

# SENATE, No. 3

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED APRIL 2, 1998

**Sponsored by:**

**Senator DONALD T. DIFRANCESCO**

**District 22 (Middlesex, Morris, Somerset and Union)**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Co-Sponsored by:**

**Senators Kyrillos, Codey, Cardinale, Inverso, Bennett, Assemblymen Bateman, Greenwald, Collins, DiGaetano, Stuhltrager, Kelly, Gregg, Rooney, Assemblywoman Vandervalk, Assemblymen Weingarten, O'Toole, Azzolina, Thompson, Felice, Garrett, Assemblywoman Wright, Assemblymen Talarico, Biondi, Merkt, Moran, Bodine, Chatzidakis, Kramer, Holzapfel, Wolfe, Assemblywoman Murphy, Assemblymen Asselta, Gibson, Assemblywoman Heck, Assemblymen LeFevre, T.Smith, Blee, Assemblywoman Farragher, Assemblyman Arnone, Assemblywoman Myers, Assemblymen Cottrell, Malone, Assemblywoman Crecco, Assemblymen DeCroce, Connors and Conaway**

**SYNOPSIS**

"The Automobile Insurance Cost Reduction Act."

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 4/21/1998)

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

9 b. The Legislature finds and declares:

10 **WHEREAS**, While New Jersey's automobile insurance no-fault law,  
11 enacted twenty-six years ago, has provided valuable benefits in  
12 the form of medical benefits and wage replacement benefits,  
13 without regard to fault, to New Jersey residents who have been  
14 injured in an automobile accident; and

15 **WHEREAS**, Medical benefits paid by no-fault policies over those  
16 years amount to billions of dollars, which would otherwise  
17 have been paid by health insurance, thus raising the cost of  
18 health insurance for everyone; and

19 **WHEREAS**, While medical benefits under no-fault insurance were  
20 unlimited under the law enacted in 1972, the rapidly escalating  
21 cost of those benefits made it necessary for the Legislature to  
22 reduce those benefits to a limit of \$250,000 in 1990; and

23 **WHEREAS**, Since the enactment of the verbal threshold in 1988, the  
24 substantial increase in the cost of medical expense benefits  
25 indicates that the benefits are being overutilized for the  
26 purpose of gaining standing to sue for pain and suffering, thus  
27 undermining the limitations imposed by the threshold and  
28 necessitating the imposition of further controls on the use of  
29 those benefits, including the establishment of a basis for  
30 determining whether treatments or diagnostic tests are  
31 medically necessary; and

32 **WHEREAS**, The present arbitration system has not sufficiently  
33 addressed the Legislature's goal of eliminating payment for  
34 treatments and diagnostic tests which are not medically  
35 necessary, leading to the belief that a revised dispute  
36 resolution mechanism needs to be established which will  
37 accomplish this goal; and

38 **WHEREAS**, The principle underlying the philosophical basis of the  
39 no-fault system is that of a trade-off of one benefit for another;  
40 in this case, providing medical benefits in return for a limitation  
41 on the right to sue for non-serious injuries; and

42 **WHEREAS**, While the Legislature believes that it is good public  
43 policy to provide medical benefits on a first party basis,

**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 without regard to fault, to persons injured in automobile  
2 accidents, it recognizes that in order to keep premium costs  
3 down, the cost of the benefit must be offset by a reduction in  
4 the cost of other coverages, most notably a restriction on the  
5 right of persons who have non-permanent or non-serious  
6 injuries to sue for pain and suffering; and

7 **WHEREAS**, The high cost of automobile insurance in New Jersey  
8 has presented a significant problem for many-lower income  
9 residents of the state, many of whom have been forced to drop  
10 or lapse their coverage in violation of the State's mandatory  
11 motor vehicle insurance laws, making it necessary to provide  
12 a lower-cost option to protect people by providing coverage to  
13 pay their medical expenses if they are injured; and

14 **WHEREAS**, To meet these goals, this legislation provides for the  
15 creation of two insurance coverage options, a basic policy and  
16 a standard policy, provides for cost containment of medical  
17 expense benefits through a revised dispute resolution  
18 proceeding, provides for a revised lawsuit threshold for suits  
19 for pain and suffering which will eliminate suits for injuries  
20 which are not serious or permanent, including those for soft  
21 tissue injuries, would more precisely define the benefits  
22 available under the medical expense benefits coverage, and  
23 establishes standard treatment and diagnostic procedures  
24 against which the medical necessity of treatments reimbursable  
25 under medical expense benefits coverage would be judged; and

26 **WHEREAS**, It is generally recognized that fraud, whether in the  
27 form of inappropriate medical treatments, inflated claims,  
28 staged accidents, falsification of records, or in any other form,  
29 has increased premiums, and must be uncovered and vigorously  
30 prosecuted, and while the pursuit of those who defraud the  
31 automobile insurance system has heretofore been addressed by  
32 the State through various agencies, it has been without  
33 sufficient coordination to aggressively combat fraud, leading to  
34 the conclusion that greater consolidation of agencies which  
35 were created to combat fraud is necessary to accomplish this  
36 purpose; and

37 **WHEREAS**, With these many objectives, the Legislature  
38 nevertheless recognizes that to provide a healthy and  
39 competitive automobile insurance market, insurers are entitled  
40 to earn an adequate rate of return through the ratemaking  
41 process, which shall reflect the impact of the cost-saving  
42 provisions of this act and other recent legislative insurance  
43 reforms; and

44 **WHEREAS**, The Legislature has thus addressed these and other  
45 issues in this comprehensive legislation designed to preserve  
46 the no-fault system, while at the same time reducing

1 unnecessary costs which drive premiums higher.

2

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

5 2. As used in this act:

6 a. "Automobile" means a private passenger automobile of a private  
7 passenger or station wagon type that is owned or hired and is neither  
8 used as a public or livery conveyance for passengers nor rented to  
9 others with a driver; and a motor vehicle with a pickup body, a  
10 delivery sedan, a van, or a panel truck or a camper type vehicle used  
11 for recreational purposes owned by an individual or by husband and  
12 wife who are residents of the same household, not customarily used in  
13 the occupation, profession or business of the insured other than  
14 farming or ranching. An automobile owned by a farm family  
15 copartnership or corporation, which is principally garaged on a farm  
16 or ranch and otherwise meets the definitions contained in this section,  
17 shall be considered a private passenger automobile owned by two or  
18 more relatives resident in the same household.

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

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

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

27 e. "Medical expenses" means [expenses for medical treatment,  
28 surgical treatment, dental treatment, professional nursing services,  
29 hospital expenses, rehabilitation services, X-ray and other diagnostic  
30 services, prosthetic devices, ambulance services, medication and other  
31 reasonable and necessary expenses resulting from the treatment  
32 prescribed by persons licensed to practice medicine and surgery  
33 pursuant to R.S.45:9-1 et seq., dentistry pursuant to R.S.45:6-1 et  
34 seq., psychology pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.) or  
35 chiropractic pursuant to P.L.1953, c.233 (C.45:9-41.1 et seq.) or by  
36 persons similarly licensed in other states and nations or] reasonable  
37 and necessary expenses for treatment or services as provided by the  
38 policy, including medical, surgical, rehabilitative and diagnostic  
39 services and hospital expenses, provided by a health care provider  
40 licensed or certified by the State or by another state or nation, and  
41 reasonable and necessary expenses for ambulance services or other  
42 transportation, medication and other services as may be provided for,  
43 and subject to such limitations as provided for, in the policy, as  
44 approved by the commissioner. "Medical expenses" shall also include  
45 any nonmedical remedial treatment rendered in accordance with a  
46 recognized religious method of healing.

1 f. "Hospital expenses" means [:

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

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

5 (3) The cost of other hospital services, such as operating room;  
6 medicines, drugs, anesthetics; treatments with X-ray, radium and  
7 other radioactive substances; laboratory tests, surgical dressings and  
8 supplies; and other medical care and treatment rendered by the  
9 hospital;

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

11 (5) The cost of medical supplies, such as prescribed drugs and  
12 medicines; blood and blood plasma; artificial limbs and eyes; surgical  
13 dressings, casts, splints, trusses, braces, crutches; rental of  
14 wheelchair, hospital bed or iron lung; oxygen and rental of equipment  
15 for its administration] the cost of treatment and services, as provided  
16 in the policy approved by the commissioner, by a licensed and  
17 accredited acute care facility which engages primarily in providing  
18 diagnosis, treatment and care of sick and injured persons on an  
19 inpatient or outpatient basis; the cost of covered treatment and  
20 services provided by an extended care facility which provides room  
21 and board and skilled nursing care 24 hours a day and which is  
22 recognized by the administrators of the federal Medicare program as  
23 an extended care facility; and the cost of covered services at an  
24 ambulatory surgical facility supervised by a physician licensed in this  
25 State or in another jurisdiction and recognized by the Commissioner  
26 of Health and Senior Services, or any other facility licensed, certified  
27 or recognized by the Commissioner of Health and Senior Services or  
28 the Commissioner of Human Services or a nationally recognized  
29 system such as the Commission on Accreditation of Rehabilitation  
30 Facilities, or by another jurisdiction in which it is located.

31 g. "Named insured" means the person or persons identified as the  
32 insured in the policy and, if an individual, his or her spouse, if the  
33 spouse is named as a resident of the same household, except that if the  
34 spouse ceases to be a resident of the household of the named insured,  
35 coverage shall be extended to the spouse for the full term of any policy  
36 period in effect at the time of the cessation of residency.

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

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

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

43 k. "Economic loss" means uncompensated loss of income or  
44 property, or other uncompensated expenses, including, but not limited  
45 to, medical expenses.

46 l. "Health care provider" or "provider" means those persons

1 licensed or certified to perform health care treatment or services  
2 compensable as medical expenses and shall include, but not be limited  
3 to, (1) a hospital or health care facility which is maintained by a state  
4 or any of its political subdivisions, (2) a hospital or health care facility  
5 licensed by the Department of Health and Senior Services, (3) other  
6 hospitals or health care facilities designated by the Department of  
7 Health and Senior Services to provide health care services, or other  
8 facilities, including facilities for radiology and diagnostic testing,  
9 freestanding emergency clinics or offices, and private treatment  
10 centers, (4) a nonprofit voluntary visiting nurse organization providing  
11 health care services other than in a hospital, (5) hospitals or other  
12 health care facilities or treatment centers located in other states or  
13 nations, (6) physicians licensed to practice medicine and surgery, (7)  
14 licensed chiropractors, (8) licensed dentists, (9) licensed optometrists,  
15 (10) licensed pharmacists, (11) licensed chiropodists, (12) registered  
16 bio-analytical laboratories, (13) licensed psychologists, (14) licensed  
17 physical therapists, (16) certified nurse-midwives, (17) certified nurse-  
18 practitioners/clinical nurse-specialists, (18) licensed health  
19 maintenance organizations, (19) licensed orthotists and prosthetists,  
20 and (20) providers of other health care services or supplies, including  
21 durable medical goods.

22 m. "Medically necessary" means that the treatment is consistent  
23 with the symptoms or diagnosis, and treatment of the injury (1) is not  
24 primarily for the convenience of the injured person or provider, (2) is  
25 the most appropriate standard or level of service which is in  
26 accordance with standards of good practice and standard professional  
27 treatment protocols, as such protocols may be recognized or  
28 designated by the Commissioner of Banking and Insurance, in  
29 consultation with the Commissioner of Health and Senior Services, by  
30 a professional licensing or certifying board in the Division of  
31 Consumer Affairs in the Department of Law and Public Safety, or by  
32 a nationally recognized professional organization, and (3) does not  
33 involve unnecessary or repeated diagnostic testing.

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

37 o. "Basic automobile insurance policy" means an automobile  
38 insurance policy pursuant to section of 4 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(now  
39 before the Legislature as this bill).

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

41

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

44 3. Compulsory automobile insurance coverage; limits. [Every]  
45 Except as provided by section 4 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(now  
46 before the Legislature as this bill), every owner or registered owner of

1 an automobile registered or principally garaged in this State shall  
2 maintain automobile liability insurance coverage, under provisions  
3 approved by the Commissioner of Banking and Insurance, insuring  
4 against loss resulting from liability imposed by law for bodily injury,  
5 death and property damage sustained by any person arising out of the  
6 ownership, maintenance, operation or use of an automobile wherein  
7 such coverage shall be at least in:

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

11 b. an amount or limit, subject to such limit for any one person so  
12 injured or killed, of \$30,000.00, exclusive of interest and costs, on  
13 account of injury to or death of, more than one person, in any one  
14 accident; and

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

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

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

23

24 4. (New section) As an alternative to the mandatory coverages  
25 provided in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-  
26 4), any owner or registered owner of an automobile registered or  
27 principally garaged in this State may elect a basic automobile insurance  
28 policy providing the following coverage:

29 a. Personal injury protection coverage, for the payment of benefits  
30 without regard to negligence, liability or fault of any kind, to the  
31 named insured and members of his family residing in his household,  
32 who sustained bodily injury as a result of an accident while occupying,  
33 entering into, alighting from or using an automobile, or as a  
34 pedestrian, caused by an automobile or by an object propelled by or  
35 from an automobile, to other persons sustaining bodily injury while  
36 occupying, entering into, alighting from or using the automobile of the  
37 named insured, with the permission of the named insured, and to  
38 pedestrians sustaining bodily injury caused by the named insured's  
39 automobile or struck by an object propelled by or from such  
40 automobile. "Personal injury protection coverage" issued pursuant to  
41 this section means and includes payment of medical expense benefits,  
42 as provided in the policy and approved by the commissioner, for the  
43 reasonable and necessary treatment of bodily injury in an amount not  
44 to exceed \$15,000 per person per accident; except that, medical  
45 expense benefits shall be paid in an amount not to exceed \$250,000 for  
46 the reasonable and necessary treatment of bodily injuries which result

1 in: death; permanent and significant brain injury; quadriplegia or  
2 paraplegia; dismemberment; total loss of vision in one or both eyes;  
3 total loss of hearing in one or both ears; significant permanent injury  
4 due to prominent facial, scalp or neck scarring. In the event benefits  
5 paid by an insurer pursuant to this subsection are in excess of \$75,000  
6 on account of personal injury to any one person in any one accident,  
7 such excess shall be paid by the insurer in consultation with the  
8 Unsatisfied Claim and Judgment Fund Board and shall be reimbursable  
9 to the insurer from the Unsatisfied Claim and Judgment Fund pursuant  
10 to section 2 of P.L.1977, c.310 (C.39:6-73.1). Benefits provided  
11 under basic coverage shall be in accordance with a benefit plan  
12 provided in the policy and approved by the commissioner. The policy  
13 form, which shall be subject to the approval of the commissioner, shall  
14 set forth the benefits provided under the policy, including eligible  
15 medical treatments and services as well as such other benefits as the  
16 policy may provide. The commissioner shall set forth by regulation the  
17 basic benefits which shall be included in the policy. Medical  
18 treatments, diagnostic tests, and services provided by the policy shall  
19 be rendered in accordance with commonly accepted protocols and  
20 professional standards and practices which are commonly accepted as  
21 being beneficial for the treatment of the covered injury. Protocols and  
22 professional standards and practices which are deemed to be  
23 commonly accepted pursuant to this section shall be those recognized  
24 by national standard setting organizations, national or state  
25 professional organizations of the same discipline as the treating  
26 provider, or those designated or approved by the commissioner in  
27 consultation with the professional licensing boards in the Division of  
28 Consumer Affairs in the Department of Law and Public Safety.  
29 Protocols shall be deemed to establish guidelines as to standard  
30 appropriate treatment for injuries sustained in automobile accidents,  
31 but the establishment of standard treatment protocols or protocols for  
32 the administration of diagnostic tests shall not be interpreted in such  
33 a manner as to preclude variance from the standard when warranted by  
34 reason of medical necessity. The policy form may provide for the  
35 precertification of certain procedures, treatments, diagnostic tests, or  
36 other services or for the purchase of durable medical goods, as  
37 approved by the commissioner, provided that the requirement for  
38 precertification shall not be unreasonable, and no precertification  
39 requirement shall apply within ten days of the insured event. The  
40 policy may provide that certain benefits provided by the policy which  
41 are in excess of the basic benefits required by the commissioner to be  
42 included in the policy may be subject to reasonable copayments in  
43 addition to the copayments provided for herein, provided that the  
44 copayments shall not be unreasonable and shall be established in such  
45 as manner as not to serve to encourage underutilization of benefits  
46 subject to the copayments, nor encourage overutilization of benefits.



1 The policy form shall clearly set forth any limitations on benefits or  
2 exclusions, which may include, but need not be limited to, benefits  
3 which are otherwise compensable under workers' compensation, or  
4 benefits for treatments deemed to be experimental or investigational,  
5 or benefits deducted pursuant to section 6 of P.L.1972, c.70  
6 (C.39:6A-6). The commissioner may enlist the services of a benefit  
7 consultant in establishing the basic benefits level provided in this  
8 subsection, which shall be set forth by regulation no later than 90 days  
9 following the enactment date of this amendatory and supplementary  
10 act. The commissioner shall not advertise for the consultant as  
11 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-  
12 9).

13 Medical expense benefits payable under this subsection shall not be  
14 assignable, except to a provider of service benefits, in accordance with  
15 policy terms approved by the commissioner, nor shall they be subject  
16 to levy, execution, attachment or other process for satisfaction of  
17 debts. Medical expense benefits payable in accordance with this  
18 subsection may be subject to a deductible of up to \$250, and  
19 copayments as provided for in the policy, if any. No insurer or  
20 provider providing service benefits to an insured shall have a right of  
21 subrogation for the amount of benefits paid pursuant to any deductible  
22 or copayment under this section.

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 If a named insured has elected the basic automobile insurance policy  
29 option and an immediate family member or members or relatives  
30 resident in his household have one or more policies with the coverages  
31 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and  
32 39:6A-4), the provisions of section 12 of P.L.1983, c.362 (C.39:6A-  
33 4.2) shall apply.

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

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

42

43 5. (New section) a. All automobile insurance policies issued or  
44 renewed on or after the effective date of P.L. , c. (C. )(now  
45 before the Legislature as this bill) shall be issued or renewed including  
46 at least the coverages required pursuant to sections 3 and 4 of

1 P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless the named insured  
2 elects a basic automobile insurance policy pursuant to section 4 of  
3 P.L. , c. (C. )(now before the Legislature as this bill).  
4 Election of a basic automobile insurance policy shall be in writing and  
5 signed by the named insured on the coverage selection form required  
6 by section 17 of P.L.1983, c.362 (C.39:6A-23). The coverage election  
7 form shall contain a statement, clearly readable and in 12-point bold  
8 type, in a form approved by the commissioner, that election of a basic  
9 automobile insurance policy may subject the named insured to a claim  
10 or judgment for noneconomic loss which is not covered by the basic  
11 automobile insurance policy, and which may place his assets at risk,  
12 and in the event the named insured is sued, the insurer shall not  
13 provide legal counsel.

14 b. The insurance coverages provided for in section 4 of P.L. , c.  
15 (C. )(now before the Legislature as this bill) shall be offered by  
16 every insurer which writes insurance coverages pursuant to sections  
17 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) for a period of  
18 five years after the effective date of P.L. , c. (C. )(now  
19 before the Legislature as this bill). The commissioner shall require  
20 every company writing such insurance coverage to report to him  
21 annually during that five-year period as to the number of policies  
22 written pursuant to this subsection in the previous year, the number of  
23 policies with the coverage offered pursuant to section 4 of P.L.1972,  
24 c.70 (C.39:6A-4) which have been converted to policies with the  
25 coverage offered pursuant to section 4 of P.L. , c. (C. )(now  
26 before the Legislature as this bill) and any other information the  
27 commissioner may require. The commissioner shall then report to the  
28 Governor and the Legislature regarding the acceptance of the basic  
29 automobile insurance policy by the automobile insurance consumers of  
30 this State annually for the first four years the basic policy is sold. On  
31 or before January 1, 2003, the commissioner shall make a final,  
32 cumulative report which shall include recommendations as to the  
33 continuation of the basic policy to the Governor and the Legislature.  
34

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

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

38 [Every automobile liability insurance policy, issued or renewed on  
39 or after January 1, 1991, insuring an automobile as defined in section  
40 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability  
41 imposed by law for bodily injury, death and property damage sustained  
42 by any person arising out of ownership, operation, maintenance or use  
43 of an automobile shall provide personal injury protection coverage, as  
44 defined hereinbelow, under provisions approved by the Commissioner  
45 of Banking and Insurance, for the payment of benefits without regard  
46 to negligence, liability or fault of any kind, to the named insured and

1 members of his family residing in his household who sustained bodily  
2 injury as a result of an accident while occupying, entering into,  
3 alighting from or using an automobile, or as a pedestrian, caused by an  
4 automobile or by an object propelled by or from an automobile, to  
5 other persons sustaining bodily injury while occupying, entering into,  
6 alighting from or using the automobile of the named insured, with the  
7 permission of the named insured, and to pedestrians, sustaining bodily  
8 injury caused by the named insured's automobile or struck by an object  
9 propelled by or from such automobile.

10 "Personal injury protection coverage" means and includes:

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

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

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

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

45 In the event of the death of one performing essential services as a  
46 result of injuries sustained in an accident entitling such person to

1 benefits under subsection c. of this section, the maximum amount of  
2 benefits which could have been paid such person, under subsection c.,  
3 shall be paid to the person incurring the expense of providing such  
4 essential services.

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

9 Benefits payable under this section shall:

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

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

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

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

35 "Personal injury protection coverage" means and includes:

36 a. Payment of medical expense benefits in accordance with a  
37 benefit plan provided in the policy and approved by the commissioner,  
38 for reasonable, necessary, and appropriate treatment and provision of  
39 services to persons sustaining bodily injury, in an amount not to  
40 exceed \$250,000 per person per accident. In the event benefits paid  
41 by an insurer pursuant to this subsection are in excess of \$75,000 on  
42 account of bodily injury to any one person in any one accident, that  
43 excess shall be paid by the insurer in consultation with the Unsatisfied  
44 Claim and Judgment Fund Board and shall be reimbursable to the  
45 insurer from the Unsatisfied Claim and Judgment Fund pursuant to  
46 section 2 of P.L.1977, c.310 (C.39:6-73.1). The policy form, which

1 shall be subject to the approval of the commissioner, shall set forth the  
2 benefits provided under the policy, including eligible medical  
3 treatments and services as well as such other benefits as the policy may  
4 provide. The commissioner shall set forth by regulation 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.  
17 Protocols shall be deemed to establish guidelines as to standard  
18 appropriate treatment for injuries sustained in automobile accidents,  
19 but the establishment of standard treatment protocols or protocols for  
20 the administration of diagnostic tests shall not be interpreted in such  
21 a manner as to preclude variance from the standard when warranted by  
22 reason of medical necessity. The policy form may provide for the  
23 precertification of certain procedures, treatments, diagnostic tests, or  
24 other services or for the purchase of durable medical goods, as  
25 approved by the commissioner, provided that the requirement for  
26 precertification shall not be unreasonable, and no precertification  
27 requirement shall apply within ten days of the insured event. The  
28 policy may provide that certain benefits provided by the policy which  
29 are in excess of the basic benefits required by the commissioner to be  
30 included in the policy may be subject to reasonable copayments in  
31 addition to the copayments provided for pursuant to subsection e. of  
32 this section, provided that the copayments shall not be unreasonable  
33 and shall be established in such as manner as not to serve to encourage  
34 underutilization of benefits subject to the copayments, nor encourage  
35 overutilization of benefits. The policy form shall clearly set forth any  
36 limitations on benefits or exclusions, which may include, but need not  
37 be limited to, benefits which are otherwise compensable under  
38 workers' compensation, or benefits for treatments deemed to be  
39 experimental or investigational, or benefits deducted pursuant to  
40 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may  
41 enlist the services of a benefit consultant in establishing the basic  
42 benefits level provided in this subsection, which shall be set forth by  
43 regulation no later than 90 days following the enactment date of  
44 P.L. , c. (C. )(now before the Legislature as this bill). The  
45 commissioner shall not advertise for bids for the consultant as

1 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-  
2 9).

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

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

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

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

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

38 Benefits payable under this section shall:

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

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

45 Medical expense benefit payments shall be subject to a deductible  
46 of \$250 on account of injury in any one accident and a copayment of

1 20% of any benefits payable between \$250 and \$5,000 in addition to  
2 any copayment which may be established pursuant to subsection a. of  
3 this section. Upon the request of the commissioner or any party to a  
4 claim for benefits or payment for services rendered, a provider shall  
5 present adequate proof that any deductible or copayment related to  
6 that claim has not been waived or discharged by the provider.

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

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

11  
12 7. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to read  
13 as follows:

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

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

20 b. ~~【The option to exclude all benefits offered under subsections b.,~~  
21 ~~c., d., and e. of section 4;】 (Deleted by amendment, P.L. , c. .)~~

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

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

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

1 coverage taken.]

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

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

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

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

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

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

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

43

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

46 14. a. Any person who, at the time of an automobile accident



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

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

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

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

18

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

21 6. Collateral Source. The benefits provided in **[section] sections**  
22 **4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and**  
23 **the medical expense benefits provided in section 4 of P.L. , c.**  
24 **(C. )(now before the Legislature as this bill)** shall be payable as  
25 loss accrues, upon written notice of such loss and without regard to  
26 collateral sources, except that benefits, collectible under workers'  
27 compensation insurance, employees' temporary disability benefit  
28 statutes, medicare provided under Federal law, and benefits, in fact  
29 collected, that are provided under Federal law to active and retired  
30 military personnel shall be deducted from the benefits collectible under  
31 **[section] sections 4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4**  
32 **and 39:6A-10) and the medical expense benefits provided in section 4**  
33 **of P.L. , c. (C. )(now before the Legislature as this bill).**

34 If an insurer has paid those benefits and the insured is entitled to,  
35 but has failed to apply for, workers' compensation benefits or  
36 employees' temporary disability benefits, the insurer may immediately  
37 apply to the provider of workers' compensation benefits or of  
38 employees' temporary disability benefits for a reimbursement of any  
39 **[section 4 and section 10] benefits pursuant to sections 4 and 10 of**  
40 **P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits**  
41 **pursuant to section 4 of P.L. ,c. (C. )(now before the**  
42 **Legislature as this bill)** it has paid.

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

44

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

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

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

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

11 b. An insurer may also exclude from [section 4 and section 10] the  
12 benefits provided in sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4  
13 and 39:6A-10) and the medical expense benefits provided in section 4  
14 of P.L. , c. (C. )(now before the Legislature as this bill) any  
15 person having incurred injuries or death, who, at the time of the  
16 accident:

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

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

22 (3) was a person other than the named insured or a member and  
23 named insured's family residing in his household, if that person is  
24 entitled to coverage under section 4 or section 10 of P.L.1972, c.70  
25 (C.39:6A-4 or 39:6A-10), or both, or section 4 of P.L. , c.   
26 (C. )(now before the Legislature as this bill), as a named insured  
27 or member of the named insured's family residing in his household  
28 under the terms of another policy: or

29 (4) was a member of the named insured's family residing in the  
30 named insured's household, if that person is entitled to coverage under  
31 section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or  
32 both, or section 4 of P.L. , c. (C. )(now before the  
33 Legislature as this bill) as a named insured under the terms of another  
34 policy.

35 (cf: P.L.1997, c.270, s.1)

36  
37 11. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read as  
38 follows:

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

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

44 a. [Every owner, registrant, operator or occupant of an automobile  
45 to which section 4 of P.L.1972, c.70 (C.39:6A-4), personal injury  
46 protection coverage, regardless of fault, applies, and every person or

1 organization legally responsible for his acts or omissions, is hereby  
2 exempted from tort liability for noneconomic loss to a person who is  
3 subject to this subsection and who is either a person who is required  
4 to maintain the coverage mandated by this act, or is a person who has  
5 a right to receive benefits under section 4 of P.L.1972, c.70  
6 (C.39:6A-4) as a result of bodily injury, arising out of the ownership,  
7 operation, maintenance or use of such automobile in this State, unless  
8 that person has sustained a personal injury which results in death;  
9 dismemberment; significant disfigurement; a fracture; loss of a fetus;  
10 permanent loss of use of a body organ, member, function or system;  
11 permanent consequential limitation of use of a body organ or member;  
12 significant limitation of use of a body function or system; or a  
13 medically determined injury or impairment of a non-permanent nature  
14 which prevents the injured person from performing substantially all of  
15 the material acts which constitute that person's usual and customary  
16 daily activities for not less than 90 days during the 180 days  
17 immediately following the occurrence of the injury or impairment]

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

43 In order to satisfy the tort option provisions of this subsection, the  
44 plaintiff shall, within 60 days following the date of the answer to the  
45 complaint by the defendant, provide the defendant with a certification  
46 from the licensed treating physician or a board-certified licensed

1 physician to whom the plaintiff was referred by the treating physician.  
2 The certification shall state, under penalty of perjury, that the plaintiff  
3 has sustained an injury described above. The certification shall be  
4 based on and refer to objective clinical evidence, which may include  
5 medical testing, except that any such testing shall be performed in  
6 accordance with medical protocols pursuant to subsection a. of section  
7 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests  
8 administered in accordance with section 12 of P.L. , c. (C. )( now  
9 before the Legislature as this bill). Such testing may not be  
10 experimental in nature or dependent entirely upon subjective patient  
11 response. The court may grant no more than one additional period not  
12 to exceed 60 days to file the certification pursuant to this subsection  
13 upon a finding of good cause.

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

32 b. No limitation on lawsuit option. As an alternative to the basic  
33 tort option specified in subsection a. of this section, every owner,  
34 registrant, operator, or occupant of an automobile to which section 4  
35 of P.L.1972, c.70 (C.39:6A-4) , personal injury protection coverage,  
36 or section 4 of P.L. , c. (C. )(now before the Legislature as  
37 this bill), medical expense benefits coverage, regardless of fault,  
38 applies, and every person or organization legally responsible for his  
39 acts or omissions, shall be liable for noneconomic loss to a person who  
40 is subject to this subsection and who is either a person who is required  
41 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et  
42 seq.) or is a person who has a right to receive benefits under section  
43 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the  
44 ownership, operation, maintenance or use of such automobile in this  
45 State.

46 The tort option provisions of subsection b. of this section shall also

1 apply to the right to recover for noneconomic loss of any person  
2 eligible for benefits pursuant to section 4 of P.L.1972, c.70  
3 (C.39:6A-4) or section 4 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(now before the  
4 Legislature as this bill) but who is not required to maintain personal  
5 injury protection coverage pursuant to section 4 of P.L.1972, c.70  
6 (C.39:6A-4) or medical expense benefits coverage pursuant to section  
7 4 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(now before the Legislature as this bill) and  
8 is not an immediate family member, as defined in section 14.1 of  
9 P.L.1983, c.362 (C.39:6A-8.1), under [an] a standard automobile  
10 insurance policy or basic automobile insurance policy.

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

17 The tort option provisions of subsections a. and b. of this section  
18 as provided in this [1988] 1998 amendatory and supplementary act  
19 shall apply to automobile insurance policies issued or renewed on or  
20 after [January 1, 1989] the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_  
21 (C. \_\_\_\_\_)(now before the Legislature as this bill) and as otherwise  
22 provided by law.

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

24

25 12. (New section) The professional licensing boards governing  
26 health care providers in the Division of Consumer Affairs shall  
27 promulgate, pursuant to the "Administrative Procedure Act,"  
28 P.L.1968, c.410 (C.52:14B-1 et seq.), a list of valid diagnostic tests  
29 to be used in conjunction with the appropriate health care protocols in  
30 the treatment of persons sustaining bodily injury and subject to  
31 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8). Inclusion of  
32 a test on the list of valid diagnostic tests shall be based on  
33 demonstrated medical value, and a level of general acceptance by the  
34 relevant provider community and shall not be dependent for results  
35 entirely upon subjective patient response. The initial lists shall be  
36 promulgated within 180 days of the effective date of this section and  
37 shall be revised from time to time as determined by the respective  
38 boards to reflect new testing procedures and emerging technologies  
39 enjoying a level of general acceptance within the appropriate provider  
40 community. In updating its list, a board may take action at a regularly  
41 scheduled meeting, notwithstanding the provisions of P.L.1968, c.410  
42 (C.52:14B-1 et seq.) to the contrary, after notice as provided herein.  
43 The professional boards, individually or collectively, may enlist the  
44 services of a consulting firm to assist in compiling and updating the  
45 list. The Commissioner of Banking and Insurance may reimburse the  
46 boards for the cost of the services of the consultant. The list of valid

1 diagnostic test shall apply only to benefits under section 4 of P.L.1972,  
2 c.70 (C.39:6A-4) and section 4 of P.L. , c. (C. )(now before the  
3 Legislature as this bill). The board or boards hiring a consultant shall  
4 not advertise for bids, as provided in sections 3 and 4 of P.L.1954,  
5 c.48 (C.52:34-8 and 52:34-9). Notwithstanding any of the provisions  
6 of this section to the contrary, a diagnostic test performed in an acute  
7 care facility, or extended care facility recognized by Medicare, shall  
8 not be excluded from a list of valid diagnostic tests promulgated  
9 pursuant to this section.

10 a. For the purposes of this section, "action" includes, but is not  
11 limited to:

12 (1) the addition or deletion of a test to the list; or

13 (2) procedures and standards for the performance of a test.

14 "Action" shall not include the hearing and resolution of contested  
15 cases, licensing matters, personnel matters or any other duties of a  
16 professional licensing board.

17 b. Prior to the adoption of an action by the board, the board shall  
18 forward the notice of intended action and a detailed description of the  
19 intended action to the Office of Administrative Law for publication in  
20 the New Jersey Register.

21 A copy of the text of the intended action shall be available in the  
22 Division of Consumer Affairs in accordance with the provisions of  
23 P.L.1963, c.73 (C.47:1A-1 et seq.).

24 c. The board may hold a public hearing on any intended action.

25 d. Whether or not a public hearing is held, the board shall afford all  
26 interested persons an opportunity to comment in writing on the  
27 intended action. Written comments shall be submitted to the board  
28 within the time established by the board in the notice of intended  
29 action, which time shall not be less than 10 calendar days from the  
30 date of notice. The board shall give due consideration to all comments  
31 received. A copy of the submissions shall be filed with the Office of  
32 Administrative Law for publication in the New Jersey Register.

33 e. The board may adopt the intended action immediately following  
34 the expiration of the public comment period provided in subsection d.  
35 of this section, or the hearing provided for in subsection c. of this  
36 section, whichever date is later. The final action adopted by the board  
37 shall be submitted for publication in the New Jersey Register to the  
38 Office of Administrative Law, and shall be effective on the date of the  
39 submission or such later date as the board may establish.

40 f. Actions filed with the Office of Administrative Law pursuant to  
41 this section shall be filed subject to the provisions of subsections (a),  
42 (c), (d) and (e) of section 5 of P.L.1968, c.410 (C.52:14B-5).

43 g. Nothing in this section shall be construed to prohibit the board  
44 from adopting any action pursuant to the provisions of the  
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
46 seq.).

1 h. Nothing in this section shall be construed to prohibit the  
2 Director of the Division of Consumer Affairs from adopting any rule  
3 or regulation pursuant to the provisions of the "Administrative  
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

5  
6 13. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to  
7 read as follows:

8 20. An insurer, health maintenance organization or governmental  
9 agency paying benefits pursuant to subsection a., b. or d. of section 13  
10 of P.L.1983, c.362 (C.39:6A-4.3) or personal injury protection  
11 benefits in accordance with section 4 or section 10 of P.L.1972, c.70  
12 (C.39:6A-4 or 39:6A-10) or medical expense benefits pursuant to  
13 section 4 of P.L. , c. (C. )(now before the Legislature as this  
14 bill), as a result of an accident occurring within this State, shall, within  
15 two years of the filing of the claim, have the right to recover the  
16 amount of payments from any tortfeasor who was not, at the time of  
17 the accident, required to maintain personal injury protection or medical  
18 expense benefits coverage, other than for pedestrians, under the laws  
19 of this State, including personal injury protection coverage required to  
20 be provided in accordance with section 18 of P.L.1985, c.520  
21 (C.17:28-1.4), or although required did not maintain personal injury  
22 protection or medical expense benefits coverage at the time of the  
23 accident. In the case of an accident occurring in this State involving  
24 an insured tortfeasor, the determination as to whether an insurer,  
25 health maintenance organization or governmental agency is legally  
26 entitled to recover the amount of payments and the amount of  
27 recovery, including the costs of processing benefit claims and  
28 enforcing rights granted under this section, shall be made against the  
29 insurer of the tortfeasor, and shall be by agreement of the involved  
30 parties or, upon failing to agree, by arbitration.

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

32  
33 14. Section 10 of P.L.1972, c.70 (C.39:6A-10) is amended to read  
34 as follows:

35 10. Additional personal injury protection coverage. Insurers shall  
36 make available to the named insured electing the standard automobile  
37 insurance policy and covered under section 4 of P.L.1972, c.70  
38 (C.39:6A-4), and, at his option, to resident relatives in the household  
39 of the named insured, suitable additional first party coverage for  
40 income continuation benefits, essential services benefits, death benefits  
41 and funeral expense benefits, but the income continuation and essential  
42 services benefits shall cease upon the death of the claimant, and shall  
43 not operate to increase the amount of any death benefits payable under  
44 section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional first party  
45 coverage shall be payable only to the extent that the claimant  
46 establishes that the amount of loss sustained exceeds the coverage

1 specified in section 4 of P.L.1972, c.70 (C.39:6A-4). Insurers may also  
2 make available to named insureds electing a standard automobile  
3 insurance policy and covered under section 4 of P.L.1972, c.70  
4 (C.39:6A-4), and, at their option, to resident relatives in the household  
5 of the named insured or to other persons provided medical expense  
6 benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4),  
7 or both, additional first party medical expense **[benefit]** benefits  
8 coverage. The additional coverage shall be offered by the insurer at  
9 least annually as part of the coverage selection form applicable to the  
10 standard automobile insurance policy and required by section 17 of  
11 P.L.1983, c.362 (C.39:6A-23). Income continuation in excess of that  
12 provided for in section 4 **[must]** of P.L.1972, c.70 (C.39:6A-4) shall  
13 be provided as an option by insurers for disabilities, as long as the  
14 disability persists, up to an income level of \$35,000.00 per year,  
15 provided that a. the excess between \$5,200.00 and the amount of  
16 coverage contracted for shall be written on the basis of 75% of said  
17 difference, and b. regardless of the duration of the disability, the  
18 benefits payable shall not exceed the total maximum amount of income  
19 continuation benefits contracted for. Death benefits provided pursuant  
20 to this section shall be payable without regard to the period of time  
21 elapsing between the date of the accident and the date of death, if  
22 death occurs within two years of the accident and results from bodily  
23 injury from that accident to which coverage under this section applies.  
24 The Commissioner of Insurance is hereby authorized and empowered  
25 to establish, by rule or regulation, the amounts and terms of income  
26 continuation insurance to be provided pursuant to this section.

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

28

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

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

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

45

46 16. Section 12 of P.L.1972, c.70 (C.39:6A-12) is amended to read



1 as follows:

2 12. Inadmissibility of evidence of losses collectible under personal  
3 injury protection coverage. Except as may be required in an action  
4 brought pursuant to section 20 of P.L.1983, c.362 (C.39:6A-9.1),  
5 evidence of the amounts collectible or paid under a standard  
6 automobile insurance policy pursuant to sections 4 and 10 of  
7 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and amounts collectible or  
8 paid for medical expense benefits under a basic automobile insurance  
9 policy pursuant to 4 of P.L. , c. (C. )(now before the  
10 Legislature as this bill), to an injured person, including the amounts of  
11 any deductibles, copayments or exclusions, including exclusions  
12 pursuant to subsection d. of section 13 of P.L.1983, c.362  
13 (C.39:6A-4.3), otherwise compensated is inadmissible in a civil action  
14 for recovery of damages for bodily injury by such injured person.

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

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

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

32

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

35 13. Discovery of facts as to personal injury protection coverage.  
36 The following apply to personal injury protection coverage benefits  
37 payable under a standard automobile insurance policy pursuant to  
38 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and  
39 medical expense benefits payable under a basic automobile insurance  
40 policy pursuant to section 4 of P.L. , c. (C. )(now before the  
41 Legislature as this bill):

42 a. Every employer shall, if a request is made by an insurer or the  
43 Unsatisfied Claim and Judgment Fund providing personal injury  
44 protection benefits under [this act] a standard automobile insurance  
45 policy or medical expense benefits payable under a basic automobile  
46 insurance policy against whom a claim has been made, furnish

1 forthwith, in a form approved by the Commissioner of Banking and  
2 Insurance, a signed statement of the lost earnings since the date of the  
3 bodily injury and for a reasonable period before the injury, of the  
4 person upon whose injury the claim is based.

5 b. Every physician, hospital, [clinic or other medical institution]  
6 or other health care provider providing, before and after the bodily  
7 injury upon which a claim for personal injury protection benefits or  
8 medical expense benefits is based, any products, services or  
9 accommodations in relation to such bodily injury or any other injury,  
10 or in relation to a condition claimed to be connected with such bodily  
11 injury or any other injury, shall, if requested to do so by the insurer or  
12 the Unsatisfied Claim and Judgment Fund against whom the claim has  
13 been made, furnish forthwith a written report of the history, condition,  
14 treatment, dates and costs of such treatment of the injured person, and  
15 produce forthwith and permit the inspection and copying of his or its  
16 records regarding such history, condition, treatment dates and costs of  
17 treatment. The person requesting such records shall pay all reasonable  
18 costs connected therewith.

19 c. The injured person shall be furnished upon demand a copy of all  
20 information obtained by the insurer or the Unsatisfied Claim and  
21 Judgment Fund under the provisions of this section, and shall pay a  
22 reasonable charge, if required by the insurer and the Unsatisfied Claim  
23 and Judgment Fund.

24 d. [Whenever] Except for medical expense benefits provided under  
25 a standard automobile insurance policy pursuant to subsection a. of  
26 section 4 of P.L.1972, c.70 (C.39:6A-4), under a basic automobile  
27 insurance policy pursuant to subsection b. of section 4 of P.L. \_\_\_\_\_,  
28 c. \_\_\_\_\_ (C. \_\_\_\_\_) (now before the Legislature as this bill), under subsection  
29 a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and additional first  
30 party medical expense benefits coverage provided under a standard  
31 automobile insurance policy pursuant to section 10 of P.L.1972, c.70  
32 (C.39:6A-10), if there is no dispute concerning whether the  
33 treatments, health care services or durable medical goods related to an  
34 injury for which reimbursement is being sought are causally related to  
35 an insured event, whenever the mental or physical condition of an  
36 injured person covered by personal injury protection under a standard  
37 automobile insurance policy or medical expense benefits under a basic  
38 automobile insurance policy is material to any claim that has been or  
39 may be made for such past or future personal injury protection benefits  
40 or medical expense benefits, such person shall, upon request of an  
41 insurer or the Unsatisfied Claim and Judgment Fund submit to mental  
42 or physical examination [by a physician or physicians , or chiropractor  
43 or chiropractors. Only a licensed chiropractor may determine the  
44 clinical need for further chiropractic treatment by performing a  
45 chiropractic examination and this determination shall not depend solely  
46 upon a review of the treating chiropractor patient records in cases of

1 denial of benefits] conducted by a health care provider licensed in this  
2 State in the same profession or speciality as the health care provider  
3 whose services are subject to review under this section and who is  
4 located within a reasonable proximity to the injured person's residence.  
5 The injured person shall provide or make available to the provider any  
6 pertinent medical records or medical history that the provider deems  
7 necessary to the examination. The costs of any examinations  
8 requested by an insurer or the Unsatisfied Claim and Judgment Fund  
9 shall be borne entirely by whomever makes such request. Such  
10 examination shall be conducted within the municipality of residence of  
11 the injured person. If there is no qualified [physician or chiropractor]  
12 health care provider to conduct the examination within the  
13 municipality of residence of the injured person, then such examination  
14 shall be conducted in an area of the closest proximity to the injured  
15 person's residence. [Personal protection insurers] Insurers providing  
16 personal injury protection coverage under a standard automobile  
17 insurance policy or medical expense benefits under a basic automobile  
18 insurance policy are authorized to include reasonable provisions [in  
19 personal injury protection coverage policies for mental and physical  
20 examinations of] requiring those claiming personal injury protection  
21 coverage benefits or medical expense benefits to submit to mental or  
22 physical examination as requested by an insurer or the Unsatisfied  
23 Claim and Judgment Fund pursuant to the provisions of this section.  
24 Failure to submit to a mental or physical examination requested by an  
25 insurer or the Unsatisfied Claim and Judgment Fund pursuant to the  
26 provisions of this section shall subject the injured person to certain  
27 limitations in coverage as specified in regulations promulgated by the  
28 commissioner.

29 e. If requested by the person examined, a party causing an  
30 examination to be made, shall deliver to him a copy of every written  
31 report concerning the examination rendered by an examining  
32 [physician or chiropractor] health care provider, at least one of which  
33 reports must set out his findings and conclusions in detail. After such  
34 request and delivery, the party causing the examination to be made is  
35 entitled upon request to receive from the person examined every  
36 written report available to him, or his representative, concerning any  
37 examination, previously or thereafter made of the same mental or  
38 physical condition.

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

45 g. In the event of any dispute regarding an insurer's or the  
46 Unsatisfied Claim and Judgment Fund's or an injured person's right as

1 to the discovery of facts about the injured person's earnings or about  
2 his history, condition, treatment, dates and costs of such treatment, or  
3 the submission of such injured person to a mental or physical  
4 examination subject to the provisions of this section, the insurer,  
5 Unsatisfied Claim and Judgment Fund or the injured person may  
6 petition a court of competent jurisdiction for an order resolving the  
7 dispute and protecting the rights of all parties. The order may be  
8 entered on motion for good cause shown giving notice to all persons  
9 having an interest therein. Such court may protect against annoyance,  
10 embarrassment or oppression and may as justice requires, enter an  
11 order compelling or refusing discovery, or specifying conditions of  
12 such discovery; the court may further order the payment of costs and  
13 expenses of the proceeding, as justice requires.

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

15

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

18 11. a. Every action for the payment of benefits [set forth in]  
19 payable under a standard automobile insurance policy pursuant to  
20 sections 4 and 10 of [this act] P.L.1972, c.70 (C.39:6A-4 and 39:6A-  
21 10) or medical expense benefits payable under a basic automobile  
22 insurance policy pursuant to section 4 of P.L. \_\_\_\_\_, c. \_\_\_\_\_(now  
23 before the Legislature as this bill), except an action by a decedent's  
24 estate, shall be commenced not later than [2] two years after the  
25 injured person or survivor suffers a loss or incurs an expense and  
26 either knows or in the exercise of reasonable diligence should know  
27 that the loss or expense was caused by the accident, or not later than  
28 [4] four years after the accident whichever is earlier, provided,  
29 however, that if benefits have been paid before then an action for  
30 further benefits may be commenced not later than [2] two years after  
31 the last payment of benefits.

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

1 commenced not later than [2] two years from the last payment of  
2 benefits.

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

4

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

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

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

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

35

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

38 1. a. Every owner or registered owner of a motor vehicle  
39 registered or principally garaged in this State shall maintain motor  
40 vehicle liability insurance coverage, under provisions approved by the  
41 Commissioner of Banking and Insurance, insuring against loss  
42 resulting from liability imposed by law for bodily injury, death and  
43 property damage sustained by any person arising out of the ownership,  
44 maintenance, operation or use of a motor vehicle wherein such  
45 coverage shall be at least in: [a.] (1) an amount or limit of

1 \$15,000.00, exclusive of interest and costs, on account of injury to, or  
2 death of, one person, in any one accident; and [b.] (2) an amount or  
3 limit, subject to such limit for any one person so injured or killed, of  
4 \$30,000.00, exclusive of interest and costs, on account of injury to or  
5 death of, more than one person, in any one accident; and [c.] (3) an  
6 amount or limit of \$5,000.00, exclusive of interest and costs, for  
7 damage to property in any one accident.

8 b. Notwithstanding the provisions of subsection a. of this section,  
9 an owner or registered owner of an automobile, as defined in section  
10 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the  
11 State may satisfy the requirements of subsection a. of this section by  
12 maintaining a basic automobile insurance policy pursuant to section 4  
13 of P.L. , c. (C. )(now before the Legislature as this bill).  
14 (cf: P.L.1972, c.197, s.1)

15  
16 21. Section 2 of P.L.1952, c.174 (C.39:6-62) is amended to read  
17 as follows:

18 2. Definitions. As used in this act:

19 "Executive director" means the official designated by and serving  
20 at the pleasure of the commissioner to administer to and be in charge  
21 of the Unsatisfied Claim and Judgment Fund and who shall be  
22 responsible to the Unsatisfied Claim and Judgment Fund Board.

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

25 "Commissioner" means the Commissioner of Banking and  
26 Insurance.

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

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

31 "Qualified person" means a resident of this State or the owner of a  
32 motor vehicle registered in this State or a resident of another state,  
33 territory, or federal district of the United States or province of Canada  
34 or of a foreign country, in which recourse is afforded, to residents of  
35 this State, of substantially similar character to that provided for by this  
36 act; provided, however, that no person shall be a qualified person  
37 where such person is an insured under a policy provision providing  
38 coverage for damages sustained by the insured as a result of the  
39 operation of an uninsured motor vehicle in a form authorized to be  
40 included in automobile liability policies of insurance delivered or  
41 issued for delivery in this State, pursuant to the provisions of, or any  
42 supplement to, chapter 28 of Title 17 of the Revised Statutes or in a  
43 form substantially similar thereto.

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

1 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder  
2 of a certificate of self-insurance under said law, but shall not include  
3 a motor vehicle with a policy in force which is insured pursuant to  
4 section 4 of P.L. , c. (C. )(now before the Legislature as this  
5 bill).

6 "Person" includes natural persons, firms, copartnerships,  
7 associations and corporations.

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

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

16 "Registration license year" means the period beginning June 1,  
17 1956, and ending May 31, 1957, and each subsequent 12 month  
18 period, beginning June 1 and ending the following May 31.

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

20

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

23 14. Notwithstanding any other provision of law to the contrary, the  
24 dollar amount of the commission paid to a producer for residual bodily  
25 injury coverage provided pursuant to section 8 of P.L.1972, c.70  
26 (C.39:6A-8) shall be the same whether the named insured elects the  
27 tort option provided for in subsection a. of that section or the tort  
28 option provided for in subsection b. of that section. This section shall  
29 not apply to commissions on a basic automobile insurance policy  
30 issued pursuant to section 4 of P.L. , c. (C. )(now before the  
31 Legislature as this bill).

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

33

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

36 5. Payment of personal injury protection coverage benefits.

37 a. An insurer may require written notice to be given as soon as  
38 practicable after an accident involving an automobile with respect to  
39 which the policy affords personal injury protection coverage benefits  
40 payable under a standard automobile insurance policy pursuant to  
41 section 4 of P.L.1972, c.70 (C.34:6A-4) or medical expense benefits  
42 payable under a basic automobile insurance policy pursuant to [this  
43 act] section 4 of P.L. , c. (C. )(now before the Legislature  
44 as this bill). In the case of claims for medical expense benefits under  
45 either policy, written notice shall be provided to the insurer by the  
46 treating [medical] health care provider no later than 21 days following

1 the commencement of treatment. Notification required under this  
2 section shall be made in accordance with regulations adopted by the  
3 Commissioner of Banking and Insurance and on a form prescribed by  
4 the Commissioner of Banking and Insurance. Within a reasonable time  
5 after receiving notification required pursuant to this act, the insurer  
6 shall confirm to the treating ~~[medical]~~health care provider that its  
7 policy affords the claimant personal injury protection coverage benefits  
8 as required by section ~~[5]~~ 4 of P.L.1972, c.70  
9 ~~[(C.39:6A-5)](C.39:6A-4) or medical expense benefits pursuant to~~  
10 ~~section 4 of P.L. , c. (C. )~~(now before the Legislature as this  
11 bill).

12 b. For the purposes of this section, notification shall be deemed to  
13 be met if a treating ~~[medical]~~health care provider submits a bill or  
14 invoice to the insurer for reimbursement of services within 21 days of  
15 the commencement of treatment.

16 c. In the event that notification is not made by the treating  
17 ~~[medical]~~health care provider within 21 days following the  
18 commencement of treatment, the insurer shall reserve the right to  
19 deny, in accordance with regulations established by the Commissioner  
20 of Banking and Insurance, payment of the claim and the treating  
21 ~~[medical]~~ health care provider shall be prohibited from seeking any  
22 payment directly from the insured. In establishing the standards for  
23 denial of payment, the Commissioner of Banking and Insurance shall  
24 consider the length of delay in notification, the severity of the treating  
25 ~~[medical]~~health care provider's failure to comply with the notification  
26 provisions of this act based upon the potential adverse impact to the  
27 public and whether or not the provider has engaged in a pattern of  
28 noncompliance with the notification provisions of this act. In  
29 establishing the regulations necessary to effectuate the purposes of this  
30 subsection, the Commissioner of Banking and Insurance shall define  
31 specific instances where the sanctions permitted pursuant to this  
32 subsection shall not apply. Such instances may include, but not be  
33 limited to, a treating medical provider's failure to provide notification  
34 to the insurer as required by this act due to the insured's medical  
35 condition during the time period within which notification is required.

36 d. A ~~[medical]~~health care provider who fails to notify the insurer  
37 within 21 days and whose claim for payment has been denied by the  
38 insurer pursuant to the standards established by the Commissioner of  
39 Banking and Insurance may, in the discretion of a judge of the  
40 Superior Court, be permitted to refile such claim provided that the  
41 insurer has not been substantially prejudiced thereby. Application to  
42 the court for permission to refile a claim shall be made within 14 days  
43 of notification of denial of payment and shall be made upon motion  
44 based upon affidavits showing sufficient reasons for the failure to  
45 notify the insurer within the period of time prescribed by this act.



1 e. [For the purposes of this section, "treating medical provider"  
2 shall mean any licensee of the State of New Jersey whose services are  
3 reimbursable under personal injury protection coverage, including but  
4 not limited to persons licensed to practice medicine and surgery,  
5 psychology, chiropractic, or such other professions as the  
6 Commissioner of Insurance determines pursuant to regulation, or other  
7 licensees similarly licensed in other states and nations, or the  
8 practitioner of any religious method of healing, or any general hospital,  
9 mental hospital, convalescent home, nursing home or any other  
10 institution, whether operated for profit or not, which maintains or  
11 operates facilities for health care, whose services are compensated  
12 under personal injury protection insurance proceeds.] (Deleted by  
13 amendment, P.L. , c. )

14 f. In instances when multiple treating ~~[medical]~~ health care  
15 providers render services in connection with emergency care, the  
16 Commissioner of Banking and Insurance shall designate, through  
17 regulation, a process whereby notification by one treating  
18 ~~[medical]~~ health care provider to the insurer shall be deemed to meet  
19 the notification requirements of all the treating ~~[medical]~~ health care  
20 providers who render services in connection with emergency care.

21 g. Personal injury protection coverage benefits pursuant to section  
22 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits  
23 pursuant to section 4 of P.L. , c. (C. )(now before the  
24 Legislature as this bill) shall be overdue if not paid within 60 days after  
25 the insurer is furnished written notice of the fact of a covered loss and  
26 of the amount of same. If such written notice is not furnished to the  
27 insurer as to the entire claim, any partial amount supported by written  
28 notice is overdue if not paid within 60 days after such written notice  
29 is furnished to the insurer. Any part or all of the remainder of the  
30 claim that is subsequently supported by written notice is overdue if not  
31 paid within 60 days after such written notice is furnished to the  
32 insurer; provided, however, that any payment shall not be deemed  
33 overdue where, within 60 days of receipt of notice of the claim, the  
34 insurer notifies the claimant or his representative in writing of the  
35 denial of the claim or the need for additional time, not to exceed 45  
36 days, to investigate the claim, and states the reasons therefor. The  
37 written notice stating the need for additional time to investigate the  
38 claim shall set forth the number of the insurance policy against which  
39 the claim is made, the claim number, the address of the office handling  
40 the claim and a telephone number, which is toll free or can be called  
41 collect, or is within the claimant's area code. Written notice to the  
42 organization administering dispute resolution pursuant to sections 24  
43 and 25 of P.L. , c. (C. )(now before the Legislature as this  
44 bill) shall satisfy the notice request for additional time to investigate  
45 a claim pursuant to this subsection. For the purpose of determining  
46 interest charges in the event the injured party prevails in a subsequent

1 proceeding where an insurer has elected a 45-day extension pursuant  
2 to this subsection, payment shall be considered overdue at the  
3 expiration of the 45-day period or, if the injured person was required  
4 to provide additional information to the insurer, within 10 business  
5 days following receipt by the insurer of all the information requested  
6 by it, whichever is later.

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

12 h. All overdue payments shall bear interest at the percentage of  
13 interest prescribed in the Rules Governing the Courts of the State of  
14 New Jersey for judgments, awards and orders for the payment of  
15 money.

16 i. All automobile insurers and the Unsatisfied Claim and Judgment  
17 Fund shall provide any claimant with the option of submitting a dispute  
18 under this section to [binding arbitration. Arbitration proceedings  
19 shall be administered and subject to procedures established by the  
20 American Arbitration Association. If the claimant prevails in the  
21 arbitration proceedings, the insurer shall pay all the costs of the  
22 proceedings, including reasonable attorney's fees, to be determined in  
23 accordance with a schedule of hourly rates for services performed, to  
24 be prescribed by the Supreme Court of New Jersey] dispute resolution  
25 pursuant to sections 24 and 25 of P.L. , c. (C. )(now before  
26 the Legislature as this bill).

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

28

29 24. (New section) a. Any dispute regarding the recovery of  
30 medical expense benefits or other benefits provided under personal  
31 injury protection coverage pursuant to section 4 of P.L.1972, c.70  
32 (C.39:6A-4), or section 4 of P.L. , c. (C. ) (now before the  
33 Legislature as this bill) arising out of the operation, ownership,  
34 maintenance or use of an automobile may be submitted to dispute  
35 resolution on the initiative of any party to the dispute, as hereinafter  
36 provided.

37 b. The Commissioner of Banking and Insurance shall designate an  
38 organization, and for that purpose may, at his discretion, advertise for  
39 proposals, for the purpose of administering dispute resolution  
40 proceedings regarding medical expense benefits and other benefits  
41 provided under personal injury protection pursuant to section 4 of P.L.  
42 1972, c.70 (C.39:6A-4) or medical expense benefits coverage pursuant  
43 to section 4 of P.L. , c. (C. )(now before the Legislature as this  
44 bill). The commissioner shall promulgate rules and regulations with  
45 respect to the conduct of the dispute resolution proceedings. The  
46 organization administering dispute resolution shall utilize qualified

1 professionals who serve on a full-time basis and who meet standards  
2 of competency established by the commissioner. The commissioner  
3 shall establish standards of performance for the organization to ensure  
4 the independence and fairness of the review process, including, but not  
5 limited to, standards relative to the professional qualifications of the  
6 professionals presiding over the dispute resolution process, and  
7 standards to ensure that no conflict of interest exists which would  
8 prevent the professional from performing his duties in an impartial  
9 manner. The standards of performance shall include a requirement  
10 that the organization establish an advisory council composed of parties  
11 who are users of the dispute resolution mechanism established herein.  
12 The commissioner may contract with a consulting firm for the  
13 formulation of the standards of performance of the organization and  
14 establishment of qualifications for the persons who are to conduct the  
15 dispute resolution proceedings. The commissioner shall not advertise  
16 for bids for the consulting firm, as provided in sections 3 and 4 of  
17 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Compensation to the dispute  
18 resolution professionals shall be fixed on a per case basis and adjusted  
19 from time to time as appropriate, with the approval of the  
20 commissioner. In no case shall compensation be paid on a contingency  
21 basis. The organization shall establish a dispute resolution plan, which  
22 shall include procedures and rules governing the dispute resolution  
23 process and provisions for monitoring the dispute resolution process  
24 to ensure adherence to the standards of performance established by the  
25 commissioner. The plan, and any amendments thereto, shall be subject  
26 to the approval of the commissioner.

27 c. Dispute resolution proceedings under this section 24 and section  
28 25 of this amendatory and supplementary act shall include disputes  
29 arising regarding medical expense benefits provided under subsection  
30 a. of section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. ,  
31 c. (C. ) (now before the Legislature as this bill), benefits provided  
32 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70  
33 (C.39:6A-4), subsection b., c., d. or e. of P.L.1972, c.198 (C.39:6-  
34 86.1), and disputes as to additional first party coverage benefits  
35 required to be offered pursuant to section 10 of P.L.1972, c.70  
36 (C.39:6A-10). Disputes involving medical expense benefits may  
37 include, but not necessarily be limited to, matters concerning: (1)  
38 interpretation of the insurance contract; (2) whether the treatment or  
39 health care service which is the subject of the dispute resolution  
40 proceeding is in accordance with the provisions of section 4 of  
41 P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c. (C. )  
42 (now before the Legislature this bill) or the terms of the policy; (3) the  
43 eligibility of the treatment or service for compensation; (4) the  
44 eligibility of the provider performing the treatment or service to be  
45 compensated under the terms of the policy or under regulations  
46 promulgated by the commissioner, including whether the person is

1 licensed or certified to perform such treatment; (5) whether the  
2 disputed medical treatment was actually performed; (6) whether  
3 diagnostic tests performed in connection with the treatment are those  
4 recognized by the professional licensing boards in the Division of  
5 Consumer Affairs in the Department of Law and Public Safety or other  
6 recognized professional organizations, or as otherwise provided in  
7 section 12 of P.L. , c. (C. )(now before the Legislature as this bill);  
8 (7) the necessity or appropriateness of consultations by other health  
9 care providers; (8) disputes involving application of and adherence to  
10 fee schedules promulgated by the commissioner; and (9) whether the  
11 treatment performed is reasonable, necessary, and compatible with the  
12 protocols provided for pursuant to P.L. , c. (C. )(now  
13 before the Legislature as this bill). The dispute resolution  
14 professionals may review the entire claims file of the insurer, subject  
15 to any confidentiality requirement established pursuant to State or  
16 federal law. All decisions of the dispute resolution professional shall  
17 be in writing, in a form prescribed by the commissioner, shall state the  
18 issues in dispute, the findings and conclusions on which the decision  
19 is based, and shall be signed by the dispute resolution professional. All  
20 decisions of a dispute resolution professional shall be binding. The  
21 dispute resolution organization shall provide for the retention of all  
22 documents used in dispute resolution proceedings under this section  
23 and section 25 of this amendatory and supplementary act, including the  
24 written decision, for a period of at least five years, in a form approved  
25 by the commissioner, or for such additional time as may be established  
26 by the commissioner. The written decisions of the dispute resolution  
27 professional shall be forwarded to the commissioner, who shall  
28 establish a record of the proceedings conducted under the dispute  
29 resolution procedure, which shall be accessible to the public and may  
30 be determined to have standing as precedent for subsequent dispute  
31 resolution proceedings.

32 d. With respect to disputes as to the diagnosis, the medical  
33 necessity of the treatment or diagnostic test administered to the injured  
34 person, whether the injury is causally related to the insured event or  
35 is the product of a preexisting condition, or disputes as to the  
36 appropriateness of the protocols utilized by the provider, the dispute  
37 resolution professional shall, either at his option or at the request of  
38 any party to the dispute, refer the matter to a medical review  
39 organization for a determination.

40 e. Any person submitting a matter to the dispute resolution process  
41 established herein may submit for review all or a portion of a disputed  
42 treatment or treatments or a dispute regarding a diagnostic test or  
43 tests or a dispute regarding the providing of services or durable  
44 medical goods. Any portion of a treatment or diagnostic test or  
45 service which is not under review shall be reimbursed in accordance  
46 with the provisions of section 5 of P.L.1972, c.70 (C.39:6A-5). If the

1 dispute resolution proceeding results in a determination that all or part  
2 of a treatment or treatments, diagnostic test or tests or service  
3 performed, or durable medical goods provided are medically necessary  
4 and appropriate, reimbursement shall be made with interest payable in  
5 accordance with the provisions of section 5 of P.L.1972, c.70  
6 (C.39:6A-5).

7  
8 25. (New section) a. The commissioner shall establish standards  
9 for the certification of medical review organizations, which shall  
10 include standards of performance formulated by the commissioner in  
11 consultation with the Commissioner of Health and Senior Services.  
12 The standards of performance shall set forth procedures to ensure a  
13 timely and impartial review of the medical records of the injured  
14 person by a medical review organization, including, but not limited to,  
15 a review of the necessity or appropriateness of treatments for injuries,  
16 including diagnostic tests, sustained in an automobile accident. The  
17 commissioner shall establish standards for persons conducting the  
18 medical review, including standards with respect to credentials,  
19 experience, licensure, fees, and confidentiality. The standards shall  
20 include a requirement that all persons performing reviews are New  
21 Jersey licensed or certified health care providers, and a requirement  
22 that any medical review panel contain a health care provider licensed  
23 or certified in the same profession as the treating health care provider  
24 and that it contain a sufficient representation of reviewers to judge the  
25 appropriateness of treatment or treatments in dispute, including, but  
26 not limited to, the medical necessity of such treatments,  
27 appropriateness of the protocols used by the treating provider, issues  
28 regarding causality and preexisting conditions, the appropriateness and  
29 efficacy of diagnostic tests performed in connection with the diagnosis,  
30 and whether the diagnostic tests meet the requirements set forth in  
31 section 12 of P.L. , c. (C. )(now before the Legislature  
32 as this bill). The commissioner may contract with a consultant for the  
33 formulation of the standards governing the certification of the persons  
34 conducting the medical reviews. The commissioner shall not advertise  
35 for bids for the consultant, as provided in sections 3 and 4 of  
36 P.L.1954, c.48 (C.52:34-8 and 52:34-9).

37 b. Before certifying a medical review organization to receive  
38 referrals from dispute resolution proceedings, the commissioner shall  
39 determine that the organization has a sufficient number of qualified  
40 health care providers, by specialty, to perform the reviews, has a  
41 satisfactory procedure for maintaining the confidentiality of medical  
42 records, is not owned or controlled by an insurer, and has met any  
43 other requirements established by the commissioner.

44 c. The medical review organization shall establish and utilize  
45 written review procedures, which shall be filed with the commissioner.  
46 Every determination made by a medical review organization shall be

1 in writing and shall be retained by the organization for a period of no  
2 less than five years.

3 d. The medical review organization may review the medical  
4 treatment or treatments in dispute to determine whether: (1) the  
5 treatment or diagnostic test being given for the injury or the services  
6 provided in connection with the injury is medically necessary; (2) the  
7 treatment is in accordance with or compatible with medically  
8 recognized standard protocols, professional standards, and commonly  
9 accepted medical practice in the same health care discipline as the  
10 treating provider; (3) the treatment is consistent with the symptoms  
11 or diagnosis of the injury; (4) the treatment or health care service is  
12 related to the injury sustained in the insured event, or is required for  
13 the diagnosis, evaluation or confirmation of the injury; (5) the  
14 treatment is of a palliative, rather than restorative, nature; and (6)  
15 medical procedures, treatment, or testing which have been repeated  
16 are medically necessary and consistent with standard practice.

17 e. Cases referred by a dispute resolution professional for medical  
18 review shall be referred to appropriate certified medical reviewers  
19 affiliated with the certified medical review organization by a dispute  
20 resolution organization. The dispute resolution organization shall  
21 forward the referrals to certified medical reviewers on a random basis,  
22 so that there is a relatively equal apportionment among all medical  
23 reviewers. Referrals shall be made in such a manner so as not to  
24 disclose to the medical reviewers the identity of the insurer, nor shall  
25 the identity of the reviewer be disclosed to the insurer.

26 f. When appropriate in the context of its review of services or  
27 treatments under dispute, a medical reviewer may request and shall  
28 receive a written report or copy of the provider's records regarding  
29 the case history, treatment dates, or the dates diagnostic tests or other  
30 services were performed, and the provider's projected treatment plan.  
31 The injured person or provider, as applicable, shall provide or make  
32 available to the medical reviewer any pertinent medical records or  
33 medical history which the medical reviewer may request. The medical  
34 reviewer shall complete its review and make a determination within 20  
35 business days of receipt of all of the requested information from the  
36 dispute resolution professional or provider, as the case may be. The  
37 medical reviewer shall submit its determination in writing to the  
38 referring dispute resolution organization, which shall forward it to the  
39 dispute resolution professional.

40 g. The cost of the proceedings shall be apportioned by the dispute  
41 resolution professional. Fees shall be determined to be reasonable if  
42 they are consonant with the amount of the award, in accordance with  
43 a schedule established by the New Jersey Supreme Court. If the  
44 treatment, diagnostic test, or service performed is not determined to  
45 be medically necessary or appropriate, the injured person shall not be  
46 liable to pay the provider the disputed amount.

1       26. (New section) No later than three months following the  
2 effective date of this section, every insurer writing automobile  
3 insurance in this State and any rating bureau which establishes a  
4 territorial and risk classification plan on behalf of insurers shall  
5 establish a procedure for collecting loss experience by postal zip code  
6 and shall begin collecting that data in that manner in addition to any  
7 other manner which it normally employs no later than six months  
8 following the effective date of this section. Loss experience collected  
9 by zip code shall be confidential.

10  
11       27. (New section) There is established an automobile insurance  
12 industry committee to revise the territorial rating system which is in  
13 place as of the effective date of this section. The committee shall  
14 consist of eighteen members. Eleven members shall be representatives  
15 of insurers writing automobile insurance in this State, two members  
16 shall represent a rating bureau which compiles loss experience and  
17 assembles statistical data for insurers writing automobile insurance in  
18 this State and four members shall be public members. Of the public  
19 members, one shall be appointed by the President of the Senate, the  
20 Speaker of the General Assembly, the Minority Leader of the Senate  
21 and the Minority Leader of the General Assembly. Of the insurer  
22 members, two shall be elected from member companies of the  
23 American Insurance Association, two from member companies of the  
24 Alliance of American Insurers, and two from member companies of the  
25 National Association of Independent Insurers or their successor  
26 organizations. The remaining members affiliated with the insurance  
27 industry shall be elected at large as representatives of insurers writing  
28 automobile insurance in this State, but no insurer or group of insurers  
29 under common control shall have more than one representative elected  
30 to the board. The representatives of insurers shall include at least five  
31 actuaries. The commissioner or his designee shall be the eighteenth  
32 member of the committee, but shall not have voting privileges.

33  
34       28. (New section) No later than three months following the  
35 effective date of this section, the commissioner shall cause nominations  
36 to be made and an election to be held among all insurers writing  
37 automobile insurance in this State. Each trade association shall  
38 nominate members from their association and shall hold an election for  
39 membership to the committee. The respective trade associations shall  
40 nominate candidates for the five seats to be elected at large.

41  
42       29. (New section) The committee shall elect a chairman and a vice  
43 chairman from among the members representing the insurance industry  
44 elected pursuant to section 28 of this amendatory and supplementary  
45 act. The committee shall review the present territorial rating system  
46 and recommend any revision to the territorial rating plan in existence

1 on the effective date of this section as it deems reasonable and proper;  
2 provided, however, that any such recommendation be based on the  
3 principles that territories shall:

4 a. be created in such a manner as to recognize qualitative  
5 differences in driving environments, which may include, but not be  
6 limited to, traffic density, population density, comparative severity of  
7 loss in like driving environments, similarities in the relative mix of  
8 driving environments applicable to each proposed territory and  
9 comparative homogeneity;

10 b. be based on statistically credible data, which shall include a  
11 consideration of the rate of variability of loss in each territory on a  
12 year-to-year basis;

13 c. take into account the impact of the overlapping of traffic  
14 patterns on exposure to loss, including the relative number of intra-  
15 territory trips and out-of-territory trips applicable to each proposed  
16 territory, for which the committee shall have access to the information  
17 on commuting patterns collected pursuant to the provisions of section  
18 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

19 d. take into account the relative mix of business in each proposed  
20 territory, by driver classification;

21 e. be created in a manner which shall not result in territory  
22 boundaries which are arbitrary, unfairly discriminatory, significantly  
23 disproportionate in size although similar in driving environments and  
24 losses, or delineated in a manner which is primarily for marketing  
25 reasons rather than measuring relativity of exposure to probable loss.

26

27 30. (New section) The committee may utilize the resources of any  
28 insurer, rating bureau, or group of insurers in performing its duties.  
29 The committee shall review the data made available to it from insurers  
30 or rating bureaus collecting data by zip code, as provided in section 26  
31 of this amendatory and supplementary act. The committee may also  
32 request the commissioner to order a closed claim study from any  
33 insurer or insurers writing private passenger automobile insurance in  
34 this State, and the commissioner shall provide the committee with the  
35 results of the study. The insurer or insurers supplying the information  
36 from the closed claim study need not be identified to the members of  
37 the committee. The committee may hold public hearings as it  
38 determines are necessary in addition to its regular meetings.

39

40 31. (New section) When the committee determines that it has  
41 accumulated sufficient data to develop recommendations to the  
42 commissioner, it may submit a territorial revision plan to the  
43 commissioner for approval. The plan shall include at least one  
44 common territorial rating system, but the committee may recommend,  
45 that insurers may file individual territorial rating systems. The  
46 commissioner may, if he determines that separate territorial rating



1 plans filed by individual insurers are in the interest of the citizens of  
2 this State, approve an individual territorial rating system proposed by  
3 an insurer, but only if the insurer's individual territorial rating system  
4 meets the criteria established in section 29 of this amendatory and  
5 supplementary act. The commissioner shall not approve any individual  
6 territorial rating system, or any portion thereof, which contains  
7 territorial configurations which he determines to be primarily directed  
8 toward marketing purposes, or which would result in the likelihood  
9 that an insurer's market share would be distributed unevenly  
10 throughout the State.

11

12 32. (New section) a. Upon finding that the plan or plans meet the  
13 criteria above, the commissioner shall approve the territories or  
14 require that adjustments be made in order that they conform with the  
15 standards set forth in sections 26 through 33 of this amendatory and  
16 supplementary act. If the commissioner approves territorial rating  
17 plans for individual insurers, he shall also approve a territorial rating  
18 plan for common use by insurers not filing their own plan.

19 b. Notwithstanding the provisions of section 7 of P.L.1983, c.65  
20 (C.17:29A-36), the territorial configuration established by the  
21 committee or by any insurer or filer pursuant to sections 29 through  
22 32 of this amendatory and supplementary act shall produce territorial  
23 rate relativities which accurately reflect differences in traffic density;  
24 population density; and comparative severity of loss in like driving  
25 environments, which do not produce unfair cross-subsidization  
26 between territories with differing characteristics.

27

28 33. (New section) Any insurer filing its own territorial rating plan  
29 shall file a revised rating plan, along with its proposed territorial  
30 relativity factors, which shall not take effect until approved by the  
31 commissioner, in accordance with the "Administrative Procedure Act,"  
32 P.L.1968, c.410 (C.52:14B-1 et seq.). In determining whether to  
33 approve an individual territorial rating plan, the commissioner shall  
34 consider whether the territorial relativity factors which are filed are (1)  
35 not unfairly discriminatory; and (2) accurately reflect the probable  
36 differentials in losses among territories.

37

38 34. (New section) There is established in the Division of Criminal  
39 Justice in the Department of Law and Public Safety the Office of the  
40 Insurance Fraud Prosecutor. The Insurance Fraud Prosecutor shall be  
41 appointed by, and serve at the pleasure of, the Governor with the  
42 advice and consent of the Senate and be under the direction and  
43 supervision of the Attorney General. Any person appointed as  
44 Insurance Fraud Prosecutor shall have had prosecutorial experience,  
45 including experience in the litigation of civil and criminal cases. The  
46 Attorney General shall establish standards of performance for the

1 Office of Insurance Fraud Prosecutor, which shall include standards of  
2 accountability.

3  
4 35. (New section) The Attorney General may appoint such  
5 personnel, including attorneys and clerical personnel, as necessary to  
6 carry out the duties of the office. The personnel charged with  
7 investigatory work in Division of Fraud Prevention in the Department  
8 of Banking and Insurance shall be transferred to the Office of the  
9 Insurance Fraud Prosecutor as determined by the Commissioner of  
10 Banking and Insurance and the Attorney General, in accordance with  
11 a plan of reorganization, and shall become the Fraud Investigatory  
12 Section of the Office of the Insurance Fraud Prosecutor. A section of  
13 the Office of Insurance Fraud Prosecutor shall be designated to be  
14 responsible for establishing a liaison and continuing communication  
15 between the office and the Department of Health and Senior Services,  
16 the Department of Human Services, any professional board in the  
17 Division of Consumer Affairs in the Department of Law and Public  
18 Safety, the Department of Banking and Insurance, the Division of  
19 State Police, every county prosecutor's office, such local government  
20 units as may be necessary or practicable and insurers.

21  
22 36. (New section) The section of the office responsible for such  
23 liaison shall establish procedures: (1) for receiving notice from all  
24 entities enumerated in section 35 of this amendatory and  
25 supplementary act of any case in which fraud is suspected or has been  
26 substantiated; (2) for receiving referrals for the investigation of alleged  
27 fraud; (3) for receiving referrals for the prosecution of fraud by the  
28 office; (4) for receiving and referring information regarding cases,  
29 administrative or otherwise, under investigation by any department or  
30 other entity to the appropriate authority, and (5) for providing  
31 information to and coordinating information among any referring  
32 entities on pending cases of insurance fraud which are under  
33 investigation or being litigated or prosecuted. The liaison section of  
34 the office shall maintain a record of every referral or investigation.

35  
36 37. (New section) The Insurance Fraud Prosecutor shall  
37 investigate and, if warranted, prosecute, cases referred to it by  
38 insurers, State agencies, or county and municipal governments. The  
39 Insurance Fraud Prosecutor may assist county prosecutors in the  
40 investigation and prosecution of fraud, and shall give county  
41 prosecutors access to the data base maintained pursuant to section 40  
42 of this amendatory and supplementary act.

43  
44 38. (New section) The Attorney General shall, in consultation with  
45 county prosecutors, establish a Statewide fraud enforcement policy for  
46 all State and local agencies, including guidelines for the investigation

1 and prosecution of fraud, which shall include standards for detecting  
2 fraud, for the investigation of alleged fraud and standards for the  
3 submission of cases for prosecution. Priorities shall be established  
4 among the cases referred to the office for prosecution or other  
5 litigation and the office shall assist referring entities in establishing  
6 priorities among investigations or cases to be disposed of by the  
7 entities themselves. The Insurance Fraud Prosecutor shall prosecute  
8 criminal cases, litigate civil cases as appropriate, or assist county  
9 prosecutors in prosecuting criminal cases in accordance with the  
10 guidelines and priorities so established.

11

12 39. (New section) Standards of performance shall be established  
13 for the Fraud Investigatory Section, which shall include, but not be  
14 limited to, recording the cases referred by insurers, local government  
15 agencies and others which are assigned to the Fraud Investigatory  
16 Section, investigating cases of alleged fraud in accordance with the  
17 priorities established by the Insurance Fraud Prosecutor, recording the  
18 disposition of the cases referred to the section, and making  
19 recommendations to the Insurance Fraud Prosecutor as to any  
20 procedural, regulatory, or statutory changes which may be necessary  
21 to carry out the provisions of this amendatory and supplementary act.

22

23 40. (New section) a. The Insurance Fraud Prosecutor shall  
24 maintain a data base which includes referrals, reports of fraud  
25 investigations, prosecution, or litigation, and the results of such  
26 proceedings, which shall include: (1) identification of the referring  
27 entity; (2) type of fraud; (3) disposition of case; and (4) such other  
28 data as may be necessary to the work of the office and the referring  
29 entities.

30 b. The Insurance Fraud Prosecutor shall provide for the reporting  
31 of claims information by insurers writing at least \$2,000,000 in direct  
32 insurance premiums in any calendar year, in a standard reporting form,  
33 which shall include, but shall not be limited to, information on stolen  
34 vehicles, including the owners of such vehicles, information on  
35 automobile accidents, including date and location of accidents, persons  
36 involved in accidents, the kinds of injuries sustained in accidents and  
37 treating health care providers, for the purpose of identifying patterns  
38 of possible fraudulent activity, which information shall be shared with  
39 county prosecutors, local law enforcement officials, and the New  
40 Jersey State Police. Every insurer shall submit the data required by the  
41 Insurance Fraud Prosecutor for all claims closing with payment during  
42 a period established by the Insurance Fraud Prosecutor.

43

44 41. (New section) The Insurance Fraud Prosecutor shall have  
45 access to all necessary information in the possession of the State or  
46 local public entities, including agency inspection reports, motor vehicle

1 records and license information, individual case files, and intelligence  
2 information compiled and maintained by the Division of State Police  
3 in the Department of Law and Public Safety. Upon the request of the  
4 Insurance Fraud Prosecutor, any insurer which has referred a case to  
5 the Insurance Fraud Prosecutor, or to any county or local government  
6 agency shall make all information on the case available to the Office  
7 of the Insurance Fraud Prosecutor that the Insurance Fraud Prosecutor  
8 shall request.

9  
10 42. (New section) The Attorney General shall direct the Office of  
11 the Insurance Fraud Prosecutor to:

12 a. Confer from time to time with departments or other units of  
13 State government which have units which investigate fraud, in order  
14 to coordinate activities, share information, and provide any assistance  
15 necessary to any State agency in overseeing administrative  
16 enforcement activities;

17 b. Formulate and evaluate proposals for legislative, administrative  
18 and judicial initiatives to strengthen insurance fraud enforcement;

19 c. In connection with insurance fraud enforcement activities, act as  
20 the liaison for the Executive Branch of government with agencies  
21 involved in insurance fraud enforcement outside the Executive Branch,  
22 including federal agencies and the Judiciary.

23 d. Provide an annual report to the Governor and the Legislature,  
24 no later than March 1 of each year, as to the activities of the Insurance  
25 Fraud Prosecutor for the preceding twelve months, including, but not  
26 limited to, the number of cases referred, the number of cases  
27 investigated, the number of cases in which professional licenses were  
28 suspended or revoked, by type of license, the number of cases  
29 prosecuted, the number of convictions procured, and the aggregate  
30 amount of money collected in fines and returned in restitution to  
31 insurers or others.

32  
33 43. (New section) In the case of a professional licensed or  
34 certified by a professional licensing board in the Division of Consumer  
35 Affairs in the Department of Law and Public Safety who is guilty of  
36 fraud, the Insurance Fraud Prosecutor may recommend to the  
37 appropriate board a suspension or revocation of the professional  
38 license.

39  
40 44. (New section) The Insurance Fraud Prosecutor shall consider  
41 the restitution of moneys to insurers and others who are defrauded as  
42 a major priority, in order that policyholders may benefit from the  
43 prosecution of those persons guilty of insurance fraud, and to that end,  
44 any assets of any person guilty of fraud shall be subject to seizure.

45  
46 45. (New section) The Insurance Fraud Prosecutor shall have

1 access to all information concerning insurance fraud enforcement  
2 activities in the possession of all State departments and agencies. The  
3 office shall meet on a regular basis with representatives of State  
4 departments and agencies and county prosecutors to set specific goals  
5 and strategies for the most effective resolution of insurance fraud  
6 cases, whether by criminal, civil, or administrative enforcement action,  
7 or a combination thereof.

8

9 46. (New section) Any county prosecutor may apply to the Office  
10 of Insurance Fraud Prosecutor for reimbursement for activities  
11 undertaken in connection with investigating and prosecuting insurance  
12 fraud. The Attorney General shall allocate such funds as he deems  
13 necessary from such moneys as may be appropriated for the operation  
14 of the Office of Insurance Fraud Prosecutor to a fund dedicated for the  
15 purpose of reimbursing county prosecutors or sharing in fines levied  
16 by the Attorney General, which reimbursement or sharing may be  
17 made by the Attorney General at his discretion.

18

19 47. (New section) Every state and local law enforcement agency,  
20 including the New Jersey State Police, shall make available to  
21 investigators employed by insurers, upon presentation of appropriate  
22 identification, information from any accident report, as set forth in this  
23 section, no later than 24 hours following the time of occurrence. The  
24 information may include, but need not be limited to, the names and  
25 addresses of the owners of the vehicles, insurance information  
26 recorded on the accident report, and the names and addresses of  
27 passengers in the vehicles at the time of the occurrence and, if  
28 applicable, the name of any pedestrian injured in an accident. Every  
29 accident report form shall contain the names and addresses of any  
30 person occupying a vehicle involved in an accident, and any pedestrian  
31 injured in an accident.

32

33 48. (New section) The Attorney General shall annually, on or  
34 before October 1, certify to the State Treasurer an amount allocable  
35 to the expenses of the Office of the Insurance Fraud Prosecutor for the  
36 preceding fiscal year, which amount shall be transferred to the  
37 Department of Law and Public Safety by the State Treasurer from the  
38 amounts assessed and collected for the operation of the Division of  
39 Insurance Fraud Prevention in the Department of Banking and  
40 Insurance pursuant to section 8 of P.L.1983, c.320 (C.17:33A-8).

41

42 49. (New section) For the purposes of sections 50 through 63 of  
43 this amendatory and supplementary act:

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

46 "Claim" means any claim filed under a policy of insurance issued

1 pursuant to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any  
2 policy of life or health insurance issued pursuant to Title 17 of the  
3 Revised Statutes or Title 17B of the New Jersey Statutes;

4 "Insurance" means any contract of direct insurance written pursuant  
5 to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any policy of  
6 life or health insurance issued pursuant to Title 17 of the Revised  
7 Statutes or Title 17B of the New Jersey Statutes;

8 "Ombudsman" means the Insurance Claims Ombudsman appointed  
9 pursuant to section 50 of this amendatory and supplementary act.

10  
11 50. (New section) There is created within the Division of  
12 Consumer Affairs in the Department of Law and Public Safety the  
13 Office of the Insurance Claims Ombudsman. The ombudsman shall be  
14 appointed by the Governor with the advice and consent of the Senate  
15 and shall serve at the pleasure of the Governor during the Governor's  
16 term of office. The ombudsman shall devote his entire time to the  
17 duties of his office. Any vacancy occurring in the position of  
18 ombudsman shall be filled in the same manner as the original  
19 appointment. If the ombudsman shall be unable for any reason to  
20 serve his full term of office, the Governor may designate an acting  
21 ombudsman until a successor is appointed and qualified. The  
22 ombudsman shall have at least a baccalaureate degree and at least  
23 seven years' experience in property and casualty or life and health  
24 insurance, which may include experience as a broker or an agent.

25  
26 51. (New section) The ombudsman shall:

27 a. Administer and organize the work of the office and hire such  
28 persons as shall be deemed necessary to effectuate his duties, subject  
29 to Title 11A (Civil Service) of the New Jersey Statutes, and within the  
30 limits of funds made available by the Department of Banking and  
31 Insurance, in consultation with the Attorney General.

32 b. Appoint and employ any consultants, independent adjusters,  
33 claims specialists, attorneys or others for the purpose of providing  
34 legal and professional advice as the ombudsman may from time to time  
35 require, within the limits of the funds provided therefor;

36 c. Investigate consumer complaints regarding policies of insurance,  
37 including the payment of claims on policies of insurance;

38 d. Establish procedures to monitor the implementation of  
39 P.L.1985, c.179 (C17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et  
40 seq.), P.L.1982, c.95 (C.17:35C-1 et seq.) and chapter 30 of Title 17B  
41 of the New Jersey Statutes and investigate violations of section 8 of  
42 P.L.1992, c.144 (C.17:35C-11).

43 e. Respond to inquiries from consumers, including, but not limited  
44 to, those regarding policy provisions and the availability of coverage;

45 f. Publish and disseminate buyers' guides and, where provided by  
46 law, comparative rates; provided, however, that this shall not apply to

1 any policy of health insurance issued pursuant to P.L.1992, c.161  
2 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

3 g. Review conduct of arbitrators appointed under the terms of the  
4 policy to arbitrate disputes, except policies issued pursuant to  
5 P.L.1972, c.70 (C.39:6A-1 et seq.)

6 h. Promulgate such rules and regulations as shall be necessary to  
7 effectuate the purposes of sections 50 through 63 of this amendatory  
8 and supplementary act; and

9 i. Perform such other functions as may be prescribed by this or by  
10 any other law or regulation.

11

12 52. (New section) Any person who: a. has reasonable cause to  
13 believe that an insurer has failed or refuses to settle a claim in  
14 accordance with the provisions of the insurance contract or engaged  
15 in any practice in violation of the provisions of P.L.1985, c.179  
16 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et seq.), P.L.1982,  
17 c.95 (C.17:35C-1 et seq.), chapter 30 of Title 17B of the New Jersey  
18 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11); and, in the  
19 case of disputed claims, b. has previously filed an appeal with the  
20 insurer's internal appeals procedure established pursuant to section 57  
21 of this amendatory and supplementary act, which has been adjudicated,  
22 or other dispute resolution procedure established pursuant to  
23 P.L.1972, c.70 (C.39:6A-1 et seq.), P.L.1997, c.192 (C.26:2S-1 et  
24 seq.), sections 1 through 12 of P.L.1983, c.358 (C.39:6A-24 through  
25 39:6A-35, inclusive) or sections 24 and 25 of P.L. , c. (C. )(now  
26 before the Legislature as this bill) may file an application with the  
27 ombudsman for a review of the claims settlement.

28

29 53. (New section) In any investigation involving a disputed claim,  
30 the ombudsman may:

31 a. Investigate whether the claims settlement was appropriate and  
32 in accordance with the contract;

33 b. Make the necessary inquiries and obtain such information as he  
34 deems necessary;

35 c. Hold a hearing on the disputed claim;

36 d. Inspect any books or records which are relevant to the claim;

37 e. Compel any person to produce at a specific time and place, by  
38 subpoena, any documents, books, records, papers, objects or other  
39 evidence which he believes may relate to a claim under investigation.

40

41 54. (New section) The ombudsman need not investigate any  
42 complaint if he determines that:

43 a. The complaint is trivial, frivolous, vexatious or not made in  
44 good faith;

45 b. The complaint has been too long delayed to justify present  
46 investigation;

1 c. The resources available, considering the established priorities,  
2 are insufficient for an adequate investigation; or

3 d. The matter complained of is not within the investigatory  
4 authority of the office.

5

6 55. (New section) The ombudsman shall maintain a central registry  
7 of all claims investigations which have been disposed of and closed,  
8 the nature of the investigation, findings, and recommended actions.  
9 No information so compiled shall be construed to be a public record.  
10 In addition, the ombudsman shall:

11 a. Report to the commissioner any evidence that an insurer has  
12 established a pattern of settlement practices which would constitute an  
13 unfair claims settlement practice within the meaning of P.L.1947,  
14 c.379 (C.17:29B-1 et seq.) or any violations of P.L.1985, c.179  
15 (C.17:23A-1 et seq.), P.L.1947, c.379 (C17:29B-1 et seq.), P.L.1982,  
16 c.95 (C.17:35C-1 et seq.) chapter 30 of Title 17B of the New Jersey  
17 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11);

18 b. Report to the commissioner any contract provision, including  
19 any endorsements, which are unfairly discriminatory, confusing,  
20 misleading or contrary to public policy, along with a recommendation  
21 as to whether the policy form should be modified or withdrawn.

22

23 56. (New section) With respect to trade or marketing practices,  
24 the ombudsman may:

25 a. Conduct an investigation regarding an insurer's trade practices,  
26 including claims settlement practices and marketing practices;

27 b. Make the necessary inquiries and obtain such information as he  
28 deems necessary;

29 c. Hold a hearing;

30 d. Inspect any books or records which may be necessary for the  
31 investigation;

32 e. Compel any person to produce at a specific time and place, by  
33 subpoena, any documents, books, records, papers, objects or other  
34 evidence which he believes may relate to the investigation.

35 The ombudsman shall report his findings to the commissioner with  
36 respect to the trade practices or marketing practices under  
37 investigation.

38

39 57. (New section) Every insurer writing property and casualty  
40 insurance or life insurance in this State shall establish an internal  
41 appeals procedure for the adjudication of disputed claims, in  
42 accordance with terms set forth by the commissioner by rule and  
43 regulation or as otherwise provided by law or regulation. The  
44 adjudication shall be conducted by a panel of the insurer's employees,  
45 who shall be personnel other than those responsible for claims payment  
46 on a day-to-day basis and shall be conducted within 10 business days



1 of the receipt of the complaint.

2

3 58. (New section) Complaints shall be filed on a form set forth by  
4 the ombudsman. The office of the ombudsman shall acknowledge the  
5 receipt of complaints, and advise the applicants of any action taken or  
6 opinions and recommendations which may have been made by it to the  
7 insurer. The ombudsman shall make recommendations to the  
8 commissioner as he deems necessary, including, but not limited to:

9 a. A recommendation that a policy form or endorsement thereon  
10 which he finds unfairly discriminatory, misleading or contrary to public  
11 policy be modified;

12 b. A recommendation that specific rules and regulations  
13 promulgated by the commissioner, including rules concerning trade  
14 practices and claims settlement practices, be modified or repealed;

15 c. A recommendation that the claims settlement practices of a  
16 specific insurer or insurers be further investigated by the  
17 commissioner;

18 d. A recommendation that the commissioner impose penalties or  
19 other sanctions against an insurer or insurers as a result of the insurer's  
20 claims settlement practices.

21

22 59. (New section) Every buyer's guide which is required to be  
23 provided to insureds for any line of insurance shall contain a notice  
24 describing the functions of the ombudsman, the mailing address of the  
25 ombudsman, and a toll-free information telephone number. The  
26 ombudsman may publicize his existence, function and activities to the  
27 public at large.

28

29 60. (New section) a. Any correspondence or written  
30 communication from any applicant and any written material submitted  
31 by an insurer shall remain confidential and shall not be part of any  
32 public record, unless the parties authorize, in writing, the release of  
33 the information, except for such disclosures as may be necessary to  
34 enable the ombudsman to perform his duties and to support any  
35 opinions or recommendations.

36 b. Any person conducting or participating in any investigation of  
37 a complaint who discloses to any person, other than the office of the  
38 ombudsman, or those authorized by the ombudsman to receive it, any  
39 information collected during the investigation, is guilty of a disorderly  
40 person's offense.

41 c. Any statement or communication made by the office of the  
42 ombudsman relevant to a complaint received by the ombudsman, to  
43 proceedings conducted by the ombudsman, or relating to an  
44 investigation conducted by the ombudsman, which is provided to the  
45 office in good faith, shall be absolutely privileged.

46 d. The ombudsman shall not be required to testify in court with

1 respect to matters held to be confidential except as the court may  
2 deem necessary to enforce the provisions of sections 50 through 63 of  
3 this amendatory and supplementary act.

4  
5 61. (New section) Upon making his determination as to the  
6 appropriate disposition of a claim, the ombudsman shall notify the  
7 insurer and the claimant of his decision. The decision shall be  
8 admissible in any court action or any other proceeding which is  
9 instituted to determine final disposition of the claim. The ombudsman  
10 may file a brief with the court in connection with an action relating to  
11 the disposition of claim.

12  
13 62. (New section) Any person who willfully hinders the lawful  
14 actions of the ombudsman or willfully refuses to comply with his  
15 lawful demands, including the demand for the inspection of records,  
16 shall be subject to a penalty of not more than \$5,000. The penalty  
17 shall be collected and enforced by summary proceedings pursuant to  
18 "the penalty enforcement law," N.J.S.2A:58-1 et seq. Each violation  
19 of sections 50 through 63 of this amendatory and supplementary act  
20 shall constitute a separate offense. Notwithstanding any other  
21 provision of law to the contrary, no investigation or determination  
22 made by the ombudsman shall be subject to the provisions of  
23 P.L.1960, c. 39 (C.56:8-1 et seq.).

24  
25 63. (New section) The ombudsman shall report to the Governor  
26 and the Legislature on or before September 30 of each year,  
27 summarizing his activities for the preceding year, documenting any  
28 significant insurance industry problems with regard to claims  
29 settlement practices in any line of insurance, and setting forth any  
30 recommendations for statutory or regulatory change which will further  
31 the State's capacity to resolve claims disputes.

32  
33 64. Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended to read  
34 as follows:

35 4. No insurer shall fail to renew a policy unless it shall mail or  
36 deliver to the named insured, at the address shown in the policy, at  
37 least 60 days' advance notice of its intention not to renew. This  
38 section shall not apply:

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

40 (b) In case of nonpayment of premium;

41 provided that, notwithstanding the failure of an insurer to comply  
42 with this section, the policy shall terminate on the effective date of any  
43 other insurance policy with respect to any automobile designated in  
44 both policies.

45 [If a named insured qualifies for his insurer's non-standard rate  
46 level after having been insured at the standard rate level, the insurer

1 shall mail or deliver to the named insured, at the address shown in the  
2 policy, at least 60 days' advance notice of its intention to renew at the  
3 non-standard rate level.]

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

7 (cf: P.L.1997, c.240, s.1)

8

9 65. (New section) a. An insurer authorized to transact or  
10 transacting automobile insurance business in this State shall file with  
11 the commissioner, for the commissioner's approval, an endorsement to  
12 its automobile liability insurance policy which contains a "named  
13 excluded driver" provision that would exclude physical damage  
14 coverage on an automobile covered by an automobile liability  
15 insurance policy if it is operated by the "named excluded driver." For  
16 purposes of this section, "named excluded driver" means a driver in the  
17 household of the named insured who is specifically identified in the  
18 endorsement as a person whose operation of an automobile covered  
19 under the automobile liability insurance policy at the time of an  
20 accident would result in the denial of a physical damage claim for that  
21 automobile.

22 b. The premium charged for the physical damage coverage on a  
23 policy containing a "named excluded driver" endorsement shall not  
24 reflect the claim experience or driving record of the "named excluded  
25 driver" or drivers.

26 c. Election of a "named excluded driver" endorsement shall be in  
27 writing and signed by the named insured on a form prescribed by the  
28 commissioner. The "named excluded driver" endorsement shall  
29 continue in force as to subsequent renewal or replacement policies  
30 until the insurer or its authorized representative receives a properly  
31 executed form electing to discontinue the endorsement.

32 d. Notwithstanding any other provision of the law to the contrary,  
33 no person, including, but not limited to, an insurer or an insurance  
34 producer, shall be liable in an action for damages on account of the  
35 election of a "named excluded driver" endorsement.

36 e. The commissioner may promulgate rules and regulations  
37 necessary to implement the provisions of this section.

38

39 66. (New section) If an insurer has a financial arrangement with  
40 an auto body repair shop or other repair facility or a network of  
41 facilities for the purpose of repairing vehicles covered under physical  
42 damage, collision, or comprehensive coverages, the insurer shall not  
43 deny a person the right to select an auto body repair shop or other  
44 repair facility of his choice for repair of a covered vehicle, provided  
45 that such auto body repair shop or other repair facility elected by the  
46 person accepts the same terms and conditions as the shop, facility, or

1 network with which the insurer has an arrangement and agrees to  
2 repair the covered vehicle at the same price.

3

4 67. (New section) a. The Commissioner of Banking and Insurance  
5 may, in connection with any profits report made under P.L.1988, c.118  
6 (C.17:29A-5.6 et seq.), require a review of all or part of the filing by  
7 qualified independent actuary, including the elements of the filing  
8 including the insurer or filer's assumptions with respect to the  
9 development of losses or loss adjustment expenses developed to an  
10 ultimate basis, allowance for profit and contingencies and anticipated  
11 investment income.

12 b. For the purposes of this section, "qualified independent actuary"  
13 means a person or firm with annual billings of at least \$5,000,000, who  
14 has not worked for the insurer or filer whose filing is under review  
15 during the previous three year period.

16

17 68. (New section) a. For the purposes of this section:

18 "Qualified person" means a person qualified by the Commissioner  
19 of Banking and Insurance to intervene in public hearings pursuant to  
20 this section;

21 "Rate filing" means a filing for a rate increase by an automobile  
22 insurer writing private passenger automobile insurance in this State,  
23 other than a rate filing made pursuant to any statutory change in  
24 coverage provided under a policy of private passenger automobile  
25 insurance.

26 b. The Commissioner of Banking and Insurance shall establish  
27 standards for qualifying persons to intervene in rate filings pursuant to  
28 this section. The standards shall include, but shall not necessarily be  
29 limited to, requiring that any person intervening in a rate filing  
30 demonstrate: (1) expertise in the insurance laws of this State; (2) an  
31 understanding of the actuarial principles employed in establishing rates  
32 and rating systems; (3) sufficient access to a qualified actuary and  
33 sufficient expertise to conduct a technical examination of a rate filing;  
34 (4) sufficient resources to intervene in the rate filing process as  
35 provided herein; and (5) that the person represents the interest of  
36 consumers.

37 c. The commissioner shall require such documentation as he  
38 determines is necessary to qualify a person to intervene in a rate filing,  
39 and may charge a fee for registration with the department as an  
40 intervenor, which fee shall be payable annually.

41 d. The commissioner may remove the registration of an intervenor  
42 if he determines that (1) the intervenor no longer meets the  
43 qualifications, or (2) if the intervenor is convicted of a crime or loses  
44 a professional license for misconduct.

45 e. If an insurer or rating organization files for a rate increase for  
46 private passenger automobile insurance, the commissioner shall notify

1 the public of the proposed rate change in a newspaper or newspapers  
2 of general circulation throughout the State. A qualified person may  
3 request, and shall receive, a copy of the rate filing and any  
4 amendments and supplements thereto and shall pay the expenses in  
5 connection therewith. The qualified person may request that the  
6 commissioner certify the rate filing for a hearing pursuant to section  
7 14 of P.L.1944, c.27 (C:17:29A-14).

8 f. The commissioner shall establish by regulation the terms and  
9 conditions under which the proceedings under this section shall be  
10 conducted, including, but not limited to the supporting material which  
11 shall accompany the intervention.

12 g. Upon determining that the intervenor has demonstrated that the  
13 qualified person has made a substantial contribution to the adoption of  
14 any order, regulation, or decision by the commissioner or a court in  
15 connection with a rate filing made pursuant to this section, the  
16 commissioner shall award reasonable advocacy and witness fees and  
17 expenses.

18

19 69. (New section) a. Except for the plan established pursuant to  
20 section 1 of P.L.1970, c.215 (C.17:29D-1), every insurer writing  
21 private passenger automobile insurance in this State pursuant to  
22 P.L.1972, c.70 (C.39:6A-1 et seq.) shall file rates with the  
23 Commissioner of Banking and Insurance which result in:

24 (1) a reduction of at least 25% from the personal injury protection  
25 territorial base rate applicable to medical expense benefits, at least  
26 10% of which shall reflect a reduction in the actuarial value of the  
27 medical expense benefits provided pursuant to section 4 of P.L.1972,  
28 c.70 (C.39:6A-4), within the policy limits provided for in that section;

29 (2) a reduction of at least 22% in the territorial base rate for bodily  
30 injury liability coverage applicable to named insureds to whom the  
31 Limitation on Lawsuit Option provided for in subsection a. of section  
32 8 of P.L.1972, c.70 (C.39:6A-8) applies;

33 (3) a reduction of at least 6% in the territorial base rate for  
34 collision coverage which shall reflect the provisions of section 66 of  
35 this amendatory and supplementary act; and

36 (4) after the reductions required pursuant to paragraphs (1), (2) and  
37 (3) of this subsection have been applied, an additional aggregate  
38 reduction of at least 3% in the territorial base rates for personal injury  
39 protection, bodily injury, property damage, comprehensive and  
40 collision coverages, as apportioned by the insurer and approved by the  
41 commissioner, which reduction is attributable to the effect of the  
42 enhanced insurance fraud provisions of this amendatory and  
43 supplementary act and of other such laws including, but not limited to  
44 P.L.1997, c.353 (C.2C:21-4.2 et seq.) and P.L.1997, c.151  
45 (C.17:33B-64 et seq.).

46 b. The rate filings reflecting these reductions shall apply to policies

1 issued or renewed on or after 90 days following:

2 (1) the establishment by the commissioner of basic benefits  
3 required to be provided pursuant to section 4 of P.L.1972, c.70  
4 (C.39:6A-4); or

5 (2) the adoption by rule of the professional boards of the  
6 designation of valid diagnostic tests pursuant to the provisions of  
7 section 12 of P.L. , c. (C. )(now before the Legislature as this  
8 bill);

9 whichever is later.

10

11 70. Section 3 of P.L.1991,c.154 (C.17:28-1.7) is amended to read  
12 as follows:

13 3. Every owner, registrant or operator of a motor bus registered or  
14 principally garaged in this State and every person or organization  
15 legally responsible for his acts or omissions, is hereby exempted from  
16 tort liability for noneconomic loss to a passenger who has a right to  
17 receive benefits under section 2 of this act as a result of bodily injury  
18 arising out of the ownership, operation, maintenance or use of a motor  
19 bus in this State, unless that person has sustained a personal injury  
20 which results in death; dismemberment; significant disfigurement or  
21 significant scarring; [a fracture]displaced fractures; loss of a fetus;  
22 [permanent loss of use of a body organ, member, function or system;  
23 permanent consequential limitation of use of a body organ or member;  
24 significant limitation of use of a body function or system; or a  
25 medically determined injury or impairment of a non-permanent nature  
26 which prevents the injured person from performing substantially all of  
27 the material acts which constitute that person's usual and customary  
28 daily activities for not less than 90 days during the 180 days  
29 immediately following the occurrence of the injury or impairment] or  
30 a permanent injury within a reasonable degree of medical probability,  
31 other than scarring or disfigurement. An injury shall be considered  
32 permanent when the body part or organ, or both, has not healed to  
33 function normally and will not heal to function normally with further  
34 medical treatment. For the purposes of this subsection, "physician"  
35 means a physician as defined in section 5 of P.L.1939,c.115 (C.45:9-  
36 5.1).

37 In order to satisfy the provisions of this section, the plaintiff shall,  
38 within 60 days following the date of the answer to the complaint by  
39 the defendant, provide the defendant with a certification from the  
40 licensed treating physician or a board-certified licensed physician to  
41 whom the plaintiff was referred by the treating physician. The  
42 certification shall state, under penalty of perjury, that the plaintiff has  
43 sustained an injury described above. The certification shall be based  
44 on and refer to objective clinical evidence, which may include medical  
45 testing, except that any such testing shall be performed in accordance  
46 with medical protocols pursuant to subsection a. of section 4 of

1 P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests  
2 administered in accordance with section 12 of P.L. , c. (C. )( now  
3 before the Legislature as this bill). Such testing may not be  
4 experimental in nature or dependent entirely upon subjective patient  
5 response. The court may grant no more than one additional period not  
6 to exceed 60 days to file the certification pursuant to this section upon  
7 a finding of good cause.

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

26 (cf: P.L.1991, c.154, s.3)

27  
28 71. Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended to read  
29 as follows:

30 2. In the event medical expense benefits paid by an insurer, in  
31 accordance with subsection a. of section 4 of P.L.1972, c.70  
32 (C.39:6A-4) or section 4 of P.L. , c. (C. )(now before the  
33 Legislature as this bill), are in excess of \$75,000.00 on account of  
34 personal injury to any one person in any one accident, the Unsatisfied  
35 Claim and Judgment Fund shall assume such excess up to \$250,000  
36 and reimburse the insurer therefor in accordance with rules and  
37 regulations promulgated by the commissioner; provided, however, that  
38 this provision is not intended to broaden the coverage available to  
39 accidents involving uninsured or hit-and-run automobiles, to provide  
40 extraterritorial coverage, or to pay excess medical expenses.

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

42  
43 72. This act shall take effect 90 days following the establishment  
44 by the Commissioner of Banking and Insurance of basic benefits  
45 required to be provided pursuant to section 4 of P.L.1972, c.70  
46 (C.39:6A-4) or the adoption by rule of the professional boards of the

1 designation of valid diagnostic tests pursuant to the provisions of  
2 section 12 of this act, whichever is later, except that sections 49  
3 through 63 shall take effect on the 90th day after the date of  
4 enactment and sections 1, 12, 26 through 48, 64 through 67 and 69  
5 shall take effect immediately. Prior to the effective date of any section  
6 of this act, the Commissioner of Banking and Insurance may take  
7 those actions and promulgate those regulations necessary to implement  
8 the provisions of this act.

9

10

11

#### STATEMENT

12

13 This bill makes a number of substantial changes to the private  
14 passenger automobile insurance system under the state's no-fault law.

15

16 The bill modernizes the definition section of the no-fault law,  
17 modifying the 26-year old descriptions of medical expenses and  
18 hospital expenses to take into account health care professions licensed  
19 since that time, and setting forth a new definition of "hospital" to take  
20 into account the larger number of facilities which now come under the  
21 purview of the act. The bill establishes a new type of policy, the basic  
22 policy, which would permit people to meet the state's mandatory  
23 insurance requirement at substantially lower cost than at present, and  
24 is directed toward reducing the number of uninsured drivers. This  
25 policy provides for \$15,000 medical expense benefits, with benefits for  
26 catastrophic injuries, as enumerated in the bill, which would permit  
27 recovery up to \$250,000. The basic policy also includes \$5,000  
28 coverage for property damage liability. It is anticipated that  
29 individuals purchasing this policy would be those with few tangible  
30 assets to protect as well as lower-income persons who cannot now  
31 purchase insurance because it is unaffordable. It is likely that many  
32 drivers now driving without insurance will purchase this coverage,  
33 thus ensuring that in the event they are seriously injured they will be  
34 able to pay for their medical bills. It is estimated that on average, this  
35 policy will cost somewhere around \$350 to \$400. The bill contains a  
36 provision that prospective purchasers of this coverage must be notified  
37 that purchase of the policy could put their assets at risk. Drivers with  
38 full coverage who are injured by someone who elects a basic policy  
39 would be covered by their own personal injury protection coverage,  
40 and would collect benefits for pain and suffering under their own  
41 insurance policies.

41

42 In order to reduce the overutilization of medical benefits under  
43 automobile insurance policies, which is the principal cause of the  
44 escalation in premiums in recent years, the bill establishes the standard  
45 that providers are expected to use commonly accepted protocols in  
46 treating patients injured in automobile accidents; while the bill does  
not impose a rigid adherence to treatment protocols, the protocols



1 establish a baseline for determining whether unnecessary treatment is  
2 taking place. Similarly, to better define standards for diagnostic  
3 testing, the bill requires the professional boards in the Division of  
4 Consumer Affairs to establish a list of diagnostic tests generally  
5 determined to be acceptable for treatment in the respective  
6 professions. This is intended to eliminate the problem of the use of  
7 diagnostic tests which are not generally recognized as useful or  
8 appropriate.

9 In order to reduce the number of disputes regarding medical  
10 treatment, the bill provides for more specificity in the policy form  
11 itself, so that it would be more similar to a health insurance policy.  
12 The lack of specificity as to eligible benefits in the policy form dates  
13 back to the time when no-fault policies contained unlimited medical  
14 benefits and there was less need for specificity. This would not serve  
15 to limit such things as the purchase of specialized vehicles for injured  
16 persons or other special benefits provided in connection with personal  
17 injury protection coverage which are not normally reimbursable under  
18 health insurance, but would, among other things, make disputes over  
19 the eligibility of benefits easier to decide by the dispute resolution  
20 procedure established in the policy.

21 The bill replaces the present arbitration procedure for medical  
22 expense benefits with a refined dispute resolution procedure; the  
23 existing arbitration procedure, which uses part time arbitrators who  
24 are also engaged in the active practice of law and who are not required  
25 to set forth their decisions in writing, is generally recognized as being  
26 ineffective in terms of holding down costs. The commissioner would  
27 establish standards of performance for a dispute resolution  
28 organization and establish qualifications for full-time dispute  
29 resolution professionals, similar to the system now in use in New  
30 York, and decisions would have to be in writing and would have value  
31 as precedent for subsequent cases. Under certain circumstances set  
32 forth in the bill, any party, including the person conducting the dispute  
33 resolution proceedings, could ask for a medical review for questions  
34 including medical necessity or causality. The reviews would be  
35 conducted by a professional medical review organization certified by  
36 the commissioner. The organization could not have any affiliation  
37 with an insurer or a dispute resolution organization, and the reviews  
38 would be distributed on a random basis among qualified professionals  
39 in the same discipline as the health care provider whose treatment is  
40 under review. It is anticipated, however, that because of the enhanced  
41 specificity of the insurance policy and the establishment of standard  
42 treatment protocols and standards for diagnostic testing, substantially  
43 fewer cases would be referred to dispute resolution.

44 The bill establishes a committee, which would include public  
45 members, to collect accident data and reconfigure the existing  
46 automobile insurance rating territories. Existing territories are over 50

1 years old and the boundaries which delineate them do not adequately  
2 reflect demographic changes in the state which have occurred since  
3 they were drawn. The bill establishes standards for the reconfiguration  
4 of territories and permits the commissioner to allow insurers to use  
5 individual territorial configurations if it is deemed to be in the public  
6 interest. It is anticipated that a redrawing of territorial boundaries will  
7 ameliorate the inequities presented by the existence of the territorial  
8 rating caps established in 1983.

9 The bill establishes an Office of Insurance Fraud Prosecutor in the  
10 Division of Criminal Justice in the Department of Law and Public  
11 Safety. To provide for more effective investigation and prosecution  
12 of fraud than exists at the present time, the bill consolidates the  
13 investigatory component of the Division of Fraud Prevention in the  
14 Department of Banking and Insurance and the Office of Fraud  
15 Prosecutor. It also establishes a formal liaison between the Office of  
16 Insurance Fraud Prosecutor and the county prosecutors, and provides  
17 for the reimbursement of county prosecutors for their anti-fraud  
18 activities by the Attorney General if he deems it to be warranted. The  
19 Office of Insurance Fraud Prosecutor, which encompasses both  
20 property and casualty and life and health insurance-related anti-fraud  
21 activities, would be responsible for coordinating anti-fraud activities  
22 on a statewide basis, including state agencies.

23 The bill also establishes the Office of the Insurance Claims  
24 Ombudsman in the Division of Consumer Affairs in the Department of  
25 Law and Public Safety. The Ombudsman would perform many of the  
26 duties now performed by the Department of Banking and Insurance in  
27 investigating consumer complaints against insurers. It would also  
28 monitor possible violations of the insurance trade practices laws, and  
29 report them to the Commissioner of Banking and Insurance. The  
30 Ombudsman would also be charged with publishing and disseminating  
31 buyers' guides for all lines of insurance. The bill requires that all  
32 insurers establish an internal procedure for the adjudication of  
33 consumer complaints; this and other avenues of appeal would have to  
34 be exhausted before the Ombudsman would become involved in a  
35 claims dispute.

36 The bill provides for the election of a "named excluded driver" on  
37 automobile insurance policy forms. At present, if there is a young  
38 driver in a household, insurers apply the high rating factors applicable  
39 to that driver on the most expensive car in the household. This option  
40 would permit the exclusion of a specific driver in the household on a  
41 specified car. This would mean that the excluded driver could not  
42 drive the car, but it also means that the premiums for that car would  
43 be substantially lower. In the event that the excluded driver does drive  
44 the car and is in an accident, no physical damage coverage (collision  
45 and comprehensive) would apply to the car, and the insured would  
46 have to pay the costs of repair himself. All other coverages, including

1 personal injury protection coverage and the liability coverages, would  
2 continue to apply.

3 The bill contains a provision that certain portions of a filing under  
4 the excess profits law could be submitted for review to an outside  
5 independent actuary. These components of the excess profits filing  
6 would be those upon which the judgment of the filer may be viewed as  
7 subjective.

8 Finally, in order to further limit the number of lawsuits filed and  
9 thereby reduce premiums for bodily injury coverage, the bill  
10 completely eliminates the existing verbal threshold and substitutes a  
11 new verbal threshold which is intended to eliminate some of the  
12 lawsuits for minor injuries, including soft tissue injuries, which are  
13 neither serious nor permanent. The new threshold would permit suits  
14 in the event of death, dismemberment, significant disfigurement or  
15 significant scarring, displaced fractures, loss of a fetus, or permanent  
16 injuries other than significant disfigurement or significant scarring if  
17 the injury is permanent to the extent that the body part or organ  
18 system has not healed to function normally and will not heal to  
19 function normally with further medical treatment. Certification by a  
20 licensed treating physician that the body part or organ system has not  
21 healed to function normally and will not heal to function normally  
22 would be necessary before suit was filed. The certification would have  
23 to be based on objective clinical evidence which would include medical  
24 testing. Fraudulent certification by a physician could be a crime of the  
25 fourth degree. No provision in this bill is intended to repeal otherwise  
26 applicable case law.

27 The bill establishes terms and conditions under which a person  
28 could intervene in private passenger rate filings for rate increases.  
29 This provides that such intervenors must be qualified by the  
30 commissioner, and that they demonstrate the capacity to intervene in  
31 a rate filing with actuarial support.

32 The bill provides for a mandatory rate decrease applicable to  
33 various coverages which will result in a reduction of 15% from a  
34 typical policy with full coverage.