

ASSEMBLY, No. 2625

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 28, 2002

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Co-Sponsored by:

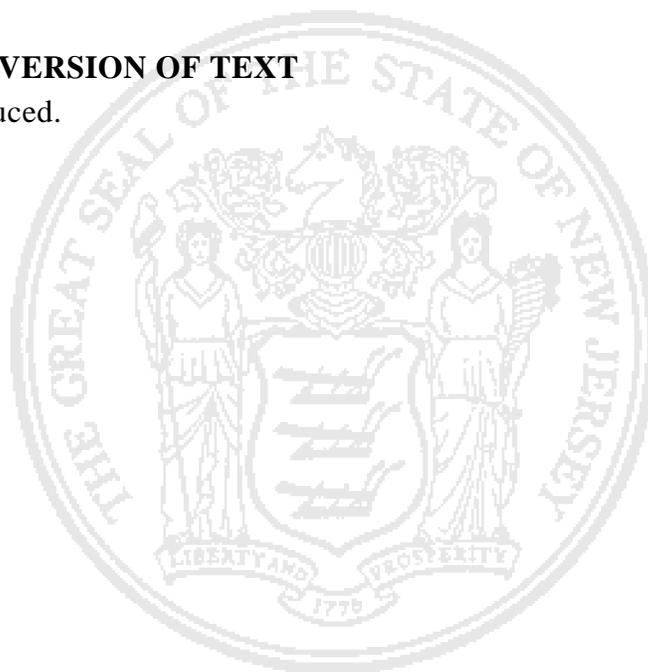
**Assemblywoman Cruz-Perez, Assemblymen Guear, Ahearn, Cryan,
Edwards, Biondi, R.Smith, Conners, Merkt, Wolfe, DeCroce, Pennacchio,
Barnes, Diegnan and S.Kean**

SYNOPSIS

"New Jersey Automobile Insurance Competition and Choice Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/6/2003)

1 AN ACT concerning the regulation of the business of automobile
2 insurance and revising various parts 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) This act shall be known and may be cited as the
8 "New Jersey Automobile Insurance Competition and Choice Act."

9
10 2. (New section) The Legislature finds and declares:

11 a. The existence of a vibrant, competitive private passenger
12 automobile insurance market in New Jersey is clearly in the best
13 interests of the State;

14 b. Numerous insurance companies have left New Jersey in recent
15 years and many other major insurers refuse to do business in our State,
16 thus denying consumers the substantial benefits of a competitive
17 automobile insurance market;

18 c. The private passenger automobile insurance regulatory system
19 in New Jersey has long been characterized by numerous challenges and
20 repeated efforts to address the difficulties associated with this line of
21 insurance;

22 d. The Legislature has, from time to time, enacted various
23 regulatory controls on the business of automobile insurance that, at the
24 time of their enactment, were designed to address specific problems
25 existing at the time of the enactments;

26 e. Many of these legislative controls have outlived their utility and
27 the cumulative effect of their continuation is a regulatory system that
28 stifles competition and has resulted in fewer and fewer automobile
29 insurers doing business in the State;

30 f. The reduction in the number of automobile insurers doing
31 business in the State has resulted in fewer choices for consumers and
32 reduced competition, and any further reduction in insurers will
33 jeopardize the availability of automobile insurance for the public and
34 will undermine the continued economic development of the State;

35 g. The further diminution in the number of automobile insurers will
36 have an adverse effect on the availability of other lines of insurance;

37 h. The best interests of consumers will be served by encouraging
38 existing insurers to remain in New Jersey and new insurers to do
39 business in the State;

40 i. The Legislature has determined that a modernized regulatory
41 system that promotes robust competition among insurers will better
42 serve the needs and interests of consumers;

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 j. This Legislature finds and declares that a competitive
2 marketplace is the most effective and efficient regulator of insurance
3 for consumers and that an informed and willing buyer purchasing a
4 product from a capable and willing seller is the optimal economic
5 model for the insurance marketplace;

6 k. An effective, competitive marketplace must enhance the role that
7 well-informed consumers play in the competitive marketplace and
8 should therefore provide timely and accurate information as to price,
9 solvency and market conduct, so that consumers can enjoy the full
10 benefits of the marketplace; and

11 l. The promotion of a competitive marketplace should not diminish
12 the ability of the State to protect policyholders and the public
13 generally from unfair insurance practices and it is therefore essential
14 that the State retain the necessary regulatory authority to protect
15 consumers and insure that the competitive market fairly and adequately
16 serves consumers.

17

18 3. (New section) a. There is established in the Department of
19 Banking and Insurance the Commission for the Advancement of
20 Insurance Competition. The commission shall consist of 13 members
21 as follows:

22 (1) Four public members, one member to be appointed by the
23 President of the Senate, one member to be appointed by the Minority
24 Leader of the Senate, one member to be appointed by the Speaker of
25 the General Assembly, and one member to be appointed by the
26 Minority Leader of the General Assembly;

27 (2) The Commissioner of Banking and Insurance, who shall serve
28 ex-officio;

29 (3) The Chief Executive Officer and Secretary of the New Jersey
30 Commerce and Economic Growth Commission;

31 (4) Seven members appointed by the Governor, as follows: a
32 member of the New Jersey academic community with expertise in
33 economics or business management; a representative of the Insurance
34 Council of New Jersey; a representative of the National Association of
35 Independent Insurers; a representative American Insurance
36 Association; a representative of the Alliance of American Insurers; and
37 two members who shall be licensed insurance producers authorized to
38 transact personal lines insurance, including homeowners, private
39 passenger non-fleet automobile, or property insurance for personal,
40 family or household needs;

41 b. The members of the commission shall serve for two-year terms
42 and until their successors are appointed and qualified. Any vacancy in
43 the membership of the commission shall be filled for the unexpired
44 term in the same manner as provided for the original appointment.

45 c. The commission shall annually elect from among its insurance
46 industry members a chair and vice-chair. The commission shall meet

1 at least two times a year and may hold additional meetings as
2 necessary to discharge its duties.

3 d. Members of the commission shall be compensated and
4 reimbursed for actual expenses reasonably incurred in the performance
5 of their official duties and provided with office and meeting facilities
6 and personnel required for the proper conduct of the commission's
7 business.

8 e. Among its duties and responsibilities, the commission shall:

9 (1) Assist the Commissioner of Banking and Insurance in the study
10 and review of the availability of personal lines insurance in this State;

11 (2) Identify and analyze barriers to personal lines insurance
12 companies doing business in the State and formulate incentives to
13 encourage insurers to do business in the State;

14 (3) Monitor the competitiveness of the personal lines insurance
15 marketplace and engage in review and development activities as
16 necessary to enhance competition among insurers and otherwise
17 effectuate the purposes of this act;

18 (4) Make recommendations to the commissioner, as it deems
19 necessary and appropriate, to develop and encourage a stable
20 insurance marketplace, facilitate competition, and empower
21 consumers; and

22 (5) Annually file a report and recommendations by September 1st
23 of each year with the commissioner on the state of the personal lines
24 insurance marketplace.

25 f. The commission shall organize upon appointment of its members
26 and shall expire on December 31, 2006.

27

28 4. (New section) a. The Commissioner of Banking and Insurance
29 shall implement a consumer information system regarding personal
30 lines insurance, which includes homeowners, private passenger non-
31 fleet automobile, and property insurance for personal, family or
32 household needs, that:

33 (1) Recognizes and enhances the role well-informed consumers
34 play in the competitive marketplace;

35 (2) Collects and disseminates relevant information to consumers in
36 order to enhance their ability to make informed choices in their
37 purchase of insurance products;

38 (3) Promotes competition among insurers; and

39 (4) Protects policyholders and the public from unfair market
40 practices of insurers.

41 b. The commissioner shall develop, or cause to be developed, and
42 utilize, a consumer information system to provide and disseminate
43 price information, solvency information, consumer complaint ratios
44 and other relevant information on a readily available basis to
45 purchasers of personal lines insurance and which shall include the
46 following:

1 (1) A compilation of representative rating examples, for each rating
2 territory where applicable, for all insurers writing personal lines
3 insurance;

4 (2) A compilation and explanation of commonly used insurance
5 rating factors;

6 (3) Advisory materials on how consumers can improve their
7 insurance rating factors, make informed insurance purchases, and make
8 cost-saving choices;

9 (4) A single, uniform measure for consumer complaints and a
10 complaint ratio for each company per state;

11 (5) Standardized solvency information;

12 (6) A point of contact for each insurer for the purpose of obtaining
13 quotations for insurance; and

14 (7) Other relevant information.

15 c. The consumer information system may be developed by the
16 department, in cooperation with other state insurance departments,
17 through outside contractors or in any other appropriate manner. To
18 the extent deemed necessary and appropriate by the commissioner,
19 insurers, advisory organizations, statistical agents and other persons
20 or organizations involved in conducting the business of personal lines
21 insurance in this State shall cooperate in the development and
22 utilization of a consumer information system and to increase the
23 amount of competition in the State. To the extent practical, the
24 commissioner shall utilize existing standardized measurements of the
25 relevant information provided to consumers, and may eliminate any
26 aspect of the system that becomes redundant or unnecessary as the
27 result of general availability through alternate sources.

28 d. Each insurer providing personal lines insurance for the consumer
29 information system shall provide the rating examples to the
30 commissioner in a format to be established by regulation that will
31 facilitate the comparison of the information by consumers, provided
32 that the commissioner shall not require insurers to provide more than
33 five rating examples per territory.

34

35 5. (New section) For the purposes of sections 6 through 14 of
36 P.L. , c. (C.) (now before the Legislature as this bill):

37 "Automobile" means an automobile as defined in section 2 of
38 P.L.1972, c.70 (C.39:6A-2).

39 "Automobile insurance" means insurance for an automobile,
40 including coverage for bodily injury liability and property damage
41 liability, comprehensive and collision coverages, uninsured and
42 underinsured motorist coverage, personal injury protection coverage,
43 additional personal injury protection coverage and any other
44 automobile insurance required by law.

45 "Classification system" or "classification" means the process of
46 grouping risks with similar risk characteristics so that differences in

1 costs may be recognized.

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

4 "Competitive market" means any market except those that have
5 been found to be non-competitive pursuant to section 7 of P.L. , c.
6 (C.) (now before the Legislature as this bill).

7 "Department" means the Department of Banking and Insurance.

8 "Excessive" means a rate in a non-competitive market that is likely
9 to produce a long-term profit that is unreasonably high for the
10 insurance provided.

11 "Expenses" means that portion of a rate attributable to acquisition,
12 field supervision, collection expenses, general expenses, taxes, licenses
13 and fees.

14 "Inadequate" means a rate which is unreasonably low for the
15 automobile insurance provided and: (1) the continued use of which
16 endangers the solvency of the insurers using it; or (2) will have the
17 effect of substantially lessening competition or creating a monopoly in
18 any market.

19 "Loss adjustment expense" means the expenses incurred by the
20 insurer in the course of settling claims.

21 "Market" is the Statewide interaction between buyers and sellers in
22 the procurement of a line of insurance coverage pursuant to the
23 provisions of P.L. , c. (C.) (now before the Legislature as
24 this bill).

25 "Non-competitive market" means a market that is subject to a ruling
26 pursuant to section 7 of P.L. , c. (C.) (now before the
27 Legislature as this bill), that a reasonable degree of competition does
28 not exist. For the purposes of this act, residual market mechanisms
29 are non-competitive markets.

30 "Prospective loss cost" means that portion of a rate that does not
31 include provisions for expenses, other than loss adjustment expenses
32 or profit, and is based on historical aggregate losses and loss
33 adjustment expenses adjusted through development to their ultimate
34 value and projected through trending to a future point in time.

35 "Rate" means that cost of insurance per exposure unit whether
36 expressed as a single number or as a prospective loss cost with an
37 adjustment to account for the treatment of expenses, profit and
38 individual insurer variation in loss experience, prior to any application
39 of individual risk variations based on loss or expense considerations,
40 and does not include minimum premiums.

41 "Residual market mechanism" means an arrangement, either
42 voluntary or mandated by law, involving participation by insurers in
43 the equitable apportionment of risks among insurers for insurance
44 which may be afforded applicants who are unable to obtain insurance
45 through ordinary methods.

1 "Supplementary rate information" means any manual or plan of
2 rates, classification, rating schedule, minimum premium, policy fee,
3 rating rule and any other similar information needed to determine an
4 applicable rate in effect or to be in effect.

5 "Supporting information" means: (1) the experience and judgment
6 of the filer and the experience or data of other insurers or
7 organizations relied upon by the filer; (2) the interpretation of any
8 statistical data relied upon by the filer; (3) a description of methods
9 used in making the rates; and (4) other similar information relied upon
10 by the filer.

11 "Trending" means any procedure for projecting losses to the
12 average date of loss, or premiums or exposures to the average date of
13 writing, for the period during which the policies are to be effective.

14 "Unfairly discriminatory" means a rate that cannot be actuarially
15 justified. The term does not refer to rates that produce differences in
16 premiums for policyholders with like loss exposures, but different
17 expenses, or like expenses but different loss exposures, so long as the
18 rate reflects such differences with reasonable accuracy.

19

20 6. (New section) The provisions of sections 5 through 14 of
21 P.L. , c. (C.) (now before the Legislature as this bill) shall
22 apply to all types of automobile insurance written on risks in this State
23 by any insurer licensed or authorized to do business in this State.

24

25 7. (New section) a. A competitive market for automobile
26 insurance is presumed to exist unless the commissioner, after notice
27 and hearing, determines by clear and convincing evidence, that a
28 reasonable degree of competition does not exist within that market
29 based on two or more of the factors set forth in subsection b. of this
30 section and issues a ruling to that effect.

31 A ruling issued pursuant to this section shall expire one year after
32 issue unless rescinded earlier by the commissioner or unless the
33 commissioner renews the ruling after a hearing and a finding as to
34 continued lack of a reasonable degree of competition. Any ruling that
35 renews the finding that competition does not exist within the market
36 for automobile insurance shall include findings regarding: (1) the
37 action the State and the commissioner have taken to return the market
38 to a competitive market; and (2) an explanation regarding why those
39 actions have failed to return the market to a competitive market.

40 b. The following factors shall be considered by the commissioner
41 for purposes of determining if a reasonable degree of competition does
42 not exist in a particular line of automobile insurance:

43 (1) The number of insurers or groups of affiliated insurers actively
44 engaged in providing coverage in the market, taking into account the
45 specialization traditionally associated with the line of insurance;

1 (2) Measures of market concentration and changes of market
2 concentration over time, including, but not limited to, the Herfindahl-
3 Hirschman Index (HHI) and the United States Department of Justice
4 merger guidelines for an unconcentrated market;

5 (3) Ease of entry and exit and the existence of financial or
6 economic barriers that could prevent new insurers from entering the
7 market;

8 (4) The extent to which any insurer or group of affiliated insurers
9 controls all or a dominant portion of the market and has actively
10 sought to prevent competition;

11 (5) Whether the total number of insurers writing the line of
12 insurance in this State is sufficient to provide multiple options;

13 (6) The availability of insurance coverage to consumers in the
14 market; and

15 (7) The opportunities available to consumers in the market to
16 acquire pricing and other consumer information.

17 c. The commissioner shall monitor, and take all reasonable actions
18 to maintain, the degree and continued existence of competition in this
19 State on an on-going basis. In doing so, the commissioner may utilize
20 existing relevant information, analytical systems and other sources, or
21 rely on any combination thereof. Monitoring activities may be
22 conducted internally within the department, in cooperation with other
23 state insurance departments, through outside contractors and in any
24 other manner determined appropriate by the commissioner.

25
26 8. (New section) a. Rates for automobile insurance shall not be
27 excessive, inadequate or unfairly discriminatory as determined in
28 accordance with the provisions of sections 5 through 14 of P.L. ,
29 c. (C.) (now before the Legislature as this bill).

30 (1) No rate in a competitive market shall be considered excessive.

31 (2) No rate in a competitive market shall be considered unfairly
32 discriminatory unless it classifies risk on the basis of race, color, creed
33 or national origin. Risks may be classified in any way except that no
34 risk shall be classified on the basis of race, color, creed or national
35 origin. A rate is not unfairly discriminatory if it averages broadly
36 among persons insured under a group, franchise or blanket policy, or
37 a mass marketing plan.

38 b. In determining whether rates in a non-competitive market are
39 excessive, inadequate or unfairly discriminatory, the commissioner may
40 consider the following:

41 (1) Basic rate factors. Due consideration shall be given to past and
42 prospective loss costs and expense experience within and outside of
43 this State, to catastrophe hazards and contingencies, to events or
44 trends within and outside of this State, to dividends or savings to
45 policyholders, members or subscribers, and to all other factors and
46 judgments deemed relevant by the insurer.

1 (2) Classification. Risks may be grouped by classifications for the
2 establishment of rates and minimum premiums. Classification rates
3 may be modified for individual risks in accordance with rating plans or
4 schedules which establish standards for measuring probable variations
5 in hazards or expenses, or both.

6 (3) Expenses. The expense provision shall reflect the operating
7 methods of the insurer and its own past expense experience and
8 anticipated future expenses.

9 (4) Contingencies and profits. The rates may contain a provision
10 for contingencies and a provision for a reasonable underwriting profit,
11 and may reflect investment income directly attributable to unearned
12 premium and loss reserves.

13 (5) Other relevant factors. Any other factors available at the time
14 of hearing may be considered.

15
16 9. (New section) a. If the commissioner determines that competition
17 does not exist in the automobile insurance market and issues a ruling
18 to that effect pursuant to section 7 of P.L. , c. (C.) (now
19 before the Legislature as this bill), the rates applicable to insurance
20 sold in that market shall be regulated in accordance with the provisions
21 of this section and sections 8, 10 and 11 of P.L. , c. (C.) (now
22 before the Legislature as this bill) applicable to non-competitive
23 markets.

24 b. Any rate filing in effect at the time the commissioner determines
25 that competition does not exist pursuant to section 7 of P.L. , c.
26 (C.) (now before the Legislature as this bill) shall be deemed to be
27 in compliance with the laws of this State unless disapproved pursuant
28 to the procedures and rating standards contained in this section and
29 sections 8, 10 and 11 of P.L. , c. (C.) (now before the
30 Legislature as this bill) applicable to non-competitive markets.

31 c. Any insurer having a rate filing in effect at the time the
32 commissioner determines that competition does not exist pursuant to
33 section 7 of P.L. , c. (C.) (now before the Legislature as this
34 bill) may be required to furnish supporting information within 30 days
35 of a written request by the commissioner.

36 d. Any rate filing that results in an overall increase for the filer of
37 more than 10% in any twelve-month period shall be treated in
38 accordance with the provisions of sections 8, 10 and 11 of P.L. ,
39 c. (C.) (now before the Legislature as this bill) applicable to
40 non-competitive markets as if the filing was a filing in a non-
41 competitive market.

42
43 10. (New section) a. (1) For an automobile insurance rate filing
44 in a competitive market, every insurer shall file with the commissioner
45 all rates and supplementary rate information to be used in this State no
46 later than 30 days after the effective date of the rate.

1 (2) For an automobile insurance rate filing in a non-competitive
2 market, every insurer shall either file under the provisions of section
3 34 of P.L. 1997, c.51 (C.17:29A-46.6) and have the filing governed
4 entirely by those provisions or file under the provisions of sections 5
5 through 14 of P.L. , c. (C.) (now before the Legislature as
6 this bill) with the commissioner all rates, supplementary rate
7 information and supporting information at least 30 days before the
8 proposed effective date of the rate and have the filing governed by
9 these provisions. The commissioner may give written notice, within
10 30 days of receipt of the filing, that the commissioner needs additional
11 time, not to exceed 30 days from the date of the notice, to consider the
12 filing. Upon written application of the insurer, the commissioner may
13 authorize rates to be effective before the expiration of the waiting
14 period or an extension thereof. A filing shall be deemed to meet the
15 requirements of sections 5 through 14 of P.L. , c. (C.)
16 (now before the Legislature as this bill) and shall become effective,
17 unless disapproved pursuant to section 11 of P.L. , c. (C.)
18 (now before the Legislature as this bill) by the commissioner, before
19 the expiration of the waiting period or an extension thereof.

20 (3) The filing shall be deemed in compliance with the filing
21 provisions of this section unless the commissioner informs the insurer
22 within 10 days after receipt of the filing as to what supplementary rate
23 information or supporting information is required to complete the
24 filing.

25 (4) Residual market mechanisms may file residual market rates.

26 b. An insurer may file its rates pursuant to this section by either
27 filing its final rates or by filing a multiplier that will be applied to all of
28 its existing rates.

29 c. Except for information that is trade secret, confidential, or
30 proprietary, all rates, supplementary rate information and any
31 supporting information filed pursuant to sections 5 through 14 of
32 P.L. , c. (C.) (now before the Legislature as this bill) shall
33 be open to public inspection on:

34 (1) The later on the date filed or the filing's effective date, if
35 subject to paragraph (1) of subsection a. of this section; or

36 (2) Upon filing, if subject to paragraph (2) of subsection a. of this
37 section.

38 Copies may be obtained from the commissioner upon request and
39 upon payment of a reasonable fee.

40 d. Notwithstanding any other provisions of this section to the
41 contrary, upon written application of the insurer, stating the reason
42 therefore, a rate in excess of or below that otherwise applicable may
43 be used on any specific risk.

44

45 11. (New section) a. The commissioner shall disapprove a rate
46 filed pursuant to section 10 of P.L. , c. (C.) (now before the

1 Legislature as this bill) in a competitive market only if the
2 commissioner finds pursuant to subsection b. of this section that the
3 rate is inadequate or unfairly discriminatory pursuant to subsection a.
4 of section 8 of P.L. , c. (C.) (now before the Legislature
5 as this bill).

6 The commissioner may disapprove a rate filed pursuant to section
7 10 of P.L. , c. (C.) (now before the Legislature as this bill)
8 for use in a non-competitive market only if the commissioner finds that
9 the rate is excessive, inadequate or unfairly discriminatory.

10 b. Prior to the expiration of the waiting period, or an extension
11 thereof, of a filing made pursuant to section 10 of P.L. , c.
12 (C.) (now before the Legislature as this bill), the commissioner
13 may disapprove, by written order, rates filed pursuant to that section,
14 without a hearing. The order shall specify in what respect the filing
15 fails to meet the requirements of sections 5 through 14 of P.L. , c.
16 (C.) (now before the Legislature as this bill). Any insurer whose
17 rates are disapproved pursuant to this section shall be given a hearing
18 upon written request made within 30 days of disapproval.

19 If, at any time, the commissioner finds that a rate applicable to
20 automobile insurance sold in a non-competitive market is excessive,
21 inadequate or unfairly discriminatory, the commissioner may, after a
22 hearing held upon not less than 20 days after written notice, issue an
23 order disapproving the rate. The disapproval order shall not affect any
24 contract or policy made or issued prior to the effective date set forth
25 in the order. A policyholder may cancel a policy containing a
26 disapproved rate without penalty.

27 If, at any time, the commissioner finds that a rate applicable to
28 automobile insurance sold in a competitive market is inadequate or
29 unfairly discriminatory, the commissioner may issue an order
30 disapproving the rate. The disapproval order shall not affect any
31 contract or policy made or issued prior to the effective date set forth
32 in the order.

33 c. If the commissioner disapproves a rate pursuant to subsection b.
34 of this section, the commissioner shall issue an order within 30 days of
35 the close of any hearing specifying in what respect the rate fails to
36 meet the requirements of sections 5 through 14 of P.L. , c.
37 (C.) (now before the Legislature as this bill). The order shall
38 state an effective date no sooner than 60 days after the date of the
39 order when the use of that rate shall be discontinued and that the
40 insurer shall have the option to use its rates that were in force at the
41 time the now disapproved rate filing was made or the rates that the
42 commissioner specifies in the order that would meet the requirements
43 of sections 5 through 14 of P.L. , c. (C.) (now before the
44 Legislature as this bill). This order shall not affect any contract or
45 policy made or issued prior to the effective date set forth in the order.
46 A policyholder may cancel a policy containing a disapproved rate

1 without penalty.

2 d. If an order of disapproval is appealed pursuant to section 13 of
3 P.L. , c. (C.) (now before the Legislature as this bill), the
4 insurer may implement the disapproved rate upon notification to the
5 court, in which case any excess of the disapproved rate over, at the
6 insurer's option, either its rates that were in force at the time the now
7 disapproved rate filing was made or the rates that the commissioner
8 specifies in the order that would meet the requirements of the act shall
9 be placed in a reserve escrow account established by the insurer. The
10 court shall have control over the disbursement of funds from the
11 reserve escrow account. Funds shall be distributed as determined by
12 the court in its final order, except that de minimus refunds to
13 policyholders shall not be required.

14

15 12. (New section) a. The commissioner may impose, after notice
16 and hearing, a penalty for violations of sections 5 through 14 of the
17 provisions of P.L. , c. (C.) (now before the Legislature as
18 this bill) determined in accordance with section 23 of P.L.1944, c.27
19 (C.17:29A-23).

20 b. Technical violations arising from systems or computer errors of
21 the same type shall be treated as a single violation. In the event of an
22 overcharge, if the insurer makes restitution including payment of
23 interest, no penalty shall be imposed.

24 c. The commissioner may suspend or revoke the license of any
25 insurer which fails to comply with an order of the commissioner within
26 the time prescribed by the order, or any extension thereof which the
27 commissioner may grant.

28 d. The commissioner may determine when a suspension of license
29 shall become effective and the period of that suspension, which the
30 commissioner may modify or rescind in any reasonable manner.

31 e. No penalty shall be imposed and no license shall be suspended
32 or revoked except upon a written order of the commissioner, stating
33 his findings, made after notice and hearing.

34

35 13. (New section) Any order, ruling, finding, decision or other act
36 of the commissioner made pursuant to the provisions of sections 5
37 through 14 of P.L. , c. (C.) (now before the Legislature as
38 this bill) shall be subject to judicial review in accordance with the
39 Rules Governing the Courts of New Jersey. No action shall be
40 brought against an insurer alleging that a rate subject to sections 5
41 through 14 of P.L. , c. (C.) (now before the Legislature as
42 this bill) that the insurer is charging is contrary to law unless that
43 person files a complaint with the commissioner requesting a hearing
44 under section 11 of P.L. , c. (C.) (now before the Legislature
45 as this bill) and appeals any adverse order arising from that hearing to
46 the courts in accordance with the Rules Governing the Courts of New

1 Jersey.

2 14. (New section) a. All notices rendered pursuant to the
3 provisions of sections 5 through 14 of P.L. , c. (C.) (now
4 before the Legislature as this bill) shall be in writing and shall state
5 clearly the nature and purpose of the hearing. All relevant facts,
6 statutes and rules shall be specified so that the parties are fully
7 informed of the scope of the hearing, including specific allegations, if
8 any. If a hearing is required, all notices shall designate a hearing date
9 at least 14 days from the date of the notice, unless this minimum notice
10 period is waived.

11 b. All hearings pursuant to the provisions sections of 5 through 14
12 of P.L. , c. (C.) (now before the Legislature as this bill) shall
13 be conducted in accordance with the provisions of the "Administrative
14 Procedure Act" P.L.1968, c.410 (C.52:14B-1 et seq.), to the extent
15 those provisions are consistent with the procedural requirements
16 contained in sections of 5 through 14 of P.L. , c. (C.) (now
17 before the Legislature as this bill), except as expressly modified herein.

18

19 15. Section 34 of P.L.1997, c.151 (C.17:29A-46.6) is amended to
20 read as follows:

21 34. a. [Notwithstanding] On or after the effective date of
22 P.L. , c. (C.) (now before the Legislature as this bill) and until
23 January 1, 2006, notwithstanding section 14 of P.L.1944, c.27
24 (C.17:29A- 14), an insurer or rating organization may elect to file a
25 proposed alteration to its rating system pursuant to the [expedited] a
26 file and use process set forth in this section when the filer requests
27 either an increase of no more than [3%] 10% prior to January 1, 2006
28 or any decrease in its Statewide average base rate prior to January 1,
29 2006, for private passenger automobile insurance.

30 b. A filer electing to use this [expedited] file and use process shall
31 file with the commissioner that reasonable information necessary to
32 support the rate change which the commissioner prescribes by
33 regulation and a proposed effective date for the rates which shall be at
34 least 60 days after the date of the filing. The prescribed filing
35 requirements shall recognize the intent of this section to provide [an
36 expedited] a file and use process and shall not require any information
37 not required by a filing pursuant to section 14 of P.L.1944, c.27
38 (C.17:29A-14).

39 c. [If the commissioner] Notwithstanding the provisions of the
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.), or any other provision of law to the contrary, the commissioner
42 may disapprove the filing on a prospective basis only, if an
43 administrative law judge has determined, after opportunity for a
44 contested case hearing, that the filing will [not] produce rates that are
45 excessive, inadequate for the safety and soundness of the insurer, or
46 unfairly discriminatory between risks in this State involving

1 substantially the same hazards and expense elements [approve the
2 filing].

3 d. [A decision on the filing shall be rendered not later than 45 days
4 after receipt of the filing, unless the commissioner grants an extension,
5 in which case a decision shall be rendered not later than 60 days after
6 receipt of the filing. A filing shall be complete and received when the
7 filing is accompanied by a certification by a qualified actuary which
8 states that the material, data and documentation, which is part of the
9 filing, includes the documents set forth in regulations, supports the
10 requested rate change and is consistent with generally accepted
11 ratemaking principles of the actuarial profession. A filing shall be
12 deemed to be approved unless rejected or modified by the
13 commissioner within the time provided.] A filer may use the rates
14 proposed in the rate filing on the proposed effective date of the filing.
15 The filer may continue to use those rates until and unless the rates are
16 disapproved by the commissioner pursuant to subsection c. of this
17 section. Any such disapproval shall be prospective only. The order of
18 disapproval shall contain an effective date of not less than 60 days
19 after the effective date of the disapproval order.

20 e. The [commissioner shall not approve] filer shall not file any rate
21 change pursuant to this [expedited] file and use process that results
22 in an overall increase of more than [3% or an increase in any single
23 coverage of more than 5%] 10% prior to January 1, 2006. In
24 addition, a file and use rate change shall include the changes in rates
25 resulting from the changes in the territorial rate cap established
26 pursuant to section 7 of P.L.1983, c.65 (C.17:29A-36) as provided in
27 section 17 of this amendatory and supplementary act. The change in
28 rates resulting from the changes in the territorial rate cap alone shall
29 be revenue neutral for the filer.

30 f. [An] Prior to January 1, 2006, an insurer shall not [file more
31 than one request for an increase in rates] implement any rate increases
32 pursuant to this section which combine to produce increases of more
33 than 10% overall in any [twelve-month period] one calendar year.

34 (cf: P.L.1997, c.151, s.34)

35

36 16. Section 14 of P.L.1944, c.27(C.17:29A-14) is amended to read
37 as follows:

38 14. a. With regard to all property and casualty lines, a filer may,
39 from time to time, alter, supplement, or amend its rates, rating
40 systems, or any part thereof, by filing with the commissioner copies of
41 such alterations, supplements, or amendments, together with a
42 statement of the reason or reasons for such alteration, supplement, or
43 amendment, in a manner and with such information as may be required
44 by the commissioner. If such alteration, supplement, or amendment
45 shall have the effect of increasing or decreasing rates, the

1 commissioner shall determine whether the rates as altered thereby are
2 reasonable, adequate, and not unfairly discriminatory. If the
3 commissioner shall determine that the rates as so altered are not
4 unreasonably high, or inadequate, or unfairly discriminatory, he shall
5 make an order approving them. If he shall find that the rates as altered
6 are unreasonable, inadequate, or unfairly discriminatory, he shall issue
7 an order disapproving such alteration, supplement or amendment.
8 With respect to a filing for private passenger automobile insurance
9 rates, the commissioner shall issue an order of approval or disapproval
10 within 60 days of the date that the filing was made, otherwise the filing
11 shall be deemed approved and the insurer may implement the rates for
12 policyholders as set forth in the filing.

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

14 c. If an insurer or rating organization files a proposed alteration,
15 supplement or amendment to its rating system, or any part thereof,
16 which would result in a change in rates, the commissioner [may, or]
17 upon the request of the filer [or the appropriate division or office in
18 the Department of Insurance] shall, certify the matter for a hearing.
19 The hearing shall, at the commissioner's discretion, be conducted by
20 himself, by a person appointed by the commissioner pursuant to
21 section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of
22 Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.),
23 as a contested case. The following requirements shall apply to the
24 hearing:

25 (1) The hearing shall commence within 30 days of the date of the
26 request or decision that a hearing is to be held. The hearing shall be
27 held on consecutive working days, except that the commissioner may,
28 for good cause, waive the consecutive working day requirement. If the
29 hearing is conducted by an administrative law judge, the administrative
30 law judge shall submit his findings and recommendations to the
31 commissioner within 30 days of the close of the hearing. The
32 commissioner may, for good cause, extend the time within which the
33 administrative law judge shall submit his findings and
34 recommendations by not more than 30 days. A decision shall be
35 rendered by the commissioner not later than 60 days, or, if he has
36 granted a 30 day extension, not later than 90 days, from the close of
37 the hearing. A filing shall be deemed to be approved unless rejected or
38 modified by the commissioner within the time period provided herein.

39 (2) The commissioner, or the Director of the Office of
40 Administrative Law, as appropriate, shall notify all interested parties,
41 including the appropriate division or office in the Department of
42 Banking and Insurance on behalf of insurance consumers, of the date
43 set for commencement of the hearing, on the date of the filing of the
44 request for a hearing, or within 10 days of the decision that a hearing
45 is to be held.

1 (3) The insurer or rating organization making a filing on which a
2 hearing is held shall bear the costs of the hearing.

3 (4) The commissioner may promulgate rules and regulations (a) to
4 establish standards for the submission of proposed filings,
5 amendments, additions, deletions and alterations to the rating system
6 of filers, which may include forms to be submitted by each filer; and
7 (b) making such other provisions as he deems necessary for effective
8 implementation of this act.

9 d. (Deleted by amendment, P.L.1984, c.1.)

10 e. [In order to meet, as closely as possible, the deadlines in section
11 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of
12 available optional automobile insurance coverages pursuant to section
13 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
14 (C.39:6A-8), and to implement these coverages, the commissioner may
15 require the use of rates, fixed by him in advance of any hearing, for
16 deductible, exclusion, set off and tort limitation options, on an interim
17 basis, subject to a hearing and to a provision for subsequent
18 adjustment of the rates, by means of a debit, credit or refund
19 retroactive to the effective date of the interim rates. The public hearing
20 on initial rates applicable to the coverages available under section 13
21 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
22 (C.39:6A-8) shall not be limited by the provisions of subsection c. of
23 this section governing changes in previously approved rates or rating
24 systems.] (Deleted by amendment, P.L. _____, c. ____.)
25 (cf: P.L.1994, c.58, s.43)

26
27 17. Section 7 of P.L. 1983, c.65 (C.17:29A-36) is amended to read
28 as follows:

29 7. a. Any filing made for the purpose of automobile insurance rate
30 making shall indicate the actual rate needs of the filer; provided,
31 however, that (a) each filer's rate classification definitions, as used by
32 that filer, shall be uniform Statewide; (b) the automobile insurance rate
33 charged an insured shall not exceed [two] three and one-half times the
34 filer's territorial base rate for each coverage, exclusive of driving
35 record surcharges and discounts; and (c) the automobile insurance rate
36 of the base class in any territory for each coverage, exclusive of
37 driving record surcharges and discounts for any filer shall not exceed
38 1.35 times the filer's [Statewide average] base rate in that territory for
39 each coverage [exclusive of driving record surcharges and discounts
40 for any basic policy issued or renewed at any time and for any standard
41 policy issued or renewed before January 1, 2000 or the 180th day
42 following approval of the common territorial rating plan pursuant to
43 section 28 of P.L.1998, c.21 (C.17:29A-50), whichever first occurs]
44 that was in effect for the twelve month period immediately preceding
45 the effective date of any rating plan filed on or after January 1, 2003.
46 The provisions of this subsection shall expire on January 1, 2006.

1 b. [No rating plan or rate filing applicable to any policy issued or
2 renewed on or after January 1, 2000 or the 180th day following the
3 approval of the common territorial rating plan provided for in sections
4 27 and 28 of P.L.1998, c.21 (C.17:29A-49 and 17:29A-50), whichever
5 first occurs, shall be approved by the commissioner which creates
6 territorial relativities which are significantly disproportionate to those
7 in effect as of the effective date of P.L.1998, c.21 (C.39:6A-1.1 et
8 al.).] (Deleted by amendment, P.L. c.)

9 c. The automobile insurance rate of an automobile whose principal
10 operator is 65 years of age or older shall not exceed one and one-
11 quarter times the Statewide average rate for principal operators 65
12 years of age or older for each coverage, exclusive of driving record
13 surcharges and discounts; provided, however, that no filer shall
14 increase rates for principal operators 65 years of age or older as a
15 result of the implementation of this section unless more than 50% of
16 its insureds are principal operators 65 years of age or older.

17 d. [As a result of the filings made pursuant to sections 26 and 27
18 of P.L. 1998, c. 21 (C.17:29A-48 and 17:29A- 49) and subsections a.,
19 b. and c. of this section, the filer's aggregate premium for all territories
20 shall not exceed the filer's aggregate premium in effect prior to the
21 date established in subsection b. of this section.] (Deleted by
22 amendment, P.L. , c.)

23 As used in this section, base rate means the automobile insurance
24 rate charged for an automobile that is not used in business and not
25 used in going to and from work, except for the going to and from
26 work distance included in the pleasure use classification of the filer,
27 and where there is no youthful operator, as defined in the filer's
28 classification system. The base rate class shall not include automobiles
29 to which discounts apply under the filer's classification system,
30 including, but not limited to, farmers' and senior citizens' automobiles
31 or any discount from a standard rate provided for in the filer's tier
32 rating system.

33 The provisions of this section shall be implemented after the
34 implementation of the provisions of subsection a. of section 8 of
35 P.L.1983, c.65 (C.17:29A-37).

36 (cf: P.L.1998, c.22, s.6)

37
38 18. Section 26 of P.L.1998, c. 21 (C.17:29A-48) is amended to
39 read as follows:

40 26. a. Every insurer writing private passenger automobile insurance
41 in this State and every rating organization establishing territorial rating
42 plans on behalf of its member companies shall establish new territorial
43 rating plans in place of the insurer's or filer's territorial rating plan in
44 effect on June 1, 1998, which shall include territorial definitions,
45 territorial relativity factors and territorial base rates, and which are in
46 accordance with the provisions of sections 26 through 29 of this

1 amendatory and supplementary act. The Commissioner of Banking and
2 Insurance shall promulgate regulations establishing standards
3 governing the establishment of new rating territories, which standards
4 shall include, but not be limited to:

5 [a.] (1) Territories shall be defined in such a manner as to
6 recognize throughout the territorial rating plan both qualitative
7 similarities and qualitative differences in driving environments or mix
8 of driving environments, which may include, but not be limited to,
9 traffic density, population density, comparative severity of loss, and
10 the degree of homogeneity within a territory in terms of driving
11 environments, population, and driver classification, and the territory
12 shall be comprised of towns or cities which are contiguous;

13 [b.] (2) Territories shall contain a sufficient number of exposures
14 to result in statistically credible experience, in accordance with
15 regulations established by the commissioner, and shall be defined in a
16 manner which minimizes the effect of variability of loss in a territory
17 on a year-to-year basis;

18 [c.] (3) Territory definitions shall take into account the impact of
19 the overlapping of traffic patterns on exposure to loss, including the
20 relative number of intraterritory trips and inter-territory trips
21 applicable to each proposed territory, for which the commissioner shall
22 make available to the insurer, filer, or the commission established
23 pursuant to section 28 of this amendatory and supplementary act,
24 appropriate information collected pursuant to the provisions of section
25 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

26 [d.] (4) Territories shall be created in a manner which results in an
27 equitable distribution of exposures among territories throughout the
28 State and no territorial rating plan shall result in territories which are
29 arbitrary, unfairly discriminatory, significantly disproportionate in
30 terms of the number of exposures per territory, or created in a manner
31 which is primarily for marketing purposes rather than measuring
32 relativity of exposure to probable loss, or created in a manner which
33 can be used to avoid the insurer's or filer's obligations under section 27
34 of P.L.1990, c.8 (C.17:33B- 15);

35 [e.] (5) Territories shall be created in a manner which does not
36 result in disproportionate differences in territorial relativity factors or
37 territorial base rates between contiguous territories with similar
38 driving environments or similar mix of driving environments;

39 [f.] (6) Factors to be considered in establishing territorial rate
40 relativities shall include taking into account similarities or differences
41 in driving environments or mix of driving environments, including
42 traffic density, population density, mix of driver classifications within
43 a territory, including classifications capped pursuant to the provisions
44 of section 7 of P.L.1983, c.65 (C.17:29A-36), comparative degree of
45 severity of loss, and the relative number of intraterritory and inter-
46 territory trips;

1 [g.] (7) Territories shall be defined in a manner which does not
2 result in unfair inter-territorial subsidization among territories with
3 significant differences in driving environments or mix of driving
4 environments, population density, traffic density, mix of driver
5 classifications, including classifications capped pursuant to the
6 provisions of section 7 of P.L.1983, c.65 (C.17:29A-36) and
7 comparative degree of severity of loss;

8 [h.] (8) For the purpose of defining territories and establishing
9 territorial relativity factors, loss experience allocated to any territory
10 by an insurer or filer [(1)] (a) shall take into account any recovery
11 applicable to exposures in the territory which are attributable to
12 subrogation or any other kind of recovery by the insurer reporting the
13 losses and [(2)] (b) shall not include any loss attributable to capping
14 of driver classifications pursuant to section 7 of P.L.1983, c.65
15 (C.17:29A-36).

16 The commissioner shall establish by regulation the minimum number
17 of exposures which shall be deemed to meet the standard of being
18 statistically credible for the purpose of defining territories.

19 b. All insurers shall file a revised territorial rating plan by
20 January 1, 2003 regardless of whether the regulations referred to in
21 subsection a. of this section have been adopted. If those regulations
22 have not been adopted by July 1, 2002 or a territorial rating plan
23 pursuant to section 28 of P.L.1998, c.21 (C.17:29A-50) has not been
24 established by July 1, 2002, the insurer's revised territorial rating plan
25 shall be filed pursuant to section 34 of P.L.1997, c.151 (C.17:29A-
26 46.6) and governed by its provisions. If the regulations referred to in
27 subsection a. of this section have been adopted and a revised territorial
28 rating plan has been established by July 1, 2002, then the insurer's
29 territorial rating plan shall be subject to the provisions of section 27 of
30 P.L.1998, c.21 (C.17:29A-49).

31 (cf: P.L.1998, c.22, s.5)

32

33 19. (New section) a. On or after January 1, 2006, no insurer shall
34 decline a policy of automobile insurance based on race, color, creed,
35 national origin, age, gender, marital status or sexual orientation.

36 b. For the purposes of this section:

37 "Automobile" means an automobile as defined in section 2 of
38 P.L.1972, c.70 (C.39:6A-2).

39 "Automobile insurance" means insurance for an automobile
40 including coverage for bodily injury liability and property damage
41 liability, comprehensive and collision coverages, uninsured and
42 underinsured motorist coverage, personal injury protection coverage,
43 additional personal injury protection coverage and any other
44 automobile insurance required by law.

45 "Decline" means:

1 (1) Refusal by an insurance producer to submit an application on
2 behalf of an applicant to any of the insurers represented by the
3 producer;

4 (2) Refusal by an insurer to issue an automobile insurance policy
5 to a person upon receipt of an application for automobile insurance;

6 (3) The offer of automobile insurance coverage with less favorable
7 terms or conditions than those requested by the person, except that the
8 charging of a higher rate or premium pursuant to a filed rating plan
9 shall not constitute a declination;

10 (4) The refusal by an insurer or producer to provide, upon the
11 request of a person, an application form or other means of making an
12 application or request for automobile insurance coverage; or

13 (5) The cancellation or nonrenewal of an automobile insurance
14 policy.

15 "Insurance producer" means an insurance producer as defined in
16 section 3 of P.L.2001, c.210 (C.17:22A-28).

17 "Insurer" means any insurer authorized or admitted to write
18 automobile insurance in this State, but does not include any residual
19 market mechanism implemented pursuant to section 1 of P.L.1970,
20 c.215 (C.17:29D-1).

21

22 20. Section 25 of P.L.1990, c.8 (C.17:33B-13) is amended to read
23 as follows:

24 25. As used in section 25 through 33 of this 1990 amendatory and
25 supplementary act:

26 "Automobile" means an automobile as defined in section 2 of
27 P.L.1972, c.70 (C.39:6A-2).

28 "Automobile insurance" means insurance for an automobile
29 including coverage for bodily injury liability and property damage
30 liability, comprehensive and collision coverages, uninsured and
31 underinsured motorist coverage, personal injury protection coverage,
32 additional personal injury protection coverage and any other
33 automobile insurance required by law.

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

36 "Declination" means:

37 a. Refusal by an insurance agent to submit an application on behalf
38 of an applicant to any of the insurers represented by the agent;

39 b. Refusal by an insurer to issue an automobile insurance policy to
40 an eligible person upon receipt of an application for automobile
41 insurance;

42 c. The offer of automobile insurance coverage with less favorable
43 terms or conditions than those requested by an eligible person; or

44 d. The refusal by an insurer or agent to provide, upon the request
45 of an eligible person, an application form or other means of making an
46 application or request for automobile insurance coverage.

1 "Automobile insurance eligibility points" means points calculated
2 under the schedule promulgated by the commissioner pursuant to
3 section 26 of this act.

4 "Eligible person" means a person who is an owner or registrant of
5 an automobile registered in this State or who holds a valid New Jersey
6 driver's license to operate an automobile, but does not include any
7 person:

8 a. Who, during the [~~three-year~~] five-year period immediately
9 preceding application for, or renewal of, an automobile insurance
10 policy has been convicted pursuant to R.S.39:4- 50 or section 2 of
11 P.L.1981, c.512 (C.39:4-50.4a), or for an offense of a substantially
12 similar nature committed in another jurisdiction; has been convicted of
13 a crime of the first, second or third degree resulting from the use of a
14 motor vehicle; or has been convicted of theft of a motor vehicle,
15 except that for policies issued prior to the effective date of P.L. _____,
16 c. (C. _____) (now before the Legislature as this bill), the applicable
17 period shall be three years;

18 b. Whose driver's license to operate an automobile is under
19 suspension or revocation;

20 c. Who has been convicted, within the five-year period immediately
21 preceding application for or renewal of a policy of automobile
22 insurance, of fraud or intent to defraud involving an insurance claim
23 or an application for insurance; or who has been successfully denied,
24 within the immediately preceding five years, payment by an insurer of
25 a claim in excess of \$1,000 under an automobile insurance policy, if
26 there was evidence of fraud or intent to defraud involving the
27 automobile insurance claim or application;

28 d. Whose policy of automobile insurance has been canceled
29 because of nonpayment of premium or financed premium within the
30 immediately preceding two-year period, unless the premium due on a
31 policy for which application has been made is paid in full before
32 issuance or renewal of the policy;

33 e. Who fails to obtain or maintain membership or qualification for
34 membership in a club, group, or organization, if membership is a
35 uniform requirement of the insurer as a condition of providing
36 insurance, and if the dues or charges, if any, or other conditions for
37 membership or qualifications for membership are applied uniformly
38 throughout this State, are not expressed as a percentage of the
39 insurance premium, and do not vary with respect to the rating
40 classification of the member or potential member except for the
41 purpose of offering a membership fee to family units. Membership
42 fees, if applicable, may vary in accordance with the amount or type of
43 coverage if the purchase of additional coverage, either as to type or
44 amount, is not a condition for reduction of dues or fees;

45 f. Whose driving record for the [~~three~~] five year period
46 immediately preceding application for or renewal of a policy of

1 automobile insurance has an accumulation of automobile insurance
2 eligibility points as determined under the schedule promulgated by the
3 commissioner pursuant to section 26 of this act [or], except that for
4 policies issued prior to the effective date of P.L. , c. (C.)
5 (now before the Legislature as this bill), the applicable period shall be
6 three years;

7 g. Who possesses such other risk factors as determined to be
8 relevant by rule or regulation of the commissioner; or

9 h. After December 31, 2005, who has been unable to
10 obtain automobile insurance from at least two insurers at rates not
11 exceeding those applicable to the residual market, and who certifies
12 that fact on a form approved by the commissioner.

13 "Insurance agent" or "agent" means an insurance agent as defined
14 by subsection f. of section 2 of P.L.1987, c.293 (C.17:22A-2) and
15 shall also include an insurance broker as defined by subsection g. of
16 section 2 of P.L.1987, c.293 (C.17:22A-2) who has a brokerage
17 relationship with an insurer or an insurance producer as defined in
18 section 3 of P.L.2001, c.210 (C.17:22A-28).

19 "Insurer" means any insurer authorized or admitted to write
20 automobile insurance in this State, but does not include [the New
21 Jersey Automobile Full Insurance Underwriting Association created
22 pursuant to sections 13 through 34 of P.L. 1983, c. 65 (C.17:30E-1 et
23 seq.) or] any residual market mechanism implemented pursuant to
24 section 1 of P.L.1970, c.215 (C.17:29D-1).
25 (cf: P.L.1990, c.8, s.25)

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

29 26. The commissioner shall, within 90 days of the effective date of
30 this act, promulgate a schedule of automobile insurance eligibility
31 points by rule or regulation adopted pursuant to the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule
33 shall assess a point valuation to driving experience related violations
34 and shall include assessments for violations of lawful speed limits
35 within such increments as determined by the commissioner, other
36 moving violations, and at-fault accidents. For the purposes of this
37 section, an "at-fault accident" means an at-fault accident which results
38 in payment by the insurer of at least a \$500 claim; except that an at-
39 fault accident shall not mean an accident occurring as a result of
40 operation of any motor vehicle in response to a medical emergency if
41 the operator at the time of the accident was a physician responding to
42 the medical emergency. In addition to the schedule of automobile
43 insurance eligibility points adopted by the commissioner, insurers may
44 also assess automobile insurance eligibility points for any offense for
45 which the Division of Motor Vehicles assigns points pursuant to
46 section 1 of P.L.1982, c.43 (C.39:5-30.5) with the same number of

1 points assigned by the Division of Motor Vehicles to the extent those
2 offenses are not listed in the schedule of automobile insurance
3 eligibility points. Insurers may also assess three automobile insurance
4 eligibility points for each time that a policy of automobile insurance
5 has been canceled because of nonpayment of premium or financed
6 premium with a lapse of coverage of at least 30 days within the
7 immediately preceding five-year period.

8 (cf: P.L.1997, c.381, s.1)

9

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

12 27. On or after April 1, 1992, every insurer, either by one or more
13 separate rating plans filed in accordance with the provisions of
14 [section 6 of P.L.1988, c.156 (C.17:29A-45) prior to March 1, 1998,
15 or] section 14 of P.L.1997, c.150, (C.17:29A-46.1) on or after
16 March 1, 1998, or through one or more affiliated insurers, shall
17 provide automobile insurance coverage for eligible persons.

18 b. No insurer shall refuse to insure, refuse to renew, or limit
19 coverage available for automobile insurance to an eligible person who
20 meets its underwriting rules as filed with and approved by the
21 commissioner in accordance with the provisions of [section 7 of
22 P.L.1988, c.156 (C.17:29A-46) prior to March 1, 1998 or] section 15
23 of P.L.1997, c.150 (C.17:29A-46.2) on or after March 1, 1998.

24 c. Notwithstanding the provisions of subsections a. and b. of this
25 section to the contrary, any qualified insurer engaged in writing
26 automobile insurance in an automobile insurance urban enterprise zone
27 pursuant to section 22 of P.L.1997, c.151 (C.17:33C-4) may limit the
28 number of exposures written through its UEZ agent or agents, or in
29 the case of a qualified insurer doing business on a direct writing basis,
30 the qualified insurer may limit the number of exposures written in an
31 automobile insurance urban enterprise zone consistent with its
32 marketing plans and goals as provided in subsection a. of section 21
33 of P.L.1997, c.151 (C.17:33C-3). Nothing in this subsection shall be
34 construed to relieve a qualified insurer from its obligation under
35 subsections a. and b. of this section to write all eligible persons
36 residing within an automobile insurance urban enterprise zone through
37 its non-UEZ agent points of access.

38 d. Notwithstanding the provisions of subsections a. and b. of this
39 section to the contrary, an insurer may refuse to insure, refuse to
40 renew, or limit coverage available for automobile insurance in any
41 rating territory to an eligible person who does not meet its
42 underwriting rules if that insurer has increased the total number of
43 automobiles it insures in that rating territory during the previous four
44 calendar quarters by 3% over the total number of automobiles it
45 insured in that territory on the last day of the month ending four
46 calendar quarters earlier. This relief from the requirement that an

1 insurer provides automobile insurance coverage to all eligible persons
2 is effective on the first day of the second calendar month after the end
3 of the calendar quarter in which the 3% standard has been reached. If
4 the total number of automobiles insured by the insurer in that rating
5 territory at the end of a subsequent calendar quarter declines to less
6 than 102.5% of the total number of automobiles insured in that
7 territory on the last day of the month ending four calendar quarters
8 earlier, then the insurer shall be subject to the provisions of
9 subsections a. and b. of this section in that rating territory beginning
10 on the first day of the second calendar month after the end of the
11 calendar quarter in which that percentage decline has been reached
12 until the end of a calendar quarter once the insurer exceeds the 3%
13 standard in that rating territory, in which case the insurer shall be
14 relieved from the eligible persons requirement effective on the first day
15 of the second calendar month after the end of the calendar quarter in
16 which the insurer once again exceeds the 3% standard in that rating
17 territory. An insurer shall report to the commissioner the total number
18 of automobiles it insures as of the last day of the month of each
19 calendar quarter by rating territory and shall, at the time of the report,
20 notify the commissioner whether the insurer is refusing to insure,
21 refusing to renew or limiting coverage for eligible persons pursuant to
22 this subsection d. The percentages set forth in this subsection d. shall
23 increase by two percentage points if the commissioner certifies that the
24 plan established pursuant to P.L.1970, c.215 (C.17:29D-1 et seq.), is
25 insuring 10 percent or more of the aggregate number of private
26 passenger automobile non-fleet exposures being written in the total
27 private passenger automobile insurance market in this State and shall
28 continue at that level until such time as the commissioner certifies that
29 the plan is insuring less than 10 percent of the aggregate number of
30 private passenger automobile non-fleet exposures being written in the
31 total private passenger automobile insurance market in this State.

32 e. The commissioner may suspend, revoke or otherwise terminate
33 the certificate of authority to transact automobile insurance business
34 in this State of any insurer who violates the provisions of this section.
35 (cf: P.L.1997, c.151, s.24)

36

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

39 30. [A] Except for an insurer that the agent represents which may
40 refuse to insure, refuse to renew, or limit coverage available for
41 automobile insurance to an eligible person who meets its underwriting
42 criteria as provided in subsection d. of section 27 of P.L.1990, c.8
43 (C.17:33B-15), a licensed insurance agent shall, as a condition of
44 licensure:

45 (1) Provide each eligible person seeking automobile insurance
46 premium quotations for the forms or types of automobile insurance

1 coverages which are offered by all insurers represented by the agent
2 or with which the agent places risks;

3 (2) Not attempt to channel an eligible person away from an insurer
4 or insurance coverage with the purpose or effect of avoiding an agent's
5 obligation to submit an application or an insurer's obligation to accept
6 an eligible person; and

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

9 If a UEZ agent has a contract with a qualified insurer pursuant to
10 the provisions of section 22 of P.L.1997, c.151 (C.17:33C-4) and the
11 UEZ agent is unable to place an otherwise eligible person with that
12 qualified insurer because of the limitation on the number of exposures
13 imposed by that qualified insurer on the UEZ agent, the UEZ agent
14 shall be deemed to have met the requirements of this subsection,
15 provided that the limitation on the number of exposures has been
16 reached and the UEZ agent fulfills all applicable regulatory
17 requirements.

18 b. With respect to automobile insurance, an insurer shall not
19 penalize an agent by paying less than normal commissions or normal
20 compensation or salary because of the expected or actual experience
21 produced by the agent's automobile insurance business or because of
22 the geographic location of automobile insurance business written by
23 the agent.

24 (cf: P.L.1997, c.151, s.25)

25

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

28 26. a. Notwithstanding the provisions of section 3 of P.L.1972,
29 c.70 (C.39:6A- 3), a licensed insurer may, prior to January 1, 2006 in
30 accordance with the restrictions in subsections b. and c. of this section,
31 and on or after January 1, 2006 without any restrictions, refuse to
32 renew a policy of private passenger automobile insurance that provides
33 coverage required to be maintained pursuant to P.L.1972, c.70
34 (C.39:6A- 1 et seq.), except that no insurer shall refuse to renew a
35 policy pursuant to subsections b. and c. of this section[

36 (1)] in an amount in excess of 20% of the entire private passenger
37 automobile insurance book of business of any one producer in force
38 with the insurer at the end of the previous calendar year. For purposes
39 of this paragraph, "producer" means a person licensed pursuant to
40 P.L.1987, c.293 (C.17:22A- 1 et seq.) or P.L.2001, c.210 (C.17:22A-
41 26 et seq.), who earned \$10,000 or more from the insurer in the prior
42 calendar year[; and

43 (2) unless the insured or operator insured under the policy in the
44 five years immediately preceding renewal has had at least two of the
45 following or any combination thereof: (a) an at-fault accident; or (b)
46 a moving violation which was assessed at least four automobile

1 insurance eligibility points; or (c) had been required, but failed, to
2 maintain coverage mandated by section 4 of P.L.1972, c.70 (C.39:6A-
3 4) without lapse].

4 b. For each calendar year period, an insurer may issue notices of
5 intention not to renew an automobile insurance policy in the voluntary
6 market in an amount not to exceed 2% of the total number of
7 voluntary market automobile insurance policies of the insurer, rounded
8 to the nearest whole number, which are in force at the end of the
9 previous calendar year in each of the insurer's rating territories in use
10 in this State.

11 c. For every two newly insured automobiles which an insurer
12 voluntarily writes in each territory during each calendar year period,
13 the insurer shall be permitted to refuse to renew insurance on one
14 additional automobile in that territory in excess of the 2% limitation
15 established by subsection b. of this section, subject to a fair and
16 nondiscriminatory formula developed by rule or regulation of the
17 commissioner. The provisions of this subsection shall only apply to an
18 insurer whose aggregate voluntary market share in an automobile
19 insurance urban enterprise zone is reasonably proportionate to the
20 insurer's voluntary Statewide market share as determined by the
21 commissioner by regulation or in a rating territory in which the insurer
22 demonstrates growth in the aggregate number of in-force exposures.

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

26 e. (Deleted by amendment, P.L.1997, c.151.)

27 f. Nothing in this section shall prohibit an insurer from refusing to
28 renew, in addition to nonrenewals permitted in subsections b. and c.
29 of this section, the policy of any insured who has: (1) provided false
30 or misleading information in connection with any application for
31 insurance, renewal of insurance or claim for benefits under an
32 insurance policy; or (2) who has failed to provide, after written request
33 by an insurer, the minimum information necessary to accurately rate
34 the policy under terms and conditions set forth by the commissioner in
35 regulations.

36 (cf: P.L.1997, c.151, s.27)

37

38 25. Section 1 of P.L.1988, c.118 (C.17:29A-5.6) is amended to
39 read as follows:

40 1. As used in this act:

41 a. "Actual investment income" means that portion of income
42 generated by investment of policyholder-supplied funds. Policyholder-
43 supplied funds are the assets that offset the insurer's total New Jersey
44 private passenger automobile insurance unearned premium and loss
45 reserves without regard to whether those funds came from private
46 passenger automobile insurance policyholders or other policyholders

1 or were from policyholder funds from the last five calendar years or
2 earlier years. If the actual investment income earned by the insurer for
3 any given calendar year is negative, then the insurer shall report zero
4 dollars for its actual investment income for that calendar year.

5 b. "Actuarial gain" means the remainder obtained by subtracting the
6 allowance for profit and contingencies from underwriting income,
7 which remainder may be positive or negative.

8 c. "AIRE charges" and "AIRE compensation" mean, respectively,
9 amounts paid to or received from the New Jersey Automobile
10 Insurance Risk Exchange pursuant to section 16 of P.L.1983, c.362
11 (C.39:6A-22).

12 d. "Anticipated investment income" means the amount obtained by
13 multiplying earned premium by the percentage of premium
14 representing investment income and used in the insurer's approved rate
15 filings or filings made pursuant to section 29 of P.L.1988, c.119
16 (C.17:29A-42), during the period of the three calendar-accident years
17 being calculated, to calculate the allowance for profit and
18 contingencies.

19 e. "Calendar-accident year" means the period from January 1 to
20 December 31, during which, in the appropriate context:

21 (1) premium or investment income was earned;

22 (2) expenses were incurred; or

23 (3) accidents occurred which resulted in losses, loss adjustment
24 expenses or AIRE compensation.

25 f. "Car year" means the unit of exposure equivalent to the insuring
26 of one automobile for 12 months, two automobiles for six months
27 each, three automobiles for four months each, and so forth.

28 g. "Commissioner" means the Commissioner of Banking and
29 Insurance.

30 h. "Development adjustment," for a given calendar-accident year,
31 means the difference obtained by subtracting:

32 (1) The sum of

33 (a) Losses and loss adjustment expenses for that calendar-accident
34 year, developed to an ultimate basis and evaluated as of March 31 of
35 the year preceding the year in which the profits report required by
36 section 2 of this act is due; plus

37 (b) AIRE compensation for that calendar-accident year, developed
38 to an ultimate basis and evaluated as of March 31 of the year in which
39 the profits report is due; from

40 (2) The sum of

41 (a) Losses and loss adjustment expenses for that calendar-accident
42 year, developed to an ultimate basis and evaluated as of March 31 of
43 the year in which the profits report is due; plus

44 (b) AIRE compensation for that calendar-accident year, developed
45 to an ultimate basis and evaluated as of March 31 of the year
46 preceding the year in which the profits report is due.

- 1 i. "Excess investment income" means the remainder obtained by
2 subtracting the anticipated investment income from the actual
3 investment income earned by the insurer, which remainder may be
4 positive or negative.
- 5 j. "Insurer" means an entity authorized or admitted to transact
6 private passenger automobile insurance business in New Jersey[, but
7 does not include the New Jersey Automobile Full Insurance
8 Underwriting Association created pursuant to P.L.1983, c.65
9 (C.17:30E-1 et seq.)].
- 10 k. "Private passenger automobile insurance business" means direct
11 insurance on private passenger automobiles as defined in subsection a.
12 of section 2 of P.L.1972, c.70 (C.39:6A-2), excluding personal excess
13 liability insurance and insurance on commercial vehicles.
- 14 l. "Total actuarial gain" means the sum of the actuarial gains for
15 the [~~three~~] five calendar-accident years immediately preceding the due
16 date of the profits report required by section 2 of this act, less the
17 development adjustments for the calendar-accident years beginning
18 with the [~~seventh~~] ninth calendar-accident year immediately preceding
19 the due date of the profits report and ending with the [~~fourth~~] sixth
20 calendar-accident year immediately preceding the due date of the
21 profits report.
- 22 m. "Underwriting income" means the remainder obtained by
23 subtracting the sum of all losses developed to an ultimate basis, all loss
24 adjustment expenses developed to an ultimate basis, and all other
25 expenses exclusive of UCJF assessments, from the sum of premiums
26 earned and AIRE compensation developed to an ultimate basis, which
27 remainder may be positive or negative.
- 28 n. "UCJF assessments" means amounts paid by insurers to the
29 Unsatisfied Claim and Judgment Fund pursuant to section 3 of P.L.
30 1952, c. 174 (C.39:6-63).
- 31 o. "UCJF reimbursements" means amounts received by an insurer
32 from the Unsatisfied Claim and Judgment Fund as a result of excess
33 medical expense benefit payments by the insurer pursuant to section
34 2 of P.L.1977, c.310 (C.39:6-73.1).
35 (cf: P.L.1988, c.118, s.1)
36
- 37 26. Section 2 of P.L.1988, c.118 (C.17:29A-5.7) is amended to
38 read as follows:
- 39 2. a. Each insurer, except those exempt from filing pursuant to
40 section 6 of this act, shall annually file with the commissioner, on or
41 before July 1 of each year, a profits report containing the information
42 and calculations required by this section. The information shall be
43 provided with respect to the insurer's New Jersey private passenger
44 automobile insurance business separately for each of the following
45 coverages and for all these coverages combined:

- 1 (1) Personal injury protection, including all options;
- 2 (2) Bodily injury liability, reported at total limits;
- 3 (3) Other liability, consisting of property damage liability and
- 4 uninsured and underinsured motorist coverages, all reported at total
- 5 limits;
- 6 (4) Physical damage, consisting of comprehensive and collision
- 7 coverages, including all deductibles.

8 A separate profits report shall be filed for each insurer and each
9 insurer in an insurance holding company system. Each insurance
10 holding company system shall file a separate combined profits report
11 for all insurers in its system. The excess profits computation for an
12 insurance holding company system shall be performed on its combined
13 profits report [, except that the commissioner may order an adjustment
14 in the combined profits report if in his judgment, upon examining each
15 insurer's profits report in the insurance holding company system, one
16 or more of the insurers in that system are excessively subsidizing other
17 insurers in that system].

18 b. The profits report shall contain the following information for
19 each of the [seven] nine most recent calendar-accident years, with an
20 evaluation date as of March 31 of the year in which the profits report
21 is due:

- 22 (1) Losses paid;
- 23 (2) Losses developed to an ultimate basis;
- 24 (3) Loss adjustment expenses paid;
- 25 (4) Loss adjustment expenses developed to an ultimate basis;
- 26 (5) AIRE compensation received; and
- 27 (6) AIRE compensation developed to an ultimate basis.

28 c. The profits report shall contain the following information for the
29 calendar-accident year ending December 31 immediately preceding the
30 date the profits report is due:

- 31 (1) Premiums written;
- 32 (2) Premiums earned;
- 33 (3) [Other] All other expenses, itemized separately as follows:
 - 34 (a) [Commissions] All commission and all brokerage fees;
 - 35 (b) [Taxes] All taxes, all licenses and all fees;
 - 36 (c) All AIRE charges;
 - 37 (d) All UCJF [assessment] assessments;
 - 38 (e) [Other] All other acquisition costs and all general expenses;
 - 39 (f) [Policyholder] All policyholder dividends incurred by the
 - 40 insurer, including any excess profits refunded or credited to
 - 41 policyholders;
 - 42 (g) The net of all catastrophe reinsurance premiums incurred and
 - 43 all sums paid or owed by a catastrophe reinsurer for losses that
 - 44 occurred during the calendar-accident year;

1 (4) Allowance for profit and contingencies, calculated by
2 multiplying the premiums earned by the profit and contingency factors
3 authorized for use with the insurer's approved rate filings;

4 (5) Anticipated investment income;

5 (6) Actual investment income; and

6 (7) UCJF reimbursements received.

7 d. The profits report shall include a clear and explicit calculation
8 of each of the following items;

9 (1) Underwriting income for each of the ~~[three]~~ five calendar-
10 accident years immediately preceding the date of the profits report;

11 (2) Actuarial gain for each of the ~~[three]~~ five calendar-accident
12 years immediately preceding the date of the profits report;

13 (3) Excess investment income for each of the ~~[three]~~ five calendar-
14 accident years immediately preceding the date of the profits report;

15 (4) Development adjustment for each of the four calendar-accident
16 years specified in subsection l. of section 1 of this act;

17 (5) Total actuarial gain; and

18 (6) Excess profits.

19 e. No reports shall be made covering calendar year 2006 or later,
20 unless ordered by the commissioner pursuant to section 23 of
21 P.L.1988, c.118 (C.17:29A-5.8).

22 f. This section shall expire on January 1 of the year immediately
23 following a determination by the commissioner pursuant to section 3
24 of P.L.1988, c.118 (C.17:29A-5.8) that profits for the New Jersey
25 automobile insurance market averaged for five consecutive years have
26 not exceeded the automobile insurance industry's national average by
27 2.5 percent of earned premiums for that same period.

28 (cf: P.L.1988, c.118, s.2)

29
30 27. Section 3 of P.L.1988, c.118 (C.17:29A-5.8) is amended to
31 read as follows:

32 3. a. The commissioner shall determine whether, based on external
33 standardized profit reports, profits for the New Jersey automobile
34 insurance market exceed the automobile insurance industry's national
35 average by 2.5 percent of earned premiums for each of the three most
36 recent calendar years for which the computation has been made. If the
37 reports so establish, then the commissioner shall order each insurer to
38 determine if it owes any excess profits by performing the calculation
39 in subsection b. of this section. If the external standardized profit
40 reports do not establish profits for New Jersey automobile insurance
41 business in excess of the national average by 2.5 percent of earned
42 premium, in that three year period, then no insurer shall owe any
43 excess profits and no excess profits report need be filed by any insurer
44 under section 2 of P.L.1988, c.118 (C.17:29A-5.7).

45 b. Excess profits for an insurer shall exist if for the [three] five
46 calendar-accident years immediately preceding the date the profits

1 report is due, the sum of an insurer's total actuarial gain and excess
2 investment income for all private passenger automobile coverages
3 combined exceeds 2.5 percent of earned premiums [, except that the
4 effect of a negative excess investment income shall be limited in the
5 computation of excess profits, at the discretion of the commissioner,
6 which discretion shall be exercised pursuant to a standard on the
7 investment of policyholder-supplied funds pursuant to regulations
8 promulgated by the commissioner not later than April 1 of the year in
9 which excess profits reports are filed].

10 (cf: P.L.1988, c.118, s.3)

11

12 28. R.S. 17:17-10 is amended to read as follows:

13 17:17-10. a. When satisfied that a company has complied with all
14 the requirements of this subtitle to entitle it to engage in business and
15 that the proposed methods of operation of the company are not such
16 as would render its operation hazardous to the public or its
17 policyholders, the commissioner shall issue to the company a
18 certificate authorizing it to commence business, specifying in the
19 certificate the particular kind or kinds of insurance it is authorized to
20 transact. The commissioner may refuse to issue a certificate of
21 authority if he finds that any of the company's directors or officers has
22 been convicted of a crime involving fraud, dishonesty, or like moral
23 turpitude or that said persons are not persons of good character and
24 integrity. No company shall transact the business for which it is
25 incorporated until it has received the certificate from the
26 commissioner. If any company fails to obtain the certificate of
27 authority within one year from the date of the certificate of the
28 Attorney General to its certificate of incorporation, as provided in
29 R.S.17:17-5, the company shall, ipso facto, be dissolved and its
30 certificate of incorporation be null and void.

31 b. No company licensed to transact insurance business in this State
32 pursuant to chapter 17 of Title 17 of the Revised Statutes may
33 surrender its certificate of authority or discontinue writing or renewing
34 any kind or kinds of insurance specified in the certificate, except in
35 accordance with [a plan to be] an informational filing submitted [by
36 the company and approved by] to the commissioner, which [plan]
37 filing shall [provide for an orderly withdrawal from the market and for
38 the minimization of the impact of the surrender of the certificate or the
39 discontinuance of the writing or renewing of any kind or kinds of
40 insurance upon the public generally and upon the company's
41 policyholders in this State. No surrender or discontinuance shall
42 become effective until the approved plan has been complied with. In
43 reviewing a plan for withdrawal submitted by the company, the
44 commissioner shall consider, and may require as a condition of
45 approval, whether some or all other certificates of authority issued
46 pursuant to chapter 17 or 32 of Title 17 of the Revised Statutes held

1 by the company or by other companies within the same holding
2 company system as the company submitting the plan shall be required
3 to be surrendered. The provisions of this subsection shall apply to any
4 request for withdrawal, surrender or discontinuance filed on or after
5 January 25, 1990] include the following elements for any withdrawals
6 filed on or after the effective date of P.L. , c. (C.) (now
7 before the Legislature as this bill):

8 (1) notice to policyholders, issued no later than 60 days after the
9 date of the informational filing, which notice shall state that the insurer
10 intends to withdraw and that a plan of withdrawal has been filed with
11 the commissioner;

12 (2) nonrenewals shall not be effective before the later of two years
13 after the date of the informational filing or January 1, 2007;

14 (3) the insurer shall send two notices of nonrenewal from the
15 insurer, the first at least one year prior to the date of nonrenewal, and
16 the second notice of nonrenewal in compliance with the time
17 limitations provided by law for that line of insurance.

18 Under this subsection b., the commissioner's authority is limited to
19 enforcing compliance with this subsection and enforcing the terms of
20 the withdrawal plan as stated in the informational filing and, if the
21 withdrawing insurer proposes to use a replacement carrier or carriers,
22 approving or disapproving any replacement carrier or carriers pursuant
23 to subsection c. of this section.

24 c. Notwithstanding the provisions of subsection b. of this section
25 to the contrary, if the insurer finds either before or after the date of the
26 informational filing a replacement carrier or carriers for the business
27 that will not be renewed, then the insurer may nonrenew and transfer
28 the business intended to be nonrenewed to the replacement carrier or
29 carriers subject only to the requirements that the commissioner
30 approve the replacement carrier or carriers, the nonrenewal notice be
31 in compliance with the time limits provided by law for that line of
32 insurance, and that an offer of coverage with the replacement carrier
33 or carriers be made prior to the effective date of the nonrenewal. The
34 commissioner shall not withhold his approval of a replacement carrier
35 or carriers if that insurer is authorized to do business in the relevant
36 line or lines of insurance in New Jersey and has the financial and
37 business capability to write and service the business being transferred
38 to it. The commissioner shall approve or disapprove the replacement
39 carrier or carriers within 60 days of the later of the date of the filing
40 by both the withdrawing insurer requesting approval of a replacement
41 carrier or the filing by the replacement carrier requesting to be a
42 replacement carrier.

43 d. Notwithstanding the provisions of subsection b. of this section
44 to the contrary, the commissioner may waive the requirements of
45 paragraph (2) of subsection b. of this section and the one-year
46 nonrenewal notice of paragraph (3) of subsection b. of this section if

1 the commissioner finds that a waiver is necessary to protect the
2 solvency of the insurer making the filing to withdraw.

3 (cf: P.L.1990, c.8, s.71)

4

5 29. Section 72 of P.L.1990, c.8 (C.17:33B-30) is amended to read
6 as follows:

7 72. a. An insurance company of another state or foreign country
8 authorized under chapter 32 of Title 17 of the Revised Statutes to
9 transact insurance business in this State may surrender to the
10 commissioner its certificate of authority and thereafter cease to
11 transact insurance in this State, or discontinue the writing or renewal
12 of [one or more kinds of] private passenger automobile insurance
13 specified in the certificate of authority, only after the submission of [a
14 plan which provides for an orderly withdrawal from the market and a
15 minimization of the impact of the surrender or discontinuance on the
16 public generally and on the company's policyholders in this State. The
17 plan shall be approved by the commissioner before the withdrawal or
18 discontinuance takes effect. In reviewing a plan for withdrawal under
19 this section, the commissioner shall consider, and may require as a
20 condition of approval, whether some or all other certificates of
21 authority issued pursuant to chapter 17 or 32 of Title 17 of the
22 Revised Statutes held by the company or by other companies in the
23 same holding company as the company submitting the plan should be
24 surrendered. The certificate of authority of the company shall be
25 deemed to continue in effect until the provisions of the approved plan
26 have been carried out. The provisions of this section shall apply to any
27 request for withdrawal, surrender or discontinuance filed on or after
28 January 25, 1990] an informational filing submitted to the
29 commissioner, which filing shall include the following elements for any
30 withdrawals filed on or after the effective date of P.L. , c (C.)
31 (now before the Legislature as this bill):

32 (1) notice to policyholders, issued no later than 60 days after the
33 date of the informational filing, which notice shall state that the insurer
34 intends to withdraw and that a plan of withdrawal has been filed with
35 the commissioner;

36 (2) nonrenewals shall not be effective before the later of two years
37 after the date of the informational filing or January 1, 2007;

38 (3) the insurer shall send two notices of nonrenewal from the
39 insurer, the first at least one year prior to the date of nonrenewal, and
40 the second notice of nonrenewal in compliance with the time
41 limitations provided by law for that line of insurance;

42 Under this subsection a., the commissioner's authority is limited to
43 enforcing compliance with this subsection, enforcing the terms of the
44 withdrawal plan as stated in the informational filing, and, if the
45 withdrawing insurer proposes to use a replacement carrier or carriers,
46 approving or disapproving any replacement carrier or carriers pursuant

1 to subsection b. of this section.

2 b. Notwithstanding the provisions of subsection a. of this section
3 to the contrary, if the insurer finds either before or after the date of the
4 informational filing a replacement carrier or carriers for the business
5 that will not be renewed, then the insurer may nonrenew and transfer
6 the business intended to be nonrenewed to the replacement carrier or
7 carriers subject only to the requirements that the commissioner
8 approve the replacement carrier or carriers, the nonrenewal notice be
9 in compliance with the time limits provided by law for that line of
10 insurance, and that an offer of coverage with the replacement carrier
11 or carriers be made prior to the effective date of the nonrenewal. The
12 commissioner shall not withhold his approval of a replacement carrier
13 or carriers if that insurer is authorized to do business in the relevant
14 line or lines of insurance in New Jersey and has the financial and
15 business capability to write and service the business being transferred
16 to it. The commissioner shall approve or disapprove the replacement
17 of carrier or carriers within 60 days of the later of the date of the filing
18 by both the withdrawing insurer requesting approval of a replacement
19 carrier or the filing by the replacement carrier requesting to be a
20 replacement carrier.

21 c. Notwithstanding the provisions of subsection a. of this section
22 to the contrary, the commissioner may waive the requirements of
23 paragraph (2) of subsection a. of this section and the one-year
24 nonrenewal notice of paragraph (3) of subsection a. of this section if
25 the commissioner finds that a waiver is necessary to protect the
26 solvency of the insurer making the filing to withdraw.

27 (cf: P.L.1990, c.8, s.72)

28

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

31 1. The Commissioner of Banking and Insurance may adopt, issue
32 and promulgate rules and regulations establishing a plan for the
33 providing and apportionment of insurance coverage for applicants
34 therefor who are in good faith entitled to, but are unable to procure
35 the same, through ordinary methods. Every insurer admitted to
36 transact and transacting any line, or lines, of insurance in the State of
37 New Jersey shall participate in such plan and provide insurance
38 coverage to the extent required in such rules and regulations.

39 The governing board of any plan established pursuant to the
40 commissioner's rules and regulations shall continue to exercise such
41 administrative authority, subject to the commissioner's oversight and
42 as provided in any rules and regulations promulgated pursuant to this
43 section, as is necessary to ensure the plan's efficient operation,
44 including, but not limited to, the authority to investigate complaints
45 and hear appeals from applicants, insureds, producers, servicing
46 carriers or participants about any matter pertaining to the plan's proper

1 administration, as well as the authority to appoint subcommittees to
2 hear such appeals. Any determination of an appeal by a plan's
3 governing board shall be subject to review by the commissioner on the
4 record below, and shall not be considered a contested case under the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B- 1 et
6 seq.). The commissioner's determination shall be a final order and shall
7 be subject to review by the Superior Court.

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

11 a. For a rating system which shall produce rates for each coverage
12 which are adequate for the safeness and soundness of the plan, and are
13 not excessive nor unfairly discriminatory with regard to risks in the
14 plan involving essentially the same hazards and expense elements,
15 which rates may be changed from time to time by a filing with the
16 commissioner [in a manner and form approved by the commissioner]
17 proposed alterations pursuant to section 34 of P.L.1997, c.151
18 (C.17:29A-46.6), except that the 10 percent limitation set forth in
19 subsections a. and e. of that section shall be inapplicable;

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

24 c. For a limited assignment distribution system permitting insurers
25 to enter into agreements with other mutually agreeable insurers or
26 other qualified entities to transfer their applicants and insureds under
27 such plan to such insurers or other entities;

28 d. That it shall not provide insurance coverage for more than
29 10 percent of the aggregate number of private passenger automobile
30 non-fleet exposures being written in the total private passenger
31 automobile insurance market in this State. The plan shall provide for
32 the cessation of the acceptance of applications or the issuance of new
33 policies at any time it reaches 10 percent of market share, as certified
34 by the commissioner, until such time that the commissioner certifies
35 that the plan is insuring less than 10 percent of the aggregate number
36 of private passenger automobile non-fleet exposures being written in
37 the total private passenger automobile insurance market in this State;

38 e. ~~[Except]~~ Prior to January 1, 2006, except for risks written in
39 automobile insurance urban enterprise zones pursuant to subsection i.
40 of this section, that it shall not provide coverage to an eligible person
41 as defined pursuant to section 25 of P.L.1990, c.8 (C.17:33B-13);

42 f. (Deleted by amendment, P.L.1997, c.151.)

43 g. That the plan shall not be subsidized by any source external to
44 the plan;

45 h. That a qualified insurer who writes automobile insurance risks
46 in those automobile insurance urban enterprise zones designated by the

1 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-
2 2) shall receive assigned risk credits for voluntary risks written in
3 those designated automobile insurance urban enterprise zones as a
4 direct writer or through a UEZ agent or agents or through any agent
5 with whom the insurer has an in-force contract as of the effective date
6 of P.L.1997, c.151 (C.17:33B-64 et al.). The commissioner shall
7 establish by regulation the manner in which any qualified automobile
8 insurer may utilize the provisions of this subsection. In no event shall
9 that credit apply to reduce an insurer's obligations under subsection i.
10 of this section; and

11 i. (1) For a voluntary rating tier to accommodate eligible persons,
12 as defined in section 25 of P.L.1990, c. 8 (C.17:33B-13), residing in
13 automobile insurance urban enterprise zones, designated by the
14 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-
15 2), to provide increased availability and encourage the voluntary
16 writing of eligible persons residing in those zones;

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

20 (3) The voluntary rating tier shall not provide insurance coverage
21 for more than five percent of the aggregate number of private
22 passenger automobile non-fleet exposures being written in the total
23 private passenger automobile insurance market in this State, and the
24 number of exposures written in the voluntary rating tier shall be
25 included for computing the maximum number of exposures permitted
26 to be written in the plan;

27 (4) The plan shall distribute risks submitted by qualified producers
28 to insurers authorized to write automobile insurance in this State
29 pursuant to a fair and nondiscriminatory formula established by the
30 commissioner. The formula shall provide that insurers which have, and
31 maintain, an aggregate voluntary automobile insurance market share
32 in automobile insurance urban enterprise zones, which is reasonably
33 equal to the insurer's voluntary Statewide market share excluding risks
34 written in automobile insurance urban enterprise zones, shall be
35 exempt from these distributions;

36 (5) Qualified producers may submit eligible person risks from
37 automobile insurance urban enterprise zones to the plan for coverage
38 in the voluntary rating tier. As used in this subsection i.: a "qualified
39 producer" means a UEZ agent, as defined in section 19 of P.L.1997,
40 c.151 (C.17:33C-1), who has met any limit on exposures that may be
41 written in accordance with the UEZ agent's agreement with the
42 appointing insurer pursuant to section 22 of P.L.1997, c.151
43 (C.17:33C-4); and a producer who: is duly licensed with
44 property/casualty authority for the three years immediately preceding
45 the effective date of P.L.1997, c.151 (C.17:33B-64 et al.); has no
46 affiliation with a voluntary market insurer for the placement of

1 automobile insurance; had an affiliation with a voluntary market
2 insurer for the placement of automobile insurance that was terminated
3 by the insurer in the last three years; demonstrates to the plan his
4 competency, efficiency and effectiveness in the solicitation, negotiation
5 and effectuation of automobile insurance as evidenced by any history
6 of disciplinary actions or complaints against the producer, and other
7 relevant factors; and conducts his business in an office in an
8 automobile insurance urban enterprise zone. For purposes of this
9 subsection i., "insurer" means an insurer or group of affiliated insurers
10 admitted or authorized to transact the business of automobile
11 insurance in this State;

12 (6) This subsection shall expire on the first day of the 61st month
13 after the first policy using the voluntary rating tier required by this
14 subsection was issued to a risk, as certified by the commissioner.

15 Prior to the adoption or amendment of such rules and regulations,
16 the commissioner shall consult with such members of the insurance
17 industry as he deems appropriate. Such consultation shall be in
18 addition to any otherwise required public hearing or notice with regard
19 to the adoption or amendment of rules and regulations.

20 The governing body administering the plan shall report annually to
21 the Legislature and the Governor on the activities of the plan. The
22 report shall contain an actuarial analysis regarding the adequacy of the
23 rates for each coverage for the safeness and soundness of the plan.

24 (cf: P.L.1998, c.21, s.31)

25

26 31. Section 1 of P.L.1945, c.132 (C.54:18A-1) is amended to read
27 as follows:

28 1. (a) Every stock, mutual and assessment insurance company
29 organized or existing under any general or special law of this State,
30 hereinafter referred to as "domestic insurance company," and every
31 stock, mutual and assessment insurance company organized or existing
32 under the laws of another state or foreign country, hereinafter referred
33 to as "foreign insurance company," and transacting business in this
34 State shall annually on or before March 1, file with the Director of the
35 Division of Taxation, in the form as the director and the Commissioner
36 of Banking and Insurance may prescribe, a return under oath or
37 affirmation signed by a duly authorized officer or agent of the
38 company, containing such information as may be deemed necessary
39 and shall at the same time pay to the director an annual tax, in each
40 calendar year, in the amount specified in sections 2 and 3 of P.L.1945,
41 c.132 (C.54:28A-2 and 54:18A-3). At the same time, a duplicate
42 original of the return shall be filed with the Commissioner of Banking
43 and Insurance. The tax shall be based on net premiums on contracts of
44 insurance covering property and risks located within this State written
45 during the calendar year ending December 31 next preceding.

1 (b) Effective for calendar years ending on December 31, 1980 and
2 thereafter, every foreign insurance company subject to the provisions
3 of subsection (a) of this section, shall pay to the Director of the
4 Division of Taxation on or before March 1, 1981, and on or before
5 March 1 of each year thereafter an amount equal to one-half of the tax
6 payable under subsection (a) hereof on the company's business done
7 during the preceding calendar year. Every foreign insurance company
8 subject to the provisions of subsection (a) of this section, shall pay to
9 the Director of the Division of Taxation on or before June 1, 1989,
10 and on or before June 1 of each year thereafter an amount equal to
11 one-half of the tax payable under subsection (a) hereof on the
12 company's business done during the preceding calendar year. Each
13 such payment shall be in addition to the tax payable under subsection
14 (a) hereof and shall be considered as a partial payment of the tax which
15 will become due under subsection (a) hereof, upon the following
16 March 1.

17 (c) Effective for calendar years ending on December 31, 1981 and
18 thereafter, every domestic insurance company shall:

19 (1) On March 1, 1982, pay the tax due under subsection (a) of this
20 section based on the company's business done during the calendar year
21 1981 less any franchise tax paid to counties or municipalities in this
22 State during the calendar year 1981.

23 (2) On March 1, 1982 make an installment payment of taxes due
24 under subsection (a) of this section on the company's business done
25 during the calendar year 1982, which payment shall amount to one-half
26 of the prior year's premium tax without deduction for any franchise tax
27 paid to counties or municipalities of this State.

28 (3) On June 1, 1982 and each June 1 thereafter, make a second
29 installment payment on taxes due under subsection (a) of this section
30 on the company's business done during the current calendar year,
31 which payment shall amount to one-half of the prior year's premium
32 tax without a deduction for any franchise tax paid to counties or
33 municipalities of this State.

34 (4) On March 1, 1983 and each March 1 thereafter, pay the balance
35 of any tax due under subsection (a) of this section based on the
36 company's business during the preceding calendar year and make an
37 installment payment in an amount equal to one-half of the tax payable
38 under subsection (a) of this section on the company's business done
39 during the preceding calendar year.

40 (d) Nothing in this section requiring a partial payment of tax shall
41 be deemed to apply to premiums for fire insurance risks on
42 properties in this State paid to an insurer which is not organized under
43 the laws of this State or to premiums for marine insurance risks.

44 (e) In the calculation of the tax due in accordance with subsection
45 (a) hereof, every insurance company shall be entitled to a credit in the
46 amount of the tax paid as a partial payment in the preceding calendar

1 year and shall be entitled to the return of any amount so paid which
2 shall be found to be in excess of the total amount payable in
3 accordance with this section.

4 (f) If the franchise tax paid to counties and municipalities of this
5 State during the calendar year 1981 exceeds the amount of the tax due
6 under subsection (a) of this section, no refund or credit shall be
7 allowed.

8 (g) Effective for calendar years ending on December 31, 2005 and
9 thereafter, in the calculation of the tax due in accordance with
10 subsection (a) hereof, every insurance company shall be entitled to a
11 credit for each policy-year of automobile insurance, covering a vehicle
12 where those policies of insurance are written in a rating territory
13 whose base rates exceed the Statewide average base rates for such
14 coverages written by the company by an amount to be determined by
15 the State Treasurer, in consultation with the Commissioner of Banking
16 and Insurance, provided further that the company has provided a credit
17 or reduction in premium to the policyholder purchasing coverage in
18 those territories equivalent to the tax credit herein established. For the
19 purposes of this subsection (g), "automobile insurance" means
20 insurance for an automobile, including coverage for bodily injury
21 liability and property damage liability, comprehensive and collision
22 coverages, uninsured and underinsured motorist coverage, personal
23 injury protection coverage, additional personal injury protection
24 coverage and any other automobile insurance required by law. The
25 amount of the tax credit, and the equivalent premium credit or
26 reduction, shall be determined by regulations promulgated by the State
27 Treasurer in consultation with the commissioner, provided that no
28 company shall be required to provide premium credits or reductions to
29 any policyholder if the cumulative effect of those premium credits or
30 reductions would exceed the total premium tax obligation. The per-
31 policy tax credit shall be apportioned so that the total anticipated tax
32 credits for all insurance companies shall not exceed the total
33 anticipated premium tax less \$103,000,000. In the event a company
34 provides premium reductions or credits which in the aggregate exceed
35 the company's total premium tax obligation for the calendar year, the
36 excess shall be applied as a carry forward tax credit for the following
37 year, to be applied to the tax otherwise due under this section.

38 (cf: P.L.1989, c.81, s.1)

39

40 32. (New section) The commissioner may promulgate rules and
41 regulations in accordance with the provisions of the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to
43 effectuate the provisions of this act, however, the lack of such
44 regulations shall not delay the effective date of any provision of this
45 act.

1 33. Sections 26 and 27 of P.L.1998, c.21 (C.17:29A-48 and 49)
2 and sections 25 through 33 of P.L.1990, c.8 (C.17:33B-13 through
3 21) are repealed effective January 1, 2006.

4
5 34. (New section) Sections 1 through 4 and 15 through 33 shall
6 take effect immediately and sections 5 through 14 of this act shall take
7 effect January 1, 2006.

8
9
10 STATEMENT

11
12 This bill, the "New Jersey Automobile Insurance Competition and
13 Choice Act," seeks to move New Jersey toward a competitive
14 automobile insurance market over a period of four years. Because
15 numerous automobile insurers have ceased doing business in this State
16 in recent years and because many other major insurers refuse to do
17 business in New Jersey, the bill establishes a modernized regulatory
18 system that encourages competition among automobile insurers in
19 order to better serve the needs and interests of consumers.

20 For the transition period, from the time that the bill is enacted until
21 December 31, 2006, there is established a 13-member Commission for
22 the Advancement of Insurance Competition to: assist the
23 Commissioner of Banking and Insurance in identifying barriers to
24 automobile insurers doing business in this State; develop activities
25 necessary to encourage competition among insurers; and recommend
26 ways to facilitate competition and inform consumers.

27 During the four year transition period, the bill provides that
28 automobile insurers may file for up to a 10% rate increase 60 days in
29 advance. After the expiration of the 60-day period, the commissioner
30 may disapprove the rate on a prospective basis only, provided an
31 administrative law judge has determined that the rate filing would
32 produce rates that are excessive, inadequate for the safety and
33 soundness of the insurer, or unfairly discriminatory between risks in
34 this State involving substantially the same hazards and expense
35 elements.

36 Thereafter, the bill establishes a modernized and competitive
37 procedure which promotes price competition among automobile
38 insurers; protects policyholders and the public against adverse effects
39 of excessive, inadequate or unfairly discriminatory rates; and provides
40 necessary regulatory authority in the absence of a competitive
41 marketplace.

42 The bill provides that a competitive automobile insurance market is
43 presumed to exist unless the commissioner determines that a
44 reasonable degree of competition does not exist within the market and
45 issues a ruling to that effect. As provided in the bill, in a competitive
46 market, every automobile insurer shall file all rates and supplementary

1 materials to be used in this State no later than 30 days after the
2 effective date of the rate. The commissioner may disapprove a
3 competitive market rate only upon a finding that the rate is inadequate
4 or unfairly discriminatory. In a non-competitive market, any filing that
5 results in an overall increase of more than 10% in any 12-month period
6 must receive the prior approval of the commissioner.

7 The bill provides that automobile insurers shall file revised
8 territorial rating plans by January 1, 2003 regardless of whether the
9 commissioner has issued regulations outlining criteria for new
10 territorial maps. In addition, the current base rate cap for each
11 coverage is increased from 2.5% to 3.5%, during the four year
12 transition period, until competitive rating becomes effective.

13 Under the bill, the "take-all-comers" provisions enacted in 1990 are
14 phased out by January 1, 2006, and are replaced by barring automobile
15 insurance declinations on the basis of race, color, creed, national
16 origin, age, gender marital status or sexual orientation. During the
17 transition period, an insurer may review the prior five years of driver
18 accident and motor vehicle violation history to determine eligibility for
19 automobile insurance in the voluntary market. In addition, if an
20 insurer increases by 3% in a particular territory its total number of
21 insured private passenger automobiles, the insurer is relieved from the
22 "take-all-comers" provisions, unless the insurer's annual increase goes
23 below 2.5%. Other provisions of the bill provide that an insurer may
24 not be relieved of its "take all comers" obligations if the residual
25 market mechanism reaches its maximum level of 10% of the market,
26 in which case, an insurer would be required to increase its total
27 number of insured private passenger automobiles in a particular
28 territory by 5% before being relieved of that obligation.

29 The bill revises certain provisions pertaining to excess profits for
30 automobile insurers by establishing that excess profits shall only be
31 calculated if profits for the New Jersey automobile insurance market
32 exceed the industry's national average by 2.5% of earned premiums for
33 the prior three-year period.

34 The bill also removes certain restrictions with respect to the
35 withdrawal of automobile insurers from the State. Rather than
36 requiring the prior approval of the commissioner and the surrender of
37 other licenses if an insurer pursues a withdrawal from doing business
38 in this State, the bill provides for the informational filing of a plan of
39 withdrawal by an insurer, timely notification to policyholders, and the
40 ability to transfer its automobile insurance business to a replacement
41 insurer so long as that insurer is in a financial position to assume that
42 book of business.

43 Finally, the bill allows for a premium tax credit beginning in tax-
44 year 2005 to automobile insurers that write policies in certain
45 territories, provided, however, that the insurer has reduced premiums
46 to policyholders in that territory by an amount equivalent to the tax

1 credit.