

§1 - C.17:30A-2.1
§6 - C.17:30A-6.1
§7 - C.39:6-64c
§35 - C.39:6-86.7
§§43,44 -
C.17:29A-52
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§45 - C.39:6A-3.3
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C.2C:21-4.4 to
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§85 - Repealer
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sections

(Corrected Copy)

P.L. 2003, CHAPTER 89, *approved June 9, 2003*

Senate Committee Substitute for

Senate, No. 63

1 **AN ACT** concerning automobile insurance and revising parts of the
2 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) With respect to sections 2 through 34 of this
8 act, the Legislature finds and declares that:

9 a. The Unsatisfied Claim and Judgment Fund, created pursuant to
10 P.L.1952, c.174 (C.39:6-61 et seq.) currently serves a dual purpose:
11 its original intent to pay the claims of victims of hit and run or
12 uninsured motor vehicle accidents in certain circumstances, and a
13 subsequent objective to reimburse private passenger automobile
14 insurers when medical expense benefits payments exceed \$75,000 per
15 person per accident.

16 b. When the Unsatisfied Claim and Judgment Fund was charged
17 with reimbursing an insurer for medical expense benefits in excess of
18 \$75,000 per person per accident, the amount of medical expense
19 benefits provided on a per person, per accident basis was unlimited.
20 However, insurers are required at present to provide medical expense
21 benefits only up to \$250,000 per person per accident. Prospective
22 elimination of the reimbursement function of the Unsatisfied Claim and
23 Judgment Fund for medical expense benefits in excess of \$75,000 per
24 person for an injury suffered in an accident covered by a policy issued
25 or renewed on or after January 1, 2004 is deemed appropriate.
26 Insurers would continue to be reimbursed for medical benefits in
27 excess of \$75,000 per person per accident for injuries suffered in
28 accidents covered by policies issued or renewed prior to January 1,
29 2004.

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

Matter underlined thus is new matter.

1 c. Since all motor vehicle liability policies issued in this State,
2 except basic automobile insurance policies, include coverage for the
3 payment of all or part of the sums which a person insured thereunder
4 shall be legally entitled to recover as compensatory damages from
5 owners or operators of uninsured motor vehicles (other than hit and
6 run motor vehicles), the number of third party claims made against the
7 Unsatisfied Claim and Judgment Fund is not substantial. It would be
8 more efficient to have these claims administered by the New Jersey
9 Property-Liability Insurance Guaranty Association, established
10 pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.).

11 d. The New Jersey Automobile Full Insurance Underwriting
12 Association, created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.)
13 and the Market Transition Facility, created pursuant to section 88 of
14 P.L.1990, c.8 (C.17:33B-11) have both ceased issuing private
15 passenger automobile insurance policies and are currently in run off,
16 operating only to process the remaining claims against them.
17 Currently, the funding for the claims payment and other operational
18 activities of the New Jersey Automobile Full Insurance Underwriting
19 Association and the Market Transition Facility is primarily provided
20 by the New Jersey Automobile Insurance Guaranty Fund, created
21 pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5). However,
22 existing statutes do not state how the consolidation or runoff
23 operations of these entities will be handled. Administrative and
24 operational efficiencies would result from consolidating these entities
25 and transferring the claims handling and other administrative duties of
26 these entities to the New Jersey Property-Liability Insurance Guaranty
27 Association.

28 e. Based upon recent financial and actuarial analysis, it is
29 anticipated that the value of all residual New Jersey Automobile Full
30 Insurance Underwriting Association and Market Transition Facility
31 assets, including the balances in the New Jersey Automobile Insurance
32 Guaranty Fund, to be transferred to the New Jersey Property-Liability
33 Insurance Guaranty Association will be adequate to allow the
34 association to discharge all remaining obligations of the New Jersey
35 Automobile Full Insurance Underwriting Association and Market
36 Transition Facility which are now to be administered by the
37 association. Since no asset shortfall is projected, no additional
38 assessment or other revenue generating powers are being conferred
39 upon the association at this time with respect to such remaining
40 obligations.

41 f. It is in the public interest to authorize the transfer and
42 consolidation of compatible operations of the Unsatisfied Claim and
43 Judgment Fund, the New Jersey Automobile Full Insurance
44 Underwriting Association, and the Market Transition Facility to the
45 New Jersey Property-Liability Insurance Guaranty Association.

46 g. Following transfer to the New Jersey Property-Liability

1 Insurance Guaranty Association by the Unsatisfied Claim and
2 Judgment Fund of all its management, administrative and claim
3 functions, the Unsatisfied Claim and Judgment Fund shall continue to
4 exist as a separate legal entity subject to the provisions of P.L. ,
5 c. (C.)(now before the Legislature as this bill).

6 h. The New Jersey Property-Liability Insurance Guaranty
7 Association will run off the remaining policyholder claim obligations
8 of the New Jersey Automobile Full Insurance Underwriting
9 Association and Market Transition Facility. The New Jersey Property-
10 Liability Insurance Guaranty Association will also run off the
11 obligations of the Unsatisfied Claim and Judgment Fund pursuant to
12 section 2 of P.L.1977, c.310 (C.39:6-73.1) and take over all
13 governance, administrative and financial functions of the Unsatisfied
14 Claim and Judgment Fund, including the claim payment function.

15 i. As part of the consolidation being accomplished by P.L. ,
16 c. (C.)(now before the Legislature as this bill), the New Jersey
17 Property-Liability Insurance Guaranty Association is formally
18 designated as a servicing facility for several statutory entities for which
19 it currently provides administrative services and also for the
20 Unsatisfied Claim and Judgment Fund which, pursuant to P.L. ,
21 c. (C.)(now before the Legislature as this bill), is transferring
22 specified functions to the New Jersey Property-Liability Insurance
23 Guaranty Association. The association is also authorized to serve,
24 either by designation or by contract, as a servicing facility for other
25 entities which may be recommended by the association's board of
26 directors and approved by the commissioner.

27 j. This act is not intended to abrogate in any way the settlement
28 agreement entered into by the State and member insurers of the
29 Market Transition Facility in June, 1994.

30

31 2. Section 2 of P.L.1974, c.17 (C.17:30A-2) is amended to read
32 as follows:

33 2. a. The purpose of this act is to provide a mechanism for the
34 payment of covered claims under certain insurance policies, to avoid
35 excessive delay in payment, to avoid financial loss to claimants or
36 policyholders because of the insolvency of an insurer, to assist in the
37 detection and prevention of insurer insolvencies, [and] to provide an
38 association to assess the cost of such protection among insurers, and
39 to provide a mechanism to run off, manage, administer and pay claims
40 asserted against the Unsatisfied Claim and Judgment Fund, created
41 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey
42 Automobile Full Insurance Underwriting Association, created pursuant
43 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition
44 Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-
45 11).

46 b. This act shall apply to all kinds of direct insurance, except life

1 insurance, accident and health insurance, workers' compensation
2 insurance, title insurance, annuities, surety bonds, credit insurance,
3 mortgage guaranty insurance, municipal bond coverage, fidelity
4 insurance, investment return assurance, ocean marine insurance[,] and
5 pet health insurance[, and insurance provided by the Motor Vehicle
6 Liability Security Fund, established pursuant to P.L.1952, c.175
7 (C.39:6-92 et seq.), until funds comprising said fund are declared
8 exhausted by the commissioner].

9 (cf: P.L.1987, c.377, s.4)

10

11 3. Section 6 of P.L.1974, c.17 (C.17:30A-6) is amended to read
12 as follows:

13 6. There is created a private, nonprofit, unincorporated, legal
14 entity to be known as the New Jersey Property-Liability Insurance
15 Guaranty Association. All insurers defined as member insurers in
16 subsection 5 f. shall be and remain members of the association as a
17 condition of their authority to transact insurance in this State. The
18 association shall perform its functions under a plan of operation
19 established and approved under section 9 and shall exercise its powers
20 through a board of directors established under section 7.

21 The association is also authorized and shall have all of the powers
22 necessary and appropriate for the management and administration of
23 the affairs of the New Jersey Surplus Lines Insurance Guaranty Fund,
24 in accordance with the provisions of the "New Jersey Surplus Lines
25 Insurance Guaranty Fund Act," P.L.1984, c.101 (C.17:22-6.70 et
26 seq.).

27 The association is also authorized and shall have all of the powers
28 necessary and appropriate for the management and administration of
29 the affairs of, and the payment of valid claims asserted against: the
30 Unsatisfied Claim and Judgment Fund, created pursuant to the
31 provisions of P.L.1952, c.174 (C.39:6-61 et seq.); the New Jersey
32 Automobile Full Insurance Underwriting Association, created pursuant
33 to the provisions of P.L.1983, c.65 (C.17:30E-1 et seq.); and the
34 Market Transition Facility created pursuant to the provisions of
35 section 88 of P.L.1990, c.8 (C.17:33B-11).

36 (cf: P.L.1984, c.101, s.15)

37

38 4. Section 8 of P.L.1974, c.17 (C.17:30A-8) is amended to read
39 as follows:

40 8. a. The association shall:

41 (1) Be obligated to the extent of the covered claims against an
42 insolvent insurer incurred, in the case of private passenger automobile
43 insurance, prior to or after the determination of insolvency, but before
44 the policy expiration date or the date upon which the insured replaces
45 the policy or causes its cancellation, or in the case of insurance other
46 than private passenger automobile insurance, covered claims against

1 such insolvent insurer incurred prior to or 90 days after the
2 determination of insolvency, or before the policy expiration date if less
3 than 90 days after said determination, or before the insured replaces
4 the policy or causes its cancellation, if he does so within 90 days of the
5 determination, but such obligation shall include only that amount of
6 each covered claim which is less than \$300,000.00 and subject to any
7 applicable deductible contained in the policy, except that the
8 \$300,000.00 limitation shall not apply to a covered claim arising out
9 of insurance coverage mandated by section 4 of P.L.1972, c.70
10 (C.39:6A-4). In the case of benefits payable under subsection a. of
11 section 4 of P.L.1972, c.70 (C.39:6A-4), the association shall be liable
12 for payment of benefits in an amount not to exceed ~~[\$75,000.00]~~ the
13 amount set forth in section 4 of P.L.1972, c.70 (C.39:6A-4).
14 **[Benefits paid in excess of such amount shall be recoverable by the**
15 **association from the Unsatisfied Claim and Judgment Fund pursuant**
16 **to the provisions of section 2 of P.L.1977, c.310 (C.39:6-73.1).]** In
17 no event shall the association be obligated to a policyholder or
18 claimant in an amount in excess of the limits of liability stated in the
19 policy of the insolvent insurer from which the claim arises;

20 (2) Be deemed the insurer to the extent of its obligation on the
21 covered claims and to such extent shall have all rights, duties, and
22 obligations of the insolvent insurer as if the insurer had not become
23 insolvent;

24 (3) Assess member insurers in amounts necessary to pay:

25 (a) The ~~[obligation]~~ obligations of the association under
26 ~~[paragraph]~~ paragraphs (1) ~~and (11)~~ of this subsection;

27 (b) The expenses of handling covered claims;

28 (c) The cost of examinations under section 13; and

29 (d) Other expenses authorized by this act, excluding expenses
30 incurred by the association pursuant to paragraphs (9) and (10) of this
31 subsection.

32 The assessments of each member insurer shall be in the proportion
33 that the net direct written premiums of the member insurer for the
34 calendar year preceding the assessment bears to the net direct written
35 premiums of all member insurers for the calendar year preceding the
36 assessment.

37 Each member insurer shall be notified of the assessment not later
38 than 30 days before it is due. No member insurer of the association
39 may be assessed pursuant to this paragraph (3) in any year in an
40 amount greater than 2% of that member insurer's net direct written
41 premiums for the calendar year preceding the assessment with regard
42 to the association's obligation to pay covered claims and related
43 expenses arising under coverages issued by insolvent insurers pursuant
44 to P.L.1974, c.17 (C.17:30A-1 et seq.).

45 The association may, subject to the approval of the commissioner,
46 exempt, abate or defer, in whole or in part, the assessment of any

1 member insurer, if the assessment would cause the member insurer's
2 financial statement to reflect amounts of capital or surplus less than
3 the minimum amounts required for a certificate of authority by any
4 jurisdiction in which the member insurer is authorized to transact
5 insurance. In the event an assessment against a member insurer is
6 exempted, abated, or deferred, in whole or in part, because of the
7 limitations set forth in this section, the amount by which such
8 assessment is exempted, abated, or deferred shall be assessed against
9 the other member insurers in a manner consistent with the basis for
10 assessments set forth in this section. If the maximum assessment,
11 together with the other assets of the association, does not provide in
12 any one year an amount sufficient to carry out the responsibilities of
13 the association, the necessary additional funds shall be assessed as
14 soon thereafter as it is permitted by this act. Each member insurer
15 serving as a servicing facility may set off against any assessment,
16 authorized payments made on covered claims and expenses incurred
17 in the payment of such claims by such member insurer;

18 (4) Investigate claims brought against the association and adjust,
19 compromise, settle, and pay covered claims to the extent of the
20 association's obligation and deny all other claims and may review
21 settlements, releases and judgments to which the insolvent insurer or
22 its insureds were parties to determine the extent to which such
23 settlements, releases and judgments may be properly contested;

24 (5) Notify such persons as the commissioner directs under
25 paragraph (1) of subsection b. of section 10 of P.L.1974, c.17
26 (C.17:30A-10);

27 (6) Handle claims through its employees or through one or more
28 insurers or other persons designated as servicing facilities. Designation
29 of a servicing facility is subject to the approval of the commissioner,
30 but such designation may be declined by a member insurer. The
31 association is designated as a servicing facility for the administration
32 of claim obligations of: (a) the New Jersey Surplus Lines Insurance
33 Guaranty Fund; (b) the New Jersey Medical Malpractice Reinsurance
34 Association; and (c) the Unsatisfied Claim and Judgment Fund. The
35 association may also be designated or may contract as a servicing
36 facility for any other entity which may be recommended by the
37 association's board of directors and approved by the commissioner;

38 (7) Reimburse each servicing facility for obligations of the
39 association paid by the facility and for expenses incurred by the facility
40 while handling claims on behalf of the association and shall pay the
41 other expenses of the association authorized by this act;

42 (8) Make loans to the New Jersey Surplus Lines Insurance
43 Guaranty Fund [in accordance with the provisions of the "New Jersey
44 Surplus Lines Insurance Guaranty Fund Act," P.L.1984, c.101
45 (C.17:22-6.70 et al.)] and the Unsatisfied Claim and Judgment Fund
46 is such amounts and on such terms as the board of directors may

1 determine are necessary or appropriate to effectuate the purposes of
2 P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) in
3 accordance with the plan of operation; provided, however, no such
4 loan transaction shall be authorized to the extent the federal tax
5 exemption of the association would be withdrawn or the association
6 would otherwise incur any federal tax or penalty as a result of such
7 transaction;

8 (9) Assess member insurers in amounts necessary to make loans
9 pursuant to paragraph (10) of this subsection. The estimated
10 assessments of each member insurer shall be in the proportion that the
11 net direct written premiums of the member insurer for the calendar
12 year preceding the assessment bears to the net direct written premiums
13 of all member insurers for the calendar year preceding the assessment
14 with actual assessments adjusted in the succeeding year based on the
15 proportion that the assessed member insurer's net direct written
16 premiums in the year of assessment bears to the net direct written
17 premiums of all member insurers for that year.

18 (a) For the purposes of this paragraph, "net direct written
19 premiums" shall not include medical malpractice liability insurance
20 premiums paid to member insurers to which an additional charge has
21 been applied for deposit in the New Jersey Medical Malpractice
22 Reinsurance Recovery Fund as provided in the "Medical Malpractice
23 Liability Insurance Act," P.L.1975, c.301 (C.17:30D-1 et seq.) and the
24 regulations promulgated pursuant thereto.

25 (b) In the event that the commissioner certifies that loans in
26 amounts less than \$160 million per calendar year as provided in
27 paragraph (10) of this subsection will satisfy the current and
28 anticipated financial obligations of the Market Transition Facility,
29 without reference to the amount of funds remaining from the sale of
30 the Market Transition Facility Senior Lien Revenue Bonds, a member
31 insurer, and all of its affiliates as defined in subsection a. of section 1
32 of P.L.1970, c.22 (C.17:27A-1), shall be subject to a reduced
33 assessment pursuant to this paragraph if the member insurer and all
34 such affiliates: (i) did not issue or renew a policy of private passenger
35 automobile insurance in this State on or after January 1, 1973; (ii)
36 were not assessed as members of the Market Transition Facility as
37 established by section 88 of P.L.1990, c.8 (C.17:33B-11); and (iii)
38 had not relinquished voluntarily any expectation they may have had for
39 the repayment of loans made pursuant to paragraph (10) of this
40 subsection, as provided by paragraph (2) of subsection b. of section 6
41 of P.L.1983, c.65 (C.17:29A-35), pursuant to any court order or
42 settlement agreement approved by any court of competent jurisdiction,
43 on or before the effective date of this 1995 amendatory act. The
44 reduced assessment of such members shall be equal to their
45 proportionate share of the difference between the amount certified by
46 the commissioner and the total of the assessment of all other insurers

1 subject to such assessment. If the amount of such difference is zero
2 or less, the reduced assessment shall be zero;

3 (10) Make loans in the amount of \$160 million per calendar year,
4 beginning in calendar year 1990, or upon certification by the
5 commissioner, as provided by paragraph (b) of subsection (9) of this
6 section, that lesser amounts will satisfy the current and anticipated
7 financial obligations of the Market Transition Facility, such lesser
8 amounts as may be collected pursuant to paragraph (9) of this
9 subsection, to the New Jersey Automobile Insurance Guaranty Fund
10 created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5), except
11 that no loan shall be made pursuant to this paragraph after December
12 31, 1997. In no event shall member insurers subject to assessments
13 have their financial obligation increased due to reductions granted
14 pursuant to paragraph (9) of this subsection;

15 (11) Reimburse an insurer for medical expense benefits in excess
16 of \$75,000 per person per accident as provided in section 2 of
17 P.L.1977, c.310 (C.39:6-73.1) for injuries covered under an
18 automobile insurance policy issued prior to January 1, 2004;

19 (12) Undertake all of the management, administrative, and claims
20 activities of the Unsatisfied Claim and Judgment Fund, created
21 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), the New Jersey
22 Automobile Full Insurance Underwriting Association, created pursuant
23 to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market Transition
24 Facility, created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-
25 11).

26 b. The association may:

27 (1) Employ or retain such persons as are necessary to handle
28 claims and perform such other duties of the association;

29 (2) Borrow and separately account for funds from any source,
30 including, but not limited to, the New Jersey Surplus Lines Insurance
31 Guaranty Fund and the Unsatisfied Claim and Judgment Fund, in such
32 amounts and on such terms, as the board of directors may determine
33 are necessary or appropriate to effectuate the purpose of this act in
34 accordance with the plan of operation; provided, however, no such
35 borrowing transaction shall be authorized to the extent the federal tax
36 exemption of the association would be withdrawn or the association
37 would otherwise incur any federal tax or penalty as a result of such
38 transaction;

39 (3) Sue or be sued;

40 (4) Negotiate and become a party to such contracts as are
41 necessary to carry out the purpose of this act;

42 (5) Perform such other acts as are necessary or proper to
43 effectuate the purpose of this act;

44 (6) Refund to the member insurers in proportion of the
45 contribution of each member insurer that amount by which the assets
46 exceed the liabilities if, at the end of any calendar year, the board of

1 directors finds that the assets of the association exceed the liabilities,
2 as estimated by the board of directors for the coming year.

3 (cf: P.L.1995, c.396, s.1)

4

5 5. Section 9 of P.L.1974, c.17 (C.17:30A-9) is amended to read
6 as follows:

7 9. a. (1) The association shall submit to the commissioner a plan
8 of operation and any amendments thereto necessary or suitable to
9 assure the fair, reasonable, and equitable administration of the
10 association. The plan of operation and any amendments thereto shall
11 become effective upon approval in writing by the commissioner;

12 (2) If the association fails to submit a plan of operation acceptable
13 to the commissioner within 90 days following the effective date of this
14 act, or if at any time thereafter the association fails to submit an
15 acceptable amendment to the plan, the commissioner shall, after
16 notice and hearing adopt and promulgate such reasonable rules as are
17 necessary or advisable to effectuate the provisions of this act. Such
18 rules shall continue in force until modified by the commissioner or
19 superseded by a plan submitted by the association and approved by
20 the commissioner.

21 b. All member insurers shall comply with the plan of operation.

22 c. The plan of operation shall:

23 (1) Establish the procedures whereby all the powers and duties of
24 the association under section 8 of this act will be performed;

25 (2) Establish procedures for handling assets of the association;

26 (3) Establish the amount and method of reimbursing members of
27 the board of directors under section 7 of this act;

28 (4) Establish procedures by which claims may be filed with the
29 association and establish acceptable forms of proof of covered claims.
30 Notice of claims to the receiver or liquidator of the insolvent insurer
31 shall be deemed notice to the association or its agent and a list of such
32 claims shall be periodically submitted to the association by the receiver
33 or liquidator;

34 (5) Establish regular places and times for meetings of the board of
35 directors;

36 (6) Establish procedures for records to be kept in all financial
37 transactions of the association, its agents, and the board of directors;

38 (7) Provide that any member insurer aggrieved by any final action
39 or decision of the association may appeal to the commissioner within
40 30 days after the action or decision;

41 (8) Establish the procedures whereby selections for the board of
42 directors will be submitted to the commissioner;

43 (9) Contain additional provisions necessary or proper for the
44 execution of the powers and duties of the association;

45 (10) Establish procedures for the transition and consolidation of
46 compatible functions of the Unsatisfied Claim and Judgment Fund, the

1 New Jersey Automobile Full Insurance Underwriting Association and
2 the Market Transition Facility in order to eliminate redundant
3 operational activities and promote greater efficiencies in claims
4 handling and other operations:

5 (11) Establish procedures as necessary or proper to finance the
6 operation of and account for receipts and disbursements as well as
7 other financial transactions involving the Unsatisfied Claim and
8 Judgment Fund, the New Jersey Automobile Full Insurance
9 Underwriting Association and the Market Transition Facility:

10 (12) Create such advisory boards as necessary or proper to assist
11 in the administration and management of the operations of the
12 Unsatisfied Claim and Judgment Fund.

13 d. The plan of operation may provide that any or all powers and
14 duties of the association except those under sections 8a.(3) and 8b.(2),
15 are delegated to a corporation, association, or other organization
16 which performs or will perform functions similar to those of this
17 association, or its equivalent. Such a corporation, association or
18 organization shall be reimbursed as a servicing facility would be
19 reimbursed and shall be paid for its performance of the functions of
20 the association. A delegation under this subsection shall take effect
21 only with the approval of both the board of directors and the
22 commissioner, and may be made only to a corporation, association, or
23 organization which extends protection not substantially less favorable
24 and effective than that provided by this act.

25 (cf: P.L.1974, c.17, s. 9)

26

27 6. (New section) a. Notwithstanding the provisions of any other
28 law to the contrary, all of the functions, powers and duties of the New
29 Jersey Automobile Full Insurance Underwriting Association, created
30 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market
31 Transition Facility, created pursuant to section 88 of P.L.1990, c.8
32 (C.17:33B-11), shall be transferred to the New Jersey Property-
33 Liability Insurance Guaranty Association, established pursuant to
34 P.L.1974, c.17 (C.17:30A-1 et seq.).

35 b. Notwithstanding the provisions of any other law to the
36 contrary, the commissioner shall provide for the liquidation of the
37 policyholder liabilities and an orderly transfer and transition of the
38 operations, functions, powers and duties, including all the remaining
39 assets and policyholder liabilities of the New Jersey Automobile Full
40 Insurance Underwriting Association, created pursuant to P.L.1983,
41 c.65 (C.17:30E-1 et seq.), and the Market Transition Facility, created
42 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), to the New
43 Jersey Property-Liability Insurance Guaranty Association.

44 c. Notwithstanding the provisions of any other law to the
45 contrary, all balances in the New Jersey Automobile Insurance
46 Guaranty Fund created pursuant to section 23 of P.L.1990, c.8

1 (C.17:33B-5) are hereby transferred to the New Jersey Property-
2 Liability Insurance Guaranty Association.

3 d. Notwithstanding any other law to the contrary, the
4 commissioner may in his discretion provide for the liquidation of the
5 liabilities and an orderly transition of the operations, functions, powers
6 and duties of the Unsatisfied Claim and Judgment Fund, created
7 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.) regarding its
8 obligations pursuant to section 2 of P.L.1977, c.310 (C.39:6-73.1) to
9 the New Jersey Property-Liability Insurance Guaranty Association.

10 e. Notwithstanding any other law to the contrary, the
11 commissioner may in his discretion by order determine when the status
12 as separate legal entities of the New Jersey Automobile Full Insurance
13 Underwriting Association and the Market Transition Facility may be
14 terminated.

15

16 7. (New section) The Unsatisfied Claim and Judgment Fund
17 Board in the Department of Banking and Insurance, established
18 pursuant to P.L.1952, c.174 (C.39:6-61 et seq.), is hereby abolished
19 and all its functions, powers and duties, along with the Unsatisfied
20 Claim and Judgment Fund, including all its assets, liabilities and
21 balances, are transferred from the Department of Banking and
22 Insurance to the New Jersey Property-Liability Insurance Guaranty
23 Association, established pursuant to P.L.1974, c.17 (C.17:30A-1 et
24 seq.). Wherever in any law, rule or regulation, reference is made to
25 the Unsatisfied Claim and Judgment Fund Board, the same shall mean
26 and refer to the New Jersey Property-Liability Insurance Guaranty
27 Association.

28

29 8. Section 2 of P.L.1954, c.174 (C.39:6-62) is amended to read
30 as follows:

31 2. Definitions. As used in this act:

32 ["Executive director" means the official designated by and serving
33 at the pleasure of the commissioner to administer to and be in charge
34 of the Unsatisfied Claim and Judgment Fund and who shall be
35 responsible to the Unsatisfied Claim and Judgment Fund Board.

36 "Treasurer" means the State Treasurer of New Jersey acting as the
37 custodian of the Unsatisfied Claim and Judgment Fund.]

38 "Association" means the New Jersey Property-Liability Insurance
39 Guaranty Association created pursuant to P.L.1974, c.17 (C.17:30A-1
40 et seq.).

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

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

45 ["Unsatisfied Claim and Judgment Fund Board" or "Board" means
46 the board created in section 4 of this act.]

1 "Qualified person" means a resident of this State or the owner of
2 a motor vehicle registered in this State or a resident of another state,
3 territory, or federal district of the United States or province of Canada
4 or of a foreign country, in which recourse is afforded, to residents of
5 this State, of substantially similar character to that provided for by this
6 act; provided, however, that no person shall be a qualified person
7 where such person is an insured under a policy provision providing
8 coverage for damages sustained by the insured as a result of the
9 operation of an uninsured motor vehicle in a form authorized to be
10 included in automobile liability policies of insurance delivered or
11 issued for delivery in this State, pursuant to the provisions of, or any
12 supplement to, chapter 28 of Title 17 of the Revised Statutes or in a
13 form substantially similar thereto.

14 "Uninsured motor vehicle" means a motor vehicle as to which there
15 is not in force a liability policy meeting the requirements of section 3
16 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,
17 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
18 of a certificate of self-insurance under said law, but shall not include
19 a motor vehicle with a policy in force which is insured pursuant to
20 section 4 of P.L.1998, c.21 (C.39:6A-3.1).

21 "Person" includes natural persons, firms, copartnerships,
22 associations and corporations.

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

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

31 ["Registration license year" means the period beginning June 1,
32 1956, and ending May 31, 1957, and each subsequent 12-month
33 period, beginning June 1 and ending the following May 31.]

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

35

36 9. Section 3 of P.L.1952, c.174 (C. 39:6-63) is amended to read
37 as follows:

38 3. For the purpose of creating and maintaining the fund:

39 (a) (Deleted by amendment, P.L.1968, c.323, s.3.)

40 (b) (Deleted by amendment, P.L.1968, c.323, s.3.)

41 (c) (Deleted by amendment, P.L.1968, c.323, s.3.)

42 (d) [On December 30 in each year, the commissioner shall
43 calculate the probable amount which will be needed to carry out the
44 provisions of this act during the ensuing registration license year. In
45 such calculation, he shall take into consideration the amount presently
46 reserved for pending claims, anticipated payments from the fund

1 during said year, anticipated payments from the fund for medical
2 expenses to be made pursuant to section 2 of P.L.1977, c.310
3 (C.39:6-73.1), during the two years after said year, anticipated
4 amounts to be reserved for claims pending during said year, amounts
5 transferred to the Division of Motor Vehicles pursuant to section 28
6 of P.L.1952, c.174 (C.39:6-88) and the desirability of maintaining a
7 surplus over and above such anticipated payments and present and
8 anticipated reserves, such surplus not to exceed the amount actually
9 paid from the fund during the 12 full calendar months immediately
10 preceding the date of calculation. Such probable amount which will
11 be needed to carry out the provisions of this act shall be assessed
12 against insurers for such year's contributions to the fund. Such
13 probable amount needed shall be initially apportioned on an estimated
14 basis among such insurers in the proportion that the net direct written
15 premiums of each bear to the aggregate net direct written premiums
16 of all insurers, including the New Jersey Automobile Full Insurance
17 Underwriting Association, created pursuant to P.L.1983, c.65
18 (C.17:30E-1 et seq.), and the Market Transition Facility created
19 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), during the
20 preceding calendar year as shown by the records of the commissioner
21 as an estimate. Each insurer shall pay the sum so assessed to the
22 treasurer on or before March 31, next following. Such estimated sum
23 shall be subject to adjustment on March 31 next following payment
24 based upon the proportion that the net direct written premiums of each
25 insurer bear to the aggregate net direct written premiums of all
26 insurers, including the New Jersey Automobile Full Insurance
27 Underwriting Association created pursuant to P.L.1983, c.65
28 (C.17:30E-1 et seq.), and the Market Transition Facility created
29 pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), during the
30 year the estimated assessment was paid as shown by the records of the
31 commissioner.] Commencing on or before December 30, 2003, and on
32 or before December 30 in each year thereafter, the association shall
33 calculate the probable amount which will be needed to carry out its
34 responsibilities under section 35 of P.L. , c. (C.)(now before
35 the Legislature as this bill), section 9 of P.L.1952, c.174 (C.39:6-69)
36 and section 7 of P.L.1972, c.198 (C.39:6-86.1) during the ensuing
37 year. In that calculation, the association shall take into consideration
38 the amount presently reserved for pending claims, anticipated
39 payments from the fund during that year and during the two years after
40 that year, anticipated amounts to be reserved for claims pending during
41 that year, and the desirability of maintaining a surplus over and above
42 those anticipated payments and present and anticipated reserves, which
43 surplus shall not exceed the amount actually paid from the fund during
44 the 12 full calendar months immediately preceding the date of
45 calculation. The probable amount needed to carry out the provisions
46 of this section shall be assessed against insurers for that year's

1 contribution to the fund.

2 (e) [Whenever any of the provisions of this act concerning the
3 method and sources of assessments on insurers, including the New
4 Jersey Automobile Full Insurance Underwriting Association, created
5 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.), and the Market
6 Transition Facility created pursuant to section 88 of P.L.1990, c.8
7 (C.17:33B-11), the maximum amounts payable from the fund,
8 eligibility or qualifications of claimants, or amounts to be deducted
9 from payments made from the fund are amended by law, between
10 January 1 and April 30 in any year, the commissioner may, if he deems
11 it necessary, rescind any assessment on insurers, including the New
12 Jersey Automobile Full Insurance Underwriting Association, created
13 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) and the Market
14 Transition Facility created pursuant to section 88 of P.L.1990, c.8
15 (C.17:33B-11), made on December 30 of the preceding year. He shall
16 then, within 15 days of the adoption of such amendment, recalculate
17 the probable amount which will be needed to carry out the provisions
18 of this act during the ensuing registration license year, in accordance
19 with the provisions of subsection (d) of this section. If, in his
20 judgment, the estimated balance of the fund at the beginning of the
21 next registration license year will be insufficient to meet such needs,
22 he shall determine the contributions of insurers, if any, in accordance
23 with the provisions of subsection (d) of this section. In the event of
24 a rescission and reassessment subsequent to March 1 in any year,
25 insurers shall pay the sum so assessed, if any, to the treasurer within
26 90 days of the date of such assessment.] Whenever any of the
27 provisions concerning the method and sources of assessments on
28 insurers, the maximum amounts payable from the fund, eligibility or
29 qualifications of claimants, or amounts to be deducted from payments
30 made from the fund are amended by law, the association may, if the
31 association deems it necessary, rescind any assessment on insurers.
32 The association shall then, within 30 days of the adoption of such
33 amendment, recalculate the probable amount which will be needed to
34 carry out the provisions of P.L. , c. (C.) (now before the
35 Legislature as this bill) during the ensuing fiscal year, in accordance
36 with the provisions of subsection (d) of this section. If, in the
37 judgment of the association, the estimated balance of the fund at the
38 beginning of the next year will be sufficient to meet those needs, the
39 association shall determine the contributions of insurers, if any, in
40 accordance with the provisions of subsection (d) of this section.

41 (cf: P.L.1990, c.8, s.85)

42

43 10. Section 18 of P.L.1955, c.1 (C.39:6-64.1) is amended to read
44 as follows:

45 18. a. The [board] association may from time to time, adopt[,]
46 and amend [and enforce all reasonable rules and regulations] a plan

1 of operation, subject to the approval of the commissioner, necessary
2 or desirable [in its opinion] in connection with its functions, duties
3 and responsibilities in administering this act.

4 [Notwithstanding the provisions of P.L.1944, c.20 (C.52:17A-1 et
5 seq.), the board, with the approval of the Attorney General, shall have
6 the power to engage the services of such attorneys and other persons
7 as may be deemed necessary or desirable for the purpose of suing for,
8 enforcing, collecting and taking any other action for the collection of
9 moneys due to the commissioner or treasurer on any right, claim,
10 agreement, judgment, assignment and other obligation arising out of
11 the application of this act. After repayment to the commissioner or
12 treasurer of all sums paid from the fund and all moneys due to the
13 commissioner and treasurer on any one claim, agreement, judgment,
14 assignment or other obligation, the commissioner or treasurer may
15 assign to the original claimant, judgment creditor or other person
16 entitled thereto all of the right, title and interest that the commissioner
17 or treasurer has in and to the balance due upon such obligation. Any
18 attorney so engaged shall not be deemed an employee of the board or
19 the State of New Jersey, shall not be subject to the Civil Service laws
20 as contained in Title 11 of the Revised Statutes of New Jersey and
21 shall not have any right to continued employment in such capacity.
22 The compensation of an attorney so engaged for services so rendered
23 shall be deemed an expense of the board under section 4 of the act and
24 shall be paid out of the moneys recovered on the obligation in
25 connection with which the services were rendered, upon such terms as
26 may be authorized by the board with the approval of the Attorney
27 General.] The plan of operation shall provide that the Unsatisfied
28 Claim and Judgment Fund may (1) borrow and separately account for
29 moneys from any source, including, but not limited to, the New Jersey
30 Property-Liability Insurance Guaranty Association and the New Jersey
31 Surplus Lines Insurance Guaranty Fund, in such amounts and on such
32 terms as the board of directors may determine, are necessary or
33 appropriate and (2) make loans, in such amounts and on such terms as
34 the board of directors may determine are necessary or appropriate, to
35 the New Jersey Property-Liability Insurance Guaranty Association and
36 the New Jersey Surplus Lines Insurance Guaranty Fund.

37 b. There shall be no liability on the part of and no cause of action
38 of any nature shall arise against the association, its agents, employees,
39 or the commissioner or his designees for any action taken by them in
40 the performance of their powers and duties under P.L. c. (C.)
41 (now before the Legislature as this bill).

42 (cf: P.L.1985, c.148, s.6)

43
44 11. Section 5 of P.L.1952, c.174 (C.39:6-65) is amended to read
45 as follows:

46 5. Any qualified person, or the personal representative of such

1 person, who suffers damages resulting from bodily injury or death or
2 damage to property arising out of the ownership, maintenance or use
3 of a motor vehicle in this State on or after April 1, 1955, and whose
4 damages may be satisfied in whole or in part from the fund, shall,
5 except in cases in which the claim is asserted by actions brought under
6 section 18 of this act pursuant to section 19 of this act, within [90]
7 180 days after the accident, as a condition precedent to the right
8 thereafter to apply for payment from the fund, give notice to the
9 [board] association, the form and contents of which shall be
10 prescribed by the [board] association, of his intention to make a
11 claim thereon for such damages if otherwise uncollectible; provided,
12 any such qualified person may, in lieu of giving said notice within said
13 time, make proof to the court on the hearing of the application for the
14 payment of a judgment (a) that he was physically incapable of giving
15 said notice within said period and that he gave said notice within [90]
16 180 days after he became physically capable to do so or in the event
17 he did not become so capable, that a notice was given on his behalf
18 within a reasonable period, or (b) that he gave notice to the [board]
19 association within 15 days of receiving notice that an insurer had
20 disclaimed on a policy of insurance so as to remove or withdraw
21 liability insurance coverage for his claim against a person or persons
22 who allegedly caused him to suffer damages. A copy of the complaint
23 shall be furnished to the [board] association if an action has
24 theretofore been brought for the enforcement of such claim. Such
25 person shall also notify the [board] association of any action
26 thereafter instituted for the enforcement of such claim within 15 days
27 after the institution thereof and such notice shall be accompanied by
28 a copy of the complaint.

29 The Director of the Division of Motor Vehicles is hereby
30 authorized and empowered, the provisions of any other law relating to
31 the confidential nature of any reports or information furnished to or
32 filed with the division notwithstanding, to furnish to the [board]
33 association upon its request, for such use, utilization and purposes as
34 the [board] association may deem reasonably appropriate to
35 administer this act and discharge its functions hereunder, any reports
36 or information filed by any person or persons claiming benefits under
37 the provisions of this act, that the director has with regard to any
38 accident, and any operator or owner of a motor vehicle involved in any
39 accident, and as to any automobile or motor vehicle liability insurance
40 or bond carried by an operator or owner of any motor vehicle.

41 (cf: P.L.1985, c.148, s.7)

42

43 12. Section 7 of P.L.1952, c.174 (C.39:6-67) is amended to read
44 as follows:

45 7. The [insurer to whom any action has been assigned]
46 association may through counsel enter an appearance on behalf of the
47 defendant, file a defense, appear at the trial or take such other steps as

1 it may deem appropriate on the behalf and in the name of the
2 defendant, and may thereupon, on the behalf and in the name of the
3 defendant, conduct his defense, take recourse to any appropriate
4 method of review on behalf of, and in the name of, the defendant, and
5 all such acts shall be deemed to be the acts of such defendant;
6 provided, however, that nothing contained herein shall deprive the
7 defendant of the right to also employ his own counsel and defend the
8 action. All expense incurred by [such insurer] the association in
9 connection with any review prosecuted or defended by it from a
10 judgment rendered in such action, including its attorneys' fees in
11 connection therewith, shall be borne by the fund [, and its attorneys'
12 fees in connection therewith, unless agreed to between the board and
13 the attorney, shall be subject to approval by the court].

14 (cf: P.L.1968, c.323, s.4)

15

16 13. Section 8 of P.L.1952, c.174 (C.39:6-68) is amended to read
17 as follows:

18 8. In any case in which [an insurer] the association has assumed
19 under this act, the defense of any action, the defendant shall
20 co-operate with [such insurer] the association in the defense of such
21 action. In the event of his failure to do so, [such insurer] the
22 association may apply to the court for an order directing such
23 co-operation.

24 (cf: P.L.1952, c.174 s.8)

25

26 14. Section 9 of P.L.1952, c.174 (C.39:6-69) is amended to read
27 as follows:

28 9. When any qualified person recovers a valid judgment in any
29 court of competent jurisdiction in this State against any other person,
30 who was the operator or owner of a motor vehicle, for injury to, death
31 of, any person or persons, or a similar valid judgment in such court
32 against such a defendant for an amount in excess of \$500.00, exclusive
33 of interest and costs, for damage to property, except property of
34 others in charge of such operator or owner or such operator's or
35 owner's employees, arising out of the ownership, maintenance or use
36 of the motor vehicle in this State on or after April 1, 1955, and any
37 amount remains unpaid thereon in the case of a judgment for bodily
38 injury or death, or any amount in excess of \$500.00 remains unpaid
39 thereon in case of a judgment for damage to property, such judgment
40 creditor may, upon the termination of all proceedings, including
41 reviews and appeals in connection with such judgment, file a verified
42 claim in the court in which the judgment was entered, and upon 10
43 days' written notice to the [board] association may apply to the court
44 for an order directing payment out of the fund, of the amount unpaid
45 upon such judgment for bodily injury or death, which does not exceed,
46 or upon such judgment for damage to property, which exceeds the sum

1 of \$500.00 and does not exceed--

2 (a) The maximum amount or limit of \$15,000.00, exclusive of
3 interest and costs, on account of injury to, or death of, one person, in
4 any one accident, and

5 (b) The maximum amount or limit, subject to such limit for any
6 one person so injured or killed, of \$30,000.00, exclusive of interest
7 and costs, on account of injury to, or death of, more than one person,
8 in any one accident, and

9 (c) The maximum amount or limit of \$5,000.00, exclusive of
10 interest and costs, for damage to property in any one accident.

11 (cf: P.L.1988, c.119, s.15)

12

13 15. Section 10 of P.L.1952, c.174 (C.39:6-70) is amended to read
14 as follows:

15 10. Hearing on application for payment of judgment. The court
16 shall proceed upon such application, in a summary manner, and, upon
17 the hearing thereof, the applicant shall be required to show:

18 (a) He is not a person covered with respect to such injury or death
19 by any workers' compensation law, or the personal representative of
20 such a person,

21 (b) He is not a spouse, parent or child of the judgment debtor, or
22 the personal representative of such spouse, parent or child,

23 (c) He was not at the time of the accident a person (1) operating
24 or riding in a motor vehicle which he had stolen or participated in
25 stealing or (2) operating or riding in a motor vehicle without the
26 permission of the owner, and is not the personal representative of such
27 a person,

28 (d) He was not at the time of the accident, the owner or registrant
29 of an uninsured motor vehicle, or was not operating a motor vehicle
30 in violation of an order of suspension or revocation,

31 (e) He has complied with all of the requirements of section 5,

32 (f) The judgment debtor at the time of the accident was not
33 insured under a policy of automobile liability insurance under the terms
34 of which the insurer is liable to pay in whole or in part the amount of
35 the judgment,

36 (g) He has obtained a judgment as set out in section 9 of this act,
37 stating the amount thereof and the amount owing thereon at the date
38 of the application,

39 (h) He has caused to be issued a writ of execution upon said
40 judgment and the sheriff or officer executing the same has made a
41 return showing that no personal or real property of the judgment
42 debtor, liable to be levied upon in satisfaction of the judgment, could
43 be found or that the amount realized on the sale of them or of such of
44 them as were found, under said execution, was insufficient to satisfy
45 the judgment, stating the amount so realized and the balance remaining
46 due on the judgment after application thereon of the amount realized,

1 (i) He has caused the judgment debtor to make discovery under
2 oath, pursuant to law, concerning his personal property and as to
3 whether such judgment debtor was at the time of the accident insured
4 under any policy or policies of insurance described in subsection (f) of
5 this section,

6 (j) He has made all reasonable searches and inquiries to ascertain
7 whether the judgment debtor is possessed of personal or real property
8 or other assets, liable to be sold or applied in satisfaction of the
9 judgment,

10 (k) By such search he has discovered no personal or real property
11 or other assets, liable to be sold or applied or that he has discovered
12 certain of them, describing them, owned by the judgment debtor and
13 liable to be so sold and applied and that he has taken all necessary
14 action and proceedings for the realization thereof and that the amount
15 thereby realized was insufficient to satisfy the judgment, stating the
16 amount so realized and the balance remaining due on the judgment
17 after application of the amount realized,

18 (l) The application is not made by or on behalf of any insurer by
19 reason of the existence of a policy of insurance, whereby the insurer
20 is liable to pay, in whole or in part, the amount of the judgment and
21 that no part of the amount to be paid out of the fund is sought in lieu
22 of making a claim or receiving a payment which is payable by reason
23 of the existence of such a policy of insurance and that no part of the
24 amount so sought will be paid to an insurer to reimburse or otherwise
25 indemnify the insurer in respect of any amount paid or payable by the
26 insurer by reason of the existence of such a policy of insurance,

27 (m) Whether or not he has recovered a judgment in an action
28 against any other person against whom he has a cause of action in
29 respect of his damages for bodily injury or death or damage to
30 property arising out of the accident and what amounts, if any, he has
31 received by way of payments upon the judgment, or by way of
32 settlement of such cause of action, in whole or in part, from or on
33 behalf of such other person,

34 (n) In order to recover for noneconomic loss, as defined in section
35 2 of P.L.1972, c.70 (C.39:6A-2) for accidents to which the benefits of
36 sections 7 and 10 of P.L.1972, c.198 (C.39:6-86.1 and C.39:6-86.4)
37 apply, the injured person shall have sustained an injury described in
38 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

39 Whenever the applicant satisfies the court that it is not possible to
40 comply with one or more of the requirements enumerated in
41 subsections (h) and (I) of this section and that the applicant has taken
42 all reasonable steps to collect the amount of the judgment or the
43 unsatisfied part thereof and has been unable to collect the same, the
44 court may dispense with the necessity for complying with such
45 requirements.

46 The [board or any insurer to which the action has been assigned]

1 association may appear and be heard on application and show cause
2 why the order should not be made.

3 (cf: P.L.1988, c.119, s.19)

4

5 16. Section 11 of P.L.1952, c.174 (C.39:6-71) is amended to read
6 as follows:

7 11. The court shall make an order directed to the [treasurer]
8 association requiring [him] the association to make payment from the
9 fund of such sum, if any, as it shall find to be payable upon said claim,
10 pursuant to the provisions of and in accordance with the limitations
11 contained in this act, if the court is satisfied, upon the hearing:

12 (a) Of the truth of all matters required to be shown by the
13 applicant by section 10,

14 (b) That the applicant has fully pursued and exhausted all remedies
15 available to him for recovering damages against all persons mentioned
16 in subparagraph (m) of section 10 by

17 (1) Commencing action against all such persons against whom the
18 applicant might reasonably be considered as having a cause of action
19 in respect of such damages and prosecuting every such action in good
20 faith to judgment and

21 (2) Taking all reasonable steps available to him to collect on every
22 judgment so obtained and by applying the proceeds of any judgment
23 or recovery so obtained towards satisfaction of the amount due upon
24 the judgment for payment of which the claim is made.

25 Any amount which the plaintiff has received or can collect by way
26 of payments upon the judgment or by way of settlement of the cause
27 of action, in whole or in part, from or on behalf of any person other
28 than the judgment debtor, described in subparagraph (m) of section 10,
29 shall be deducted from the amount due upon the judgment for payment
30 of which claim is made.

31 (cf: P.L.1958, c.98, s.2)

32

33 17. Section 12 of P.L.1952, c.174 (C.39:6-72) is amended to read
34 as follows:

35 12. (a) In any action against an operator or owner of a motor
36 vehicle for injury to or death of any person or for damage to property
37 arising out of the ownership, maintenance or use of said vehicle in this
38 State on or after April 1, 1955, pending in any court of competent
39 jurisdiction in this State, the plaintiff may upon notice to the [board]
40 association file a verified petition with the court alleging:

41 (1) the matters set forth in subparagraphs (a), (b), (c), (d), (e) and
42 (f) of section 10;

43 (2) that the petition is not presented on behalf of an insurer under
44 circumstances set forth in subparagraph (1) of section 10;

45 (3) that he has entered into an agreement with the defendant to
46 settle all claims set forth in the complaint in said action and the

1 amount proposed to be paid to him pursuant thereto;

2 (4) that the said proposed settlement has been entered into with
3 and by the consent of the Superior Court and approved by the
4 [executive director of the fund] association;

5 (5) that the defendant has executed and delivered to the [board]
6 association a verified statement of his financial condition;

7 (6) that a judgment against the defendant would be uncollectible;

8 (7) that the defendant has undertaken in writing to repay to the
9 [treasurer] association the sum that he would be required to pay
10 under such settlement, and has executed a confession of judgment in
11 connection therewith.

12 If the court be satisfied of the truth of the allegations in said
13 petition and of the fairness of such proposed settlement, it may enter
14 an order approving the same and directing the [treasurer] association,
15 upon receipt of the undertaking and confession of judgment mentioned
16 in subparagraph (7) of this section, to make payment to the plaintiff of
17 the amount agreed to be accepted.

18 (b) [An insurer to whom a claim has been assigned] The
19 association may settle any claim [involving the payment of less than
20 \$5,000.00 with the approval of the executive director of the fund or
21 any claim involving payment of \$5,000.00 or more with the approval
22 of the board], without court approval, if satisfied:

23 (1) that the claimant is not a person of the character described in
24 subparagraphs (a), (b), (c), (d), (e) and (f) of section 10;

25 (2) that the settlement is not made on behalf of an insurer under
26 circumstances set forth in subparagraph (e) of section 10; and

27 (3) that a judgment against the owner or operator of the motor
28 vehicle involved in the accident would be uncollectible, and that such
29 owner or operator has consented to such settlement, executed and
30 delivered to the [board] association a verified statement of his
31 financial condition and undertaken in writing to repay to the
32 [treasurer] association the sum to be paid under the settlement, and
33 executed a confession of judgment in connection therewith. [Any
34 settlement so made shall be certified by the board to the treasurer, who
35 shall, upon receipt of said undertaking to repay and confession of
36 judgment, make the required payment to claimant out of the fund.]

37 (cf: P.L.1985, c.148, s.8)

38

39 18. Section 13 of P.L.1952, c.174 (C.39:6-73) is amended to read
40 as follows:

41 13. Except with respect to medical expense benefits paid pursuant
42 to section 2 of P.L.1977, c.310 (C.39:6-73.1), no order shall be made
43 for the payment and the [treasurer] association shall make no
44 payment, out of the fund, of

45 (a) Any claim for damage to property for less than \$500.00,

1 (b) The first \$500.00 of any judgment for damage to property or
2 of the unsatisfied portion thereof, or

3 (c) The unsatisfied portion of any judgment which, after deducting
4 \$500.00 therefrom if the judgment is for damage to property, exceeds

5 (1) the maximum or limit of \$15,000.00, exclusive of interest and
6 costs, on account of injury to, or death of, one person in any one
7 accident, and

8 (2) the maximum amount or limit, subject to such limit for any one
9 person so injured or killed, of \$30,000.00, exclusive of interest and
10 costs, on account of injury to, or death of, more than one person, in
11 any one accident, and

12 (3) the maximum amount or limit of \$5,000.00, exclusive of
13 interest and costs, for damage to property in any one accident;
14 provided, that such maximum amounts shall be reduced by any amount
15 received or recovered as specified in subsection (m) of section 10.

16 (d) Any claim for damage to property which includes any sum
17 greater than the difference between said maximum amounts and the
18 sum of \$500.00, and any amount paid out of the fund in excess of the
19 amount so authorized may be recovered by the [treasurer] association
20 in an action brought to [him] it against the person receiving the same.
21 (cf: P.L.1988, c.119, s.16)

22
23 19. Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended to read
24 as follows:

25 2. In the event medical expense benefits paid by an insurer, in
26 accordance with subsection a. of section 4 of P.L.1972, c.70
27 (C.39:6A-4) or section 4 of P.L.1998, c.21 (C.39:6A-3.1), are in
28 excess of \$75,000.00 on account of personal injury to any one person
29 in any one accident covered under a policy issued prior to January 1,
30 2004, the Unsatisfied Claim and Judgment Fund shall assume the
31 following: a. the entire excess for a medical expense benefits claim
32 covered under a policy issued before January 1, 1991; and b. such
33 excess up to \$250,000 for a medical expense benefits claim covered
34 under a policy issued on or after January 1, 1991 and the Unsatisfied
35 Claim and Judgment Fund shall reimburse the insurer therefor in
36 accordance with rules and regulations promulgated by the
37 commissioner; provided, however, that this provision is not intended
38 to broaden the coverage available to accidents involving uninsured or
39 hit-and-run automobiles, to provide extraterritorial coverage, or to pay
40 excess medical expenses.

41 The Unsatisfied Claim and Judgment Fund shall cease to reimburse
42 an insurer for medical expense benefits under this section for injuries
43 covered under a policy issued on or after January 1, 2004.

44 (cf: P.L.1998, c.21, s.69)

45
46 20. Section 14 of P.L.1952, c.174 (C.39:6-74) is amended to read

1 as follows:

2 14. No claim shall be allowed and ordered to be paid out of the
3 fund if the court shall find, upon the hearing for the allowance of the
4 claim, that it is founded upon a judgment which was entered by default
5 unless (1) the claimant shall have complied with the requirements of
6 section 5, and (2) prior to the entry of such judgment the [board]
7 association shall have been given notice of intention to enter the
8 judgment and file a claim thereon against the fund and shall have been
9 afforded an opportunity to take such action as it shall deem advisable
10 [under section 15].

11 If the court, upon a hearing for the allowance of any claim against
12 the fund, finds that it was a claim which was not assigned by the
13 [board to an insurer in accordance with section 6] association for
14 defense, or that the action upon such claim was not fully and fairly
15 defended, or that the judgment thereon was entered upon the consent
16 or with the agreement of the defendant, the court shall allow such
17 claim but shall order it to be paid only in such sum as the court shall
18 determine to be justly due and payable out of the fund, on the basis of
19 the actual amount of damages for which the defendant was liable to
20 the plaintiff under the cause of action, upon which the judgment was
21 rendered and reduced by any amount received from any person
22 mentioned in subparagraph (m) of section 10, notwithstanding that the
23 judgment is for a greater amount.

24 (cf: P.L.1955, c.1, s.7)

25

26 21. Section 17 of P.L.1952, c.174 (C.39:6-77) is amended to read
27 as follows:

28 17. Assignment of judgments to commissioner. The [treasurer]
29 association shall not pay any sum from the fund, in compliance with an
30 order made for that purpose, in any case in which the claim is founded
31 upon a judgment, except a judgment obtained against the
32 [commissioner] association under this act, until the applicant assigns
33 the judgment to the [commissioner] association and, thereupon, the
34 [commissioner] association shall be deemed to have all the rights of
35 the judgment creditor under the judgment and shall enforce and collect
36 the same for the full amount thereof with interest and costs and if more
37 money is collected upon any such judgment than the amount paid out
38 of the fund, the [commissioner] association shall pay the balance,
39 after reimbursing the fund, to the judgment creditor. Upon assignment
40 of a judgment to the [commissioner] association the [board]
41 association may[, on behalf of the commissioner] enter into agreement
42 with the defendant for reimbursement of the fund by lump sum or
43 installment payments, including waiver of interest and subordination
44 of the lien of the judgment where the same is determined to be
45 advantageous in obtaining reimbursement of payments made by the

1 fund. Any such agreement may be annexed to an application for a
2 court order made pursuant to section 27(b).

3 (cf: P.L.1985, c.148, s.10)

4

5 22. Section 18 of P.L.1952, c.174 (C.39:6-78) is amended to read
6 as follows:

7 18. When the death of, or personal injury to, any person arises out
8 of ownership, maintenance or use of a motor vehicle in this State on
9 or after April 1, 1955, but the identity of the motor vehicle and of the
10 operator and owner thereof cannot be ascertained or it is established
11 that the motor vehicle was, at the time said accident occurred, in the
12 possession of some person other than the owner without the owner's
13 consent and that the identity of such person cannot be ascertained, any
14 qualified person who would have a cause of action against the
15 operator or owner or both in respect to such death or personal injury
16 may bring an action therefor against the [commissioner] association
17 in any court of competent jurisdiction, but no judgment against the
18 [commissioner] association shall be entered in such an action unless
19 the court is satisfied, upon the hearing of the action, that--

20 (a) The claimant has complied with the requirements of section 5,

21 (b) The claimant is not a person covered with respect to such
22 injury or death by any workers' compensation law, or the personal
23 representative of such a person,

24 (c) The claimant was not at the time of the accident the owner or
25 registrant of an uninsured motor vehicle, or was not operating a motor
26 vehicle in violation of an order of suspension or revocation,

27 (d) The claimant has a cause of action against the operator or
28 owner of such motor vehicle or against the operator who was
29 operating the motor vehicle without the consent of the owner of the
30 motor vehicle,

31 (e) All reasonable efforts have been made to ascertain the identity
32 of the motor vehicle and of the owner and operator thereof and either
33 that the identity of the motor vehicle and the owner and operator
34 thereof cannot be established, or that the identity of the operator, who
35 was operating the motor vehicle without the owner's consent, cannot
36 be established,

37 (f) The action is not brought by or on behalf of an insurer under
38 circumstances set forth in paragraph (1) of section 10.

39 (cf: P.L.1985, c.148, s.11)

40

41 23. Section 19 of P.L.1952, c.174 (C.39:6-79) is amended to read
42 as follows:

43 19. When in an action in respect to the death of, or personal injury
44 to, any person, arising out of the ownership, maintenance or use of a
45 motor vehicle in this State on or after April 1, 1955, judgment is
46 rendered for the defendant on the sole ground that such death or

1 personal injury was occasioned by a motor vehicle--

2 (a) The identity of which, and of the owner and operator of which,
3 has not been established, or

4 (b) Which was in the possession of some person other than the
5 owner or his agent without the consent of the owner and the identity
6 of the operator has not been established, such cause shall be stated in
7 the judgment and the plaintiff in such action may within [three
8 months] 180 days from the date of the entry of such judgment bring
9 an action upon said cause of action against the [commissioner]
10 association in the manner provided in section 18.

11 (cf: P.L.1985, c.148, s.12)

12

13 24. Section 20 of P.L.1952, c.174 (C.39:6-80) is amended to read
14 as follows:

15 20. Impleading [commissioner] association in "hit-and-run" cases.
16 When an action has been commenced in respect of the death or injury
17 of any person arising out of the ownership, maintenance or use of a
18 motor vehicle in this State on or after April 1, 1955, the plaintiff shall
19 be entitled to make the [commissioner] association a party thereto if
20 the provisions of section 18 or 19 shall apply in any such case, and the
21 plaintiff has made the application and the court has entered the order
22 provided for in section 18.

23 (cf: P.L.1985, c.148, s.13)

24

25 25. Section 21 of P.L.1952, c.174 (C.39:6-81) is amended to read
26 as follows:

27 21. Defense of such actions by [commissioner] association. In
28 any action brought under sections 18 and 19 of this act, the
29 [commissioner] association may appear [by counsel for the insurer to
30 whom such action has been assigned]. [He] The association shall for
31 all purposes of the action be deemed to be the defendant. [He] The
32 association shall have available to [him] it any and all defenses which
33 would have been available to said operator or owner or both if the
34 action had been brought against them or either of them and process
35 upon them or either of them had been duly served within this State,
36 but [he] the association shall be entitled to defend in all cases without
37 asserting any specific facts.

38 (cf: P.L.1985, c.148, s.14)

39

40 26. Section 22 of P.L.1952, c.174 (C.39:6-82) is amended to read
41 as follows:

42 22. Settlement of actions against the [commissioner] association.
43 In any action brought against the [commissioner] association pursuant
44 to an order by the court entered in accordance with the provisions of
45 section 18, the plaintiff may file a verified petition alleging that he has

1 entered into an agreement with the [board] association to settle all
2 claims set forth in the complaint in said action and the amount
3 proposed to be paid to him pursuant thereto. If the court be satisfied
4 of the fairness of such proposed settlement, it may enter an order
5 approving such settlement and enter a judgment against the
6 [commissioner] association for the amount so agreed to be paid
7 thereunder.

8 (cf: P.L.1985, c.148, s.15)

9

10 27. Section 23 of P.L.1952, c.174 (C.39:6-83) is amended to read
11 as follows:

12 23. Credits against judgment. A judgment against the
13 [commissioner] association shall be reduced by any amounts which
14 such plaintiff has received from any person mentioned in subparagraph
15 (m) of section 10.

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

17

18 28. Section 24 of P.L.1952, c.174 (C.39:6-84) is amended to read
19 as follows:

20 24. When a judgment is obtained against the [commissioner]
21 association, in an action brought under this act, upon the
22 determination of all proceedings including appeals and reviews, the
23 court shall make an order directed to the [treasurer] association
24 directing [him] it to pay out of the fund to the plaintiff in the action
25 the amount thereof which does not exceed \$15,000.00, exclusive of
26 interest and costs, on account of injury to, or death of, one person
27 and, subject to such limits for the death of, or injury to, any one
28 person, does not exceed \$30,000.00, exclusive of interest and costs,
29 on account of the injury to, or death of, more than one person, in any
30 one accident, provided that such maximum amount shall be reduced by
31 any amount received or recovered by the plaintiff as specified in
32 subparagraph (m) of section 10.

33 (cf: P.L.1985, c.148, s.17)

34

35 29. Section 25 of P.L.1952, c.174 (C.39:6-85) is amended to read
36 as follows:

37 25. Subrogation. When judgment has been obtained against the
38 [commissioner] association in an action brought under this act, the
39 [commissioner] association shall, upon payment from the fund of the
40 amount of the judgment to the extent provided in this act, be
41 subrogated to the cause of action of the judgment creditor against the
42 operator and owner of the motor vehicle by which the accident was
43 occasioned and shall bring an action against either or both of such
44 persons for the amount of the damage sustained by the judgment
45 creditor when and in the event that the identity of either or both of
46 such persons shall be established, and shall recover the same out of

1 any funds which would be payable in respect to the death or injury
2 under any policy of insurance, which was in force at the time of the
3 accident and in event that more is recovered and collected in any such
4 action than the amount paid out of the fund by reason of the judgment,
5 the [treasurer] association shall pay the balance, after reimbursing the
6 fund, to the judgment creditor.

7 (cf: P.L.1985, c.148, s.18)

8

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

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

30 a. Medical expenses benefits. Payment of all [reasonable] medical
31 expense benefits in accordance with a benefits plan, subject to the
32 approval of the commissioner, for reasonable, necessary and
33 appropriate treatment and provision of services in an amount not
34 exceeding \$250,000 per person per accident. In the event of death,
35 payment shall be made to the estate of the decedent. The benefits plan
36 shall set forth the benefits provided by the Unsatisfied Claim and
37 Judgment Fund, including eligible medical treatments, diagnostic tests
38 and services as well as such other benefits as the Unsatisfied Claim and
39 Judgment Fund may provide.

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

43 b. Income continuation benefits. The payment of the loss of
44 income of an income producer as a result of bodily injury disability,
45 subject to a maximum weekly payment of \$100.00. Such sums shall
46 be payable during the life of the injured person and shall be subject to

1 an amount or limit of \$5,200.00, on account of injury to any one
2 person in any one accident, except that in no case shall income
3 continuation benefits exceed the net income normally earned during
4 the period in which the benefits are payable.

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

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

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

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

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

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

38

39 31. Section 12 of P.L.1972, c.198 (C.39:6-86.6) is amended to
40 read as follows:

41 12. The [commissioner] association shall be entitled to recover on
42 behalf of the Unsatisfied Claim and Judgment Fund for all payments
43 made by it pursuant to sections 7 and 10 of this act, regardless of fault,
44 from any person who owned or operated the automobile involved in
45 the accident and whose failure to have the required insurance coverage
46 in effect at the time of the accident resulted in the payment of personal

1 injury protection benefits. If the identity of the owner and operator is
2 not ascertained until after personal injury protection benefits have been
3 paid then the [commissioner] association shall be entitled to recover
4 for such payments, regardless of fault, from the operator if he was
5 driving without the owner's permission or from the operator and the
6 owner if he was driving with the owner's permission or, in either case,
7 from the insurer if there is an insurance policy providing personal
8 injury protection benefits that was in effect at the time of the accident
9 with respect to such automobile.

10 The [commissioner] association is authorized to bring an action,
11 which shall be a summary proceeding, in the Superior Court to reduce
12 the right provided by this section to judgment.

13 (cf: P.L.1985, c.148, s.19)

14
15 32. Section 27 of P.L.1952, c.174 (C.39:6-87) is amended to read
16 as follows:

17 27. Registration, etc. not restored until fund is reimbursed. Where
18 the license or privileges of any person, or the registration of a motor
19 vehicle registered in his name, has been suspended or cancelled under
20 the Motor Vehicle Security-Responsibility Law of this State, and the
21 [treasurer] association has paid from the fund any amount in
22 settlement of a claim or towards satisfaction of a judgment against that
23 person, or for the payment of personal injury protection benefits as
24 provided in section 7 and section 10 of this act, the cancellation or
25 suspension shall not be removed, nor the license, privileges, or
26 registration restored, nor shall any new license or privilege be issued
27 or granted to, or registration be permitted to be made by, that person
28 until he has

29 (a) Repaid in full to the [treasurer] association the amount so
30 paid by him together with interest thereon at 8% per annum from the
31 date of such payment; and

32 (b) Satisfied all requirements of said Motor Vehicle
33 Security-Responsibility Law in respect of giving proof of ability to
34 respond in damages for future accidents, provided, that the court in
35 which such judgment was rendered may, upon 10 days' notice to the
36 [board] association, make an order permitting payment of the amount
37 of such person's indebtedness to the fund, to be made in installments,
38 or in the event the fund makes personal injury protection benefit
39 payments, such person and the fund by agreement may provide for
40 repayment to the fund to be made in installments, and in such case,
41 such person's driver's license, or his driving privileges, or registration
42 certificate, if the same have been suspended or revoked, or have
43 expired, may be restored or renewed and shall remain in effect unless
44 and until such person defaults in making any installment payment
45 specified in such order. In the event of any such default, the Director
46 of the Division of Motor Vehicles shall upon notice of such default

1 suspend such person's driver's license, or driving privileges or
2 registration certificate until the amount of his indebtedness to the fund
3 has been paid in full.

4 (cf: P.L.1985, c.148, s.20)

5

6 33. Section 28 of P.L.1952, c.174 (C.39:6-88) is amended to read
7 as follows:

8 28. Fund to be held in trust. All sums received by the [treasurer]
9 association pursuant to any of the provisions of this act shall become
10 part of the fund, and shall be held by the [treasurer] association in
11 trust for the carrying out of the purposes of this act and for the
12 payment of the cost of administering this act [, and for the payment
13 of the costs of the Division of Motor Vehicles of implementing the
14 New Jersey Merit Rating Plan pursuant to section 6 of P.L.1983, c.65
15 (C.17:29A-35). The Director of the Division of Motor Vehicles shall
16 certify to the treasurer the amount necessary to implement the New
17 Jersey Merit Rating Plan pursuant to that section, and the treasurer
18 shall thereupon disburse that amount from the fund. Moneys
19 transferred to the Division of Motor Vehicles pursuant to this section
20 shall be repaid, with interest at the prevailing rate as determined by the
21 board, out of sums appropriated to the Division of Motor Vehicles
22 from surcharges assessed in accordance with the New Jersey Merit
23 Rating Plan established pursuant to section 6 of P.L.1983, c.65
24 (C.17:29A-35). Said fund may be invested and reinvested in the same
25 manner as other State funds and shall be disbursed according to the
26 order of the treasurer, as custodian of the fund].

27 (cf: P.L.1985, c.148, s.21)

28

29 34. Section 30 of P.L.1952, c.174 (C.39:6-90) is amended to read
30 as follows:

31 30. Any person and any agent or servant of such person, who
32 knowingly files with the fund [, board or treasurer,] or [any] the
33 association or either of them, any notice, statement or other document
34 required under this act, which is false or untrue or contains any
35 material misstatement of fact shall be subject to a [fine of not less than
36 one hundred dollars (\$100.00), nor more than five hundred dollars
37 (\$500.00), or imprisonment for not more than thirty days, at the
38 discretion of the court] penalty as provided in section 5 of P.L.1983,
39 c.320 (C.17:33A-5) and damages as provided in section 7 of P.L.1983,
40 c.320 (C.17:33A-7).

41 (cf: P.L.1952, c.174, s.30)

42

43 35. (New section) The Unsatisfied Claim and Judgment Fund
44 created pursuant to P.L.1952, c.174 (C.39:6-61 et seq.) shall provide
45 personal injury protection benefits pursuant to section 7 of P.L.1972,
46 c.198 (C.39:6-86.1) to a pedestrian sustaining bodily injury in this

1 State caused by an automobile, other than to a named insured or a
2 member of the named insured's family residing in his household, if that
3 pedestrian is entitled to personal injury protection coverage under an
4 automobile insurance policy.

5
6 36. Section 4 of P.L.1998, c.21 (C.39:6A-3.1) is amended to read
7 as follows:

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

13 a. Personal injury protection coverage, for the payment of benefits
14 without regard to negligence, liability or fault of any kind, to the
15 named insured and members of his family residing in his household,
16 who sustained bodily injury as a result of an accident while occupying,
17 entering into, alighting from or using an automobile, or as a
18 pedestrian, caused by an automobile or by an object propelled by or
19 from an automobile, and to other persons sustaining bodily injury
20 while occupying, entering into, alighting from or using the automobile
21 of the named insured, with the permission of the named insured[, and
22 to pedestrians sustaining bodily injury caused by the named insured's
23 automobile or struck by an object propelled by or from such
24 automobile]. "Personal injury protection coverage" issued pursuant
25 to this section means and includes payment of medical expense
26 benefits, as provided in the policy and approved by the commissioner,
27 for the reasonable and necessary treatment of bodily injury in an
28 amount not to exceed \$15,000 per person per accident; except that,
29 medical expense benefits shall be paid in an amount not to exceed
30 \$250,000: (1) for all medically necessary treatment of permanent or
31 significant brain injury, spinal cord injury or disfigurement or (2) for
32 medically necessary treatment of other permanent or significant
33 injuries rendered at a trauma center or acute care hospital immediately
34 following the accident and until the patient is stable, no longer requires
35 critical care and can be safely discharged or transferred to another
36 facility in the judgment of the attending physician. In the event
37 benefits paid by an insurer pursuant to this subsection are in excess of
38 \$75,000 on account of personal injury to any one person in any one
39 accident covered by a policy issued or renewed prior to January 1,
40 2004, such excess shall be paid by the insurer [in consultation with the
41 Unsatisfied Claim and Judgment Fund Board] and shall be
42 reimbursable to the insurer from the Unsatisfied Claim and Judgment
43 Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-73.1). Benefits
44 provided under basic coverage shall be in accordance with a benefit
45 plan provided in the policy and approved by the commissioner. The
46 policy form, which shall be subject to the approval of the

1 commissioner, shall set forth the benefits provided under the policy,
2 including eligible medical treatments, diagnostic tests and services as
3 well as such other benefits as the policy may provide. The
4 commissioner shall set forth by regulation a statement of the basic
5 benefits which shall be included in the policy. Medical treatments,
6 diagnostic tests, and services provided by the policy shall be rendered
7 in accordance with commonly accepted protocols and professional
8 standards and practices which are commonly accepted as being
9 beneficial for the treatment of the covered injury. Protocols and
10 professional standards and practices which are deemed to be
11 commonly accepted pursuant to this section shall be those recognized
12 by national standard setting organizations, national or state
13 professional organizations of the same discipline as the treating
14 provider, or those designated or approved by the commissioner in
15 consultation with the professional licensing boards in the Division of
16 Consumer Affairs in the Department of Law and Public Safety. The
17 commissioner, in consultation with the Commissioner of the
18 Department of Health and Senior Services and the applicable licensing
19 boards, may reject the use of protocols, standards and practices or lists
20 of diagnostic tests set by any organization deemed not to have
21 standing or general recognition by the provider community or the
22 applicable licensing boards. Protocols shall be deemed to establish
23 guidelines as to standard appropriate treatment and diagnostic tests for
24 injuries sustained in automobile accidents, but the establishment of
25 standard treatment protocols or protocols for the administration of
26 diagnostic tests shall not be interpreted in such a manner as to
27 preclude variance from the standard when warranted by reason of
28 medical necessity. The policy form may provide for the
29 precertification of certain procedures, treatments, diagnostic tests, or
30 other services or for the purchase of durable medical goods, as
31 approved by the commissioner, provided that the requirement for
32 precertification shall not be unreasonable, and no precertification
33 requirement shall apply within ten days of the insured event. The
34 policy may provide that certain benefits provided by the policy which
35 are in excess of the basic benefits required by the commissioner to be
36 included in the policy may be subject to reasonable copayments in
37 addition to the copayments provided for herein, provided that the
38 copayments shall not be unreasonable and shall be established in such
39 a manner as not to serve to encourage underutilization of benefits
40 subject to the copayments, nor encourage overutilization of benefits.
41 The policy form shall clearly set forth any limitations on benefits or
42 exclusions, which may include, but need not be limited to, benefits
43 which are otherwise compensable under workers' compensation, or
44 benefits for treatments deemed to be experimental or investigational,
45 or benefits deducted pursuant to section 6 of P.L.1972, c.70
46 (C.39:6A-6). The commissioner may enlist the services of a benefit

1 consultant in establishing the basic benefits level provided in this
2 subsection, which shall be set forth by regulation no later than 120
3 days following the enactment date of this amendatory and
4 supplementary act. The commissioner shall not advertise for the
5 consultant as provided in sections 3 and 4 of P.L.1954, c.48
6 (C.52:34-8 and 52:34-9).

7 Medical expense benefits payable under this subsection shall not be
8 assignable, except to a provider of service benefits, in accordance with
9 policy terms approved by the commissioner, nor shall they be subject
10 to levy, execution, attachment or other process for satisfaction of
11 debts. Medical expense benefits payable in accordance with this
12 subsection may be subject to a deductible and copayments as provided
13 for in the policy, if any. No insurer or provider providing service
14 benefits to an insured shall have a right of subrogation for the amount
15 of benefits paid pursuant to any deductible or copayment under this
16 section.

17 Notwithstanding the provisions of P.L.2003, c.18, physical therapy
18 treatment shall not be reimbursable as medical expense benefits
19 pursuant to this subsection unless rendered by a licensed physical
20 therapist pursuant to a referral from a licensed physician, dentist,
21 podiatrist or chiropractor within the scope of their respective
22 practices.

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

28 c. In addition to the aforesaid coverages required to be provided
29 in a basic automobile insurance policy, optional liability insurance
30 coverage insuring against loss resulting from liability imposed by law
31 for bodily injury or death in an amount or limit of \$10,000, exclusive
32 of interests and costs, on account of injury to, or death of, one or
33 more persons in any one accident.

34 If a named insured has elected the basic automobile insurance
35 policy option and an immediate family member or members or relatives
36 resident in his household have one or more policies with the coverages
37 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and
38 39:6A-4), the provisions of section 12 of P.L.1983, c.362
39 (C.39:6A-4.2) shall apply.

40 Every named insured and any other person to whom the basic
41 automobile insurance policy, with or without the optional \$10,000
42 liability coverage insuring against loss resulting from liability imposed
43 by law for bodily injury or death provided for in subsection c. of this
44 section, applies shall be subject to the tort option provided in
45 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

46 No licensed insurance carrier shall refuse to renew the coverage

1 stipulated by this section of an eligible person as defined in section 25
2 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
3 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with
4 the consent of the Commissioner of Banking and Insurance.
5 (cf: P.L.2003, c.18, s.26)

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

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

10 Except as provided by section 45 of P.L. _____, c. _____ (C. _____)(now
11 before the Legislature as this bill) and section 4 of P.L.1998, c.21
12 (C.39:6A-3.1), every standard automobile liability insurance policy
13 issued or renewed on or after the effective date of P.L.1998, c.21
14 (C.39:6A-1.1 et al.) shall contain personal injury protection benefits
15 for the payment of benefits without regard to negligence, liability or
16 fault of any kind, to the named insured and members of his family
17 residing in his household who sustain bodily injury as a result of an
18 accident while occupying, entering into, alighting from or using an
19 automobile, or as a pedestrian, caused by an automobile or by an
20 object propelled by or from an automobile, and to other persons
21 sustaining bodily injury while occupying, entering into, alighting from
22 or using the automobile of the named insured, with permission of the
23 named insured [, and to pedestrians sustaining bodily injury caused by
24 the named insured's automobile or struck by an automobile or struck
25 by an object propelled by or from that automobile].

26 "Personal injury protection coverage" means and includes:

27 a. Payment of medical expense benefits in accordance with a
28 benefit plan provided in the policy and approved by the commissioner,
29 for reasonable, necessary, and appropriate treatment and provision of
30 services to persons sustaining bodily injury, in an amount not to
31 exceed \$250,000 per person per accident. In the event benefits paid
32 by an insurer pursuant to this subsection are in excess of \$75,000 on
33 account of bodily injury to any one person in any one accident, that
34 excess shall be paid by the insurer [in consultation with the Unsatisfied
35 Claim and Judgment Fund Board] and shall be reimbursable to the
36 insurer from the Unsatisfied Claim and Judgment Fund pursuant to
37 section 2 of P.L.1977, c.310 (C.39:6-73.1). The policy form, which
38 shall be subject to the approval of the commissioner, shall set forth the
39 benefits provided under the policy, including eligible medical
40 treatments, diagnostic tests and services as well as such other benefits
41 as the policy may provide. The commissioner shall set forth by
42 regulation a statement of the basic benefits which shall be included in
43 the policy. Medical treatments, diagnostic tests, and services provided
44 by the policy shall be rendered in accordance with commonly accepted
45 protocols and professional standards and practices which are
46 commonly accepted as being beneficial for the treatment of the

1 covered injury. Protocols and professional standards and practices and
2 lists of valid diagnostic tests which are deemed to be commonly
3 accepted pursuant to this section shall be those recognized by national
4 standard setting organizations, national or state professional
5 organizations of the same discipline as the treating provider, or those
6 designated or approved by the commissioner in consultation with the
7 professional licensing boards in the Division of Consumer Affairs in
8 the Department of Law and Public Safety. The commissioner, in
9 consultation with the Commissioner of the Department of Health and
10 Senior Services and the applicable licensing boards, may reject the use
11 of protocols, standards and practices or lists of diagnostic tests set by
12 any organization deemed not to have standing or general recognition
13 by the provider community or the applicable licensing boards.
14 Protocols shall be deemed to establish guidelines as to standard
15 appropriate treatment and diagnostic tests for injuries sustained in
16 automobile accidents, but the establishment of standard treatment
17 protocols or protocols for the administration of diagnostic tests shall
18 not be interpreted in such a manner as to preclude variance from the
19 standard when warranted by reason of medical necessity. The policy
20 form may provide for the precertification of certain procedures,
21 treatments, diagnostic tests, or other services or for the purchase of
22 durable medical goods, as approved by the commissioner, provided
23 that the requirement for precertification shall not be unreasonable, and
24 no precertification requirement shall apply within ten days of the
25 insured event. The policy may provide that certain benefits provided
26 by the policy which are in excess of the basic benefits required by the
27 commissioner to be included in the policy may be subject to reasonable
28 copayments in addition to the copayments provided for pursuant to
29 subsection e. of this section, provided that the copayments shall not be
30 unreasonable and shall be established in such a manner as not to serve
31 to encourage underutilization of benefits subject to the copayments,
32 nor encourage overutilization of benefits. The policy form shall clearly
33 set forth any limitations on benefits or exclusions, which may include,
34 but need not be limited to, benefits which are otherwise compensable
35 under workers' compensation, or benefits for treatments deemed to be
36 experimental or investigational, or benefits deducted pursuant to
37 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may
38 enlist the services of a benefit consultant in establishing the basic
39 benefits level provided in this subsection, which shall be set forth by
40 regulation no later than 120 days following the enactment date of
41 P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall not
42 advertise for bids for the consultant as provided in sections 3 and 4 of
43 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

44 Notwithstanding the provisions of P.L.2003, c.18, physical therapy
45 treatment shall not be reimbursable as medical expense benefits
46 pursuant to this subsection unless rendered by a licensed physical

1 therapist pursuant to a referral from a licensed physician, dentist,
2 podiatrist or chiropractor within the scope of their respective
3 practices.

4 b. Income continuation benefits. The payment of the loss of
5 income of an income producer as a result of bodily injury disability,
6 subject to a maximum weekly payment of \$100. Such sum shall be
7 payable during the life of the injured person and shall be subject to an
8 amount or limit of \$5,200, on account of injury to any one person in
9 any one accident, except that in no case shall income continuation
10 benefits exceed the net income normally earned during the period in
11 which the benefits are payable.

12 c. Essential services benefits. Payment of essential services
13 benefits to an injured person shall be made in reimbursement of
14 necessary and reasonable expenses incurred for such substitute
15 essential services ordinarily performed by the injured person for
16 himself, his family and members of the family residing in the
17 household, subject to an amount or limit of \$12 per day. Such benefits
18 shall be payable during the life of the injured person and shall be
19 subject to an amount or limit of \$4,380, on account of injury to any
20 one person in any one accident.

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

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

35 e. Funeral expenses benefits. All reasonable funeral, burial and
36 cremation expenses, subject to a maximum benefit of \$1,000, on
37 account of the death of any one person in any one accident shall be
38 payable to the decedent's estate.

39 Benefits payable under this section shall:

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

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

46 Medical expense benefit payments shall be subject to any

1 deductible and any copayment which may be established as provided
2 in the policy. Upon the request of the commissioner or any party to
3 a claim for benefits or payment for services rendered, a provider shall
4 present adequate proof that any deductible or copayment related to
5 that claim has not been waived or discharged by the provider.

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

9 (cf: P.L.2003, c.18, s.27).

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

13 27. a. On or after April 1, 1992, every insurer, either by one or
14 more separate rating plans filed in accordance with the provisions of
15 section 6 of P.L.1988, c.156 (C.17:29A-45) prior to March 1, 1998,
16 or section 14 of P.L.1997, c.151 (C.17:29A-46.1) on or after March
17 1, 1998, or through one or more affiliated insurers, shall provide
18 automobile insurance coverage for eligible persons. This subsection
19 shall become inoperative on January 1, 2009.

20 b. No insurer shall refuse to insure, refuse to renew, or limit
21 coverage available for automobile insurance to an eligible person who
22 meets its underwriting rules as filed with and approved by the
23 commissioner in accordance with the provisions of section 7 of
24 P.L.1988, c.156 (C.17:29A-46) prior to March 1, 1998 or section 15
25 of P.L.1997, c.151 (C.17:29A-46.2) on or after March 1, 1998. This
26 subsection shall become inoperative on January 1, 2009.

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

41 d. (1) Notwithstanding the provisions of subsections a. and b. of
42 this section to the contrary, an insurer may file underwriting rules by
43 which it may refuse to issue or limit coverage available for automobile
44 insurance in any rating territory to an eligible person if the insurer has
45 increased its aggregate number of private passenger automobile non-
46 fleet exposures in the rating territory during the previous year: by 5%

1 during the one year period beginning January 1, 2004; by 4% during
2 the one year period beginning January 1, 2005; by 3% during the one
3 year period beginning January 1, 2006; by 2% during the one year
4 period beginning January 1, 2007; and by 1% during the one year
5 period beginning January 1, 2008, provided further that an insurer may
6 file with the commissioner for a lower percentage growth standard
7 than that listed in this subsection and the commissioner shall approve
8 such a filing if he finds that the insurer does not have the financial and
9 business resources to accommodate growth statewide at a higher
10 percentage than that proposed in the filing.

11 (2) Underwriting rules filed pursuant to this subsection shall
12 provide that the rules are activated only upon the filing with the
13 commissioner of a proper certification. The certification shall be by
14 an officer of the insurer attesting to the aggregate number of private
15 passenger automobile non-fleet exposures in each rating territory on
16 June 30 and December 31 of the preceding year and clearly identify
17 any rating territory in which the insurer has met the percentage growth
18 standard established by this subsection. Such underwriting rules shall
19 be operational in the identified territory on the first day of the second
20 calendar month after the end of the calendar six month period in which
21 the percentage growth standard has been met. Such underwriting rules
22 shall be operational in an identified territory for a period of six months,
23 unless prior to their expiration, an officer of the insurer files a
24 certification with the commissioner attesting that the percentage
25 growth standard in an identified territory continues to be met.

26 (3) Notwithstanding any provision of this section to the contrary,
27 the commissioner may make operative the provisions of subsections a.
28 and b. of this section only by order finding one of the following
29 circumstances:

30 (a) The commissioner determines, after a hearing, that a
31 competitive market does not exist among insurers authorized to write
32 private passenger automobile insurance in this State, which
33 determination shall only be made pursuant to subsection f. of this
34 section, provided, however, that there shall be a rebuttable
35 presumption that a competitive market exists among insurers
36 authorized to write private passenger automobile insurance in this
37 State if the plan established pursuant to P.L.1970, c.215 (C.17:29D-1)
38 is insuring less than 10% of the aggregate number of private passenger
39 automobile non-fleet exposures being written in the total private
40 passenger automobile insurance market in this State.

41 (b) The commissioner certifies that the plan established pursuant
42 to P.L.1970, c.215 (C.17:29D-1) is insuring 10% or more of the
43 aggregate number of private passenger automobile non-fleet exposures
44 being written in the total private passenger automobile insurance
45 market in this State.

46 (4) Any order issued by the commissioner that makes operative

1 the provisions of subsections a. and b. of this section may limit the
2 form of policies to which the order applies and shall establish a
3 maximum increase in an insurer's aggregate number of private
4 passenger automobile non-fleet exposures to which the order applies,
5 which increase shall not exceed the maximum limit set forth in
6 paragraph (1) of this subsection d.

7 (5) An eligible person denied or refused renewal of automobile
8 insurance in a rating territory by an insurer granted relief pursuant to
9 this subsection shall be advised by the insurer that coverage may be
10 available from another insurer or that coverage is available from the
11 plan established pursuant to P.L.1970, c.215 (C.17:29D-1). The
12 commissioner shall establish by regulation the form and content of the
13 notice to be provided to such an eligible person.

14 (6) The provisions of this subsection d. shall not reduce an
15 insurer's obligation to renew policies pursuant to section 26 of
16 P.L.1988, c.119 (C.17:29C-7.1).

17 e. The commissioner may suspend, revoke or otherwise terminate
18 the certificate of authority to transact automobile insurance business
19 in this State of any insurer who violates the provisions of this section.

20 f. (1) A determination that a competitive market for private
21 passenger automobile insurance does not exist may be made by the
22 commissioner, after notice and hearing, based on two or more of the
23 factors set forth in paragraph (2) of this subsection. A hearing under
24 this subsection shall be held consistent with the rulemaking provisions
25 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52.14B-1
26 et seq.), except that an order by the commissioner pursuant to this
27 subsection shall include specific finding of fact and be supported by
28 clear and convincing evidence. Any ruling that finds that competition
29 does not exist within the market for automobile insurance shall include
30 specific findings regarding: (a) the actions the State and the
31 commissioner have taken to return the market to a competitive market;
32 and (b) an explanation regarding why those actions have failed to
33 return the market to a competitive market. A ruling pursuant to this
34 subsection shall expire one year after issued unless rescinded earlier by
35 the commissioner or unless the commissioner renews the ruling after
36 a hearing and a finding as to continued lack of a reasonable degree of
37 competition.

38 (2) The following factors shall be considered by the commissioner
39 for purposes of determining if a reasonable degree of competition does
40 not exist in a particular line of private passenger automobile insurance:

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

44 (b) Measures of market concentration and changes of market
45 concentration over time, including, but not limited to, the Herfindahl-
46 Hirschman Index (HHI) and the United States Department of Justice

1 merger guidelines for an unconcentrated market;

2 (c) Ease of entry and exit and the existence of financial or
3 economic barriers that could prevent new insurers from entering the
4 market;

5 (d) The extent to which any insurer or group of affiliated insurers
6 controls all or a dominant portion of the market and has actively
7 sought to prevent competition;

8 (e) Whether the total number of insurers writing the line of
9 insurance in this State is sufficient to provide multiple options;

10 (f) The availability of insurance coverage to consumers in the
11 voluntary market; and

12 (g) The opportunities available to consumers in the market to
13 acquire pricing and other consumer information.

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

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

23

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

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

34 The governing board of any plan established pursuant to the
35 commissioner's rules and regulations shall continue to exercise such
36 administrative authority, subject to the commissioner's oversight and
37 as provided in any rules and regulations promulgated pursuant to this
38 section, as is necessary to ensure the plan's efficient operation,
39 including, but not limited to, the authority to investigate complaints
40 and hear appeals from applicants, insureds, producers, servicing
41 carriers or participants about any matter pertaining to the plan's proper
42 administration, as well as the authority to appoint subcommittees to
43 hear such appeals. Any determination of an appeal by a plan's
44 governing board shall be subject to review by the commissioner on the
45 record below, and shall not be considered a contested case under the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.). The commissioner's determination shall be a final order and
2 shall be subject to review by the Superior Court.

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

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

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

16 c. For a limited assignment distribution system permitting insurers
17 to enter into agreements with other mutually agreeable insurers or
18 other qualified entities to transfer their applicants and insureds under
19 such plan to such insurers or other entities, including applicants and
20 insureds who may be covered by special automobile insurance policies
21 issued pursuant to section 45 of P.L. , c. (C.) (now before the
22 Legislature as this bill);

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

34 e. Except for risks written in automobile insurance urban
35 enterprise zones pursuant to subsection i., or risks written pursuant to
36 subsection j. of this section, that it shall not provide coverage to an
37 eligible person as defined pursuant to section 25 of P.L.1990, c.8
38 (C.17:33B-13);

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

40 g. That the plan shall not be subsidized by any source external to
41 the plan;

42 h. That a qualified insurer who writes automobile insurance risks
43 in those automobile insurance urban enterprise zones designated by the
44 commissioner pursuant to section 20 of P.L.1997, c.151 (C.17:33C-2)
45 shall receive assigned risk credits for voluntary risks written in those
46 designated automobile insurance urban enterprise zones as a direct

1 writer or through a UEZ agent or agents or through any agent with
2 whom the insurer has an in-force contract as of the effective date of
3 P.L.1997, c.151(C.17:33B-64 et al.). The commissioner shall establish
4 by regulation the manner in which any qualified automobile insurer
5 may utilize the provisions of this subsection. In no event shall that
6 credit apply to reduce an insurer's obligations under subsection I. of
7 this section; [and]

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

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

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

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

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

1 competency, efficiency and effectiveness in the solicitation, negotiation
2 and effectuation of automobile insurance as evidenced by any history
3 of disciplinary actions or complaints against the producer, and other
4 relevant factors; [and] conducts his business in an office in an
5 automobile insurance urban enterprise zone ; and meets such other
6 requirements as may be established by the commissioner by regulation.

7 For purposes of this subsection i., "insurer" means an insurer or group
8 of affiliated insurers admitted or authorized to transact the business of
9 automobile insurance in this State;

10 (6) This subsection shall expire on the first day of the [61st] 97th
11 month after the first policy using the voluntary rating tier required by
12 this subsection was issued to a risk, as certified by the commissioner;

13 j. For a voluntary rating tier to accommodate eligible persons, as
14 defined in section 25 of P.L.1990, c.8 (C.17:33B-13), denied or
15 refused renewal of automobile insurance in a rating territory by an
16 insurer granted relief pursuant to subsection d. of section 27 of
17 P.L.1990, c.8 (C.17:33B-15);

18 k. That an insurer granted relief pursuant to subsection d. of
19 section 27 of P.L.1990, c.8 (C.17:33B-15) shall receive assigned risk
20 credits for voluntary risks written in excess of the percentage growth
21 standard established by that subsection d. The commissioner shall
22 establish by regulation the manner in which such an insurer may utilize
23 the provisions of this subsection. In no event shall that credit apply to
24 reduce an insurer's obligations under subsection i. of this section; and

25 l. That an insurer granted relief pursuant to subsection d. of
26 section 27 of P.L.1990, c.8 (C.17:33B-15) shall also receive assigned
27 risk credits for the voluntary first renewal of an eligible person written
28 pursuant to subsection j. of this section.

29 Prior to the adoption or amendment of such rules and regulations,
30 the commissioner shall consult with such members of the insurance
31 industry as he deems appropriate. Such consultation shall be in
32 addition to any otherwise required public hearing or notice with regard
33 to the adoption or amendment of rules and regulations.

34 The governing body administering the plan shall report annually to
35 the Legislature and the Governor on the activities of the plan. The
36 report shall contain an actuarial analysis regarding the adequacy of the
37 rates for each coverage for the safeness and soundness of the plan.

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

39
40 40. Section 15 of P.L.1997, c.151 (C.17:29A-46.2) is amended to
41 read as follows:

42 15. a. Insurers shall put in writing all underwriting rules
43 applicable to each rate level utilized pursuant to section 14 of [this
44 amendatory and supplementary act] P.L.1997, c.151 (C.17:29A-46.1).

45 An insurer may take into account factors, including, but not limited to,
46 driving record characteristics appropriate for underwriting and

1 classification in formulating its underwriting rules; provided that no
2 underwriting rule based on motor vehicle violations shall be
3 formulated in such a manner as to assign any named insured to a rating
4 tier other than the standard rating tier applicable to the insured's
5 territory solely on the basis of accumulating ~~[six]~~ four motor vehicle
6 points or less. No underwriting rule shall operate in such a manner as
7 to assign a risk to a rating plan on the basis of the territory in which
8 the insured resides or any other factor which the commissioner finds
9 is a surrogate for territory. An insurer which knowingly fails to
10 transact automobile insurance consistently with its underwriting rules
11 shall be subject to a fine of not less than \$1,000 for each violation.

12 b. All underwriting rules applicable to each rate level as provided
13 for in section 14 of ~~[this amendatory and supplementary act]~~
14 P.L.1997, c.151 (C.17:29A-46.1) shall be filed with the commissioner
15 and shall be subject to his prior approval. All underwriting rules shall
16 be subject to public inspection. ~~[Insurers]~~ Except as provided in
17 subsection d. of section 27 of P.L.1990, c.8 (C.17:33B-15), insurers
18 shall apply their underwriting rules uniformly and without exception
19 throughout the State, so that every applicant or insured conforming
20 with the underwriting rules will be insured or renewed, and so that
21 every applicant not conforming with the underwriting rules will be
22 refused insurance.

23 c. An insurer with more than one rating plan for private passenger
24 automobile insurance policies providing identical coverages shall not
25 adopt underwriting rules which would permit a person to be insured
26 for private passenger automobile insurance under more than one of the
27 rating plans.

28 d. An insurer that revises its underwriting rules with respect to the
29 assignment of insureds to rating tiers based on the number of
30 accumulated motor vehicle points, as provided by subsection a. of this
31 section, as amended by P.L. c. (C.)(now before the
32 Legislature as this bill), shall certify to the commissioner that the
33 revised rule will produce rates that are revenue neutral based upon the
34 insurer's current coverages and book of business.

35 (cf: P.L.1997, c.151, s.15)

36

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

39 14. a. With regard to all property and casualty lines, a filer may,
40 from time to time, alter, supplement, or amend its rates, rating
41 systems, or any part thereof, by filing with the commissioner copies of
42 such alterations, supplements, or amendments, together with a
43 statement of the reason or reasons for such alteration, supplement, or
44 amendment, in a manner and with such information as may be required
45 by the commissioner. If such alteration, supplement, or amendment
46 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 b. (Deleted by amendment, P.L.1984, c.1.)

9 c. If an insurer or rating organization files a proposed alteration,
10 supplement or amendment to its private passenger automobile
11 insurance rating system, or any part thereof, the commissioner shall
12 transmit the filing to the appropriate office in the Division of
13 Insurance, which office shall issue a preliminary determination within
14 90 days of receipt of a rate filing, except that the commissioner may,
15 for good cause, extend the time for a preliminary determination by not
16 more than 30 days. The preliminary determination shall set forth the
17 basis for accepting, rejecting or modifying the rates as filed. A copy of
18 the preliminary determination shall be provided to the filer and other
19 interested parties. Unless the filer or other interested party requests
20 a hearing, the commissioner may adopt the preliminary determination
21 as final within 30 days of the preliminary determination. If a hearing
22 is requested, it shall proceed on an expedited basis in accordance with
23 the provisions of this section. If a preliminary determination is not
24 made within the time provided, a filing shall be transmitted to the
25 Office of Administrative Law for a hearing and the commissioner shall
26 adopt the determination of the administrative law judge as a final
27 decision on the filing.

28 For filings other than private passenger automobile, if an insurer or
29 rating organization files a proposed alteration, supplement or
30 amendment to its rating system, or any part thereof, which would
31 result in a change in rates, the commissioner may, or upon the request
32 of the filer or the appropriate [division or] office in the [Department]
33 Division of Insurance shall, certify the matter for a hearing. The
34 hearing shall, at the commissioner's discretion, be conducted by
35 himself, by a person appointed by the commissioner pursuant to
36 section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of
37 Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.),
38 as a contested case. The following requirements shall apply to the
39 hearing:

40 (1) The hearing shall commence within 30 days of the date of the
41 request or decision that a hearing is to be held. The hearing shall be
42 held on consecutive working days, except that the commissioner may,
43 for good cause, waive the consecutive working day requirement. If
44 the hearing is conducted by an administrative law judge, the
45 administrative law judge shall submit his findings and
46 recommendations to the commissioner within 30 days of the close of

1 the hearing. The commissioner may, for good cause, extend the time
2 within which the administrative law judge shall submit his findings and
3 recommendations by not more than 30 days. A decision shall be
4 rendered by the commissioner not later than 60 days, or, if he has
5 granted a 30 day extension, not later than 90 days, from the close of
6 the hearing. A filing shall be deemed to be approved unless rejected
7 or modified by the commissioner within the time period provided
8 herein.

9 (2) The commissioner, or the Director of the Office of
10 Administrative Law, as appropriate, shall notify all interested parties,
11 including the appropriate [division or] office in the [Department]
12 Division of Insurance on behalf of insurance consumers, of the date set
13 for commencement of the hearing, on the date of the filing of the
14 request for a hearing, or within 10 days of the decision that a hearing
15 is to be held.

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

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

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

25 e. [In order to meet, as closely as possible, the deadlines in
26 section 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of
27 available optional automobile insurance coverages pursuant to section
28 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
29 (C.39:6A-8), and to implement these coverages, the commissioner may
30 require the use of rates, fixed by him in advance of any hearing, for
31 deductible, exclusion, setoff and tort limitation options, on an interim
32 basis, subject to a hearing and to a provision for subsequent
33 adjustment of the rates, by means of a debit, credit or refund
34 retroactive to the effective date of the interim rates. The public hearing
35 on initial rates applicable to the coverages available under section 13
36 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70
37 (C.39:6A-8) shall not be limited by the provisions of subsection c. of
38 this section governing changes in previously approved rates or rating
39 systems.] (Deleted by amendment, P.L. , c. .)

40 (cf: P.L.1994, c.58, s.43)

41

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

44 34. a. Notwithstanding section 14 of P.L.1944, c.27
45 (C.17:29A-14), an insurer, affiliated group of insurers or rating
46 organization may elect to file a proposed alteration to its rating system

1 pursuant to the expedited process set forth in this section when the
2 filer requests either an increase of no more than ~~[3%]~~ 7% or any
3 decrease in its Statewide average base rate for private passenger
4 automobile insurance.

5 b. A filer electing to use this expedited process shall file with the
6 commissioner that reasonable information and calculations necessary
7 to support the rate change which the commissioner prescribes by
8 regulation. The prescribed filing requirements shall recognize the
9 intent of this section to provide an expedited process that will not
10 produce rates that are excessive, inadequate for the safety and
11 soundness of the insurer, or unfairly discriminatory between risks in
12 the State involving substantially the same hazards and expense
13 elements.

14 c. If the commissioner determines that the filing ~~[will not produce~~
15 ~~rates that are excessive, inadequate for the safety and soundness of the~~
16 ~~insurer, or unfairly discriminatory between risks in this State involving~~
17 ~~substantially the same hazards and expense elements]~~ includes all the
18 information and calculations required to support the rate change, the
19 commissioner shall approve the filing.

20 d. A decision on ~~[the]~~ a filing requesting an increase of up to 3%
21 shall be rendered not later [that 45] than 30 days after receipt of the
22 filing, unless the commissioner grants an extension, in which case a
23 decision shall be rendered not later than [60] 45 days after receipt of
24 the filing. A decision on a filing requesting an increase of more than
25 3%, but not more than 7%, shall be rendered not less than 45 days
26 after receipt of the filing, unless the commissioner grants an extension,
27 in which case a decision shall be rendered not later than 60 days after
28 receipt of the filing. A filing shall be complete and received when the
29 filing is accompanied by a certification by a qualified actuary which
30 states that the material, data and documentation, which is part of the
31 filing, includes the documents set forth in regulations, supports the
32 requested rate change and is consistent with generally accepted
33 ratemaking principles of the actuarial profession. A filing shall be
34 deemed to be approved unless rejected or modified by the
35 commissioner within the time provided.

36 e. The commissioner shall not approve any rate change pursuant
37 to this expedited process that results in an overall increase of more
38 than ~~[3%]~~ 7% or an increase in any single coverage of more than
39 ~~[5%]~~ 10%.

40 f. An insurer shall not file more than one request for an increase
41 in rates pursuant to this section in any twelve-month period, provided
42 that this limitation shall not apply to a filing for an overall reduction
43 in rates or prohibit a filing to recover an overall reduction in rates, or
44 to a filing reflecting a statutory change in coverage.

45 g. An insurer not using this expedited process in a 12-month
46 period may elect to file a proposed alteration to its rating system that

1 will result in a rate change of not more than double the increase
2 permitted pursuant to subsection e. of this section if the filing complies
3 with subsections b. and c. of this section and is made not more than
4 once within a twenty-four month period.

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

6

7 43. (New section) a. Every insurer writing private passenger
8 automobile insurance in this State shall provide each insured at least
9 annually and each applicant upon receipt of initial application with an
10 Automobile Insurance Consumer Bill of Rights. The Automobile
11 Insurance Consumer Bill of Rights shall contain information that the
12 Commissioner of Banking and Insurance establishes by regulation as
13 necessary, relevant or appropriate to improve the understanding of the
14 rights and responsibilities of consumers and insurers regarding
15 automobile insurance.

16 b. To further assist consumers in evaluating an automobile insurer,
17 the commissioner shall develop and disseminate an Automobile
18 Insurance Report Card. Those insurers with more than 50,000
19 insured private passenger automobiles writing private passenger
20 automobile insurance in this State shall maintain and submit annually
21 to the commissioner customer satisfaction data. The commissioner
22 shall establish by regulation the methodology and criteria to be used
23 in collecting the customer satisfaction data, including, but not limited
24 to, the use of a survey. This data, including consumer complaint ratios
25 and other relevant consumer information designated by the
26 commissioner, shall be included in the Automobile Insurance Report
27 Card. The Automobile Insurance Report Card shall be available on the
28 official website of the Department of Banking and Insurance, and shall
29 be updated annually.

30 c. Every insurer writing private passenger automobile insurance
31 in this State shall also provide each new applicant seeking automobile
32 insurance and each insured upon request, with three premium
33 scenarios demonstrating the effect of different coverage choices. The
34 commissioner shall establish by regulation the types of coverage
35 examples for which insurers shall provide premium scenarios and the
36 time in which such scenarios shall be provided.

37 d. If the commissioner finds, after notice and hearing, that an
38 insurer has a pattern and practice of failing to provide any of the
39 information required by this section, the commissioner may, after
40 notice and hearing, order the payment of a penalty not to exceed
41 \$1,000 for each offense. Each instance of a failure to provide
42 information to an insured, an applicant or the commissioner, as the
43 case may be, shall be a separate offense and subject to assessment of
44 a separate penalty. Penalties assessed pursuant to this section shall be
45 collected by the commissioner pursuant to the "Penalty Enforcement
46 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

1 44. (New section) a. The Department of Banking and Insurance
2 shall publish on its official website, to the extent practicable, as the
3 case may be: (1) notice of all filings for consumer insurance rate
4 increases; (2) all requests for hearing dates for such increases; and (3)
5 the date or dates a hearing is to be held. Publication on the website
6 shall take place within three business days of the applicable notice of
7 filing, request for hearing, and date or dates of hearings.

8 b. If an insurer or rating organization files for a consumer
9 insurance overall rate increase, the insurer or rating organization shall,
10 in conjunction with such filing, notify the public of the proposed rate
11 change; except, however, the filer is not required to notify the public
12 of the proposed rate change if the rate increase pertains to: (1) an
13 expedited prior approval rate filing made pursuant to either section 34
14 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409
15 (C.17:36-5.35); (2) rating system changes made pursuant to sections
16 14 through 18 and section 34 of P.L.1997, c.151 (C.17:29A-46.1 et
17 seq.), or (3) a rate filing made pursuant to any statutory change in
18 coverage provided under a policy of private passenger automobile
19 insurance.

20 c. (1) For insurers, that notice shall be communicated through
21 regular or electronic mail to the named policy holders who use the
22 products and services subject to the overall rate increase, within 10
23 business days after the applicable filing and shall conform to a form
24 prescribed by the Department of Banking and Insurance pursuant to
25 regulations.

26 (2) For rating organizations, the notice shall be communicated in
27 a form and manner prescribed by the commissioner by regulation.

28 d. For purposes of this section, “consumer insurance rate
29 increases” means prior approval rate increases for: personal lines
30 property casualty coverages; or Medicare supplemental coverages.

31
32 45. (New section) a. In order to assist certain low income
33 individuals in this State and encourage their greater compliance in
34 satisfying the mandatory private passenger automobile insurance
35 requirements, the Legislature intends to establish a special automobile
36 insurance policy. The special automobile insurance policy shall be
37 offered only to individuals who qualify for and are actively covered by
38 designated government subsidized programs in the State. For the
39 purpose of this section, “eligible low income individual” means an
40 individual who meets the income criteria established by the
41 commissioner by regulation. In setting the low income criteria, the
42 commissioner shall limit availability to those persons eligible and
43 enrolled in the federal Medicaid program.

44 b. As an additional option to the mandatory coverage provided in
45 sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) or the
46 alternative covered provided in section 4 of P.L.1998, c.21 (C.39:6A-

1 3.1), an owner or registered owner of an automobile registered or
2 principally garaged in this State, who is an eligible low income
3 individual, may elect a special automobile insurance policy providing
4 the following coverage:

5 (1) Emergency personal injury protection coverage, for the
6 payment of benefits without regard to negligence, liability or fault of
7 any kind, only to the named insured and dependent members of his
8 family, as defined by the federal Medicaid program, residing in his
9 household, who sustain bodily injury as a result of an accident while
10 occupying, entering into, alighting from or using an automobile, or as
11 a pedestrian, caused by an automobile or by an object propelled by or
12 from an automobile, and to other persons sustaining bodily injury
13 while occupying, entering into, alighting from or using the automobile
14 of the named insured, with the permission of the named insured.
15 “Emergency personal injury protection coverage” issued pursuant to
16 this section means and includes only payment of treatment for
17 emergency care in an amount not to exceed \$250,000 per person per
18 accident. “Emergency care” means all medically necessary treatment
19 of a traumatic injury or a medical condition manifesting itself by acute
20 symptoms of sufficient severity such that absence of immediate
21 attention could reasonably be expected to result in: death; serious
22 impairment to bodily functions; or serious dysfunction of a bodily
23 organ or part. Such emergency care shall include all medically
24 necessary care immediately following an automobile accident,
25 including, but not limited to, immediate pre-hospitalization care,
26 transportation to a hospital or trauma center, emergency room care,
27 surgery, critical and acute care. Emergency care extends during the
28 period of initial hospitalization until the patient is discharged from
29 acute care by the attending physician. Emergency care shall be
30 presumed when medical care is initiated at a hospital within 120 hours
31 of the accident. “Emergency personal injury protection coverage”
32 shall also include all medically necessary treatment of permanent or
33 significant brain injury, spinal cord injury or disfigurement after the
34 patient is discharged from acute care. In the event benefits paid by an
35 insurer pursuant to this subsection are in excess of \$75,000 on account
36 of bodily injury to any one person in any one accident covered by a
37 policy issued or renewed prior to January 1, 2004, that excess shall be
38 paid by the insurer and shall be reimbursable to the insurer from the
39 Unsatisfied Claim and Judgment Fund pursuant to section 2 of
40 P.L.1977, c.310 (C.39:6-73.1);

41 (2) Death benefit in the amount of \$10,000;

42 (3) The tort option provided in subsection a. of section 8 of
43 P.L.1972, c.70 (C.39:6A-8) shall apply to every named insured and
44 any other person to whom the special automobile insurance policy
45 applies.

46 c. A special automobile insurance policy shall not provide liability,

1 collision, comprehensive, uninsured or underinsured motorist
2 coverage.

3 d. The policy form for special automobile insurance policies shall
4 be subject to the approval of the Commissioner of Banking and
5 Insurance and shall clearly and conspicuously set forth the limitations
6 on benefits provided under the policy.

7 e. The commissioner shall approve the rating system to be used for
8 a special automobile insurance policy, which shall be administered by
9 the plan created pursuant to section 1 of P.L.1970, c.215 (C.17:29D-
10 1), to provide a uniform Statewide rate to be utilized by all insurers
11 providing coverage through a special automobile insurance policy. The
12 rate established by the commissioner shall be sufficient to reimburse
13 the insurer for the cost of writing the policy and an amount set by the
14 commissioner to be forwarded to the Unsatisfied Claim and Judgment
15 Fund to offset claims paid by the Unsatisfied Claim and Judgment
16 Fund. The commissioner may adjust the rate annually.

17 f. Special automobile insurance policies shall be assigned to
18 insurers pursuant to the apportionment methodology of the plan
19 created pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1). The
20 number of policies assigned pursuant to this subsection shall not be
21 included in the determination of a competitive market pursuant to
22 subsection d. of section 27 of P.L.1990, c.8 (C.17:33B-15).

23

24 46. Section 5 of P.L.1998, c.21 (C.39:6A-3.2) is amended to read
25 as follows:

26 5. a. All automobile insurance policies issued or renewed on or
27 after the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall be
28 issued or renewed including at least the coverages required pursuant
29 to sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless
30 the named insured elects a basic automobile insurance policy pursuant
31 to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or, after the effective
32 date of P.L. , c. (C.)(now before the Legislature as this bill), a
33 special automobile insurance policy pursuant to section 45 of P.L. ,
34 c. (C.)(now before the Legislature as this bill). Election of a basic
35 automobile insurance policy or a special automobile insurance policy
36 shall be in writing and signed by the named insured on the coverage
37 selection form required by section 17 of P.L.1983, c.362
38 (C.39:6A-23). The coverage [election] selection form shall contain
39 a statement, clearly readable and in 12-point bold type, in a form
40 approved by the commissioner, that: (1) election of a basic automobile
41 insurance policy will result in less coverage than the \$250,000 medical
42 expense benefits coverage mandated prior to the effective date of [this
43 act] P.L.1998, c.21 (C.39:6A-1.1 et al.); or (2) election of a special
44 automobile insurance policy will result in coverage only for emergency
45 care. Furthermore, the coverage election form shall contain a
46 statement, clearly readable and in 12-point bold type, in a form

1 approved by the commissioner, that election of a special automobile
2 insurance policy, or a basic automobile insurance policy without the
3 optional \$10,000 liability coverage provided for in section 4 of
4 P.L.1998, c.21 (C.39:6A-3.1) may subject the named insured to a
5 claim or judgment for noneconomic loss which is not covered by the
6 basic or special automobile insurance policy, and which may place his
7 assets at risk, and in the event the named insured is sued, the insurer
8 shall not provide legal counsel.

9 b. The insurance coverages provided for in section 4 of P.L.1998,
10 c.21 (C.39:6A-3.1) shall be offered by every insurer which writes
11 insurance coverages pursuant to sections 3 and 4 of P.L.1972, c.70
12 (C.39:6A-3 and 39:6A-4) for a period of five years after the effective
13 date of P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall
14 require every company writing such insurance coverage to report to
15 him annually during that five-year period as to the number of policies
16 written pursuant to this subsection in the previous year, the number of
17 policies with the coverage offered pursuant to section 4 of P.L.1972,
18 c.70 (C.39:6A-4) which have been converted to policies with the
19 coverage offered pursuant to section 4 of P.L.1998, c.21
20 (C.39:6A-3.1) and any other information the commissioner may
21 require such as, but not limited to, the age of the policyholders and the
22 territories in which the policyholders reside. The commissioner shall
23 then report to the Governor and the Legislature regarding the
24 acceptance of the basic automobile insurance policy by the automobile
25 insurance consumers of this State annually for the first four years the
26 basic policy is sold. On or before January 1, 2003, the commissioner
27 shall make a final, cumulative report which shall include
28 recommendations as to the continuation of the basic policy to the
29 Governor and the Legislature.

30 c. The insurance coverages provided for in section 45 of P.L. , c.
31 (C.)(now before the Legislature as this bill) shall be offered or
32 provided pursuant to subsection f. of that section for a period of five
33 years after the effective date of P.L. , c. (C.)(now before the
34 Legislature as this bill). On or before January 1, 2008, the
35 commissioner shall make a final report which shall include
36 recommendations as to the continuation of the special policy to the
37 Governor and the Legislature.

38 (cf: P.L.1998, c.21, s.5)

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

42 14. a. Any person who, at the time of an automobile accident
43 resulting in injuries to that person, is required but fails to maintain
44 medical expense benefits coverage mandated by section 4 of P.L.1972,
45 c.70 (C.39:6A-4) [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
46 section 45 of P.L. , c. (C.)(now before the Legislature as this

1 bill) shall have no cause of action for recovery of economic or
2 noneconomic loss sustained as a result of an accident while operating
3 an uninsured automobile.

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

10 c. Any person acting with specific intent of causing injury to
11 himself or others in the operation or use of an automobile shall have
12 no cause of action for recovery of economic or noneconomic loss
13 sustained as a result of an accident arising from such conduct.
14 (cf: P.L.1998, c.21, s.8)

15

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

18 5. Payment of personal injury protection coverage benefits.

19 a. An insurer may require written notice to be given as soon as
20 practicable after an accident involving an automobile with respect to
21 which the policy affords personal injury protection coverage benefits
22 payable under a standard automobile insurance policy pursuant to
23 section 4 of P.L.1972, c.70 (C.34:6A-4) [~~or~~], medical expense
24 benefits payable under a basic automobile insurance policy pursuant to
25 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency care medical
26 expense benefits payable under a special automobile insurance policy
27 pursuant to section 45 of P.L. ,c. (C.)(now before the
28 Legislature as this bill). In the case of claims for medical expense
29 benefits under [~~either policy~~] any of those policies, written notice
30 shall be provided to the insurer by the treating health care provider no
31 later than 21 days following the commencement of treatment.
32 Notification required under this section shall be made in accordance
33 with regulations adopted by the Commissioner of Banking and
34 Insurance and on a form prescribed by the Commissioner of Banking
35 and Insurance. Within a reasonable time after receiving notification
36 required pursuant to this act, the insurer shall confirm to the treating
37 health care provider that its policy affords the claimant personal injury
38 protection coverage benefits as required by section 4 of P.L.1972, c.70
39 (C.39:6A-4) [~~or~~], medical expense benefits pursuant to section 4 of
40 P.L.1998, c.21 (C.39:6A-3.1) or emergency care medical expense
41 benefits payable under a special automobile insurance policy pursuant
42 to section 45 of P.L. ,c. (C.)(now before the Legislature as this
43 bill).

44 b. For the purposes of this section, notification shall be deemed to
45 be met if a treating health care provider submits a bill or invoice to the
46 insurer for reimbursement of services within 21 days of the

1 commencement of treatment.

2 c. In the event that notification is not made by the treating health
3 care provider within 21 days following the commencement of
4 treatment, the insurer shall reserve the right to deny, in accordance
5 with regulations established by the Commissioner of Banking and
6 Insurance, payment of the claim and the treating health care provider
7 shall be prohibited from seeking any payment directly from the insured.
8 In establishing the standards for denial of payment, the Commissioner
9 of Banking and Insurance shall consider the length of delay in
10 notification, the severity of the treating health care provider's failure
11 to comply with the notification provisions of this act based upon the
12 potential adverse impact to the public and whether or not the provider
13 has engaged in a pattern of noncompliance with the notification
14 provisions of this act. In establishing the regulations necessary to
15 effectuate the purposes of this subsection, the Commissioner of
16 Banking and Insurance shall define specific instances where the
17 sanctions permitted pursuant to this subsection shall not apply. Such
18 instances may include, but not be limited to, a treating medical
19 provider's failure to provide notification to the insurer as required by
20 this act due to the insured's medical condition during the time period
21 within which notification is required.

22 d. A health care provider who fails to notify the insurer within 21
23 days and whose claim for payment has been denied by the insurer
24 pursuant to the standards established by the Commissioner of Banking
25 and Insurance may, in the discretion of a judge of the Superior Court,
26 be permitted to refile such claim provided that the insurer has not been
27 substantially prejudiced thereby. Application to the court for
28 permission to refile a claim shall be made within 14 days of notification
29 of denial of payment and shall be made upon motion based upon
30 affidavits showing sufficient reasons for the failure to notify the insurer
31 within the period of time prescribed by this act.

32 e. (Deleted by amendment, P.L.1998, c.21.)

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

40 g. Personal injury protection coverage benefits pursuant to section
41 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
42 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency
43 care medical expense benefits payable under a special automobile
44 insurance policy pursuant to section 45 of P.L. , c. (C.) (now
45 before the Legislature as this bill) shall be overdue if not paid within
46 60 days after the insurer is furnished written notice of the fact of a

1 covered loss and of the amount of same. If such written notice is not
2 furnished to the insurer as to the entire claim, any partial amount
3 supported by written notice is overdue if not paid within 60 days after
4 such written notice is furnished to the insurer. Any part or all of the
5 remainder of the claim that is subsequently supported by written notice
6 is overdue if not paid within 60 days after such written notice is
7 furnished to the insurer; provided, however, that any payment shall not
8 be deemed overdue where, within 60 days of receipt of notice of the
9 claim, the insurer notifies the claimant or his representative in writing
10 of the denial of the claim or the need for additional time, not to exceed
11 45 days, to investigate the claim, and states the reasons therefor. The
12 written notice stating the need for additional time to investigate the
13 claim shall set forth the number of the insurance policy against which
14 the claim is made, the claim number, the address of the office handling
15 the claim and a telephone number, which is toll free or can be called
16 collect, or is within the claimant's area code. Written notice to the
17 organization administering dispute resolution pursuant to sections 24
18 and 25 of P.L.1998, c.21 (C.39:6A-5.1 and C.39:6A-5.2) shall satisfy
19 the notice request for additional time to investigate a claim pursuant
20 to this subsection. For the purpose of determining interest charges in
21 the event the injured party prevails in a subsequent proceeding where
22 an insurer has elected a 45-day extension pursuant to this subsection,
23 payment shall be considered overdue at the expiration of the 45-day
24 period or, if the injured person was required to provide additional
25 information to the insurer, within 10 business days following receipt
26 by the insurer of all the information requested by it, whichever is later.

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

32 h. All overdue payments shall bear interest at the percentage of
33 interest prescribed in the Rules Governing the Courts of the State of
34 New Jersey for judgments, awards and orders for the payment of
35 money.

36 i. All automobile insurers and the Unsatisfied Claim and Judgment
37 Fund shall provide any claimant with the option of submitting a dispute
38 under this section to dispute resolution pursuant to sections 24 and 25
39 of P.L.1998, c.21 (C.39:6A-5.1 and C.39:6A-5.2).

40 (cf: P.L.1998, c.21, s.23)

41

42 49. Section 24 of P.L.1998, c.21 (C.39:6A-5.1) is amended to
43 read as follows:

44 24. a. Any dispute regarding the recovery of medical expense
45 benefits or other benefits provided under personal injury protection
46 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4), [or]

1 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L. _____,
2 c. _____(now before the Legislature as this bill) arising out of the
3 operation, ownership, maintenance or use of an automobile may be
4 submitted to dispute resolution on the initiative of any party to the
5 dispute, as hereinafter provided.

6 b. The Commissioner of Banking and Insurance shall designate an
7 organization, and for that purpose may, at his discretion, advertise for
8 proposals, for the purpose of administering dispute resolution
9 proceedings regarding medical expense benefits and other benefits
10 provided under personal injury protection pursuant to section 4 of
11 P.L.1972, c.70 (C.39:6A-4) [or], medical expense benefits coverage
12 pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or emergency
13 care medical expense benefits pursuant to section 45 of P.L. _____, c. _____
14 (C. _____)(now before the Legislature as this bill). The commissioner
15 shall promulgate rules and regulations with respect to the conduct of
16 the dispute resolution proceedings. The organization administering
17 dispute resolution shall utilize qualified professionals who serve on a
18 full-time basis and who meet standards of competency established by
19 the commissioner. The commissioner shall establish standards of
20 performance for the organization to ensure the independence and
21 fairness of the review process, including, but not limited to, standards
22 relative to the professional qualifications of the professionals presiding
23 over the dispute resolution process, and standards to ensure that no
24 conflict of interest exists which would prevent the professional from
25 performing his duties in an impartial manner. The standards of
26 performance shall include a requirement that the organization establish
27 an advisory council composed of parties who are users of the dispute
28 resolution mechanism established herein. The commissioner may
29 contract with a consulting firm for the formulation of the standards of
30 performance of the organization and establishment of qualifications for
31 the persons who are to conduct the dispute resolution proceedings.
32 The commissioner shall not advertise for bids for the consulting firm,
33 as provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and
34 52:34-9). Compensation to the dispute resolution professionals shall
35 be established by the commissioner and adjusted from time to time as
36 appropriate, with the approval of the commissioner. In no case shall
37 compensation be paid on a contingency basis. The organization shall
38 establish a dispute resolution plan, which shall include procedures and
39 rules governing the dispute resolution process and provisions for
40 monitoring the dispute resolution process to ensure adherence to the
41 standards of performance established by the commissioner. The plan,
42 and any amendments thereto, shall be subject to the approval of the
43 commissioner.

44 c. Dispute resolution proceedings under this section 24 and
45 section 25 of this amendatory and supplementary act shall include
46 disputes arising regarding medical expense benefits provided under

1 subsection a. of section 4 of P.L.1972, c.70 (C.39:6A-4) [or], section
2 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of P.L. _____, c. _____
3 (C. _____)(now before the Legislature as this bill), benefits provided
4 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70
5 (C.39:6A-4), subsection b., c., d. or e. of section 7 of P.L.1972, c.198
6 (C.39:6-86.1), and disputes as to additional first party coverage
7 benefits required to be offered pursuant to section 10 of P.L.1972,
8 c.70 (C.39:6A-10). Disputes involving medical expense benefits may
9 include, but not necessarily be limited to, matters concerning: (1)
10 interpretation of the insurance contract; (2) whether the treatment or
11 health care service which is the subject of the dispute resolution
12 proceeding is in accordance with the provisions of section 4 of
13 P.L.1972, c.70 (C.39:6A-4) [or], section 4 of P.L.1998, c.21
14 (C.39:6A-3.1) or section 45 of P.L. _____, c. _____ (C. _____)(now before the
15 Legislature as this bill) or the terms of the policy; (3) the eligibility of
16 the treatment or service for compensation; (4) the eligibility of the
17 provider performing the treatment or service to be compensated under
18 the terms of the policy or under regulations promulgated by the
19 commissioner, including whether the person is licensed or certified to
20 perform such treatment; (5) whether the disputed medical treatment
21 was actually performed; (6) whether diagnostic tests performed in
22 connection with the treatment are those recognized by the
23 commissioner; (7) the necessity or appropriateness of consultations by
24 other health care providers; (8) disputes involving application of and
25 adherence to fee schedules promulgated by the commissioner; and (9)
26 whether the treatment performed is reasonable, necessary, and
27 compatible with the protocols provided for pursuant to P.L.1998, c.21
28 (C.39:6A-1.1 et al.). The dispute resolution professionals may review
29 the entire claims file of the insurer, subject to any confidentiality
30 requirement established pursuant to State or federal law. All decisions
31 of the dispute resolution professional shall be in writing, in a form
32 prescribed by the commissioner, shall state the issues in dispute, the
33 findings and conclusions on which the decision is based, and shall be
34 signed by the dispute resolution professional. All decisions of a
35 dispute resolution professional shall be binding. The dispute
36 resolution organization shall provide for the retention of all documents
37 used in dispute resolution proceedings under this section and section
38 25 of this amendatory and supplementary act, including the written
39 decision, for a period of at least five years, in a form approved by the
40 commissioner, or for such additional time as may be established by the
41 commissioner. The written decisions of the dispute resolution
42 professional shall be forwarded to the commissioner, who shall
43 establish a record of the proceedings conducted under the dispute
44 resolution procedure, which shall be accessible to the public and may
45 be used as guidance in subsequent dispute resolution proceedings.

46 d. With respect to disputes as to the diagnosis, the medical

1 necessity of the treatment or diagnostic test administered to the injured
2 person, whether the injury is causally related to the insured event or
3 is the product of a preexisting condition, or disputes as to the
4 appropriateness of the protocols utilized by the provider, the dispute
5 resolution professional shall, either at his option or at the request of
6 any party to the dispute, refer the matter to a medical review
7 organization for a determination. The determination of the medical
8 review organization on the dispute referred shall be presumed to be
9 correct by the dispute resolution professional, which presumption may
10 be rebutted by a preponderance of the evidence. Should the dispute
11 resolution professional find that the decision of the medical review
12 organization is not correct, the reasons supporting that finding shall be
13 set forth in the dispute resolution professional's written decision.

14 e. Any person submitting a matter to the dispute resolution
15 process established herein may submit for review all or a portion of a
16 disputed treatment or treatments or a dispute regarding a diagnostic
17 test or tests or a dispute regarding the providing of services or durable
18 medical goods. Any portion of a treatment or diagnostic test or
19 service which is not under review shall be reimbursed in accordance
20 with the provisions of section 5 of P.L.1972, c.70 (C.39:6A-5). If the
21 dispute resolution proceeding results in a determination that all or part
22 of a treatment or treatments, diagnostic test or tests or service
23 performed, or durable medical goods provided are medically necessary
24 and appropriate, reimbursement shall be made with interest payable in
25 accordance with the provisions of section 5 of P.L.1972, c.70
26 (C.39:6A-5).

27 (cf: P.L.1998, c.22, s.4)

28

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

31 6. Collateral Source. The benefits provided in sections 4 and 10
32 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], the medical
33 expense benefits provided in section 4 of P.L.1998, c.21
34 (C.39:6A-3.1) and the benefits provided in section 45 of P.L. , c.
35 (C.)(now before the Legislature as this bill) shall be payable as loss
36 accrues, upon written notice of such loss and without regard to
37 collateral sources, except that benefits, collectible under workers'
38 compensation insurance, employees' temporary disability benefit
39 statutes, Medicare provided under federal law, and benefits, in fact
40 collected, that are provided under federal law to active and retired
41 military personnel shall be deducted from the benefits collectible under
42 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
43 the medical expense benefits provided in section 4 of P.L.1998, c.21
44 (C.39:6A-3.1) and the benefits provided in section 45 of P.L. , c.
45 (C.)(now before the Legislature as this bill).

46 If an insurer has paid those benefits and the insured is entitled to,

1 but has failed to apply for, workers' compensation benefits or
2 employees' temporary disability benefits, the insurer may immediately
3 apply to the provider of workers' compensation benefits or of
4 employees' temporary disability benefits for a reimbursement of any
5 benefits pursuant to sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
6 and 39:6A-10) [or], medical expense benefits pursuant to section 4 of
7 P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to section 45 of
8 P.L. , c. (C.)(now before the Legislature as this bill) it has paid.
9 cf: P.L.1998, c.21, s.9

10

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

13 7. Exclusions. a. Insurers may exclude a person from benefits
14 under sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10)
15 [and], medical expense benefits provided in section 4 of P.L.1998,
16 c.21 (C.39:6A-3.1) and benefits provided in section 45 of P.L. ,
17 c. (C.)(now before the Legislature as this bill) if that person's
18 conduct contributed to his personal injuries or death occurred in any
19 of the following ways:

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

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

24 b. An insurer may also exclude from the benefits provided in
25 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
26 the medical expense benefits provided in section 4 of P.L.1998, c.21
27 (C.39:6A-3.1) and benefits provided in section 45 of P.L. , c.
28 (C.)(now before the Legislature as this bill) any person having
29 incurred injuries or death, who, at the time of the accident:

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

33 (2) was occupying or operating an automobile without the
34 permission of the owner or other named insured;

35 (3) was a person other than the named insured or a member of the
36 named insured's family residing in his household, if that person is
37 entitled to coverage under section 4 or section 10 of P.L.1972, c.70
38 (C.39:6A-4 or 39:6A-10), or both, [or] section 4 of P.L.1998, c.21
39 (C.39:6A-3.1) or section 45 of P.L. , c. (C.)(now before the
40 Legislature as this bill), as a named insured or member of the named
41 insured's family residing in his household under the terms of another
42 policy; or

43 (4) was a member of the named insured's family residing in the
44 named insured's household, if that person is entitled to coverage under
45 section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or
46 both, [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1) or section 45 of

1 P.L. , c. (C.)(now before the Legislature as this bill) as a named
2 insured under the terms of another policy.

3 (cf: P.L.1998, c.21, s.10)

4

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

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

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

12 a. Limitation on lawsuit option. Every owner, registrant, operator
13 or occupant of an automobile to which section 4 of P.L.1972, c.70
14 (C.39:6A-4), personal injury protection coverage, [or] section 4 of
15 P.L.1998, c.21 (C.39:6A-3.1), medical expense benefits coverage, or
16 section 45 of P.L. , c. (C.)(now before the Legislature as this
17 bill) regardless of fault, applies, and every person or organization
18 legally responsible for his acts or omissions, is hereby exempted from
19 tort liability for noneconomic loss to a person who is subject to this
20 subsection and who is either a person who is required to maintain
21 personal injury protection coverage pursuant to section 4 of P.L.1972,
22 c.70 (C.39:6A-4) [or], medical expense benefits pursuant to section
23 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to section 45
24 of P.L. , c. (C.)(now before the Legislature as this bill), or is
25 a person who has a right to receive benefits under section 4 of
26 P.L.1972, c.70 (C.39:6A-4) [or], section 4 of P.L.1998, c.21
27 (C.39:6A-3.1) or section 45 of P.L. , c. (C.)(now before the
28 Legislature as this bill), as a result of bodily injury, arising out of the
29 ownership, operation, maintenance or use of such automobile in this
30 State, unless that person has sustained a bodily injury which results in
31 death; dismemberment; significant disfigurement or significant
32 scarring; displaced fractures; loss of a fetus; or a permanent injury
33 within a reasonable degree of medical probability, other than scarring
34 or disfigurement. An injury shall be considered permanent when the
35 body part or organ, or both, has not healed to function normally and
36 will not heal to function normally with further medical treatment. For
37 the purposes of this subsection, "physician" means a physician as
38 defined in section 5 of P.L.1939, c.115 (C.45:9-5.1).

39 In order to satisfy the tort option provisions of this subsection, the
40 plaintiff shall, within 60 days following the date of the answer to the
41 complaint by the defendant, provide the defendant with a certification
42 from the licensed treating physician or a board-certified licensed
43 physician to whom the plaintiff was referred by the treating physician.
44 The certification shall state, under penalty of perjury, that the plaintiff
45 has sustained an injury described above. The certification shall be
46 based on and refer to objective clinical evidence, which may include

1 medical testing, except that any such testing shall be performed in
2 accordance with medical protocols pursuant to subsection a. of section
3 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
4 administered in accordance with section 12 of P.L.1998, c.21
5 (C.39:6A-4.7). Such testing may not be experimental in nature or
6 dependent entirely upon subjective patient response. The court may
7 grant no more than one additional period not to exceed 60 days to file
8 the certification pursuant to this subsection upon a finding of good
9 cause.

10 A person is guilty of a crime of the fourth degree if that person
11 purposefully or knowingly makes, or causes to be made, a false,
12 fictitious, fraudulent, or misleading statement of material fact in, or
13 omits a material fact from, or causes a material fact to be omitted
14 from, any certification filed pursuant to this subsection.
15 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-1, the
16 court shall deal with a person who has been convicted of a violation
17 of this subsection by imposing a sentence of imprisonment unless,
18 having regard to the character and condition of the person, the court
19 is of the opinion that imprisonment would be a serious injustice which
20 overrides the need to deter such conduct by others. If the court
21 imposes a noncustodial or probationary sentence, such sentence shall
22 not become final for 10 days in order to permit the appeal of such
23 sentence by the prosecution. Nothing in this subsection a. shall
24 preclude an indictment and conviction for any other offense defined by
25 the laws of this State. In addition, any professional license held by the
26 person shall be forfeited according to the procedures established by
27 section 4 of P.L.1997, c.353 (C.2C:51-5); or

28 b. No limitation on lawsuit option. As an alternative to the basic
29 tort option specified in subsection a. of this section, every owner,
30 registrant, operator, or occupant of an automobile to which section 4
31 of P.L.1972, c.70 (C.39:6A-4), personal injury protection coverage,
32 [or] section 4 of P.L.1998, c.21 (C.39:6A-3.1), medical expense
33 benefits coverage, or section 45 of P.L. , c. (C.)(now before the
34 Legislature as this bill), regardless of fault, applies, and every person
35 or organization legally responsible for his acts or omissions, shall be
36 liable for noneconomic loss to a person who is subject to this
37 subsection and who is either a person who is required to maintain the
38 coverage mandated by P.L.1972, c.70 (C.39:6A-1 et seq.) or is a
39 person who has a right to receive benefits under section 4 of that act
40 (C.39:6A-4), as a result of bodily injury, arising out of the ownership,
41 operation, maintenance or use of such automobile in this State.

42 The tort option provisions of subsection b. of this section shall also
43 apply to the right to recover for noneconomic loss of any person
44 eligible for benefits pursuant to section 4 of P.L.1972, c.70
45 (C.39:6A-4) [or], section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
46 section 45 of P.L. , c. (C.)(now before the Legislature as this

1 bill) but who is not required to maintain personal injury protection
2 coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) [or],
3 medical expense benefits coverage pursuant to section 4 of P.L.1998,
4 c.21 (C.39:6A-3.1) or benefits pursuant to section 45 of P.L. , c. (C.)
5 (now before the Legislature as this bill) and is not an immediate
6 family member, as defined in section 14.1 of P.L.1983, c.362
7 (C.39:6A-8.1), under a standard automobile insurance policy or basic
8 automobile insurance policy.

9 The tort option provisions of subsection a. of this section shall also
10 apply to any person subject to section 14 of P.L.1985, c.520
11 (C.39:6A-4.5) and to every named insured and any other person to
12 whom the benefits of the special automobile insurance policy provided
13 in section 45 of P.L. , c. (C.)(now before the Legislature as
14 this bill) or the medical expense benefits of the basic automobile
15 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1)
16 apply whether or not the person has elected the optional \$10,000
17 liability coverage insuring against loss resulting from liability imposed
18 by law for bodily injury or death provided for in subsection c. of
19 section 4 of P.L.1998, c.21 (C.39:6A-3.1).

20 The tort option provisions of subsections a. and b. of this section
21 as provided in this 1998 amendatory and supplementary act shall apply
22 to automobile insurance policies issued or renewed on or after the
23 effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) and as otherwise
24 provided by law.

25 (cf: P.L.1998, c.21, s.11)

26

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

29 20. An insurer, health maintenance organization or governmental
30 agency paying benefits pursuant to subsection a., b. or d. of section 13
31 of P.L.1983, c.362 (C.39:6A-4.3) [or], personal injury protection
32 benefits in accordance with section 4 or section 10 of P.L.1972, c.70
33 (C.39:6A-4 or 39:6A-10) [or], medical expense benefits pursuant to
34 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits pursuant to
35 section 45 of P.L. , c. (C.)(now before the Legislature as this
36 bill), as a result of an accident occurring within this State, shall, within
37 two years of the filing of the claim, have the right to recover the
38 amount of payments from any tortfeasor who was not, at the time of
39 the accident, required to maintain personal injury protection or medical
40 expense benefits coverage, other than for pedestrians, under the laws
41 of this State, including personal injury protection coverage required to
42 be provided in accordance with section 18 of P.L.1985, c.520
43 (C.17:28-1.4), or although required did not maintain personal injury
44 protection or medical expense benefits coverage at the time of the
45 accident. In the case of an accident occurring in this State involving
46 an insured tortfeasor, the determination as to whether an insurer,

1 health maintenance organization or governmental agency is legally
2 entitled to recover the amount of payments and the amount of
3 recovery, including the costs of processing benefit claims and
4 enforcing rights granted under this section, shall be made against the
5 insurer of the tortfeasor, and shall be by agreement of the involved
6 parties or, upon failing to agree, by arbitration.

7 (cf: P.L.1998, c.21, s.13)

8

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

11 11. Contribution among insurers. If two or more insurers are
12 liable to pay benefits under sections 4 and 10 of P.L.1972, c.70
13 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
14 policy for the same bodily injury, or death, of any one person, the
15 maximum amount payable shall be as specified in those sections 4 and
16 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], section 4 of
17 P.L.1998, c.21 (C.39:6A-3.1) and section 45 of P.L. , c. (C.)
18 (now before the Legislature as this bill), respectively, if additional first
19 party coverage applies and any insurer paying the benefits shall be
20 entitled to recover from each of the other insurers, only by
21 inter-company arbitration or inter-company agreement, an equitable
22 pro-rata share of the benefits paid.

23 (cf: P.L.1998, c.21, s.15)

24

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

27 12. Inadmissibility of evidence of losses collectible under personal
28 injury protection coverage. Except as may be required in an action
29 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),
30 evidence of the amounts collectible or paid under a standard
31 automobile insurance policy pursuant to sections 4 and 10 of
32 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and], amounts collectible
33 or paid for medical expense benefits under a basic automobile
34 insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1)
35 and amounts collectible or paid for benefits under a special automobile
36 insurance policy pursuant to section 45 of P.L. , c. (C.)(now
37 before the Legislature as this bill), to an injured person, including the
38 amounts of any deductibles, copayments or exclusions, including
39 exclusions pursuant to subsection d. of section 13 of P.L.1983, c.362
40 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action
41 for recovery of damages for bodily injury by such injured person.

42 The court shall instruct the jury that, in arriving at a verdict as to
43 the amount of the damages for noneconomic loss to be recovered by
44 the injured person, the jury shall not speculate as to the amount of the
45 medical expense benefits paid or payable by an automobile insurer
46 under personal injury protection coverage payable under a standard

1 automobile insurance policy pursuant to sections 4 and 10 of
2 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [or], medical expense
3 benefits under a basic automobile insurance policy pursuant to section
4 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits under a special
5 automobile insurance policy pursuant to section 45 of P.L. , c.
6 (C.)(now before the Legislature as this bill) to the injured person,
7 nor shall they speculate as to the amount of benefits paid or payable
8 by a health insurer, health maintenance organization or governmental
9 agency under subsection d. of section 13 of P.L.1983, c.362
10 (C.39:6A-4.3).

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

14 (cf: P.L.1998, c.21, s.16)

15

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

18 13. Discovery of facts as to personal injury protection coverage.
19 The following apply to personal injury protection coverage benefits
20 payable under a standard automobile insurance policy pursuant to
21 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [and],
22 medical expense benefits payable under a basic automobile insurance
23 policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) and
24 benefits payable under a special automobile insurance policy pursuant
25 to section 45 of P.L. , c. (C.)(now before the Legislature as this
26 bill):

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

36 b. Every physician, hospital, or other health care provider
37 providing, before and after the bodily injury upon which a claim for
38 personal injury protection benefits or medical expense benefits is
39 based, any products, services or accommodations in relation to such
40 bodily injury or any other injury, or in relation to a condition claimed
41 to be connected with such bodily injury or any other injury, shall, if
42 requested to do so by the insurer or the Unsatisfied Claim and
43 Judgment Fund against whom the claim has been made, furnish
44 forthwith a written report of the history, condition, treatment, dates
45 and costs of such treatment of the injured person, and produce
46 forthwith and permit the inspection and copying of his or its records

1 regarding such history, condition, treatment dates and costs of
2 treatment. The person requesting such records shall pay all reasonable
3 costs connected therewith.

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

9 d. Whenever the mental or physical condition of an injured person
10 covered by personal injury protection under a standard automobile
11 insurance policy or medical expense benefits under a basic automobile
12 insurance policy is material to any claim that has been or may be made
13 for such past or future personal injury protection benefits or medical
14 expense benefits, such person shall, upon request of an insurer or the
15 Unsatisfied Claim and Judgment Fund submit to mental or physical
16 examination conducted by a health care provider licensed in this State
17 in the same profession or specialty as the health care provider whose
18 services are subject to review under this section and who is located
19 within a reasonable proximity to the injured person's residence. The
20 injured person shall provide or make available to the provider any
21 pertinent medical records or medical history that the provider deems
22 necessary to the examination. The costs of any examinations
23 requested by an insurer or the Unsatisfied Claim and Judgment Fund
24 shall be borne entirely by whomever makes such request. Such
25 examination shall be conducted within the municipality of residence of
26 the injured person. If there is no qualified health care provider to
27 conduct the examination within the municipality of residence of the
28 injured person, then such examination shall be conducted in an area of
29 the closest proximity to the injured person's residence. Insurers
30 providing personal injury protection coverage under a standard
31 automobile insurance policy or medical expense benefits under a basic
32 automobile insurance policy are authorized to include reasonable
33 provisions requiring those claiming personal injury protection
34 coverage benefits or medical expense benefits to submit to mental or
35 physical examination as requested by an insurer or the Unsatisfied
36 Claim and Judgment Fund pursuant to the provisions of this section.
37 Failure to submit to a mental or physical examination requested by an
38 insurer or the Unsatisfied Claim and Judgment Fund pursuant to the
39 provisions of this section shall subject the injured person to certain
40 limitations in coverage as specified in regulations promulgated by the
41 commissioner.

42 e. If requested by the person examined, a party causing an
43 examination to be made, shall deliver to him a copy of every written
44 report concerning the examination rendered by an examining health
45 care provider, at least one of which reports must set out his findings
46 and conclusions in detail. After such request and delivery, the party

1 causing the examination to be made is entitled upon request to receive
2 from the person examined every written report available to him, or his
3 representative, concerning any examination, previously or thereafter
4 made of the same mental or physical condition.

5 f. The injured person, upon reasonable request by the insurer or
6 the Unsatisfied Claim and Judgment Fund, shall sign all forms,
7 authorizations or releases for information, approved by the
8 Commissioner of Banking and Insurance, which may be necessary to
9 the discovery of the above facts, in order to reasonably prove the
10 injured person's losses.

11 g. In the event of any dispute regarding an insurer's or the
12 Unsatisfied Claim and Judgment Fund's or an injured person's right as
13 to the discovery of facts about the injured person's earnings or about
14 his history, condition, treatment, dates and costs of such treatment, or
15 the submission of such injured person to a mental or physical
16 examination subject to the provisions of this section, the insurer,
17 Unsatisfied Claim and Judgment Fund or the injured person may
18 petition a court of competent jurisdiction for an order resolving the
19 dispute and protecting the rights of all parties. The order may be
20 entered on motion for good cause shown giving notice to all persons
21 having an interest therein. Such court may protect against annoyance,
22 embarrassment or oppression and may as justice requires, enter an
23 order compelling or refusing discovery, or specifying conditions of
24 such discovery; the court may further order the payment of costs and
25 expenses of the proceeding, as justice requires.

26 (cf: P.L.1998, c.21, s.17)

27

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

30 11. a. Every action for the payment of benefits payable under a
31 standard automobile insurance policy pursuant to sections 4 and 10 of
32 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [~~or~~], medical expense
33 benefits payable under a basic automobile insurance policy pursuant to
34 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or benefits payable under
35 a special automobile insurance policy pursuant to section 45 of P.L. .
36 c. (C.) (now before the Legislature as this bill), except an action
37 by a decedent's estate, shall be commenced not later than two years
38 after the injured person or survivor suffers a loss or incurs an expense
39 and either knows or in the exercise of reasonable diligence should
40 know that the loss or expense was caused by the accident, or not later
41 than four years after the accident whichever is earlier, provided,
42 however, that if benefits have been paid before then an action for
43 further benefits may be commenced not later than two years after the
44 last payment of benefits.

45 b. Every action by a decedent's estate for the payment of benefits
46 provided under a standard automobile insurance policy pursuant to

1 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) [or],
2 medical expense benefits provided under a basic automobile insurance
3 policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1) or
4 benefits payable under a special automobile insurance policy pursuant
5 to section 45 of P.L. , c. (C.)(now before the Legislature as
6 this bill), shall be commenced not later than two years after death or
7 four years after the accident from which death results, whichever is
8 earlier, provided, however, that if benefits had been paid to the
9 decedent prior to his death then an action may be commenced not later
10 than two years after his death or four years after the last payment of
11 benefits, whichever is earlier, provided, further, that if the decedent's
12 estate has received benefits before then an action for further benefits
13 shall be commenced not later than two years from the last payment of
14 benefits.

15 (cf: P.L.1998, c.21, s.18)

16

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

19 15. In any claim or action arising for benefits payable under a
20 standard automobile insurance policy under section 4 of P.L.1972,
21 c.70 (C.39:6A-4) [or], any claim or action arising for medical expense
22 benefits payable under a basic automobile insurance policy under
23 section 4 of P.L.1998, c.21 (C.39:6A-3.1) or any claim or action
24 arising for benefits payable under a special automobile insurance policy
25 pursuant to section 45 of P.L. , c. (C.)(now before the
26 Legislature as this bill) wherein any person obtains or attempts to
27 obtain from any other person, insurance company or Unsatisfied Claim
28 and Judgment Fund any money or other thing of value by (1) falsely or
29 fraudulently representing that such person is entitled to such benefits;
30 (2) falsely and fraudulently making statements or presenting
31 documentation in order to obtain or attempt to obtain such benefits;
32 or (3) cooperates, conspires or otherwise acts in concert with any
33 person seeking to falsely or fraudulently obtain, or attempt to obtain,
34 such benefits may upon conviction be fined not more than \$5,000.00,
35 or imprisoned for not more than three years or both, or in the event
36 the sum so obtained or attempted to be obtained is not more than
37 \$500.00, may upon conviction, be fined not more than \$500.00, or
38 imprisoned for not more than six months or both, as a disorderly
39 person.

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

47 (cf: P.L.1998, c.21, s.19)

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

3 2. a. Except for a basic automobile insurance policy, no motor
4 vehicle liability policy or renewal of such policy of insurance, including
5 a standard liability policy for an automobile as defined in section 2 of
6 P.L.1972, c.70 (C.39:6A-2), insuring against loss resulting from
7 liability imposed by law for bodily injury or death, sustained by any
8 person arising out of the ownership, maintenance or use of a motor
9 vehicle, shall be issued in this State with respect to any motor vehicle
10 registered or principally garaged in this State unless it includes
11 coverage in limits for bodily injury or death as follows:

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

15 (2) an amount or limit, subject to such limit for any one person so
16 injured or killed, of \$30,000.00, exclusive of interest and costs, on
17 account of injury to or death of more than one person, in any one
18 accident, under provisions approved by the Commissioner of Banking
19 and Insurance, for payment of all or part of the sums which the insured
20 or his legal representative shall be legally entitled to recover as
21 damages from the operator or owner of an uninsured motor vehicle,
22 or hit and run motor vehicle, as defined in section 18 of P.L.1952,
23 c.174 (C.39:6-78), because of bodily injury, sickness or disease,
24 including death resulting therefrom, sustained by the insured, caused
25 by accident and arising out of the ownership, maintenance, operation
26 or use of such uninsured or hit and run motor vehicle anywhere within
27 the United States or Canada; except that uninsured motorist coverage
28 shall provide that in order to recover for non-economic loss, as defined
29 in section 2 of P.L.1972, c.70 (C.39:6A-2), for accidents to which the
30 benefits of section 4 (C.39:6A-4) of that act apply, the tort option
31 elected pursuant to section 8 (C.39:6A-8) of that act shall apply to
32 that injured person.

33 All motor vehicle liability policies, except basic automobile
34 insurance policies, shall also include coverage for the payment of all
35 or part of the sums which persons insured thereunder shall be legally
36 entitled to recover as damages from owners or operators of uninsured
37 motor vehicles, other than hit and run motor vehicles, because of
38 injury to or destruction to the personal property of such insured, with
39 a limit in the aggregate for all insureds involved in any one accident of
40 \$5,000.00, and subject, for each insured, to an exclusion of the first
41 \$500.00 of such damages.

42 b. Uninsured and underinsured motorist coverage shall be
43 provided as an option by an insurer to the named insured electing a
44 standard automobile insurance policy up to at least the following
45 limits: \$250,000.00 each person and \$500,000.00 each accident for
46 bodily injury; \$100,000.00 each accident for property damage or

1 \$500,000.00 single limit, subject to an exclusion of the first \$500.00
2 of such damage to property for each accident, except that the limits for
3 uninsured and underinsured motorist coverage shall not exceed the
4 insured's motor vehicle liability policy limits for bodily injury and
5 property damage, respectively.

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

9 c. Uninsured and underinsured motorist coverage provided for in
10 this section shall not be increased by stacking the limits of coverage of
11 multiple motor vehicles covered under the same policy of insurance
12 nor shall these coverages be increased by stacking the limits of
13 coverage of multiple policies available to the insured. If the insured
14 had uninsured motorist coverage available under more than one policy,
15 any recovery shall not exceed the higher of the applicable limits of the
16 respective coverages and the recovery shall be prorated between the
17 applicable coverages as the limits of each coverage bear to the total of
18 the limits.

19 d. Uninsured and underinsured motorist coverage shall be subject
20 to the policy terms, conditions and exclusions approved by the
21 Commissioner of Banking and Insurance, including, but not limited to,
22 unauthorized settlements, nonduplication of coverage, subrogation and
23 arbitration.

24 e. For the purpose of this section, (1) "underinsured motorist
25 coverage" means insurance for damages because of bodily injury and
26 property damage resulting from an accident arising out of the
27 ownership, maintenance, operation or use of an underinsured motor
28 vehicle. Underinsured motorist coverage shall not apply to an
29 uninsured motor vehicle. A motor vehicle is underinsured when the
30 sum of the limits of liability under all bodily injury and property
31 damage liability bonds and insurance policies available to a person
32 against whom recovery is sought for bodily injury or property damage
33 is, at the time of the accident, less than the applicable limits for
34 underinsured motorist coverage afforded under the motor vehicle
35 insurance policy held by the person seeking that recovery. A motor
36 vehicle shall not be considered an underinsured motor vehicle under
37 this section unless the limits of all bodily injury liability insurance or
38 bonds applicable at the time of the accident have been exhausted by
39 payment of settlements or judgments. The limits of underinsured
40 motorist coverage available to an injured person shall be reduced by
41 the amount he has recovered under all bodily injury liability insurance
42 or bonds;

43 (2) "uninsured motor vehicle" means:

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

1 (b) a motor vehicle with respect to the ownership, operation,
2 maintenance, or use of which there is bodily injury liability insurance
3 in existence but the liability insurer denies coverage or is unable to
4 make payment with respect to the legal liability of its insured because
5 the insurer has become insolvent or bankrupt, or the Commissioner of
6 Banking and Insurance has undertaken control of the insurer for the
7 purpose of liquidation; [or]

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

10 (d) an automobile covered by a special automobile insurance
11 policy pursuant to section 45 of P.L. , c. (C.)(now before the
12 Legislature as this bill).

13 "Uninsured motor vehicle" shall not include an automobile covered
14 by a basic automobile insurance policy; an underinsured motor vehicle;
15 a motor vehicle owned by or furnished for the regular use of the
16 named insured or any resident of the same household; a self-insurer
17 within the meaning of any financial responsibility or similar law of the
18 state in which the motor vehicle is registered or principally garaged;
19 a motor vehicle which is owned by the United States or Canada, or a
20 state, political subdivision or agency of those governments or any of
21 the foregoing; a land motor vehicle or trailer operated on rails or
22 crawler treads; a motor vehicle used as a residence or stationary
23 structure and not as a vehicle; or equipment or vehicles designed for
24 use principally off public roads, except while actually upon public
25 roads.

26 (cf: P.L.1998, c.21, s.71)

27
28 60. Section 1 of P.L.1972, c.197 (C.39:6B-1) is amended to read
29 as follows:

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

45 b. Notwithstanding the provisions of subsection a. of this section,
46 an owner or registered owner of an automobile, as defined in section

1 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
2 State may satisfy the requirements of subsection a. of this section by
3 maintaining a basic automobile insurance policy containing coverages
4 provided pursuant to subsections a. and b. of section 4 of P.L.1998,
5 c.21 (C.39:6A-3.1).

6 c. Notwithstanding the provisions of subsection a. of this section,
7 an owner or registered owner of an automobile, as defined in section
8 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
9 State may satisfy the requirements of subsection a. of this section by
10 maintaining a special automobile insurance policy containing coverages
11 provided pursuant to subsection b. of section 45 of P.L. _____, c. _____
12 (C. _____) (now before the Legislature as this bill).
13 (cf: P.L.1998, c.21, s.20)
14

15 61. Section 2 of P.L.1968, c.158 (C.17:29C-7) is amended to read
16 as follows:

17 2. (A) A notice of cancellation of a policy shall be effective only
18 if it is based on one or more of the following reasons:

19 (a) Nonpayment of premium or nonpayment of a residual market
20 equalization charge imposed pursuant to the provisions of section 20
21 of P.L.1983, c.65 (C.17:30E-8); or

22 (b) The driver's license or motor vehicle registration of the named
23 insured or of any other operator who either resides in the same
24 household or customarily operates an automobile insured under the
25 policy has been under suspension or revocation during the policy
26 period or, if the policy is a renewal, during its policy period; or

27 (c) Knowingly providing materially false or misleading information
28 in connection with any application for insurance, renewal of insurance
29 or claim for benefits under an insurance policy; or

30 (d) The insurer determines, within 60 days of issuance of the
31 policy, that the named insurer does not meet the approved
32 underwriting rules of the insured then in effect.

33 (B) [This section shall not apply to any policy or coverage which
34 has been in effect less than 60 days at the time notice of cancellation
35 is mailed or delivered by the insurer unless it is a renewal policy.]
36 (Deleted by amendment, P.L. _____, c. _____.)

37 (C) [Modification of automobile physical damage coverage by the
38 inclusion of a deductible not exceeding \$100.00 shall not be deemed
39 a cancellation of the coverage or of the policy.] (Deleted by
40 amendment, P.L. _____, c. _____.)

41 (D) This section shall not apply to nonrenewal.

42 (E) Nothing in this section shall be interpreted to limit the ability
43 of an insurer to void a policy ab initio as otherwise provided by law.

44 (F) The commissioner shall adopt rules and regulations necessary
45 or appropriate to effectuate the purposes of this section.

46 (cf: P.L.1988, c.119, s.27)

1 62. Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended to read
2 as follows:

3 4. No insurer shall fail to renew a policy unless it shall mail or
4 deliver to the named insured, at the address shown in the policy, at
5 least 60 days' advance notice of its intention not to renew, except that
6 the commissioner may extend the advance notice period up to an
7 additional 30 days by regulation. This section shall not apply:

8 (a) If the insurer has manifested its willingness to renew; nor

9 (b) In case of nonpayment of premium;

10 provided that, notwithstanding the failure of an insurer to comply
11 with this section, the policy shall terminate on the effective date of any
12 other insurance policy with respect to any automobile designated in
13 both policies.

14 Renewal of a policy shall not constitute a waiver or estoppel with
15 respect to grounds for cancellation which existed before the effective
16 date of such renewal.

17 (cf: P.L.1998, c.21, s.62)

18

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

21 25. As used in sections 25 through 33 of this 1990 amendatory
22 and supplementary act:

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

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

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

33 "Declination" means:

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

36 b. Refusal by an insurer to issue an automobile insurance policy to
37 an eligible person upon receipt of an application for automobile
38 insurance;

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

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

44 "Automobile insurance eligibility points" means points calculated
45 under the schedule promulgated by the commissioner pursuant to
46 section 26 of this act.

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

5 a. Who, during the three-year period immediately preceding
6 application for, or renewal of, an automobile insurance policy has been
7 convicted pursuant to R.S.39:4-50 or section 2 of P.L.1981, c.512
8 (C.39:4-50.4a), or for an offense of a substantially similar nature
9 committed in another jurisdiction; has been convicted of a crime of the
10 first, second or third degree resulting from the use of a motor vehicle;
11 or has been convicted of theft of a motor vehicle;

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

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

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

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

39 f. Whose driving record for the three year period immediately
40 preceding application for or renewal of a policy of automobile
41 insurance has an accumulation of automobile insurance eligibility
42 points as determined under the schedule promulgated by the
43 commissioner pursuant to section 26 of this act; **[or]**

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

46 h. Who, during the three-year period immediately preceding

1 application for, or renewal of, an automobile insurance policy, has
2 knowingly provided materially false or misleading information in
3 connection with an application for insurance, renewal of insurance or
4 claim for benefits under an insurance policy.

5 "Insurance agent" or "agent" means an insurance agent as defined
6 by subsection f. of section 2 of P.L.1987, c.293 (C.17:22A-2) and
7 shall also include an insurance broker as defined by subsection g. of
8 section 2 of P.L.1987, c.293 (C.17:22A-2) who has a brokerage
9 relationship with an insurer.

10 "Insurer" means any insurer authorized or admitted to write
11 automobile insurance in this State, but does not include the New
12 Jersey Automobile Full Insurance Underwriting Association created
13 pursuant to sections 13 through 34 of P.L.1983, c.65 (C.17:30E-1 et
14 seq.) or any residual market mechanism implemented pursuant to
15 section 1 of P.L.1970, c.215 (C.17:29D-1).

16 (cf: P.L.1990, c.8, s.25)

17

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

20 26. The commissioner shall, within 90 days of the effective date
21 of this act, promulgate a schedule of automobile insurance eligibility
22 points by rule or regulation adopted pursuant to the "Administrative
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule
24 shall assess a point valuation to driving experience related violations
25 and shall include assessments for violations of lawful speed limits
26 within such increments as determined by the commissioner, other
27 moving violations, and at-fault accidents. For the purposes of this
28 section, an "at-fault accident," occurring before the effective date of
29 P.L. , c. (C.)(now before the Legislature as this bill), means an
30 at-fault accident which results in payment by the insurer of at least a
31 \$500 claim and for accidents occurring on or after the effective date
32 of P.L. , c. (C.)(now before the Legislature as this bill), means
33 an at-fault accident which results in payment by the insurer of at least
34 a \$1,000 claim, which amount may be adjusted in \$100 or \$250
35 increments periodically by order of the commissioner no more
36 frequently than every 36 months, as the commissioner deems
37 appropriate, to reflect the cumulative increases or decreases in the
38 components of the Consumer Price Index, All Urban Consumers (CPI-
39 U) for the Northeast Region, and the adjusted amount shall apply to
40 automobile accidents occurring at least 120 days after the effective
41 date of the adjustment; except that an at-fault accident shall not mean
42 an accident occurring as a result of operation of any motor vehicle in
43 response to a medical emergency if the operator at the time of the
44 accident was a physician responding to the medical emergency.

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

1 65. Section 10 of P.L.1983, c.65 (C.17:29A-39) is amended to
2 read as follows:

3 10. a. [Every] Unless the named insured selects a lower
4 deductible amount, every private passenger automobile insurance
5 policy providing collision and comprehensive coverages, issued or
6 renewed on or after the effective date of this act, shall provide a
7 deductible in a minimum amount of \$500.00 each for collision and
8 comprehensive coverages, [unless the named insured selects a lower
9 deductible amount] except for policies issued on or after the effective
10 date of this section, that deductible amount shall be \$750 each for
11 collision and comprehensive coverages. The minimum deductible
12 established by this subsection shall apply to all policies providing
13 collision and comprehensive coverages unless the named insured
14 provides otherwise in writing on a form approved by the
15 commissioner.

16 b. The commissioner shall promulgate rules and regulations
17 requiring insurers to offer a range of deductibles up to at least
18 \$2,000.00 for private passenger automobile collision and
19 comprehensive coverages, which upper range may be adjusted in \$100
20 or \$250 increments periodically by order of the commissioner no more
21 frequently than every 36 months, as the commissioner deems
22 appropriate, to reflect the cumulative increases or decreases, since the
23 deductibles were last set, in the components of the Consumer Price
24 Index, All Urban Consumers (CPI-U) for the Northeast Region.
25 (cf: P.L.1988, c.119, s.33)
26

27 66. Section 16 of P.L.1974, c.17 (C.17:30A-16) is amended to
28 read as follows:

29 16. a. The commissioner shall adopt rules permitting member
30 insurers to recoup over a reasonable length of time, a sum reasonably
31 calculated to recoup assessments paid by the member insurer pursuant
32 to paragraph (3) of subsection a. of section 8 of P.L.1974, c.17
33 (C.17:30A-8) by way of a surcharge on premiums charged for
34 insurance policies to which this act applies. The amount of any
35 surcharge shall be determined by the commissioner. The commissioner
36 may permit an insurer to omit collection of the surcharge from its
37 insureds when the expense of collecting the surcharge would exceed
38 the amount of the surcharge, provided that nothing in this subsection
39 shall relieve the insurer of its obligation to remit the amount of
40 surcharge otherwise collectible.

41 b. No member insurer shall impose a surcharge on the premiums
42 of any policy to recoup assessments paid pursuant to paragraph (9) of
43 subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8).

44 c. Members shall recoup assessments paid by member insurers
45 pursuant to paragraph (11) of section 8 of P.L.1974, c.17 (C.17:30A-
46 8) by way of a surcharge on premiums charged for insurance policies

1 to which this act applies. Members shall recoup these assessments
2 within two years of the date they are paid. The commissioner may
3 permit an insurer to omit collection of the surcharge from its insureds
4 when the expense of collecting the surcharge would exceed the
5 amount of the surcharge, provided that nothing in this subsection shall
6 relieve the insurer of its obligation to remit the amount of the
7 surcharge otherwise collectible.

8 (cf: P.L.1990, c.8, s.75)

9
10 67. Section 1 of P.L.1988, c.118 (C.17:29A-5.6) is amended to
11 read as follows:

12 1. As used in this act:

13 a. "Actual investment income" means that portion of income
14 generated by investment of policyholder-supplied funds. Policyholder-
15 supplied funds are the assets that offset the insurer's total New Jersey
16 private passenger automobile insurance unearned premium and loss
17 reserves without regard to whether those funds came from private
18 passenger automobile insurance policyholders or other policyholders
19 or were from policyholder funds from the last seven calendar years or
20 earlier years.

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

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

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

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

37 (1) premium or investment income was earned;

38 (2) expenses were incurred; or

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

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

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

46 h. "Development adjustment," for a given calendar-accident year,

- 1 means the difference obtained by subtracting:
- 2 (1) The sum of
- 3 (a) Losses and loss adjustment expenses for that calendar-accident
- 4 year, developed to an ultimate basis and evaluated as of March 31 of
- 5 the year preceding the year in which the profits report required by
- 6 section 2 of this act is due; plus
- 7 (b) AIRE compensation for that calendar-accident year, developed
- 8 to an ultimate basis and evaluated as of March 31 of the year in which
- 9 the profits report is due; from
- 10 (2) The sum of
- 11 (a) Losses and loss adjustment expenses for that calendar-accident
- 12 year, developed to an ultimate basis and evaluated as of March 31 of
- 13 the year in which the profits report is due; plus
- 14 (b) AIRE compensation for that calendar-accident year, developed
- 15 to an ultimate basis and evaluated as of March 31 of the year
- 16 preceding the year in which the profits report is due.
- 17 i. "Excess investment income" means the remainder obtained by
- 18 subtracting the anticipated investment income from the actual
- 19 investment income earned by the insurer, which remainder may be
- 20 positive or negative.
- 21 j. "Insurer" means an entity authorized or admitted to transact
- 22 private passenger automobile insurance business in New Jersey [, but
- 23 does not include the New Jersey Automobile Full Insurance
- 24 Underwriting Association created pursuant to P.L.1983, c.65
- 25 (C.17:30E-1 et seq.)].
- 26 k. "Private passenger automobile insurance business" means direct
- 27 insurance on private passenger automobiles as defined in subsection a.
- 28 of section 2 of P.L.1972, c.70 (C.39:6A-2), excluding personal excess
- 29 liability insurance and insurance on commercial vehicles.
- 30 l. "Total actuarial gain" means the sum of the actuarial gains for
- 31 the [~~three~~ seven] calendar-accident years immediately preceding the
- 32 due date of the profits report required by section 2 of this act, less the
- 33 development adjustments submitted at the option of the insurer for the
- 34 calendar-accident years beginning with the [~~seventh~~ eleventh]
- 35 calendar-accident year immediately preceding the due date of the
- 36 profits report and ending with the [~~fourth~~ eighth] calendar-accident
- 37 year immediately preceding the due date of the profits report.
- 38 m. "Underwriting income" means the remainder obtained by
- 39 subtracting the sum of all losses developed to an ultimate basis, all loss
- 40 adjustment expenses developed to an ultimate basis, and all other
- 41 expenses exclusive of UCJF assessments, from the sum of premiums
- 42 earned and AIRE compensation developed to an ultimate basis, which
- 43 remainder may be positive or negative.
- 44 n. "UCJF assessments" means amounts paid by insurers to the
- 45 Unsatisfied Claim and Judgment Fund pursuant to section 3 of
- 46 P.L.1952, c.174 (C.39:6-63).

1 o. "UCJF reimbursements" means amounts received by an insurer
2 from the Unsatisfied Claim and Judgment Fund as a result of excess
3 medical expense benefit payments by the insurer pursuant to section
4 2 of P.L.1977, c.310 (C.39:6-73.1).

5 (cf: P.L.1988, c.118, s.1)

6
7 68. Section 2 of P.L.1988, c.118 (C.17:29A-5.7) is amended to
8 read as follows:

9 2. a. Each insurer, except those exempt from filing pursuant to
10 section 6 of this act, shall annually file with the commissioner, on or
11 before July 1 of each year, a profits report containing the information
12 and calculations required by this section. The information shall be
13 provided with respect to the insurer's New Jersey private passenger
14 automobile insurance business separately for each of the following
15 coverages and for all these coverages combined:

16 (1) Personal injury protection, including all options;

17 (2) Bodily injury liability, reported at total limits;

18 (3) Other liability, consisting of property damage liability and
19 uninsured and underinsured motorist coverages, all reported at total
20 limits;

21 (4) Physical damage, consisting of comprehensive and collision
22 coverages, including all deductibles.

23 A separate profits report shall be filed for each insurer and each
24 insurer in an insurance holding company system. Each insurance
25 holding company system shall file a separate combined profits report
26 for all insurers in its system. The excess profits computation for an
27 insurance holding company system shall be performed on its combined
28 profits report, except that the commissioner may order an adjustment
29 in the combined profits report if in his judgment, upon examining each
30 insurer's profits report in the insurance holding company system, one
31 or more of the insurers in that system are excessively subsidizing other
32 insurers in that system.

33 b. The profits report shall contain the following information [for
34 each of the seven most recent calendar-accident years, with an
35 evaluation date as of March 31 of the year in which the profits report
36 is due], in a manner and for a time period as prescribed by the
37 commissioner by regulation:

38 (1) Losses paid;

39 (2) Losses developed to an ultimate basis;

40 (3) Loss adjustment expenses paid;

41 (4) Loss adjustment expenses developed to an ultimate basis;

42 (5) AIRE compensation received; and

43 (6) AIRE compensation developed to an ultimate basis.

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

- 1 (1) Premiums written;
- 2 (2) Premiums earned;
- 3 (3) ~~[Other]~~ All other expenses, itemized separately as follows:
- 4 (a) ~~[Commissions]~~ All commissions and all brokerage fees;
- 5 (b) ~~[Taxes]~~ All taxes, all licenses and all fees;
- 6 (c) All AIRE charges;
- 7 (d) All UCJF ~~[assessment]~~ assessments;
- 8 (e) ~~[Other]~~ All other acquisition costs and all general expenses;
- 9 (f) ~~[Policyholder]~~ All policyholder dividends incurred by the
- 10 insurer, including any excess profits refunded or credited to
- 11 policyholders;
- 12 (g) The net of all catastrophe reinsurance premiums incurred to
- 13 unaffiliated catastrophe reinsurers and all sums paid or owed by
- 14 unaffiliated catastrophe reinsurers for losses that occurred during the
- 15 calendar-accident year, subject to such substantiation of expense as the
- 16 commissioner may require;
- 17 (h) All expenses incurred for the services of a limited assignment
- 18 distribution carrier pursuant to subsection c. of section 1 of P.L.1970,
- 19 c.215 (C.17:29D-1);
- 20 (4) Allowance for profit and contingencies, calculated by
- 21 multiplying the premiums earned by the profit and contingency factors
- 22 authorized for use with the insurer's approved rate filings, which profit
- 23 and contingency factors shall be based on the insurer's targeted rate of
- 24 return, method of doing business, the cost of capital and other relevant
- 25 economic considerations of the insurer;
- 26 (5) Anticipated investment income;
- 27 (6) Actual investment income; and
- 28 (7) UCJF reimbursements received.
- 29 d. The profits report shall include a clear and explicit calculation
- 30 of each of the following items, in a manner and for a time period as
- 31 prescribed by the commissioner by regulation:
- 32 (1) Underwriting income ~~[for each of the three calendar-accident~~
- 33 ~~years immediately preceding the date of the profits report]~~;
- 34 (2) Actuarial gain ~~[for each of the three calendar-accident years~~
- 35 ~~immediately preceding the date of the profits report]~~;
- 36 (3) Excess investment income ~~[for each of the three~~
- 37 ~~calendar-accident years immediately preceding the date of the profits~~
- 38 ~~report]~~;
- 39 (4) Development adjustment ~~[for each of the four~~
- 40 ~~calendar-accident years specified in subsection l. of section 1 of this~~
- 41 ~~act]~~;
- 42 (5) Total actuarial gain; and
- 43 (6) Excess profits.
- 44 (cf: P.L.1988, c.118, s.2)

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

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

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

15

16 70. Section 2 of P.L.1972, c.200 (C.39:3-29.1) is amended to read
17 as follows:

18 2. The Commissioner of Banking and Insurance shall, after
19 consultation with the Director of the Division of Motor Vehicles,
20 promulgate rules and regulations concerning the issuance, design and
21 content of the insurance identification cards required by this act.

22 The rules and regulations shall contain provisions designed to deter
23 and detect counterfeit or fraudulent insurance identification cards.

24 (cf: P.L.1972, c.200, s.2)

25

26 71. (New section) With respect to sections 72 through 74 of
27 P.L. c. (C.) (now before the Legislature as this bill), the
28 Legislature finds and declares:

29 a. Insurance fraud is inimical to public safety, welfare and order
30 within the State of New Jersey. Insurance fraud is pervasive and
31 expensive, costing consumers and businesses millions of dollars in
32 direct and indirect losses each year. Insurance fraud increases
33 insurance premiums, to the detriment of individual policyholders, small
34 businesses, large corporations and governmental entities. All New
35 Jerseyans ultimately bear the societal burdens and costs caused by
36 those who commit insurance fraud.

37 b. The problem of insurance fraud must be confronted aggressively
38 by facilitating the detection, investigation and prosecution of such
39 misconduct, as well as by reducing its occurrence and achieving
40 deterrence through the implementation of measures that more precisely
41 target specific conduct constituting insurance fraud.

42 c. To enable more efficient prosecution of criminally culpable
43 persons who knowingly commit or assist or conspire with others in
44 committing fraud against insurance companies, it is necessary to
45 establish a crime of "insurance fraud" to directly and comprehensively
46 criminalize this type of harmful conduct, with substantial criminal

1 penalties to punish wrongdoers and to appropriately deter others from
2 such illicit activity.

3 d. In addition to criminal penalties, in order to maintain the public
4 trust and ensure the integrity of professional licensees and certificate-
5 holders who by virtue of their professions are involved in insurance
6 transactions, it is appropriate to provide civil remedial provisions
7 governing license or certificate forfeiture and suspension tailored to
8 this new crime of insurance fraud and other criminal insurance-related
9 activities.

10 e. To enhance the State's ability to detect insurance fraud, which
11 will lead to more productive investigations and, ultimately, more
12 successful criminal prosecutions, it is appropriate to provide members
13 of the public with significant incentives to come forward when they
14 may have reasonable suspicions or knowledge of a person or persons
15 committing insurance fraud. The establishment of an Insurance Fraud
16 Detection Reward Program will enable the Insurance Fraud Prosecutor
17 to obtain information which may lead to the arrest, prosecution and
18 conviction of persons or entities who have committed insurance-
19 related fraud.

20

21 72. (New section) As used in sections 73 and 74 of P.L. , c.
22 (C.) (now before the Legislature as this bill), unless the context
23 otherwise requires, the following words and terms shall have the
24 following meanings:

25 "Insurance company" means any person, company, corporation,
26 unincorporated association, partnership, professional corporation,
27 agency of government and any other entity authorized or permitted to
28 do business in New Jersey, subject to regulation by the State, or
29 incorporated or organized under the laws of any other state of the
30 United States or of any foreign nation or of any province or territory
31 thereof, to indemnify another against loss, damage, risk or liability
32 arising from a contingent or unknown event. "Insurance company"
33 includes, but is not limited to, an insurance company as that term is
34 defined in section 3 of P.L.1983, c.320 (C.17:33A-3), self-insurer, re-
35 insurer, reciprocal exchange, inter-insurer, hospital, medical or health
36 service corporation, health maintenance organization, surety, assigned
37 risk plan, joint insurance fund, and any other entity legally engaged in
38 the business of insurance as authorized or permitted by the State of
39 New Jersey, including but not limited to any such entity incorporated
40 or organized under the laws of any other state of the United States or
41 of any foreign nation or of any province or territory thereof.

42 "Insurance policy" means the instrument, in writing, electronically
43 or in any other form, in which are set forth the terms of any certificate
44 of insurance, binder of coverage, contract of insurance or contract of
45 re-insurance, issued by an insurance company, including, but not
46 limited to, a State-assigned risk plan, plan of indemnity protection

1 provided by or on behalf of a joint insurance fund or benefit plan,
2 motor club service plan, or guaranty bond, surety bond, cash bond or
3 any other alternative to insurance authorized or permitted by the State
4 of New Jersey.

5 "Insurance transaction" means a transaction by, between, or among
6 (1) an insurance company and (2) an insured, claimant, applicant for
7 insurance, public adjuster, insurance professional, practitioner as
8 defined by section 2 of P.L.1997, c.353 (C.2C:21-4.2), attorney, or
9 any person who acts on behalf of any of the foregoing for the purpose
10 of obtaining insurance or reinsurance, calculating insurance premiums,
11 submitting a claim, negotiating or adjusting a claim, or otherwise
12 obtaining insurance, self insurance, or reinsurance, or obtaining the
13 benefits or annuities thereof or therefrom.

14 "Premium finance transaction" means a transaction involving or
15 related to insurance premium financing which is subject to the
16 "Insurance Premium Finance Company Act," P.L.1968, c.221
17 (C.17:16D-1 et seq.).

18

19 73. (New section) a. A person is guilty of the crime of insurance
20 fraud if that person knowingly makes, or causes to be made, a false,
21 fictitious, fraudulent, or misleading statement of material fact in, or
22 omits a material fact from, or causes a material fact to be omitted
23 from, any record, bill, claim or other document, in writing,
24 electronically, orally or in any other form, that a person attempts to
25 submit, submits, causes to be submitted, or attempts to cause to be
26 submitted as part of, in support of or opposition to or in connection
27 with: (1) a claim for payment, reimbursement or other benefit
28 pursuant to an insurance policy, or from an insurance company or the
29 "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174
30 (C.39:6-61 et seq.); (2) an application to obtain or renew an insurance
31 policy; (3) any payment made or to be made in accordance with the
32 terms of an insurance policy or premium finance transaction; or (4) an
33 affidavit, certification, record or other document used in any insurance
34 or premium finance transaction.

35 b. Insurance fraud constitutes a crime of the second degree if the
36 person knowingly commits five or more acts of insurance fraud,
37 including acts of health care claims fraud pursuant to section 2 of
38 P.L.1997, c.353 (C.2C:21-4.2) and if the aggregate value of property,
39 services or other benefit wrongfully obtained or sought to be obtained
40 is at least \$1,000. Otherwise, insurance fraud is a crime of the third
41 degree. Each act of insurance fraud shall constitute an additional,
42 separate and distinct offense, except that five or more separate acts
43 may be aggregated for the purpose of establishing liability pursuant to
44 this subsection. Multiple acts of insurance fraud which are contained
45 in a single record, bill, claim, application, payment, affidavit,
46 certification or other document shall each constitute an additional,

1 separate and distinct offense for purposes of this subsection.

2 c. Proof that a person has signed or initialed an application, bill,
3 claim, affidavit, certification, record or other document may give rise
4 to an inference that the person has read and reviewed the application,
5 bill, claim, affidavit, certification, record or other document.

6 d. In order to promote the uniform enforcement of this act, the
7 Attorney General shall develop insurance fraud prosecution guidelines
8 and disseminate them to county prosecutors within 180 days of the
9 effective date of this act.

10 e. Nothing in this act shall preclude an indictment and conviction
11 for any other offense defined by the laws of this State.

12 f. Nothing in this act shall preclude an assignment judge from
13 dismissing a prosecution of insurance fraud if the assignment judge
14 determines, pursuant to N.J.S.2C:2-11, the conduct charged to be a de
15 minimus infraction.

16

17 74. (New section) a. There is established within the Office of the
18 Insurance Fraud Prosecutor an Insurance Fraud Detection Reward
19 Program, to be funded from surcharges imposed pursuant to section
20 53 of P.L.2002, c.34 (C.17:33A-5.1) and supplemented as necessary
21 and appropriate by amounts budgeted for the operation of the office.

22 b. A member of the public who has knowledge of or who believes
23 that an act of health care claims fraud, insurance fraud or any other
24 criminal offense involving or related to an insurance transaction is
25 being or has been committed may provide the Insurance Fraud
26 Prosecutor with a report or information pertinent to that knowledge
27 or belief and may provide additional information that the Insurance
28 Fraud Prosecutor requests.

29 c. The Insurance Fraud Prosecutor shall maintain a 24-hour toll-
30 free insurance fraud hotline to receive information from members of
31 the public who have knowledge of or who believe that an act of health
32 care claims fraud, insurance fraud or any other criminal offense
33 involving or related to an insurance transaction is being or has been
34 committed.

35 d. The Attorney General, through the Insurance Fraud Prosecutor,
36 is authorized to pay a reward of up to \$25,000 to persons providing
37 information leading to the arrest, prosecution and conviction of
38 persons or entities who have committed health care claims fraud,
39 insurance fraud or any other criminal offense related to an insurance
40 transaction. Only a single reward amount may be paid by the
41 Insurance Fraud Prosecutor for claims arising out of the same
42 transaction or occurrence, regardless of the number of persons
43 arrested, prosecuted and convicted and regardless of the number of
44 persons submitting claims for the reward. The reward may be divided
45 and disbursed among more than one person in amounts determined by
46 the Insurance Fraud Prosecutor, in accordance with the provisions of

1 this subsection. The decision of the Insurance Fraud Prosecutor as to
2 the person or persons entitled to the reward shall be final unless the
3 reward recipients shall disagree, in which event, the matter shall be
4 referred to the Attorney General whose decision shall be final and shall
5 not be subject to judicial review.

6 e. Any person acting in good faith who provides information in
7 accordance with subsection b. of this section shall have immunity from
8 any liability, civil or criminal, that might otherwise be incurred or
9 imposed as a result of such act.

10 f. The Attorney General shall promulgate and adopt rules and
11 regulations which set forth the reward program application and
12 approval process, including the criteria against which claims shall be
13 evaluated, the basis for determining specific reward amounts, and the
14 manner of reward disbursement. Applications for rewards authorized
15 by this section must be submitted in accordance with rules established
16 by the Attorney General.

17

18 75. Section 3 of P.L.1997, c.353 (C.2C:21-4.3) is amended to
19 read as follows:

20 3. a. A practitioner is guilty of a crime of the second degree if
21 that person knowingly commits health care claims fraud in the course
22 of providing professional services. In addition to all other criminal
23 penalties allowed by law, a person convicted under this subsection may
24 be subject to a fine of up to five times the pecuniary benefit obtained
25 or sought to be obtained.

26 b. A practitioner is guilty of a crime of the third degree if that
27 person recklessly commits health care claims fraud in the course of
28 providing professional services. In addition to all other criminal
29 penalties allowed by law, a person convicted under this subsection may
30 be subject to a fine of up to five times the pecuniary benefit obtained
31 or sought to be obtained.

32 c. A person, who is not a practitioner subject to the provisions of
33 subsection a. or b. of this section, is guilty of a crime of the third
34 degree if that person knowingly commits health care claims fraud. A
35 person, who is not a practitioner subject to the provisions of
36 subsection a. or b. of this section, is guilty of a crime of the second
37 degree if that person knowingly commits five or more acts of health
38 care claims fraud and the aggregate pecuniary benefit obtained or
39 sought to be obtained is at least \$1,000. In addition to all other
40 criminal penalties allowed by law, a person convicted under this
41 subsection may be subject to a fine of up to five times the pecuniary
42 benefit obtained or sought to be obtained.

43 d. A person, who is not a practitioner subject to the provisions of
44 subsection a. or b. of this section, is guilty of a crime of the fourth
45 degree if that person recklessly commits health care claims fraud. In
46 addition to all other criminal penalties allowed by law, a person

1 convicted under this subsection may be subject to a fine of up to five
2 times the pecuniary benefit obtained or sought to be obtained.

3 e. Each act of health care claims fraud shall constitute an
4 additional, separate and distinct offense, except that five or more
5 separate acts may be aggregated for the purpose of establishing
6 liability pursuant to subsection c. of this section. Multiple acts of
7 health care claims fraud which are contained in a single record, bill,
8 claim, application, payment, affidavit, certification or other document
9 shall each constitute an additional, separate and distinct offense for
10 purposes of this section.

11 f. (1) The falsity, fictitiousness, fraudulence or misleading nature
12 of a statement may be inferred by the trier of fact in the case of a
13 practitioner who attempts to submit, submits, causes to be submitted,
14 or attempts to cause to be submitted, any record, bill, claim or other
15 document for treatment or procedure without the practitioner, or an
16 associate of the practitioner, having performed an assessment of the
17 physical or mental condition of the patient or client necessary to
18 determine the appropriate course of treatment.

19 (2) The falsity, fictitiousness, fraudulence or misleading nature of
20 a statement may be inferred by the trier of fact in the case of a
21 person who attempts to submit, submits, causes to be submitted, or
22 attempts to cause to be submitted any record, bill, claim or other
23 document for more treatments or procedures than can be performed
24 during the time in which the treatments or procedures were
25 represented to have been performed.

26 (3) Proof that a practitioner has signed or initialed a record, bill,
27 claim or other document gives rise to an inference that the
28 practitioner has read and reviewed that record, bill, claim or other
29 document.

30 g. In order to promote the uniform enforcement of this act, the
31 Attorney General shall develop health care claims fraud prosecution
32 guidelines and disseminate them to the county prosecutors within 120
33 days of the effective date of this act.

34 h. For the purposes of this section, a person acts recklessly with
35 respect to a material element of an offense when he consciously
36 disregards a substantial and unjustifiable risk that the material element
37 exists or will result from his conduct. The risk must be of such a
38 nature and degree that, considering the nature and purpose of the
39 actor's conduct and the circumstances known to him, its disregard
40 involves a gross deviation from the standard of conduct that a
41 reasonable person would observe in the actor's situation.

42 i. (1) Nothing in this act shall preclude an indictment and
43 conviction for any other offense defined by the laws of this State.

44 (2) Nothing in this act shall preclude an assignment judge from
45 dismissing a prosecution of health care claims fraud if the assignment
46 judge determines, pursuant to N.J.S.2C:2-11, the conduct charged to

1 be a de minimis infraction.

2 (cf: P.L.1997, c.353, s.3)

3

4 76. Section 4 of P.L.1997, c.353 (C.2C:51-5) is amended to read
5 as follows:

6 4. a. (1) A practitioner convicted of health care claims fraud
7 pursuant to subsection a. of section 3 of P.L.1997, c.353
8 (C.2C:21-4.3) or a substantially similar crime under the laws of
9 another state or the United States shall forfeit his license and be
10 forever barred from the practice of the profession unless the court
11 finds that such license forfeiture would be a serious injustice which
12 overrides the need to deter such conduct by others and in such case
13 the court shall determine an appropriate period of license suspension
14 which shall be for a period of not less than one year. If the court does
15 not permanently forfeit such license pursuant to this paragraph, the
16 sentence shall not become final for 10 days in order to permit the
17 appeal of such sentence by the prosecution.

18 (2) Upon a first conviction of health care claims fraud pursuant to
19 subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
20 substantially similar crime under the laws of another state or the
21 United States, a practitioner shall have his license suspended and be
22 barred from the practice of the profession for a period of at least one
23 year.

24 (3) Upon a second conviction of health care claims fraud pursuant
25 to subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a
26 substantially similar crime under the laws of another state or the
27 United States, a practitioner shall forfeit his license and be forever
28 barred from the practice of the profession.

29 (4) A person convicted of second degree insurance fraud pursuant
30 to section 73 of P.L. , c. (C.) (now before the Legislature as this
31 bill) or a substantially similar crime under the laws of another state or
32 the United States who holds a license or certificate of authority or
33 qualification to engage in the practice of a profession, occupation,
34 trade, or vocation or business, including but not limited to a
35 practitioner as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2),
36 shall forfeit that license or certificate and be forever barred from the
37 practice of that profession, occupation, trade, vocation or business if
38 the act or acts of insurance fraud were related to or performed while
39 engaged in the practice of that profession, occupation, trade, vocation
40 or business, unless the court finds that such license or certificate
41 forfeiture would be a serious injustice which overrides the need to
42 deter such conduct by others and in that case the court shall determine
43 an appropriate period of license or certificate suspension which shall
44 be for a period of not less than one year. If the court does not
45 permanently forfeit such license or certificate pursuant to this
46 paragraph, the sentence shall not become final for 10 days in order to

1 permit the appeal of that sentence by the prosecution.

2 (5) A person convicted of third degree insurance fraud pursuant
3 to section 73 of P.L. , c. (C.) (now before the Legislature as this
4 bill) or a substantially similar crime under the laws of another state or
5 the United States who holds a license or certificate of authority or
6 qualification to engage in the practice of a profession, occupation,
7 trade, vocation or business, including but not limited to a practitioner
8 as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall have
9 his license or certificate suspended and be barred from the practice of
10 that profession, occupation, trade, vocation or business for a period of
11 at least one year if the act or acts of insurance fraud were related to or
12 performed while engaged in the practice of that profession,
13 occupation, trade, vocation or business.

14 (6) Upon a second conviction of third degree insurance fraud
15 pursuant to section 73 of P.L. , c. (C.) (now before the
16 Legislature as this bill) or a substantially similar crime under the laws
17 of another state or the United States which meets the criteria of
18 paragraph (2) of this subsection, a person shall forfeit his license or
19 certificate and be forever barred from the practice of that profession,
20 occupation, trade, vocation or business.

21 (7) Upon application of the county prosecutor or the Attorney
22 General, a person convicted of any crime of the second degree or
23 above enumerated in chapter 20 or 21 of Title 2C of the New Jersey
24 Statutes or a substantially similar crime under the laws of another state
25 or the United States who holds a license or certificate or authority or
26 qualification to engage in the practice of a profession, occupation,
27 trade, vocation or business, including a practitioner as defined in
28 section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall forfeit such license
29 or certificate and be forever barred from the practice of that
30 profession, occupation, trade, vocation or business if the act or acts
31 underlying the conviction involved or were related to an insurance
32 transaction as defined in section 72 of P.L. , c. (C.) (now before
33 the Legislature as this bill) and touched upon or were performed while
34 engaged in the practice of that profession, occupation, trade, vocation
35 or business, unless the court finds that the license or certificate
36 forfeiture would be a serious injustice which overrides the need to
37 deter such conduct by others and in that case the court shall determine
38 an appropriate period of license or certificate suspension which shall
39 be for a period of not less than one year. If the court does not
40 permanently forfeit that license or certificate pursuant to this
41 paragraph, the sentence shall not become final for 10 days in order to
42 permit the appeal of that sentence by the prosecution.

43 (8) Upon application of the county prosecutor or the Attorney
44 General, a person convicted of any crime of the third degree
45 enumerated in chapter 20 or 21 of Title 2C of the New Jersey Statutes
46 or a substantially similar crime under the laws of another state or the

1 United States who holds a license or certificate of authority or
2 qualification to engage in the practice of a profession, occupation,
3 trade, vocation or business, including but not limited to a practitioner
4 as defined in section 2 of P.L.1997, c.353 (C.2C:21-4.2), shall have
5 his license or certificate suspended and be barred from the practice of
6 that profession, occupation, trade, vocation or business for a period of
7 at least one year if the act or acts underlying the conviction involved
8 or were related to an insurance transaction as defined in section 73 of
9 P.L. , c. (C.) (now before the Legislature as this bill) and
10 touched upon or were performed while engaged in the practice of that
11 profession, occupation, trade, vocation or business.

12 b. A court of this State shall enter an order of license or certificate
13 forfeiture or suspension pursuant to subsection a. of this section:

14 (1) Immediately upon a finding of guilt by the trier of fact or a
15 plea of guilty entered in any court of this State; or

16 (2) Upon application of the county prosecutor or the Attorney
17 General, when the license or certificate forfeiture or suspension is
18 made pursuant to paragraph (4) of subsection a. of this section or is
19 based upon a conviction of an offense under the laws of another state
20 or of the United States. An order of license or certificate forfeiture or
21 suspension pursuant to this paragraph shall be effective as of the date
22 the person is found guilty by the trier of fact or pleads guilty to the
23 offense.

24 This application may also be made in the alternative by the
25 Attorney General to the appropriate licensing agency.

26 The court shall provide notice of the forfeiture or suspension to the
27 appropriate licensing agency within 10 days of the date an order of
28 forfeiture or suspension is entered.

29 c. No court shall grant a stay of an order of license or certificate
30 forfeiture or suspension pending appeal of a conviction or forfeiture
31 or suspension order unless the court is clearly convinced that there is
32 a substantial likelihood of success on the merits. If the conviction is
33 reversed or the order of license or certificate forfeiture or suspension
34 is overturned, the court shall provide notice of reinstatement to the
35 appropriate licensing agency within 10 days of the date of the order of
36 reinstatement. The license or certificate shall be restored, in
37 accordance with applicable procedures, unless the appropriate
38 licensing agency determines to suspend or revoke the license or
39 certificate.

40 d. In any case in which the issue of license or certificate forfeiture
41 or suspension is not raised in a court of this State at the time of a
42 finding of guilt, entry of a guilty plea or sentencing, a license or
43 certificate forfeiture or suspension required by this section may be
44 ordered by a court or by the appropriate licensing agency of this State
45 upon application of the county prosecutor or the Attorney General or
46 upon application of the appropriate licensing agency having authority

1 to revoke or suspend the professional's license or certificate. The fact
2 that a court has declined to order license or certificate forfeiture or
3 suspension shall not preclude the appropriate licensing agency having
4 authority to revoke or suspend the professional's license or certificate
5 from seeking to do so on the ground that the conduct giving rise to the
6 conviction demonstrates that the person is unfit to hold the license or
7 certificate or is otherwise liable for an offense as specified in section
8 of P.L.1978, c.73 (C.45:1-21).

9 e. If the Supreme Court of the State of New Jersey issues Rules
10 of Court pursuant to this act, the Supreme Court may revoke the
11 license to practice law of any attorney who has been convicted, under
12 the laws of this State, of health care claims fraud pursuant to section
13 3 of P.L.1997, c.353 (C.2C:21-4.3), or an offense which, if committed
14 in this State, would constitute health care claims fraud, insurance fraud
15 pursuant to section 73 of P.L. , c. (C.) (now before the
16 Legislature as this bill), or an offense which, if committed in this State,
17 would constitute insurance fraud.

18 f. Nothing in this section shall be construed to prevent or limit the
19 appropriate licensing agency or any other party from taking any other
20 action permitted by law against the practitioner.
21 (cf: P.L.1997, c.353, s.4)

22

23 77. Section 5 of P.L.1997, c.353 (C.2C:52-27.1) is amended to
24 read as follows:

25 5. a. If an order of expungement of records of conviction under
26 the provisions of chapter 52 of Title 2C of the New Jersey Statutes is
27 granted by the court to a person convicted of health care claims fraud
28 in which the court had ordered the offender's professional license or
29 certificate be forfeited and the person be forever barred from the
30 practice of the profession, occupation, trade, vocation or business
31 pursuant to [paragraph (1) of] subsection a. of section 4 of P.L.1997,
32 c.353 (C.2C:51-5), the person may petition the court for an order to
33 rescind the court's order of debarment if the person can demonstrate
34 that the person is sufficiently rehabilitated.

35 b. If an order to rescind the court's order of debarment is granted,
36 the person granted the order may apply to be licensed or certified to
37 practice the profession, occupation, trade, vocation or business from
38 which the offender was barred.

39 (cf: P.L.1997, c.353, s.5)

40

41 78. R.S.39:3-29 is amended to read as follows:

42 39:3-29. The driver's license, the registration certificate of a motor
43 vehicle and an insurance identification card shall be in the possession
44 of the driver or operator at all times when he is in charge of a motor
45 vehicle on the highways of this State.

46 The driver or operator shall exhibit his driver's license and an

1 insurance identification card, and the holder of a registration certificate
2 or the operator or driver of a motor vehicle for which a registration
3 certificate has been issued, whether or not the holder, driver or
4 operator is a resident of this State, shall also exhibit the registration
5 certificate, when requested so to do by a police officer or judge, while
6 in the performance of the duties of his office, and shall write his name
7 in the presence of the officer, so that the officer may thereby determine
8 the identity of the licensee and at the same time determine the
9 correctness of the registration certificate, as it relates to the
10 registration number and number plates of the motor vehicle for which
11 it was issued; and the correctness of the evidence of a policy of
12 insurance, as it relates to the coverage of the motor vehicle for which
13 it was issued.

14 Any person violating this section shall be subject to a fine [not
15 exceeding \$100.00] of \$150, of which \$25 shall be deposited in the
16 Uninsured Motorist Prevention Fund established by section 2 of
17 P.L.1983, c.141 (C.39:6B-3).

18 If a person charged with a violation of this section can exhibit his
19 driver's license, insurance identification card and registration
20 certificate, which were valid on the day he was charged, to the judge
21 of the municipal court before whom he is summoned to answer to the
22 charge, such judge may dismiss the charge. However, the judge may
23 impose court costs.

24 (cf: P.L.1983, c.403, s.10)

25

26 79. (New section) a. Upon the issuance of a summons for failing
27 to possess or exhibit an insurance identification card in violation of
28 R.S.39:3-29, the violator or registrant shall have 24 hours from the
29 time of the citation to provide the issuing law enforcement agency with
30 the insurance identification card, or other satisfactory proof of
31 insurance. Failure to provide the insurance identification card or other
32 satisfactory proof of insurance within the 24 hour time frame shall
33 result in the issuance of a warrant for the immediate impoundment of
34 the vehicle that was being operated when the summons was issued. A
35 motor vehicle impounded pursuant to the provisions of this subsection
36 shall be removed to a storage space or garage. The registrant shall be
37 responsible for the cost of the removal and storage of the impounded
38 motor vehicle.

39 b. (1) If the registrant fails to claim a motor vehicle impounded
40 pursuant to subsection a. of this section and pay the reasonable costs
41 of removal and storage by midnight of the 30th day following
42 impoundment, along with a fine of \$100 to cover the administrative
43 costs of the municipality wherein the violation occurred, and after a
44 hearing, the municipality may sell the motor vehicle at public auction.
45 The municipality shall give notice of the sale by certified mail to the
46 registrant of the motor vehicle and to the holder of any security

1 interest filed with the Director of the Division of Motor Vehicles, and
2 by publication in a form to be prescribed by the director by one
3 insertion, at least five days before the date of the sale, in one or more
4 newspapers published in this State and circulating in the municipality
5 in which the motor vehicle has been impounded.

6 (2) At any time prior to the sale, the registrant or other person
7 entitled to the motor vehicle may reclaim possession of it upon
8 providing satisfactory proof of motor vehicle liability insurance
9 coverage and payment of the reasonable costs of removal and storage
10 of the motor vehicle and any outstanding fines or penalties; provided,
11 however, if the other person entitled to the motor vehicle is a lessor or
12 the holder of a lien on the motor vehicle, he may reclaim the motor
13 vehicle without payment. In such cases, the registrant shall be liable
14 for all outstanding costs, fines and penalties, and the municipality shall
15 have a lien against the property and income of that registrant for the
16 total amount of those outstanding costs, fines and penalties.

17 (3) Any proceeds obtained from the sale of a motor vehicle at
18 public auction pursuant to paragraph (1) of this subsection in excess
19 of the amount owed to the municipality for the reasonable costs of
20 removal and storage of the motor vehicle and any outstanding fines or
21 penalties shall be returned to the registrant of the vehicle.

22

23 80. Section 2 of P.L.1983. c.141 (C.39:6B-3) is amended to read
24 as follows:

25 2. The Uninsured Motorist Prevention Fund (hereinafter referred
26 to as the "fund") is established as a nonlapsing, revolving fund into
27 which shall be deposited all revenues from the fines imposed pursuant
28 to section 2 of P.L.1972, c.197 (C.39:6B-2) and \$25 from each fine
29 imposed pursuant to R.S.39:3-29. Interest received on moneys in the
30 fund shall be credited to the fund. The fund shall be administered by
31 the Division of Motor Vehicles in the Department of [Law and Public
32 Safety] Transportation. Moneys in the fund shall be allocated and
33 used for the purpose of the administrative expenses of the fund and
34 enforcement of the compulsory motor vehicle insurance law, P.L.1972,
35 c.197 (C.39:6B-1 et seq.) by the Division of Motor Vehicles.

36 (cf: P.L.1983, c.141, s.2)

37

38 81. Section 5 of P.L.1984, c.101 (C.17:22-6.74) is amended to
39 read as follows:

40 5. a. The fund shall:

41 (1) Be obligated to the extent of the covered claims against an
42 insolvent insurer incurred prior to or 30 days after the determination
43 of insolvency, or before the policy expiration date, if less than 30 days
44 after that determination, or before the policyholder replaces the policy
45 or causes its cancellation, if he does so within 30 days of the
46 determination. The fund's obligation for covered claims shall not be

1 greater than \$300,000.00 per occurrence, subject to any applicable
2 deductible contained in the policy. The commissioner may adjust the
3 fund's obligations for covered claims based on the moneys available in
4 the fund. In no event shall the fund be obligated to a policyholder or
5 claimant in excess of the limits of liability of the insolvent insurer
6 stated in the policy from which the claim arises;

7 (2) Be deemed the insurer to the extent of its obligation on the
8 covered claims and to such extent shall have all rights, duties, and
9 obligations of the insolvent insurer as if the insurer had not become
10 insolvent;

11 (3) Assess member insurers in accordance with section 6 of this
12 act in amounts necessary to pay:

13 (a) Obligations of the fund under paragraph (1) of this subsection,

14 (b) Expenses of handling covered claims,

15 (c) Any other expenses incurred in the implementation of the
16 provisions of this act;

17 (4) Investigate claims brought against the fund; and adjust,
18 compromise, settle, and pay covered claims to the extent of the fund's
19 obligation; and deny all other claims; and may review settlements,
20 releases and judgments to which the insolvent insurer or its
21 policyholders were parties to determine the extent to which the
22 settlements, releases and judgments may be properly contested;

23 (5) Notify those persons as the commissioner directs under section
24 8 of this act;

25 (6) Handle claims through the association's employees or
26 representatives, or through one or more insurers or other persons
27 designated as servicing facilities;

28 (7) Pay the other expenses of the association in administering the
29 provisions of this act; and

30 (8) Within 60 days of enactment of P.L.2002, c.30 (C.17:22-6.70a
31 et al.), transfer to the General Fund any and all moneys in excess of
32 \$40,000,000 in the fund as of June 24, 2002.

33 b. The fund may:

34 (1) Sue or be sued;

35 (2) Negotiate and become a party to those contracts which are
36 necessary to carry out the purpose of this act;

37 (3) Perform those other acts which are necessary or appropriate
38 to effectuate the purpose of this act;

39 (4) (Deleted by amendment, P.L.2002, c.30.)

40 (5) With the approval of the commissioner, borrow and separately
41 account for moneys from any source, including but not limited to the
42 New Jersey Property-Liability Insurance Guaranty Association and the
43 Unsatisfied Claim and Judgment Fund, [in accordance with subsection
44 b. of section 6 of P.L.1984, c.101 (C.17:22-6.75), as may be
45 necessary] in such amounts and on such terms as the New Jersey
46 Property-Liability Insurance Guaranty Association may determine are

1 necessary or appropriate to effectuate the purposes of [that act,
2 except that the use of the proceeds of any loans shall be limited to the
3 payment of covered claims, including claim adjustment expenses]
4 P.L. , c. (C.)(now before the Legislature as this bill) in
5 accordance with the association's plan of operation; and
6 (6) Make loans, in such amounts and on such terms as the
7 association may determine are necessary or appropriate, to the New
8 Jersey Property-Liability Insurance Guaranty Association in
9 accordance with the provisions of the "New Jersey Property-Liability
10 Insurance Guaranty Association Act," P.L.1974, c.17 (C.17:30A-1 et
11 seq.) and the "Unsatisfied Claim and Judgment Fund Law," P.L.1952,
12 c.174 (C.39:6-61 et seq.).
13 (cf: P.L.2002, c.30, s.5)
14

15 82. Section 7 of P.L.1988, c.118 (C.17:29A-5.12) is amended to
16 read as follows:

17 7. If the commissioner finds that an insurer has excess profits, the
18 insurer shall establish, subject to the approval of the commissioner, a
19 fair, practicable, and nondiscriminatory plan for the refund or credit of
20 the excess profits to such group or groups of policyholders [of the
21 excess profits] as the commissioner may determine to be reasonable
22 in consideration of the insurer's financial and business circumstances.
23 (cf: P.L.1988, c.118, s.7)
24

25 83. R.S.17:17-10 is amended to read as follows:

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

44 b. No company licensed to transact insurance business in this State
45 pursuant to chapter 17 of Title 17 of the Revised Statutes may
46 surrender its certificate of authority or discontinue writing or renewing

1 any kind or kinds of insurance specified in the certificate, except in
2 accordance with [a plan to be] an informational filing submitted [by
3 the company and approved by] to the commissioner, which [plan]
4 filing shall [provide for an orderly withdrawal from the market and for
5 the minimization of the impact of the surrender of the certificate or the
6 discontinuance of the writing or renewing of any kind or kinds of
7 insurance upon the public generally and upon the company's
8 policyholders in this State. No surrender or discontinuance shall
9 become effective until the approved plan has been complied with. In
10 reviewing a plan for withdrawal submitted by the company, the
11 commissioner shall consider, and may require as a condition of
12 approval, whether some or all other certificates of authority issued
13 pursuant to chapter 17 or 32 of Title 17 of the Revised Statutes held
14 by the company or by other companies within the same holding
15 company system as the company submitting the plan shall be required
16 to be surrendered. The provisions of this subsection shall apply to any
17 request for withdrawal, surrender or discontinuance filed on or after
18 January 25, 1990] be subject to the following provisions regarding any
19 withdrawals:

20 (1) the company shall send a notice to policyholders of the
21 proposed withdrawal no later than thirty days following the submission
22 of the informational filing to the commissioner, which shall state that
23 the insurer intends to withdraw and has filed its intention to withdraw
24 with the commissioner, the terms of the withdrawal, including the date
25 of the proposed commencement of nonrenewal of policies, and the
26 proposed duration of the nonrenewal of the company's book of
27 business;

28 (2) nonrenewals shall not commence prior to one calendar year
29 and ninety days following the submission of the informational filing;

30 (3) the company shall send a notice of nonrenewal to every
31 policyholder (a) no later than one calendar year preceding the date of
32 nonrenewal and (b) a subsequent notice of nonrenewal in accordance
33 with any time limit otherwise established by law for that line of
34 insurance;

35 (4) nonrenewals shall take place in a manner so as to be applicable
36 to all insureds on an equitable basis with respect to risk classification
37 and territorial or other form of rating factor, and shall be effectuated
38 at a uniform rate over a period not exceeding three calendar years,
39 commencing with the date established in paragraph (2) of this
40 subsection; provided, however, that if more than one company files for
41 withdrawal for the same line of business and the companies, in the
42 aggregate, write more than 25% of the market share for that line of
43 business, the commissioner may extend the period of withdrawal
44 provided for herein to five years.

45 The commissioner's authority with respect to withdrawals as
46 provided for herein shall be limited to enforcing compliance with this

1 subsection and enforcing the terms of the withdrawal plan proposed in
2 the informational filing.

3 c. Upon receiving the informational filing provided for in
4 subsection b. of this section, the commissioner shall consider, and may
5 require as a condition of approval, whether some or all of the
6 company's other certificates of authority issued pursuant to Title 17 of
7 the Revised Statutes held by the company or other companies within
8 the same holding company system as the company submitting the plan
9 shall be required to be surrendered.

10 d. Notwithstanding the provisions of subsection b. of this section,
11 if the company finds a replacement carrier for the business that will not
12 be renewed as the result of the withdrawal either prior to or after the
13 date of the informational filing, the insurer may apply to the
14 commissioner for approval to transfer the business to a replacement
15 carrier or carriers. If the commissioner approves the replacement
16 carrier or carriers, notwithstanding the provisions of paragraphs (1),
17 (2), and (3) of subsection b. of this section, the notice of nonrenewal
18 shall be in compliance with the time limits provided by law for that line
19 of insurance, and the company shall offer every insured coverage with
20 the replacement carrier prior to the effective date of the nonrenewal.
21 The commissioner shall not withhold approval of a replacement carrier
22 or carriers if that insurer is authorized to do business in the same line
23 of business in New Jersey and has the financial and business capability
24 to write and service the business being transferred to it by the
25 withdrawing company. The commissioner shall approve or disapprove
26 the replacement carrier or carriers within 60 days of (1) the date of the
27 filing by both the withdrawing insurer requesting approval of a
28 replacement carrier or carrier or (2) the filing by the replacement
29 carrier or carriers requesting to be a replacement carrier, whichever is
30 later.

31 e. Notwithstanding the provisions of subsection b. of this section,
32 the commissioner may waive the requirements of paragraph (2) of that
33 subsection, and the one-year nonrenewal notice of paragraph (3) of
34 that subsection, as well as the three year minimum nonrenewal period
35 provided in paragraph (4) of that subsection if the commissioner
36 deems a waiver to be necessary to protect the solvency of the insurer
37 making the informational filing or if the commissioner deems the
38 withdrawal to have a limited impact on the market.

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

40
41 84. Section 72 of P.L.1990, c.8 (C.17:33B-30) is amended to read
42 as follows:

43 72. a. An insurance company of another state or foreign country
44 authorized under chapter 32 of Title 17 of the Revised Statutes to
45 transact insurance business in this State may surrender to the
46 commissioner its certificate of authority and thereafter cease to

1 transact insurance in this State, or discontinue the writing or renewal
2 of [one or more kinds of] private passenger automobile insurance
3 specified in the certificate of authority only after the submission of [a
4 plan which provides for an orderly withdrawal from the market and a
5 minimization of the impact of the surrender or discontinuance on the
6 public generally and on the company's policyholders in this State. The
7 plan shall be approved by the commissioner before the withdrawal or
8 discontinuance takes effect. In reviewing a plan for withdrawal under
9 this section, the commissioner shall consider, and may require as a
10 condition of approval, whether some or all other certificates of
11 authority issued pursuant to chapter 17 or 32 of Title 17 of the
12 Revised Statutes held by the company or by other companies in the
13 same holding company as the company submitting the plan should be
14 surrendered. The certificate of authority of the company shall be
15 deemed to continue in effect until the provisions of the approved plan
16 have been carried out. The provisions of this section shall apply to any
17 request for withdrawal, surrender or discontinuance filed on or after
18 January 25, 1990] an informational filing submitted to the
19 commissioner, which filing shall be subject to the following provisions:

20 (1) the company shall send a notice to policyholders of the
21 proposed withdrawal no later than thirty days following the submission
22 of the informational filing to the commissioner, which shall state that
23 the insurer intends to withdraw and has filed its intention to withdraw
24 with the commissioner, the terms of the withdrawal, including the date
25 of the proposed commencement of nonrenewal of policies, and the
26 proposed duration of the nonrenewal of the company's book of
27 business;

28 (2) nonrenewals shall not commence prior to one calendar year
29 and ninety days following the submission of the informational filing;

30 (3) the company shall send a notice of nonrenewal to every
31 policyholder (a) no later than one calendar year preceding the date of
32 nonrenewal and (b) a subsequent notice of nonrenewal in accordance
33 with any time limit otherwise established by law for that line of
34 insurance;

35 (4) nonrenewals shall take place in a manner so as to be applicable
36 to all insureds on an equitable basis with respect to risk classification
37 and territorial or other form of rating factor, and shall be effectuated
38 at a uniform rate over a period not exceeding three calendar years,
39 commencing with the date established in paragraph (2) of this
40 subsection; provided, however, that if more than one company files for
41 withdrawal for the same line of business and the companies, in the
42 aggregate, write more than 25% of the market share for that line of
43 business, the commissioner may extend the period of withdrawal
44 provided for herein to five years.

45 The commissioner's authority with respect to withdrawals as
46 provided for herein shall be limited to enforcing compliance with this

1 subsection and enforcing the terms of the withdrawal plan proposed in
2 the informational filing.

3 b. Upon receiving the informational filing provided for in
4 subsection a. of this section, the commissioner shall consider, and may
5 require as a condition of approval, whether some or all of the
6 company's other certificates of authority issued pursuant to Title 17 of
7 the Revised Statutes held by the company or other companies within
8 the same holding company system as the company submitting the plan
9 shall be required to be surrendered.

10 c. Notwithstanding the provisions of subsection a. of this section,
11 if the company finds a replacement carrier for the business that will not
12 be renewed as the result of the withdrawal either prior to or after the
13 date of the informational filing, the insurer may apply to the
14 commissioner for approval to transfer the business to a replacement
15 carrier or carriers. If the commissioner approves the replacement
16 carrier or carriers, notwithstanding the provisions of paragraphs (1),
17 (2), and (3) of subsection a. of this section, the notice of nonrenewal
18 shall be in compliance with the time limits provided by law for that line
19 of insurance, and the company shall offer every insured coverage with
20 the replacement carrier prior to the effective date of the nonrenewal.
21 The commissioner shall not withhold approval of a replacement carrier
22 or carriers if that insurer is authorized to do business in the same line
23 of business in New Jersey and has the financial and business capability
24 to write and service the business being transferred to it by the
25 withdrawing company. The commissioner shall approve or disapprove
26 the replacement carrier or carriers within 60 days of (1) the date of the
27 filing by both the withdrawing insurer requesting approval of a
28 replacement carrier or carrier or (2) the filing by the replacement
29 carrier or carriers requesting to be a replacement carrier, whichever is
30 later.

31 d. Notwithstanding the provisions of subsection a. of this section,
32 the commissioner may waive the requirements of paragraph (2) of that
33 subsection, and the one-year nonrenewal notice of paragraph (3) of
34 that subsection, as well as the three year minimum nonrenewal period
35 provided in paragraph (4) of that subsection if the commissioner
36 deems a waiver to be necessary to protect the solvency of the insurer
37 making the informational filing or if the commissioner deems the
38 withdrawal to have a limited impact on the market.

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

40

41 85. The following are repealed:

42 a. Sections 4, 6, 15, 29 and 31 of P.L.1952, c.174 (C.39:6-64,
43 39:6-66, 39:6-75, 39:6-89 and 39:6-91);

44 b. Sections 1 and 2 of P.L.1985, c.148 (C.39:6-64a and 39:6-64b)

45 c. Section 23 of P.L.1990, c.8 (C.17:33B-5)

1 86. This act shall take effect immediately, except that section 38
2 shall take effect on January 1, 2004, section 45 shall take effect on the
3 earlier of the 120th day next following enactment or the adoption of
4 regulations by the Commissioner of Banking and Insurance to
5 implement that section, section 65 shall take effect upon the adoption
6 of regulations by the Commissioner of Banking and Insurance, sections
7 83 and 84 shall take effect on January 1, 2007, and section 79 shall
8 take effect on 365th day next following enactment.

9

10

11

12

13 _____

14 Makes various changes to the automobile insurance laws; consolidates
15 administrative functions relative to automobile insurance; provides for
 insurance fraud reforms.