

[First Reprint]

SENATE, No. 3

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED APRIL 2, 1998

Sponsored by:

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SYNOPSIS

"The Automobile Insurance Cost Reduction Act."

CURRENT VERSION OF TEXT

As amended by the General Assembly on April 20, 1998.

(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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted April 20, 1998.

1 **WHEREAS**, While the Legislature believes that it is good public
2 policy to provide medical benefits on a first party basis,
3 without regard to fault, to persons injured in automobile
4 accidents, it recognizes that in order to keep premium costs
5 down, the cost of the benefit must be offset by a reduction in
6 the cost of other coverages, most notably a restriction on the
7 right of persons who have non-permanent or non-serious
8 injuries to sue for pain and suffering; and

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

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

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

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

1 **WHEREAS**, The Legislature has thus addressed these and other
2 issues in this comprehensive legislation designed to preserve
3 the no-fault system, while at the same time reducing
4 unnecessary costs which drive premiums higher.

5
6 2. Section 2 of P.L.1972, c.70 (C.39:6A-2) is amended to read as
7 follows:

8 2. As used in this act:

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

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

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

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

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

1 approved by the commissioner. "Medical expenses" shall also include
2 any nonmedical remedial treatment rendered in accordance with a
3 recognized religious method of healing.

4 f. "Hospital expenses" means [:

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

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

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

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

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

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

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

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

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

46 k. "Economic loss" means uncompensated loss of income or

1 property, or other uncompensated expenses, including, but not limited
2 to, medical expenses.

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

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

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

40 o. "Basic automobile insurance policy" means an automobile
41 insurance policy pursuant to section of 4 of P.L. , c. (C.)(now
42 before the Legislature as this bill).

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

44
45 3. Section 3 of P.L.1972, c.70 (C.39:6A-3) is amended to read as
46 follows:

1 3. Compulsory automobile insurance coverage; limits. **【Every】**
2 Except as provided by section 4 of P.L. _____, c. _____ (C. _____)(now
3 before the Legislature as this bill), every owner or registered owner of
4 an automobile registered or principally garaged in this State shall
5 maintain automobile liability insurance coverage, under provisions
6 approved by the Commissioner of Banking and Insurance, insuring
7 against loss resulting from liability imposed by law for bodily injury,
8 death and property damage sustained by any person arising out of the
9 ownership, maintenance, operation or use of an automobile wherein
10 such coverage shall be at least in:

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

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

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

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

26

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

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

1 to exceed \$15,000 per person per accident; except that, medical
2 expense benefits shall be paid in an amount not to exceed \$250,000 for
3 the reasonable and necessary treatment of bodily injuries which result
4 in: death; permanent and significant brain injury; quadriplegia or
5 paraplegia; dismemberment; total loss of vision in one or both eyes;
6 total loss of hearing in one or both ears; significant permanent injury
7 due to prominent facial, scalp or neck scarring. In the event benefits
8 paid by an insurer pursuant to this subsection are in excess of \$75,000
9 on account of personal injury to any one person in any one accident,
10 such excess shall be paid by the insurer in consultation with the
11 Unsatisfied Claim and Judgment Fund Board and shall be reimbursable
12 to the insurer from the Unsatisfied Claim and Judgment Fund pursuant
13 to section 2 of P.L.1977, c.310 (C.39:6-73.1). Benefits provided
14 under basic coverage shall be in accordance with a benefit plan
15 provided in the policy and approved by the commissioner. The policy
16 form, which shall be subject to the approval of the commissioner, shall
17 set forth the benefits provided under the policy, including eligible
18 medical treatments and services as well as such other benefits as the
19 policy may provide. The commissioner shall set forth by regulation the
20 basic benefits which shall be included in the policy. Medical
21 treatments, diagnostic tests, and services provided by the policy shall
22 be rendered in accordance with commonly accepted protocols and
23 professional standards and practices which are commonly accepted as
24 being beneficial for the treatment of the covered injury. Protocols and
25 professional standards and practices which are deemed to be
26 commonly accepted pursuant to this section shall be those recognized
27 by national standard setting organizations, national or state
28 professional organizations of the same discipline as the treating
29 provider, or those designated or approved by the commissioner in
30 consultation with the professional licensing boards in the Division of
31 Consumer Affairs in the Department of Law and Public Safety.
32 Protocols shall be deemed to establish guidelines as to standard
33 appropriate treatment for injuries sustained in automobile accidents,
34 but the establishment of standard treatment protocols or protocols for
35 the administration of diagnostic tests shall not be interpreted in such
36 a manner as to preclude variance from the standard when warranted by
37 reason of medical necessity. The policy form may provide for the
38 precertification of certain procedures, treatments, diagnostic tests, or
39 other services or for the purchase of durable medical goods, as
40 approved by the commissioner, provided that the requirement for
41 precertification shall not be unreasonable, and no precertification
42 requirement shall apply within ten days of the insured event. The
43 policy may provide that certain benefits provided by the policy which
44 are in excess of the basic benefits required by the commissioner to be
45 included in the policy may be subject to reasonable copayments in
46 addition to the copayments provided for herein, provided that the

1 copayments shall not be unreasonable and shall be established in such
2 as manner as not to serve to encourage underutilization of benefits
3 subject to the copayments, nor encourage overutilization of benefits.
4 The policy form shall clearly set forth any limitations on benefits or
5 exclusions, which may include, but need not be limited to, benefits
6 which are otherwise compensable under workers' compensation, or
7 benefits for treatments deemed to be experimental or investigational,
8 or benefits deducted pursuant to section 6 of P.L.1972, c.70
9 (C.39:6A-6). The commissioner may enlist the services of a benefit
10 consultant in establishing the basic benefits level provided in this
11 subsection, which shall be set forth by regulation no later than 90 days
12 following the enactment date of this amendatory and supplementary
13 act. The commissioner shall not advertise for the consultant as
14 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
15 9).

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

26 b. Liability insurance coverage insuring against loss resulting from
27 liability imposed by law for 'bodily injury, death and' property damage
28 sustained by any person arising out of the ownership, maintenance,
29 operation or use of an automobile ¹: (1) in an amount or limit of
30 \$10,000, exclusive of interests and costs, on account of injury to, or
31 death of, one or more persons in any one accident; and (2)¹ in an
32 amount or limit of \$5,000, exclusive of interest and costs, for damage
33 to property in any one accident.

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

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

43 No licensed insurance carrier shall refuse to renew the coverage
44 stipulated by this section of an eligible person as defined in section 25
45 of P.L.1990, c.8 (C.17:33B-13) except in accordance with the
46 provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or with

1 the consent of the Commissioner of Banking and Insurance.

2

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

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

40

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

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

44 **【**Every automobile liability insurance policy, issued or renewed on
45 or after January 1, 1991, insuring an automobile as defined in section
46 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability

1 imposed by law for bodily injury, death and property damage sustained
2 by any person arising out of ownership, operation, maintenance or use
3 of an automobile shall provide personal injury protection coverage, as
4 defined hereinbelow, under provisions approved by the Commissioner
5 of Banking and Insurance, for the payment of benefits without regard
6 to negligence, liability or fault of any kind, to the named insured and
7 members of his family residing in his household who sustained bodily
8 injury as a result of an accident while occupying, entering into,
9 alighting from or using an automobile, or as a pedestrian, caused by an
10 automobile or by an object propelled by or from an automobile, to
11 other persons sustaining bodily injury while occupying, entering into,
12 alighting from or using the automobile of the named insured, with the
13 permission of the named insured, and to pedestrians, sustaining bodily
14 injury caused by the named insured's automobile or struck by an object
15 propelled by or from such automobile.

16 "Personal injury protection coverage" means and includes:

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

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

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

43 d. Death benefits. In the event of the death of an income producer
44 as a result of injuries sustained in an accident entitling such person to
45 benefits under this section, the maximum amount of benefits which
46 could have been paid to the income producer, but for his death, under

1 subsection b. of this section shall be paid to the surviving spouse, or
2 in the event there is no surviving spouse, then to the surviving
3 children, and in the event there are no surviving spouse or surviving
4 children, then to the estate of the income producer.

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

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

15 Benefits payable under this section shall:

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

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

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

25 Except as provided by section 4 of P.L. , c. (C.)(now
26 before the Legislature as this bill), every standard automobile liability
27 insurance policy issued or renewed on or after the effective date of
28 P.L. , c. (C.)(now before the Legislature as this bill)
29 shall contain personal injury protection benefits for the payment of
30 benefits without regard to negligence, liability or fault of any kind, to
31 the named insured and members of his family residing in his household
32 who sustain 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 permission of the named insured, and to
38 pedestrians sustaining bodily injury caused by the named insured's
39 automobile or struck by an automobile or struck by an object propelled
40 by or from that automobile.

41 "Personal injury protection coverage" means and includes:

42 a. Payment of medical expense benefits in accordance with a
43 benefit plan provided in the policy and approved by the commissioner,
44 for reasonable, necessary, and appropriate treatment and provision of
45 services to persons sustaining bodily injury, in an amount not to
46 exceed \$250,000 per person per accident. In the event benefits paid

1 by an insurer pursuant to this subsection are in excess of \$75,000 on
2 account of bodily injury to any one person in any one accident, that
3 excess shall be paid by the insurer in consultation with the Unsatisfied
4 Claim and Judgment Fund Board and shall be reimbursable to the
5 insurer from the Unsatisfied Claim and Judgment Fund pursuant to
6 section 2 of P.L.1977, c.310 (C.39:6-73.1). The policy form, which
7 shall be subject to the approval of the commissioner, shall set forth the
8 benefits provided under the policy, including eligible medical
9 treatments and services as well as such other benefits as the policy may
10 provide. The commissioner shall set forth by regulation the basic
11 benefits which shall be included in the policy. Medical treatments,
12 diagnostic tests, and services provided by the policy shall be rendered
13 in accordance with commonly accepted protocols and professional
14 standards and practices which are commonly accepted as being
15 beneficial for the treatment of the covered injury. Protocols and
16 professional standards and practices which are deemed to be
17 commonly accepted pursuant to this section shall be those recognized
18 by national standard setting organizations, national or state
19 professional organizations of the same discipline as the treating
20 provider, or those designated or approved by the commissioner in
21 consultation with the professional licensing boards in the Division of
22 Consumer Affairs in the Department of Law and Public Safety.
23 Protocols shall be deemed to establish guidelines as to standard
24 appropriate treatment for injuries sustained in automobile accidents,
25 but the establishment of standard treatment protocols or protocols for
26 the administration of diagnostic tests shall not be interpreted in such
27 a manner as to preclude variance from the standard when warranted by
28 reason of medical necessity. The policy form may provide for the
29 precertification of certain procedures, treatments, diagnostic tests, or
30 other services or for the purchase of durable medical goods, as
31 approved by the commissioner, provided that the requirement for
32 precertification shall not be unreasonable, and no precertification
33 requirement shall apply within ten days of the insured event. The
34 policy may provide that certain benefits provided by the policy which
35 are in excess of the basic benefits required by the commissioner to be
36 included in the policy may be subject to reasonable copayments in
37 addition to the copayments provided for pursuant to subsection e. of
38 this section, provided that the copayments shall not be unreasonable
39 and shall be established in such as manner as not to serve to encourage
40 underutilization of benefits subject to the copayments, nor encourage
41 overutilization of benefits. The policy form shall clearly set forth any
42 limitations on benefits or exclusions, which may include, but need not
43 be limited to, benefits which are otherwise compensable under
44 workers' compensation, or benefits for treatments deemed to be
45 experimental or investigational, or benefits deducted pursuant to
46 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may

1 enlist the services of a benefit consultant in establishing the basic
2 benefits level provided in this subsection, which shall be set forth by
3 regulation no later than 90 days following the enactment date of
4 P.L. , c. (C.)(now before the Legislature as this bill). The
5 commissioner shall not advertise for bids for the consultant as
6 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
7 9).

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

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

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

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

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

43 Benefits payable under this section shall:

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

46 (2) Not be assignable, except to a provider of service benefits

1 under this section in accordance with policy terms approved by the
2 commissioner, nor subject to levy, execution, attachment or other
3 process for satisfaction of debts.

4 Medical expense benefit payments shall be subject to a deductible
5 of \$250 on account of injury in any one accident and a copayment of
6 20% of any benefits payable between \$250 and \$5,000 in addition to
7 any copayment which may be established pursuant to subsection a. of
8 this section. Upon the request of the commissioner or any party to a
9 claim for benefits or payment for services rendered, a provider shall
10 present adequate proof that any deductible or copayment related to
11 that claim has not been waived or discharged by the provider.

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

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

16

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

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

23 a. Medical expense benefit deductibles in amounts of \$500.00,
24 \$1,000.00, \$2,000.00 and \$2,500.00 for any one accident;

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

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

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

44 **【Insurers shall offer the options provided by subsections a. and b.**
45 **of this section at appropriately reduced premiums. For policies issued**
46 **or renewed prior to January 1, 1992, insurers shall offer the option**

1 provided by subsection d. of this section at a discount of not less than
2 25% from the base rate applicable to the first \$250,000 of medical
3 expense benefits, and for policies issued or renewed on or after
4 January 1, 1992, insurers shall offer the option at an appropriate
5 discount from the base rate for the amount of medical expense benefits
6 coverage taken.】

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

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

28 【In the case of a medical expense benefit deductible, the deductible
29 elected by the named insured shall be satisfied for any one accident,
30 whether the medical expense benefits are paid or provided, in the
31 amount of the deductible, to the named insured or to one or more
32 resident relatives in the named insured's household who are not named
33 insureds under another insurance policy, or to any combination
34 thereof.】

35 Medical expense benefits payable in any amount between the
36 deductible selected pursuant to subsection a. of this section and
37 \$5,000.00 shall be subject to 【a】 the copayment 【of 20%】 provided
38 in the policy, if any.

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

43 The Commissioner of Banking and Insurance shall adopt rules and
44 regulations to effectuate the purposes of this section and may

1 promulgate standards applicable to the coordination of personal injury
2 protection medical expense benefits coverage.

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

4

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

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

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

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

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

25

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

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

41 If an insurer has paid those benefits and the insured is entitled to,
42 but has failed to apply for, workers' compensation benefits or
43 employees' temporary disability benefits, the insurer may immediately
44 apply to the provider of workers' compensation benefits or of
45 employees' temporary disability benefits for a reimbursement of any
46 **[section 4 and section 10]** benefits pursuant to sections 4 and 10 of

1 P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits
2 pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
3 Legislature as this bill) it has paid.
4 (cf: P.L.1983, c.362, s.9)

5
6 10. Section 7 of P.L.1972, c.70 (C.39:6A-7) is amended to read as
7 follows:

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

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

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

18 b. An insurer may also exclude from **[section 4 and section 10]** the
19 benefits provided in sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4
20 and 39:6A-10) and the medical expense benefits provided in section 4
21 of P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) any
22 person having incurred injuries or death, who, at the time of the
23 accident:

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

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

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

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

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

43
44 11. Section 8 of P.L.1972, c.70 (C.39:6A-8) is amended to read as
45 follows:

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

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

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

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

1 normally with further medical treatment. For the purposes of this
2 subsection, "physician" means a physician as defined in section 5 of
3 P.L.1939,c.115 (C.45:9-5.1).

4 In order to satisfy the tort option provisions of this subsection, the
5 plaintiff shall, within 60 days following the date of the answer to the
6 complaint by the defendant, provide the defendant with a certification
7 from the licensed treating physician or a board-certified licensed
8 physician to whom the plaintiff was referred by the treating physician.
9 The certification shall state, under penalty of perjury, that the plaintiff
10 has sustained an injury described above. The certification shall be
11 based on and refer to objective clinical evidence, which may include
12 medical testing, except that any such testing shall be performed in
13 accordance with medical protocols pursuant to subsection a. of section
14 4 of P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
15 administered in accordance with section 12 of P.L. , c. (C.)(now
16 before the Legislature as this bill). Such testing may not be
17 experimental in nature or dependent entirely upon subjective patient
18 response. The court may grant no more than one additional period not
19 to exceed 60 days to file the certification pursuant to this subsection
20 upon a finding of good cause.

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

39 b. No limitation on lawsuit option. As an alternative to the basic
40 tort option specified in subsection a. of this section, every owner,
41 registrant, operator, or occupant of an automobile to which section 4
42 of P.L.1972, c.70 (C.39:6A-4) , personal injury protection coverage,
43 or section 4 of P.L. , c. (C.)(now before the Legislature as
44 this bill), medical expense benefits coverage, regardless of fault,
45 applies, and every person or organization legally responsible for his
46 acts or omissions, shall be liable for noneconomic loss to a person who

1 is subject to this subsection and who is either a person who is required
2 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et
3 seq.) or is a person who has a right to receive benefits under section
4 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the
5 ownership, operation, maintenance or use of such automobile in this
6 State.

7 The tort option provisions of subsection b. of this section shall also
8 apply to the right to recover for noneconomic loss of any person
9 eligible for benefits pursuant to section 4 of P.L.1972, c.70
10 (C.39:6A-4) or section 4 of P.L. _____, c. _____ (C. _____)(now before the
11 Legislature as this bill) but who is not required to maintain personal
12 injury protection coverage pursuant to section 4 of P.L.1972, c.70
13 (C.39:6A-4) or medical expense benefits coverage pursuant to section
14 4 of P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) and
15 is not an immediate family member, as defined in section 14.1 of
16 P.L.1983, c.362 (C.39:6A-8.1), under **[an] a standard** automobile
17 insurance policy or basic automobile insurance policy.

18 The tort option provisions of subsection a. of this section shall also
19 apply to any person subject to section 14 of P.L.1985, c.520
20 (C.39:6A-4.5) and to every named insured and any other person to
21 whom the medical expense benefits of the basic automobile insurance
22 policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
23 Legislature as this bill) apply.

24 The tort option provisions of subsections a. and b. of this section
25 as provided in this **[1988] 1998** amendatory and supplementary act
26 shall apply to automobile insurance policies issued or renewed on or
27 after **[January 1, 1989] the effective date of P.L. _____, c. _____**
28 (C. _____)(now before the Legislature as this bill) and as otherwise
29 provided by law.

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

31

32 12. (New section) The professional licensing boards governing
33 health care providers in the Division of Consumer Affairs shall
34 promulgate, pursuant to the "Administrative Procedure Act,"
35 P.L.1968, c.410 (C.52:14B-1 et seq.), a list of valid diagnostic tests
36 to be used in conjunction with the appropriate health care protocols in
37 the treatment of persons sustaining bodily injury and subject to
38 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8). Inclusion of
39 a test on the list of valid diagnostic tests shall be based on
40 demonstrated medical value, and a level of general acceptance by the
41 relevant provider community and shall not be dependent for results
42 entirely upon subjective patient response. The initial lists shall be
43 promulgated within 180 days of the effective date of this section and
44 shall be revised from time to time as determined by the respective
45 boards to reflect new testing procedures and emerging technologies
46 enjoying a level of general acceptance within the appropriate provider

1 community. In updating its list, a board may take action at a regularly
2 scheduled meeting, notwithstanding the provisions of P.L.1968, c.410
3 (C.52:14B-1 et seq.) to the contrary, after notice as provided herein.
4 The professional boards, individually or collectively, may enlist the
5 services of a consulting firm to assist in compiling and updating the
6 list. The Commissioner of Banking and Insurance may reimburse the
7 boards for the cost of the services of the consultant. The list of valid
8 diagnostic test shall apply only to benefits under section 4 of P.L.1972,
9 c.70 (C.39:6A-4) and section 4 of P.L. , c. (C.)(now before the
10 Legislature as this bill). The board or boards hiring a consultant shall
11 not advertise for bids, as provided in sections 3 and 4 of P.L.1954,
12 c.48 (C.52:34-8 and 52:34-9). Notwithstanding any of the provisions
13 of this section to the contrary, a diagnostic test performed in an acute
14 care facility, or extended care facility recognized by Medicare, shall
15 not be excluded from a list of valid diagnostic tests promulgated
16 pursuant to this section.

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

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

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

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

24 b. Prior to the adoption of an action by the board, the board shall
25 forward the notice of intended action and a detailed description of the
26 intended action to the Office of Administrative Law for publication in
27 the New Jersey Register.

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

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

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

40 e. The board may adopt the intended action immediately following
41 the expiration of the public comment period provided in subsection d.
42 of this section, or the hearing provided for in subsection c. of this
43 section, whichever date is later. The final action adopted by the board
44 shall be submitted for publication in the New Jersey Register to the
45 Office of Administrative Law, and shall be effective on the date of the
46 submission or such later date as the board may establish.

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

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

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

12
13 13. Section 20 of P.L.1983, c.362 (C.39:6A-9.1) is amended to
14 read as follows:

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

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

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

42 10. Additional personal injury protection coverage. Insurers shall
43 make available to the named insured electing the standard automobile
44 insurance policy and covered under section 4 of P.L.1972, c.70
45 (C.39:6A-4), and, at his option, to resident relatives in the household
46 of the named insured, suitable additional first party coverage for

1 income continuation benefits, essential services benefits, death benefits
2 and funeral expense benefits, but the income continuation and essential
3 services benefits shall cease upon the death of the claimant, and shall
4 not operate to increase the amount of any death benefits payable under
5 section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional first party
6 coverage shall be payable only to the extent that the claimant
7 establishes that the amount of loss sustained exceeds the coverage
8 specified in section 4 of P.L.1972, c.70 (C.39:6A-4). Insurers may also
9 make available to named insureds electing a standard automobile
10 insurance policy and covered under section 4 of P.L.1972, c.70
11 (C.39:6A-4), and, at their option, to resident relatives in the household
12 of the named insured or to other persons provided medical expense
13 benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4),
14 or both, additional first party medical expense **【benefit】** benefits
15 coverage. The additional coverage shall be offered by the insurer at
16 least annually as part of the coverage selection form applicable to the
17 standard automobile insurance policy and required by section 17 of
18 P.L.1983, c.362 (C.39:6A-23). Income continuation in excess of that
19 provided for in section 4 **【must】** of P.L.1972, c.70 (C.39:6A-4) shall
20 be provided as an option by insurers for disabilities, as long as the
21 disability persists, up to an income level of \$35,000.00 per year,
22 provided that a. the excess between \$5,200.00 and the amount of
23 coverage contracted for shall be written on the basis of 75% of said
24 difference, and b. regardless of the duration of the disability, the
25 benefits payable shall not exceed the total maximum amount of income
26 continuation benefits contracted for. Death benefits provided pursuant
27 to this section shall be payable without regard to the period of time
28 elapsing between the date of the accident and the date of death, if
29 death occurs within two years of the accident and results from bodily
30 injury from that accident to which coverage under this section applies.
31 The Commissioner of Insurance is hereby authorized and empowered
32 to establish, by rule or regulation, the amounts and terms of income
33 continuation insurance to be provided pursuant to this section.
34 (cf: P.L.1990, c.8, s.11)

35
36 15. Section 11 of P.L.1972, c.70 (C.39:6A-11) is amended to read
37 as follows:

38 11. Contribution among insurers. If two or more insurers are liable
39 to pay benefits under sections 4 and 10 of **【this act】** P.L.1972, c.70
40 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
41 policy or medical expense benefits under a basic automobile insurance
42 policy pursuant to section 4 of P.L. , c. (C.)(now before
43 the Legislature as this bill) for the same bodily injury, or death, of any
44 one person, the maximum amount payable shall be as specified in those
45 sections 4 and 10 of P.L.1972, C.70 (C.39:6A-4 and 39:6A-10) and
46 section 4 of P.L. , c. (C.)(now before the Legislature as this

1 bill), respectively, if additional first party coverage applies and any
2 insurer paying the benefits shall be entitled to recover from each of the
3 other insurers, only by inter-company arbitration or inter-company
4 agreement, an equitable pro-rata share of the benefits paid.

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

6

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

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

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

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

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

39

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

42 13. Discovery of facts as to personal injury protection coverage.
43 The following apply to personal injury protection coverage benefits
44 payable under a standard automobile insurance policy pursuant to
45 sections 4 and 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
46 medical expense benefits payable under a basic automobile insurance

1 policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now before the
2 Legislature as this bill):

3 a. Every employer shall, if a request is made by an insurer or the
4 Unsatisfied Claim and Judgment Fund providing personal injury
5 protection benefits under **[this act]** a standard automobile insurance
6 policy or medical expense benefits payable under a basic automobile
7 insurance policy against whom a claim has been made, furnish
8 forthwith, in a form approved by the Commissioner of Banking and
9 Insurance, a signed statement of the lost earnings since the date of the
10 bodily injury and for a reasonable period before the injury, of the
11 person upon whose injury the claim is based.

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

26 c. The injured person shall be furnished upon demand a copy of all
27 information obtained by the insurer or the Unsatisfied Claim and
28 Judgment Fund under the provisions of this section, and shall pay a
29 reasonable charge, if required by the insurer and the Unsatisfied Claim
30 and Judgment Fund.

31 d. **[Whenever]** Except for medical expense benefits provided under
32 a standard automobile insurance policy pursuant to subsection a. of
33 section 4 of P.L.1972, c.70 (C.39:6A-4), under a basic automobile
34 insurance policy pursuant to subsection b. of section 4 of P.L. _____,
35 c. _____ (C. _____)(now before the Legislature as this bill), under subsection
36 a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and additional first
37 party medical expense benefits coverage provided under a standard
38 automobile insurance policy pursuant to section 10 of P.L.1972, c.70
39 (C.39:6A-10), if there is no dispute concerning whether the
40 treatments, health care services or durable medical goods related to an
41 injury for which reimbursement is being sought are causally related to
42 an insured event, whenever the mental or physical condition of an
43 injured person covered by personal injury protection under a standard
44 automobile insurance policy or medical expense benefits under a basic
45 automobile insurance policy is material to any claim that has been or
46 may be made for such past or future personal injury protection benefits

1 or medical expense benefits, such person shall, upon request of an
2 insurer or the Unsatisfied Claim and Judgment Fund submit to mental
3 or physical examination **[by a physician or physicians , or chiropractor**
4 **or chiropractors. Only a licensed chiropractor may determine the**
5 **clinical need for further chiropractic treatment by performing a**
6 **chiropractic examination and this determination shall not depend solely**
7 **upon a review of the treating chiropractor patient records in cases of**
8 **denial of benefits]** conducted by a health care provider licensed in this
9 State in the same profession or speciality as the health care provider
10 whose services are subject to review under this section and who is
11 located within a reasonable proximity to the injured person's residence.
12 The injured person shall provide or make available to the provider any
13 pertinent medical records or medical history that the provider deems
14 necessary to the examination. The costs of any examinations
15 requested by an insurer or the Unsatisfied Claim and Judgment Fund
16 shall be borne entirely by whomever makes such request. Such
17 examination shall be conducted within the municipality of residence of
18 the injured person. If there is no qualified **[physician or chiropractor]**
19 health care provider to conduct the examination within the
20 municipality of residence of the injured person, then such examination
21 shall be conducted in an area of the closest proximity to the injured
22 person's residence. **[Personal protection insurers]** Insurers providing
23 personal injury protection coverage under a standard automobile
24 insurance policy or medical expense benefits under a basic automobile
25 insurance policy are authorized to include reasonable provisions **[in**
26 **personal injury protection coverage policies for mental and physical**
27 **examinations of]** requiring those claiming personal injury protection
28 coverage benefits or medical expense benefits to submit to mental or
29 physical examination as requested by an insurer or the Unsatisfied
30 Claim and Judgment Fund pursuant to the provisions of this section.
31 Failure to submit to a mental or physical examination requested by an
32 insurer or the Unsatisfied Claim and Judgment Fund pursuant to the
33 provisions of this section shall subject the injured person to certain
34 limitations in coverage as specified in regulations promulgated by the
35 commissioner.

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

46 f. The injured person, upon reasonable request by the insurer or the

1 Unsatisfied Claim and Judgment Fund, shall sign all forms,
2 authorizations **[,]** or releases for information, approved by the
3 Commissioner of Banking and Insurance, which may be necessary to
4 the discovery of the above facts, in order to reasonably prove the
5 injured person's losses.

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

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

22

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

25 11. a. Every action for the payment of benefits **[set forth in]**
26 payable under a standard automobile insurance policy pursuant to
27 sections 4 and 10 of **[this act]** P.L.1972, c.70 (C.39:6A-4 and 39:6A-
28 10) or medical expense benefits payable under a basic automobile
29 insurance policy pursuant to section 4 of P.L. _____, c. _____ (C. _____)(now
30 before the Legislature as this bill), except an action by a decedent's
31 estate, shall be commenced not later than **[2]** two years after the
32 injured person or survivor suffers a loss or incurs an expense and
33 either knows or in the exercise of reasonable diligence should know
34 that the loss or expense was caused by the accident, or not later than
35 **[4]** four years after the accident whichever is earlier, provided,
36 however, that if benefits have been paid before then an action for
37 further benefits may be commenced not later than **[2]** two years after
38 the last payment of benefits.

39 b. Every action by a decedent's estate for the payment of benefits
40 **[set forth in]** provided under a standard automobile insurance policy
41 pursuant to sections 4 and 10 of **[this act]** P.L.1972, c.70 (C.39:6A-4
42 and 39:6A-10) or medical expense benefits provided under a basic
43 automobile insurance policy pursuant to section 4 of P.L. _____, c. _____
44 (C. _____)(now before the Legislature as this bill) shall be commenced
45 not later than **[2]** two years after death or **[4]** four years after the

1 accident from which death results, whichever is earlier, provided,
2 however, that if benefits had been paid to the decedent prior to his
3 death then an action may be commenced not later than [2] two years
4 after his death or [4] four years after the last payment of benefits,
5 whichever is earlier, provided, further, that if the decedent's estate has
6 received benefits before then an action for further benefits shall be
7 commenced not later than [2] two years from the last payment of
8 benefits.

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

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

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

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

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

41
42 20. Section 1 of P.L.1972, c.197 (C.39:6B-1) is amended to read
43 as follows:

44 1. a. Every owner or registered owner of a motor vehicle
45 registered or principally garaged in this State shall maintain motor

1 vehicle liability insurance coverage, under provisions approved by the
2 Commissioner of Banking and Insurance, insuring against loss
3 resulting from liability imposed by law for bodily injury, death and
4 property damage sustained by any person arising out of the ownership,
5 maintenance, operation or use of a motor vehicle wherein such
6 coverage shall be at least in: **[a.] (1)** an amount or limit of
7 \$15,000.00, exclusive of interest and costs, on account of injury to, or
8 death of, one person, in any one accident; and **[b.] (2)** an amount or
9 limit, subject to such limit for any one person so injured or killed, of
10 \$30,000.00, exclusive of interest and costs, on account of injury to or
11 death of, more than one person, in any one accident; and **[c.] (3)** an
12 amount or limit of \$5,000.00, exclusive of interest and costs, for
13 damage to property in any one accident.

14 b. Notwithstanding the provisions of subsection a. of this section,
15 an owner or registered owner of an automobile, as defined in section
16 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
17 State may satisfy the requirements of subsection a. of this section by
18 maintaining a basic automobile insurance policy pursuant to section 4
19 of P.L. , c. (C.)(now before the Legislature as this bill).
20 (cf: P.L.1972, c.197, s.1)

21

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

24 2. Definitions. As used in this act:

25 "Executive director" means the official designated by and serving
26 at the pleasure of the commissioner to administer to and be in charge
27 of the Unsatisfied Claim and Judgment Fund and who shall be
28 responsible to the Unsatisfied Claim and Judgment Fund Board.

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

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

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

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

37 "Qualified person" means a resident of this State or the owner of a
38 motor vehicle registered in this State or a resident of another state,
39 territory, or federal district of the United States or province of Canada
40 or of a foreign country, in which recourse is afforded, to residents of
41 this State, of substantially similar character to that provided for by this
42 act; provided, however, that no person shall be a qualified person
43 where such person is an insured under a policy provision providing
44 coverage for damages sustained by the insured as a result of the
45 operation of an uninsured motor vehicle in a form authorized to be
46 included in automobile liability policies of insurance delivered or

1 issued for delivery in this State, pursuant to the provisions of, or any
2 supplement to, chapter 28 of Title 17 of the Revised Statutes or in a
3 form substantially similar thereto.

4 "Uninsured motor vehicle" means a motor vehicle as to which there
5 is not in force a liability policy meeting the requirements of section 3,
6 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L.1952,
7 c.173 (C.39:6-25 or C.39:6-48), and which is not owned by a holder
8 of a certificate of self-insurance under said law, but shall not include
9 a motor vehicle with a policy in force which is insured pursuant to
10 section 4 of P.L. , c. (C.)(now before the Legislature as this
11 bill).

12 "Person" includes natural persons, firms, copartnerships,
13 associations and corporations.

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

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

22 "Registration license year" means the period beginning June 1,
23 1956, and ending May 31, 1957, and each subsequent 12 month
24 period, beginning June 1 and ending the following May 31.

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

26

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

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

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

39

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

42 5. Payment of personal injury protection coverage benefits.

43 a. An insurer may require written notice to be given as soon as
44 practicable after an accident involving an automobile with respect to
45 which the policy affords personal injury protection coverage benefits
46 payable under a standard automobile insurance policy pursuant to

1 section 4 of P.L.1972, c.70 (C.34:6A-4) or medical expense benefits
2 payable under a basic automobile insurance policy pursuant to [this
3 act] section 4 of P.L. , c. (C.)(now before the Legislature
4 as this bill). In the case of claims for medical expense benefits under
5 either policy, written notice shall be provided to the insurer by the
6 treating **[medical]** health care provider no later than 21 days following
7 the commencement of treatment. Notification required under this
8 section shall be made in accordance with regulations adopted by the
9 Commissioner of Banking and Insurance and on a form prescribed by
10 the Commissioner of Banking and Insurance. Within a reasonable time
11 after receiving notification required pursuant to this act, the insurer
12 shall confirm to the treating **[medical]**health care provider that its
13 policy affords the claimant personal injury protection coverage benefits
14 as required by section **[5]** 4 of P.L.1972, c.70
15 **[(C.39:6A-5)](C.39:6A-4) or medical expense benefits pursuant to**
16 section 4 of P.L. , c. (C.)(now before the Legislature as this
17 bill).

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

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

42 d. A **[medical]**health care provider who fails to notify the insurer
43 within 21 days and whose claim for payment has been denied by the
44 insurer pursuant to the standards established by the Commissioner of
45 Banking and Insurance may, in the discretion of a judge of the

1 Superior Court, be permitted to refile such claim provided that the
2 insurer has not been substantially prejudiced thereby. Application to
3 the court for permission to refile a claim shall be made within 14 days
4 of notification of denial of payment and shall be made upon motion
5 based upon affidavits showing sufficient reasons for the failure to
6 notify the insurer within the period of time prescribed by this act.

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

20 f. In instances when multiple treating **【medical】health care**
21 providers render services in connection with emergency care, the
22 Commissioner of Banking and Insurance shall designate, through
23 regulation, a process whereby notification by one treating
24 **【medical】health care** provider to the insurer shall be deemed to meet
25 the notification requirements of all the treating **【medical】health care**
26 providers who render services in connection with emergency care.

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

1 collect, or is within the claimant's area code. Written notice to the
2 organization administering dispute resolution pursuant to sections 24
3 and 25 of P.L. , c. (C.)(now before the Legislature as this
4 bill) shall satisfy the notice request for additional time to investigate
5 a claim pursuant to this subsection. For the purpose of determining
6 interest charges in the event the injured party prevails in a subsequent
7 proceeding where an insurer has elected a 45-day extension pursuant
8 to this subsection, payment shall be considered overdue at the
9 expiration of the 45-day period or, if the injured person was required
10 to provide additional information to the insurer, within 10 business
11 days following receipt by the insurer of all the information requested
12 by it, whichever is later.

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

18 h. All overdue payments shall bear interest at the percentage of
19 interest prescribed in the Rules Governing the Courts of the State of
20 New Jersey for judgments, awards and orders for the payment of
21 money.

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

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

34

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

43 b. The Commissioner of Banking and Insurance shall designate an
44 organization, and for that purpose may, at his discretion, advertise for
45 proposals, for the purpose of administering dispute resolution
46 proceedings regarding medical expense benefits and other benefits

1 provided under personal injury protection pursuant to section 4 of P.L.
2 1972, c.70 (C.39:6A-4) or medical expense benefits coverage pursuant
3 to section 4 of P.L. , c. (C.)(now before the Legislature as this
4 bill). The commissioner shall promulgate rules and regulations with
5 respect to the conduct of the dispute resolution proceedings. The
6 organization administering dispute resolution shall utilize qualified
7 professionals who serve on a full-time basis and who meet standards
8 of competency established by the commissioner. The commissioner
9 shall establish standards of performance for the organization to ensure
10 the independence and fairness of the review process, including, but not
11 limited to, standards relative to the professional qualifications of the
12 professionals presiding over the dispute resolution process, and
13 standards to ensure that no conflict of interest exists which would
14 prevent the professional from performing his duties in an impartial
15 manner. The standards of performance shall include a requirement
16 that the organization establish an advisory council composed of parties
17 who are users of the dispute resolution mechanism established herein.
18 The commissioner may contract with a consulting firm for the
19 formulation of the standards of performance of the organization and
20 establishment of qualifications for the persons who are to conduct the
21 dispute resolution proceedings. The commissioner shall not advertise
22 for bids for the consulting firm, as provided in sections 3 and 4 of
23 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Compensation to the dispute
24 resolution professionals shall be fixed on a per case basis and adjusted
25 from time to time as appropriate, with the approval of the
26 commissioner. In no case shall compensation be paid on a contingency
27 basis. The organization shall establish a dispute resolution plan, which
28 shall include procedures and rules governing the dispute resolution
29 process and provisions for monitoring the dispute resolution process
30 to ensure adherence to the standards of performance established by the
31 commissioner. The plan, and any amendments thereto, shall be subject
32 to the approval of the commissioner.

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

1 P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c. (C.)
2 (now before the Legislature this bill) or the terms of the policy; (3) the
3 eligibility of the treatment or service for compensation; (4) the
4 eligibility of the provider performing the treatment or service to be
5 compensated under the terms of the policy or under regulations
6 promulgated by the commissioner, including whether the person is
7 licensed or certified to perform such treatment; (5) whether the
8 disputed medical treatment was actually performed; (6) whether
9 diagnostic tests performed in connection with the treatment are those
10 recognized by the professional licensing boards in the Division of
11 Consumer Affairs in the Department of Law and Public Safety or other
12 recognized professional organizations, or as otherwise provided in
13 section 12 of P.L. , c. (C.)(now before the Legislature as this bill);
14 (7) the necessity or appropriateness of consultations by other health
15 care providers; (8) disputes involving application of and adherence to
16 fee schedules promulgated by the commissioner; and (9) whether the
17 treatment performed is reasonable, necessary, and compatible with the
18 protocols provided for pursuant to P.L. , c. (C.)(now
19 before the Legislature as this bill). The dispute resolution
20 professionals may review the entire claims file of the insurer, subject
21 to any confidentiality requirement established pursuant to State or
22 federal law. All decisions of the dispute resolution professional shall
23 be in writing, in a form prescribed by the commissioner, shall state the
24 issues in dispute, the findings and conclusions on which the decision
25 is based, and shall be signed by the dispute resolution professional. All
26 decisions of a dispute resolution professional shall be binding. The
27 dispute resolution organization shall provide for the retention of all
28 documents used in dispute resolution proceedings under this section
29 and section 25 of this amendatory and supplementary act, including the
30 written decision, for a period of at least five years, in a form approved
31 by the commissioner, or for such additional time as may be established
32 by the commissioner. The written decisions of the dispute resolution
33 professional shall be forwarded to the commissioner, who shall
34 establish a record of the proceedings conducted under the dispute
35 resolution procedure, which shall be accessible to the public and may
36 be determined to have standing as precedent for subsequent dispute
37 resolution proceedings.

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

46 e. Any person submitting a matter to the dispute resolution process

1 established herein may submit for review all or a portion of a disputed
2 treatment or treatments or a dispute regarding a diagnostic test or
3 tests or a dispute regarding the providing of services or durable
4 medical goods. Any portion of a treatment or diagnostic test or
5 service which is not under review shall be reimbursed in accordance
6 with the provisions of section 5 of P.L.1972, c.70 (C.39:6A-5). If the
7 dispute resolution proceeding results in a determination that all or part
8 of a treatment or treatments, diagnostic test or tests or service
9 performed, or durable medical goods provided are medically necessary
10 and appropriate, reimbursement shall be made with interest payable in
11 accordance with the provisions of section 5 of P.L.1972, c.70
12 (C.39:6A-5).

13

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

43 b. Before certifying a medical review organization to receive
44 referrals from dispute resolution proceedings, the commissioner shall
45 determine that the organization has a sufficient number of qualified
46 health care providers, by specialty, to perform the reviews, has a

1 satisfactory procedure for maintaining the confidentiality of medical
2 records, is not owned or controlled by an insurer, and has met any
3 other requirements established by the commissioner.

4 c. The medical review organization shall establish and utilize
5 written review procedures, which shall be filed with the commissioner.
6 Every determination made by a medical review organization shall be
7 in writing and shall be retained by the organization for a period of no
8 less than five years.

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

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

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

46 g. The cost of the proceedings shall be apportioned by the dispute

1 resolution professional. Fees shall be determined to be reasonable if
2 they are consonant with the amount of the award, in accordance with
3 a schedule established by the New Jersey Supreme Court. If the
4 treatment, diagnostic test, or service performed is not determined to
5 be medically necessary or appropriate, the injured person shall not be
6 liable to pay the provider the disputed amount.

7

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

17

18 ¹[27. (New section) There is established an automobile insurance
19 industry committee to revise the territorial rating system which is in
20 place as of the effective date of this section. The committee shall
21 consist of eighteen members. Eleven members shall be representatives
22 of insurers writing automobile insurance in this State, two members
23 shall represent a rating bureau which compiles loss experience and
24 assembles statistical data for insurers writing automobile insurance in
25 this State and four members shall be public members. Of the public
26 members, one shall be appointed by the President of the Senate, the
27 Speaker of the General Assembly, the Minority Leader of the Senate
28 and the Minority Leader of the General Assembly. Of the insurer
29 members, two shall be elected from member companies of the
30 American Insurance Association, two from member companies of the
31 Alliance of American Insurers, and two from member companies of the
32 National Association of Independent Insurers or their successor
33 organizations. The remaining members affiliated with the insurance
34 industry shall be elected at large as representatives of insurers writing
35 automobile insurance in this State, but no insurer or group of insurers
36 under common control shall have more than one representative elected
37 to the board. The representatives of insurers shall include at least five
38 actuaries. The commissioner or his designee shall be the eighteenth
39 member of the committee, but shall not have voting privileges.]¹

40

41 ¹[28. (New section) No later than three months following the
42 effective date of this section, the commissioner shall cause nominations
43 to be made and an election to be held among all insurers writing
44 automobile insurance in this State. Each trade association shall
45 nominate members from their association and shall hold an election for
46 membership to the committee. The respective trade associations shall

1 nominate candidates for the five seats to be elected at large.】¹

2

3 ¹【29. (New section) The committee shall elect a chairman and a
4 vice chairman from among the members representing the insurance
5 industry elected pursuant to section 28 of this amendatory and
6 supplementary act. The committee shall review the present territorial
7 rating system and recommend any revision to the territorial rating plan
8 in existence on the effective date of this section as it deems reasonable
9 and proper; provided, however, that any such recommendation be
10 based on the principles that territories shall:

11 a. be created in such a manner as to recognize qualitative
12 differences in driving environments, which may include, but not be
13 limited to, traffic density, population density, comparative severity of
14 loss in like driving environments, similarities in the relative mix of
15 driving environments applicable to each proposed territory and
16 comparative homogeneity;

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

20 c. take into account the impact of the overlapping of traffic
21 patterns on exposure to loss, including the relative number of intra-
22 territory trips and out-of-territory trips applicable to each proposed
23 territory, for which the committee shall have access to the information
24 on commuting patterns collected pursuant to the provisions of section
25 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

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

28 e. be created in a manner which shall not result in territory
29 boundaries which are arbitrary, unfairly discriminatory, significantly
30 disproportionate in size although similar in driving environments and
31 losses, or delineated in a manner which is primarily for marketing
32 reasons rather than measuring relativity of exposure to probable
33 loss.】¹

34

35 ¹【30. (New section) The committee may utilize the resources of
36 any insurer, rating bureau, or group of insurers in performing its
37 duties. The committee shall review the data made available to it from
38 insurers or rating bureaus collecting data by zip code, as provided in
39 section 26 of this amendatory and supplementary act. The committee
40 may also request the commissioner to order a closed claim study from
41 any insurer or insurers writing private passenger automobile insurance
42 in this State, and the commissioner shall provide the committee with
43 the results of the study. The insurer or insurers supplying the
44 information from the closed claim study need not be identified to the
45 members of the committee. The committee may hold public hearings
46 as it determines are necessary in addition to its regular meetings.】¹

1 ¹【31. (New section) When the committee determines that it has
2 accumulated sufficient data to develop recommendations to the
3 commissioner, it may submit a territorial revision plan to the
4 commissioner for approval. The plan shall include at least one
5 common territorial rating system, but the committee may recommend,
6 that insurers may file individual territorial rating systems. The
7 commissioner may, if he determines that separate territorial rating
8 plans filed by individual insurers are in the interest of the citizens of
9 this State, approve an individual territorial rating system proposed by
10 an insurer, but only if the insurer's individual territorial rating system
11 meets the criteria established in section 29 of this amendatory and
12 supplementary act. The commissioner shall not approve any individual
13 territorial rating system, or any portion thereof, which contains
14 territorial configurations which he determines to be primarily directed
15 toward marketing purposes, or which would result in the likelihood
16 that an insurer's market share would be distributed unevenly
17 throughout the State.】¹

18

19 ¹【32. (New section) a. Upon finding that the plan or plans meet
20 the criteria above, the commissioner shall approve the territories or
21 require that adjustments be made in order that they conform with the
22 standards set forth in sections 26 through 33 of this amendatory and
23 supplementary act. If the commissioner approves territorial rating
24 plans for individual insurers, he shall also approve a territorial rating
25 plan for common use by insurers not filing their own plan.

26 b. Notwithstanding the provisions of section 7 of P.L.1983, c.65
27 (C.17:29A-36), the territorial configuration established by the
28 committee or by any insurer or filer pursuant to sections 29 through
29 32 of this amendatory and supplementary act shall produce territorial
30 rate relativities which accurately reflect differences in traffic density;
31 population density; and comparative severity of loss in like driving
32 environments, which do not produce unfair cross-subsidization
33 between territories with differing characteristics.】¹

34

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

44

45 ¹26. (New section) The Commissioner of Banking and Insurance
46 shall promulgate regulations, to take effect no later than 90 days

1 following the effective date of this section, which require every
2 insurer or group of insurers writing private passenger automobile
3 insurance in this State, by itself or by a rating organization on its
4 behalf, to file and implement a territorial rating plan, including
5 territorial definitions, territorial relativity factors and territorial base
6 rates, that meet the requirements of this section. Automobile
7 insurance territories shall:

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

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

17 c. consider the impact of the overlapping of traffic patterns on
18 exposure to loss, including the relative number of intra-territory trips
19 and out-of-territory trips applicable to each proposed territory;

20 d. consider the relative mix of business in each territory by driver
21 classification;

22 e. be created in a manner which shall not result in territorial
23 definitions which are arbitrary, unfairly discriminatory, significantly
24 disproportionate, or delineated in a manner which is primarily for
25 marketing reasons, rather than for measuring the relativity of exposure
26 to probable loss; and

27 f. be created so as to include such other reasonable and necessary
28 standards as the commissioner may establish by regulation.¹

29
30 ¹27. (New section) a. Within 45 days of the establishment of the
31 common territorial rating plan pursuant to section 28 of this
32 amendatory and supplementary act, each filer shall file for approval by
33 the commissioner a territorial rating plan for its use which meets the
34 standards of section 26 of this amendatory and supplementary act. A
35 filer may file for its use:

36 (1) an individual territorial rating plan which it has developed;

37 (2) the territorial rating plan of another filer which has been
38 approved pursuant to this section; or

39 (3) the common territorial rating plan established and approved
40 pursuant to section 28 of this amendatory and supplementary act.

41 b. The commissioner shall approve or disapprove the use of a
42 territorial rating plan by a filer by written notice within 15 days of its
43 filing. If the commissioner disapproves a plan, he shall state his
44 reasons therefor, along with any amendments necessary for his
45 approval. The amended plan shall be filed and approved no later than
46 15 days thereafter.

1 c. Territorial rating plans approved pursuant to this section shall
2 apply to policies of the filer issued or renewed on or after the effective
3 date of the plan, which in no case shall be more than 30 days following
4 the date of that approval and, in the case of plans initially filed and
5 approved pursuant to this section, shall be no later than March 1,
6 1999.

7 d. Approved individual territorial rating plans shall be on file and
8 available for review by filers subject to this section.

9 e. Filers shall periodically review, at least once in every five year
10 period following the effective date of this section, the continued
11 validity of the territorial rating plan it has implemented pursuant to
12 subsection a. of this section, and shall report its findings to the
13 commissioner. Based on his review of the report and a comparison of
14 the filer's territorial rating plan to the common plan established
15 pursuant to section 28 of this amendatory and supplementary act, the
16 commissioner may require the filer to amend its plan or, if the filer fails
17 to do so, to adopt the common plan.

18 f. All rating territories, and any subsequent modifications of
19 territorial rating plans, shall be filed with the commissioner and shall
20 be subject to his prior approval in accordance with this section and
21 section 26 of this amendatory and supplementary act.

22 g. As used in this section, "filer" means a rating organization or an
23 insurer or group of affiliated insurers making its own rates for private
24 passenger automobile insurance in this State.¹

25
26 ¹28. (New section) a. There is established the Automobile
27 Insurance Territorial Rating Plan Advisory Commission to review data
28 and establish one common territorial rating plan for use by insurers not
29 filing a territorial rating plan pursuant to paragraph (1) or (2) of
30 subsection a. of section 27 of this amendatory and supplementary act.
31 The territorial rating plan established by the commission shall be
32 established according to the criteria and standards provided in section
33 26 of this amendatory and supplementary act. The common territorial
34 rating plan shall be subject to the prior approval of the Commissioner
35 of Banking and Insurance, and shall be reviewed by the commissioner
36 at least once every five years as provided in section 27 of this
37 amendatory and supplementary act.

38 b. The commission shall consist of 14 members: nine
39 representatives of insurers writing private passenger automobile
40 insurance in this State appointed by the Governor with the advice and
41 consent of the Senate; four public members, of whom one shall be
42 appointed by the President of the Senate, one by the Speaker of the
43 General Assembly, one by the Minority Leader of the Senate and one
44 by the Minority Leader of the General Assembly; and the
45 Commissioner of Banking and Insurance, who shall serve ex-officio.
46 Of the insurer members appointed by the Governor, at least two

1 members shall be selected from member companies of the American
2 Insurance Association, two members selected from member companies
3 of the Alliance of American Insurers, and two members selected from
4 member companies of the National Association of Independent
5 Insurers or their successor organizations. The remaining insurer
6 members shall be selected from insurers writing automobile insurance
7 in this State, but no insurer or group of insurers under common
8 control shall have more than one representative appointed to serve on
9 the commission.

10 c. The members of the commission shall serve for two year terms
11 and until their successors are appointed and qualified.

12 d. The commission shall elect a chairman and a vice chairman from
13 among the insurer members.

14 e. The commission shall establish a common territorial rating plan
15 pursuant to subsection a. of this section within 45 days of the effective
16 date of the regulations promulgated by the commissioner pursuant to
17 section 26 of this amendatory and supplementary act.¹

18
19 ¹29. Section 7 of P.L. 1983, c. 65 (C. 17:29A-36) is amended to
20 read as follows:

21 7. Any filing made for the purpose of automobile insurance rate
22 making shall indicate the actual rate needs of the filer; provided,
23 however, that (a) each filer's rate classification definitions, as used by
24 that filer, shall be uniform Statewide; and (b) the automobile
25 insurance rate charged an insured shall not exceed two and one-half
26 times the filer's territorial base rate for each coverage, exclusive of
27 driving record surcharges and discounts **];** and (c) the automobile
28 insurance rate for the base class in any territory for any filer shall not
29 exceed 1.35 times the filer's Statewide average base rate for each
30 coverage, exclusive of driving record surcharges and discounts**].**

31 The automobile insurance rate of an automobile whose principal
32 operator is 65 years of age or older shall not exceed one and
33 one-quarter times the Statewide average rate for principal operators
34 65 years of age or older for each coverage, exclusive of driving
35 record surcharges and discounts; provided, however, that no filer shall
36 increase rates for principal operators 65 years of age or older as a
37 result of the implementation of this section unless more than 50% of
38 its insureds are principal operators 65 years of age or older.

39 As used in this section, base rate means the automobile insurance
40 rate charged for an automobile that is not used in business and not
41 used in going to and from work, except for the going to and from
42 work distance included in the pleasure use classification of the filer,
43 and where there is no youthful operator, as defined in the filer's
44 classification system. The base rate class shall not include
45 automobiles to which discounts apply under the filer's classification
46 system, including, but not limited to, farmers' and senior citizens'

1 automobiles.

2 The provisions of this section shall be implemented after the
3 implementation of the provisions of subsection a. of section 8 of this
4 act.¹

5 (cf: P.L.1983, c.65, s.7)

6

7 ¹30. Section 50 of P.L.1990, c.8 (C.17:33B-41) is amended to read
8 as follows:

9 50. a. Upon the termination of a policy of motor vehicle liability
10 insurance by cancellation for nonpayment of premium pursuant to
11 section 2 of P.L.1968, c.158 (C.17:29C-7), notice of that cancellation
12 shall be filed by the insurer with the Division of Motor Vehicles not
13 later than 30 days following the effective date of that cancellation.
14 Within 180 days of the date of enactment of P.L. , c. (now before
15 the Legislature as this bill), the division shall develop and maintain a
16 computer data base to verify compliance of owners and registrants of
17 motor vehicles with the motor vehicle liability insurance requirements
18 of section 1 of P.L.1972, c.197 (C.39:6B-1). The data base shall be
19 developed and maintained so that State and local law enforcement
20 agencies can efficiently access the data base. The data base shall be
21 funded from the Uninsured Motorist Prevention Fund established
22 pursuant to section 2 of P.L. 1983, c. 141 (C.39:6B-3); except that the
23 State Treasurer shall not disburse any funds to the director for the
24 costs associated with the establishment and operation of the data base
25 until the Director of the Division of Motor Vehicles certifies to the
26 satisfaction of the Treasurer that the data base is fully operational.

27 (1) The information filed by the insurer shall include:

28 (a) the name, year, and driver's license number of each insured
29 owner or operator, and the address of the named insured;

30 (b) the make, year and vehicle identification number of each
31 insured vehicle; and

32 (c) the policy number, effective date and expiration date of each
33 policy.

34 (2) Each insurer shall provide this information on magnetic tape or
35 in another form the division agrees to accept.

36 (3) The information to be filed pursuant to this subsection shall be
37 confidential and proprietary and shall not be a public record subject to
38 disclosure pursuant to section 2 of P.L.1963, c.73 (C.47:1A-2). The
39 division shall establish security procedures to protect the
40 confidentiality of the information provided pursuant to this subsection.

41 (4) In addition to the information supplied by insurers pursuant to
42 paragraph (1) of this subsection, the computer data base shall also
43 contain the following:

44 (a) the name, date of birth, address and driver's license number of
45 all persons with current driver's licenses in this State; and

46 (b) all current motor vehicle registrations.

1 (5) The division shall, at least monthly:

2 (a) update the data base with the motor vehicle insurance
3 information provided by the insurers in accordance with paragraph (1)
4 of this subsection; and

5 (b) compare all current motor vehicle registrations against the data
6 base.

7 b. The division shall notify the person whose policy was canceled
8 that, unless proof of motor vehicle liability insurance is filed with the
9 division within 30 days of the notification or some other allowable
10 circumstance exists and the division is notified of that circumstance
11 within 30 days of the notification, the sanctions and penalties of this
12 section shall apply.

13 c. If the Director of the Division of Motor Vehicles has not
14 received proof of motor vehicle liability insurance or other allowable
15 circumstances within 30 days pursuant to subsection b. of this section,
16 he shall suspend the registration of such vehicle, except that:

17 (1) Suspension shall not be made under this subsection upon the
18 basis of a cancellation of motor vehicle liability insurance if the
19 registration certificate and registration plates of the motor vehicle are
20 surrendered prior to the time at which the cancellation of insurance
21 becomes effective. Such surrender shall be made to such officers of
22 the division as the director shall direct. For the purposes of this
23 paragraph, the expiration of a registration without renewal of that
24 registration shall be deemed to be a surrender of registration as of the
25 date of expiration;

26 (2) Suspension shall not be made under this subsection upon a
27 cancellation of motor vehicle liability insurance if the vehicle has been,
28 or will be, prior to the date of that cancellation, removed from the
29 United States in North America and the Dominion of Canada for the
30 purpose of international traffic, provided that the owner of the vehicle,
31 prior to the date of that cancellation, has filed with the director a
32 statement, in a form prescribed by him, indicating that the vehicle has
33 been, or will be, so removed, and agreeing to notify the director
34 immediately upon return of the vehicle to the United States in North
35 America or the Dominion of Canada. Upon receipt of the statement
36 the director shall restrict the use of the registration to such
37 international traffic until new proof that motor vehicle liability
38 insurance has been secured for the vehicle;

39 (3) Suspension need not be made under this subsection upon the
40 basis of a cancellation of motor vehicle liability insurance if the period
41 of time during which the motor vehicle remained both registered and
42 uninsured was not greater than 15 days. The director shall promulgate
43 regulations governing the conditions under which suspension action
44 may be withheld pursuant to this paragraph.

45 d. Notwithstanding the provisions of subsection c. of this section,
46 an order of suspension may be rescinded if the registrant pays to the

1 commissioner a civil penalty in the amount of \$4 for each day up to 90
2 days for which motor vehicle liability insurance was not in effect. The
3 provisions of this subsection shall apply only once during any
4 36-month period and only if the registrant surrenders the certificate of
5 registration and registration plates to the director not more than 90
6 days from the date of cancellation of motor vehicle liability insurance
7 coverage or submits to the director proof of motor vehicle liability
8 insurance which took effect not more than 90 days from the
9 cancellation of his previous motor vehicle liability insurance.

10 e. Any motor vehicle, the registration for which has been
11 suspended pursuant to this section, shall not be registered or
12 reregistered in the name of the same registrant, or in any other name
13 where the director has reasonable grounds to believe that such
14 registration or reregistration will have the effect of defeating the
15 purposes of this section, and no other motor vehicle shall be registered
16 in the name of such person during the period of suspension.

17 f. No registration plates shall be returned to the registrant until
18 proof of motor vehicle liability insurance is submitted to the director.

19 g. If a registrant has not surrendered his certificate of registration
20 and registration plates or obtained motor vehicle liability insurance
21 within 90 days from the date of cancellation of motor vehicle liability
22 insurance, the director shall suspend the driver's license of any such
23 registrant. The suspension shall take effect on the date specified in the
24 order and shall remain in effect until termination of the suspension of
25 the registrant's registration.

26 h. The Director of the Division of Motor Vehicles shall adopt rules
27 and regulations pursuant to the "Administrative Procedure Act,"
28 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of
29 this section. The director may, by regulation, require that the
30 provisions of this section shall be applicable to the termination of
31 policies of motor vehicle liability insurance for reasons other than
32 cancellation for nonpayment of premium, including nonrenewals.¹
33 (cf: P.L.1990, c.8, s.50)

34

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

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

45 The governing board of any plan established pursuant to the
46 commissioner's rules and regulations shall continue to exercise such

1 administrative authority, subject to the commissioner's oversight and
2 as provided in any rules and regulations promulgated pursuant to this
3 section, as is necessary to ensure the plan's efficient operation,
4 including, but not limited to, the authority to investigate complaints
5 and hear appeals from applicants, insureds, producers, servicing
6 carriers or participants about any matter pertaining to the plan's proper
7 administration, as well as the authority to appoint subcommittees to
8 hear such appeals. Any determination of an appeal by a plan's
9 governing board shall be subject to review by the commissioner on the
10 record below, and shall not be considered a contested case under the
11 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
12 seq.). The commissioner's determination shall be a final order and
13 shall be subject to review by the Superior Court.

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

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

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

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

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

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

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

46 g. That the plan shall not be subsidized by any source external to

1 the plan;

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

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

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

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

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

39 (5) Qualified producers may submit eligible person risks from
40 automobile insurance urban enterprise zones to the plan for coverage
41 in the voluntary rating tier. As used in this subsection i.: a "qualified
42 producer" means a UEZ agent, as defined in section 19 of P.L.1997,
43 c.151 (C.17:33C-1), who has met any limit on exposures that may be
44 written in accordance with the UEZ agent's agreement with the
45 appointing insurer pursuant to section 22 of P.L.1997, c.151
46 (C.17:33C-4); and a producer who: is duly licensed with

1 property/casualty authority for the three years immediately preceding
2 the effective date of P.L.1997, c.151 (C.17:33B-64 et al.); has no
3 affiliation with a voluntary market insurer for the placement of
4 automobile insurance; had an affiliation with a voluntary market
5 insurer for the placement of automobile insurance that was terminated
6 by the insurer in the last three years; demonstrates to the plan his
7 competency, efficiency and effectiveness in the solicitation, negotiation
8 and effectuation of automobile insurance as evidenced by any history
9 of disciplinary actions or complaints against the producer, and other
10 relevant factors; and conducts his business in an office in an
11 automobile insurance urban enterprise zone. For purposes of this
12 subsection i., "insurer" means an insurer or group of affiliated insurers
13 admitted or authorized to transact the business of automobile
14 insurance in this State;

15 (6) This subsection shall expire on **[December 31, 2000]** the first
16 day of the 61st month after the first policy using the voluntary rating
17 tier required by this subsection was issued to a risk, as certified by the
18 commissioner.

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

24 The governing body administering the plan shall report annually to
25 the Legislature and the Governor on the activities of the plan. The
26 report shall contain an actuarial analysis regarding the adequacy of the
27 rates for each coverage for the safeness and soundness of the plan.¹
28 (cf: P.L.1997, c.151, s.26)

29

30 ¹**[34.] 32.**¹ (New section) There is established in the Division of
31 Criminal Justice in the Department of Law and Public Safety the Office
32 of the Insurance Fraud Prosecutor. The Insurance Fraud Prosecutor
33 shall be appointed by, and serve at the pleasure of, the Governor with
34 the advice and consent of the Senate and be under the direction and
35 supervision of the Attorney General. Any person appointed as
36 Insurance Fraud Prosecutor shall have had prosecutorial experience,
37 including experience in the litigation of civil and criminal cases. The
38 Attorney General shall establish standards of performance for the
39 Office of Insurance Fraud Prosecutor, which shall include standards of
40 accountability.

41

42 ¹**[35.] 33.**¹ (New section) The Attorney General may appoint
43 such personnel, including attorneys and clerical personnel, as
44 necessary to carry out the duties of the office. The personnel charged
45 with investigatory work in ¹the¹ Division of Insurance ¹Fraud
46 Prevention in the Department of Banking and Insurance shall be

1 transferred to the Office of the Insurance Fraud Prosecutor as
2 determined by the Commissioner of Banking and Insurance and the
3 Attorney General, in accordance with a plan of reorganization, and
4 shall become the Fraud Investigatory Section of the Office of the
5 Insurance Fraud Prosecutor. ¹ 【A section of the Office of Insurance
6 Fraud Prosecutor shall be designated to be responsible for establishing
7 a liaison and continuing communication between the office and the
8 Department of Health and Senior Services, the Department of Human
9 Services, any professional board in the Division of Consumer Affairs
10 in the Department of Law and Public Safety, the Department of
11 Banking and Insurance, the Division of State Police, every county
12 prosecutor's office, such local government units as may be necessary
13 or practicable and insurers.】 Personnel transferred from the Division
14 of Insurance Fraud Prevention in the Department of Banking and
15 Insurance to the Office of the Insurance Fraud Prosecutor pursuant to
16 this section and any such reorganization plan shall be transferred with
17 all tenure rights and any rights or protections provided by Title 11A
18 of the New Jersey Statutes or other applicable statutes, as provided in
19 section 8 of P.L.1983, c.320 (C.17:33A-8), and any pension law or
20 retirement system; and, notwithstanding the provisions of section 4 of
21 P.L.1970, c.74 (C.52:17B-100), or any other law, to the contrary, all
22 supervisory and investigative personnel of the Office of the Insurance
23 Fraud Prosecutor including, but not limited to, supervisory and
24 investigative personnel of the Division of Insurance Fraud Prevention
25 transferred pursuant to this section and any such reorganization plan,
26 shall not be confidential employees for the purposes of the "New
27 Jersey Employer-Employee Relations Act," P.L.1941, c.100
28 (C.34:13A-1 et seq.).¹

29
30 ¹ 【36.】 34.¹ (New section) ¹ a. A section of the Office of Insurance
31 Fraud Prosecutor shall be designated to be responsible for establishing
32 a liaison and continuing communication between the office and the
33 Department of Health and Senior Services, the Department of Human
34 Services, any professional board in the Division of Consumer Affairs
35 in the Department of Law and Public Safety, the Department of
36 Banking and Insurance, the Division of State Police, every county
37 prosecutor's office, such local government units as may be necessary
38 or practicable and insurers.

39 b.¹ The section of the office responsible for such liaison shall
40 establish procedures: (1) for receiving notice from all entities
41 enumerated in ¹ subsection a. of this¹ section ¹ 【35 of this amendatory
42 and supplementary act】¹ of any case in which fraud is suspected or has
43 been substantiated; (2) for receiving referrals for the investigation of
44 alleged fraud; (3) for receiving referrals for the prosecution of fraud
45 by the office; (4) for receiving and referring information regarding
46 cases, administrative or otherwise, under investigation by any

1 department or other entity to the appropriate authority, and (5) for
2 providing information to and coordinating information among any
3 referring entities on pending cases of insurance fraud which are under
4 investigation or being litigated or prosecuted. The liaison section of
5 the office shall maintain a record of every referral or investigation.

6
7 ¹~~37.~~ 35.¹ (New section) The Insurance Fraud Prosecutor shall
8 investigate and, if warranted, prosecute, cases referred to it by
9 insurers, State agencies, or county and municipal governments. The
10 Insurance Fraud Prosecutor may assist county prosecutors in the
11 investigation and prosecution of fraud, and shall give county
12 prosecutors access to the data base maintained pursuant to section
13 ¹~~40~~ 38¹ of this amendatory and supplementary act.

14
15 ¹~~38.~~ 36.¹ (New section) The Attorney General shall, in
16 consultation with county prosecutors, establish a Statewide fraud
17 enforcement policy for all State and local agencies, including
18 guidelines for the investigation and prosecution of fraud, which shall
19 include standards for detecting fraud, for the investigation of alleged
20 fraud and standards for the submission of cases for prosecution.
21 Priorities shall be established among the cases referred to the office for
22 prosecution or other litigation and the office shall assist referring
23 entities in establishing priorities among investigations or cases to be
24 disposed of by the entities themselves. The Insurance Fraud
25 Prosecutor shall prosecute criminal cases, litigate civil cases as
26 appropriate, or assist county prosecutors in prosecuting criminal cases
27 in accordance with the guidelines and priorities so established.

28
29 ¹~~39.~~ 37.¹ (New section) Standards of performance shall be
30 established for the Fraud Investigatory Section, which shall include,
31 but not be limited to, recording the cases referred by insurers, local
32 government agencies and others which are assigned to the Fraud
33 Investigatory Section, investigating cases of alleged fraud in
34 accordance with the priorities established by the Insurance Fraud
35 Prosecutor, recording the disposition of the cases referred to the
36 section, and making recommendations to the Insurance Fraud
37 Prosecutor as to any procedural, regulatory, or statutory changes
38 which may be necessary to carry out the provisions of this amendatory
39 and supplementary act.

40
41 ¹~~40.~~ 38.¹ (New section) a. The Insurance Fraud Prosecutor shall
42 maintain a data base which includes referrals, reports of fraud
43 investigations, prosecution, or litigation, and the results of such
44 proceedings, which shall include: (1) identification of the referring
45 entity; (2) type of fraud; (3) disposition of case; and (4) such other
46 data as may be necessary to the work of the office and the referring

1 entities.

2 b. The Insurance Fraud Prosecutor shall provide for the reporting
3 of claims information by insurers writing at least \$2,000,000 in direct
4 insurance premiums in any calendar year, in a standard reporting form,
5 which shall include, but shall not be limited to, information on stolen
6 vehicles, including the owners of such vehicles, information on
7 automobile accidents, including date and location of accidents, persons
8 involved in accidents, the kinds of injuries sustained in accidents and
9 treating health care providers, for the purpose of identifying patterns
10 of possible fraudulent activity, which information shall be shared with
11 county prosecutors, local law enforcement officials, and the New
12 Jersey State Police. Every insurer shall submit the data required by the
13 Insurance Fraud Prosecutor for all claims closing with payment during
14 a period established by the Insurance Fraud Prosecutor.

15
16 ¹[41.] 39.¹ (New section) The Insurance Fraud Prosecutor shall
17 have access to all necessary information in the possession of the State
18 or local public entities, including agency inspection reports, motor
19 vehicle records and license information, individual case files, and
20 intelligence information compiled and maintained by the Division of
21 State Police in the Department of Law and Public Safety. Upon the
22 request of the Insurance Fraud Prosecutor, any insurer which has
23 referred a case to the Insurance Fraud Prosecutor, or to any county
24 or local government agency shall make all information on the case
25 available to the Office of the Insurance Fraud Prosecutor that the
26 Insurance Fraud Prosecutor shall request.

27
28 ¹[42.] 40.¹ (New section) The Attorney General shall direct the
29 Office of the Insurance Fraud Prosecutor to:

30 a. Confer from time to time with departments or other units of
31 State government which have units which investigate fraud, in order
32 to coordinate activities, share information, and provide any assistance
33 necessary to any State agency in overseeing administrative
34 enforcement activities;

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

37 c. In connection with insurance fraud enforcement activities, act as
38 the liaison for the Executive Branch of government with agencies
39 involved in insurance fraud enforcement outside the Executive Branch,
40 including federal agencies and the Judiciary.

41 d. Provide an annual report to the Governor and the Legislature,
42 no later than March 1 of each year, as to the activities of the Insurance
43 Fraud Prosecutor for the preceding twelve months, including, but not
44 limited to, the number of cases referred, the number of cases
45 investigated, the number of cases in which professional licenses were
46 suspended or revoked, by type of license, the number of cases

1 prosecuted, the number of convictions procured, and the aggregate
2 amount of money collected in fines and returned in restitution to
3 insurers or others.

4
5 ¹[43.] 41.¹ (New section) In the case of a professional licensed
6 or certified by a professional licensing board in the Division of
7 Consumer Affairs in the Department of Law and Public Safety who is
8 guilty of fraud, the Insurance Fraud Prosecutor may recommend to the
9 appropriate board a suspension or revocation of the professional
10 license.

11
12 ¹[44.] 42.¹ (New section) The Insurance Fraud Prosecutor shall
13 consider the restitution of moneys to insurers and others who are
14 defrauded as a major priority, in order that policyholders may benefit
15 from the prosecution of those persons guilty of insurance fraud, and
16 to that end, any assets of any person guilty of fraud shall be subject to
17 seizure.

18
19 ¹[45.] 43.¹ (New section) The Insurance Fraud Prosecutor shall
20 have access to all information concerning insurance fraud enforcement
21 activities in the possession of all State departments and agencies. The
22 office shall meet on a regular basis with representatives of State
23 departments and agencies and county prosecutors to set specific goals
24 and strategies for the most effective resolution of insurance fraud
25 cases, whether by criminal, civil, or administrative enforcement action,
26 or a combination thereof.

27
28 ¹[46.] 44.¹ (New section) Any county prosecutor may apply to
29 the Office of Insurance Fraud Prosecutor for reimbursement for
30 activities undertaken in connection with investigating and prosecuting
31 insurance fraud. The Attorney General shall allocate such funds as he
32 deems necessary from such moneys as may be appropriated for the
33 operation of the Office of Insurance Fraud Prosecutor to a fund
34 dedicated for the purpose of reimbursing county prosecutors or
35 sharing in fines levied by the Attorney General, which reimbursement
36 or sharing may be made by the Attorney General at his discretion.

37
38 ¹[47.] 45.¹ (New section) Every state and local law enforcement
39 agency, including the New Jersey State Police, shall make available to
40 investigators employed by insurers, upon presentation of appropriate
41 identification, information from any accident report, as set forth in this
42 section, no later than 24 hours following the time of occurrence. The
43 information may include, but need not be limited to, the names and
44 addresses of the owners of the vehicles, insurance information
45 recorded on the accident report, and the names and addresses of
46 passengers in the vehicles at the time of the occurrence and, if

1 applicable, the name of any pedestrian injured in an accident. Every
2 accident report form shall contain the names and addresses of any
3 person occupying a vehicle involved in an accident, and any pedestrian
4 injured in an accident.

5
6 ¹[48.] 46.¹ (New section) The Attorney General shall annually,
7 on or before October 1, certify to the State Treasurer an amount
8 allocable to the expenses of the Office of the Insurance Fraud
9 Prosecutor for the preceding fiscal year, which amount shall be
10 transferred to the Department of Law and Public Safety by the State
11 Treasurer from the amounts assessed and collected for the operation
12 of the Division of Insurance Fraud Prevention in the Department of
13 Banking and Insurance pursuant to section 8 of P.L.1983, c.320
14 (C.17:33A-8).

15
16 ¹[49.] 47.¹ (New section) For the purposes of sections ¹[50] 48¹
17 through ¹[63] 61¹ of this amendatory and supplementary act:

18 "Commissioner" means the Commissioner of Banking and
19 Insurance;

20 "Claim" means any claim filed under a policy of insurance issued
21 pursuant to R.S.17:17-1, P.L.1972, c.70 (C.39:6A-1 et seq.) or any
22 policy of life or health insurance issued pursuant to Title 17 of the
23 Revised Statutes or Title 17B of the New Jersey Statutes;

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

28 "Ombudsman" means the Insurance Claims Ombudsman appointed
29 pursuant to section ¹[50] 48¹ of this amendatory and supplementary
30 act.

31
32 ¹[50.] 48.¹ (New section) There is created within the Division of
33 Consumer Affairs in the Department of Law and Public Safety the
34 Office of the Insurance Claims Ombudsman. The ombudsman shall be
35 appointed by the Governor with the advice and consent of the Senate
36 and shall serve at the pleasure of the Governor during the Governor's
37 term of office. The ombudsman shall devote his entire time to the
38 duties of his office. Any vacancy occurring in the position of
39 ombudsman shall be filled in the same manner as the original
40 appointment. If the ombudsman shall be unable for any reason to
41 serve his full term of office, the Governor may designate an acting
42 ombudsman until a successor is appointed and qualified. The
43 ombudsman shall have at least a baccalaureate degree and at least
44 seven years' experience in property and casualty or life and health
45 insurance, which may include experience as a broker or an agent.

1 ¹**[51.] 49.**¹ (New section) The ombudsman shall:

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

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

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

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

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

20 f. Publish and disseminate buyers' guides and, where provided by
21 law, comparative rates; provided, however, that this shall not apply to
22 any policy of health insurance issued pursuant to P.L.1992, c.161
23 (C.17B:27A-2 et seq.) or P.L.1992, c.162 (C.17B:27A-17 et seq.).

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

27 h. Promulgate such rules and regulations as shall be necessary to
28 effectuate the purposes of sections ¹**[50] 48**¹ through ¹**[63] 61**¹ of
29 this amendatory and supplementary act; and

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

32

33 ¹**[52.] 50.**¹ (New section) Any person who: a. has reasonable
34 cause to believe that an insurer has failed or refuses to settle a claim
35 in accordance with the provisions of the insurance contract or engaged
36 in any practice in violation of the provisions of P.L.1985, c.179
37 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et seq.), P.L.1982,
38 c.95 (C.17:35C-1 et seq.), chapter 30 of Title 17B of the New Jersey
39 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11); and, in the
40 case of disputed claims, b. has previously filed an appeal with the
41 insurer's internal appeals procedure established pursuant to section
42 ¹**[57] 55**¹ of this amendatory and supplementary act, which has been
43 adjudicated, or other dispute resolution procedure established pursuant
44 to P.L.1972, c.70 (C.39:6A-1 et seq.), P.L.1997, c.192 (C.26:2S-1 et
45 seq.), sections 1 through 12 of P.L.1983, c.358 (C.39:6A-24 through
46 39:6A-35, inclusive) or sections 24 and 25 of P.L. , c. (C.)(now

1 before the Legislature as this bill) may file an application with the
2 ombudsman for a review of the claims settlement.

3

4 ¹[53.] 51.¹ (New section) In any investigation involving a
5 disputed claim, the ombudsman may:

6 a. Investigate whether the claims settlement was appropriate and
7 in accordance with the contract;

8 b. Make the necessary inquiries and obtain such information as he
9 deems necessary;

10 c. Hold a hearing on the disputed claim;

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

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

15

16 ¹[54.] 52.¹ (New section) The ombudsman need not investigate
17 any complaint if he determines that:

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

20 b. The complaint has been too long delayed to justify present
21 investigation;

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

24 d. The matter complained of is not within the investigatory
25 authority of the office.

26

27 ¹[55.] 53.¹ (New section) The ombudsman shall maintain a
28 central registry of all claims investigations which have been disposed
29 of and closed, the nature of the investigation, findings, and
30 recommended actions. No information so compiled shall be construed
31 to be a public record. In addition, the ombudsman shall:

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

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

43

44 ¹[56.] 54.¹ (New section) With respect to trade or marketing
45 practices, the ombudsman may:

46 a. Conduct an investigation regarding an insurer's trade practices,

- 1 including claims settlement practices and marketing practices;
2 b. Make the necessary inquiries and obtain such information as he
3 deems necessary;
4 c. Hold a hearing;
5 d. Inspect any books or records which may be necessary for the
6 investigation;
7 e. Compel any person to produce at a specific time and place, by
8 subpoena, any documents, books, records, papers, objects or other
9 evidence which he believes may relate to the investigation.

10 The ombudsman shall report his findings to the commissioner with
11 respect to the trade practices or marketing practices under
12 investigation.

13

14 ¹~~57.~~ 55.¹ (New section) Every insurer writing property and
15 casualty insurance or life insurance in this State shall establish an
16 internal appeals procedure for the adjudication of disputed claims, in
17 accordance with terms set forth by the commissioner by rule and
18 regulation or as otherwise provided by law or regulation. The
19 adjudication shall be conducted by a panel of the insurer's employees,
20 who shall be personnel other than those responsible for claims payment
21 on a day-to-day basis and shall be conducted within 10 business days
22 of the receipt of the complaint.

23

24 ¹~~58.~~ 56.¹ (New section) Complaints shall be filed on a form set
25 forth by the ombudsman. The office of the ombudsman shall
26 acknowledge the receipt of complaints, and advise the applicants of
27 any action taken or opinions and recommendations which may have
28 been made by it to the insurer. The ombudsman shall make
29 recommendations to the commissioner as he deems necessary,
30 including, but not limited to:

31 a. A recommendation that a policy form or endorsement thereon
32 which he finds unfairly discriminatory, misleading or contrary to public
33 policy be modified;

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

37 c. A recommendation that the claims settlement practices of a
38 specific insurer or insurers be further investigated by the
39 commissioner;

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

43

44 ¹~~59.~~ 57.¹ (New section) Every buyer's guide which is required
45 to be provided to insureds for any line of insurance shall contain a
46 notice describing the functions of the ombudsman, the mailing address

1 of the ombudsman, and a toll-free information telephone number. The
2 ombudsman may publicize his existence, function and activities to the
3 public at large.

4
5 ¹**[60.] 58.**¹ (New section) a. Any correspondence or written
6 communication from any applicant and any written material submitted
7 by an insurer shall remain confidential and shall not be part of any
8 public record, unless the parties authorize, in writing, the release of
9 the information, except for such disclosures as may be necessary to
10 enable the ombudsman to perform his duties and to support any
11 opinions or recommendations.

12 b. Any person conducting or participating in any investigation of
13 a complaint who discloses to any person, other than the office of the
14 ombudsman, or those authorized by the ombudsman to receive it, any
15 information collected during the investigation, is guilty of a disorderly
16 person's offense.

17 c. Any statement or communication made by the office of the
18 ombudsman relevant to a complaint received by the ombudsman, to
19 proceedings conducted by the ombudsman, or relating to an
20 investigation conducted by the ombudsman, which is provided to the
21 office in good faith, shall be absolutely privileged.

22 d. The ombudsman shall not be required to testify in court with
23 respect to matters held to be confidential except as the court may
24 deem necessary to enforce the provisions of sections ¹**[50] 48**¹
25 through ¹**[63] 61**¹ of this amendatory and supplementary act.

26
27 ¹**[61.] 59.**¹ (New section) Upon making his determination as to
28 the appropriate disposition of a claim, the ombudsman shall notify the
29 insurer and the claimant of his decision. The decision shall be
30 admissible in any court action or any other proceeding which is
31 instituted to determine final disposition of the claim. The ombudsman
32 may file a brief with the court in connection with an action relating to
33 the disposition of claim.

34
35 ¹**[62.] 60.**¹ (New section) Any person who willfully hinders the
36 lawful actions of the ombudsman or willfully refuses to comply with
37 his lawful demands, including the demand for the inspection of
38 records, shall be subject to a penalty of not more than \$5,000. The
39 penalty shall be collected and enforced by summary proceedings
40 pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.
41 Each violation of sections ¹**[50] 48**¹ through ¹**[63] 61**¹ of this
42 amendatory and supplementary act shall constitute a separate offense.
43 Notwithstanding any other provision of law to the contrary, no
44 investigation or determination made by the ombudsman shall be
45 subject to the provisions of P.L.1960, c. 39 (C.56:8-1 et seq.).

1 ¹**[63.] 61.**¹ (New section) The ombudsman shall report to the
2 Governor and the Legislature on or before September 30 of each year,
3 summarizing his activities for the preceding year, documenting any
4 significant insurance industry problems with regard to claims
5 settlement practices in any line of insurance, and setting forth any
6 recommendations for statutory or regulatory change which will further
7 the State's capacity to resolve claims disputes.

8

9 ¹**[64.] 62.**¹ Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended
10 to read as follows:

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

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

16 (b) In case of nonpayment of premium;

17 provided that, notwithstanding the failure of an insurer to comply
18 with this section, the policy shall terminate on the effective date of any
19 other insurance policy with respect to any automobile designated in
20 both policies.

21 **[If a named insured qualifies for his insurer's non-standard rate**
22 **level after having been insured at the standard rate level, the insurer**
23 **shall mail or deliver to the named insured, at the address shown in the**
24 **policy, at least 60 days' advance notice of its intention to renew at the**
25 **non-standard rate level.]**

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

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

30

31 ¹**[65.] 63.**¹ (New section) a. An insurer authorized to transact or
32 transacting automobile insurance business in this State shall file with
33 the commissioner, for the commissioner's approval, an endorsement to
34 its automobile liability insurance policy which contains a "named
35 excluded driver" provision that would exclude physical damage
36 coverage on an automobile covered by an automobile liability
37 insurance policy if it is operated by the "named excluded driver." For
38 purposes of this section, "named excluded driver" means a driver in the
39 household of the named insured who is specifically identified in the
40 endorsement as a person whose operation of an automobile covered
41 under the automobile liability insurance policy at the time of an
42 accident would result in the denial of a physical damage claim for that
43 automobile.

44 b. The premium charged for the physical damage coverage on a
45 policy containing a "named excluded driver" endorsement shall not
46 reflect the claim experience or driving record of the "named excluded

1 driver" or drivers.

2 c. Election of a "named excluded driver" endorsement shall be in
3 writing and signed by the named insured on a form prescribed by the
4 commissioner. The "named excluded driver" endorsement shall
5 continue in force as to subsequent renewal or replacement policies
6 until the insurer or its authorized representative receives a properly
7 executed form electing to discontinue the endorsement.

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

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

14

15 ¹[66.] 64.¹ (New section) If an insurer has a financial
16 arrangement with an auto body repair shop or other repair facility or
17 a network of facilities for the purpose of repairing vehicles covered
18 under physical damage, collision, or comprehensive coverages, the
19 insurer shall not deny a person the right to select an auto body repair
20 shop or other repair facility of his choice for repair of a covered
21 vehicle, provided that such auto body repair shop or other repair
22 facility elected by the person accepts the same terms and conditions as
23 the shop, facility, or network with which the insurer has an
24 arrangement and agrees to repair the covered vehicle at the same
25 price.

26

27 ¹[67.] 65.¹ (New section) a. The Commissioner of Banking and
28 Insurance may, in connection with any profits report made under
29 P.L.1988, c.118 (C.17:29A-5.6 et seq.), require a review of all or part
30 of the filing by qualified independent actuary, including the elements
31 of the filing including the insurer or filer's assumptions with respect to
32 the development of losses or loss adjustment expenses developed to
33 an ultimate basis, allowance for profit and contingencies and
34 anticipated investment income.

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

39

40 ¹[68.] 66.¹ (New section) a. For the purposes of this section:

41 "Qualified person" means a person qualified by the Commissioner
42 of Banking and Insurance to intervene in public hearings pursuant to
43 this section;

44 "Rate filing" means a filing for a rate increase by an automobile
45 insurer writing private passenger automobile insurance in this State,
46 other than a rate filing made pursuant to any statutory change in

1 coverage provided under a policy of private passenger automobile
2 insurance.

3 b. The Commissioner of Banking and Insurance shall establish
4 standards for qualifying persons to intervene in rate filings pursuant to
5 this section. The standards shall include, but shall not necessarily be
6 limited to, requiring that any person intervening in a rate filing
7 demonstrate: (1) expertise in the insurance laws of this State; (2) an
8 understanding of the actuarial principles employed in establishing rates
9 and rating systems; (3) sufficient access to a qualified actuary and
10 sufficient expertise to conduct a technical examination of a rate filing;
11 (4) sufficient resources to intervene in the rate filing process as
12 provided herein; and (5) that the person represents the interest of
13 consumers.

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

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

22 e. If an insurer or rating organization files for a rate increase for
23 private passenger automobile insurance, the commissioner shall notify
24 the public of the proposed rate change in a newspaper or newspapers
25 of general circulation throughout the State. A qualified person may
26 request, and shall receive, a copy of the rate filing and any
27 amendments and supplements thereto and shall pay the expenses in
28 connection therewith. The qualified person may request that the
29 commissioner certify the rate filing for a hearing pursuant to section
30 14 of P.L.1944, c.27 (C:17:29A-14).

31 f. The commissioner shall establish by regulation the terms and
32 conditions under which the proceedings under this section shall be
33 conducted, including, but not limited to the supporting material which
34 shall accompany the intervention.

35 g. Upon determining that the intervenor has demonstrated that the
36 qualified person has made a substantial contribution to the adoption of
37 any order, regulation, or decision by the commissioner or a court in
38 connection with a rate filing made pursuant to this section, the
39 commissioner shall award reasonable advocacy and witness fees and
40 expenses.

41

42 ¹[69.] 67.¹ (New section) a. Except for the plan established
43 pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1), every insurer
44 writing private passenger automobile insurance in this State pursuant
45 to P.L.1972, c.70 (C.39:6A-1 et seq.) shall file rates with the
46 Commissioner of Banking and Insurance which result in:

1 (1) a reduction of at least 25% from the personal injury protection
2 territorial base rate applicable to medical expense benefits, at least
3 10% of which shall reflect a reduction in the actuarial value of the
4 medical expense benefits provided pursuant to section 4 of P.L.1972,
5 c.70 (C.39:6A-4), within the policy limits provided for in that section;

6 (2) a reduction of at least 22% in the territorial base rate for bodily
7 injury liability coverage applicable to named insureds to whom the
8 Limitation on Lawsuit Option provided for in subsection a. of section
9 8 of P.L.1972, c.70 (C.39:6A-8) applies;

10 (3) a reduction of at least 6% in the territorial base rate for
11 collision coverage which shall reflect the provisions of section ¹**[66]**
12 64¹ of this amendatory and supplementary act; and

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

23 b. The rate filings reflecting these reductions shall apply to policies
24 issued or renewed on or after 90 days following:

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

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

32 whichever is later.

33

34 ¹**[70.] 68.**¹ Section 3 of P.L.1991,c.154 (C.17:28-1.7) is amended
35 to read as follows:

36 3. Every owner, registrant or operator of a motor bus registered or
37 principally garaged in this State and every person or organization
38 legally responsible for his acts or omissions, is hereby exempted from
39 tort liability for noneconomic loss to a passenger who has a right to
40 receive benefits under section 2 of this act as a result of bodily injury
41 arising out of the ownership, operation, maintenance or use of a motor
42 bus in this State, unless that person has sustained a personal injury
43 which results in death; dismemberment; significant disfigurement or
44 significant scarring; **[a fracture]**displaced fractures; loss of a fetus;
45 **[permanent loss of use of a body organ, member, function or system;**
46 permanent consequential limitation of use of a body organ or member;

1 significant limitation of use of a body function or system; or a
2 medically determined injury or impairment of a non-permanent nature
3 which prevents the injured person from performing substantially all of
4 the material acts which constitute that person's usual and customary
5 daily activities for not less than 90 days during the 180 days
6 immediately following the occurrence of the injury or impairment] or
7 a permanent injury within a reasonable degree of medical probability,
8 other than scarring or disfigurement. An injury shall be considered
9 permanent when the body part or organ, or both, has not healed to
10 function normally and will not heal to function normally with further
11 medical treatment. For the purposes of this subsection, "physician"
12 means a physician as defined in section 5 of P.L.1939,c.115 (C.45:9-
13 5.1).

14 In order to satisfy the provisions of this section, the plaintiff shall,
15 within 60 days following the date of the answer to the complaint by
16 the defendant, provide the defendant with a certification from the
17 licensed treating physician or a board-certified licensed physician to
18 whom the plaintiff was referred by the treating physician. The
19 certification shall state, under penalty of perjury, that the plaintiff has
20 sustained an injury described above. The certification shall be based
21 on and refer to objective clinical evidence, which may include medical
22 testing, except that any such testing shall be performed in accordance
23 with medical protocols pursuant to subsection a. of section 4 of
24 P.L.1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests
25 administered in accordance with section 12 of P.L. , c. (C.)(now
26 before the Legislature as this bill). Such testing may not be
27 experimental in nature or dependent entirely upon subjective patient
28 response. The court may grant no more than one additional period not
29 to exceed 60 days to file the certification pursuant to this section upon
30 a finding of good cause.

31 A person is guilty of a crime of the fourth degree if that person
32 purposefully or knowingly makes, or causes to be made, a false,
33 fictitious, fraudulent, or misleading statement of material fact in, or
34 omits a material fact from, or causes a material fact to be omitted
35 from, any certification filed pursuant to this section. Notwithstanding
36 the provisions of subsection e. of N.J.S. 2C:44-1, the court shall deal
37 with a person who has been convicted of a violation of this section by
38 imposing a sentence of imprisonment unless, having regard to the
39 character and condition of the person, the court is of the opinion that
40 imprisonment would be a serious injustice which overrides the need to
41 deter such conduct by others. If the court imposes a noncustodial or
42 probationary sentence, such sentence shall not become final for 10
43 days in order to permit the appeal of such sentence by the prosecution.
44 Nothing in this section shall preclude an indictment and conviction for
45 any other offense defined by the laws of this State. In addition, any
46 professional license held by the person shall be forfeited according to

1 the procedures established by section 4 of P.L.1997, c.353 (C.2C:51-
2 5).

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

4

5 ¹~~[71.] 69.~~¹ Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended
6 to read as follows:

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

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

19

20 ¹~~[72.] 70. a.~~¹ This act shall take effect 90 days following the
21 establishment by the Commissioner of Banking and Insurance of basic
22 benefits required to be provided pursuant to section 4 of P.L.1972,
23 c.70 (C.39:6A-4) or the adoption by rule of the professional boards of
24 the designation of valid diagnostic tests pursuant to the provisions of
25 section 12 of this act, whichever is later, except that ¹: (1)¹ sections
26 ¹~~[49] 47~~¹ through ¹~~[63] 61~~¹ shall take effect on the 90th day after
27 the date of enactment ¹~~[and] ;(2)~~¹ sections 1, 12, 26 through ¹~~[48]~~
28 ~~28, 30 through 46~~¹, ¹~~[64] 62~~¹ through ¹~~[67] 65~~¹ and ¹~~[69] 67~~¹ shall
29 take effect immediately ¹: and (3) section 29 shall take effect
30 immediately and the elimination of the limit on territorial base rates
31 provided therein shall apply to policies issued or renewed by an insurer
32 on or after the effective date of the insurer's territorial rating plan
33 approved by the commissioner as provided in section 27, but no later
34 than March 1, 1999¹.

35 ¹~~b.~~¹ Prior to the effective date of any section of this act, the
36 Commissioner of Banking and Insurance may take those actions and
37 promulgate those regulations necessary to implement the provisions of
38 this act.