
4 7. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to read
5 as follows:

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

10 a. Medical expense benefit deductibles in amounts of \$500.00,
11 \$1,000.00 and \$2,500.00 for any one accident;

12 b. [The option to exclude all benefits offered under subsections b.,
13 c., d., and e. of section 4;] (Deleted by amendment, P.L. .c. .)

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

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

28 Insurers shall offer the options provided by subsections a. and b. of
29 this section at appropriately reduced premiums. For policies issued or
30 renewed prior to January 1, 1992, insurers shall offer the option
31 provided by subsection d. of this section at a discount of not less than
32 25% from the base rate applicable to the first \$250,000 of medical
33 expense benefits, and for policies issued or renewed on or after
34 January 1, 1992, insurers shall offer the option at an appropriate
35 discount from the base rate for the amount of medical expense benefits
36 coverage taken.

37 Any named insured who chooses the option provided by subsection
38 d. of this section shall provide proof that he and members of his family
39 residing in his household are covered by health insurance coverage or
40 benefits in a manner and to an extent approved by the commissioner.
41 Nothing in this section shall be construed to require a health insurer,
42 health maintenance organization or governmental agency to cover
43 individuals or treatment which is not normally covered under the
44 applicable benefit contract or plan. If it is determined that an insured
45 who selected or is otherwise covered by the option provided in
46 subsection d. of this section did not have such health coverage in

1 effect at the time of an accident, medical expense benefits shall be
2 payable by the person's automobile insurer and shall be subject to any
3 deductible required by law or otherwise selected as an option pursuant
4 to subsection a. of this section, any copayment required by law and an
5 additional deductible in the amount of \$750.

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

12 [In the case of a medical expense benefit deductible, the deductible
13 elected by the named insured shall be satisfied for any one accident,
14 whether the medical expense benefits are paid or provided, in the
15 amount of the deductible, to the named insured or to one or more
16 resident relatives in the named insured's household who are not named
17 insureds under another insurance policy, or to any combination
18 thereof.]

19 Medical expense benefits payable in any amount between the
20 deductible selected pursuant to subsection a. of this section and
21 \$5,000.00 shall be subject to [a] the copayment [of 20%] provided in
22 the policy, if any.

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

27 The Commissioner of Banking and Insurance shall adopt rules and
28 regulations to effectuate the purposes of this section and may
29 promulgate standards applicable to the coordination of personal injury
30 protection medical expense benefits coverage.

31 (cf: P.L.1997, c.151, s.32)

32

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

35 14. a. Any person who, at the time of an automobile accident
36 resulting in injuries to that person, is required but fails to maintain
37 medical expense benefits coverage mandated by section 4 of P.L.1972,
38 c.70 (C.39:6A-4) or section 4 of P.L. , c. (C.)(now before
39 the Legislature as this bill) shall have no cause of action for recovery
40 of economic or noneconomic loss sustained as a result of an accident
41 while operating an uninsured automobile.

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

1 accident.

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

6 (cf: P.L.1997, c.151, s.13)

7

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

10 6. Collateral Source. The benefits provided in [section] sections
11 4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
12 the medical expense benefits provided in section 4 of P.L. , c.
13 (C.)(now before the Legislature as this bill) shall be payable as
14 loss accrues, upon written notice of such loss and without regard to
15 collateral sources, except that benefits, collectible under workers'
16 compensation insurance, employees' temporary disability benefit
17 statutes, medicare provided under Federal law, and benefits, in fact
18 collected, that are provided under Federal law to active and retired
19 military personnel shall be deducted from the benefits collectible under
20 [section] sections 4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4
21 and 39:6A-10) and the medical expense benefits provided in section 4
22 of P.L. , c. (C.)(now before the Legislature as this bill).

23 If an insurer has paid those benefits and the insured is entitled to,
24 but has failed to apply for, workers' compensation benefits or
25 employees' temporary disability benefits, the insurer may immediately
26 apply to the provider of workers' compensation benefits or of
27 employees' temporary disability benefits for a reimbursement of any
28 [section 4 and section 10] benefits pursuant to sections 4 and 10 of
29 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits
30 pursuant to section 4 of P.L. ,c. (C.)(now before the
31 Legislature as this bill) it has paid.

32 (cf: P.L.1983, c.362, s.9)

33

34 10. Section 7 of P.L.1972, c.70 (C.39:6A-7) is amended to read as
35 follows:

36 7. Exclusions. a. Insurers may exclude a person from benefits
37 under [section] sections 4 and [section] 10 [where such] of P.L.1972,
38 c.70 (C.39:6A-4 and 39:6A-10) and medical expense benefits provided
39 in section 4 of P.L. , c. (C.)(now before the Legislature as
40 this bill) if that person's conduct contributed to his personal injuries or
41 death occurred in any of the following ways:

42 (1) while committing a high misdemeanor or felony or seeking to
43 avoid lawful apprehension or arrest by a police officer; or

44 (2) while acting with specific intent of causing injury or damage to
45 himself or others.

46 b. An insurer may also exclude from [section 4 and section 10] the

1 benefits provided in sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
2 and 39:6A-10) and the medical expense benefits provided in section 4
3 of P.L. , c. (C.)(now before the Legislature as this bill) any
4 person having incurred injuries or death, who, at the time of the
5 accident:

6 (1) was the owner or registrant of an automobile registered or
7 principally garaged in this State that was being operated without
8 personal injury protection coverage;

9 (2) was occupying or operating an automobile without the
10 permission of the owner or other named insured.

11 (cf: P.L.1983, c.362, s.10)

12

13 11. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read as
14 follows:

15 8. Tort exemption; limitation on the right to noneconomic loss.

16 One of the following two tort options shall be elected, in
17 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by
18 any named insured required to maintain personal injury protection
19 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4):

20 a. Every owner, registrant, operator or occupant of an automobile
21 to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury
22 protection coverage, regardless of fault, applies, and every person or
23 organization legally responsible for his acts or omissions, is hereby
24 exempted from tort liability for noneconomic loss to a person who is
25 subject to this subsection and who is either a person who is required
26 to maintain the coverage mandated by this act, or is a person who has
27 a right to receive benefits under section 4 of P.L.1972, c.70
28 (C.39:6A-4), as a result of bodily injury, arising out of the ownership,
29 operation, maintenance or use of such automobile in this State, unless
30 that person has sustained a personal injury which results in death;
31 dismemberment; significant disfigurement; a fracture; loss of a fetus;
32 permanent loss of use of a body organ, member, function or system;
33 permanent consequential limitation of use of a body organ or member;
34 significant limitation of use of a body function or system; or a
35 medically determined injury or impairment of a non-permanent nature
36 which prevents the injured person from performing substantially all of
37 the material acts which constitute that person's usual and customary
38 daily activities for not less than 90 days during the 180 days
39 immediately following the occurrence of the injury or impairment; or

40 b. As an alternative to the basic tort option specified in subsection
41 a. of this section, every owner, registrant, operator, or occupant of an
42 automobile to which section 4 of P.L.1972, c.70 (C.39:6A-4) applies,
43 and every person or organization legally responsible for his acts or
44 omissions, shall be liable for noneconomic loss to a person who is
45 subject to this subsection and who is either a person who is required
46 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et

1 seq.) or is a person who has a right to receive benefits under section
2 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the
3 ownership, operation, maintenance or use of such automobile in this
4 State.

5 The tort option provisions of subsection b. of this section shall also
6 apply to the right to recover for noneconomic loss of any person
7 eligible for benefits pursuant to section 4 of P.L.1972, c.70
8 (C.39:6A-4) but who is not required to maintain personal injury
9 protection coverage and is not an immediate family member, as defined
10 in section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), under an automobile
11 insurance policy.

12 The tort option provisions of subsection a. of this section shall also
13 apply to any person subject to section 14 of P.L.1985, c.520
14 (C.39:6A-4.5).

15 The tort option provisions of subsections a. and b. of this section
16 [as provided in this 1988 amendatory and supplementary act] shall
17 apply to automobile insurance policies issued or renewed [on or after
18 January 1, 1989 and as otherwise provided by law] prior to the
19 effective date of P.L. , c. (C.)(now before the Legislature
20 as this bill).

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

22

23 12. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read as
24 follows:

25 8. Tort exemption; limitation on the right to noneconomic loss.

26 One of the following [two] three tort options shall be elected, in
27 accordance with section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), by
28 any named insured required to maintain personal injury protection
29 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or
30 medical expense benefits pursuant to section 4 of P.L. , c.
31 (C.)(now before the Legislature as this bill):

32 a. Every owner, registrant, operator or occupant of an automobile
33 to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury
34 protection coverage, or medical expense benefits pursuant to section
35 4 of P.L. , c. (C.)(now before the Legislature as this bill),
36 regardless of fault, applies, and every person or organization legally
37 responsible for his acts or omissions, is hereby exempted from tort
38 liability for noneconomic loss to a person who is subject to this
39 subsection and who is either a person who is required to maintain
40 personal injury protection coverage pursuant to section 4 of P.L.1972,
41 c.70 (C.39:6A-4) or medical expense benefits pursuant to section 4 of
42 P.L. , c. (C.)(now before the Legislature as this bill), or is
43 a person who has a right to receive benefits under section 4 of
44 P.L.1972, c.70 (C.39:6A-4) or medical expense benefits pursuant to
45 section 4 of P.L. , c. (C.)(now before the Legislature as this
46 bill), as a result of bodily injury, arising out of the ownership,

1 operation, maintenance or use of such automobile in this State, unless
2 that person has sustained a bodily injury which results in death, serious
3 impairment of body function or permanent serious disfigurement; or
4 b. As an alternative to the basic tort option specified in subsection
5 a. of this section, every owner, registrant, operator or occupant of an
6 automobile to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal
7 injury protection coverage, or medical expense benefits pursuant to
8 section 4 of P.L. , c. (C.)(now before the Legislature as this
9 bill), regardless of fault, applies, and every person or organization
10 legally responsible for his acts or omissions, is hereby exempted from
11 tort liability for noneconomic loss to a person who is subject to this
12 subsection and who is either a person who is required to maintain the
13 coverage mandated by this act, or is a person who has a right to
14 receive benefits under section 4 of P.L.1972, c.70 (C.39:6A-4), as a
15 result of bodily injury, arising out of the ownership, operation,
16 maintenance or use of such automobile in this State, unless that person
17 has sustained a personal injury which results in death; dismemberment;
18 significant disfigurement; a fracture; loss of a fetus; permanent loss of
19 use of a body organ, member, function or system; permanent
20 consequential limitation of use of a body organ or member; significant
21 limitation of use of a body function or system; or a medically
22 determined injury or impairment of a non-permanent nature which
23 prevents the injured person from performing substantially all of the
24 material acts which constitute that person's usual and customary daily
25 activities for not less than 90 days during the 180 days immediately
26 following the occurrence of the injury or impairment; or

27 [b.] c. As an alternative to the basic tort option specified in
28 subsection a. of this section, every owner, registrant, operator [,] or
29 occupant of an automobile to which section 4 of P.L.1972, c.70
30 (C.39:6A-4), personal injury protection coverage, or medical expense
31 benefits pursuant to section 4 of P.L. , c. (C.)(now before
32 the Legislature as this bill), regardless of fault, applies, and every
33 person or organization legally responsible for his acts or omissions,
34 shall be liable for noneconomic loss to a person who is subject to this
35 subsection and who is either a person who is required to maintain the
36 coverage mandated by P.L.1972, c.70 (C.39:6A-1 et seq.) or is a
37 person who has a right to receive benefits under section 4 of that act
38 (C.39:6A-4), as a result of bodily injury, arising out of the ownership,
39 operation, maintenance or use of such automobile in this State.

40 The tort option provisions of subsection [b.] c. of this section shall
41 also apply to the right to recover for noneconomic loss of any person
42 eligible for benefits pursuant to section 4 of P.L.1972, c.70
43 (C.39:6A-4) or medical expense benefits pursuant to section 4 of
44 P.L. , c. (C.)(now before the Legislature as this bill) but who is
45 not required to maintain personal injury protection coverage pursuant
46 to section 4 of P.L.1972, c.70 (C.39:6A-4) or medical expense

1 benefits pursuant to section 4 of P.L. , c. (C.)(now before the
2 Legislature as this bill) and is not an immediate family member, as
3 defined in section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), under [an]
4 a standard automobile insurance policy or mini automobile insurance
5 policy.

6 The tort option provisions of subsection a. of this section shall also
7 apply to any person subject to section 14 of P.L.1985, c.520
8 (C.39:6A-4.5) and to every named insured and any other person to
9 whom the medical expense benefits of the mini automobile insurance
10 policy pursuant to section 4 of P.L. , c. (C.)(now before the
11 Legislature as this bill) applies.

12 The tort option provisions of subsections a. [and] , b. and c. of this
13 section shall apply to automobile insurance policies issued or renewed
14 [prior to] on or after the effective date of P.L. , c. (C.)(now
15 before the Legislature as this bill).

16 For purposes of subsection a. of this section, the issue of whether
17 an injured person has suffered serious impairment of body function or
18 permanent serious disfigurement is a question of law for the court if
19 the court finds either of the following:

20 (1) There is no factual dispute concerning the nature and extent of
21 the person's injuries; or

22 (2) There is a factual dispute concerning the nature and extent of
23 the person's injuries, but the dispute is not material to the
24 determination as to whether the person has suffered a serious
25 impairment of body function or permanent serious disfigurement.
26 However, for a closed-head injury, a question of fact for the jury is
27 created if a licensed allopathic or osteopathic physician who regularly
28 diagnoses or treats closed-head injuries testifies under oath that there
29 may be a serious neurological injury.

30 (cf: P.L.1997, c. , s.)

31

32 13. Section 14.1 of P.L.1983, c.362 (C.39:6A-8.1) is amended to
33 read as follows:

34 14.1 Election of tort option. a. Election of a tort option pursuant
35 to section 8 of P.L.1972, c.70 (C.39:6A-8) shall be in writing and
36 signed by the named insured on the coverage selection form required
37 by section 17 of P.L.1983, c.362 (C.39:6A-23). The form shall state
38 the percentage difference in the premium rates or the dollar savings
39 [between] among the [two] three tort options. The tort option elected
40 shall apply to the named insured and any immediate family member
41 residing in the named insured's household. "Immediate family member"
42 means the spouse of the named insured and any child of the named
43 insured or spouse residing in the named insured's household, who is
44 not a named insured under another automobile insurance policy.

45 b. [If the named insured fails to elect, in writing, any of the tort
46 options offered pursuant to section 8 of P.L.1972, c.70 (C.39:6A-8),

1 the named insured shall be deemed to elect the tort option of
2 subsection a. of that section 8.] If a named insured of an automobile
3 insurance policy issued prior to the effective date of P.L. , c.
4 (C.)(now before the Legislature as this bill) has a tort option
5 provided in subsection a. or b. of section 8 of P.L.1972, c.70
6 (C.39:6A-8) in effect for automobile insurance policies issued or
7 renewed prior to the effective date of P.L. , c. (C.)(now
8 before the Legislature as this bill), and fails to elect, in writing, any of
9 the tort options offered pursuant to section 8 of P.L.1972, c.70
10 (C.39:6A-8) in effect for automobile insurance policies issued or
11 renewed on or after the effective date of P.L. , c. (C.)(now
12 before the Legislature as this bill), the tort option in subsection a. of
13 section 8 of P.L.1972, c.70 (C.39:6A-8) in effect for automobile
14 insurance policies issued or renewed on or after the effective date of
15 P.L. , c. (C.)(now before the Legislature as this bill) shall
16 apply to that policy if the tort option under that policy was subsection
17 a. of section 8 of P.L.1972, c.70 (C.39:6A-8) in effect for automobile
18 insurance policies issued or renewed prior to the effective date of
19 P.L. , c. (C.)(now before the Legislature as this bill), and the
20 tort option in subsection c. of 8 of P.L.1972, c.70 (C.39:6A-8) in
21 effect for automobile insurance policies issued or renewed on or after
22 the effective date of P.L. , c. (now before the Legislature as this
23 bill) shall apply to that policy if the tort option under that policy was
24 subsection b.of section 8 of P.L.1972, c.70 (C.39:6A-8) in effect for
25 automobile insurance policies issued or renewed prior to the effective
26 date of P.L. , c. (C.)(now before the Legislature as this bill).
27 If a person is not a named insured of an automobile insurance policy
28 on the day prior to the effective date of P.L. , c. (C.)(now
29 before the Legislature as this bill) and fails to elect, in writing, any of
30 the tort options offered pursuant to section 8 of P.L.1972, c.70
31 (C.39:6A-8) in effect for automobile insurance policies issued or
32 renewed on or after the effective date of P.L. , c. (C.)(now
33 before the Legislature as this bill), the tort option in subsection a. of
34 section 8 of P.L.1972, c.70 (C.39:6A-8) in effect for automobile
35 insurance policies issued or renewed on or after the effective date of
36 P.L. , c. (C.)(now before the Legislature as this bill) shall
37 apply to the named insured's policy. Upon the first renewal of an
38 automobile insurance policy following the effective date of
39 P.L. , c. (C.)(now before the Legislature as this bill), every
40 insurer shall notify every insured, by separate notice, that they have the
41 right to elect the tort threshold established pursuant to subsection a.
42 of section 8 of P.L.1972, c.70 (C.39:6A-8) which was in effect for
43 policies issued or renewed prior to the effective date of P.L. , c.
44 (C.)(now before the Legislature as this bill), stating the benefits
45 conferred by that threshold and any premium differential applicable to
46 the threshold.

1 c. The tort option elected by a named insured for an automobile
2 policy issued or renewed on or after [January 1, 1989] the effective
3 date of P.L. , c. (C.)(now before the Legislature as this bill)
4 shall continue in force as to subsequent renewal or replacement
5 policies until the insurer or its authorized representative receives a
6 properly executed form electing [the other] another tort option.

7 d. The tort option elected by the named insured shall apply to all
8 automobiles owned by the named insured and to any immediate family
9 member who is not a named insured under another automobile
10 insurance policy, except that in the case where more than one policy
11 is applicable to the named insured or immediate family member, and
12 the policies have different tort options, the tort option elected by the
13 injured named insured shall apply or, in the case of an immediate
14 family member who is not a named insured and is injured in an
15 accident involving an automobile to which a policy issued to a named
16 insured in the household of the injured immediate family member
17 applies, the tort option elected by that named insured shall apply.

18 e. Notwithstanding any other provision of law to the contrary, no
19 person, including, but not limited to, an insurer, an insurance producer
20 as defined in section 2 of P.L.1987, c.293 (C.17:22A-2), a servicing
21 carrier or non-insurer servicing carrier acting in that capacity pursuant
22 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the New Jersey
23 Automobile Full Insurance Underwriting Association created pursuant
24 to P.L.1983, c.65 (C.17:30E-1 et seq.), shall be liable in an action for
25 damages on account of the election of a tort option by a named
26 insured [or] , on account of the tort option imposed pursuant to
27 subsection b. of this section or otherwise imposed by law or on
28 account of the election by the named insured to purchase a mini
29 automobile insurance policy pursuant to section 4 of P.L. , c.
30 (C.)(now before the Legislature as this bill). Nothing in this
31 subsection shall be deemed to grant immunity to any person causing
32 damage as the result of his willful, wanton or grossly negligent act of
33 commission or omission.

34 [In the case of automobile insurance policies in force on January 1,
35 1989, notice] Notice of the tort options available pursuant to [the
36 aforesaid] section 8 of P.L.1972, c.70 (C.39:6A-8) shall be given in
37 accordance with section 17 of P.L.1983, c.362 (C.39:6A-23).
38 (cf: P.L.1988, c.119, s.7)

39
40 14. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to
41 read as follows:

42 20. An insurer, health maintenance organization or governmental
43 agency paying benefits pursuant to subsection a., b. or d. of section 13
44 of P.L.1983, c.362 (C.39:6A-4.3) or personal injury protection
45 benefits in accordance with section 4 or section 10 of P.L.1972, c.70
46 (C.39:6A-4 or 39:6A-10) or medical expense benefits pursuant to

1 section 4 of P.L. , c. (C.)(now before the Legislature as this
2 bill), as a result of an accident occurring within this State, shall, within
3 two years of the filing of the claim, have the right to recover the
4 amount of payments from any tortfeasor who was not, at the time of
5 the accident, required to maintain personal injury protection or medical
6 expense benefits coverage, other than for pedestrians, under the laws
7 of this State, including personal injury protection coverage required to
8 be provided in accordance with section 18 of P.L.1985, c.520
9 (C.17:28-1.4), or although required did not maintain personal injury
10 protection or medical expense benefits coverage at the time of the
11 accident. In the case of an accident occurring in this State involving
12 an insured tortfeasor, the determination as to whether an insurer,
13 health maintenance organization or governmental agency is legally
14 entitled to recover the amount of payments and the amount of
15 recovery, including the costs of processing benefit claims and
16 enforcing rights granted under this section, shall be made against the
17 insurer of the tortfeasor, and shall be by agreement of the involved
18 parties or, upon failing to agree, by arbitration.
19 (cf: P.L.1990, c.8, s.10)

20

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

23 10. Additional personal injury protection coverage. Insurers shall
24 make available to the named insured electing the standard automobile
25 insurance policy and covered under section 4 of P.L.1972, c.70
26 (C.39:6A-4), and, at his option, to resident relatives in the household
27 of the named insured, suitable additional first party coverage for
28 income continuation benefits, essential services benefits, death benefits
29 and funeral expense benefits, but the income continuation and essential
30 services benefits shall cease upon the death of the claimant, and shall
31 not operate to increase the amount of any death benefits payable under
32 section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional first party
33 coverage shall be payable only to the extent that the claimant
34 establishes that the amount of loss sustained exceeds the coverage
35 specified in section 4 of P.L.1972, c.70 (C.39:6A-4). Insurers may also
36 make available to named insureds holding a standard automobile
37 insurance policy and covered under section 4 of P.L.1972, c.70
38 (C.39:6A-4), and, at their option, to resident relatives in the household
39 of the named insured or to other persons provided medical expense
40 benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4),
41 or both, additional first party medical expense [benefit] benefits
42 coverage. The additional coverage shall be offered by the insurer at
43 least annually as part of the coverage selection form applicable to the
44 standard automobile insurance policy and required by section 17 of
45 P.L.1983, c.362 (C.39:6A-23). Income continuation in excess of that
46 provided for in section 4 [must] of P.L.1972, c.70 (C.39:6A-4) shall

1 be provided as an option by insurers for disabilities, as long as the
2 disability persists, at least up to an income level of [\$35,000.00]
3 \$50,000.00 per year, provided that a. the excess between [\$5,200.00]
4 \$10,400.00 and the amount of coverage contracted for shall be written
5 on the basis of 75% of said difference, and b. regardless of the
6 duration of the disability, the benefits payable shall not exceed the
7 total maximum amount of income continuation benefits contracted for.
8 Death benefits provided pursuant to this section shall be payable
9 without regard to the period of time elapsing between the date of the
10 accident and the date of death, if death occurs within two years of the
11 accident and results from bodily injury from that accident to which
12 coverage under this section applies. The Commissioner of Insurance
13 is hereby authorized and empowered to establish, by rule or regulation,
14 the amounts and terms of income continuation insurance to be
15 provided pursuant to this section.

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

17

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

20 11. Contribution among insurers. If two or more insurers are liable
21 to pay benefits under sections 4 and 10 of [this act] P.L.1972, c.70
22 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
23 policy or medical expense benefits under a mini automobile insurance
24 policy pursuant to section 4 of P.L. , c. (C.)(now before
25 the Legislature as this bill) for the same bodily injury, or death, of any
26 one person, the maximum amount payable shall be as specified in those
27 sections 4 [and] , 10 of P.L.1972, C.70 (C.39:6A-4 and 39:6A-10) and
28 section 4 of P.L. , c. (C.)(now before the Legislature as this
29 bill), respectively, if additional first party coverage applies and any
30 insurer paying the benefits shall be entitled to recover from each of the
31 other insurers, only by inter-company arbitration or inter-company
32 agreement, an equitable pro-rata share of the benefits paid.

33 (cf: P.L.1972, c.70, s.11)

34

35 17. Section12 of P.L.1972, c.70 (C.39:6A-12) is amended to read
36 as follows:

37 12. Inadmissibility of evidence of losses collectible under personal
38 injury protection coverage. Except as may be required in an action
39 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),
40 evidence of the amounts collectible or paid under a standard
41 automobile insurance policy pursuant to sections 4 and 10 of
42 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and amounts collectible or
43 paid for medical expense benefits under a mini automobile insurance
44 policy pursuant to 4 of P.L. , c. (C.)(now before the
45 Legislature as this bill), to an injured person, including the amounts of
46 any deductibles, copayments or exclusions, including exclusions

1 pursuant to subsection d. of section 13 of P.L.1983, c.362
2 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action
3 for recovery of damages for bodily injury by such injured person.

4 The court shall instruct the jury that, in arriving at a verdict as to
5 the amount of the damages for noneconomic loss to be recovered by
6 the injured person, the jury shall not speculate as to the amount of the
7 medical expense benefits paid or payable by an automobile insurer
8 under personal injury protection coverage payable under a standard
9 automobile insurance policy pursuant to sections 4 and 10 of
10 P.L.1972, c.70 (C.39:6A-4 and 39:6A-11) or medical expense benefits
11 under a mini automobile insurance policy pursuant to section 4 of
12 P.L. , c. (C.)(now before the Legislature as this bill) to the
13 injured person, nor shall they speculate as to the amount of benefits
14 paid or payable by a health insurer, health maintenance organization or
15 governmental agency under subsection d. of section 13 of P.L.1983,
16 c.362 (C.39:6A-4.3).

17 Nothing in this section shall be construed to limit the right of
18 recovery, against the tortfeasor, of uncompensated economic loss
19 sustained by the injured party.

20 (cf: P.L.1990, c.8, s.12)

21

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

24 13. Discovery of facts as to personal injury protection coverage.
25 The following apply to personal injury protection coverage benefits
26 payable under a standard automobile insurance policy pursuant to
27 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
28 medical expense benefits payable under a mini automobile insurance
29 policy pursuant to section 4 of P.L. , c. (C.)(now before the
30 Legislature as this bill):

31 a. Every employer shall, if a request is made by an insurer or the
32 Unsatisfied Claim and Judgment Fund providing personal injury
33 protection benefits under [this act] a standard automobile insurance
34 policy or medical expense benefits payable under a mini automobile
35 insurance policy against whom a claim has been made, furnish
36 forthwith, in a form approved by the Commissioner of Banking and
37 Insurance, a signed statement of the lost earnings since the date of the
38 bodily injury and for a reasonable period before the injury, of the
39 person upon whose injury the claim is based.

40 b. Every physician, hospital, [clinic or other medical institution] or
41 other health care provider providing, before and after the bodily injury
42 upon which a claim for personal injury protection benefits or medical
43 expense benefits is based, any products, services or accommodations
44 in relation to such bodily injury or any other injury, or in relation to a
45 condition claimed to be connected with such bodily injury or any other
46 injury, shall, if requested to do so by the insurer or the Unsatisfied

1 Claim and Judgment Fund against whom the claim has been made,
2 furnish forthwith a written report of the history, condition, treatment,
3 dates and costs of such treatment of the injured person, and produce
4 forthwith and permit the inspection and copying of his or its records
5 regarding such history, condition, treatment dates and costs of
6 treatment. The person requesting such records shall pay all reasonable
7 costs connected therewith.

8 c. The injured person shall be furnished upon demand a copy of all
9 information obtained by the insurer or the Unsatisfied Claim and
10 Judgment Fund under the provisions of this section, and shall pay a
11 reasonable charge, if required by the insurer and the Unsatisfied Claim
12 and Judgment Fund.

13 d. [Whenever] Except for medical expense benefits provided under
14 a standard automobile insurance policy pursuant to subsection a. of
15 section 4 of P.L.1972, c.70 (C.39:6A-4), under a mini automobile
16 insurance policy pursuant to subsection b. of section 4 of P.L. . . .
17 c. (C. . .)(now before the Legislature as this bill), under subsection
18 a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and additional first
19 party medical expense benefits coverage provided under a standard
20 automobile insurance policy pursuant to section 10 of P.L.1972, c.70
21 (C.39:6A-10), if there is no dispute concerning whether the
22 treatments, health care services or durable medical goods related to an
23 injury for which reimbursement is being sought are causally related to
24 an insured event, whenever the mental or physical condition of an
25 injured person covered by personal injury protection under a standard
26 automobile insurance policy or medical expense benefits under a mini
27 automobile insurance policy is material to any claim that has been or
28 may be made for such past or future personal injury protection benefits
29 or medical expense benefits, such person shall, upon request of an
30 insurer or the Unsatisfied Claim and Judgment Fund submit to mental
31 or physical examination [by a physician or physicians , or chiropractor
32 or chiropractors. Only a licensed chiropractor may determine the
33 clinical need for further chiropractic treatment by performing a
34 chiropractic examination and this determination shall not depend solely
35 upon a review of the treating chiropractor patient records in cases of
36 denial of benefits] conducted by a provider of health care services
37 licensed in this State in the same profession or speciality as the
38 provider of health care services whose services are subject to review
39 under this section and who is located within a reasonable proximity to
40 the injured person's residence. The injured person shall provide or
41 make available to the provider any pertinent medical records or
42 medical history that the provider deems necessary to the examination.
43 The costs of any examinations requested by an insurer or the
44 Unsatisfied Claim and Judgment Fund shall be borne entirely by
45 whomever makes such request. Such examination shall be conducted
46 within the municipality of residence of the injured person. If there is

1 no qualified [physician or chiropractor] provider of health care
2 services to conduct the examination within the municipality of
3 residence of the injured person, then such examination shall be
4 conducted in an area of the closest proximity to the injured person's
5 residence. [Personal protection insurers] Insurers providing personal
6 injury protection coverage under a standard automobile insurance
7 policy or medical expense benefits under a mini automobile insurance
8 policy are authorized to include reasonable provisions [in personal
9 injury protection coverage policies for mental and physical
10 examinations of] requiring those claiming personal injury protection
11 coverage benefits or medical expense benefits to submit to mental or
12 physical examination as requested by an insurer or the Unsatisfied
13 Claim and Judgment Fund pursuant to the provisions of this section.
14 Failure to submit to a mental or physical examination requested by an
15 insurer or the Unsatisfied Claim and Judgment Fund pursuant to the
16 provisions of this section shall subject the injured person to certain
17 limitations in coverage as specified in regulations promulgated by the
18 commissioner.

19 e. If requested by the person examined, a party causing an
20 examination to be made, shall deliver to him a copy of every written
21 report concerning the examination rendered by an examining
22 [physician or chiropractor] provider of health care services, at least
23 one of which reports must set out his findings and conclusions in
24 detail. After such request and delivery, the party causing the
25 examination to be made is entitled upon request to receive from the
26 person examined every written report available to him, or his
27 representative, concerning any examination, previously or thereafter
28 made of the same mental or physical condition.

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

35 g. In the event of any dispute regarding an insurer's or the
36 Unsatisfied Claim and Judgment Fund's or an injured person's right as
37 to the discovery of facts about the injured person's earnings or about
38 his history, condition, treatment, dates and costs of such treatment, or
39 the submission of such injured person to a mental or physical
40 examination subject to the provisions of this section, the insurer,
41 Unsatisfied Claim and Judgment Fund or the injured person may
42 petition a court of competent jurisdiction for an order resolving the
43 dispute and protecting the rights of all parties. The order may be
44 entered on motion for good cause shown giving notice to all persons
45 having an interest therein. Such court may protect against annoyance,
46 embarrassment or oppression and may as justice requires, enter an

1 order compelling or refusing discovery, or specifying conditions of
2 such discovery; the court may further order the payment of costs and
3 expenses of the proceeding, as justice requires.

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

5
6 19. Section 11 of P.L.1972, c.203 (C.39:6A-13.1) is amended to
7 read as follows:

8 11. a. Every action for the payment of benefits [set forth in]
9 payable under a standard automobile insurance policy pursuant to
10 sections 4 and 10 of [this act] P.L.1972, c.70 (C.39:6A-4 and 39:6A-
11 10) or medical expense benefits payable under a mini automobile
12 insurance policy pursuant to section 4 of P.L. , c. (C.)(now
13 before the Legislature as this bill), except an action by a decedent's
14 estate, shall be commenced not later than [2] two years after the
15 injured person or survivor suffers a loss or incurs an expense and
16 either knows or in the exercise of reasonable diligence should know
17 that the loss or expense was caused by the accident, or not later than
18 [4] four years after the accident whichever is earlier, provided,
19 however, that if benefits have been paid before then an action for
20 further benefits may be commenced not later than [2] two years after
21 the last payment of benefits.

22 b. Every action by a decedent's estate for the payment of benefits
23 [set forth in] provided under a standard automobile insurance policy
24 pursuant to sections 4 and 10 of [this act] P.L.1972, c.70 (C.39:6A-4
25 and 39:6A-10) or medical expense benefits provided under a mini
26 automobile insurance policy pursuant to section 4 of P.L. , c.
27 (C.)(now before the Legislature as this bill) shall be commenced
28 not later than [2] two years after death or [4] four years after the
29 accident from which death results, whichever is earlier, provided,
30 however, that if benefits had been paid to the decedent prior to his
31 death then an action may be commenced not later than [2] two years
32 after his death or [4] four years after the last payment of benefits,
33 whichever is earlier, provided, further, that if the decedent's estate has
34 received benefits before then an action for further benefits shall be
35 commenced not later than [2] two years from the last payment of
36 benefits.

37 (cf: P.L.1972, c.203, s.11)

38
39 20. Section 15 of P.L.1972, c.70 (C.39:6A-15) is amended to read
40 as follows:

41 15. In any claim or action arising for benefits payable under a
42 standard automobile insurance policy under section 4 of [this act]
43 P.L.1972, c.70 (C.39:6A-4) or any claim or action arising for medical
44 expense benefits payable under a mini automobile insurance policy
45 under section 4 of P.L. , c. (C.)(now before the Legislature
46 as this bill) wherein any person [,] obtains or attempts to obtain from

1 any other person, insurance company or Unsatisfied Claim and
2 Judgment Fund any money or other thing of value by (1) falsely or
3 fraudulently representing that such person is entitled to such benefits
4 [under section 4] or, (2) falsely and fraudulently making statements or
5 presenting documentation in order to obtain or attempt to obtain such
6 benefits [under section 4] or, (3) cooperates, conspires or otherwise
7 acts in concert with any person seeking to falsely or fraudulently
8 obtain, or attempt to obtain, such benefits [under section 4] may upon
9 conviction be fined not more than \$5,000.00, or imprisoned for not
10 more than [3] three years or both, or in the event the sum so obtained
11 or attempted to be obtained is not more than \$500.00, may upon
12 conviction, be fined not more than \$500.00, or imprisoned for not
13 more than [6] six months or both, as a disorderly person.

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

21 (cf: P.L.1997, c.151, s.9)

22

23 21. Section 16 of P.L.1983, c.362 (C.39:6A-22) is amended to read
24 as follows:

25 16. Powers of exchange. a. The exchange shall be empowered to
26 raise sufficient moneys (1) to pay its operating expenses, and (2) to
27 compensate members of the exchange for claims paid for noneconomic
28 loss, and associated claim adjustment expenses, which would not have
29 been incurred had the tort limitation option provided in [subsection b.
30 of section 8 of P.L.1972, c.70 (C.39:6A-8) or, in the case of policies
31 issued or renewed on or after January 1, 1989,] subsection a. of
32 section 8 of P.L.1972, c.70 (C.39:6A-8) in effect for automobile
33 insurance policies issued or renewed prior to the effective date of
34 P.L. , c. (C.)(now before the Legislature as this bill), been
35 elected; or in the case of policies issued or renewed on or after the
36 effective date of P.L. , c. (C.)(now before the Legislature
37 as this bill), subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8)
38 in effect for automobile insurance policies issued or renewed on or
39 after the effective date of P.L. , c. (C.)(now before the
40 Legislature as this bill), been elected, by the injured party filing the
41 claim for noneconomic loss.

42 b. In order to enable the exchange to meet its obligations under
43 subsection a. of this section, every member insurer or servicing carrier
44 of the New Jersey Automobile Full Insurance Underwriting
45 Association shall forward on a monthly basis, within 15 days of the
46 close of the member's accounting month, a charge, to be known as the

1 AIRE charge, in an amount and manner to be prescribed by the board
2 of directors.

3 AIRE charge amounts required to be paid to the exchange in
4 accordance with this subsection shall, in the case of those amounts
5 determined by the board of directors to be applicable during the period
6 from July 1, 1984 to the effective date of P.L.1985, c.520, be paid to
7 the exchange within 60 days of that date.

8 A 10% per annum penalty charge shall be assessed by the exchange
9 on any overdue AIRE charges.

10 c. The board of directors shall establish guidelines by which
11 members or servicing carriers and the exchange may verify the tort
12 limitation options elected by claimants.

13 d. Moneys collected by or otherwise available to the exchange shall
14 be invested as hereinafter provided in section 12 of P.L.1985, c.520
15 (C.39:6A-22.1).

16 e. The exchange shall have such powers as may be necessary or
17 appropriate to effectuate the purposes of the exchange.
18 (cf: P.L.1988,c.119,s.31)

19

20 22. Section 1 of P.L.1972, c.197 (39:6B-1) is amended to read as
21 follows:

22 1. a. Every owner or registered owner of a motor vehicle
23 registered or principally garaged in this State shall maintain motor
24 vehicle liability insurance coverage, under provisions approved by the
25 Commissioner of Banking and Insurance, insuring against loss
26 resulting from liability imposed by law for bodily injury, death and
27 property damage sustained by any person arising out of the ownership,
28 maintenance, operation or use of a motor vehicle wherein such
29 coverage shall be at least in: [a.] (1) an amount or limit of
30 \$15,000.00, exclusive of interest and costs, on account of injury to, or
31 death of, one person, in any one accident; and [b.] (2) an amount or
32 limit, subject to such limit for any one person so injured or killed, of
33 \$30,000.00, exclusive of interest and costs, on account of injury to or
34 death of, more than one person, in any one accident; and [c.] (3) an
35 amount or limit of \$5,000.00, exclusive of interest and costs, for
36 damage to property in any one accident.

37 b. Notwithstanding the provisions of subsection a. of this section,
38 an owner or registered owner of an automobile, as defined in section
39 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
40 State may satisfy the requirements of subsection a. of this section by
41 maintaining a mini automobile insurance policy pursuant to section 4

1 of P.L. , c. (C.)(now before the Legislature as this bill).
2 (cf: P.L.1972, c.197, s.1)

3
4 23. Section 2 of P.L.1968, c.385 (C.17:28-1.1) is amended to read
5 as follows:

6 2. a. [No] Except for a standard automobile insurance policy and
7 mini automobile insurance policy, no motor vehicle liability policy or
8 renewal of such policy of insurance, [including a liability policy for an
9 automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2),]
10 insuring against loss resulting from liability imposed by law for bodily
11 injury or death, sustained by any person arising out of the ownership,
12 maintenance or use of a motor vehicle, shall be issued in this State
13 with respect to any motor vehicle registered or principally garaged in
14 this State unless it includes basic uninsured motorist coverage [in
15 limits] for bodily injury or death [as follows:] as provided in this
16 subsection. The coverage provided in this subsection shall be offered
17 as an option by an insurer to every named insured electing a standard
18 automobile insurance policy or mini automobile insurance policy.

19 Basic uninsured motorist coverage shall include:

20 (1) an amount or limit of \$15,000.00, exclusive of interest and
21 costs, on account of injury to, or death of, one person, in any one
22 accident, and

23 (2) an amount or limit, subject to such limit for any one person so
24 injured or killed, of \$30,000.00, exclusive of interest and costs, on
25 account of injury to or death of more than one person, in any one
26 accident,

27 under provisions approved by the Commissioner of Banking and
28 Insurance, for payment of all or part of the sums which the insured or
29 his legal representative shall be legally entitled to recover as damages
30 from the operator or owner of an uninsured motor vehicle, or hit and
31 run motor vehicle, as defined in section 18 of P.L.1952, c.174
32 (C.39:6-78), because of bodily injury, sickness or disease, including
33 death resulting therefrom, sustained by the insured, caused by accident
34 and arising out of the ownership, maintenance, operation or use of
35 such uninsured or hit and run motor vehicle anywhere within the
36 United States or Canada [; except that uninsured motorist coverage
37 shall provide that in order to recover for non-economic loss, as defined
38 in section 2 of P.L.1972, c.70 (C.39:6A-2), for accidents to which the
39 benefits of section 4 (C.39:6A-4) of that act apply, the tort option
40 elected pursuant to section 8 (C.39:6A-8) of that act shall apply to
41 that injured person].

42 All [motor vehicle liability policies] basic uninsured motorist
43 coverage shall also include coverage for the payment of all or part of
44 the sums which persons insured thereunder shall be legally entitled to
45 recover as damages from owners or operators of uninsured motor
46 vehicles, other than hit and run motor vehicles, because of injury to or

1 destruction to the personal property of such insured, with a limit in the
2 aggregate for all insureds involved in any one accident of \$5,000.00,
3 and subject, for each insured, to an exclusion of the first \$500.00 of
4 such damages.

5 b. (1) Uninsured and underinsured motorist coverage shall be
6 provided as an option by an insurer to the named insured electing a
7 standard automobile insurance policy or mini automobile insurance
8 policy up to at least the following limits: \$250,000.00 each person and
9 \$500,000.00 each accident for bodily injury; \$100,000.00 each
10 accident for property damage or \$500,000.00 single limit, subject to
11 an exclusion of the first \$500.00 of such damage to property for each
12 accident, except that the limits for uninsured and underinsured
13 motorist coverage shall not exceed the insured's motor vehicle liability
14 policy limits for bodily injury and property damage, respectively,
15 except that uninsured and underinsured motorist coverage shall
16 provide that in order to recover for non-economic loss, as defined in
17 section 2 of P.L.1972, c.70 (C.39:6A-2), for accidents to which the
18 benefits under a standard automobile insurance policy provided in
19 section 4 of P.L.1972, c.70 (C.39:6A-4) or the medical expense
20 benefits of a mini policy provided in section 4 of P.L. _____, c.
21 (C. _____)(now before the Legislature as this bill) apply, the tort option
22 elected or assigned pursuant to section 8 of P.L.1972, c.70
23 (C.39:6A-8) shall apply to that injured person.

24 (2) Uninsured and underinsured motorist coverage shall also be
25 provided as an option by an insurer to the named insured for economic
26 loss only in a single limit of not less than \$5,000.00 and up to
27 \$250,000.00 for each accident, subject to an exclusion of the first
28 \$500.00 of damage to property.

29 Election of the coverages pursuant to this subsection shall be in
30 writing and signed by the named insured on the coverage selection
31 form required by section 17 of P.L.1983, c.362 (c.39:6A-23).

32 Rates for uninsured and underinsured motorist coverage for the
33 same limits shall, for each filer, be uniform on a Statewide basis
34 without regard to classification or territory.

35 c. Uninsured and underinsured motorist coverage provided for in
36 this section shall not be increased by stacking the limits of coverage of
37 multiple motor vehicles covered under the same policy of insurance
38 nor shall these coverages be increased by stacking the limits of
39 coverage of multiple policies available to the insured. If the insured
40 had uninsured motorist coverage available under more than one policy,
41 any recovery shall not exceed the higher of the applicable limits of the
42 respective coverages and the recovery shall be prorated between the
43 applicable coverages as the limits of each coverage bear to the total of
44 the limits.

45 d. Uninsured and underinsured motorist coverage shall be subject
46 to the policy terms, conditions and exclusions approved by the

1 Commissioner of Banking and Insurance, including, but not limited to,
2 unauthorized settlements, nonduplication of coverage, subrogation and
3 arbitration.

4 e. For the purpose of this section, (1) for coverage provided
5 pursuant to subsection a. and paragraph (1) of subsection b. of this
6 section. "underinsured motorist coverage" means insurance for
7 damages because of bodily injury and property damage resulting from
8 an accident arising out of the ownership, maintenance, operation or
9 use of an underinsured motor vehicle ; and for coverage provided
10 pursuant to paragraph (2) of subsection b. of this section.
11 "underinsured motorist coverage" means insurance for damages
12 because of economic loss resulting from an accident arising out of the
13 ownership, maintenance, operation or use of an underinsured motor
14 vehicle. Underinsured motorist coverage shall not apply to an
15 uninsured motor vehicle. A motor vehicle is underinsured when the
16 sum of the limits of liability under all bodily injury and property
17 damage liability bonds and insurance policies available to a person
18 against whom recovery is sought for bodily injury or property damage
19 is, at the time of the accident, less than the applicable limits for
20 underinsured motorist coverage afforded under the motor vehicle
21 insurance policy held by the person seeking that recovery. A motor
22 vehicle shall not be considered an underinsured motor vehicle under
23 this section unless the limits of all bodily injury liability insurance or
24 bonds applicable at the time of the accident have been exhausted by
25 payment of settlements or judgments. The limits of underinsured
26 motorist coverage available to an injured person shall be reduced by
27 the amount he has recovered under all bodily injury liability insurance
28 or bonds;

29 (2) "uninsured motor vehicle" means:

30 (a) a motor vehicle with respect to the ownership, operation,
31 maintenance, or use of which there is no bodily injury liability
32 insurance or bond applicable at the time of the accident;

33 (b) a motor vehicle with respect to the ownership, operation,
34 maintenance, or use of which there is bodily injury liability insurance
35 in existence but the liability insurer denies coverage or is unable to
36 make payment with respect to the legal liability of its insured because
37 the insurer has become insolvent or bankrupt, or the Commissioner of
38 Banking and Insurance has undertaken control of the insurer for the
39 purpose of liquidation; or

40 (c) a hit and run motor vehicle as described in section 18 of
41 P.L.1952, c.174 (C.39:6-78).

42 "Uninsured motor vehicle" shall not include an underinsured motor
43 vehicle; a motor vehicle owned by or furnished for the regular use of
44 the named insured or any resident of the same household; a self-insurer
45 within the meaning of any financial responsibility or similar law of the
46 state in which the motor vehicle is registered or principally garaged;

1 a motor vehicle which is owned by the United States or Canada, or a
2 state, political subdivision or agency of those governments or any of
3 the foregoing; a land motor vehicle or trailer operated on rails or
4 crawler treads; a motor vehicle used as a residence or stationary
5 structure and not as a vehicle; or equipment or vehicles designed for
6 use principally off public roads, except while actually upon public
7 roads.

8 (cf: P.L.1988, c.119, s.11)

9

10 24. Section 2 of P.L.1952, c.174 (C.39:6-62) is amended to read
11 as follows:

12 2. Definitions. As used in this act:

13 "Executive director" means the official designated by and serving
14 at the pleasure of the commissioner to administer to and be in charge
15 of the Unsatisfied Claim and Judgment Fund and who shall be
16 responsible to the Unsatisfied Claim and Judgment Fund Board.

17 "Treasurer" means the State Treasurer of New Jersey acting as the
18 custodian of the Unsatisfied Claim and Judgment Fund.

19 "Commissioner" means the Commissioner of Banking and
20 Insurance.

21 "Unsatisfied Claim and Judgment Fund" or "Fund" means the fund
22 derived from the sources specified in this act.

23 "Unsatisfied Claim and Judgment Fund Board" or "Board" means
24 the board created in section 4 of this act.

25 "Qualified person" means a resident of this State or the owner of a
26 motor vehicle registered in this State or a resident of another state,
27 territory, or federal district of the United States or province of Canada
28 or of a foreign country, in which recourse is afforded, to residents of
29 this State, of substantially similar character to that provided for by this
30 act; provided, however, that no person shall be a qualified person
31 [where such person is an insured under a policy provision providing
32 coverage for damages sustained by the insured as a result of the
33 operation of an uninsured motor vehicle in a form authorized to be
34 included in automobile liability policies of insurance delivered or
35 issued for delivery in this State, pursuant to the provisions of, or any
36 supplement to, chapter 28 of Title 17 of the Revised Statutes or in a
37 form substantially similar thereto] who, at the time of the automobile
38 accident resulting in damages to that person, is required to maintain
39 personal injury protection coverage under a standard automobile
40 insurance policy pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4)
41 or medical expense benefits under a mini automobile insurance policy
42 pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
43 Legislature as this bill).

44 "Uninsured motor vehicle" means a motor vehicle as to which there
45 is not in force a liability policy meeting the requirements of section 3,
46 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,

1 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
2 of a certificate of self-insurance under said law.

3 "Person" includes natural persons, firms, copartnerships,
4 associations and corporations.

5 "Insurer" means any insurer authorized in this State to write the
6 kinds of insurance specified in paragraphs d. and e. of R.S.17:17-1.

7 "Net direct written premiums" means direct gross premiums written
8 on policies, insuring against legal liability for bodily injury or death
9 and for damage to property arising out of the ownership, operation or
10 maintenance of motor vehicles, which are principally garaged in this
11 State, less return premiums thereon and dividends paid to
12 policyholders on such direct business.

13 "Registration license year" means the period beginning June 1,
14 1956, and ending May 31, 1957, and each subsequent 12 month
15 period, beginning June 1 and ending the following May 31.

16 (cf: P.L.1985, c.148, s.3)

17

18 25. Section 7 of P.L.1972, c.198 (C.39:6-86.1) is amended to read
19 as follows:

20 7. When any person qualified to receive payments under the
21 provisions of the "Unsatisfied Claim and Judgment Fund Law" suffers
22 bodily injury or death as a pedestrian, as defined in section 2 of
23 P.L.1972, c.70 (C.39:6A-2), caused by a motor vehicle, including an
24 automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2), and
25 a motorcycle, or by an object propelled therefrom, or arising out of an
26 accident while occupying, entering into, alighting from, or using an
27 automobile, registered or principally garaged in this State for which
28 personal injury protection benefits under the "New Jersey Automobile
29 Reparation Reform Act," P.L.1972, c.70 (C.39:6A-1 et seq.), or
30 section 19 of P.L.1983, c.362 (C.17:28-1.3), would be payable to such
31 person if personal injury protection coverage were in force and the
32 damages resulting from such accident or death are not satisfied due to
33 the personal injury protection coverage not being in effect with respect
34 to such accident, then in such event the Unsatisfied Claim and
35 Judgment Fund shall provide, under the following conditions, the
36 following benefits:

37 a. Medical expenses benefits. Payment of all reasonable medical
38 expense benefits in an amount not exceeding \$250,000 per person per
39 accident. In the event of death, payment shall be made to the estate of
40 the decedent.

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

44 b. Income continuation benefits. The payment of the loss of
45 income of an income producer as a result of bodily injury disability,
46 subject to a maximum weekly payment of [~~\$100.00~~] \$200.00. Such

1 sums shall be payable during the life of the injured person and shall be
2 subject to an amount or limit of [~~\$5,200.00~~] \$10,400.00, on account
3 of injury to any one person in any one accident, except that in no case
4 shall income continuation benefits exceed the net income normally
5 earned during the period in which the benefits are payable.

6 c. Essential services benefits. Payment of essential services
7 benefits to an injured person shall be made in reimbursement of
8 necessary and reasonable expenses incurred for such substitute
9 essential services ordinarily performed by the injured person for
10 himself, his family and members of the family residing in the
11 household, subject to an amount or limit of [~~\$12.00~~] \$20.00 per day.
12 Such benefits shall be payable during the life of the injured person and
13 shall be subject to an amount or limit of [~~\$4,380.00~~] \$6,300.00, on
14 account of injury to any one person in any one accident.

15 d. Death benefits. In the event of the death of an income producer
16 as a result of injuries sustained in an accident entitling such person to
17 benefits under this section, the maximum amount of benefits which
18 could have been paid to the income producer, but for his death, under
19 subsection b. of this section shall be paid to the surviving spouse, or
20 in the event there is no surviving spouse, then to the surviving
21 children, and in the event there are no surviving spouse or surviving
22 children, then to the estate of the income producer.

23 In the event of the death of one performing essential services as a
24 result of injuries sustained in an accident entitling such person to
25 benefits under subsection c. of this section, the maximum amount of
26 benefits which could have been paid such person, under subsection c.,
27 shall be paid to the person incurring the expense of providing such
28 essential services.

29 e. Funeral expenses benefits. All reasonable funeral, burial and
30 cremation expenses, subject to a maximum benefit of [~~\$1,000.00~~]
31 \$1,500.00, on account of the death to any one person in any one
32 accident shall be payable to decedent's estate.

33 Provided, however, that no benefits shall be paid under this section
34 unless the person applying for benefits has demonstrated that he is not
35 disqualified by reason of the provisions of subsection (a), (c), (d) or
36 (l) of section 10 of P.L.1952, c.174 (C.39:6-70), or any other
37 provision of law.

38 (cf: P.L.1990, c.8, s.101)

39

40 26. Section 14 of P.L.1988, c.156 (C.17:29A-15.2) is amended to
41 read as follows:

42 14. Notwithstanding any other provision of law to the contrary, the
43 dollar amount of the commission paid to a producer for residual bodily
44 injury coverage provided pursuant to section 8 of P.L.1972, c.70
45 (C.39:6A-8) shall be the same whether the named insured elects the
46 tort option provided for in subsection a. [of that section or the tort

1 option provided for in subsection] , b. or c. of that section. This
2 section shall not apply to commissions on a mini automobile insurance
3 policy issued pursuant to section 4 of P.L. , c. (C.)(now
4 before the Legislature as this bill).

5 (cf: P.L.1988, c.156, s.14)

6

7 27. (New section) For the purposes of sections 27 through 40 of
8 this amendatory and supplementary act:

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

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

15 "Medically necessary" means that the treatment is consistent with
16 the symptoms or diagnosis, and treatment of the injury: (1) is not
17 primarily for the convenience of the injured person or provider; (2) is
18 the most appropriate standard or level of service which is in
19 accordance with standard protocols and standards of good practice, as
20 recognized by the provider's professional organizations and licensing
21 board; and (3) does not involve unnecessary or repeated diagnostic
22 testing.

23 "Peer review organization" or "organization" means a group of
24 health care providers licensed in New Jersey, or any peer review
25 organization with which the Federal Health Care Financing
26 Administration or the State contracts for medical review of Medicare
27 or medical assistance services, which is certified by the commissioner
28 pursuant to section 29 of this amendatory and supplementary act, or
29 any independent health care review company certified by the
30 commissioner to engage in unbiased peer review for the purpose of
31 determining the medical necessity or appropriateness of treatment,
32 services or durable medical goods provided to a person injured in an
33 automobile accident to whom the medical expense benefits of personal
34 injury protection coverage apply.

35 "Personal injury protection coverage" is that coverage provided for
36 in sections 4 and 10 of P.L.1972, c.67 (C.39:6A-4 and 39:6A-10) or
37 medical expense benefits provided under a mini automobile insurance
38 policy pursuant to section 4 of P.L. , c. (C.)(now before the
39 Legislature as this bill).

40 "Health care provider" or "provider" means those persons
41 authorized to perform health care treatment or services pursuant to
42 section 2 of P.L.1972, c.70 (C.39:6A-2) and shall include, but not be
43 limited to: (1) a hospital or health care facility which is maintained by
44 a state or any of its political subdivisions; (2) a hospital or health care
45 facility licensed by the Department of Health and Senior Services; (3)
46 other hospitals or health care facilities designated by the Department

1 of Health and Senior Services to provide health care services, or other
2 facilities, including facilities for radiology and diagnostic testing,
3 freestanding emergency clinics or offices, and private treatment
4 centers; (4) a nonprofit voluntary visiting nurse organization providing
5 health care services other than in a hospital; (5) hospitals or other
6 health care facilities or treatment centers located in other states; (6)
7 physicians licensed to practice medicine and surgery; (7) licensed
8 chiropractors; (8) licensed dentists; (9) licensed optometrists; (10)
9 licensed pharmacists; (11) licensed chiropodists; (12) registered
10 bio-analytical laboratories; (13) licensed psychologists and psychiatric
11 social workers; (14) licensed marriage and family therapists; (15)
12 licensed physical therapists; (16) certified nurse-midwives; (17)
13 licensed health maintenance organizations; (18) licensed orthotists and
14 prosthetists; and (19) providers of other health care services or
15 supplies, including durable medical goods. "Provider" shall not
16 include any practitioner of a religious faith, or any service performed
17 on an emergency basis immediately subsequent to an accident.

18

19 28. (New section) The commissioner shall establish standards for
20 the certification of peer review organizations, which shall include
21 standards of performance formulated by the commissioner in
22 consultation with the Commissioner of Health and Senior Services.
23 The standards of performance shall set forth procedures which are
24 reasonable and necessary to ensure a timely and impartial review of the
25 medical necessity or appropriateness of treatments for injuries
26 sustained in an automobile accident, a review of the use of other health
27 care services reimbursable under personal injury protection coverage,
28 and the necessity or appropriateness of the use of durable medical
29 goods. The standards shall ensure the independence and fairness of the
30 review process. The commissioner shall establish standards for the
31 persons who are to conduct reviews, including standards with respect
32 to credentials, experience, licensure, fees and confidentiality. No fee
33 charged by a peer review organization shall be on a contingency basis.
34 The standards shall include a requirement for the number of persons
35 on a panel conducting a review, a requirement that all persons
36 performing reviews are New Jersey licensed or certified health care
37 providers, and a requirement that a panel contain sufficient
38 representation of reviewers as to be able to judge not only the medical
39 necessity and the appropriateness of a treatment, but also to assess the
40 issue of causality.

41

42 29. (New section) The commissioner shall certify a peer review
43 organization if the commissioner determines that the applicant: a. has
44 the resources to comply with the standards of performance; b. has a
45 sufficient number of qualified health care providers, by specialty, to
46 perform the reviews; c. has a satisfactory procedure for maintaining

1 the confidentiality of medical records; d. has procedures in effect to
2 guarantee the fair and open exchange of information and records
3 related to reviews between the provider and the organization; e. is not
4 owned or controlled by an insurer; and f. has met any other
5 requirements established by the commissioner. "Controlled by" means
6 the possession, direct or indirect, of the power to direct or cause the
7 direction of the management and policies of a person, whether through
8 the ownership of voting securities, by contract other than a
9 commercial contract for goods or nonmanagement services, or
10 otherwise.

11

12 30. (New section) A peer review organization shall be granted
13 certification for a period of five years and shall pay an annual fee to
14 the commissioner as set forth by regulation of the commissioner. The
15 commissioner shall undertake or cause to be undertaken performance
16 audits of an organization's review procedure and its compliance with
17 the standards of performance established by the commissioner. If, at
18 any time, the commissioner determines that the organization no longer
19 meets the standards required for initial certification, if the review
20 procedures of the organization are not being carried out in an impartial
21 and independent manner, or if the organization does not continue to
22 meet the standards of performance established by the commissioner,
23 the commissioner may, after notice and hearing, suspend or revoke the
24 organization's certification. An organization shall submit an annual
25 activity report to the commissioner, in accordance with regulations
26 promulgated by the commissioner, by January 31 of each year.

27

28 31. (New section) a. A peer review organization shall utilize, in its
29 review of health care providers, providers licensed in New Jersey in
30 the same profession or specialty as the provider whose services are
31 subject to review, or a person familiar with the use or application of
32 a durable medical good, if appropriate. The organization shall
33 establish and utilize written review procedures, which shall be filed
34 with the commissioner. The organization shall conduct its reviews in
35 accordance with the most recent professional protocols which are
36 applicable to the treatment or service to be performed.

37 b. Every determination made by a peer review organization shall be
38 in writing in accordance with regulations adopted by the
39 commissioner, and shall cite specific findings based upon clinical
40 criteria and consistent with written review procedures on file with the
41 commissioner.

42

43 32. (New section) a. Upon the receipt of a bill for treatment or
44 services from a provider, an insurer may, through the referring agency
45 established pursuant to section 33 of this amendatory and
46 supplementary act, refer a case to a peer review organization for a

1 review of a treatment or course of treatments, health care services
2 provided or to be provided, or a review of the necessity or suitability
3 of durable medical goods which are provided or to be provided to a
4 person injured in an automobile accident for which payment is sought
5 under personal injury protection coverage.

6 b. The insurer may make a referral to a peer review organization
7 for one or more of the following reasons: (1) if there is substantial
8 evidence that the treatment being given for the injury or the services
9 provided are not medically necessary; (2) if the treatment is not in
10 accordance with the protocols, professional standards, and the
11 commonly accepted medical practice of providers in the same health
12 care discipline as the treating provider; (3) if the treatment is not
13 consistent with the symptom or diagnosis of the injury; (4) if the
14 treatment appears to be of a palliative, rather than restorative, nature;
15 (5) if the treatment or health care service, including, but not limited to,
16 diagnostic testing: (a) is not related to the injury sustained in the
17 accident, or not required for the diagnosis, evaluation or confirmation
18 of the injury; (b) is not required to assess the effectiveness of the
19 treatment; or (c) if the treatment or health care service, including, but
20 not limited to, diagnostic testing, is not performed by a person licensed
21 or certified to perform such treatment, service or diagnostic testing;
22 (6) if the treatment or health care services provided are not in
23 accordance with the provisions of section 4 of P.L.1972, c.70
24 (C.39:6A-4) or section 4 of P.L. , c. (C.)(now before the
25 Legislature as this bill), or the terms of the policy; (7) if there appears
26 to have been unnecessary consultations by other health care providers;
27 or (8) if medical procedures, treatment, or testing, which have been
28 repeated, are not medically necessary. No matters regarding the
29 amount or appropriateness of a provider's fee shall be referred to an
30 organization by an insurer.

31
32 33. (New section) a. The commissioner shall contract with an
33 independent entity, which is not affiliated with the State, an insurer or
34 a peer review organization, to act as the referring agency to whom
35 referrals shall be made pursuant to section 32 of this amendatory and
36 supplementary act. The referring agency shall maintain a record of:
37 (1) all referrals made by each insurer; (2) the reasons cited by the
38 insurer for each referral; (3) all referrals submitted for reconsideration;
39 and (4) the final disposition of each referral. The referring agency shall
40 forward the referrals to a certified peer review organization on a
41 random basis, so that there is a relatively equal apportionment among
42 all peer review organizations. Referrals shall be made in such a
43 manner so as not to disclose to the peer review organization the
44 identity of the insurer, nor shall the identity of the insurer be disclosed
45 to the organization. Referrals shall be forwarded to the organization
46 by the referring agency within five business days of receipt.

1 Compensation of the referring agency shall be funded by assessments
2 on insurers transacting the business of automobile insurance in this
3 State.

4 b. The referring agency shall notify the provider and the injured
5 person to whom the treatment, health care service or durable medical
6 good has been provided, or is to be provided, by certified mail, return
7 receipt requested, within five business days of its referral to the peer
8 review organization: (1) that the referral has been made to a peer
9 review organization; (2) the specific treatment or services which are
10 under review; (3) that payment for the specified treatment or service
11 under review will be withheld by the insurer until a final determination
12 is made by the peer review organization; and (4) that the treatment or
13 health care service under review may not continue to be reimbursable
14 after a determination is made by the peer review organization. Every
15 referral by an insurer to the referring agency shall state specifically the
16 treatment or treatments or health care services being referred for
17 review, and the specific reason that the review is being requested, in
18 accordance with the standards established pursuant to subsection b. of
19 section 32 of this amendatory and supplementary act. Only the
20 treatments or services cited by the insurer in the referral shall be the
21 subject of the review. The injured person shall not be liable for
22 payment for any treatments or health care services performed by a
23 provider which are the subject of the review. The insurer shall remain
24 liable for payment for any treatment or health care service which was
25 performed or is being performed which is not the subject of a review.

26 c. With the approval of the commissioner, an insurer may require
27 that certain types of durable medical goods be preapproved for
28 payment by the insurer before they are purchased, rented or leased.
29 The requirement for preapproval shall be included in the insurer's
30 policy form, and the insured shall be notified separately of this
31 requirement. In the event of a dispute as to the necessity of the
32 purchase, rental or lease of durable medical goods, the insurer may
33 refer the dispute to the referring agency for referral to a peer review
34 organization for a determination. The organization shall review the
35 proposed use of the durable medical goods, the condition of the
36 injured person and the provider's prognosis for the condition of the
37 injured person and may recommend, if the organization determines the
38 durable medical goods to be medically necessary and appropriate, that
39 the insurer provide payment for the purchase, rental or lease of the
40 durable medical goods, as appropriate. For the purposes of this
41 amendatory and supplementary act, "durable medical goods" shall not
42 include any device used in emergency treatment subsequent to the
43 accident, any device used in connection with the hospitalization of the
44 injured person, or any device used in connection with surgery. An
45 insurer may deny payment, in accordance with the terms of the policy,
46 for any durable medical goods which are purchased, rented or leased

1 by the injured person without a prescription by the provider.

2 d. Upon notification of a referral of a case which involves
3 admission to a specialized hospital or medical facility, the provider
4 may, within five days of the receipt of the notification, request an
5 expedited review, through the referring agency, by the peer review
6 organization as to the medical necessity or appropriateness of such
7 admission. The organization shall make its determination within 10
8 days of the request for the expedited review.

9 e. If a peer review organization determines that the referral by the
10 insurer is frivolous or that it does not meet the standards for referral
11 established in section 32 of this amendatory and supplementary act,
12 and that there are no substantial grounds for the referral, the
13 organization shall deny the request for review and return the referral
14 to the referring agency.

15 f. If: (1) a peer review organization has reason to believe that the
16 provider, the injured person, or both, may be guilty of fraud, including,
17 but not limited to, that treatment or services for which the insurer was
18 billed were or may not have been actually performed, or that there was
19 misrepresentation as to the nature of the injury; or (2) it has reason to
20 believe that the provider may be guilty of malpractice or the treatment
21 or service was provided by an unauthorized or unqualified person, it
22 shall refer the case to the commissioner, who shall refer the case to the
23 Attorney General or the appropriate licensing board, or both, for an
24 investigation.

25

26 34. (New section) a. When appropriate in the context of its
27 review of challenged treatments, health care services or durable
28 medical goods, a peer review organization may request and review a
29 provider's projected treatment plan. If, in the course of its review, an
30 organization questions whether the treatments, health care services or
31 durable medical goods for which reimbursement is being sought are
32 causally related to an insured event, the organization shall report to
33 the insurer through the referring agency of its recommendations
34 concerning any issue of causality. Such a recommendation shall not
35 be determinative. An insurer may deny payment for the treatment,
36 health care service or durable medical goods on the ground that the
37 treatment, health care service or durable medical goods for which
38 reimbursement is sought is not causally related to the insured event.

39 b. Upon the request of the peer review organization performing a
40 review, a provider whose treatment or services are the subject of the
41 review shall furnish a written report of the history, condition and
42 treatment dates, or the dates services were performed, and shall
43 produce and permit the inspection and copying of the records. The
44 insurer shall reimburse the provider for all reasonable costs in
45 connection with the production of documents. A provider whose
46 treatments, services or prescription for durable medical goods are the

1 subject of a review may request, and shall be granted expeditiously, an
2 opportunity to discuss his treatments or treatment plans with the
3 organization conducting the review. A provider shall produce the
4 information in a timely manner. If the information is withheld, or not
5 provided in a timely manner, the peer review organization may
6 recommend that payment for any continuing treatment or services
7 under review be suspended by the insurer.

8 c. In any dispute which arises in connection with the review
9 regarding discovery of facts about the injured person's history,
10 condition and treatment dates, or a dispute relative to a mental or
11 physical examination of the injured person, any party to the dispute
12 may petition a court, of competent jurisdiction for an order resolving
13 the dispute. The order may be entered on motion for good cause
14 shown giving notice to all persons having an interest therein. The
15 court may protect against annoyance, embarrassment or oppression of
16 any party and may, as justice requires, enter an order compelling or
17 refusing discovery, or specifying conditions of that discovery. The
18 court may further order the payment of costs and expenses of the
19 proceeding, as justice requires.

20
21 35. (New section) The peer review organization shall, except in
22 the case of an expedited review pursuant to subsection d. of section 33
23 of this amendatory and supplementary act, complete its review and
24 make a determination within 20 business days of receipt of all
25 requested information from the provider, as provided for in subsection
26 b. of section 34 of this amendatory and supplementary act, except that
27 the time period may be extended no more than 10 days if a request by
28 the provider to discuss his treatment or treatment plan with the
29 organization cannot be honored within the 20-day period.

30 b. The organization shall submit its determination in writing, in
31 accordance with procedures provided for in subsection b. of section 31
32 of this amendatory and supplementary act, to the referring agency,
33 who shall, within three business days, forward a copy to the insurer,
34 the provider and the injured person for whom the reimbursement is
35 claimed by certified mail, return receipt requested. The insurer shall
36 act on the organization's initial determination to make payment or to
37 deny treatment within seven business days of that determination.

38
39 36. (New section) An insurer, provider or injured person may
40 request a reconsideration of the peer review organization's initial
41 determination by notifying the referring agency by certified mail within
42 seven business days of receipt of the determination. The referring
43 agency shall forward the determination and the accompanying
44 documentation to a peer review organization other than the
45 organization which conducted the initial review. The peer review
46 organization conducting the reconsideration shall afford the requesting

1 party an opportunity to discuss the case with the organization and to
2 file any additional information which was not available at the time of
3 the initial review.

4
5 37. (New section) The peer review organization performing the
6 reconsideration may base its determination on information from the
7 initial determination, other information in the records, or additional
8 evidence submitted by the requesting party and shall complete the
9 reconsideration within 10 days of the receipt of requested information,
10 unless otherwise agreed to by all parties. The organization shall
11 forward its determination to the referring agency, which shall forward
12 it to the insurer, the provider and the injured person, by certified mail,
13 return receipt requested, within five business days of the receipt of the
14 findings of the organization conducting the reconsideration. The cost
15 of the reconsideration shall be borne by the requesting party if the
16 party is the insurer or the provider, or shall be borne by any other
17 party requesting the reconsideration if other than the injured person.

18
19 38. (New section) a. When appropriate, and if provided for in the
20 policy form issued by the insurer, a peer review organization
21 conducting an initial review or an organization conducting a
22 reconsideration of an initial determination may request an injured
23 person to submit to a mental or physical examination by an
24 independent health care provider, who shall be selected by the
25 organization and who is (1) not affiliated with either the peer review
26 organization requesting the examination or the insurer; (2) licensed in
27 New Jersey in the same profession or specialty as the provider whose
28 services are the subject of the review; and (3) located within
29 reasonable proximity to the injured person's residence or place of
30 work.

31 b. The injured person shall provide or make available to the
32 independent provider any pertinent medical records or medical history
33 that the independent provider determines to be necessary to the
34 examination. The identity of the independent provider shall not be
35 made known to the insurer or the provider whose treatment or services
36 are the subject of the review. The costs of an examination by an
37 independent provider requested by a peer review organization shall be
38 borne by the insurer. The policy form may contain a provision, to be
39 approved by the commissioner, that failure to submit to a mental or
40 physical examination requested by a peer review organization pursuant
41 to this amendatory and supplementary act shall subject the injured
42 person to limitations in coverage as set forth in the policy form. In the
43 case of personal injury protection medical expense benefits payable by
44 the Unsatisfied Claim and Judgment Fund, the commissioner may
45 promulgate rules and regulations governing the failure of an injured
46 person to submit to a mental or physical examination requested by a

1 peer review organization pursuant to this section.

2

3 39. (New section) a. If a peer review organization determines that
4 the treatment or service, or a portion thereof, was medically necessary
5 or appropriate, or that certain durable medical goods are necessary or
6 appropriate, given the injuries sustained, the insurer shall pay the
7 provider or injured person, as appropriate, the outstanding amount for
8 that treatment, service or a portion thereof, or for the rental, lease or
9 purchase of the durable medical goods, as appropriate.

10 b. If a peer review organization determines that a health care
11 provider provided unnecessary or inappropriate treatments or services,
12 or that durable medical goods already purchased, rented or leased
13 were not necessary, the provider or injured person, as appropriate,
14 shall not be reimbursed by the insurer for that treatment, service or
15 durable medical good.

16 c. Within 30 days of the date of notification of an initial
17 determination or a determination made by a peer review organization
18 as the result of a reconsideration, an insurer, provider or injured
19 person may seek review of the dispute by the Superior Court, Law
20 Division. The determination of the peer review organization shall be
21 presumed to be correct and shall be admissible as evidence at trial
22 upon the request of any party involved in the peer review
23 organization's review. A presumption under this section may be
24 rebutted in an appropriate action only by a preponderance of the
25 evidence presented to the court showing that the peer review
26 organization's determination was erroneous. Neither the insurer nor
27 the provider, as the case may be, shall be required to pay any amount
28 in dispute until the judicial proceeding is concluded. A provider shall
29 not bill an injured person to which the provisions of this section apply
30 for any medical treatment or health care service which is the subject
31 of a judicial proceeding.

32

33 40. (New section) The data maintained by the referring agency
34 shall be made available to the commissioner, who shall monitor the
35 operation of the peer review system to ensure compliance with the
36 provisions of this amendatory and supplementary act. If the
37 commissioner determines that an insurer has established a pattern of
38 referring cases for review in a manner which is frivolous, making
39 referrals which are not in accordance with the standards set forth in
40 subsection b. of section 32 of this amendatory and supplementary act,
41 which results in a disproportionately high number of claims to be
42 rejected by a peer review organization pursuant to subsection e. of
43 section 33 of this amendatory and supplementary act, or which applies
44 for an excessive number of reconsiderations of initial determinations
45 made by peer review organizations, the commissioner may, after notice
46 and hearing, fine the insurer not less than \$5,000 nor more than

1 \$10,000, or suspend or revoke the insurer's right to refer cases, or
2 both.

3
4 41. Section 5 of P.L.1972, c.70 (C.39:6A-5) is amended to read as
5 follows:

6 5. Payment of personal injury protection coverage benefits.

7 a. An insurer may require written notice to be given as soon as
8 practicable after an accident involving an automobile with respect to
9 which the policy affords personal injury protection coverage benefits
10 payable under a standard automobile insurance policy pursuant to
11 section 4 of P.L.1972, c.70 (C.34:6A-4) or medical expense benefits
12 payable under a mini automobile insurance policy pursuant to [this act]
13 section 4 of P.L. , c. (C.)(now before the Legislature as this
14 bill). In the case of claims for medical expense benefits under either
15 policy, written notice shall be provided to the insurer by the treating
16 medical provider no later than 21 days following the commencement
17 of treatment. Notification required under this section shall be made in
18 accordance with regulations adopted by the Commissioner of Banking
19 and Insurance and on a form prescribed by the Commissioner of
20 Banking and Insurance. Within a reasonable time after receiving
21 notification required pursuant to this act, the insurer shall confirm to
22 the treating medical provider that its policy affords the claimant
23 personal injury protection coverage benefits as required by section [5]
24 4 of P.L.1972, c.70 [(C.39:6A-5)] (C.39:6A-4) or medical expense
25 benefits pursuant to section 4 of P.L. , c. (C.)(now before the
26 Legislature as this bill).

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

31 c. In the event that notification is not made by the treating medical
32 provider within 21 days following the commencement of treatment, the
33 insurer shall reserve the right to deny, in accordance with regulations
34 established by the Commissioner of Banking and Insurance, payment
35 of the claim and the treating medical provider shall be prohibited from
36 seeking any payment directly from the insured. In establishing the
37 standards for denial of payment, the Commissioner of Banking and
38 Insurance shall consider the length of delay in notification, the severity
39 of the treating medical provider's failure to comply with the
40 notification provisions of this act based upon the potential adverse
41 impact to the public and whether or not the provider has engaged in
42 a pattern of noncompliance with the notification provisions of this act.
43 In establishing the regulations necessary to effectuate the purposes of
44 this subsection, the Commissioner of Banking and Insurance shall
45 define specific instances where the sanctions permitted pursuant to this
46 subsection shall not apply. Such instances may include, but not be

1 limited to, a treating medical provider's failure to provide notification
2 to the insurer as required by this act due to the insured's medical
3 condition during the time period within which notification is required.

4 d. A medical provider who fails to notify the insurer within 21 days
5 and whose claim for payment has been denied by the insurer pursuant
6 to the standards established by the Commissioner of Banking and
7 Insurance may, in the discretion of a judge of the Superior Court, be
8 permitted to refile such claim provided that the insurer has not been
9 substantially prejudiced thereby. Application to the court for
10 permission to refile a claim shall be made within 14 days of notification
11 of denial of payment and shall be made upon motion based upon
12 affidavits showing sufficient reasons for the failure to notify the insurer
13 within the period of time prescribed by this act.

14 e. For the purposes of this section, "treating medical provider"
15 shall mean any licensee of the State of New Jersey whose services are
16 reimbursable under personal injury protection coverage pursuant to
17 section 4 of P.L.1972, c.70 (C.39:6A-4) or medical expense benefits
18 pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
19 Legislature as this bill), including, but not limited to, persons licensed
20 to practice medicine and surgery, psychology, chiropractic, or such
21 other professions as the Commissioner of Banking and Insurance
22 determines pursuant to regulation, or other licensees similarly licensed
23 in other states and nations, or the practitioner of any religious method
24 of healing, or any general hospital, mental hospital, convalescent
25 home, nursing home or any other institution, whether operated for
26 profit or not, which maintains or operates facilities for health care,
27 whose services are compensated under personal injury protection
28 insurance proceeds.

29 f. In instances when multiple treating medical providers render
30 services in connection with emergency care, the Commissioner of
31 Banking and Insurance shall designate, through regulation, a process
32 whereby notification by one treating medical provider to the insurer
33 shall be deemed to meet the notification requirements of all the
34 treating medical providers who render services in connection with
35 emergency care.

36 g. Personal injury protection coverage benefits pursuant to section
37 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
38 pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
39 Legislature as this bill) shall be overdue if not paid within 60 days after
40 the insurer is furnished written notice of the fact of a covered loss and
41 of the amount of same. If such written notice is not furnished to the
42 insurer as to the entire claim, any partial amount supported by written
43 notice is overdue if not paid within 60 days after such written notice
44 is furnished to the insurer. Any part or all of the remainder of the
45 claim that is subsequently supported by written notice is overdue if not
46 paid within 60 days after such written notice is furnished to the

1 insurer; provided, however, that any payment shall not be deemed
2 overdue where, within 60 days of receipt of notice of the claim, the
3 insurer notifies the claimant or his representative in writing of the
4 denial of the claim or the need for additional time, not to exceed 45
5 days, to investigate the claim, and states the reasons therefor. The
6 written notice stating the need for additional time to investigate the
7 claim shall set forth the number of the insurance policy against which
8 the claim is made, the claim number, the address of the office handling
9 the claim and a telephone number, which is toll free or can be called
10 collect, or is within the claimant's area code. Written notice to the
11 referring agency for a referral to a peer review organization pursuant
12 to section 32 of P.L. _____, c. _____ (C. _____)(now before the Legislature as
13 this bill) shall satisfy the notice request for additional time to
14 investigate a claim pursuant to this subsection. For the purpose of
15 determining interest charges in the event the injured party prevails in
16 a subsequent proceeding where an insurer has elected a 45-day
17 extension pursuant to this subsection, payment shall be considered
18 overdue at the expiration of the 45-day period or, if the injured person
19 was required to provide additional information to the insurer, within
20 10 business days following receipt by the insurer of all the information
21 requested by it, whichever is later.

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

27 h. All overdue payments shall bear interest at the percentage of
28 interest prescribed in the Rules Governing the Courts of the State of
29 New Jersey for judgments, awards and orders for the payment of
30 money.

31 i. All automobile insurers and the Unsatisfied Claim and Judgment
32 Fund shall provide any claimant with the option of submitting a dispute
33 [under this section] to binding arbitration if the dispute arose pursuant
34 to the following provisions: subsections b., c., d. and e. of section 4
35 of P.L.1972, c.70 (C.39:6A-4); subsection b., c., d. and e. of section
36 7 of P.L.1972, c.198 (C.39:6-86.1); additional first party coverage
37 benefits required to be offered pursuant to section 10 of P.L.1972,
38 c.70 (C.39:6A-10) or whether a submitted charge or fee is in
39 conformance with the provisions of section 10 of P.L.1988, c.119
40 (C.39:6A-4.6). Arbitration proceedings shall be administered and
41 subject to procedures [established by the American Arbitration
42 Association] approved by the commissioner which are in conformance
43 with New Jersey law and consistent with the Legislature's intent as
44 stated in section 1 of P.L. _____, c. _____ (C. _____)(now before the
45 Legislature as this bill). If the claimant prevails in the arbitration
46 proceedings, the insurer shall pay all the costs of the proceedings,

1 including reasonable attorney's fees, to be determined in accordance
2 with [a schedule of hourly rates for services performed, to be
3 prescribed by the Supreme Court] the Rules Governing the Courts of
4 the State of New Jersey and in accordance with the New Jersey Rules
5 of Professional Conduct. Disputes concerning the determination of the
6 medical necessity or appropriateness of treatments, health care
7 services or durable medical goods and disputes concerning whether a
8 treatment, health care service or durable medical good relating to an
9 injury for which reimbursement is being sought is causally related to
10 an insured event shall not be subject to binding arbitration.

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

12

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

15 10. a. The Commissioner of Banking and Insurance shall, within
16 90 days after the effective date of P.L.1990, c.8 (C.17:33B-1 et al.),
17 promulgate medical fee schedules on a regional basis for the
18 reimbursement of health care providers providing services or
19 equipment for medical expense benefits for which payment is to be
20 made by an automobile insurer under personal injury protection
21 coverage pursuant to sections 4 and 10 of P.L.1972, c.70 [(C.39:6A-1
22 et seq.)] (C.39:6A-4 and 39:6A-10) or medical expense benefits
23 coverage pursuant to section 4 of P.L. , c. (C.)(now before
24 the Legislature as this bill), or by an insurer under medical expense
25 benefits coverage pursuant to section 2 of P.L.1991, c.154
26 (C.17:28-1.6). These fee schedules shall be promulgated on the basis
27 of the type of service provided, and shall incorporate the reasonable
28 and prevailing fees of 75% of the practitioners within the region. If,
29 in the case of a specialist provider, there are fewer than 50 specialists
30 within a region, the fee schedule shall incorporate the reasonable and
31 prevailing fees of the specialist providers on a Statewide basis. The
32 commissioner may contract with a proprietary purveyor of fee
33 schedules for the maintenance of the fee schedule, which shall be
34 adjusted biennially for inflation and for the addition of new medical
35 procedures.

36 b. The fee schedule may provide for reimbursement for appropriate
37 services on the basis of a diagnostic-related (DRG) payment by
38 diagnostic code where appropriate, and may establish the use of a
39 single fee, rather than an unbundled fee, for a group of services if
40 those services are commonly provided together. In the case of
41 multiple procedures performed simultaneously, the fee schedule and
42 regulations promulgated pursuant thereto may also provide for a
43 standard fee for a primary procedure, and proportional reductions in
44 the cost of the additional procedures.

45 c. No health care provider may demand or request any payment
46 from any person in excess of those permitted by the medical fee

1 schedules established pursuant to this section, nor shall any person be
2 liable to any health care provider for any amount of money which
3 results from the charging of fees in excess of those permitted by the
4 medical fee schedules established pursuant to this section.

5 (cf: P.L.1997, c.151, s.33)

6
7 43. Section 14 of P.L.1972, c.70 (C.39:6A-14) is repealed.

8
9 44. This act shall take effect on the 180th day following enactment,
10 except that section 11 of this act shall take effect immediately and that
11 the Commissioner of Banking and Insurance may take those actions
12 and promulgate those regulations necessary to implement the
13 provisions of this act prior to that 180th day.

14
15
16 STATEMENT

17
18 This bill makes a number of modifications to New Jersey's
19 automobile insurance no-fault law. The bill permits a choice of
20 policies to satisfy the State's mandatory insurance requirement. It
21 provides for two types of coverage - standard coverage and a mini
22 policy, which contains less coverage and will be significantly more
23 affordable than standard coverage.

24 A policy containing standard coverage includes personal injury
25 protection coverage with \$250,000 medical expense benefits, wage
26 loss benefits, benefits for replacement services, and a death benefit, all
27 payable without regard to fault. It also includes bodily injury liability
28 coverage, which protects the insured in the event he is sued for pain
29 and suffering, in a minimum amount of \$15,000 for each person, each
30 accident, up to a maximum of \$30,000 for each accident, and property
31 damage liability coverage for damage done to another's vehicle, in the
32 amount of \$5,000. These are the limits presently required for these
33 coverages. Uninsured motorist coverage would no longer be
34 mandatory.

35 Drivers would have the option of purchasing a "mini" policy, which
36 includes \$10,000 medical expense benefit personal injury protection
37 coverage, and \$5,000 property damage liability coverage, the latter
38 being the same amount presently required. Persons electing this
39 coverage would not be required to purchase bodily injury liability
40 coverage, which would provide coverage in the event that the insured
41 is sued for pain and suffering. The person electing this coverage does
42 assume considerable financial risk, however, and insurers would be
43 required to disclose that fact to anyone seeking to buy coverage.
44 While most individuals who have assets, such as a home or other
45 property, probably would not purchase this coverage, it is likely that
46 lower-income persons, such as minimum wage earners, with no assets

1 to protect, would find this coverage affordable and within their means
2 to purchase. Many of these individuals are without insurance under the
3 present system. This would ensure that they at least have medical
4 benefits in the event they are injured; many of the uninsured drivers
5 today not only do not have medical benefits, but are also without
6 health insurance, meaning that if they are hospitalized they are treated
7 under charity care. In more than 75% of all automobile accident cases,
8 the medical expense benefits paid are less than \$10,000. Individuals
9 selecting the mini policy are not barred from suing for pain and
10 suffering, but they would be subject to the most restrictive tort
11 threshold.

12 The bill provides for enhanced personal injury protection coverage
13 for those selecting a standard policy, which includes wage loss and
14 other benefits. The bill doubles the basic wage loss benefit, payable
15 without regard to fault, from \$100 a week to \$200 a week; funeral
16 expense benefits are increased from \$1000 to \$1500. The amounts
17 currently set forth in the law have not been changed since 1972.
18 Anyone having a standard policy can continue to purchase higher
19 amounts if they wish, as currently provided in the no-fault law.

20 While the \$250 medical expense deductible presently provided in
21 the law remains, the 20% across-the-board copayment is eliminated by
22 the bill, with insurers being permitted to modify their policies to apply
23 copayments in varying amounts, at their discretion, to selected benefits
24 which are subject to overutilization. This is both a cost-saving and
25 anti-fraud measure. The existing across-the-board payment was
26 intended to discourage overutilization of benefits, but instead serves
27 to penalize those individuals who do not abuse medical benefits.

28 The bill establishes a peer review mechanism which differs from the
29 Governor's proposal in several important ways. While the Governor's
30 proposal permits insurers to contract individually with peer review
31 organizations (PROs), which could result in a PRO becoming a
32 "captive" of the insurer which pays it, this bill provides that the cases
33 referred to peer review will be distributed among PROs by an
34 independent agency designated by the Commissioner of Banking and
35 Insurance. The time period for peer review is reduced from that in the
36 Governor's bill in order to effectuate a speedier resolution of disputes
37 over payment of benefits, and it requires insurers to pay for treatment
38 up to the time the final decision is made. Either party - the insurer or
39 the insured - can appeal the decision. The bill contains sanctions
40 against insurers which abuse the process by referring cases to peer
41 review frivolously; it establishes standards for those cases which can
42 be referred. Under certain circumstances, an insurer's right to refer
43 cases for peer review can be terminated by the commissioner, if there
44 is shown to be a pattern of abuse.

45 The bill updates the 1972 statutory language with respect to the
46 payment of benefits by redefining "medical benefits"; in part, this is

1 done in order to accommodate the many new medical procedures
2 which have come into existence since that time. The language also
3 recognizes that the expansive nature of the personal injury protection
4 medical benefit which was contemplated in 1972 with the
5 establishment of unlimited benefits has been modified by the reduction
6 of the benefit to \$250,000 by the FAIR act in 1990; this fact is also
7 underlined by the establishment in this bill of the \$10,000 mini policy
8 medical expense benefit. To assist in providing a statutory guideline
9 for medical expense benefits and to provide an objective standard for
10 the peer review process, the bill contains a definition of “medically
11 necessary,” as most health insurance policies do, and establishes that
12 in order to be reimbursable, treatment for injuries must be medically
13 necessary. While this has been implicit in existing law, it has been
14 subjectively interpreted.

15 To provide insureds having standard coverage with an option to
16 reduce their premium cost, the bill adds a verbal threshold which is the
17 same as Michigan’s - an insured having this coverage can only sue for
18 pain and suffering for death, serious impairment of body function or
19 permanent serious disfigurement; people choosing this option can save
20 12% on the bodily injury portion of their coverage. Insureds who
21 want a more liberal right to sue for pain and suffering can retain the
22 present verbal threshold. There will still be a saving for the latter
23 because of other provisions in the bill and in existing law, including the
24 option to eliminate all or part of their uninsured motorist coverage,
25 savings which will be gained as the result of peer review, savings as a
26 result of the new fee schedule recently enacted by the Legislature, and
27 savings as a result of the modification of the copayment structure for
28 medical expense benefits. In addition, these individuals will have
29 enhanced basic wage loss and other expense benefits.

30 In order to assist in combating fraudulent practices, the bill clarifies
31 the fact that in order to be reimbursable, treatments and diagnostic
32 tests must be performed by persons licensed or certified to do so, and
33 diagnostic tests must be recognized by the professional board which
34 supervises the treating provider.

35 Under the bill, uninsured motorist coverage, which would no longer
36 be mandatory, will be offered in two different versions. The more
37 expensive coverage will contain coverage for bodily injury, which, in
38 the event you are injured by an uninsured driver, will permit you to
39 collect pain and suffering from your own insurer if you meet the
40 requirements of the threshold you have elected; it will also include
41 property damage coverage for damage done to your vehicle by an
42 uninsured motorist. This is the same basic coverage required of every
43 driver today. An alternative choice would also be offered, which is to
44 purchase coverage for your economic loss only. This coverage, which
45 is much less expensive, would reimburse you for economic loss if you
46 are injured by an uninsured motorist. This would protect you from

1 financial hardship in the event you are injured. This coverage would
2 also be offered as an underinsured motorist coverage.

3 Taken together, the provisions of this bill offer opportunities for
4 significant savings. It also provides low-income drivers an opportunity
5 to meet the requirements of the mandatory insurance law by paying
6 significantly less than they are required to do today; while not without
7 risk, this option will provide persons with at least the medical benefits
8 they need if they are injured in an accident. The mini policy provision
9 stops short of removing the mandatory insurance requirement of New
10 Jersey's automobile insurance law and it continues to make drivers
11 assume some responsibility in return for their driving privilege. While
12 providing enhanced benefits for drivers electing the standard option,
13 the bill also provides opportunities for them to contain their costs by
14 further restricting their right to sue for pain and suffering; at the same
15 time it recognizes that many drivers are willing to pay somewhat more
16 for a more liberal right to sue, even though they may not be willing to
17 pay the significantly greater cost attendant to the election of the "zero"
18 threshold.

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23 Provides for a modification of threshold options, a mini automobile
24 insurance policy, repeal of mandatory uninsured motorist coverage and
25 review of medical expense benefits disputes by PROs.