

[Second Reprint]
SENATE, No. 3

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED APRIL 2, 1998

Sponsored by:

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District 22 (Middlesex, Morris, Somerset and Union)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

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SYNOPSIS

"The Automobile Insurance Cost Reduction Act."

CURRENT VERSION OF TEXT

As amended on April 27, 1998 by the Senate pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 5/5/1998)

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

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.

² Senate amendments adopted in accordance with Governor's recommendations April 27, 1998.

1 on the right to sue for non-serious injuries; and

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

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

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

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

40 **WHEREAS**, With these many objectives, the Legislature
41 nevertheless recognizes that to provide a healthy and
42 competitive automobile insurance market, insurers are entitled
43 to earn an adequate rate of return through the ratemaking
44 process, which shall reflect the impact of the cost-saving
45 provisions of this act and other recent legislative insurance
46 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 1. "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 ²(20) licensed professional nurses,² and ²[(20)](21)² providers of
24 other health care services or supplies, including durable medical
25 goods.

26 m. "Medically necessary" means that the treatment is consistent
27 with the symptoms or diagnosis, and treatment of the injury (1) is not
28 primarily for the convenience of the injured person or provider, (2) is
29 the most appropriate standard or level of service which is in
30 accordance with standards of good practice and standard professional
31 treatment protocols, as such protocols may be recognized or
32 designated by the Commissioner of Banking and Insurance, in
33 consultation with the Commissioner of Health and Senior Services ²[,
34 by] or with² a professional licensing or certifying board in the Division
35 of Consumer Affairs in the Department of Law and Public Safety, or
36 by a nationally recognized professional organization, and (3) does not
37 involve unnecessary ²[or repeated]² diagnostic testing.

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

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

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

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

1 follows:

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

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

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

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

21 No licensed insurance carrier shall refuse to renew the required
22 coverage stipulated by this act of an eligible person as defined in
23 section 25 of P.L.1990, c.8 (C.17:33B-13) except in accordance with
24 the provisions of section 26 of P.L.1988, c.119 (C.17:29C-7.1) or
25 with the consent of the Commissioner of Banking and Insurance.
26 (cf: P.L.1990, c.8, s.3)
27

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

33 a. Personal injury protection coverage, for the payment of benefits
34 without regard to negligence, liability or fault of any kind, to the
35 named insured and members of his family residing in his household,
36 who sustained bodily injury as a result of an accident while occupying,
37 entering into, alighting from or using an automobile, or as a
38 pedestrian, caused by an automobile or by an object propelled by or
39 from an automobile, to other persons sustaining bodily injury while
40 occupying, entering into, alighting from or using the automobile of the
41 named insured, with the permission of the named insured, and to
42 pedestrians sustaining bodily injury caused by the named insured's
43 automobile or struck by an object propelled by or from such
44 automobile. "Personal injury protection coverage" issued pursuant to
45 this section means and includes payment of medical expense benefits,
46 as provided in the policy and approved by the commissioner, for the

1 reasonable and necessary treatment of bodily injury in an amount not
2 to exceed \$15,000 per person per accident; except that, medical
3 expense benefits shall be paid in an amount not to exceed \$250,000 for
4 ²[the reasonable and necessary treatment of bodily injuries which
5 result in: death; permanent and significant brain injury; quadriplegia or
6 paraplegia; dismemberment; total loss of vision in one or both eyes;
7 total loss of hearing in one or both ears; significant permanent injury
8 due to prominent facial, scalp or neck scarring] all medically necessary
9 treatment of permanent or significant brain injury, spinal cord injury
10 or disfigurement or for medically necessary treatment of other
11 permanent or significant injuries rendered at a trauma center or acute
12 care hospital immediately following the accident and until the patient
13 is stable, no longer requires critical care and can be safely discharged
14 or transferred to another facility in the judgement of the attending
15 physician². In the event benefits paid by an insurer pursuant to this
16 subsection are in excess of \$75,000 on account of personal injury to
17 any one person in any one accident, such excess shall be paid by the
18 insurer in consultation with the Unsatisfied Claim and Judgment Fund
19 Board and shall be reimbursable to the insurer from the Unsatisfied
20 Claim and Judgment Fund pursuant to section 2 of P.L.1977, c.310
21 (C.39:6-73.1). Benefits provided under basic coverage shall be in
22 accordance with a benefit plan provided in the policy and approved by
23 the commissioner. The policy form, which shall be subject to the
24 approval of the commissioner, shall set forth the benefits provided
25 under the policy, including eligible medical treatments ²diagnostic
26 tests² and services as well as such other benefits as the policy may
27 provide. The commissioner shall set forth by regulation ²a statement
28 of² the basic benefits which shall be included in the policy. Medical
29 treatments, diagnostic tests, and services provided by the policy shall
30 be rendered in accordance with commonly accepted protocols and
31 professional standards and practices which are commonly accepted as
32 being beneficial for the treatment of the covered injury. Protocols and
33 professional standards and practices which are deemed to be
34 commonly accepted pursuant to this section shall be those recognized
35 by national standard setting organizations, national or state
36 professional organizations of the same discipline as the treating
37 provider, or those designated or approved by the commissioner in
38 consultation with the professional licensing boards in the Division of
39 Consumer Affairs in the Department of Law and Public Safety. ²The
40 commissioner, in consultation with the Commissioner of the
41 Department of Health and Senior Services and the applicable licensing
42 boards, may reject the use of protocols, standards and practices or lists
43 of diagnostic tests set by any organization deemed not to have
44 standing or general recognition by the provider community or the
45 applicable licensing boards.² Protocols shall be deemed to establish
46 guidelines as to standard appropriate treatment ²and diagnostic tests²

1 for injuries sustained in automobile accidents, but the establishment of
2 standard treatment protocols or protocols for the administration of
3 diagnostic tests shall not be interpreted in such a manner as to
4 preclude variance from the standard when warranted by reason of
5 medical necessity. The policy form may provide for the
6 precertification of certain procedures, treatments, diagnostic tests, or
7 other services or for the purchase of durable medical goods, as
8 approved by the commissioner, provided that the requirement for
9 precertification shall not be unreasonable, and no precertification
10 requirement shall apply within ten days of the insured event. The
11 policy may provide that certain benefits provided by the policy which
12 are in excess of the basic benefits required by the commissioner to be
13 included in the policy may be subject to reasonable copayments in
14 addition to the copayments provided for herein, provided that the
15 copayments shall not be unreasonable and shall be established in such
16 as manner as not to serve to encourage underutilization of benefits
17 subject to the copayments, nor encourage overutilization of benefits.
18 The policy form shall clearly set forth any limitations on benefits or
19 exclusions, which may include, but need not be limited to, benefits
20 which are otherwise compensable under workers' compensation, or
21 benefits for treatments deemed to be experimental or investigational,
22 or benefits deducted pursuant to section 6 of P.L.1972, c.70
23 (C.39:6A-6). The commissioner may enlist the services of a benefit
24 consultant in establishing the basic benefits level provided in this
25 subsection, which shall be set forth by regulation no later than
26 ²[90]120² days following the enactment date of this amendatory and
27 supplementary act. The commissioner shall not advertise for the
28 consultant as provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-
29 8 and 52:34-9).

30 Medical expense benefits payable under this subsection shall not be
31 assignable, except to a provider of service benefits, in accordance with
32 policy terms approved by the commissioner, nor shall they be subject
33 to levy, execution, attachment or other process for satisfaction of
34 debts. Medical expense benefits payable in accordance with this
35 subsection may be subject to a deductible ²[of up to \$250,]² and
36 copayments as provided for in the policy, if any. No insurer or
37 provider providing service benefits to an insured shall have a right of
38 subrogation for the amount of benefits paid pursuant to any deductible
39 or copayment under this section.

40 b. Liability insurance coverage insuring against loss resulting from
41 liability imposed by law for ²[¹bodily injury, death and¹]² property
42 damage sustained by any person arising out of the ownership,
43 maintenance, operation or use of an automobile ²[¹: (1) in an amount
44 or limit of \$10,000, exclusive of interests and costs, on account of
45 injury to, or death of, one or more persons in any one accident; and
46 (2)¹]² in an amount or limit of \$5,000, exclusive of interest and costs,

1 for damage to property in any one accident.

2 ²c. In addition to the aforesaid coverages required to be provided
3 in a basic automobile insurance policy, optional liability insurance
4 coverage insuring against loss resulting from liability imposed by law
5 for bodily injury or death in an amount or limit of \$10,000, exclusive
6 of interests and costs, on account of injury to, or death of, one or
7 more persons in any one accident.²

8 If a named insured has elected the basic automobile insurance policy
9 option and an immediate family member or members or relatives
10 resident in his household have one or more policies with the coverages
11 provided for in sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and
12 39:6A-4), the provisions of section 12 of P.L.1983, c.362 (C.39:6A-
13 4.2) shall apply.

14 Every named insured and any other person to whom the basic
15 automobile insurance policy ²with or without the optional \$10,000
16 liability coverage insuring against loss resulting from liability imposed
17 by law for bodily injury or death provided for in subsection c. of this
18 section.² applies shall be subject to the tort option provided in
19 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

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

25
26 5. (New section) a. All automobile insurance policies issued or
27 renewed on or after the effective date of P.L. , c. (C.)(now
28 before the Legislature as this bill) shall be issued or renewed including
29 at least the coverages required pursuant to sections 3 and 4 of
30 P.L.1972, c.70 (C.39:6A-3 and 39:6A-4), unless the named insured
31 elects a basic automobile insurance policy pursuant to section 4 of
32 P.L. , c. (C.)(now before the Legislature as this bill).
33 Election of a basic automobile insurance policy shall be in writing and
34 signed by the named insured on the coverage selection form required
35 by section 17 of P.L.1983, c.362 (C.39:6A-23). The coverage election
36 form shall contain a statement, clearly readable and in 12-point bold
37 type, in a form approved by the commissioner, that election of a basic
38 automobile insurance policy ²will result in less coverage than the
39 \$250,000 medical expense benefits coverage mandated prior to the
40 effective date of this act. Furthermore, the coverage election form
41 shall contain a statement, clearly readable and in 12-point bold type,
42 in a form approved by the commissioner, that election of a basic
43 automobile insurance policy without the optional \$10,000 liability
44 coverage provided for in section 4 of P.L. , c. (C.)(now before
45 the Legislature as this bill)² may subject the named insured to a claim
46 or judgment for noneconomic loss which is not covered by the basic

1 automobile insurance policy, and which may place his assets at risk,
2 and in the event the named insured is sued, the insurer shall not
3 provide legal counsel.

4 b. The insurance coverages provided for in section 4 of P.L. , c.
5 (C.)(now before the Legislature as this bill) shall be offered by
6 every insurer which writes insurance coverages pursuant to sections
7 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4) for a period of
8 five years after the effective date of P.L. , c. (C.)(now
9 before the Legislature as this bill). The commissioner shall require
10 every company writing such insurance coverage to report to him
11 annually during that five-year period as to the number of policies
12 written pursuant to this subsection in the previous year, the number of
13 policies with the coverage offered pursuant to section 4 of P.L.1972,
14 c.70 (C.39:6A-4) which have been converted to policies with the
15 coverage offered pursuant to section 4 of P.L. , c. (C.)(now
16 before the Legislature as this bill) and any other information the
17 commissioner may require ²such as, but not limited to, the age of the
18 policyholders and the territories in which the policyholders reside².
19 The commissioner shall then report to the Governor and the
20 Legislature regarding the acceptance of the basic automobile insurance
21 policy by the automobile insurance consumers of this State annually
22 for the first four years the basic policy is sold. On or before January
23 1, 2003, the commissioner shall make a final, cumulative report which
24 shall include recommendations as to the continuation of the basic
25 policy to the Governor and the Legislature.

26
27 6. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended to read as
28 follows:

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

30 **【**Every automobile liability insurance policy, issued or renewed on
31 or after January 1, 1991, insuring an automobile as defined in section
32 2 of P.L.1972, c.70 (C.39:6A-2) against loss resulting from liability
33 imposed by law for bodily injury, death and property damage sustained
34 by any person arising out of ownership, operation, maintenance or use
35 of an automobile shall provide personal injury protection coverage, as
36 defined hereinbelow, under provisions approved by the Commissioner
37 of Banking and Insurance, for the payment of benefits without regard
38 to negligence, liability or fault of any kind, to the named insured and
39 members of his family residing in his household who sustained bodily
40 injury as a result of an accident while occupying, entering into,
41 alighting from or using an automobile, or as a pedestrian, caused by an
42 automobile or by an object propelled by or from an automobile, to
43 other persons sustaining bodily injury while occupying, entering into,
44 alighting from or using the automobile of the named insured, with the
45 permission of the named insured, and to pedestrians, sustaining bodily
46 injury caused by the named insured's automobile or struck by an object

1 propelled by or from such automobile.

2 "Personal injury protection coverage" means and includes:

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

12 b. Income continuation benefits. The payment of the loss of
13 income of an income producer as a result of bodily injury disability,
14 subject to a maximum weekly payment of \$100.00. Such sum shall be
15 payable during the life of the injured person and shall be subject to an
16 amount or limit of \$5,200.00, on account of injury to any one person
17 in any one accident, except that in no case shall income continuation
18 benefits exceed the net income normally earned during the period in
19 which the benefits are payable.

20 c. Essential services benefits. Payment of essential services
21 benefits to an injured person shall be made in reimbursement of
22 necessary and reasonable expenses incurred for such substitute
23 essential services ordinarily performed by the injured person for
24 himself, his family and members of the family residing in the
25 household, subject to an amount or limit of \$12.00 per day. Such
26 benefits shall be payable during the life of the injured person and shall
27 be subject to an amount or limit of \$4,380.00, on account of injury to
28 any one person in any one accident.

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

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

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

1 Benefits payable under this section shall:

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

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

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

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

27 "Personal injury protection coverage" means and includes:

28 a. Payment of medical expense benefits in accordance with a
29 benefit plan provided in the policy and approved by the commissioner,
30 for reasonable, necessary, and appropriate treatment and provision of
31 services to persons sustaining bodily injury, in an amount not to
32 exceed \$250,000 per person per accident. In the event benefits paid
33 by an insurer pursuant to this subsection are in excess of \$75,000 on
34 account of bodily injury to any one person in any one accident, that
35 excess shall be paid by the insurer in consultation with the Unsatisfied
36 Claim and Judgment Fund Board and shall be reimbursable to the
37 insurer from the Unsatisfied Claim and Judgment Fund pursuant to
38 section 2 of P.L.1977, c.310 (C.39:6-73.1). The policy form, which
39 shall be subject to the approval of the commissioner, shall set forth the
40 benefits provided under the policy, including eligible medical
41 treatments ²diagnostic tests² and services as well as such other
42 benefits as the policy may provide. The commissioner shall set forth
43 by regulation ²a statement of² the basic benefits which shall be
44 included in the policy. Medical treatments, diagnostic tests, and
45 services provided by the policy shall be rendered in accordance with
46 commonly accepted protocols and professional standards and practices

1 which are commonly accepted as being beneficial for the treatment of
2 the covered injury. Protocols and professional standards and practices
3 ²and lists of valid diagnostic tests² which are deemed to be commonly
4 accepted pursuant to this section shall be those recognized by national
5 standard setting organizations, national or state professional
6 organizations of the same discipline as the treating provider, or those
7 designated or approved by the commissioner in consultation with the
8 professional licensing boards in the Division of Consumer Affairs in
9 the Department of Law and Public Safety. ²The commissioner, in
10 consultation with the Commissioner of the Department of Health and
11 Senior Services and the applicable licensing boards, may reject the use
12 of protocols, standards and practices or lists of diagnostic tests set by
13 any organization deemed not to have standing or general recognition
14 by the provider community or the applicable licensing boards.²
15 Protocols shall be deemed to establish guidelines as to standard
16 appropriate treatment ²and diagnostic tests² for injuries sustained in
17 automobile accidents, but the establishment of standard treatment
18 protocols or protocols for the administration of diagnostic tests shall
19 not be interpreted in such a manner as to preclude variance from the
20 standard when warranted by reason of medical necessity. The policy
21 form may provide for the precertification of certain procedures,
22 treatments, diagnostic tests, or other services or for the purchase of
23 durable medical goods, as approved by the commissioner, provided
24 that the requirement for precertification shall not be unreasonable, and
25 no precertification requirement shall apply within ten days of the
26 insured event. The policy may provide that certain benefits provided
27 by the policy which are in excess of the basic benefits required by the
28 commissioner to be included in the policy may be subject to reasonable
29 copayments in addition to the copayments provided for pursuant to
30 subsection e. of this section, provided that the copayments shall not be
31 unreasonable and shall be established in such as manner as not to serve
32 to encourage underutilization of benefits subject to the copayments,
33 nor encourage overutilization of benefits. The policy form shall clearly
34 set forth any limitations on benefits or exclusions, which may include,
35 but need not be limited to, benefits which are otherwise compensable
36 under workers' compensation, or benefits for treatments deemed to be
37 experimental or investigational, or benefits deducted pursuant to
38 section 6 of P.L.1972, c.70 (C.39:6A-6). The commissioner may
39 enlist the services of a benefit consultant in establishing the basic
40 benefits level provided in this subsection, which shall be set forth by
41 regulation no later than ²[90] 120² days following the enactment date
42 of P.L. , c. (C.)(now before the Legislature as this bill). The
43 commissioner shall not advertise for bids for the consultant as
44 provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and 52:34-
45 9).
46 b. Income continuation benefits. The payment of the loss of

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

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

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

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

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

35 Benefits payable under this section shall:

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

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

42 Medical expense benefit payments shall be subject to a deductible
43 ²[of \$250 on account of injury in any one accident] ² and ~~¶~~a
44 copayment of 20% of any benefits payable between \$250 and \$5,000
45 in addition to] ² any copayment which may be established ²[pursuant
46 to subsection a. of this section] as provided in the policy, of any ² .

1 Upon the request of the commissioner or any party to a claim for
2 benefits or payment for services rendered, a provider shall present
3 adequate proof that any deductible or copayment related to that claim
4 has not been waived or discharged by the provider.

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

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

9
10 7. Section 13 of P.L.1983, c.362 (C.39:6A-4.3) is amended to read
11 as follows:

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

16 a. Medical expense benefit deductibles in amounts of \$500.00,
17 \$1,000.00, \$2,000.00 and \$2,500.00 for any one accident;

18 b. **【The option to exclude all benefits offered under subsections b.,**
19 **c., d., and e. of section 4;】**²**【(Deleted by amendment, P.L. __, c. __**
20 **.)】** The option to exclude all benefits offered under subsection b., c.,
21 d., and e. of section 4;²

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

23 d. For policies issued or renewed on or after January 1, 1991, the
24 option that other health insurance coverage or benefits of the insured,
25 including health care services provided by a health maintenance
26 organization and any coverage or benefits provided under any federal
27 or State program, are the primary coverage in regard to medical
28 expense benefits pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4).
29 If health insurance coverage or benefits are primary, an automobile
30 insurer providing medical expense benefits under personal injury
31 protection coverage shall be liable for reasonable medical expenses not
32 covered by the health insurance coverage or benefits up to the limit of
33 the medical expense benefit coverage. The principles of coordination
34 of benefits shall apply to personal injury protection medical expense
35 benefits coverage pursuant to this subsection. ²**【The insurer shall**
36 **provide an appropriate reduction from the territorial base rate for**
37 **personal injury protection coverage for those electing the options in**
38 **subsections a. and d. of this section.】**

39 e. Medical expense benefits in amounts of \$150,000, \$75,000,
40 \$50,000 or \$15,000 per person per accident; except that, medical
41 expense benefits shall be paid in an amount not to exceed \$250,000 for
42 all medically necessary treatment of permanent or significant brain
43 injury, spinal cord injury or disfigurement or for medically necessary
44 treatment of other permanent or significant injuries rendered at a
45 trauma center or acute care hospital immediately following the
46 accident and until the patient is stable, no longer requires critical care

1 and can be safely discharged or transferred to another facility in the
2 judgment of the attending physician. The coverage election form shall
3 contain a statement, clearly readable and in 12-point bold type, in a
4 form approved by the commissioner, that election of any of the
5 aforesaid medical expense benefits options results in less coverage
6 than the \$250,000 medical expense benefits coverage mandated prior
7 to the effective date of this act.

8 If none of the aforesaid medical expenses benefits options is
9 affirmatively chosen in writing, the policy shall provide \$250,000
10 medical expense benefits coverage.

11 f. The insurer shall provide an appropriate reduction from the
12 territorial base rate for personal injury protection coverage for those
13 electing any of the options in subsections a., d. and e. of this section.²

14 **【Insurers shall offer the options provided by subsections a. and b.**
15 **of this section at appropriately reduced premiums. For policies issued**
16 **or renewed prior to January 1, 1992, insurers shall offer the option**
17 **provided by subsection d. of this section at a discount of not less than**
18 **25% from the base rate applicable to the first \$250,000 of medical**
19 **expense benefits, and for policies issued or renewed on or after**
20 **January 1, 1992, insurers shall offer the option at an appropriate**
21 **discount from the base rate for the amount of medical expense benefits**
22 **coverage taken.】**

23 Any named insured who chooses the option provided by subsection
24 d. of this section shall provide proof that he and members of his family
25 residing in his household are covered by health insurance coverage or
26 benefits in a manner and to an extent approved by the commissioner.
27 Nothing in this section shall be construed to require a health insurer,
28 health maintenance organization or governmental agency to cover
29 individuals or treatment which is not normally covered under the
30 applicable benefit contract or plan. If it is determined that an insured
31 who selected or is otherwise covered by the option provided in
32 subsection d. of this section did not have such health coverage in
33 effect at the time of an accident, medical expense benefits shall be
34 payable by the person's automobile insurer and shall be subject to any
35 deductible required by law or otherwise selected as an option pursuant
36 to subsection a. of this section, any copayment required by law and an
37 additional deductible in the amount of \$750.

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

44 **【In the case of a medical expense benefit deductible, the deductible**
45 **elected by the named insured shall be satisfied for any one accident,**
46 **whether the medical expense benefits are paid or provided, in the**

1 amount of the deductible, to the named insured or to one or more
2 resident relatives in the named insured's household who are not named
3 insureds under another insurance policy, or to any combination
4 thereof.】

5 Medical expense benefits payable in any amount between the
6 deductible selected pursuant to subsection a. of this section and
7 \$5,000.00 shall be subject to 【a】 the copayment 【of 20%】 provided
8 in the policy, if any.

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

13 The Commissioner of Banking and Insurance shall adopt rules and
14 regulations to effectuate the purposes of this section and may
15 promulgate standards applicable to the coordination of personal injury
16 protection medical expense benefits coverage.

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

18
19 8. Section 14 of P.L.1985, c.520 (C.39:6A-4.5) is amended to read
20 as follows:

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

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

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

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

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

42 6. Collateral Source. The benefits provided in 【section】 sections
43 4 and 【section】 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) and
44 the medical expense benefits provided in section 4 of P.L.____, c.____
45 (C.____)(now before the Legislature as this bill) shall be payable as
46 loss accrues, upon written notice of such loss and without regard to

1 collateral sources, except that benefits, collectible under workers'
 2 compensation insurance, employees' temporary disability benefit
 3 statutes, medicare provided under Federal law, and benefits, in fact
 4 collected, that are provided under Federal law to active and retired
 5 military personnel shall be deducted from the benefits collectible under
 6 **[section] sections 4 and [section] 10 of P.L.1972, c.70 (C.39:6A-4**
 7 **and 39:6A-10) and the medical expense benefits provided in section 4**
 8 **of P.L. , c. (C.)(now before the Legislature as this bill).**

9 If an insurer has paid those benefits and the insured is entitled to,
 10 but has failed to apply for, workers' compensation benefits or
 11 employees' temporary disability benefits, the insurer may immediately
 12 apply to the provider of workers' compensation benefits or of
 13 employees' temporary disability benefits for a reimbursement of any
 14 **[section 4 and section 10] benefits pursuant to sections 4 and 10 of**
 15 **P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) or medical expense benefits**
 16 **pursuant to section 4 of P.L. ,c. (C.)(now before the**
 17 **Legislature as this bill) it has paid.**

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

19
 20 10. Section 7 of P.L.1972, c.70 (C.39:6A-7) is amended to read as
 21 follows:

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

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

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

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

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

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

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

1 (C. _____)(now before the Legislature as this bill), as a named insured
2 or member of the named insured's family residing in his household
3 under the terms of another policy: or

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

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

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

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

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

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

39 Limitation on lawsuit option. Every owner, registrant, operator or
40 occupant of an automobile to which section 4 of P.L.1972, c.70
41 (C.39:6A-4), personal injury protection coverage, or section 4 of
42 P.L. _____, c. _____ (C. _____)(now before the Legislature as this bill) medical
43 expense benefits coverage, regardless of fault, applies, and every
44 person or organization legally responsible for his acts or omissions, is
45 hereby exempted from tort liability for noneconomic loss to a person
46 who is subject to this subsection and who is either a person who is

1 required to maintain personal injury protection coverage pursuant to
2 section 4 of P.L.1972, c.70 (C.39:6A-4) or medical expense benefits
3 pursuant to section 4 of P.L. , c. (C.)(now before the
4 Legislature as this bill), or is a person who has a right to receive
5 benefits under section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of
6 P.L. , c. (C.)(now before the Legislature as this bill), as a
7 result of bodily injury, arising out of the ownership, operation,
8 maintenance or use of such automobile in this State, unless that person
9 has sustained a bodily injury which results in death; dismemberment;
10 significant disfigurement or significant scarring; displaced fractures;
11 loss of a fetus; or a permanent injury within a reasonable degree of
12 medical probability, other than scarring or disfigurement. An injury
13 shall be considered permanent when the body part or organ, or both,
14 has not healed to function normally and will not heal to function
15 normally with further medical treatment. For the purposes of this
16 subsection, "physician" means a physician as defined in section 5 of
17 P.L.1939,c.115 (C.45:9-5.1).

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

35 A person is guilty of a crime of the fourth degree if that person
36 purposefully or knowingly makes, or causes to be made, a false,
37 fictitious, fraudulent, or misleading statement of material fact in, or
38 omits a material fact from, or causes a material fact to be omitted
39 from, any certification filed pursuant to this subsection.
40 Notwithstanding the provisions of subsection e. of N.J.S. 2C:44-1, the
41 court shall deal with a person who has been convicted of a violation
42 of this subsection by imposing a sentence of imprisonment unless,
43 having regard to the character and condition of the person, the court
44 is of the opinion that imprisonment would be a serious injustice which
45 overrides the need to deter such conduct by others. If the court
46 imposes a noncustodial or probationary sentence, such sentence shall

1 not become final for 10 days in order to permit the appeal of such
2 sentence by the prosecution. Nothing in this subsection a. shall
3 preclude an indictment and conviction for any other offense defined by
4 the laws of this State. In addition, any professional license held by the
5 person shall be forfeited according to the procedures established by
6 section 4 of P.L.1997, c.353 (C.2C:51-5); or

7 b. No limitation on lawsuit option. As an alternative to the basic
8 tort option specified in subsection a. of this section, every owner,
9 registrant, operator, or occupant of an automobile to which section 4
10 of P.L.1972, c.70 (C.39:6A-4) , personal injury protection coverage,
11 or section 4 of P.L. , c. (C.)(now before the Legislature as
12 this bill), medical expense benefits coverage, regardless of fault,
13 applies, and every person or organization legally responsible for his
14 acts or omissions, shall be liable for noneconomic loss to a person who
15 is subject to this subsection and who is either a person who is required
16 to maintain the coverage mandated by P.L.1972, c.70 (C.39:6A-1 et
17 seq.) or is a person who has a right to receive benefits under section
18 4 of that act (C.39:6A-4), as a result of bodily injury, arising out of the
19 ownership, operation, maintenance or use of such automobile in this
20 State.

21 The tort option provisions of subsection b. of this section shall also
22 apply to the right to recover for noneconomic loss of any person
23 eligible for benefits pursuant to section 4 of P.L.1972, c.70
24 (C.39:6A-4) or section 4 of P.L. , c. (C.)(now before the
25 Legislature as this bill) but who is not required to maintain personal
26 injury protection coverage pursuant to section 4 of P.L.1972, c.70
27 (C.39:6A-4) or medical expense benefits coverage pursuant to section
28 4 of P.L. , c. (C.)(now before the Legislature as this bill) and
29 is not an immediate family member, as defined in section 14.1 of
30 P.L.1983, c.362 (C.39:6A-8.1), under **[an]** a standard automobile
31 insurance policy or basic automobile insurance policy.

32 The tort option provisions of subsection a. of this section shall also
33 apply to any person subject to section 14 of P.L.1985, c.520
34 (C.39:6A-4.5) and to every named insured and any other person to
35 whom the medical expense benefits of the basic automobile insurance
36 policy pursuant to section 4 of P.L. , c. (C.)(now before the
37 Legislature as this bill) apply ²whether or not the person has elected
38 the optional \$10,000 liability coverage insuring against loss resulting
39 from liability imposed by law for bodily injury or death provided for
40 in subsection c. of section 4 of P.L. , c. (C.)(now before the
41 Legislature as this bill)².

42 The tort option provisions of subsections a. and b. of this section
43 as provided in this **[1988]** 1998 amendatory and supplementary act
44 shall apply to automobile insurance policies issued or renewed on or
45 after **[January 1, 1989]** the effective date of P.L. , c.
46 (C.)(now before the Legislature as this bill) and as otherwise

1 provided by law.

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

3

4 12. (New section) The professional licensing boards governing
5 health care providers in the Division of Consumer Affairs shall
6 promulgate, pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), a list of valid diagnostic tests
8 to be used in conjunction with the appropriate health care protocols in
9 the treatment of persons sustaining bodily injury and subject to
10 subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8). Inclusion of
11 a test on the list of valid diagnostic tests shall be based on
12 demonstrated medical value, and a level of general acceptance by the
13 relevant provider community and shall not be dependent for results
14 entirely upon subjective patient response. The initial lists shall be
15 promulgated within 180 days of the effective date of this section and
16 shall be revised from time to time as determined by the respective
17 boards to reflect new testing procedures and emerging technologies
18 enjoying a level of general acceptance within the appropriate provider
19 community. In updating its list, a board may take action at a regularly
20 scheduled meeting, notwithstanding the provisions of P.L.1968, c.410
21 (C.52:14B-1 et seq.) to the contrary, after notice as provided herein.
22 The professional boards, individually or collectively, may enlist the
23 services of a consulting firm to assist in compiling and updating the
24 list. The Commissioner of Banking and Insurance may reimburse the
25 boards for the cost of the services of the consultant. The list of valid
26 diagnostic ²**[test]** tests, once approved by the commissioner² shall
27 apply only to benefits under section 4 of P.L.1972, c.70 (C.39:6A-4)
28 and section 4 of P.L. , c. (C.)(now before the Legislature as this
29 bill). The board or boards hiring a consultant shall not advertise for
30 bids, as provided in sections 3 and 4 of P.L.1954, c.48 (C.52:34-8 and
31 52:34-9). Notwithstanding any of the provisions of this section to the
32 contrary, a diagnostic test performed in an acute care facility, or
33 extended care facility recognized by Medicare, shall not be excluded
34 from a list of valid diagnostic tests promulgated pursuant to this
35 section.

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

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

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

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

43 b. Prior to the adoption of an action by the board, the board shall
44 forward the notice of intended action and a detailed description of the
45 intended action to the Office of Administrative Law for publication in
46 the New Jersey Register.

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

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

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

13 e. The board may adopt the intended action immediately following
14 the expiration of the public comment period provided in subsection d.
15 of this section, or the hearing provided for in subsection c. of this
16 section, whichever date is later. The final action adopted by the board
17 shall be submitted for publication in the New Jersey Register to the
18 Office of Administrative Law, and shall be effective on the date of the
19 submission or such later date as the board may establish.

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

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

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

31

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

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

1 (C.17:28-1.4), or although required did not maintain personal injury
2 protection or medical expense benefits coverage at the time of the
3 accident. In the case of an accident occurring in this State involving
4 an insured tortfeasor, the determination as to whether an insurer,
5 health maintenance organization or governmental agency is legally
6 entitled to recover the amount of payments and the amount of
7 recovery, including the costs of processing benefit claims and
8 enforcing rights granted under this section, shall be made against the
9 insurer of the tortfeasor, and shall be by agreement of the involved
10 parties or, upon failing to agree, by arbitration.
11 (cf: P.L.1990, c.8, s.10)

12

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

15 10. Additional personal injury protection coverage. Insurers shall
16 make available to the named insured electing the standard automobile
17 insurance policy and covered under section 4 of P.L.1972, c.70
18 (C.39:6A-4), and, at his option, to resident relatives in the household
19 of the named insured, suitable additional first party coverage for
20 income continuation benefits, essential services benefits, death benefits
21 and funeral expense benefits, but the income continuation and essential
22 services benefits shall cease upon the death of the claimant, and shall
23 not operate to increase the amount of any death benefits payable under
24 section 4 of P.L.1972, c.70 (C.39:6A-4) and such additional first party
25 coverage shall be payable only to the extent that the claimant
26 establishes that the amount of loss sustained exceeds the coverage
27 specified in section 4 of P.L.1972, c.70 (C.39:6A-4). Insurers may also
28 make available to named insureds electing a standard automobile
29 insurance policy and covered under section 4 of P.L.1972, c.70
30 (C.39:6A-4), and, at their option, to resident relatives in the household
31 of the named insured or to other persons provided medical expense
32 benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4),
33 or both, additional first party medical expense **【benefit】** benefits
34 coverage. The additional coverage shall be offered by the insurer at
35 least annually as part of the coverage selection form applicable to the
36 standard automobile insurance policy and required by section 17 of
37 P.L.1983, c.362 (C.39:6A-23). Income continuation in excess of that
38 provided for in section 4 **【must】** of P.L.1972, c.70 (C.39:6A-4) shall
39 be provided as an option by insurers for disabilities, as long as the
40 disability persists, up to an income level of \$35,000.00 per year,
41 provided that a. the excess between \$5,200.00 and the amount of
42 coverage contracted for shall be written on the basis of 75% of said
43 difference, and b. regardless of the duration of the disability, the
44 benefits payable shall not exceed the total maximum amount of income
45 continuation benefits contracted for. Death benefits provided pursuant
46 to this section shall be payable without regard to the period of time

1 elapsing between the date of the accident and the date of death, if
2 death occurs within two years of the accident and results from bodily
3 injury from that accident to which coverage under this section applies.
4 The Commissioner of Insurance is hereby authorized and empowered
5 to establish, by rule or regulation, the amounts and terms of income
6 continuation insurance to be provided pursuant to this section.
7 (cf: P.L.1990, c.8, s.11)

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

11 11. Contribution among insurers. If two or more insurers are liable
12 to pay benefits under sections 4 and 10 of **[this act] P.L.1972, c.70**
13 (C.39:6A-4 and 39:6A-10) under a standard automobile insurance
14 policy ²[or medical expense benefits under a basic automobile
15 insurance policy pursuant to section 4 of P.L. , c. (C.)(now
16 before the Legislature as this bill)]² for the same bodily injury, or
17 death, of any one person, the maximum amount payable shall be as
18 specified in those sections 4 and 10 of P.L.1972, C.70 (C.39:6A-4 and
19 39:6A-10) and section 4 of P.L. , c. (C.)(now before the
20 Legislature as this bill), respectively, if additional first party coverage
21 applies and any insurer paying the benefits shall be entitled to recover
22 from each of the other insurers, only by inter-company arbitration or
23 inter-company agreement, an equitable pro-rata share of the benefits
24 paid.
25 (cf: P.L.1972, c.70, s.11)

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

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

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

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

9 Nothing in this section shall be construed to limit the right of
10 recovery, against the tortfeasor, of uncompensated economic loss
11 sustained by the injured party.
12 (cf: P.L.1990, c.8, s.12)

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

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

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

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

46 c. The injured person shall be furnished upon demand a copy of all

1 information obtained by the insurer or the Unsatisfied Claim and
2 Judgment Fund under the provisions of this section, and shall pay a
3 reasonable charge, if required by the insurer and the Unsatisfied Claim
4 and Judgment Fund.

5 d. **【Whenever】**²【Except for medical expense benefits provided
6 under a standard automobile insurance policy pursuant to subsection
7 a. of section 4 of P.L.1972, c.70 (C.39:6A-4), under a basic
8 automobile insurance policy pursuant to subsection b. of section 4 of
9 P.L. ___, c. __ (C. __)(now before the Legislature as this bill), under
10 subsection a. of section 7 of P.L.1972, c.198 (C.39:6-86.1) and
11 additional first party medical expense benefits coverage provided
12 under a standard automobile insurance policy pursuant to section 10
13 of P.L.1972, c.70 (C.39:6A-10), if there is no dispute concerning
14 whether the treatments, health care services or durable medical goods
15 related to an injury for which reimbursement is being sought are
16 causally related to an insured event, whenever】 Whenever² the mental
17 or physical condition of an injured person covered by personal injury
18 protection under a standard automobile insurance policy or medical
19 expense benefits under a basic automobile insurance policy is material
20 to any claim that has been or may be made for such past or future
21 personal injury protection benefits or medical expense benefits, such
22 person shall, upon request of an insurer or the Unsatisfied Claim and
23 Judgment Fund submit to mental or physical examination **【by a**
24 **physician or physicians , or chiropractor or chiropractors. Only a**
25 **licensed chiropractor may determine the clinical need for further**
26 **chiropractic treatment by performing a chiropractic examination and**
27 **this determination shall not depend solely upon a review of the treating**
28 **chiropractor patient records in cases of denial of benefits】** conducted
29 by a health care provider licensed in this State in the same profession
30 or speciality as the health care provider whose services are subject to
31 review under this section and who is located within a reasonable
32 proximity to the injured person's residence. The injured person shall
33 provide or make available to the provider any pertinent medical
34 records or medical history that the provider deems necessary to the
35 examination. The costs of any examinations requested by an insurer
36 or the Unsatisfied Claim and Judgment Fund shall be borne entirely by
37 whomever makes such request. Such examination shall be conducted
38 within the municipality of residence of the injured person. If there is
39 no qualified 【physician or chiropractor】 health care provider to
40 conduct the examination within the municipality of residence of the
41 injured person, then such examination shall be conducted in an area of
42 the closest proximity to the injured person's residence. 【Personal
43 protection insurers】 Insurers providing personal injury protection
44 coverage under a standard automobile insurance policy or medical
45 expense benefits under a basic automobile insurance policy are
46 authorized to include reasonable provisions **【in personal injury**

1 protection coverage policies for mental and physical examinations of]
2 requiring those claiming personal injury protection coverage benefits
3 or medical expense benefits to submit to mental or physical
4 examination as requested by an insurer or the Unsatisfied Claim and
5 Judgment Fund pursuant to the provisions of this section. Failure to
6 submit to a mental or physical examination requested by an insurer or
7 the Unsatisfied Claim and Judgment Fund pursuant to the provisions
8 of this section shall subject the injured person to certain limitations in
9 coverage as specified in regulations promulgated by the commissioner.

10 e. If requested by the person examined, a party causing an
11 examination to be made, shall deliver to him a copy of every written
12 report concerning the examination rendered by an examining
13 **[physician or chiropractor]** health care provider, at least one of which
14 reports must set out his findings and conclusions in detail. After such
15 request and delivery, the party causing the examination to be made is
16 entitled upon request to receive from the person examined every
17 written report available to him, or his representative, concerning any
18 examination, previously or thereafter made of the same mental or
19 physical condition.

20 f. The injured person, upon reasonable request by the insurer or the
21 Unsatisfied Claim and Judgment Fund, shall sign all forms,
22 authorizations **[,]** or releases for information, approved by the
23 Commissioner of Banking and Insurance, which may be necessary to
24 the discovery of the above facts, in order to reasonably prove the
25 injured person's losses.

26 g. In the event of any dispute regarding an insurer's or the
27 Unsatisfied Claim and Judgment Fund's or an injured person's right as
28 to the discovery of facts about the injured person's earnings or about
29 his history, condition, treatment, dates and costs of such treatment, or
30 the submission of such injured person to a mental or physical
31 examination subject to the provisions of this section, the insurer,
32 Unsatisfied Claim and Judgment Fund or the injured person may
33 petition a court of competent jurisdiction for an order resolving the
34 dispute and protecting the rights of all parties. The order may be
35 entered on motion for good cause shown giving notice to all persons
36 having an interest therein. Such court may protect against annoyance,
37 embarrassment or oppression and may as justice requires, enter an
38 order compelling or refusing discovery, or specifying conditions of
39 such discovery; the court may further order the payment of costs and
40 expenses of the proceeding, as justice requires.

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

42

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

45 11. a. Every action for the payment of benefits **[set forth in]**
46 payable under a standard automobile insurance policy pursuant to

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

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

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

29

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

32 15. In any claim or action arising for benefits payable under a
 33 standard automobile insurance policy under section 4 of **[this act]**
 34 P.L.1972, c.70 (C.39:6A-4) or any claim or action arising for medical
 35 expense benefits payable under a basic automobile insurance policy
 36 under section 4 of P.L. , c. (C.)(now before the Legislature
 37 as this bill) wherein any person **[,]** obtains or attempts to obtain from
 38 any other person, insurance company or Unsatisfied Claim and
 39 Judgment Fund any money or other thing of value by (1) falsely or
 40 fraudulently representing that such person is entitled to such benefits
 41 **[under section 4 or,]** ; (2) falsely and fraudulently making statements
 42 or presenting documentation in order to obtain or attempt to obtain
 43 such benefits **[under section 4]** ; or**[,]** (3) cooperates, conspires or
 44 otherwise acts in concert with any person seeking to falsely or
 45 fraudulently obtain, or attempt to obtain, such benefits **[under section**

1 4] may upon conviction be fined not more than \$5,000.00, or
2 imprisoned for not more than [3] three years or both, or in the event
3 the sum so obtained or attempted to be obtained is not more than
4 \$500.00, may upon conviction, be fined not more than \$500.00, or
5 imprisoned for not more than [6] six months or both, as a disorderly
6 person.

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

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

15
16 20. Section 1 of P.L.1972, c.197 (C.39:6B-1) is amended to read
17 as follows:

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

33 b. Notwithstanding the provisions of subsection a. of this section,
34 an owner or registered owner of an automobile, as defined in section
35 2 of P.L.1972, c.70 (C.39:6A-2), registered or primarily garaged in the
36 State may satisfy the requirements of subsection a. of this section by
37 maintaining a basic automobile insurance policy ²[pursuant to]
38 containing coverages provided pursuant to subsections a. and b. of²
39 section 4 of P.L. , c. (C.)(now before the Legislature as this
40 bill).

41 (cf: P.L.1972, c.197, s.1)

42
43 21. Section 2 of P.L.1952, c.174 (C.39:6-62) is amended to read
44 as follows:

45 2. Definitions. As used in this act:

46 "Executive director" means the official designated by and serving

1 at the pleasure of the commissioner to administer to and be in charge
2 of the Unsatisfied Claim and Judgment Fund and who shall be
3 responsible to the Unsatisfied Claim and Judgment Fund Board.

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

6 "Commissioner" means the Commissioner of Banking and
7 Insurance.

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

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

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

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

33 "Person" includes natural persons, firms, copartnerships,
34 associations and corporations.

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

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

43 "Registration license year" means the period beginning June 1,
44 1956, and ending May 31, 1957, and each subsequent 12 month
45 period, beginning June 1 and ending the following May 31.

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

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

3 14. Notwithstanding any other provision of law to the contrary, the
4 dollar amount of the commission paid to a producer for residual bodily
5 injury coverage provided pursuant to section 8 of P.L.1972, c.70
6 (C.39:6A-8) shall be the same whether the named insured elects the
7 tort option provided for in subsection a. of that section or the tort
8 option provided for in subsection b. of that section. This section shall
9 not apply to commissions on a basic automobile insurance policy
10 issued pursuant to section 4 of P.L. , c. (C.)(now before the
11 Legislature as this bill).
12 (cf: P.L.1988, c.156, s.14)

13

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

16 5. Payment of personal injury protection coverage benefits.

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

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

42 c. In the event that notification is not made by the treating
43 [medical]health care provider within 21 days following the
44 commencement of treatment, the insurer shall reserve the right to
45 deny, in accordance with regulations established by the Commissioner
46 of Banking and Insurance, payment of the claim and the treating

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

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

26 e. **【For the purposes of this section, "treating medical provider"**
27 shall mean any licensee of the State of New Jersey whose services are
28 reimbursable under personal injury protection coverage, including but
29 not limited to persons licensed to practice medicine and surgery,
30 psychology, chiropractic, or such other professions as the
31 Commissioner of Insurance determines pursuant to regulation, or other
32 licensees similarly licensed in other states and nations, or the
33 practitioner of any religious method of healing, or any general hospital,
34 mental hospital, convalescent home, nursing home or any other
35 institution, whether operated for profit or not, which maintains or
36 operates facilities for health care, whose services are compensated
37 under personal injury protection insurance proceeds.】 (Deleted by
38 amendment, P.L. , c.)

39 f. In instances when multiple treating **【medical】health care**
40 providers render services in connection with emergency care, the
41 Commissioner of Banking and Insurance shall designate, through
42 regulation, a process whereby notification by one treating
43 **【medical】health care** provider to the insurer shall be deemed to meet
44 the notification requirements of all the treating **【medical】health care**
45 providers who render services in connection with emergency care.

46 g. Personal injury protection coverage benefits pursuant to section

1 4 of P.L.1972, c.70 (C.39:6A-4) and medical expense benefits
2 pursuant to section 4 of P.L.____, c.____ (C.____)(now before the
3 Legislature as this bill) shall be overdue if not paid within 60 days after
4 the insurer is furnished written notice of the fact of a covered loss and
5 of the amount of same. If such written notice is not furnished to the
6 insurer as to the entire claim, any partial amount supported by written
7 notice is overdue if not paid within 60 days after such written notice
8 is furnished to the insurer. Any part or all of the remainder of the
9 claim that is subsequently supported by written notice is overdue if not
10 paid within 60 days after such written notice is furnished to the
11 insurer; provided, however, that any payment shall not be deemed
12 overdue where, within 60 days of receipt of notice of the claim, the
13 insurer notifies the claimant or his representative in writing of the
14 denial of the claim or the need for additional time, not to exceed 45
15 days, to investigate the claim, and states the reasons therefor. The
16 written notice stating the need for additional time to investigate the
17 claim shall set forth the number of the insurance policy against which
18 the claim is made, the claim number, the address of the office handling
19 the claim and a telephone number, which is toll free or can be called
20 collect, or is within the claimant's area code. Written notice to the
21 organization administering dispute resolution pursuant to sections 24
22 and 25 of P.L.____, c.____ (C.____)(now before the Legislature as this
23 bill) shall satisfy the notice request for additional time to investigate
24 a claim pursuant to this subsection. For the purpose of determining
25 interest charges in the event the injured party prevails in a subsequent
26 proceeding where an insurer has elected a 45-day extension pursuant
27 to this subsection, payment shall be considered overdue at the
28 expiration of the 45-day period or, if the injured person was required
29 to provide additional information to the insurer, within 10 business
30 days following receipt by the insurer of all the information requested
31 by it, whichever is later.

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

37 h. All overdue payments shall bear interest at the percentage of
38 interest prescribed in the Rules Governing the Courts of the State of
39 New Jersey for judgments, awards and orders for the payment of
40 money.

41 i. All automobile insurers and the Unsatisfied Claim and Judgment
42 Fund shall provide any claimant with the option of submitting a dispute
43 under this section to **[**binding arbitration. Arbitration proceedings
44 shall be administered and subject to procedures established by the
45 American Arbitration Association. If the claimant prevails in the
46 arbitration proceedings, the insurer shall pay all the costs of the

1 proceedings, including reasonable attorney's fees, to be determined in
2 accordance with a schedule of hourly rates for services performed, to
3 be prescribed by the Supreme Court of New Jersey] dispute resolution
4 pursuant to sections 24 and 25 of P.L. , c. (C.)(now before
5 the Legislature as this bill).
6 (cf: P.L.1995, c.407, s.1)

7
8 24. (New section) a. Any dispute regarding the recovery of
9 medical expense benefits or other benefits provided under personal
10 injury protection coverage pursuant to section 4 of P.L.1972, c.70
11 (C.39:6A-4), or section 4 of P.L. , c. (C.) (now before the
12 Legislature as this bill) arising out of the operation, ownership,
13 maintenance or use of an automobile may be submitted to dispute
14 resolution on the initiative of any party to the dispute, as hereinafter
15 provided.

16 b. The Commissioner of Banking and Insurance shall designate an
17 organization, and for that purpose may, at his discretion, advertise for
18 proposals, for the purpose of administering dispute resolution
19 proceedings regarding medical expense benefits and other benefits
20 provided under personal injury protection pursuant to section 4 of P.L.
21 1972, c.70 (C.39:6A-4) or medical expense benefits coverage pursuant
22 to section 4 of P.L. , c. (C.)(now before the Legislature as this
23 bill). The commissioner shall promulgate rules and regulations with
24 respect to the conduct of the dispute resolution proceedings. The
25 organization administering dispute resolution shall utilize qualified
26 professionals who serve on a full-time basis and who meet standards
27 of competency established by the commissioner. The commissioner
28 shall establish standards of performance for the organization to ensure
29 the independence and fairness of the review process, including, but not
30 limited to, standards relative to the professional qualifications of the
31 professionals presiding over the dispute resolution process, and
32 standards to ensure that no conflict of interest exists which would
33 prevent the professional from performing his duties in an impartial
34 manner. The standards of performance shall include a requirement
35 that the organization establish an advisory council composed of parties
36 who are users of the dispute resolution mechanism established herein.
37 The commissioner may contract with a consulting firm for the
38 formulation of the standards of performance of the organization and
39 establishment of qualifications for the persons who are to conduct the
40 dispute resolution proceedings. The commissioner shall not advertise
41 for bids for the consulting firm, as provided in sections 3 and 4 of
42 P.L.1954, c.48 (C.52:34-8 and 52:34-9). Compensation to the dispute
43 resolution professionals shall be ²**[fixed on a per case basis]**
44 established by the commissioner² and adjusted from time to time as
45 appropriate, with the approval of the commissioner. In no case shall
46 compensation be paid on a contingency basis. The organization shall

1 establish a dispute resolution plan, which shall include procedures and
2 rules governing the dispute resolution process and provisions for
3 monitoring the dispute resolution process to ensure adherence to the
4 standards of performance established by the commissioner. The plan,
5 and any amendments thereto, shall be subject to the approval of the
6 commissioner.

7 c. Dispute resolution proceedings under this section 24 and section
8 25 of this amendatory and supplementary act shall include disputes
9 arising regarding medical expense benefits provided under subsection
10 a. of section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. ,
11 c. (C.) (now before the Legislature as this bill), benefits provided
12 pursuant to subsection b., c., d. or e. of section 4 of P.L.1972, c.70
13 (C.39:6A-4), subsection b., c., d. or e. of P.L.1972, c.198 (C.39:6-
14 86.1), and disputes as to additional first party coverage benefits
15 required to be offered pursuant to section 10 of P.L.1972, c.70
16 (C.39:6A-10). Disputes involving medical expense benefits may
17 include, but not necessarily be limited to, matters concerning: (1)
18 interpretation of the insurance contract; (2) whether the treatment or
19 health care service which is the subject of the dispute resolution
20 proceeding is in accordance with the provisions of section 4 of
21 P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c. (C.)
22 (now before the Legislature this bill) or the terms of the policy; (3) the
23 eligibility of the treatment or service for compensation; (4) the
24 eligibility of the provider performing the treatment or service to be
25 compensated under the terms of the policy or under regulations
26 promulgated by the commissioner, including whether the person is
27 licensed or certified to perform such treatment; (5) whether the
28 disputed medical treatment was actually performed; (6) whether
29 diagnostic tests performed in connection with the treatment are those
30 recognized by the ²professional licensing boards in the Division of
31 Consumer Affairs in the Department of Law and Public Safety or other
32 recognized professional organizations, or as otherwise provided in
33 section 12 of P.L. , c. (C.)(now before the Legislature as this
34 bill)] commissioner² ; (7) the necessity or appropriateness of
35 consultations by other health care providers; (8) disputes involving
36 application of and adherence to fee schedules promulgated by the
37 commissioner; and (9) whether the treatment performed is reasonable,
38 necessary, and compatible with the protocols provided for pursuant to
39 P.L. , c. (C.)(now before the Legislature as this bill).
40 The dispute resolution professionals may review the entire claims file
41 of the insurer, subject to any confidentiality requirement established
42 pursuant to State or federal law. All decisions of the dispute
43 resolution professional shall be in writing, in a form prescribed by the
44 commissioner, shall state the issues in dispute, the findings and
45 conclusions on which the decision is based, and shall be signed by the
46 dispute resolution professional. All decisions of a dispute resolution

1 professional shall be binding. The dispute resolution organization shall
2 provide for the retention of all documents used in dispute resolution
3 proceedings under this section and section 25 of this amendatory and
4 supplementary act, including the written decision, for a period of at
5 least five years, in a form approved by the commissioner, or for such
6 additional time as may be established by the commissioner. The
7 written decisions of the dispute resolution professional shall be
8 forwarded to the commissioner, who shall establish a record of the
9 proceedings conducted under the dispute resolution procedure, which
10 shall be accessible to the public and may be ²[determined to have
11 standing as precedent for] used as guidance in² subsequent dispute
12 resolution proceedings.

13 d. With respect to disputes as to the diagnosis, the medical
14 necessity of the treatment or diagnostic test administered to the injured
15 person, whether the injury is causally related to the insured event or
16 is the product of a preexisting condition, or disputes as to the
17 appropriateness of the protocols utilized by the provider, the dispute
18 resolution professional shall, either at his option or at the request of
19 any party to the dispute, refer the matter to a medical review
20 organization for a determination. ²The determination of the medical
21 review organization on the dispute referred shall be binding upon the
22 dispute resolution professional.²

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

36
37 25. (New section) a. The commissioner shall establish standards
38 for the certification of medical review organizations, which shall
39 include standards of performance formulated by the commissioner in
40 consultation with the Commissioner of Health and Senior Services.
41 The standards of performance shall set forth procedures to ensure a
42 timely and impartial review of the medical records of the injured
43 person by a medical review organization, including, but not limited to,
44 a review of the necessity or appropriateness of treatments for injuries,
45 including diagnostic tests, sustained in an automobile accident. The
46 commissioner shall establish standards for persons conducting the

1 medical review, including standards with respect to credentials,
2 experience, licensure, fees, and confidentiality. The standards shall
3 include a requirement that all persons performing reviews are New
4 Jersey licensed or certified health care providers, and a requirement
5 that any medical review panel contain a health care provider licensed
6 or certified in the same profession as the treating health care provider
7 and that it contain a sufficient representation of reviewers to judge the
8 appropriateness of treatment or treatments in dispute, including, but
9 not limited to, the medical necessity of such treatments,
10 appropriateness of the protocols used by the treating provider, issues
11 regarding causality and preexisting conditions, the appropriateness and
12 efficacy of diagnostic tests performed in connection with the diagnosis,
13 and whether the diagnostic tests meet the requirements ²[set forth in
14 section 12 of P.L. , c. (C.)(now before the Legislature
15 as this bill)] established by the commissioner². The commissioner may
16 contract with a consultant for the formulation of the standards
17 governing the certification of the persons conducting the medical
18 reviews. The commissioner shall not advertise for bids for the
19 consultant, as provided in sections 3 and 4 of P.L.1954, c.48
20 (C.52:34-8 and 52:34-9).

21 b. Before certifying a medical review organization to receive
22 referrals from dispute resolution proceedings, the commissioner shall
23 determine that the organization has a sufficient number of qualified
24 health care providers, by specialty, to perform the reviews, has a
25 satisfactory procedure for maintaining the confidentiality of medical
26 records, is not owned or controlled by an insurer, and has met any
27 other requirements established by the commissioner.

28 c. The medical review organization shall establish and utilize
29 written review procedures, which shall be filed with the commissioner.
30 Every determination made by a medical review organization shall be
31 in writing and shall be retained by the organization for a period of no
32 less than five years.

33 d. The medical review organization may review the medical
34 treatment or treatments in dispute to determine whether: (1) the
35 treatment or diagnostic test being given for the injury or the services
36 provided in connection with the injury is medically necessary; (2) the
37 treatment is in accordance with or compatible with medically
38 recognized standard protocols, professional standards, and commonly
39 accepted medical practice in the same health care discipline as the
40 treating provider; (3) the treatment is consistent with the symptoms
41 or diagnosis of the injury; (4) the treatment or health care service is
42 related to the injury sustained in the insured event, or is required for
43 the diagnosis, evaluation or confirmation of the injury; (5) the
44 treatment is of a palliative, rather than restorative, nature; and (6)
45 medical procedures, treatment, or testing which have been repeated
46 are medically necessary and consistent with standard practice.

1 e. Cases referred by a dispute resolution professional for medical
2 review shall be referred to appropriate certified medical reviewers
3 affiliated with the certified medical review organization by a dispute
4 resolution organization. The dispute resolution organization shall
5 forward the referrals to certified medical reviewers on a random basis,
6 so that there is a relatively equal apportionment among all medical
7 reviewers. Referrals shall be made in such a manner so as not to
8 disclose to the medical reviewers the identity of the insurer, nor shall
9 the identity of the reviewer be disclosed to the insurer.

10 f. When appropriate in the context of its review of services or
11 treatments under dispute, a medical reviewer may request and shall
12 receive a written report or copy of the provider's records regarding
13 the case history, treatment dates, or the dates diagnostic tests or other
14 services were performed, and the provider's projected treatment plan.
15 The injured person or provider, as applicable, shall provide or make
16 available to the medical reviewer any pertinent medical records or
17 medical history which the medical reviewer may request. The medical
18 reviewer shall complete its review and make a determination within 20
19 business days of receipt of all of the requested information from the
20 dispute resolution professional or provider, as the case may be. The
21 medical reviewer shall submit its determination in writing to the
22 referring dispute resolution organization, which shall forward it to the
23 dispute resolution professional.

24 g. The cost of the proceedings shall be apportioned by the dispute
25 resolution professional. Fees shall be determined to be reasonable if
26 they are consonant with the amount of the award, in accordance with
27 a schedule established by the New Jersey Supreme Court. If the
28 treatment, diagnostic test, or service performed is not determined to
29 be medically necessary or appropriate, the injured person shall not be
30 liable to pay the provider the disputed amount.

31

32 ¹[26. (New section) No later than three months following the
33 effective date of this section, every insurer writing automobile
34 insurance in this State and any rating bureau which establishes a
35 territorial and risk classification plan on behalf of insurers shall
36 establish a procedure for collecting loss experience by postal zip code
37 and shall begin collecting that data in that manner in addition to any
38 other manner which it normally employs no later than six months
39 following the effective date of this section Loss experience collected
40 by zip code shall be confidential.]¹

41

42 ¹[27. (New section) There is established an automobile insurance
43 industry committee to revise the territorial rating system which is in
44 place as of the effective date of this section. The committee shall
45 consist of eighteen members. Eleven members shall be representatives
46 of insurers writing automobile insurance in this State, two members

1 shall represent a rating bureau which compiles loss experience and
2 assembles statistical data for insurers writing automobile insurance in
3 this State and four members shall be public members. Of the public
4 members, one shall be appointed by the President of the Senate, the
5 Speaker of the General Assembly, the Minority Leader of the Senate
6 and the Minority Leader of the General Assembly. Of the insurer
7 members, two shall be elected from member companies of the
8 American Insurance Association, two from member companies of the
9 Alliance of American Insurers, and two from member companies of the
10 National Association of Independent Insurers or their successor
11 organizations. The remaining members affiliated with the insurance
12 industry shall be elected at large as representatives of insurers writing
13 automobile insurance in this State, but no insurer or group of insurers
14 under common control shall have more than one representative elected
15 to the board. The representatives of insurers shall include at least five
16 actuaries. The commissioner or his designee shall be the eighteenth
17 member of the committee, but shall not have voting privileges.】¹

18

19 ¹【28. (New section) No later than three months following the
20 effective date of this section, the commissioner shall cause nominations
21 to be made and an election to be held among all insurers writing
22 automobile insurance in this State. Each trade association shall
23 nominate members from their association and shall hold an election for
24 membership to the committee. The respective trade associations shall
25 nominate candidates for the five seats to be elected at large.】¹

26

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

35 a. be created in such a manner as to recognize qualitative
36 differences in driving environments, which may include, but not be
37 limited to, traffic density, population density, comparative severity of
38 loss in like driving environments, similarities in the relative mix of
39 driving environments applicable to each proposed territory and
40 comparative homogeneity;

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

44 c. take into account the impact of the overlapping of traffic
45 patterns on exposure to loss, including the relative number of intra-
46 territory trips and out-of-territory trips applicable to each proposed

1 territory, for which the committee shall have access to the information
2 on commuting patterns collected pursuant to the provisions of section
3 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

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

6 e. be created in a manner which shall not result in territory
7 boundaries which are arbitrary, unfairly discriminatory, significantly
8 disproportionate in size although similar in driving environments and
9 losses, or delineated in a manner which is primarily for marketing
10 reasons rather than measuring relativity of exposure to probable
11 loss.】¹

12
13 ¹【30. (New section) The committee may utilize the resources of
14 any insurer, rating bureau, or group of insurers in performing its
15 duties. The committee shall review the data made available to it from
16 insurers or rating bureaus collecting data by zip code, as provided in
17 section 26 of this amendatory and supplementary act. The committee
18 may also request the commissioner to order a closed claim study from
19 any insurer or insurers writing private passenger automobile insurance
20 in this State, and the commissioner shall provide the committee with
21 the results of the study. The insurer or insurers supplying the
22 information from the closed claim study need not be identified to the
23 members of the committee. The committee may hold public hearings
24 as it determines are necessary in addition to its regular meetings.】¹

25
26 ¹【31. (New section) When the committee determines that it has
27 accumulated sufficient data to develop recommendations to the
28 commissioner, it may submit a territorial revision plan to the
29 commissioner for approval. The plan shall include at least one
30 common territorial rating system, but the committee may recommend,
31 that insurers may file individual territorial rating systems. The
32 commissioner may, if he determines that separate territorial rating
33 plans filed by individual insurers are in the interest of the citizens of
34 this State, approve an individual territorial rating system proposed by
35 an insurer, but only if the insurer's individual territorial rating system
36 meets the criteria established in section 29 of this amendatory and
37 supplementary act. The commissioner shall not approve any individual
38 territorial rating system, or any portion thereof, which contains
39 territorial configurations which he determines to be primarily directed
40 toward marketing purposes, or which would result in the likelihood
41 that an insurer's market share would be distributed unevenly
42 throughout the State.】¹

43
44 ¹【32. (New section) a. Upon finding that the plan or plans meet
45 the criteria above, the commissioner shall approve the territories or
46 require that adjustments be made in order that they conform with the

1 standards set forth in sections 26 through 33 of this amendatory and
2 supplementary act. If the commissioner approves territorial rating
3 plans for individual insurers, he shall also approve a territorial rating
4 plan for common use by insurers not filing their own plan.

5 b. Notwithstanding the provisions of section 7 of P.L.1983, c.65
6 (C.17:29A-36), the territorial configuration established by the
7 committee or by any insurer or filer pursuant to sections 29 through
8 32 of this amendatory and supplementary act shall produce territorial
9 rate relativities which accurately reflect differences in traffic density;
10 population density; and comparative severity of loss in like driving
11 environments, which do not produce unfair cross-subsidization
12 between territories with differing characteristics.】¹

13
14 ¹【33. (New section) Any insurer filing its own territorial rating
15 plan shall file a revised rating plan, along with its proposed territorial
16 relativity factors, which shall not take effect until approved by the
17 commissioner, in accordance with the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.). In determining whether to
19 approve an individual territorial rating plan, the commissioner shall
20 consider whether the territorial relativity factors which are filed are (1)
21 not unfairly discriminatory; and (2) accurately reflect the probable
22 differentials in losses among territories.】¹

23
24 ²【¹26. (New section) The Commissioner of Banking and Insurance
25 shall promulgate regulations, to take effect no later than 90 days
26 following the effective date of this section, which require every
27 insurer or group of insurers writing private passenger automobile
28 insurance in this State, by itself or by a rating organization on its
29 behalf, to file and implement a territorial rating plan, including
30 territorial definitions, territorial relativity factors and territorial base
31 rates, that meet the requirements of this section. Automobile
32 insurance territories shall:

33 a. be created in such a manner as to recognize the qualitative
34 differences in driving environments, which may include but not be
35 limited to, traffic density, population density, comparative severity in
36 like driving environments, similarities in the relative mix of driving
37 environments applicable to each proposed territory and comparative
38 homogeneity;

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

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

45 d. consider the relative mix of business in each territory by driver
46 classification;

1 e. be created in a manner which shall not result in territorial
2 definitions which are arbitrary, unfairly discriminatory, significantly
3 disproportionate, or delineated in a manner which is primarily for
4 marketing reasons, rather than for measuring the relativity of exposure
5 to probable loss; and

6 f. be created so as to include such other reasonable and necessary
7 standards as the commissioner may establish by regulation.¹²

8
9 ²26. (New section) Every insurer writing private passenger
10 automobile insurance in this State and every rating organization
11 establishing territorial rating plans on behalf of its member companies
12 shall establish new territorial rating plans in place of the insurer or
13 filer's territorial rating plan in effect on June 1, 1998, which shall
14 include territorial definitions, territorial relativity factors and territorial
15 base rates, and which are in accordance with the provisions of sections
16 26 through 29 of this amendatory and supplementary act. The
17 Commissioner of Banking and Insurance shall promulgate regulations
18 establishing standards governing the establishment of new rating
19 territories, which standards shall include, but not be limited to:

20 a. Territories shall be defined in such a manner as to recognize
21 throughout the territorial rating plan both qualitative similarities and
22 qualitative differences in driving environments or mix of driving
23 environments, which may include, but not be limited to, traffic density,
24 population density, comparative severity of loss, and the degree of
25 homogeneity within a territory in terms of driving environments,
26 population, and driver classification, and the territory shall be
27 comprised of towns or cities which are contiguous;

28 b. Territories shall contain a sufficient number of exposures to
29 result in statistically credible experience, in accordance with
30 regulations established by the commissioner, and shall be defined in a
31 manner which minimizes the effect of variability of loss in a territory
32 on a year-to-year basis;

33 c. Territory definitions shall take into account the impact of the
34 overlapping of traffic patterns on exposure to loss, including the
35 relative number of intraterritory trips and inter-territory trips
36 applicable to each proposed territory, for which the commissioner shall
37 make available to the insurer, filer, or the commission established
38 pursuant to section 28 of this amendatory and supplementary act,
39 appropriate information collected pursuant to the provisions of section
40 1 of P.L.1987, c.450 (C.43:21-14a) by the Department of Labor;

41 d. Territories shall be created in a manner which results in an
42 equable distribution of exposures among territories throughout the
43 State and no territorial rating plan shall result in territories which are
44 arbitrary, unfairly discriminatory, significantly disproportionate in
45 terms of the number of exposures per territory, or created in a manner
46 which is primarily for marketing purposes rather than measuring

1 relativity of exposure to probable loss, or created in a manner which
2 can be used to avoid the insurer or filer's obligations under section 27
3 of P.L.1990, c.8 (C.17:33B-15);

4 e. Territories shall be created in a manner which does not result in
5 disproportionate differences in territorial relativity factors or territorial
6 base rates between contiguous territories with similar driving
7 environments or similar mix of driving environments;

8 f. Factors to be considered in establishing territorial rate relativities
9 shall include taking into account similarities or differences in driving
10 environments or mix of driving environments, including traffic density,
11 population density, mix of driver classifications within a territory,
12 including classifications capped pursuant to the provisions of section
13 7 of P.L.1983, c.65 (C.17:29A-36), comparative degree of severity
14 of loss, and the relative number of intraterritory and inter-territory
15 trips;

16 g. Territories shall be defined in a manner which does not result in
17 unfair inter-territorial subsidization among territories with significant
18 differences in driving environments or mix of driving environments,
19 population density, traffic density, mix of driver classifications,
20 including classifications capped pursuant to the provisions of section
21 7 of P.L.1983, c.65 (C.17:29A-36) and comparative degree of severity
22 of loss.

23 h. For the purpose of defining territories and establishing territorial
24 relativity factors, loss experience allocated to any territory by an
25 insurer or filer (1) shall take into account any recovery applicable to
26 exposures in the territory which are attributable to subrogation or any
27 other kind of recovery by the insurer reporting the losses and (2) shall
28 not include any loss attributable to capping of driver classifications
29 pursuant to section 7 of P.L.1983, c.65 (C.17:29A-36).

30 The commissioner shall establish by regulation the minimum number
31 of exposures which shall be deemed to meet the standard of being
32 statistically credible for the purpose of defining territories.²

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

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

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

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

45 b. The commissioner shall approve or disapprove the use of a
46 territorial rating plan by a filer by written notice within 15 days of its

1 filing. If the commissioner disapproves a plan, he shall state his
2 reasons therefor, along with any amendments necessary for his
3 approval. The amended plan shall be filed and approved no later than
4 15 days thereafter.

5 c. Territorial rating plans approved pursuant to this section shall
6 apply to policies of the filer issued or renewed on or after the effective
7 date of the plan, which in no case shall be more than 30 days following
8 the date of that approval and, in the case of plans initially filed and
9 approved pursuant to this section, shall be no later than March 1,
10 1999.

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

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

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

26 g. As used in this section, "filer" means a rating organization or an
27 insurer or group of affiliated insurers making its own rates for private
28 passenger automobile insurance in this State.¹²

29
30 ²27. (New section) a. An insurer or rate filer shall file its
31 territorial rating plan with the commissioner for the commissioner's
32 approval. The commissioner shall approve the plan if he finds that the
33 plan complies with the provisions of section 26 of this amendatory and
34 supplementary act and the regulations promulgated thereto. If the
35 commissioner does not believe that the territorial rating plan meets the
36 standards established by this act or by regulation, or that the territorial
37 rating plan would serve to work against competition among insurers
38 in this State, he shall order that the plan be modified.

39 b. A filer may file for its use:

40 (1) an individual territorial rating plan which it has developed; or
41 (2) the common territorial rating plan established and approved
42 pursuant to section 28 of this act.

43 c. Approved individual territorial rating plans shall be on file with
44 the commissioner and available for review by filers subject to this
45 section.

46 d. Every filer shall periodically review, at least once in every five-

1 year period, the continued validity of the territorial rating plan which
2 it is using and shall report its findings to the commissioner, along with
3 such data as the commissioner deems necessary. If the commissioner
4 finds that it is not in accordance with the standards established
5 pursuant to section 26 of this act, he may order that the filer amend its
6 plan or, if the filer fails to do so, require the filer to adopt the common
7 territorial rating plan established pursuant to section 28 of this act.

8 e. Any filer or filers may object to the territorial rating plan used
9 by another filer on the grounds that it (1) is anticompetitive; (2) does
10 not meet the standards established by the commissioner pursuant to
11 section 26 of this act; or (3) results in the insurer or filer not meeting
12 its obligations pursuant to the provisions of section 27 of P.L.1990,
13 c.8 (C.17:33B-15).

14 f. No territorial rating plan of any insurer or any rating
15 organization filed with and approved by the commissioner pursuant to
16 section 27 of this act shall be implemented by any insurer until the
17 180th day following the approval of the common territorial rating plan
18 established by the commission created pursuant to section 28 of this
19 act, but in no event no later than January 1, 2000.²

20
21 ²[¹ 28. (New section) a. There is established the Automobile
22 Insurance Territorial Rating Plan Advisory Commission to review data
23 and establish one common territorial rating plan for use by insurers not
24 filing a territorial rating plan pursuant to paragraph (1) or (2) of
25 subsection a. of section 27 of this amendatory and supplementary act.
26 The territorial rating plan established by the commission shall be
27 established according to the criteria and standards provided in section
28 26 of this amendatory and supplementary act. The common territorial
29 rating plan shall be subject to the prior approval of the Commissioner
30 of Banking and Insurance, and shall be reviewed by the commissioner
31 at least once every five years as provided in section 27 of this
32 amendatory and supplementary act.

33 b. The commission shall consist of 14 members: nine
34 representatives of insurers writing private passenger automobile
35 insurance in this State appointed by the Governor with the advice and
36 consent of the Senate; four public members, of whom one shall be
37 appointed by the President of the Senate, one by the Speaker of the
38 General Assembly, one by the Minority Leader of the Senate and one
39 by the Minority Leader of the General Assembly; and the
40 Commissioner of Banking and Insurance, who shall serve ex-officio.
41 Of the insurer members appointed by the Governor, at least two
42 members shall be selected from member companies of the American
43 Insurance Association, two members selected from member companies
44 of the Alliance of American Insurers, and two members selected from
45 member companies of the National Association of Independent
46 Insurers or their successor organizations. The remaining insurer

1 members shall be selected from insurers writing automobile insurance
2 in this State, but no insurer or group of insurers under common
3 control shall have more than one representative appointed to serve on
4 the commission.

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

7 d. The commission shall elect a chairman and a vice chairman from
8 among the insurer members.

9 e. The commission shall establish a common territorial rating plan
10 pursuant to subsection a. of this section within 45 days of the effective
11 date of the regulations promulgated by the commissioner pursuant to
12 section 26 of this amendatory and supplementary act.¹²

13
14 ²28. (New section) a. There is established the Automobile
15 Insurance Territorial Rating Plan Advisory Commission to review
16 insurer data and establish a common territorial rating plan for use by
17 insurers not filing a territorial rating plan pursuant to section 27 of this
18 amendatory and supplementary act. The territorial rating plan
19 established by the commission shall be established according to the
20 criteria and standards provided in section 26 of this amendatory and
21 supplementary act and in accordance with regulations established by
22 the commissioner. The common territorial rating plan shall be subject
23 to the prior approval of the Commissioner of Banking and Insurance,
24 and shall be reviewed by the commissioner from time to time but not
25 less than once every five years.

26 b. The commission shall consist of fifteen members: nine
27 representatives of insurers writing private passenger automobile
28 insurance in this State and one representative of a rating bureau filing
29 rates on behalf of its members in this State, who shall be appointed by
30 the Governor with the advice and consent of the Senate; four public
31 members, of whom one shall be appointed by the President of the
32 Senate, one by the Speaker of the General Assembly, one by the
33 Minority Leader of the Senate and one by the Minority Leader of the
34 General Assembly; and the Commissioner of Banking and Insurance,
35 who shall serve ex-officio. Of the insurer members appointed by the
36 Governor, at least two members shall be selected from member
37 companies of the Alliance of American Insurers, and two members
38 selected from member companies of the National Association of
39 Independent Insurers or their successor organizations. The remaining
40 insurer members shall be selected from insurers writing automobile
41 insurance in this State, but no insurer or group of insurers under
42 common control shall have more than one representative appointed to
43 serve on the commission.

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

46 d. The commission shall elect a chairman and a vice chairman from

1 among the insurer members.

2 e. After its initial territorial rating plan has been approved, the
3 commissioner may convene the commission at any time to review the
4 plan and to gather data from insurers. The commissioner may, if he
5 finds that the common territorial rating plan does not meet the
6 standards established pursuant to section 26 of this act, order that the
7 plan be revised.

8
9 ¹29. Section 7 of P.L.1983, c.65 (C.17:29A-36) is amended to read
10 as follows:

11 7. ²a.² Any filing made for the purpose of automobile insurance
12 rate making shall indicate the actual rate needs of the filer; provided,
13 however, that (a) each filer's rate classification definitions, as used by
14 that filer, shall be uniform Statewide; and (b) the automobile insurance
15 rate charged an insured shall not exceed two and one-half times the
16 filer's territorial base rate for each coverage, exclusive of driving
17 record surcharges and discounts **】**; and (c) the automobile insurance
18 rate for the base class in any territory for any filer shall not exceed
19 1.35 times the filer's Statewide average base rate for each coverage,
20 exclusive of driving record surcharges and discounts **】** ²; and (c) the
21 automobile insurance rate of the base class in any territory for any filer
22 shall not exceed 1.35 times the filer's Statewide average base rate for
23 each coverage, exclusive of driving record surcharges and discounts
24 for any standard policy issued or renewed before January 1, 2000 or
25 the 180th day following approval of the common territorial rating plan
26 pursuant to section 28 of P.L.1998, c. (C.)(now before the
27 Legislature as this bill), whichever first occurs.

28 b. No rating plan or rate filing applicable to any policy issued or
29 renewed on or after January 1, 2000 or the 180th day following the
30 approval of the common rating territory provided for in sections 27
31 through 28 of P.L.1998, c. (C.)(now before the Legislature as this
32 bill), whichever first occurs, shall be approved by the commissioner
33 which creates territorial relativities which are significantly
34 disproportionate to those in effect as of the effective date of P.L. ,
35 c. (C.)(now before the Legislature as this bill)².

36 ²d.² The automobile insurance rate of an automobile whose
37 principal operator is 65 years of age or older shall not exceed one and
38 one-quarter times the Statewide average rate for principal operators
39 65 years of age or older for each coverage, exclusive of driving
40 record surcharges and discounts; provided, however, that no filer shall
41 increase rates for principal operators 65 years of age or older as a
42 result of the implementation of this section unless more than 50% of
43 its insureds are principal operators 65 years of age or older.

44 ²e. As a result of the filings made pursuant to sections 26 and 27
45 of P.L.1998, c. (C.)(now before the Legislature as this bill) and
46 subparagraphs b. and c. of this section, the filer's aggregate premium

1 for all territories shall not exceed the filer's aggregate premium in
2 effect prior to the date established in subparagraph (a) of subsection
3 b. of this section.²

4 As used in this section, base rate means the automobile insurance
5 rate charged for an automobile that is not used in business and not
6 used in going to and from work, except for the going to and from
7 work distance included in the pleasure use classification of the filer,
8 and where there is no youthful operator, as defined in the filer's
9 classification system. The base rate class shall not include
10 automobiles to which discounts apply under the filer's classification
11 system, including, but not limited to, farmers' and senior citizens'
12 automobiles ²or any discount from a standard rate provided for in the
13 filer's tier rating system².

14 The provisions of this section shall be implemented after the
15 implementation of the provisions of subsection a. of section 8 of this
16 act.¹

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

18
19 ¹30. Section 50 of P.L.1990, c.8 (C.17:33B-41) is amended to read
20 as follows:

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

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

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

42 (b) the make, year and vehicle identification number of each
43 insured vehicle; and

44 (c) the policy number, effective date and expiration date of each
45 policy.

46 (2) Each insurer shall provide this information on magnetic tape or

1 in another form the division agrees to accept.

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

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

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

12 (b) all current motor vehicle registrations.

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

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

17 (b) compare all current motor vehicle registrations against the data
18 base.】²

19 b. The division shall notify the person whose policy was canceled
20 that, unless proof of motor vehicle liability insurance is filed with the
21 division within 30 days of the notification or some other allowable
22 circumstance exists and the division is notified of that circumstance
23 within 30 days of the notification, the sanctions and penalties of this
24 section shall apply.

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

29 (1) Suspension shall not be made under this subsection upon the
30 basis of a cancellation of motor vehicle liability insurance if the
31 registration certificate and registration plates of the motor vehicle are
32 surrendered prior to the time at which the cancellation of insurance
33 becomes effective. Such surrender shall be made to such officers of
34 the division as the director shall direct. For the purposes of this
35 paragraph, the expiration of a registration without renewal of that
36 registration shall be deemed to be a surrender of registration as of the
37 date of expiration;

38 (2) Suspension shall not be made under this subsection upon a
39 cancellation of motor vehicle liability insurance if the vehicle has been,
40 or will be, prior to the date of that cancellation, removed from the
41 United States in North America and the Dominion of Canada for the
42 purpose of international traffic, provided that the owner of the vehicle,
43 prior to the date of that cancellation, has filed with the director a
44 statement, in a form prescribed by him, indicating that the vehicle has
45 been, or will be, so removed, and agreeing to notify the director
46 immediately upon return of the vehicle to the United States in North

1 America or the Dominion of Canada. Upon receipt of the statement
2 the director shall restrict the use of the registration to such
3 international traffic until new proof that motor vehicle liability
4 insurance has been secured for the vehicle;

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

11 d. Notwithstanding the provisions of subsection c. of this section,
12 an order of suspension may be rescinded if the registrant pays to the
13 commissioner a civil penalty in the amount of \$4 for each day up to 90
14 days for which motor vehicle liability insurance was not in effect. The
15 provisions of this subsection shall apply only once during any
16 36-month period and only if the registrant surrenders the certificate of
17 registration and registration plates to the director not more than 90
18 days from the date of cancellation of motor vehicle liability insurance
19 coverage or submits to the director proof of motor vehicle liability
20 insurance which took effect not more than 90 days from the
21 cancellation of his previous motor vehicle liability insurance.

22 e. Any motor vehicle, the registration for which has been
23 suspended pursuant to this section, shall not be registered or
24 reregistered in the name of the same registrant, or in any other name
25 where the director has reasonable grounds to believe that such
26 registration or reregistration will have the effect of defeating the
27 purposes of this section, and no other motor vehicle shall be registered
28 in the name of such person during the period of suspension.

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

31 g. If a registrant has not surrendered his certificate of registration
32 and registration plates or obtained motor vehicle liability insurance
33 within 90 days from the date of cancellation of motor vehicle liability
34 insurance, the director shall suspend the driver's license of any such
35 registrant. The suspension shall take effect on the date specified in the
36 order and shall remain in effect until termination of the suspension of
37 the registrant's registration.

38 h. The Director of the Division of Motor Vehicles shall adopt rules
39 and regulations pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of
41 this section. The director may, by regulation, require that the
42 provisions of this section shall be applicable to the termination of
43 policies of motor vehicle liability insurance for reasons other than
44 cancellation for nonpayment of premium, including nonrenewals.

45 ²i. Within 180 days of the effective date of this act the Division of
46 Motor Vehicles shall develop a format for electronic reporting by

1 insurers writing private passenger automobile insurance to the
2 division, on a real-time basis, information regarding the cancellation
3 of policies of motor vehicle insurance, the issuance of new policies of
4 motor vehicle insurance, and changes of vehicle on policies of motor
5 vehicle insurance in force in order to verify compliance with the motor
6 vehicle liability insurance requirements of section 1 of P.L.1972, c.197
7 (C.39:6B-1), and the mandatory automobile insurance requirements of
8 section 4 of P.L.1998, c. (C.) (now before the Legislature as this
9 bill). Information shall be maintained by driver's license number of the
10 named insured. Other information to be provided by insurers shall be
11 established by the director by regulation.

12 j. The director shall establish an electronic data base containing the
13 information provided for in subsection a. of this section, which shall
14 be made available to all law enforcement officers for the purpose of
15 enforcing the mandatory motor vehicle insurance requirements of
16 section 1 of P.L.1972, c.197 (C.39:6B-1). The data base shall not be
17 made available until every insurer writing private passenger insurance
18 has complied with regulations of the director and information required
19 by subsection a. of this section is reported on a real-time basis. The
20 Division of Motor Vehicles shall establish security procedures to
21 protect the confidentiality of the information on the data base, which
22 shall preclude access to the information to any person not otherwise
23 entitled to it under this or any other law.

24 k. The data base shall be funded from the Uninsured Motorist
25 Prevention Fund established pursuant to section 2 of P.L.1983, c.141
26 (C.39:6B-3).^{2 1}
27 (cf: P.L.1990, c.8, s.50)

28
29 ¹31. Section 1 of P.L.1970, c.215 (C.17:29D-1) is amended to
30 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 competency, efficiency and effectiveness in the solicitation, negotiation
2 and effectuation of automobile insurance as evidenced by any history
3 of disciplinary actions or complaints against the producer, and other
4 relevant factors; and conducts his business in an office in an
5 automobile insurance urban enterprise zone. For purposes of this
6 subsection i., "insurer" means an insurer or group of affiliated insurers
7 admitted or authorized to transact the business of automobile
8 insurance in this State;

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

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

18 The governing body administering the plan shall report annually to
19 the Legislature and the Governor on the activities of the plan. The
20 report shall contain an actuarial analysis regarding the adequacy of the
21 rates for each coverage for the safeness and soundness of the plan.¹

22 (cf: P.L.1997, c.151, s.26)

23
24 ¹**[34.] 32.**¹ (New section) There is established in the Division of
25 Criminal Justice in the Department of Law and Public Safety the Office
26 of the Insurance Fraud Prosecutor. The Insurance Fraud Prosecutor
27 shall be appointed by, and serve at the pleasure of, the Governor with
28 the advice and consent of the Senate and be under the direction and
29 supervision of the Attorney General. Any person appointed as
30 Insurance Fraud Prosecutor shall have had prosecutorial experience,
31 including experience in the litigation of civil and criminal cases. The
32 Attorney General shall establish standards of performance for the
33 Office of Insurance Fraud Prosecutor, which shall include standards of
34 accountability.

35
36 ¹**[35.] 33.**¹ (New section) The Attorney General may appoint
37 such personnel, including attorneys and clerical personnel, as
38 necessary to carry out the duties of the office. The personnel charged
39 with investigatory work in ¹the¹ Division of ¹Insurance¹ Fraud
40 Prevention in the Department of Banking and Insurance shall be
41 transferred to the Office of the Insurance Fraud Prosecutor as
42 determined by the Commissioner of Banking and Insurance and the
43 Attorney General, in accordance with a plan of reorganization, and
44 shall become the Fraud Investigatory Section of the Office of the
45 Insurance Fraud Prosecutor. ¹**[A section of the Office of Insurance**
46 **Fraud Prosecutor shall be designated to be responsible for establishing**

1 a liaison and continuing communication between the office and the
 2 Department of Health and Senior Services, the Department of Human
 3 Services, any professional board in the Division of Consumer Affairs
 4 in the Department of Law and Public Safety, the Department of
 5 Banking and Insurance, the Division of State Police, every county
 6 prosecutor's office, such local government units as may be necessary
 7 or practicable and insurers.】 Personnel transferred from the Division
 8 of Insurance Fraud Prevention in the Department of Banking and
 9 Insurance to the Office of the Insurance Fraud Prosecutor pursuant to
 10 this section and any such reorganization plan shall be transferred with
 11 all tenure rights and any rights or protections provided by Title 11A
 12 of the New Jersey Statutes or other applicable statutes, as provided in
 13 section 8 of P.L.1983, c.320 (C.17:33A-8), and any pension law or
 14 retirement system²【; and, notwithstanding the provisions of section
 15 4 of P.L.1970, c.74 (C.52:17B-100), or any other law, to the contrary,
 16 all supervisory and investigative personnel of the Office of the
 17 Insurance Fraud Prosecutor including, but not limited to, supervisory
 18 and investigative personnel of the Division of Insurance Fraud
 19 Prevention transferred pursuant to this section and any such
 20 reorganization plan, shall not be confidential employees for the
 21 purposes of the "New Jersey Employer-Employee Relations Act,"
 22 P.L.1941, c.100 (C.34:13A-1 et seq.)】².¹

23
 24 ¹【36.】 34.¹ (New section) ¹a. A section of the Office of
 25 Insurance Fraud Prosecutor shall be designated to be responsible for
 26 establishing a liaison and continuing communication between the office
 27 and the Department of Health and Senior Services, the Department of
 28 Human Services, any professional board in the Division of Consumer
 29 Affairs in the Department of Law and Public Safety, the Department
 30 of Banking and Insurance, the Division of State Police, every county
 31 prosecutor's office, such local government units as may be necessary
 32 or practicable and insurers.

33 b.¹ The section of the office responsible for such liaison shall
 34 establish procedures: (1) for receiving notice from all entities
 35 enumerated in ¹subsection a. of this¹ section ¹【35 of this amendatory
 36 and supplementary act】¹ of any case in which fraud is suspected or has
 37 been substantiated; (2) for receiving referrals for the investigation of
 38 alleged fraud; (3) for receiving referrals for the prosecution of fraud
 39 by the office; (4) for receiving and referring information regarding
 40 cases, administrative or otherwise, under investigation by any
 41 department or other entity to the appropriate authority²【.】² and (5)
 42 for providing information to and coordinating information among any
 43 referring entities on pending cases of insurance fraud which are under
 44 investigation or being litigated or prosecuted. The liaison section of
 45 the office shall maintain a record of every referral or investigation.

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

8
9 ¹[38.] 36.¹ (New section) The Attorney General shall, in
10 consultation with county prosecutors, establish a Statewide fraud
11 enforcement policy for all State and local agencies, including
12 guidelines for the investigation and prosecution of fraud, which shall
13 include standards for detecting fraud, for the investigation of alleged
14 fraud and standards for the submission of cases for prosecution.
15 Priorities shall be established among the cases referred to the office for
16 prosecution or other litigation and the office shall assist referring
17 entities in establishing priorities among investigations or cases to be
18 disposed of by the entities themselves. The Insurance Fraud
19 Prosecutor shall prosecute criminal cases, litigate civil cases as
20 appropriate, or assist county prosecutors in prosecuting criminal cases
21 in accordance with the guidelines and priorities so established.

22
23 ¹[39.] 37.¹ (New section) Standards of performance shall be
24 established for the Fraud Investigatory Section, which shall include,
25 but not be limited to, recording the cases referred by insurers, local
26 government agencies and others which are assigned to the Fraud
27 Investigatory Section, investigating cases of alleged fraud in
28 accordance with the priorities established by the Insurance Fraud
29 Prosecutor, recording the disposition of the cases referred to the
30 section, and making recommendations to the Insurance Fraud
31 Prosecutor as to any procedural, regulatory, or statutory changes
32 which may be necessary to carry out the provisions of this amendatory
33 and supplementary act.

34
35 ¹[40.] 38.¹ (New section) a. The Insurance Fraud Prosecutor shall
36 maintain a data base which includes referrals, reports of fraud
37 investigations, prosecution, or litigation, and the results of such
38 proceedings, which shall include: (1) identification of the referring
39 entity; (2) type of fraud; (3) disposition of case; and (4) such other
40 data as may be necessary to the work of the office and the referring
41 entities.

42 b. The Insurance Fraud Prosecutor shall provide for the reporting
43 of claims information by insurers writing at least \$2,000,000 in direct
44 insurance premiums in any calendar year, in a standard reporting form,
45 which shall include, but shall not be limited to, information on stolen
46 vehicles, including the owners of such vehicles, information on

1 automobile accidents, including date and location of accidents, persons
2 involved in accidents, the kinds of injuries sustained in accidents and
3 treating health care providers, for the purpose of identifying patterns
4 of possible fraudulent activity, which information shall be shared with
5 county prosecutors, local law enforcement officials, and the New
6 Jersey State Police. Every insurer shall submit the data required by the
7 Insurance Fraud Prosecutor for all claims closing with payment during
8 a period established by the Insurance Fraud Prosecutor.

9
10 ¹[41.] 39.¹ (New section) The Insurance Fraud Prosecutor shall
11 have access to all necessary information in the possession of the State
12 or local public entities, including agency inspection reports, motor
13 vehicle records and license information, individual case files, and
14 intelligence information compiled and maintained by the Division of
15 State Police in the Department of Law and Public Safety. Upon the
16 request of the Insurance Fraud Prosecutor, any insurer which has
17 referred a case to the Insurance Fraud Prosecutor ²[.]² or to any
18 county or local government agency shall make ²available to the Office
19 of the Insurance Fraud Prosecutor² all information on the case
20 ²[available to the Office of the Insurance Fraud Prosecutor that the
21 Insurance Fraud Prosecutor shall request] in the insurer's possession².

22
23 ¹[42.] 40.¹ (New section) The Attorney General shall direct the
24 Office of the Insurance Fraud Prosecutor to:

25 a. Confer from time to time with departments or other units of
26 State government which have units which investigate fraud, in order
27 to coordinate activities, share information, and provide any assistance
28 necessary to any State agency in overseeing administrative
29 enforcement activities;

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

32 c. In connection with insurance fraud enforcement activities, act as
33 the liaison for the Executive Branch of government with agencies
34 involved in insurance fraud enforcement outside the Executive Branch,
35 including federal agencies and the Judiciary.

36 d. Provide an annual report to the Governor and the Legislature,
37 no later than March 1 of each year, as to the activities of the Insurance
38 Fraud Prosecutor for the preceding twelve months, including, but not
39 limited to, the number of cases referred, the number of cases
40 investigated, the number of cases in which professional licenses were
41 suspended or revoked, by type of license, the number of cases
42 prosecuted, the number of convictions procured, and the aggregate
43 amount of money collected in fines and returned in restitution to
44 insurers or others.

45
46 ¹[43.] 41.¹ (New section) In the case of a professional licensed

1 or certified by a professional licensing board in the Division of
2 Consumer Affairs in the Department of Law and Public Safety who is
3 guilty of fraud, the Insurance Fraud Prosecutor may recommend to the
4 appropriate board a suspension or revocation of the professional
5 license.

6
7 ¹[44.] 42.¹ (New section) The Insurance Fraud Prosecutor shall
8 consider the restitution of moneys to insurers and others who are
9 defrauded as a major priority, in order that policyholders may benefit
10 from the prosecution of those persons guilty of insurance fraud, and
11 to that end, any assets of any person guilty of fraud shall be subject to
12 seizure.

13
14 ¹[45.] 43.¹ (New section) The Insurance Fraud Prosecutor shall
15 have access to all information concerning insurance fraud enforcement
16 activities in the possession of all State departments and agencies. The
17 office shall meet on a regular basis with representatives of State
18 departments and agencies and county prosecutors to set specific goals
19 and strategies for the most effective resolution of insurance fraud
20 cases, whether by criminal, civil, or administrative enforcement action,
21 or a combination thereof.

22
23 ¹[46.] 44.¹ (New section) Any county prosecutor may apply to
24 the Office of ²the² Insurance Fraud Prosecutor for reimbursement for
25 activities undertaken in connection with investigating and prosecuting
26 insurance fraud. The Attorney General shall allocate such funds as he
27 deems necessary from such moneys as may be appropriated for the
28 operation of the Office of ²the² Insurance Fraud Prosecutor to a fund
29 dedicated for the purpose of reimbursing county prosecutors or
30 sharing in fines levied by the Attorney General, which reimbursement
31 or sharing may be made by the Attorney General at his discretion.

32
33 ¹[47.] 45.¹ (New section) Every state and local law enforcement
34 agency, including the New Jersey State Police, shall make available to
35 investigators employed by insurers, upon presentation of appropriate
36 identification, information from any accident report, as set forth in this
37 section, no later than 24 hours following the time of occurrence. The
38 information may include, but need not be limited to, the names and
39 addresses of the owners of the vehicles, insurance information
40 recorded on the accident report, and the names and addresses of
41 passengers in the vehicles at the time of the occurrence and, if
42 applicable, the name of any pedestrian injured in an accident. Every
43 accident report form shall contain the names and addresses of any
44 person occupying a vehicle involved in an accident, and any pedestrian
45 injured in an accident.

1 ¹**[48.] 46.**¹ (New section) The Attorney General shall annually,
2 on or before October 1, certify to the State Treasurer an amount
3 allocable to the expenses of the Office of the Insurance Fraud
4 Prosecutor for the preceding fiscal year, which amount shall be
5 transferred to the Department of Law and Public Safety by the State
6 Treasurer from the amounts assessed and collected for the operation
7 of the Division of Insurance Fraud Prevention in the Department of
8 Banking and Insurance pursuant to section 8 of P.L.1983, c.320
9 (C.17:33A-8).

10

11 ¹**[49.] 47.**¹ (New section) For the purposes of sections ¹**[50] 48**¹
12 through ¹**[63] 61**¹ of this amendatory and supplementary act:

13 "Commissioner" means the Commissioner of Banking and
14 Insurance;

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

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

23 "Ombudsman" means the Insurance Claims Ombudsman appointed
24 pursuant to section ¹**[50] 48**¹ of this amendatory and supplementary
25 act.

26

27 ¹**[50.] 48.**¹ (New section) There is created within the ²**[Division**
28 of Consumer Affairs in the Department of Law and Public Safety]
29 Department of Banking and Insurance² the Office of the Insurance
30 Claims Ombudsman. The ombudsman shall be appointed by the
31 Governor with the advice and consent of the Senate and shall serve at
32 the pleasure of the Governor during the Governor's term of office.
33 The ombudsman shall devote his entire time to the duties of his office.
34 Any vacancy occurring in the position of ombudsman shall be filled in
35 the same manner as the original appointment. If the ombudsman shall
36 be unable for any reason to serve his full term of office, the Governor
37 may designate an acting ombudsman until a successor is appointed and
38 qualified. The ombudsman shall have at least a baccalaureate degree
39 and at least seven years' experience in property and casualty or life and
40 health insurance, which may include experience as a broker or an
41 agent.

42

43 ¹**[51.] 49.**¹ (New section) The ombudsman shall:

44 a. Administer and organize the work of the office and hire such
45 persons as shall be deemed necessary to effectuate his duties, subject
46 to Title 11A (Civil Service) of the New Jersey Statutes, and within the

1 limits of funds made available by the Department of Banking and
2 Insurance ²[, in consultation with the Attorney General]².

3 b. Appoint and employ ²attorneys, in accordance with any
4 applicable law, regulation or executive order, and² any consultants,
5 independent adjusters, claims specialists ²[, attorneys]² or others for
6 the purpose of providing ²[legal and]² professional advice as the
7 ombudsman may from time to time require, within the limits of the
8 funds provided therefor;

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

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

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

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

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

25 h. Promulgate such rules and regulations as shall be necessary to
26 effectuate the purposes of sections ¹[50] 48¹ through ¹[63] 61¹ of
27 this amendatory and supplementary act; and

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

30

31 ¹[52.] 50.¹ (New section) Any person who: a. has reasonable
32 cause to believe that an insurer has failed or refuses to settle a claim
33 in accordance with the provisions of the insurance contract or engaged
34 in any practice in violation of the provisions of P.L.1985, c.179
35 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et seq.), P.L.1982,
36 c.95 (C.17:35C-1 et seq.), chapter 30 of Title 17B of the New Jersey
37 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11); and, in the
38 case of disputed claims, b. has previously filed an appeal with the
39 insurer's internal appeals procedure established pursuant to section
40 ¹[57] 55¹ of this amendatory and supplementary act, which has been
41 adjudicated, or other dispute resolution procedure established pursuant
42 to P.L.1972, c.70 (C.39:6A-1 et seq.), P.L.1997, c.192 (C.26:2S-1 et
43 seq.), ²or² sections 1 through 12 of P.L.1983, c.358 (C.39:6A-24
44 through 39:6A-35, inclusive) ²[or sections 24 and 25 of P.L. , c.
45 (C.)(now before the Legislature as this bill)]² may file an
46 application with the ombudsman for a review of the claims settlement.

1 ²Any disputes which may be or have been filed or adjudicated pursuant
2 to sections 24 and 25 of P.L. _____, c. _____ (C. _____)(now before the
3 Legislature as this bill) shall not be subject to the ombudsman's
4 review.²

5
6 ¹**[53.] 51.**¹ (New section) In any investigation involving a
7 disputed claim, the ombudsman may:

- 8 a. Investigate whether the claims settlement was appropriate and
9 in accordance with the contract;
10 b. Make the necessary inquiries and obtain such information as he
11 deems necessary;
12 c. Hold a hearing on the disputed claim;
13 d. Inspect any books or records which are relevant to the claim;
14 e. Compel any person to produce at a specific time and place, by
15 subpoena, any documents, books, records, papers, objects or other
16 evidence which he believes may relate to a claim under investigation.
17

18 ¹**[54.] 52.**¹ (New section) The ombudsman need not investigate
19 any complaint if he determines that:

- 20 a. The complaint is trivial, frivolous, vexatious or not made in
21 good faith;
22 b. The complaint has been too long delayed to justify present
23 investigation;
24 c. The resources available, considering the established priorities,
25 are insufficient for an adequate investigation; or
26 d. The matter complained of is not within the investigatory
27 authority of the office.
28

29 ¹**[55.] 53.**¹ (New section) The ombudsman shall maintain a
30 central registry of all claims investigations which have been disposed
31 of and closed, the nature of the investigation, findings, and
32 recommended actions. No information so compiled shall be construed
33 to be a public record. In addition, the ombudsman shall:

- 34 a. Report to the commissioner any evidence that an insurer has
35 established a pattern of settlement practices which would constitute an
36 unfair claims settlement practice within the meaning of P.L.1947,
37 c.379 (C.17:29B-1 et seq.) or any violations of P.L.1985, c.179
38 (C.17:23A-1 et seq.), P.L.1947, c.379 (C.17:29B-1 et seq.), P.L.1982,
39 c.95 (C.17:35C-1 et seq.) chapter 30 of Title 17B of the New Jersey
40 Statutes or section 8 of P.L.1992, c.144 (C.17:35C-11);
41 b. Report to the commissioner any contract provision, including
42 any endorsements, which are unfairly discriminatory, confusing,
43 misleading or contrary to public policy, along with a recommendation
44 as to whether the policy form should be modified or withdrawn.
45

46 ¹**[56.] 54.**¹ (New section) With respect to trade or marketing

1 practices, the ombudsman may:

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

4 b. Make the necessary inquiries and obtain such information as he
5 deems necessary;

6 c. Hold a hearing;

7 d. Inspect any books or records which may be necessary for the
8 investigation;

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

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

15

16 ¹[57.] 55.¹ (New section) Every insurer writing property and
17 casualty insurance or life insurance in this State shall establish an
18 internal appeals procedure for the ²[adjudication] review² of disputed
19 claims, in accordance with terms set forth by the commissioner by rule
20 and regulation or as otherwise provided by law or regulation. The
21 ²[adjudication] review² shall be conducted by a panel of the insurer's
22 employees, who shall be personnel other than those responsible for
23 claims payment on a day-to-day basis and shall be conducted within 10
24 business days of the receipt of the complaint.

25

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

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

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

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

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

45

46 ¹[59.] 57.¹ (New section) Every buyer's guide which is required

1 to be provided to insureds for any line of insurance shall contain a
2 notice describing the functions of the ombudsman, the mailing address
3 of the ombudsman, and a toll-free information telephone number. The
4 ombudsman may publicize his existence, function and activities to the
5 public at large.

6
7 ¹[60.] 58.¹ (New section) a. Any correspondence or written
8 communication from any ²[applicant] complainant² and any written
9 material submitted by an insurer shall remain confidential and shall not
10 be part of any public record, unless the parties authorize, in writing,
11 the release of the information, ²or² except for such disclosures as may
12 be necessary to enable the ombudsman to perform his duties and to
13 support any opinions or recommendations ²or as may be necessary to
14 enable the commissioner to perform any function authorized by law².

15 b. Any person conducting or participating in any investigation of
16 a complaint who discloses to any person, other than the office of the
17 ombudsman ²or the Department of Banking and Insurance², or those
18 authorized by the ombudsman ²or the commissioner² to receive it, any
19 information collected during the investigation, is guilty of a disorderly
20 person's offense.

21 c. Any statement or communication made by the office of the
22 ombudsman relevant to a complaint received by the ombudsman, to
23 proceedings conducted ²either² by the ombudsman ²or by or on behalf
24 of the commissioner², or relating to an investigation conducted by the
25 ombudsman, which is provided to the office in good faith, shall be
26 absolutely privileged.

27 d. The ombudsman shall not be required to testify in court with
28 respect to matters held to be confidential except as the court may
29 deem necessary to enforce the provisions of sections ¹[50] 48¹
30 through ¹[63] 61¹ of this amendatory and supplementary act ²or as
31 the commissioner may deem necessary in conjunction with the
32 execution of any power of the commissioner authorized by law².

33 ²e. Nothing in this section shall be deemed to limit the disclosure
34 of information to law enforcement and regulatory agencies.²

35
36 ¹[61.] 59.¹ (New section) Upon making his determination as to
37 the appropriate disposition of a claim, the ombudsman shall notify the
38 insurer and the claimant of his decision. The decision shall be
39 admissible in any court action or any other proceeding which is
40 instituted to determine final disposition of the claim. The ombudsman
41 may file a brief with the court in connection with an action relating to
42 the disposition of claim.

43
44 ¹[62.] 60.¹ (New section) Any person who willfully hinders the
45 lawful actions of the ombudsman or willfully refuses to comply with
46 his lawful demands, including the demand for the inspection of

1 records, shall be subject to a penalty of not more than \$5,000. The
2 penalty shall be collected and enforced by summary proceedings
3 pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.
4 Each violation of sections ¹[50] 48¹ through ¹[63] 61¹ of this
5 amendatory and supplementary act shall constitute a separate offense.
6 Notwithstanding any other provision of law to the contrary, no
7 investigation or determination made by the ombudsman shall be
8 ²[subject to the provisions] dispositive of a violation ²of P.L.1960,
9 c.39 (C.56:8-1 et seq.) ²but may be considered relevant in determining
10 whether a violation of such act has occurred².

11

12 ¹[63.] 61.¹ (New section) The ombudsman shall report to the
13 Governor and the Legislature on or before September 30 of each year,
14 summarizing his activities for the preceding year, documenting any
15 significant insurance industry problems with regard to claims
16 settlement practices in any line of insurance, and setting forth any
17 recommendations for statutory or regulatory change which will further
18 the State's capacity to resolve claims disputes.

19

20 ¹[64.] 62.¹ Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended
21 to read as follows:

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

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

27 (b) In case of nonpayment of premium;

28 provided that, notwithstanding the failure of an insurer to comply
29 with this section, the policy shall terminate on the effective date of any
30 other insurance policy with respect to any automobile designated in
31 both policies.

32 **【If a named insured qualifies for his insurer's non-standard rate**
33 **level after having been insured at the standard rate level, the insurer**
34 **shall mail or deliver to the named insured, at the address shown in the**
35 **policy, at least 60 days' advance notice of its intention to renew at the**
36 **non-standard rate level.】**

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

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

41

42 ¹[65.] 63.¹ (New section) a. An insurer authorized to transact or
43 transacting automobile insurance business in this State shall file with
44 the commissioner, for the commissioner's approval, an endorsement to
45 its automobile liability insurance policy which contains a "named
46 excluded driver" provision that would exclude physical damage

1 coverage on an automobile covered by an automobile liability
2 insurance policy if it is operated by the "named excluded driver." For
3 purposes of this section, "named excluded driver" means a driver in the
4 household of the named insured who is specifically identified in the
5 endorsement as a person whose operation of an automobile covered
6 under the automobile liability insurance policy at the time of an
7 accident would result in the denial of a physical damage claim for that
8 automobile.

9 b. The premium charged for the physical damage coverage on a
10 policy containing a "named excluded driver" endorsement shall not
11 reflect the claim experience or driving record of the "named excluded
12 driver" or drivers.

13 c. Election of a "named excluded driver" endorsement shall be in
14 writing and signed by the named insured on a form prescribed by the
15 commissioner. The "named excluded driver" endorsement shall
16 continue in force as to subsequent renewal or replacement policies
17 until the insurer or its authorized representative receives a properly
18 executed form electing to discontinue the endorsement.

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

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

25
26 ¹[66.] 64.¹ (New section) If an insurer has a financial
27 arrangement with ²[an] one or more² auto body repair ²[shop]
28 shops² or other repair ²[facility] facilities² or a network of facilities
29 for the purpose of repairing vehicles covered under physical damage,
30 collision, or comprehensive coverages, the insurer shall not deny a
31 person the right to select an auto body repair shop or other repair
32 facility of his choice for repair of a covered vehicle, provided that such
33 auto body repair shop or other repair facility elected by the person
34 accepts the same terms and conditions ²from the insurer, including, but
35 not limited to, price.² as the shop, facility, or network with which the
36 insurer has ²[an] the most generous² arrangement ²[and agrees to
37 repair the covered vehicle at the same price]². ²Prior to undertaking
38 any repair, the auto body repair shop or other repair facility of the
39 insured's choice shall provide the insured with written notification, in
40 a form to established by the Commissioner of the Department of
41 Banking and Insurance by regulation, that, by agreeing to have the
42 auto body shop or other repair facility of the insured's choice accept
43 the same terms and conditions from the insurer as the shop, facility or
44 network with which the insurer has the most generous arrangement,
45 the insured may jeopardize any manufacturer or dealer warranty or
46 lease agreement. Such notification form shall be signed by the insured

1 prior to the undertaking of any repair.²

2

3 ¹[67.] 65.¹ (New section) a. The Commissioner of Banking and
4 Insurance may, in connection with any profits report made under
5 P.L.1988, c.118 (C.17:29A-5.6 et seq.), require a review of all or part
6 of the filing by ²a² qualified independent actuary, ¹including the
7 elements of the filing² including ²but not limited to,² the ²[insurer
8 or]² filer's assumptions with respect to the development of losses or
9 loss adjustment expenses developed to an ultimate basis, allowance for
10 profit and contingencies and anticipated investment income.

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

15

16 ¹[68.] 66.¹ (New section) a. For the purposes of this section:
17 "Qualified person" means a person qualified by the Commissioner
18 of Banking and Insurance to intervene in public hearings pursuant to
19 this section ², who shall be deemed a "public servant" within the
20 meaning of N.J.S.2C:30-2²;

21 "Rate filing" means a filing for a rate increase by an automobile
22 insurer writing private passenger automobile insurance in this State,
23 ²other than an expedited prior approval rate filing made pursuant to
24 section 34 of P.L.1997, c.151 (C.17:29A-46.6) and² other than a rate
25 filing made pursuant to any statutory change in coverage provided
26 under a policy of private passenger automobile insurance.

27 b. The Commissioner of Banking and Insurance shall establish
28 standards for qualifying persons to intervene in rate filings pursuant to
29 this section. The standards shall include, but shall not necessarily be
30 limited to, requiring that any person intervening in a rate filing
31 demonstrate: (1) expertise in the insurance laws of this State; (2) an
32 understanding of the actuarial principles employed in establishing rates
33 and rating systems; (3) sufficient access to a qualified actuary and
34 sufficient expertise to conduct a technical examination of a rate filing;
35 (4) sufficient resources to intervene in the rate filing process as
36 provided herein; and (5) that the person represents the interest of
37 consumers ²and accepts a duty of fidelity to do so².

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

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

46 e. If an insurer or rating organization files for a rate increase for

1 private passenger automobile insurance, the commissioner shall notify
2 the public of the proposed rate change in a newspaper or newspapers
3 of general circulation throughout the State. A qualified person may
4 request, and shall receive, a copy of the rate filing and any
5 amendments and supplements thereto and shall pay the expenses in
6 connection therewith. The qualified person may request that the
7 commissioner certify the rate filing for a hearing pursuant to section
8 14 of P.L.1944, c.27 (C:17:29A-14).

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

13 g. Upon determining that the intervenor has demonstrated that the
14 qualified person has made a substantial contribution to the adoption of
15 any order ²[, regulation,]² or decision by the commissioner or a court
16 in connection with a rate filing made pursuant to this section, the
17 commissioner shall award reasonable advocacy and witness fees and
18 expenses.

19 ²h. A person commits a crime of the third degree if he solicits,
20 accepts or agrees to accept any benefits as consideration for
21 knowingly violating or agreeing to violate a duty of fidelity to which
22 he is subject pursuant to this section. In addition, to any disposition
23 authorized by law, the Commissioner of Banking and Insurance shall
24 forever bar from registration as an intervenor any person convicted
25 under this subsection.

26 i. A person commits a crime of the third degree if he confers, or
27 offers or agrees to confer, any benefit the acceptance of which would
28 be criminal under this section. In addition to any disposition
29 authorized by law, the Commissioner of Banking and Insurance shall
30 deny the rate filing of any person convicted under this subsection and
31 the person shall be barred from filing for any rate increase for a period
32 of one year.

33 j. Nothing herein shall be construed to preclude a prosecution or
34 conviction for a violation of any other law.²

35
36 ¹[69.] 67.¹ (New section) a. Except for the plan established
37 pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1), every insurer
38 writing private passenger automobile insurance in this State pursuant
39 to P.L.1972, c.70 (C.39:6A-1 et seq.) shall file rates with the
40 Commissioner of Banking and Insurance which result in:

41 (1) a reduction of at least 25% from the personal injury protection
42 territorial base rate applicable to medical expense benefits, at least
43 10% of which shall reflect a reduction in the actuarial value of the
44 medical expense benefits provided pursuant to section 4 of P.L.1972,
45 c.70 (C.39:6A-4), within the policy limits provided for in that section;

46 (2) a reduction of at least 22% in the territorial base rate for bodily

1 injury liability coverage applicable to named insureds to whom the
2 Limitation on Lawsuit Option provided for in subsection a. of section
3 8 of P.L.1972, c.70 (C.39:6A-8) applies;

4 (3) a reduction of at least 6% in the territorial base rate for
5 collision coverage which shall reflect the provisions of section ¹**[66]**
6 **64**¹ of this amendatory and supplementary act; and

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

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

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

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

26 whichever is later.

27

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

30 3. Every owner, registrant or operator of a motor bus registered or
31 principally garaged in this State and every person or organization
32 legally responsible for his acts or omissions, is hereby exempted from
33 tort liability for noneconomic loss to a passenger who has a right to
34 receive benefits under section 2 of this act as a result of bodily injury
35 arising out of the ownership, operation, maintenance or use of a motor
36 bus in this State, unless that person has sustained a personal injury
37 which results in death; dismemberment; significant disfigurement or
38 significant scarring; **[a fracture]**displaced fractures; loss of a fetus;
39 **[permanent loss of use of a body organ, member, function or system**;
40 permanent consequential limitation of use of a body organ or member;
41 significant limitation of use of a body function or system; or a
42 medically determined injury or impairment of a non-permanent nature
43 which prevents the injured person from performing substantially all of
44 the material acts which constitute that person's usual and customary
45 daily activities for not less than 90 days during the 180 days
46 immediately following the occurrence of the injury or impairment **].or**

1 a permanent injury within a reasonable degree of medical probability,
2 other than scarring or disfigurement. An injury shall be considered
3 permanent when the body part or organ, or both, has not healed to
4 function normally and will not heal to function normally with further
5 medical treatment. For the purposes of this subsection, "physician"
6 means a physician as defined in section 5 of P.L.1939,c.115 (C.45:9-
7 5.1).

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

25 A person is guilty of a crime of the fourth degree if that person
26 purposefully or knowingly makes, or causes to be made, a false,
27 fictitious, fraudulent, or misleading statement of material fact in, or
28 omits a material fact from, or causes a material fact to be omitted
29 from, any certification filed pursuant to this section. Notwithstanding
30 the provisions of subsection e. of N.J.S. 2C:44-1, the court shall deal
31 with a person who has been convicted of a violation of this section by
32 imposing a sentence of imprisonment unless, having regard to the
33 character and condition of the person, the court is of the opinion that
34 imprisonment would be a serious injustice which overrides the need to
35 deter such conduct by others. If the court imposes a noncustodial or
36 probationary sentence, such sentence shall not become final for 10
37 days in order to permit the appeal of such sentence by the prosecution.
38 Nothing in this section shall preclude an indictment and conviction for
39 any other offense defined by the laws of this State. In addition, any
40 professional license held by the person shall be forfeited according to
41 the procedures established by section 4 of P.L.1997, c.353 (C.2C:51-
42 5).

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

44
45 ¹[71.] 69.¹ Section 2 of P.L.1977, c.310 (C.39:6-73.1) is amended
46 to read as follows:

1 2. In the event medical expense benefits paid by an insurer, in
2 accordance with subsection a. of section 4 of P.L.1972, c.70
3 (C.39:6A-4) or section 4 of P.L. __, c. __ (C. __)(now before the
4 Legislature as this bill), are in excess of \$75,000.00 on account of
5 personal injury to any one person in any one accident, the Unsatisfied
6 Claim and Judgment Fund shall assume such excess up to \$250,000
7 and reimburse the insurer therefor in accordance with rules and
8 regulations promulgated by the commissioner; provided, however, that
9 this provision is not intended to broaden the coverage available to
10 accidents involving uninsured or hit-and-run automobiles, to provide
11 extraterritorial coverage, or to pay excess medical expenses.
12 (cf: P.L.1990, c.8, s.14)

13

14 ²70. Section 13 of P.L.1995, c.156 (C.17:1C-31) is amended to
15 read as follows:

16 13. The total amount assessable to companies in any fiscal year for
17 all special purpose assessments made pursuant to applicable law as of
18 the effective date of this act, including the special purpose
19 apportionment established by this act, shall not increase, as a
20 percentage, more than the percentage increase in the combined net
21 written premiums received, as defined in subsection b. of section 2 of
22 this act, by all companies for the previous year, except that, with
23 respect to fiscal year 1998 and each fiscal year thereafter, the total
24 amount of all direct and indirect expenditures incurred by the Division
25 of Insurance Fraud Prevention [in connection with the appointment of
26 additional insurance fraud investigators pursuant to the Special
27 Purpose appropriation in P.L.1997, c.131, may] , the Office of the
28 Insurance Fraud Prosecutor and the Office of the Insurance Claims
29 Ombudsman shall be included in the special purpose apportionment,
30 notwithstanding any limitation on the total amount assessable to
31 companies under this section. With respect to each fiscal year after
32 1999, the total amount assessable to companies in any fiscal year for
33 all special purpose assessments individually allocable to the direct and
34 indirect expenditures incurred by the Division of Insurance Fraud
35 Prevention, the Office of the Insurance Fraud Prosecutor and the
36 Office of the Insurance Claims Ombudsman, respectively, shall not
37 increase, as a percentage, more than the percentage increase in the
38 combined net written premiums received, as defined in subsection b.
39 of section 2 of this act, by all companies for the previous year.²
40 (cf: P.L.1997, c.154, s.1)

41

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

44 2. a. [No] Except for a basic automobile insurance policy, no
45 motor vehicle liability policy or renewal of such policy of insurance,
46 including a standard liability policy for an automobile as defined in

1 section 2 of P.L.1972, c.70 (C.39:6A-2), insuring against loss resulting
2 from liability imposed by law for bodily injury or death, sustained by
3 any person arising out of the ownership, maintenance or use of a
4 motor vehicle, shall be issued in this State with respect to any motor
5 vehicle registered or principally garaged in this State unless it includes
6 coverage in limits for bodily injury or death as follows:

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

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

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

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

38 b. Uninsured and underinsured motorist coverage shall be provided
39 as an option by an insurer to the named insured electing a standard
40 automobile insurance policy up to at least the following limits:
41 \$250,000.00 each person and \$500,000.00 each accident for bodily
42 injury; \$100,000.00 each accident for property damage or \$500,000.00
43 single limit, subject to an exclusion of the first \$500.00 of such
44 damage to property for each accident, except that the limits for
45 uninsured and underinsured motorist coverage shall not exceed the
46 insured's motor vehicle liability policy limits for bodily injury and

1 property damage, respectively.

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

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

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

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

39 (2) "uninsured motor vehicle" means:

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

43 (b) a motor vehicle with respect to the ownership, operation,
44 maintenance, or use of which there is bodily injury liability insurance
45 in existence but the liability insurer denies coverage or is unable to
46 make payment with respect to the legal liability of its insured because

1 the insurer has become insolvent or bankrupt, or the Commissioner of
2 Banking and Insurance has undertaken control of the insurer for the
3 purpose of liquidation; or

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

6 "Uninsured motor vehicle" shall not include an automobile covered
7 by a basic automobile insurance policy; an underinsured motor vehicle;
8 a motor vehicle owned by or furnished for the regular use of the
9 named insured or any resident of the same household; a self-insurer
10 within the meaning of any financial responsibility or similar law of the
11 state in which the motor vehicle is registered or principally garaged;
12 a motor vehicle which is owned by the United States or Canada, or a
13 state, political subdivision or agency of those governments or any of
14 the foregoing; a land motor vehicle or trailer operated on rails or
15 crawler treads; a motor vehicle used as a residence or stationary
16 structure and not as a vehicle; or equipment or vehicles designed for
17 use principally off public roads, except while actually upon public
18 roads. ²

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

20
21 ²72. Section 18 of P.L.1985, c.520 (C.17:28-1.4) is amended to
22 read as follows:

23 18. Any insurer authorized to transact or transacting automobile or
24 motor vehicle insurance business in this State, or controlling or
25 controlled by, or under common control by, or with, an insurer
26 authorized to transact or transacting insurance business in this State,
27 which sells a policy providing automobile or motor vehicle liability
28 insurance coverage, or any similar coverage, in any other state or in
29 any province of Canada, shall include in each policy coverage to
30 satisfy at least the personal injury protection benefits coverage
31 pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or section 19 of
32 P.L.1983, c.362 (C.17:28-1.3) for any New Jersey resident who is not
33 required to maintain personal injury protection coverage pursuant to
34 section 4 of P.L.1972, c.70 (C.39:6A-4) or section 4 of P.L. , c.
35 (C.)(now before the Legislature as this bill) and who is not
36 otherwise eligible for such benefits, whenever the automobile or motor
37 vehicle insured under the policy is used or operated in this State. In
38 addition, any insurer authorized to transact or transacting automobile
39 or motor vehicle insurance business in this State, or controlling or
40 controlled by, or under common control by, or with, an insurer
41 authorized to transact or transacting automobile or motor vehicle
42 insurance business in this State, which sells a policy providing
43 automobile or motor vehicle liability insurance coverage, or any similar
44 coverage, in any other state or in any province of Canada, shall include
45 in each policy coverage to satisfy at least the liability insurance
46 requirements of subsection a. of section 1 of P.L.1972, c.197

(C.39:6B-1) or section 3 of P.L.1972, c.70 (C.39:6A-3), the uninsured motorist insurance requirements of subsection a. of section 2 of P.L.1968, c.385 (C.17:28-1.1), and personal injury protection benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or of section 19 of P.L.1983, c.362 (C.17:28-1.3), whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

Any liability insurance policy subject to this section shall be construed as providing the coverage required herein, and any named insured, and any immediate family member as defined in section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), under that policy, shall be subject to the tort option specified in subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

Each insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State and subject to the provisions of this section shall file and maintain with the Department of Banking and Insurance written certification of compliance with the provisions of this section.

"Automobile" means an automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2).²
(cf: P.L.1997, c.436, s.1)

²73. (New section) The commissioner may promulgate any rules and regulations pursuant to P.L.1968, c.410 (C.52:14B-1 et seq.) deemed necessary in order to effectuate the provisions of this amendatory and supplementary act.²

¹[72.] ²[70.] 74.² a.¹ This act shall take effect 90 days following the establishment by the Commissioner of Banking and Insurance of basic benefits required to be provided pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or the adoption by rule of the professional boards of the designation of valid diagnostic tests pursuant to the provisions of section 12 of this act, whichever is later, except that ¹:
¹(1)¹ sections ¹[49] 47¹ through ¹[63] 61¹ shall take effect on the 90th day after the date of enactment ¹[and] ; (2)¹ sections 1, 12, 26 through ¹[48] ²[28, 30 through] ²46¹, ¹[64] 62¹ through ¹[67] 65¹ and ¹[69] 67¹ shall take effect immediately ¹ and (3) section 29 shall take effect immediately and the elimination of the limit on territorial base rates provided therein shall apply to policies issued or renewed by an insurer on or after the effective date of the insurer's territorial rating plan approved by the commissioner as provided in section 27, but no later than March 1, 1999¹]².

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