P U B L I C H E A R I N G

before

SENATE LABOR, INDUSTRY & PROFESSIONS COMMITTEE

on

SENATE BILL 2594

(This bill embodies the recommendations of the Senate Special Committee on Automobile Insurance Reform)

SENATE RESOLUTION 61

(This resolution establishes a commission to study the operation of the mandatory motor vehicle liability insurance law and the feasibility of eliminating mandatory liability insurance)

October 16, 1986
Room 334
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Raymond Lesniak, Chairman
Senator Christopher J. Jackman, Vice Chairman
Senator Edward T. O'Connor, Jr.
Senator Gerald Cardinale
Senator Donald T. DiFrancesco

ALSO PRESENT:

Dale C. Davis, Jr.
Office of Legislative Services
Aide, Senate Labor, Industry
and Professions Committee

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Public Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 086
Trenton, New Jersey

New Jersey State Legislature
SENATE LABOR, INDUSTRY
AND PROFESSIONS COMMITTEE
STATE HOUSE ANNEX CN-068
TRENTON NEW JERSEY 08625
TELEPHONE (609) 984-0445

NOTICE OF PUBLIC HEARING

October 8, 1986

On Thursday, October 16, 1986, at 2:00 P.M., in Room 334, State House Annex, the Senate Labor, Industry and Professions Committee will continue its public hearing on the following bills:

S-2594 Dalton	Contains the automobile insurance reforms recommended by the Senate Special Committee on Automobile Insurance Reform.
SR-61 Laskin	Establishes a commission to study mandatory liability insurance.

Anyone wishing to testify should contact Dale Davis, Committe Staff, at 609-984-0445.

SENATE, No. 2594

STATE OF NEW JERSEY

INTRODUCED OCTOBER 2, 1986

By Senators DALTON, ZANE, ORECHIO and LYNCH

Referred to Committee on Labor, Industry and Professions

AN ACT concerning private passenger automobile insurance.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

Section 2 of P. L. 1977, c. 210 (C. 39:6-73.1) is amended to read as follows:

2. In the event medical expense benefits paid by an insurer, in accordance with section 4 [...] of P. L. 1972, c. 70 (C. 39:6A-4), are in excess of $75,000.00 on account of personal injury to any one person in any one accident, the Unsatisfied Claim and Judgment Fund shall assume such excess and reimburse the insurer therefor in accordance with rules and regulations promulgated by the commissioner: provided, however, that this provision is not intended to broaden the coverage available to accidents involving uninsured or hit-and-run automobiles, to provide extra-territorial coverage, or to pay excess medical expenses.

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

7. When any person qualified to receive payments under the provisions of the "Unsatisfied Claim and Judgment Fund Law" *P. L. 1952, c. 174 (C. 39:6-61 et seq.)* suffers bodily injury or death through being struck, as a pedestrian, as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2), by a motor vehicle, including an automobile as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2), by the commissioner: provided, however, that this provision is out of an accident while occupying, entering into, alighting from, or using an automobile, registered or principally garaged in this

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 printed in italics *thus* is new matter.

State for which personal injury protection benefits under the "New Jersey Automobile Reparation Reform Act," P. L. 1972, c. 70 (C. 39:6A-1 et seq.), or section 19 of [this 1983 amendatory and supplementary act] *P. L. 1983, c. 362 (C. 17:28-1.3)*, would be payable to such person if personal injury protection coverage were in force and the damages resulting from such accident or death are not satisfied due to the personal injury protection coverage not being in effect with respect to such accident, then in such event the Unsatisfied Claim and Judgment Fund shall provide[, under the following conditions, the following benefits:

a. Medical expense benefits. Payment of all reasonable medical expenses incurred as a result of personal injury sustained in a motor vehicle accident. In the event of death, payment shall be made to the estate of the decedent.

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

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

d. Death benefits. In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under section 7 of this act, the maximum amount of benefits which could have been paid to the income producer, but for his death, under section 7b. shall be paid to the surviving spouse, or in the event there is no surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer.

In the event of the death of one performing essential services as-

a result of injuries sustained in an accident entitling such person to benefits under section 7c. of this act, the maximum amount of benefits which could have been paid such person, under section 7c., shall be paid to the person incurring the expense of providing such essential services.

e. Funeral expenses benefits. All reasonable funeral, burial and cremation expenses, subject to a maximum benefit of $1,000.00, on account of the death to any one person in any one accident shall be payable to decedent's estate] *medical expense benefits in an amount not exceeding $10,000.00 per person per accident.*

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

3. (New section) a. Notwithstanding the provisions of section 3 of P. L. 1972, c. 70 (C. 39:6A-3), a licensed insurance carrier may refuse to renew, in accordance with subsections b. and c. of this section, a policy of insurance that provides coverage required to be maintained pursuant to P. L. 1972, c. 70 (C. 39:6A-1 et seq.).

b. An insurer may issue notices of intention not to renew an automobile insurance policy in an amount not to exceed 2% of the total number of automobile insurance policies of the insurer, rounded to the nearest whole number, which are in force at the end of the previous calendar year in each of the insurer's rating territories in use in this State.

c. For every two newly insured automobiles which an insurer voluntarily writes in each territory, the insurer shall be permitted to refuse to renew one additional automobile in that territory in excess of the 2% limitation established by subsection b. of this section, subject to a fair and nondiscriminatory formula developed by rule or regulation of the commissioner.

d. The provisions of this section shall not apply to any cancellation made pursuant to paragraph (A) of section 2 of P. L. 1968, c. 58 (C. 17:29C-7).

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

4. Personal injury protection coverage, regardless of fault.

a. Every automobile liability insurance policy insuring an automobile as defined in this act against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of ownership, operation, main-

tenance or use of an automobile shall provide personal injury protection coverage, as defined hereinbelow, under provisions approved by the Commissioner of Insurance, for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustained bodily injury as a result of an accident while occuping, entering into, alighting from or using an automobile, or as a pedestrian, being struck by an automobile or by an object propelled by or from an automobile, to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with the permission of the named insured, and to pedestrians, sustaining bodily injury caused by the named insured's automobile or struck by an object propelled by or from such automobile.

[''Personal injury protection coverage'' means and includes:

a. Medical expense benefits. Payment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident. In the event of death, payments shall be made to the estate of the decedent. In the event benefits paid by an insurer pursuant to this subsection are in excess of $75,000.00 on account of personal injury to any one person in any one accident, such excess shall be paid by the insurer in consultation with the Unsatisfied Claim and Judgment Fund Board and shall be reimbursable to the insurer from the Unsatisfied Claim and Judgment Fund pursuant to section 2 of P. L. 1977, c. 370 (C. 39:6-73.1).

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

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

d. Death benefits. In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under section 4 of this act, the maximum amount of benefits which could have been paid to the income producer, but for his death, under section 4 b. shall be paid to the surviving spouse, or in the event there is no surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer.

In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling such person to benefits under section 4 c. of this act, the maximum amount of benefits which could have been paid such person, under section 4 c., shall be paid to the person incurring the expense of providing such essential services.

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

Benefits payable under this section shall:

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

(2) Not be assignable, except to a provider of service benefits under this section, nor subject to levy, execution, attachment or other process for satisfaction of debts.]

b. One of the following personal injury protection coverage benefit options shall be elected by any named insured required to maintain personal injury protection coverage pursuant to subsection a. of this section:

(1) Payment of medical expenses in an amount not to exceed $10,000.00 per person per accident. In the event of death, payments shall be made to the estate of the decedent; or

(2) Payment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident. In the event of death, payments shall be made to the estate of the decedent. In the event benefits paid by an insurer pursuant to this paragraph are in excess of $75,000.00 on account of personal injury to any one person in any one accident, the excess shall be paid by the insurer in consultation with the Unsatisfied Claim and Judgment Fund Board and shall be reimbursable to the insurer from the Unsatisfied Claim and Judgment Fund pursuant to section 2 of P. L. 1977, c. 310 (C. 39:6-73.1).

c. Election of a personal injury protection benefit option pursuant to this section shall be in writing by the named insured on a form approved by the Commissioner of Insurance. The personal injury protection benefit option elected shall apply to the named insured and any immediate family member residing in the named insured's household. "Immediate family member" means the spouse of the named insured and any child of the named insured or spouse residing in the named insured's household, who is not a named insured under another automobile insurance policy.

If the named insured fails to elect, in writing, either of the personal injury protection benefits offered pursuant to this section, the named insured shall be deemed to elect the option of subparagraph (1) of subsection b. of this section. No new policy of insurance shall be issued by an insurer on or after the effective date of this act unless the named insured has selected one of the options provided for in this section.

The personal protection benefit option elected by a named insured shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed form electing the other personal injury protection benefit option.

The personal injury protection benefit option elected by the named insured shall apply to all automobiles owned by the named insured and to any immediate family member who is not a named insured under another automobile insurance policy, except that in the case where more than one policy is applicable to the named insured or immediate family member, and the policies have different personal injury protection benefit options, the personal injury protection benefit option elected by the injured named insured shall apply, or in the case of an immediate family member who is not a named insured and is injured in an accident involving an automobile to which a policy issued to a named insured in the household of the injured immediate family member applies, the personal injury protection benefit option elected by that named insured shall apply. Notice of the personal injury protection benefit options available shall be given in accordance with section 17 of P. L. 1983, c. 362 (C. 39:6A-23).

5. (New section) The commissioner shall, within 90 days of the enactment of this 1986 amendatory and supplementary act, promulgate medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is required to

be made under the personal injury protection coverage provided for in section 4 of P. L. 1972, c. 70 (C. 39:6A–4). The fee schedules shall incorporate the reasonable and prevailing fees of 90% of the practitioners within the region. If, in the case of specialist providers, there are fewer than 50 within any region, the fee schedule shall incorporate the reasonable and prevailing fees of the specialist providers on a Statewide basis.

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

13. Personal injury protection coverage deductibles**[**, exclusions and setoffs**]**. With respect to personal injury protection coverage provided on an automobile in accordance with section 4 of P. L. 1972, c. 70 (C. 39:6A–4), the automobile insurer shall, at appropriately reduced premiums, provide **[**the following**]** , *as a* coverage **[**options:**]** *options*

[a. Medical**]** *medical* expense benefit deductibles in amounts of $500.00, $1,000.00 and $2,500.00 for any one accident**[**;**]**.

[b. The option to exclude all benefits offered under subsections b., c., d., and e. of section 4;

c. A setoff option entitling an automobile insurer paying medical expense benefits under section 4 to reimbursement from, and a lien on, any recovery for noneconomic loss by an injured party pursuant to an arbitration award, judicial judgment or voluntary settlement for the amount of the medical expense benefits paid, not to exceed 20% of the amount of the award, judgment or settlement, including recoveries under uninsured and underinsured motorist coverage, except that if, at the time of the ward, judgment or settlement, the amount of medical expense benefits does not exceed 20% but additional expense benefits of an indeterminate amount are anticipated, the amount of the setoff shall be 20% of the award, judgment or settlement, with the difference between the value of the 20% and the amount of medical expense benefits previously paid to be placed in an interest bearing trust account for use to indemnify the insurer paying the medical expense benefits, as the benefits are paid. Attorney's contingent fees shall be computed on the amount of the award, judgment or settlement, less the amount of the setoff, which setoff shall be, if the medical expense benefit claim of the injured person, as of the date of the award, judgment or settlement is made, is: (1) closed, the amount of medical expense benefits paid, not to exceed 20% of the award, judgment or settlement, or (2) open, 20% of the award, judgment or settlement. Under a contingent fee arrangement, the

attorney shall also be entitled to reimbursement out of the amount of the setoff for costs actually incurred in the institution and prosecution of the claim or action, which amount shall in no instance exceed 10% of the amount of the setoff, in a manner to be prescribed by the Supreme Court. Nothing in this subsection shall be construed to prohibit an attorney representing the injured party from recovering from the insurer providing personal injury protection benefits the reasonable cost of any legal services rendered to that insurer primarily in conjunction with the setoff reimbursement.]

A deductible[, exclusion or setoff] elected by the named insured in accordance with this section shall apply only to the named insured and any resident relative in the named insured's household who is not named insured under another automobile insurance policy, and not to any other person eligible for personal injury protection benefits required to be provided in accordance with section 4.

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

No insurer or health provider providing benefits to an insured who has elected a deductible pursuant to [subsection a. of] this section shall have a right of subrogation for the amount of benefits paid pursuant to a deductible elected thereunder.

[Where a trust account has been established in accordance with subsection c. of this section, any remaining principal and all accrued interest in the trust account at the time the final payment of medical expense benefits is made shall be paid to the party to whom the award, judgment or settlement was made, or to his estate.]

The Commissioner of Insurance shall adopt rules and regulations to effectuate the purposes of this section.

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

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

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

a. Every owner, registrant, operator or occupant of an automobile to which section 4, personal injury protection coverage, regardless of fault, applies, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for noneconomic loss to a person who is subject to this subsection and who is either a person who is required to maintain the coverage mandated by this act, or is a person who has a right to receive benefits under section 4 of this act as a result of bodily injury, arising out of the ownership, operation, maintenance or use of such automobile in this State, if the bodily injury is confined solely to the soft tissue of the body and the medical expenses incurred or to be incurred by such injured person or the equivalent value thereof for the reasonable and necessary treatment of such bodily injury is less than [$200.00] *$500.00*, exclusive of hospital expenses, X-rays and other diagnostic medical expenses. There shall be no exemption from tort liability if the injured party has sustained death, permanent disability, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member in whole or in part, regardless of the right of any person to receive benefits under section 4 of this act. Bodily injury confined solely to the soft tissue, for the purpose of this section, means injury in the form of sprains, strains, contusions, lacerations, bruises, hematomas, cuts, abrasions, scrapes, scratches, and tears confined to the muscles, tendons, ligaments, cartilage, nerves, fibers, veins, arteries and skin of the human body; or

b. As an alternative to the basic tort option specified in subsection a. of this section, every owner, registrant, operator, or occupant of an automobile to which section 4 of P. L. 1972, c. 70 (C. 39:6A–4) applies, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for noneconomic loss to a person who is subject to this subsection and who is either a person who is required to maintain the coverage mandated by P. L. 1972, c. 70 (C. 39:6A–1 et seq.) or is a person who has a right to receive benefits under section 4 of that act (C. 39:6A–4), as a result of bodily injury, arising out of the ownership, operation, maintenance or use of such automobile in this State, if [the medical expenses incurred or to be incurred by that injured person, or the equivalent value thereof, for the reasonable and necessary treatment of the bodily injury, is less than $1,500.00, which amount shall be adjusted annually on January 1 of each year following the operative date of this act by the Com-

missioner of Insurance to reflect increases or decreases in the national Consumer Price Index for the professional services component of medical care services, all urban consumers, U. S. city average, and which amount shall be exclusive of hospital expenses, X-rays and other diagnostic medical expenses. The adjusted rate shall apply to any claim for noneconomic loss arising from any automobile accident occurring on or after the adjustment date. There shall be no exemption from tort liability if the injured party has sustained death, permanent disability, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member in whole or in part, regardless of the right of any person to receive benefits under section 4 of P. L. 1972, c. 70 (C. 39:6A-4)] *that person has sustained personal injury which results in death, serious impairment of body function or permanent serious disfigurement.*

The tort option provisions of subsection a. of this section shall also apply to the right to recover for noneconomic loss of any person eligible for benefits pursuant to section 4 of P. L. 1972, c. 70 (C. 39:6A-4) but who is not required to maintain personal injury protection coverage and is not an immediate family member, as defined in section 14.1 of P. L. 1983, c. 362 (C. 39:6A-8.1), under an automobile insurance policy.

The tort option provisions of subsection b. of this section shall also apply to any person subject to section 14 of P. L. 1985, c. 520 (C. 39:6A-4.5).

The tort option provisions of subsection b. of this section shall remain inoperative until July 1, [1994] *1997*, and shall apply to accidents occurring on or after that date.

If any provision or subsection b. of this section shall be deemed to be unconstitutional, the provisions of the entire subsection shall be deemed null and void, and without further effect, but the decision of the court shall not affect the validity of any other provision of this act.

8. Section 14.1 of P. L. 1983, c. 362 (C. 39:6A-8.1) is amended to read as follows:

14.1 Election of tort option. a. Election of a tort option pursuant to section 8 of P. L. 1972, c. 70 (C. 39:6A-8) shall be in writing by the named insured on a form approved by the Commissioner of Insurance. The tort option elected shall apply to the named insured and any immediate family member residing in the named insured's household. "Immediate family member" means the spouse of the named insured and any child of the named in-

sured or spouse residing in the named insured's household, who is not a named insured under another automobile insurance policy.

b. If the named insured fails to elect, in writing, any of the tort options offered pursuant to section 8 of P. L. 1972, c. 70 (C. 39:6A-8), the named insured shall be deemed to elect the tort option of subsection a. of that section 8. No new automobile policy issued on or after July 1, [1984] *1987*, in this State shall be issued by an insurer unless the named insured has elected one of the tort options provided in section 8.

c. The tort option elected by a named insured shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed form electing the other tort option.

d. The tort option elected by the named insured shall apply to all automobiles owned by the named insured and to any immediate family member who is not a named insured under another automobile insurance policy, except that in the case where more than one policy is applicable to the named insured or immediate family member, and the policies have different tort options, the tort option elected by the injured named insured shall apply or, in the case of an immediate family member who is not a named insured and is injured in an accident involving an automobile to which a policy issued to a named insured in the household of the injured immediate family member applies, the tort option elected by that named insured shall apply.

In the case of automobile insurance policies in force on July 1, [1984] *1987*, notice of the tort options available pursuant to the aforesaid section 8 shall be given in accordance with section 17 of [this 1983 amendatory and supplementary act] *P. L. 1983, c. 362 (C. 39:6A-23)*.

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

10. Additional personal injury protection coverage. Insurers shall make available to the named insured covered under section 4, and, at his option, to resident relatives in the household of the named insured, [suitable additional] first party coverage for income continuation benefits, essential services benefits, death benefits and funeral expense benefits[, but the income continuation and essential services benefits shall cease upon the death of the claimant, and shall not operate to increase the amount of any death benefits payable under section 4 and such additional first party coverage shall be payable only to the extent that the claimant

establishes that the amount of loss sustained exceeds the coverage specified in section 4. The additional coverage shall be offered by the insurer at least annually on a form prescribed by the Commissioner of Insurance, which shall be attached to or accompany all applications, initial policies and renewal policies or renewal notices. Income continuation in excess of that provided for in section 4 must be provided as an option by insurers for disabilities, as long as the disability persists, up to an income level of $35,000.00 per year, provided that a. the excess between $5,200.00 and the amount of coverage contracted for shall be written on the basis of 75% of said difference, and b. regardless of the duration of the disability, the benefits payable shall not exceed the total maximum amount of income continuation benefits contracted for. Death benefits provided pursuant to this section shall be payable without regard to the period of time elapsing between the date of the accident and the date of death, if death occurs within two years of the accident and results from bodily injury from that accident to which coverage under this section applies. The Commissioner of Insurance is hereby authorized and empowered to establish, by rule or regulation, the amounts and terms of income continuation insurance to be provided pursuant to this section] *as follows:*

a. Income continuation benefits. The payment of the loss of income of an income producer as a result of bodily injury disability, in an amount not less than $100.00 per week, for any one person in any one accident, and not more than an income level established by the commissioner by regulation, which shall be not less than $35,000.00 per year. The benefit shall be payable as long as the disability exists, except that, regardless of the duration of the disability, the benefits payable shall not exceed the total maximum income continuation benefit contracted for, nor shall the benefits payable exceed the net income normally earned during the period in which the benefits are payable. Coverage in amounts in excess of $5,200.00 per year shall be written on the basis of 75% of the differential between $5,200.00 and the coverage written. Income continuation benefits shall cease upon the death of the claimant, and shall not operate to increase the amount of any death benefits payable under subsection c. of this section.

b. Essential services benefits. Payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses incurred for the substitute essential services ordinarily performed by the injured person for himself his, family and members of the family residing in the

household, subject to an amount or limit of $12.00 per day. The benefits shall be payable during the life of the injured person and shall be subject to limits established by the commissioner by regulation, on account of injury to any one person in any one accident. In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling the person to benefits under this subsection, the maximum amount of benefits which could have been paid to that person under this subsection shall be paid to the person incurring the expense of providing the essential services.

c. Death benefits. In the event of the death of an income producer as a result of injuries sustained in an accident which entitles the person to collect benefits under section 4 of P. L. 1972, c. 70 (C. 39:6A-4), the maximum amount of benefits which could have been paid to the income producer, but for his death, under subsection a. of this section shall be paid to the surviving spouse or surviving children, or in the event there is no surviving spouse or surviving children, then to the estate of the income producer. Death benefits provided pursuant to this subsection shall be payable without regard to the period of time elapsing between the date of the accident and the date of death if death occurs within two years of the accident and results from bodily injury from that accident to which coverage under this subsection applies.

d. Funeral expense benefits. All reasonable funeral, burial and cremation expenses, subject to a schedule of maximum benefits established by the commissioner by regulation, on account of the death to any one person in any one accident shall be payable to the decedent's estate.

Benefits payable under subsections a. and b. of this section shall cease upon the death of the claimant, and shall not operate to increase the amount of any death benefits payable under subsection c. of this section. Benefit options provided for under this section shall be offered by insurers at least annually on a form prescribed by the commissioner, which shall be attached to or accompany all applications for coverage, initial policies and renewal policies or renewal notices. Benefits payable pursuant to this section or section 4 of P. L. 1972, c. 70 (C. 39:6A-4) shall not be assignable, except to a provider of service benefits under this section, nor subject to levy, execution, attachment or other process for satisfaction of debts.

10. Section 2 of P. L. 1983, c. 358 (C. 39:6A-25) is amended to read as follows:

2. a. Any cause of action filed in the Superior Court after the operative date of this act, for the recovery of noneconomic loss, as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A-2), or the recovery of uncompensated economic loss, other than for damages to property, arising out of the operation, ownership, maintenance or use of an automobile, as defined in that section 2, shall be submitted, except as hereinafter provided, to arbitration by the assignment judge of the court in which the action is filed, if the court determines that the amount in controversy is **[**$15,000.00**]** *$20,000.00* or less, exclusive of interest and costs; provided that if the action is for recovery for both noneconomic and economic loss, the controversy shall be submitted to arbitration if the court determines that the amount in controversy for noneconomic loss is **[**$15,000.00**]** *$20,000.00* or less, exclusive of interest and costs.

b. Notwithstanding that the amount in controversy of an action for noneconomic loss is in excess of **[**$15,000.00**]** *$20,000.00*, the court may refer the matter to arbitration, if all of the parties to the action consent in writing to arbitration and the court determines that the controversy does not involve novel legal or unduly complex factual issues.

No cause of action determined by the court to be, upon proper motion of any party to the controversy, frivolous, insubstantial or without actionable cause shall be submitted to arbitration.

The provisions of this section shall not apply to any controversy on which an arbitration decision was rendered prior to the filing of the action.

The provisions of this section shall apply to any cause of action, subject to this section, filed prior to the operative date of this *1986 amendatory and supplementary* act, if a pretrial conference has not been concluded thereon.

11. Section 7 of P. L. 1983, c. 358 (C. 39:6A-30) is amended to read as follows:

7. Notwithstanding that a controversy was submitted pursuant to subsection a. of section 2 of **[**this act**]** *P. L. 1983, c. 358 (C. 39:6A-25)*, the arbitration award for noneconomic loss may exceed **[**$15,000.00**]** *$20,000.00*. The arbitration decision shall be in writing, and shall set forth the issues in controversy, and the arbitrators' findings and conclusions of law and fact.

12. Section 2 of P. L. 1972, c. 197 (C. 39:6B-2) is amended to read as follows:

2. Any owner, or registrant of a motor vehicle registered or principally garaged in this State who operates or causes to be

operated a motor vehicle upon any public road or highway in this State without motor vehicle liability insurance coverage required by this act, and any operator who operates or causes a motor vehicle to be operated and who knows or should know from the attendant circumstances that the motor vehicle is without motor vehicle liability insurance coverage required by this act shall be subject, for the first offense, to a fine of [not less than $100.00 nor more than] $300.00 *and a period of community service to be determined by the court*, or imprisonment for a term of not less than 30 days nor more than three months or both, in the discretion of the municipal judge, and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of [six months] *one year* from the date of conviction. Upon subsequent conviction, he shall be subject to a fine of [not less than $250.00 nor more than] $500.00 and [may] *shall* be subject to imprisonment for a term of not less than three months nor more than six months in the discretion of the municipal judge [and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances], and shall forfeit his right to operate a motor vehicle for a period of two years from the date of his conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director. The director's discretion shall be based upon an assessment of the likelihood that the individual will operate or cause a motor vehicle to be operated in the future without the insurance coverage required by this act. A complaint for violation of this act may be made to a municipal court at any time within six months after the date of the alleged offense. *$100.00 of every fine collected pursuant to this section shall be remitted by the court to the New Jersey Automobile Full Insurance Underwriting Association created by section 16 of P. L. 1983, c. 65 (C. 17:30E-4).*

13. Section 1 of P. L. 1970, c. 217 (C. 17:22-6.14a) is amended to read as follows:

1. In the event that a policy is canceled by the insurer, either at its own behest or at the behest of the agent or broker of record, the unearned premium, including the unearned commission, shall be returned to the policyholder. In the event that a policy of [automobile] insurance *covering motor vehicles other than those required to be insured pursuant to P. L. 1972, c. 70 (C. 39:6A-1*

et seq.) issued by the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D–1) or any successor thereto, is cancelled by reason of nonpayment of premium to the insurer issuing the policy or nonpayment of an installment payment due pursuant to an insurance premium finance agreement, the broker of record for that policy may retain the full annual commission due thereon and, if a premium finance agreement is not involved, the effective date of cancellation of the policy shall be no earlier than 10 days prior to the last full day for which the premium paid by the insured, net of the broker's full annual commission, would pay for coverage on a pro rata basis in accordance with rules established by the commissioner. Contracts between insurance companies and agents for the appointment of the agent as the representative of the company shall set forth the rate of commission to be paid to the agent for each class of insurance within the scope of such appointment written on all risks or operations in this State except:

(a) Reinsurance.

(b) Life insurance.

(c) Annuities.

(d) Accident and health insurance.

(e) Title insurance.

(f) Mortgage guaranty insurance.

(g) Hospital service, medical service, or dental service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations.

Said rates of commission shall continue in force and effect unless changed by mutual written consent or until termination of said contract as hereinafter provided. Failure to achieve such mutual consent shall require that the agent's contract be terminated as hereinbelow provided. The rate of commissions being paid on each class of insurance on the date of enactment hereof shall be deemed to be pursuant to the existing contract between agent and company.

Termination of any such contract for any reason other than one excluded herein shall become effective after not less than 90 days' notice in writing given by the company to the agent and the Commissioner of Insurance. No new business nor increases in liability on renewal or in force business shall be written by the agent for the company after notice of termination without written approval of the company. However, during the term of the agency contract, including the said 90-day period, the company shall not refuse to renew such business from the agent as would be in accordance with

said company's current underwriting standards. The company shall during a period of nine months from the effective date of such termination, provided the former agent has not been replaced as the broker of record by the insured, and upon request in writing of the terminated agent, renew all contracts of insurance for such agent for said company as may be in accordance with said company's then current underwriting standards and pay to the terminated agent a commission in accordance with the previous agency contract of the terminated agent. Said commission can be paid only to the holder of a New Jersey broker's license. In the event any risk shall not meet the then current underwriting standards of said company, that company may decline its renewal, provided that the company shall give the terminated agent and the insured not less than 60 days' notice of its intention not to renew said contract of insurance.

The agency termination provisions of this act shall not apply to those contracts in which the agent is paid on a salary basis without commission or where he agrees to represent exclusively one company or to the termination of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company moneys due to the company after his receipt of a written demand therefor, or after revocation of the agent's license by the Commissioner of Insurance, and in any such case the company shall upon request of the insured, provided he meets the then current underwriting standards of the company, renew any contract of insurance formerly processed by the terminated agent through an active agent, or directly pursuant to such rules and regulations as may be promulgated by the Commissioner of Insurance.

The Commissioner of Insurance, on the written complaint of any person stating that there has been a violation of this act, or when he deems it necessary without a complaint, may inquire and otherwise investigate to determine whether there has been any violation of this act.

All existing contracts between agent and company in effect in the State of New Jersey on the effective date of this act are subject to all provisions of this act.

The Commissioner of Insurance may, if he determines that a company is in unsatisfactory financial condition, exclude such company from the provisions of this act.

Whenever under this act it is required that the company shall renew a contract of insurance, the renewal shall be for a term

period equal to one additional term of the term specified in the original contract, but in no event to be less than [1] *one* year.

14. Section 19 of P. L. 1983, c. 362 (C. 17:28–1.3) is amended to read as follows:

19. Every liability insurance policy issued in this State on a motor vehicle, exclusive of an automobile as defined in section 2 of P. L. 1972, c. 70 (C. 39:6A–2), but including a motorcycle, or on a motorized bicycle, insuring against loss resulting from liability imposed by law for bodily injury, death, and property damage sustained by any person arising out of the ownership, operation, maintenance, or use of a motor vehicle or motorized bicycle shall provide personal injury protection coverage benefits, in accordance *with paragraph (1) of subsection b. of* section 4 of P. L. 1972, c. 70 (C. 39:6A–4), to pedestrians who sustain bodily injury in the State caused by the named insured's motor vehicle or motorized bicycle or by being struck by an object propelled by or from the motor vehicle or motorized bicycle.

15. Section 18 of P.L. 1985, c. 520 (C. 17:28–1.4) is amended to read as follows:

18. Any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy, coverage to satisfy at least the liability insurance requirements of section 1 of P. L. 1972, c. 197 (C. 29:6B–1) or section 3 of P. L. 1972, c. 70 (C. 39:6A–2), 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 *paragraph (1) of subsection b. of* 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 b. 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, within 30 days of the effective date of this amendatory and supplementary act, file and maintain with the Department of 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).

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

14. a. With regard to all property and casualty lines, a filer may, from time to time, alter, supplement, or amend its rates, rating systems, or any part thereof, by filing with the commissioner copies of such alterations, supplements, or amendments, together with a statement of the reason or reasons for such alteration, supplement, or amendment, in a manner and with such information as may be required by the commissioner. If such alteration, supplement, or amendment shall have the effect of increasing or decreasing rates, the commissioner shall determine whether the rates as altered thereby are reasonable, adequate, and not unfairly discriminatory. If the commissioner shall determine that the rates as so altered are not unreasonably high, or inadequate, or unfairly discriminatory, he shall make an order approving them. If he shall find that the rates as altered are unreasonable, inadequate, or unfairly discriminatory, he shall issue an order disapproving such alteration, supplement or amendent.

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

c. If an insurer or rating organization files a proposed alteration, supplement or amendment to its rating system, or any part thereof, which would result in a change in rates, the commissioner may, or upon the request of the filer or *upon the request of* the Public Advocate *in those matters within the jurisdiction of the Office of the Public Advocate, Division of Rate Counsel, pursuant to section 19 of P. L. 1974, c. 27 (C. 52:27E-19),* shall, certify the matter for a hearing. The hearing shall, at the commissioner's discretion, be conducted by himself or by the Office of Administrative Law, created by P. L. 1978, c. 67 (C. 52:14F-1 et seq.), as a contested case. The following requirements shall apply to the hearing:

(1) The hearing shall commence within 30 days of the date of the request or decision that a hearing is to be held. The hearing shall be held on consecutive working days, except that the commissioner may, for good cause, waive the consecutive working day

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

(2) The commissioner, or the Director of the Office of Administrative Law, as appropriate, shall notify all interested parties, including the Public Advocate on behalf of insurance consumers, of the date set for commencement of the hearing, on the date of the filing of the request for a hearing, or within 10 days of the decision that a hearing is to be held.

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

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

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

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

17. Section 6 of P. L. 1983, c. 65 (C. 17:29A–35) is amended to read as follows:

6. a. A merit rating accident surcharge system for private passenger automobiles may be used both in the voluntary market and by the New Jersey Automobile Full Insurance Underwriting Association created pursuant to section 16 of P. L. 1983, c. 65 (C. 17:30E-4). No surcharges for damage to any property shall be imposed on or after the operative date of this act, unless there is an accident within a three year period immediately preceding the effective date of coverage which results in payment by the insurer of at least a $300.00 property damage claim involving an at fault accident or any payment by the insurer of a bodily injury claim arising out of a collision of a private passenger automobile with a pedestrian. All moneys collected under this subsection shall be retained by the insurer assessing the surcharge. Accident surcharges shall be imposed for a three year period and shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.

b. There is created a New Jersey Merit Rating Plan which shall apply to all drivers and shall include, but not be limited to the following provisions:

(1) (a) Plan surcharges shall be levied, beginning on or after January 1, 1984, by the Division of Motor Vehicles on any driver who has accumulated, within the immediately preceding three year period, beginning on or after February 10, 1983, six or more motor vehicle points as provided in Title 39 of the Revised Statutes, exclusive of any points for convictions for which surcharges are levied under paragraph (2) of this subsection; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. Surcharges shall be levied for each year in which the driver possesses six or more points. Surcharges assessed pursuant to this paragraph shall be not less than $100.00 for six points, and not less than $25.00 for each additional point. The commissioner may increase the amount of surcharges as he deems necessary to effectuate the purposes of subsection d. of this section and P. L. 1983, c. 65 (C. 17:29A-33 et al.), and may, pursuant to regulation, permit the deferral of all or part of any surcharges authorized by this subsection until the end of the policy term of an automobile insurance policy with an effective date prior to January 1, 1984, upon presentation of appropriate evidence that an insured has already paid an equivalent surcharge arising from the same motor vehicle violation or conviction.

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

(2) Plan surcharges shall be levied for convictions (a) under R. S. 39:4–50 for violations occurring on or after February 10, 1983, and (b) under section 2 of P. L. 1981, c. 512 (C. 39:4–50.4a), or for offenses committed in other jurisdictions of a substantially similar nature to those under R. S. 39:4–50 or section 2 of P. L. 1981, c. 512 (C. 39:4–50.4a), for violations occurring on or after January 26, 1984. Surcharges under this paragraph shall be levied annually for a three year period, and shall be not less than $1,000.00 per year for each of the first two convictions, and not less than $1,500.00 per year for the third conviction occurring within a three year period. If a driver is convicted under both R. S. 39:4–50 and section 2 of P. L. 1981, c. 512 (C. 39:4–50.4a) for offenses arising out of the same incident, the driver shall be assessed only one surcharge for the two offenses. The commissioner may increase the amount of surcharges as he deems necessary to effectuate the purposes of subsection d. of this section and P. L. 1983, c. 65 (C. 17:29A–33 et al.), and may, pursuant to regulation, permit the deferral of all or any part of these surcharges as provided in paragraph (1) (a) of this subsection.

If, upon written notification from the Division of Motor Vehicles, mailed to the last address of record with the division, a driver fails to pay a surcharge levied under this subsection, the license of the driver shall be suspended forthwith until the surcharge is paid to the Division of Motor Vehicles; except that upon satisfactory showing of indigency, the Division of Motor Vehicles may authorize payment of the surcharge on an installment basis over a period not to exceed 18 months.

For the purposes of this subparagraph, "indigency" shall be defined in rules and regulations promulgated by the Director of the Division of Motor Vehicles.

All moneys collectible under this subsection shall be billed and collected by the Division of Motor Vehicles. Of the moneys collected *10%, or the actual cost of administering the collection of the surcharges whichever is less,* [80% shall be remitted to the New Jersey Automobile Full Insurance Underwriting Association, and 20%] shall be retained[, for administrative expenses,] by the Division of Motor Vehicles and turned over to the State Treasury for deposit in a special account to be used by the Division of Motor Vehicles, as may be necessary, to modernize its operations and improve its effectiveness and efficiency in order to discharge its statutory obligations *and the remainder shall be*

remitted to the New Jersey Automobile Full Insurance Underwriting Association. Any moneys in the special account at the end of a fiscal year shall be transferred to the General Fund for use for general State purposes. Moneys shall be appropriated annually to the special account.

(3) In addition to any other authority provided in P. L. 1983, c. 65 (C. 17:29A-33 et al.), the commissioner, after consultation with the Director of the Division of Motor Vehicles, is specifically authorized (a) to increase the dollar amount of the surcharges for motor vehicle violations or convictions, (b) to impose, in accordance with paragraph (1) (a) of this subsection, surcharges for motor vehicle violations or convictions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes, or (c) to reduce the number of points for which surcharges may be assessed below the level provided in paragraph (1) (a) of this subsection, except that the dollar amount of all surcharges levied under the New Jersey Merit Rating Plan shall be uniform on a Statewide basis for each filer, without regard to classification or territory. Surcharges adopted by the commissioner on or after January 1, 1984 for motor vehicle violations or convictions for which motor vehicle points are not assessable under Title 39 of the Revised Statutes shall not be retroactively applied but shall take effect on the date of the New Jersey Register in which notice of adoption appears or the effective date set forth in that notice, whichever is later.

c. No motor vehicle violation surcharges shall be levied on an automobile insurance policy issued or renewed on or after January 1, 1984, except in accordance with the New Jersey Merit Rating Plan, and all surcharges levied thereunder shall be assessed, collected and distributed in accordance with subsection b. of this section.

d. The dollar amount of all motor vehicle conviction surcharges shall be at least equivalent to the differential between the rates charged to insureds as promulgated by the rating bureau which files rates for the greatest number of insurers in the voluntary private passenger automobile insurance market in this State and the Supplement I rates in use as of December 31, 1982 by the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1), and the amount collectible under the motor vehicle conviction surcharge system in use by the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1) [illegible] prior to the implementation of this act; except that in the first year

of operation of the New Jersey Automobile Full Insurance Underwriting Association, the dollar amount of all motor vehicle surcharges shall be sufficient to eliminate the need for imposition of a residual market equalization charge authorized under section 20 of P. L. 1983, c. 65 (C. 17:30E-8).

c. The Commissioner of Insurance and the Director of the Division of Motor Vehicles, as may be appropriate, shall adopt any rules and regulations necessary or appropriate to effectuate the purposes of this section.

18. (New section) a. All rate filings submitted with regard to automobile insurance required to be maintained by the provisions of P. L. 1972, c. 70 (C. 39:6A-1 et seq.) shall be in a format as prescribed by rule or regulation of the commissioner. The format shall require the reporting of data which the commissioner deems necessary to make a determination pursuant to the provisions of section 4 of P. L. 1944, c. 27 (C. 17:29A-4).

b. The commissioner shall adopt the format required by subsection a. of this section within 180 days of the effective date of this 1986 amendatory and supplementary act.

19. (New section) a. That portion of the cost of any excess medical expense claims paid by the Unsatisfied Claim and Judgment Fund pursuant to the provisions of section 2 of P. L. 1977, c. 310 (C. 39:6-73.1) which is attributable to accidents reimbursable under policies issued prior to the effective date of this act shall be apportioned among all insureds electing personal injury protection coverage under either paragraph (1) or (2) of subsection b. of section 4 of P. L. 1972, c. 70 (C. 39:6A-4), in accordance with rules and regulations promulgated by the Commissioner of Insurance.

b. That portion of the cost of any excess medical expense claims paid by the Unsatisfied Claim and Judgment Fund which is attributable to accidents reimbursable pursuant to paragraph (2) of subsection b. of section 4 of P. L. 1972, c. 70 (C. 39:6A-4) after the effective date of this act shall be apportioned among insureds electing personal injury protection coverage under paragraph (2) of subsection b. of section 4 of P. L. 1972, c. 70 (C. 39:6A-4).

20. (New section) a. Every rating system for private passenger automobile comprehensive insurance coverage shall provide an appropriate reduction in premium, which shall in any case be not less than 5%, and which shall be based on the insurer's or rating bureau's actuarial experience, for anti-theft devices which are approved as eligible by the Commissioner of Insurance by regulation.

b. No later than 180 days after the effective date of this act every insurer writing private passenger automobile insurance in this State shall file the rate reduction required by subsection a. of this section with the commissioner. Upon the approval of the commissioner, the reduction shall be applied to every new policy or renewal policy of private passenger automobile insurance issued in this State.

21. (New section) a. Every rating system for private passenger automobile insurance shall contain an appropriate reduction for personal injury protection coverage, bodily injury liability coverage, property damage coverage, and physical damage coverage for the successful completion, by the named insured or the principal operator of the insured automobile, if other than the named insured, of a motor vehicle defensive driving course which is approved by the Director of the Division of Motor Vehicles. The reduction in premium charges shall be an amount justified by the insurer's or the rating bureau's actuarial experience, and shall be available to the insured for a three-year period beginning with the next succeeding policy period after the date of completion of an approved motor vehicle defensive driving course.

b. The provisions of this section shall not apply to driver training courses offered by driving schools pursuant to P. L. 1951, c. 216 (C. 39:12–1 et seq.), or public, parochial or private school driving education courses, or to a Division of Motor Vehicles Driver Improvement Program required pursuant to P. L. 1969, c. 261 (C. 39:5–30.2 et seq.).

22. Section 23 of P. L. 1983, c. 65 (C. 17:30E–11) is amended to read as follows:

23. The producer shall receive commissions on association business in accordance with a schedule of commissions promulgated in the plan of operation. The schedule of commissions so promulgated shall be designed to serve and reconcile the following objectives: a. to encourage equal treatment of policyholders in the association and the voluntary market; b. to minimize disincentives to the placement of applicants in the voluntary market; c. to stimulate marketing efforts in underserviced areas; d. to provide reasonable compensation for services performed by producers; e. to provide protection to the producer of record without a voluntary market company, upon the offer of voluntary market coverage to an association insured; f. to provide for an equitable rate of commission for producers during a transition period, as the term of such period is determined by the board. No rate of

commission shall be less than that provided pursuant to the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1), as payable as of December 31, 1981.

In the event that a policy issued by the association is cancelled by reason of nonpayment of premium or nonpayment of an installment payment due pursuant to an insurance premium finance agreement, the unearned commission shall be retained by the association and the effective cancellation date of the policy shall be no earlier than 10 days prior to the last full day for which the premium paid by the insured, net of the producer's full annual commission, would pay for coverage on a pro rata basis.

23. Section 25 of P. L. 1983, c. 65 (C. 17:30E-13) is amended to read as follows:

25. *a.* The rates used by the association shall be the same as those used by the rating bureau which files rates for the greatest number of insurers transacting private passenger automobile insurance in the voluntary market in this State, *except as provided in subsection b. of this section.*

b. No later than 60 days after the effective date of this 1986 amendatory and supplementary act the board shall establish and shall submit to the commissioner for his approval, base rates which are higher than those provided for in subsection a. of this section, which shall be applied to policies covering any automobile insured by the association with a named insured or principal operator who, in the three years preceding the policy year to which the rate is to be applicable, has accumulated (1) three chargeable accidents; or (2) two chargeable accidents and moving violations for which the owner or operator has received nine points; or (3) one chargeable accident and moving violations for which the owner or operator has received 12 points.

24. Section 19 of P. L. 1974, c. 27 (C. 52:27E-18) is amended to read as follows:

19. Division of Rate Counsel: jurisdiction. *a.* The Division of Rate Counsel shall represent and protect the public interest as defined in section 31 of [this act] *P. L. 1974, c. 27 (C. 52:27E-30)*, in proceedings before and appeals from any State department, commission, authority, council, agency or board charged with the regulation or control of any business, industry or utility regarding a requirement that the business, industry or utility provide a service or regarding the fixing of a rate, toll, fare or charge for a product or service. The Division of Rate Counsel may initiate [any such] *these* proceedings when the director determines that

a discontinuance or change in a required service or a rate, toll, fare or charge for a product or service is in the public interest.

b. Notwithstanding the provisions of subsection a. of this section, the Division of Rate Counsel shall be prohibited from intervening in any proceeding involving a motor vehicle insurance rate filing which results in an overall rate decrease for the filer; or in a motor vehicle insurance rate filing which contains a rate increase which results in rates being restored up to the level which had been previously approved by the commissioner within 18 months of the making of the filing.

25. (New section) Every insurer writing private passenger automobile insurance in this State, including the New Jersey Automobile Full Insurance Underwriting Association created pursuant to section 16 of P. L. 1983, c. 65 (C. 17:30E–4), shall, upon the cancellation of any automobile insurance policy required to be maintained pursuant to the provisions of P. L. 1972, c. 70 (C. 39:6A–1 et seq.), send to the Division of Motor Vehicles, on a form prescribed by the division, a notice of the cancellation, together with the license plate and registration numbers of the vehicle or vehicles insured by the policy. The division shall then notify the person whose policy was cancelled that he shall be subject to a fine of $300.00 and suspension of his driver's license if proof of insurance is not filed with the division within 30 days of the notification. 80% of any fine collected pursuant to this section shall be forwarded to the New Jersey Automobile Full Insurance Underwriting Association and 20% shall be retained by the division to defray its expenses.

26. This act shall take effect immediately and shall remain inoperative until July 1, 1987.

STATEMENT

This bill embodies the recommendations of the Senate Special Committee on Automobile Insurance Reform. Under the provisions of the bill, the mandatory personal injury protection benefits would consist of a $10,000.00 medical expense benefit. Additional benefits, such as wage loss benefits and essential services benefits, would be optional, as would unlimited medical benefits.

The bill provides for a tort threshold of $500.00, in place of the present $200.00 basic threshold amount, and a verbal threshold would be provided as an optional threshold. The present higher dollar threshold option would be eliminated.

The bill provides for a medical fee schedule for physicians, which would be established by the Commissioner of Insurance on a regional basis.

The bill prohibits the Public Advocate from intervening in any rate filing which results in an overall rate decrease, as well as any rate filing which results in rates being restored to a level which had been previously approved within an 18-month period of the filing.

The bill modifies the present law which regulates nonrenewal of policies to permit limited nonrenewal.

The bill reduces the amount of the merit rating surcharges which are permitted to be retained by the Division of Motor Vehicles. The bill also increases the penalties for the failure to maintain insurance coverage. Producers' commissions on JUA business would be required to be fully earned.

In addition, the bill would increase the number of automobile cases which are to be arbitrated by requiring arbitration for all cases of $20,000.00 or less. Insurers would be required to provide discounts on comprehensive coverages for anti-theft devices and would be required to give discounts for insureds who take defensive driving courses.

INSURANCE—AUTOMOBILE

Amends the no-fault law in accordance with Senate Special Committee on Automobile Insurance Reform report.

[OFFICIAL COPY REPRINT]

SENATE RESOLUTION No. 61

STATE OF NEW JERSEY

INTRODUCED OCTOBER 2, 1986

By Senators LASKIN, CONNORS, EWING, McNAMARA, DORSEY, DALTON, JACKMAN and ORECHIO

Referred to Committee on Labor, Industry and Professions

A SENATE RESOLUTION establishing a commission to study mandatory motor vehicle liability insurance.

WHEREAS, The New Jersey Legislature adopted mandatory automobile liability insurance in 1972 as part of the establishment of the no-fault system; and

WHEREAS, In the years since the adoption of no-fault, there have been ever-increasing numbers of uninsured drivers in the State as the cost of insurance increases; and

WHEREAS, As a result of the automobile insurance risk classification system presently in use in the State, the drivers who pay the highest insurance premiums are frequently those with the fewest assets to protect and, therefore, the least in need of liability coverage; and

WHEREAS, Because certain other states have seen fit to abolish mandatory liability insurance, it would seem necessary for the Legislature to reexamine the operation of the mandatory liability system in this State; now, therefore,

BE IT RESOLVED *by the Senate of the State of New Jersey:*

1. There is created a commission to study the feasibility of eliminating mandatory motor vehicle liability insurance in New Jersey, which shall consist of *[five]* **seven** members to be appointed by the President of the Senate as follows: two members of the Senate, of different political parties, who shall serve during the two-year legislative session during which they are appointed; one

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted October 20, 1986.

attorney, one representative of the insurance industry*; *one insurance broker*; and [one]* *two* public [member]* *members*. Vacancies in the membership shall be filled in the same manner as the original appointment.

2. It shall be the duty of the commission to study the operation of the present mandatory liability insurance requirement for motor vehicles in this State, and to study the feasibility, and the effect, of eliminating that requirement.

3. The commission shall organize as soon as possible after the appointment of its members and shall elect a chairman and a vice chairman from among its members. The chairman shall appoint a secretary who need not be a member of the commission.

4. The commission shall be entitled to call to its assistance and avail itself of the services of employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. The commission shall further be entitled to employ counsel and stenographic and clerical assistants and to incur traveling and other miscellaneous expenses as it may deem necessary in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for its purposes.

5. The commission shall report its findings, conclusions and recommendations to the Governor and the New Jersey State Senate as soon as practicable, but no later than one year following the enactment of this resolution.

6. The commission shall have all of the powers provided by chapter 13 of Title 52 of the Revised Statutes.

7. This resolution shall take effect immediately and shall expire one year after enactment.

INSURANCE—PROPERTY AND CASUALTY

Establishes commission to study mandatory motor vehicle liability insurance.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE RESOLUTION No. 61

with Senate committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 16, 1986

This Senate Resolution establishes a study commission to study the feasibility of eliminating mandatory liability insurance in New Jersey. The commission will be appointed by the Senate President and will consist of two Senators, one attorney, one insurance industry representative, one insurance broker and two public members. The commission shall report within a year.

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SENATOR RAYMOND LESNIAK (Chairman): I would like to start the public hearing. We are going to try to move things along as quickly as possible today. We have a heavy agenda after the public hearing, to consider all the bills -- and all the bills will be considered.

I would just ask those people who are going to be repetitive of items that had already been testified to, to please just summarize your remarks as quickly as possible. That would certainly give everyone an opportunity to be heard who wishes to be heard.

For the record, we are introducing a statement in opposition to SJR-40, submitted by (indiscernible) Smith, which has just been submitted to the Committee members.

Is Ed Gaffney here? (not present) Ed Gaffney is not here. The next person is Mo Brown or Karen Kotvas who is going to make a statement today.

MEMBER OF AUDIENCE: Yes.

ASSEMBLYMAN LESNIAK: I know you're not Karen, and I definitely know you're not Mo. (laughter)

K A T E H A R T M A N: I'm Kate Hartman.

SENATOR LESNIAK: She will be here, or you will be--

MS. HARTMAN: I will be making a statement on the auto insurance, and she will be making a statement on (indiscernible).

SENATOR LESNIAK: This is just on the auto-- The public hearing is just on the auto insurance. We will adjourn the public hearing after everyone's been heard and then have a regular Committee meeting.

I presume that your going to summarize these prepared remarks. The remarks will be entered into the record, since they are rather lengthy and we've heard most of the arguments at length. Right, Senator DiFrancesco?

SENATOR DiFRANCESCO: Yes. It's a challenge.

MS. HARTMAN: Chairman Lesniak and members of the Committee.

SENATOR LESNIAK: Can you please address yourselves to the specifics of the legislation -- we have your testimony -- the specific things in the legislation that you are either in favor of or opposed to.

MS. HARTMAN: My name is Katie Hartman and I thank you for allowing L.E.G.A.L. -- Lawyers Encouraging Government and Law -- to appear before you today. We are a special interest group of 3000 attorneys whose special interest parallels that of the public. By that I mean, if the courthouses are closed, lawyers would be out of a job. However, lawyers can get another form of employment, not so the quadraplegics, paraplegics, and other victims. If the courthouse doors are closed, they have nowhere else to go.

SENATOR LESNIAK: Are these proposals in any way, shape, or form closing the courthouse doors?

MS. HARTMAN: Yes. The optional verbal threshold is closing them.

SENATOR LESNIAK: Okay, to those people who choose to close the courthouse doors to themselves?

MS. HARTMAN: Yes. What I worry about is that people don't fully understand the ramifications of a verbal threshold, even after taking-- And I don't really trust their insurance agents to educate them highly.

With me today is Nancy Burns, who is a victim and a client of one of our member firms.

S-2594 is attempting to lower automobile insurance rates for the drivers of New Jersey, for which the sponsors of the bill ought to be commended. But it is doing so at the expense of lowering benefits, reducing coverage, and taking away one's right to sue, without giving anything in return.

We suggest a mandatory rate reduction. Go after the profit sharing companies, not the drivers who pay the highest rates in the nation and not the victims of auto accidents.

We suggest a mandatory rate reduction for those

insureds opting for the $500 threshold as well as those insureds opting for the verbal threshold. And we especially and strongly suggest a mandatory rate reduction for all of those insureds listed at the back of the final report of the Senate Special Committee on Automobile Insurance Reform.

SENATOR LESNIAK: Well, don't we have excess profit laws? Isn't that designed to do exactly that -- empower the Commissioner to give rebates to the consumer for any excess profits made by an insurance company, and doesn't that adequately take care of the problem?

MS. HARTMAN: The excess profit law is working in the example of World Globe rebating maybe $2. However, look at the four insurance companies that were asked by the Insurance Commissioner -- who were making substantial profits-- He asked them to reduce their rates and give money back, and they outright said no.

You're catching it after it's too late. You take preventive action rather than doing it after the fact and after the people have already paid the rate.

SENATOR LESNIAK: Well, isn't that premature? I mean, isn't the Commissioner going to go through a hearing process to determine what the actual rebates ought to be?

MS. HARTMAN: Right now--

SENATOR LESNIAK: I mean, isn't it premature to say that it isn't working effectively?

MS. HARTMAN: Well, it's not working effectively in the sense-- Look at State Farm who is arguing right now over how much rebate should be rebated to those who opted for the $1700 threshold. The Public Advocate says 35%; the Insurance Commissioner says 31%; and they say 15%. And now it's tied up in litigation.

SENATOR LESNIAK: Is it better-- Is that process in the Excess Profit Law the vehicle to determine that, or is the legislative process the better vehicle to determine that?

MS. HARTMAN: Well, it's--

SENATOR LESNIAK: Who do you think is better equipped, has the facts, will hear all the testimony, and have the actuarial support on all sides of the issue to make the determination -- the Legislature or the Commissioner?

MS. HARTMAN: The insurance industry has the facts and they have not given it to them. They're the ones--

SENATOR LESNIAK: No. The question is, who do you think is better equipped to make that decision, the Legislature or the Commissioner?

MS. HARTMAN: If the Legislature could get the information from the insurance industry -- and you do have subpoena power -- to find out how much are these options going to save the drivers -- For example, in the back of the blue book that the Special Senate Committee put out, they have rates they said they got from ISO, and so forth. Now if that was the information given to them, why shouldn't it be mandated? That's the information that the Legislature got from the insurance industry. Why wouldn't it be mandated?

SENATOR LESNIAK: You don't trust the Insurance Commissioner to do his job?

MS. HARTMAN: I'm sure that the Insurance Commissioner is doing quite the best job he can. Unfortunately, his Department is understaffed for the amount of work that they have to do.

I'd like very much for Nancy to talk about her experience. She was a victim of an auto accident. The verbal threshold that is being suggested in this package does not include fractures, soft tissue injuries, and those whose normal activities have been interrupted for at least 90 out of the first 180 days following their accident.

It's cruel to exclude from suit people who suffer fractures, soft tissue injuries, and whose normal activities have been changed and drastically interrupted. Such a person

is sitting next to me, and Nancy Burns would like to tell you a little bit about her story.

N A N C Y B U R N S: Because of the no-fault law that we have in on the insurance policy that we purchased, I consider myself very lucky. Even though it's been a very bad experience from my family's viewpoint, and from mine as an individual, it's also been a wonderful policy -- which we knew we could purchase -- that would help towards what has happened.

SENATOR LESNIAK: Are you talking about the medical -- the PIP side of it?

MS. BURNS: The medical as well as the no-fault.

My accident-- One of them was in May of 1980. I happened to be sitting in a car. I wasn't driving. I just happened to be a victim. I was a newly forming -- self-employed myself. My husband was just starting a new job several weeks later. We had two children in college and one at home.

The second income was very important to us because of the college expenses that we had. After the accident, I was diagnosed as having soft tissue injury to the back, and it remained that diagnosis for almost a full year.

I remained in my-- My problems progressed to the point that I was staying in bed 90% of the time, either in a hospital or at home. Ultimately, my business had to be dissolved. My husband was spending a great deal of time at home with me because of my problems and because of the needs of the younger child.

SENATOR LESNIAK: And you suffered economic loss because of this injury?

MS. BURNS: Absolutely.

SENATOR LESNIAK: But this proposal, this verbal threshold, doesn't apply to economic loss, does it?

MS. BURNS: No, but with the added expense of an injury and because no-fault picked up most of the bills, it saved destruction within the family to our personal lives, to

our -- what were comfortable standards for us.

SENATOR LESNIAK: What I'm saying is, we're not changing the law with regard to economic loss.

MS. BURNS: You can put a limit, a ceiling--

SENATOR LESNIAK: On the medical part of it.

MS. BURNS: The medical.

SENATOR LESNIAK: Okay. Well, I'm just trying to approach one issue at a time. You say you're testifying on the medical part, and then you say you're testifying on the verbal threshold part.

MS. BURNS: Yes.

SENATOR LESNIAK: But you mentioned your economic loss, and I just wanted to point out for the record that neither of those-- We're not-- This legislation doesn't change either of those, does it?

MR. DAVIS: Only to the extent that you have to purchase it. Now you have to take the option. You have to choose to get rid of it. Under this bill, you'll have to choose to take it, on the theory that a lot of--

SENATOR LESNIAK: The income continuation benefits?

MR. DAVIS: Right. A lot of people already have that on their jobs.

SENATOR LESNIAK: But the income continuation benefits under the current law are-- The mandatory is only $5000, isn't it?

MR. DAVIS: Yes. It's only about $5200, and then you can get, in section 10, higher benefits. So, that is still there.

SENATOR LESNIAK: But the mandatory part of it is only $5200. You're talking about a lot more than $5200, right? I'm talking about the economic loss.

MS. BURNS: Yes, sir.

SENATOR LESNIAK: Okay. But our proposals really aren't substantially changing the economic loss part of it

only to the extent of making any economic continuation benefits optional, which-- We're really only changing the $5200 part of it. So, you really want to confine your remarks to the verbal threshold part and the medical part -- if you could. It's not easy.

MS. BURNS: It's not easy to jump into one's life like that.

With the limited medical, it would have severely affected us. I far exceeded--

SENATOR LESNIAK: You would have had to go to welfare.

MS. BURNS: I don't even believe welfare would have accepted it. It's that bad, and will be until my dying days. I have injuries, particularly to the bladder, that will be problems and costly until the end of my life -- which is something you can't place a price on, but if it had to come out of my pocket or through my major medical, even then we wouldn't survive. Mechanical means for elimination of the bladder, costs me $1500 plus a year, just for the catheter. We're not talking about the infections, and the medications, and the doctors' appointments, or the tests that I have to endure on a regular basis in order to preserve the health of my kidneys.

I do wear braces. I have been from not being able to move anything below the waist, to a wheelchair, to a walker, to two crutches and, just recently -- in the last three months -- given up one crutch. I will always be considered as being disabled.

SENATOR LESNIAK: Basically, your position is that if we have an optional limited medical benefit provision, we ought to have some kind of catastrophic injury fund to cover--

MS. BURNS: Absolutely. If it had not been for the fact that we had unlimited medical funds available to us, first of all, I would not have been afforded the opportunity to seek out the best medical care for me and for my problems, nor would I have been given the opportunity to seek the help necessary to

make me mobile again. My husband and I feel I would have been a wheelchair victim for the rest of my life.

SENATOR LESNIAK: If you had not opted to purchase the unlimited?

MS. BURNS: Right, and not been able to take advantage of it, and to place ceilings on it. That seriously would limit anyone. I just can't conceive how anyone can survive what is a so-called soft tissue injury, which mine is tied into.

SENATOR LESNIAK: Now you're talking about the verbal threshold.

Can I ask you this?

MS. BURNS: Right.

SENATOR LESNIAK: Do you know if, in fact, your injuries would have been disqualified under the current verbal threshold -- the proposed verbal threshold in this legislation?

MS. BURNS: I'm told that they would. Yes, sir. It's a frightening thing.

SENATOR LESNIAK: It is. The-- I'm not so sure about that, as to whether it would or not.

MS. BURNS: Originally they would have been, but by the time-- If they awarded me the fact that it would not be under that limitation, so much time would have passed by before it would become obvious, that it was not what you'd call a routine soft tissue injury. You know, it would not have done me any good. The damage would have been permanent by that time, and it would not be a reversible situation.

SENATOR LESNIAK: Any questions from the Committee?

SENATOR CARDINALE: Yes. If the limit were higher but you had to copay, how would that change your attitude?

MS. BURNS: Not very much because I realize there are expenses that you incur when something like this happens that no one picks up the bill for. You can't even comprehend what happened, so you're already under a financial strain from these unexpected things, such as clothing that you have to have

because of your therapy, or a special type of clothing you have to utilize because of your health, or just routine things that are necessary, that an insurance company wouldn't pick up, or Major Medical wouldn't pick up.

It would still limit you as to how far you could go in order to get the medical care that would put you back in the best possible functioning health. You'd still be under a serious financial strain, coupled with the fact that you're under a strain already, emotionally and physically -- both the family and the victim. It would have to be an awfully high--

SENATOR CARDINALE: So, you wouldn't trade off a small copay on the first portion of your--

MS. BURNS: No, sir. I would not.

SENATOR CARDINALE: For a higher-- You'd rather see the $10,000 limit?

MS. BURNS: No, I'd rather see it remain the way it is.

ASSEMBLYMAN CARDINALE: But if that were not your choice, if your choice were a higher level of copay versus a-- I'm sorry, a higher level of ultimate limit-- Let's say, for the sake of using a number -- $25,000 instead of $10,000, with a small copay on the first couple of thousand dollars.

SENATOR LESNIAK: I think she testified that even-- Based on her testimony, even a $25,000 limit would not have been sufficient.

ASSEMBLYMAN CARDINALE: I'm asking her about a preference. The reality is that probably, given the bills that are here and where they came from, some kind of limit is going to be imposed, and it's probably not going to be up into the stratosphere. Now, the question is, would you accept a higher limit if it carried a copay with it, or would you rather have the lower limit with no copay?

MS. BURNS: Well, apparently there's not a choice there for someone that knows the real figures. I would have to accept a higher figure with the copayment. It's certainly not

a desirable one, and it would seriously cause problems for the average family. We're talking basically something that's long-term. Anybody that requires a $25,000 ceiling on their medical is a long-term victim, and you're making a double victim.

SENATOR O'CONNOR: Mr. Chairman, I apologize because I missed part of the testimony. This may have been covered at some point. I received a telegram recently from the victim of a serious head injury who indicated to me that the reduction of this benefit to the $10,000 limit will result in a $50 per policy savings. Is that true? Has anyone testified as to what the actual savings will be?

SENATOR LESNIAK: Dale, the option-- What is the option for the $10,000 -- the difference between the unlimited and the $10,000 PIP?

MR. DAVIS: It is not as much as you think.

SENATOR LESNIAK: Well, how much? It's in the report.

MR. DAVIS: I think it was around $40 or $50. The reason is because some 90% of the accidents are under $10,000, and the rest-- It's only that other percentage that goes over that. Well, it varies by territory.

SENATOR LESNIAK: Well, what's a ball park figure for savings on the PIP portion? Vince Serrati (phonetic spelling) says it's in the back of the book.

MR. DAVIS: It's in the back, Vince?

SENATOR LESNIAK: Vince, do you know the answer?

MR. DAVIS: Well, there's the examples.

SENATOR JACKMAN: It's $45, isn't it?

SENATOR LESNIAK: Forty or fifty dollars is probably--

SENATOR JACKMAN: Forty-five, I think.

MR. DAVIS: It should be.

SENATOR O'CONNOR: All right. I don't have a follow-up question anyway.

MS. BURNS: May I add just one point?

SENATOR LESNIAK: Surely.

MS. BURNS: To intensify this, my physical therapy is $75 a day. That's for two hours. It's the same for me for two hours as it is for you if you use a therapist for five minutes. I'm not charged according to the time.

If there were a limit on this, I would have already exceeded that by the amount of physical therapy that is necessary. And if my major medical had to pick up, they also have a varied limit on it. I would be out thousands of dollars that I would have to come up with on my own that no one would pick up.

SENATOR LESNIAK: You may not have even been able to afford to get the treatment.

MS. BURNS: Right, in order to be able to afford a physical therapist.

SENATOR LESNIAK: Of course, if you had been injured in another type of accident, other than an automobile accident, you wouldn't have the unlimited coverage either.

MS. BURNS: But then I wouldn't have to contend with the fact that somebody else caused my injury through carelessness.

SENATOR LESNIAK: If you were negligently injured by somebody other than by an automobile--

MS. BURNS: The chances aren't as great as with an auto.

SENATOR LESNIAK: That's for sure.

MR. DAVIS: About 30% of the present personal injury--

SENATOR LESNIAK: Okay, about 30% of the present PIP premium -- which on the average is--

SENATOR JACKMAN: One hundred and twenty-five to one hundred and thirty dollars.

MS. BURNS: Thirty percent would be about $35.

MR. DAVIS: One hundred to one hundred and twenty.

SENATOR LESNIAK: Okay.

SENATOR JACKMAN: It's $120, so that's $40. I told you $40.

SENATOR LESNIAK: Forty dollars. The Vice Chairman was correct. That's correct, 70% of the accidents are caused by-- No, that's not true. Seventy-five percent of the suits filed involve automobile cases but, again, but I guess probably less than 50% of the accidents are caused by automobile.

SENATOR DiFRANCESCO: Usually if they have a serious injury, and go into a hospital, and are there for a couple of weeks, $10,000 goes pretty quick. Now, most people have another insurance that kicks in, right?

SENATOR LESNIAK: Yes.

SENATOR DiFRANCESCO: Which is generally based on the usual customary things.

SENATOR LESNIAK: Eighty percent, up to a certain limit though. I don't know of any other insurance that provides unlimited medical benefits that's available. I'm sure there could be, but I don't know of any.

Okay. Thank you very much.

Tom Gurrera, Insurance Brokers of New Jersey.

T O M G U R R E R A: Mr. Chairman, Committee members, my name is Tom Gurrera. I am the immediate past President and current Chairman of the Board of the Insurance Brokers of New Jersey, representing 16,000 licensed brokers in this State.

I also own and operate an insurance agency in the Essex County area. The IBA represents not only the 16,000 brokers when we speak here today, but the many thousands of employees that are working in our offices in the State of New Jersey.

We are also the only major association that represents the insurance buying consumer in the State of New Jersey. I'd like to make a distinction for you. An agent represents the insurance company. We represent the people who come in to purchase the insurance.

Mr. Chairman, we applaud you and the Committee for your diligence in trying to bring about auto insurance reform in New Jersey. We regret that we--

SENATOR LESNIAK: That means there's bad news coming down after that. (laughter)

MR. GURRERA: Yep, that's-- We do regret that we did not have an opportunity to testify before the Special Senate Committee on Auto Insurance Reform prior to the drafting of the bill, S-2594.

There is one section, in particular, in this bill, section 23, page 22, that will have an adverse effect upon the consumer, our employees, and our ability to stay in business.

SENATOR LESNIAK: Is that the (indiscernible) information part of it?

MR. GURRERA: Yes, it is. You know exactly what I'm going to say. (laughter)

SENATOR LESNIAK: Just took a guess.

MR. GURRERA: We should record this and send it in.

This section deals with the method of payment to the insurance producer on policies canceled for nonpayment of premium. We ask you, Mr. Chairman and Committee members, that the bill please be amended, and this section deleted from the bill. Allow us time to prepare a proper response and then meet with you and the Committee members for further discussion on this issue.

S-2594--

SENATOR LESNIAK: Excuse me. I just have to make one point. The Special Auto Insurance Study Commission had lengthy hearings over numerous weeks and months -- seven months -- at which time there was plenty of opportunity. You weren't precluded from appearing before that Commission, were you?

MR. GURRERA: We were told-- Russ Bent (phonetic spelling) represents us in Trenton. We were told that we would be given -

SENATOR LESNIAK: Oh, it was invited testimony and you weren't invited?

MR. GURRERA: We were told that we would be given an opportunity to speak.

SENATOR JACKMAN: You see, I told you, change your mouthwash; you would have made it. (laughter)

MR. GURRERA: Thank you, Senator, we'll remember that next year when we reform again.

SENATOR JACKMAN: You'd better believe it.

SENATOR LESNIAK: Oh, yes. But the way, this is-- And I say this mostly for the benefit of Senator Cardinale because he's raised some very interesting proposals during the course of our deliberations.

This, I am certain -- I know -- is only the first of other reforms that will be coming after this proposal. So, when you say next year we will be talking about it, I'm sure that's an accurate prophesy.

MR. GURRERA: It is an accurate prophesy. I understand that more things will be happening, and I don't understand how we can clean it up before the end of the year.

SENATOR LESNIAK: I can tell you right now you're not going to be too happy about those either.

MR. GURRERA: I know that. We--

SENATOR LESNIAK: After speaking to the Commissioner.

MR. GURRERA: Some of the applications I have for employment in my office, I filled out.

Where was I now? S-2594 will make insurance sales more complex. It will take more time to explain the new options mandated by the Legislature. We would have to explain the new options to our existing policyholders, along with the services we now perform, such as quoting rates, explaining coverages, explaining the existing options in detail, explaining medical deductions, thresholds, and so forth. We complete the applications and various other forms mandated by

the Legislature. We collect the down payment. We bind the coverage, issue the I.D. card, contact the lien holder and the auto dealer on the insured's behalf. We then submit the completed information, with the down payment, to the insurance company.

Our job is not finished. We have to review the policy and look for errors. We have to correct any errors that exist. We then have to collect installment premiums for which we do not get paid. We make policy changes. We take claim reports. And we assist in the settlement of a claim. I know that sounds boring, but we do it each and every day.

We also, by the way, arrange for rental cars, and we deal with body shops and doctors and attorneys on behalf of the insureds.

If this bill is passed in its present form, all of these services will be seriously curtailed, perhaps not performed at all.

At this time, I would like to give a brief overview of how the fully earned commission -- or fully earned premium -- is critical to the survival of the producer. The average premium that we are concerned with is in the $350-a-year area. The down payment for this policy is $119. Our commission on this policy if it is not fully earned -- that is, if the present law is changed -- will be $13.09. Now, remember, we perform all the services that I mentioned previously. We would earn $13.09 for this.

Approximately 25% to 30% of the policies that we write are canceled for nonpayment of an installment payment. This means that the commission we receive on approximately 30% of the policies written in our office would be in the 3-1/2% range. By the way, we would be working for less than the minimum wage allowed in the State of New Jersey.

SENATOR LESNIAK: Can I ask you this? Who sets the rate -- the percentage of commission you get? Is that set by the Commissioner?

MR. GURRERA: No. The commission is mandated by the law itself. It's a--

SENATOR JACKMAN: So what's the commission rate?

MR. GURRERA: Right now the commission rate is 11%.

SENATOR LESNIAK: Wait a minute. That rate isn't mandated. The floor is mandated.

MR. GURRERA: The floor is mandated, I'm sorry. The Commissioner has the ability to change the commission.

SENATOR LESNIAK: Now, if this law goes into effect, isn't it a better procedure-- Or, don't you have the option of going to the Commissioner and reciting those same figures that you just recited for this Committee, and saying, "We need an increase in our commission"?

MR. GURRERA: All right, Senator. Let me say this, and perhaps you've never heard this side of the argument.

SENATOR LESNIAK: I've heard every side of every argument dealing with insurance for the last--

MR. GURRERA: Well, this one may be a little different to you because you brought up the question.

SENATOR LESNIAK: (continuing) --nine months.

MR. GURRERA: We considered that and we would prefer to have a higher commission, and not have to fight the fully earned battle every two years. But the way the situation exists today--

SENATOR JACKMAN: Can I ask you a question?

MR. GURRERA: Yes.

SENATOR JACKMAN: You know, you're going-- Let me ask you-- You're getting 11-1/2%?

MR. GURRERA: No, we're getting 11%.

SENATOR JACKMAN: Eleven percent of what, of the first payment?

SENATOR LESNIAK: Of the full premium.

SENATOR JACKMAN: Oh, of the full premium.

SENATOR LESNIAK: Including factious, constant--

SENATOR JACKMAN: What's the full premium?

MR. GURRERA: The full premium in the case I illustrated here would be $350 -- in this example.

SENATOR JACKMAN: That's the full premium?

SENATOR LESNIAK: You're not writing in Newark and Elizabeth.

MR. GURRERA: Yes, sir. I was born in Newark. I still work there.

SENATOR JACKMAN: So, 11% of $300--

SENATOR LESNIAK: What has that to do with-- is that per year premium?

MR. GURRERA: We're taking-- The Newark rate, the lowest rate you can have if you use all the options in the City of Newark, I believe, is in the $367 to $387 area for an adult driver.

If you take Irvington and the surrounding areas, you can get your premium down close to $300 if you utilize the options. Insurance is affordable and available if people want to buy minimum liability.

MEMBER OF AUDIENCE: This is New Jersey.

SENATOR LESNIAK: Are you going to come up to testify? (response inaudible)

MR. GURRERA: I'd like to finish explaining.

SENATOR JACKMAN: Yes, but if you get 11% of $300, it's $33 bucks in my count.

MR. GURRERA: No. But, Senator, here's the thing: Today, if we get 11% of $350, we get $35-- What is it? Approximately $38 commission.

SENATOR JACKMAN: Yes.

MR. GURRERA: And this particular section that we're speaking about-- We will be paid only on the first premium that's remitted to the company.

SENATOR LESNIAK: No.

MR. GURRERA: And that would give us--

SENATOR LESNIAK: No, that's not correct. You would be paid only on the premium that is paid.

MR. GURRERA: Okay. I stand corrected. But, normally, with the people that we're talking about we'd--

SENATOR JACKMAN: You are talking about a guy -- everybody. Do you mean to tell me that everybody pays the first three months and then quits, and we have no more people with insurance?

SENATOR LESNIAK: His testimony is 25%.

MR. GURRERA: Senator, can I explain it to you? What happens is--

SENATOR JACKMAN: We've got more uninsured drivers than I thought we had.

MR. GURRERA: No. It's not that bad. I'll tell you about that.

SENATOR JACKMAN: Well then, that's why I was wondering.

MR. GURRERA: Approximately-- What we're saying is 33% of these people will come in, they will purchase insurance, they will buy the lowest possible policy, and now they can register their vehicle. They use up two or three hours of our time -- maybe even more than that. They will not make the next payment. When they don't make the next payment, which is due in two months -- if this bill is made part of the law -- we will be charged approximately $38 back from that. We will earn for this three or four hours work and the aggravation they put us through, $13.09 which, if you want to divide it by three hours, or whatever, is less than minimum wage. And that's exactly what happens.

As far as uninsured motorists on the road, I do not agree with 600,000 because what these people will do is, they are not sophisticated, many of them, and they don't think. They will buy insurance today. Their car is not on the road for some reason. Instead of canceling their policy, getting

their money back, and letting us give them back the commission -- because there's a reason why the car is not on the road -- they will just let the policy cancel. They'll get insurance again after the car is repaired. You see, but the thing is we're doing all the work, and we cannot continue to do so if this happens to us.

SENATOR LESNIAK: What is your commission on renewals?

MR. GURRERA: The commission on renewals is 11%.

SENATOR LESNIAK: You don't have the same work on renewals as you do when they first come in.

MR. GURRERA: Most of the time we have more.

SENATOR LESNIAK: Why is that?

MR. GURRERA: Why is that? Because the fellow is not coming into the office to pay his renewal, and we have to contact him. First we send him a letter. He doesn't respond. This is normal. We then make attempts to get him on the telephone.

SENATOR LESNIAK: This is your business practice, to get them to come in to you rather than go through--

MR. GURRERA: Yes. He may have sent his renewal premium in. We finally get him into the office. We review the coverages with him. We want to make sure he doesn't have a--

SENATOR LESNIAK: But, meanwhile, you've already adequately explained the coverages the last time, so you don't have to go over that again.

MR. GURRERA: Senator, coverages change every year. I mean, I know what you're getting at, but the coverages change every year.

SENATOR LESNIAK: So, you're saying that -- and you testified before the Commissioner at hearings -- your work on renewals is more than your work on origination, because he doesn't believe it.

MR. GURRERA: I'd like to ask the people that don't believe that-- I'm not saying that holds true in every case,

by the way. Let me qualify that.

SENATOR LESNIAK: I'm not talking about every case. I'm talking thousands--

MR. GURRERA: In many cases.

SENATOR LESNIAK: Please. When I ask a question I'm talking about the average case. I'm not talking about the exception; I'm talking about the average case. You're telling this Committee on the record that on an average, your work on renewals is more than on origination.

MR. GURRERA: All right, I would say on average then it would be equal because I have to do just about the same thing I did originally, and even more, to update the policy. And when people do contact us on renewals because they need an I.D. card and they get a questionnaire from the insurance company, and they want assistance in paying. And, by the way, half of the people, or more, come into the office to renew their policy, and at that time in my office -- and it's documented -- we will sit down with them and review the policy and the options again, line by line. And we also get the same calls on the renewals from the lien holder, from the firm they leased the car from -- whatever the situation may be. We have to perform the same services.

In fact, you mentioned the Commissioner. I suggested in front of the Assembly Committee approximately two years ago-- I invited them to spend some time in my insurance agency, or any agency, if they would like to see exactly what it is we do.

SENATOR LESNIAK: Do you know how many licensed brokers there are in New Jersey now?

MR. GURRERA: There's in excess of 15,000.

SENATOR LESNIAK: Okay. How many were there five years ago? How many were there before the actions?

MR. GURRERA: I'm sorry, before--

SENATOR LESNIAK: How many were there five years ago,

do you know?

MR. GURRERA: No. I would imagine less.

SENATOR LESNIAK: Less. Okay. So, there are more people in the business now than there were before.

MR. GURRERA: Brokers with licenses?

SENATOR LESNIAK: Paul Samuelson tells me that means it is a good business proposition to be a broker in New Jersey, and that what the Legislature has done has not harmed the economics of the industry so that less people are attracted to joining the business.

MR. GURRERA: Well, there is money to be made in the insurance business, but it's not necessarily to be made selling automobile insurance. I'm speaking for people like myself who service an awful lot of residual market auto insurance. And we service this insurance. I was going to get to that but I'll deviate from it. We service what we call -- and we picked the word up from the Legislature -- the under-serviced areas of the State -- places like Elizabeth, Newark, West New York, Union City, Jersey City, Trenton, and Camden. These are companies (sic) that have been left behind by the large companies. They have no presence in these under-serviced areas. They say that they cannot make money in these areas. It is not profitable for them to keep their agents in these areas.

We stay behind to service these people in the under-serviced areas. We're doing it, and the only reason we are able to maintain our business is because as independent businessmen we work six (sic) hours a week -- we work evenings. A 65 hour or 70 hour week is not unusual.

I see you're smiling, but you can call my office. I'll be there.

SENATOR LESNIAK: No, you said six hours a week. That's why I'm smiling.

MR. GURRERA: Oh, I'm sorry. Well, you know, it's emotional. I'm going to be put out of business here. I'm a little upset.

SENATOR LESNIAK: The bankers work six hours a week.

MR. GURRERA: No. I'm a little upset, naturally. I'm confronted with having been in the business for 23 years and having to go out and look for a job in the very near future.

But, I'd like to finish this if I may -- if that's okay.

A matter of-- I think I said that. When we sell an auto insurance policy, the consumer is contracting what is legally to insure his automobile for one year. Because he decides to unilaterally avoid the contract by not paying his premium, it means that we suffer an economic loss. Is this what is intended by the law?

SENATOR JACKMAN: Without this law, you were getting the full premium in the first payment?

MR. GURRERA: Yes.

Oh, by the way, getting back to that thing of increasing the commission--

SENATOR JACKMAN: Is that right?

MR. GURRERA: Yes, Senator Jackman.

But, getting back to the portion of the speech here concerning the fact that we have an increase in the commission, possibly, that's not fair to the consumer who's buying insurance in good faith. The way it's set up right now with the fully earned commission, if, Senator, you were to come into my office and purchase an auto insurance policy, and if you had no intention of continuing that policy throughout the year, and we earned a $35 or $40 commission, you're the only one who pays. But if this is taken away from us and the commissions are increased across-the-board, then Senator O'Connor, who bought insurance in good faith, would have to subsidize what you did, and we feel that is not fair to the consumer, but we would not turn down the offer. I make that clear if that was a compromise.

SENATOR LESNIAK: Well, I didn't make that offer.

MR. GURRERA: Well, if it were coming as an offer, we would accept.

The bill, as written, will seriously affect thousands of jobs in those offices of those producers working in the under-serviced areas of the State -- again, Newark, Jersey City, Union City, and so forth -- and will most seriously impact on the insurance buying consumer residing in the under-serviced area.

An under-serviced area is one referred to as an area left behind by the large insurance carriers, due to being difficult and costly to continue providing service to the consumer.

When we first heard of the bill, we were very concerned. We were upset. We knew that we would not be able to continue to operate our offices.

I'd like to give you my personal reaction to this, and this I can document. As insureds came into my office after I first was able to read a portion of this bill, I discussed the provisions of S-2594 with them. I told them that I recalled an editorial in 1985, in The Star Ledger that said that $10 million was being lost to the consumer as the result of a fully earned commission, and I told this to the consumer. I emphasized the fact that they were losing money. I further stated that there are approximately 1.9 to 2 million vehicles insured in the JUA, and that it was costing the consumer -- with a case of simple mathematics -- approximately $2.50 a vehicle to pay us for the service we perform.

I suggested to the consumers that even if the figure were $5.00 and this money was taken from the producer and given back to them by way of reduction, as is suggested by the bill -- it doesn't say reduction, but given back to them somehow through this bill -- it would mean that I would no longer be here to service the policy. The reaction in all cases was the same: This is not a large savings; it's not worth it; we feel

that we do not want to lose the services of a neighborhood professional. They appreciate the fact that they have an agency in their neighborhood. They don't have many professional businesses in their areas now.

SENATOR LESNIAK: If this law passes, you're going to close -- turn your license in?

MR. GURRERA: Senator, I was going to bring it here. If it goes to the Assembly Committee, you will be there. You know I've testified here in the past. I will certainly turn my license in.

I have a 46 year-old male in my office who happens to be related to me. I told him today I made inquiries about a job for him.

I have two females working in my office, who will no longer be working. I also suggested they check the unemployment office for benefits.

And, we had one fellow who worked for us part-time as a broker, who moved to North Carolina a year ago. He wanted to work full-time. We are not replacing his job. His job was very valuable. He would come in each night and call people when their payments were overdue and their renewals were late, to try to get them into the office. That job we cannot replace on the basis of what we see here.

And I am very sincere when I say this. My license is up for grabs with this.

SENATOR LESNIAK: And you're Chairman of the--

MR. GURRERA: Insurance Brokers Association.

SENATOR LESNIAK: Insurance Brokers Association of New Jersey.

Are there any other insurance brokers that are similarly situated to you who will turn their license in if this bill is passed?

MR. GURRERA: Well, we had a discussion in the car on the way down here, and there were three brokers in the car.

There are brokers in here today who do not belong to the Brokers Association who will tell you-- I believe I'm echoing their sentiments here. They have also suggested to me that they will be out of business. There is no way in the world that you can service people in your office if you do not have the people there to help them.

We have dozens of people coming into our office each and every day. They make payments there. They come in. They want to know why their claim hasn't been paid.

SENATOR LESNIAK: But you don't know personally of any other broker who would be willing to go on the record and say they will turn their license in when this bill is signed into law.

MR. GURRERA: Would any of you fellows back there-- Excuse me. Would any of you back there want to turn your license in if they implement these law and reduce our income?

M I K E F A N Z A Z Z I: I for one would be reluctant to turn in my license. However, if it became a necessity because I financially couldn't handle it--

SENATOR LESNIAK: Could you identify yourself, please?

MR. FANZAZZI: My name is Mike Fanzazzi (phonetic spelling). I'm from the Brokers Association as well, and what I'm suggesting is, if our income is cut in such a fashion that it doesn't make it feasible to be there, then I will utilize every opportunity I have to survive -- because we're all survivors in the city. However, it may become necessary to eliminate it completely.

SENATOR LESNIAK: Right. That sounds like a statement that I wouldn't quarrel over.

Yes, sir?

T O M D R O S L A N D: My name is Tom Drosland (phonetic spelling). I'm from Thomas Brokerage (phonetic spelling). I have five offices scattered throughout the State, and will have to close some of them down due to the economic destabilization

of this industry, and--

SENATOR LESNIAK: Wait. What economic destabilization are we talking about?

MR. DROSLAND: Well, this. We don't know whether it's coming or going. We don't know what's coming or going with the State Legislature.

SENATOR LESNIAK: So, that why--

MR. DROSLAND: The fact is, I had 21 people who used to work. We now have 12 people who work. We had to lay them off.

SENATOR LESNIAK: I don't understand. Why did you have to lay them off?

MR. DROSLAND: Lay them off? Because there's no stabilization in this business, and you're probably going to--

SENATOR LESNIAK: I don't understand. There's no stabilization in any business. What-- There hasn't been a premium increase, for instance, in the State of New Jersey for the last three years.

MR. GURRERA: Can I help you?

SENATOR LESNIAK: What stabilization are you talking about?

MR. DROSLAND: Well, sir, the simple fact is, number one, we don't have the market -- the proper markets -- to deal with it. We should have homeowner applications. We also should have umbrella policies. We can only sell auto insurance because no other person is opening up their markets.

It's economically nonfeasible to continue in business if I don't have other markets to do business with.

MR. DAVIS: Excuse me, Mr. Chairman.

MR. DROSLAND: Plus the fact that this is a voluntary market.

MR. DAVIS: Excuse me, sir. Mr. Chairman, I'm advised that the microphones are not picking up the speakers from the back of the room. They'll have to come up to the table.

SENATOR LESNIAK: Okay. Thank you.

SENATOR CARDINALE: Mr. Chairman, may I ask a question of this witness?

SENATOR LESNIAK: Sure.

SENATOR CARDINALE: Part of the problem that you're alluding to is one that has fascinated me over a period of time because we've had similar testimony each time we've dealt with this area.

The commissions that you earn are based on a percentage of the full premium being collected -- a presumption that the full premium is going to be collected for a year's policy, generally. Yet, that is broken down in payments by the company.

Now, it occurs to me that when someone goes out to buy a car, the car manufacturer -- unless they also have a side financing company -- isn't giving people the right to pay for the car in four installments over a period of a year. And, therefore, that problem doesn't occur in other industries, because most things -- if you're not going to pay for it right away -- are financed, so you can pay for it over a period of time.

Why is it that in insurance-- How has it come about that in automobile insurance we have this kind of situation, where people can, in fact, get the insurance card simply by making the first payment, then never make another payment and still continue to keep that card? Isn't there something else we can do in terms of either causing that insurance to be financed by an outside company -- as is done with fire and with many other policies that are extended over a period of time -- or issuing the card for a finite period that corresponds to the period for which it has been paid, or any of a number of other things? Why does no one approach that? Is it not possible in your business to do that, or is it too complicated to do it? What is the reason why this has not been approached?

MR. GURRERA: Senator Cardinale, if you recall approximately four years ago, the Brokers Association held a brunch meeting in Nutley. You were there.

SENATOR CARDINALE: Uh-huh.

MR. GURRERA: And at that time one of my pet ideas was something you're suggesting. It was that in order to take the uninsured motorist off the street, what we would suggest is that when you buy your insurance you are given a sticker to put in your car, similar to the inspection sticker. That card would be color coordinated so that it would correspond with the amount of money you paid. For example, if you paid for six months, you would be given, for example, a red sticker that was good for six months. If you paid for two months, you would be given a blue sticker.

Now, what would happen if this was done is, the police would be able to identify all of these people who are avoiding the law when they're shopping on Saturday up at the Willowbrook Mall, for example, or the Hudson Mall, and you would get, I think, most of them off the road because you can identify them without stopping them.

SENATOR CARDINALE: Would you not be getting them off the road, but really giving them an incentive to pay their insurance premiums so that they keep their insurance up to date?

But why not finance these premiums over a period--

MR. GURRERA: We can't finance these premiums.

SENATOR CARDINALE: Why don't you?

MR. GURRERA: We finance them with a premium finance company. That, by the way-- We don't charge extra for that, but that causes us to do a lot of extra work.

Now, the companies do not want to handle money nine, and ten, and twelve times a year because it's too expensive to do so, and I agree with them.

SENATOR LESNIAK: Can you turn down somebody who

doesn't -- either isn't willing to pay the full premium or finance the premium?

MR. GURRERA: According to the law, we must write everybody who comes into the office, but he must have the proper down payment when he comes in. But if the man has the proper down payment--

SENATOR LESNIAK: Which is a quarter.

MR. GURRERA: No, 34% or 25% on the financing agreement that we have with various finance companies. Some of them might be even less. But we cannot turn down anyone who comes in who is within the parameters of the law, which is A-1696. If he meets the criteria established in that particular law, we cannot turn him down, even if we think that he is not applying in good faith -- that either he will not keep the insurance policy or he's like these two people I have files on here: he's up to some kind of insurance fraud. I just brought these for an example to show you.

SENATOR LESNIAK: Well, would you then be in favor of a change that required an applicant to pay either the entire premium or finance the entire premium?

MR. GURRERA: We would like to look into that, and we would like to sit down and study it. I would not like to make a decision at this particular moment for a lot of people who are not here.

SENATOR CARDINALE: But, there seems to be nothing else in this world that you could buy a year's worth of and pay one-third or one-quarter of the cost and get, essentially, what is for many people the benefit of having bought the whole year, and paid for the whole year.

SENATOR LESNIAK: As long as they don't get stopped by the police--

SENATOR CARDINALE: Right, as long as you don't get stopped by a police officer.

SENATOR LESNIAK: (continuing) --nor are in an accident.

Okay. Can you summarize your testimony, please? Because I think we've covered the testimony.

MR. GURRERA: Well, I think I've said about-- I think I've said just about everything I wanted to, other than I just wanted to point this out to you: Every day in The Star Ledger we read about enterprise zones in the cities -- creating jobs, revitalizing the cities. I say to you if our income is reduced and we are put out of business, not only do we lose jobs in these city areas, but what happens is, there's no professional insurance agents and brokers left in these city areas to service the new businesses we're trying to attract to the areas.

SENATOR LESNIAK: You don't have any expert economic analysis of the industry which would indicate that, other than your own opinion and your experience -- empirical data will show that this legislation is going to reduce employment in any way, shape, or form?

MR. GURRERA: Do I have statistics that show that? What kind of statistics? I gave you figures here. We certainly in my office--

SENATOR LESNIAK: Those figures are just absolute numbers. You don't tie that into any economic model that would show that--

MR. GURRERA: Yes. I would lose-- In our office, we would--

SENATOR LESNIAK: No, no. You don't have any expert economic testimony to that effect?

MR. GURRERA: You tell me what it is you want, and I'd certainly be more than happy to get it for you.

SENATOR LESNIAK: Show me an economic model with regard to the industry, and employment in the industry, and the impact of this bill on it. We just really have your conclusion.

MR. GURRERA: Well, our conclusion is based on our

experience. We know what we're earning. We know how many people we need in a particular office -- in a given office -- in an urban area.

SENATOR LESNIAK: Yeah, but I don't have your figures. I don't have your income figures. You haven't shown me your income and your expense figures.

MR. GURRERA: I'll be more than happy to provide you with them. It's an open book.

SENATOR LESNIAK: For the record?

MR. GURRERA: Yes, sir. I will provide you with them. I have nothing there to hide.

SENATOR LESNIAK: No, it's not a question of hiding.

MR. GURRERA: Senator?

SENATOR LESNIAK: It's just a question of being able to analyze it.

MR. GURRERA: Senator, I would also invite you-- As I stated earlier, and I've been saying it for many years, I would invite you and the Committee members -- anybody in the room who would like to know exactly what it is that we do -- to spend time in our office.

SENATOR LESNIAK: Let me just make it clear why I've asked that question, because continually we know whether it's-- Any type of legislation that we have that's going to have any impact on any industry, we hear over, and over, and over again, "We're going to leave the State; we're going to close down the business; we're to close shops." We hear it all the time.

I'm not saying that your position isn't correct. I'm just saying we've heard it so many times, in so many different instances, and it hasn't occurred. Unless we have real hard evidence, it's difficult in any particular case to say -- for us to draw any particular conclusions without that hard evidence.

MR. GURRERA: Senator, I will get you these figures. You know that we didn't have a full year in commission last year. It was illegally taken away from us, and I will show you something that I think is quite remarkable. I'm not embarrassed to do it. I've been in this business for many years and last year was the first time since I've been in the business that I had to borrow money to pay my own Errors and Omissions Insurance, which was increased 400% without the benefit of a claim.

SENATOR LESNIAK: I'm more interested in the bottom line in terms of the accounting.

MR. GURRERA: But, I'll even show you the loan statement. I'll show you whatever you want that's in my office that I reported to the Internal Revenue. Is that fair?

SENATOR LESNIAK: They won't even sell us Errors and Omissions Insurance, so--

Okay. Thank you.

MR. GURRERA: Well, somebody is making more errors than us.

SENATOR LESNIAK: Thank you.

MR. GURRERA: Thank you.

SENATOR LESNIAK: Are Harold Easley and Wallace Lee from the Black Professional Insurance Agents of New Jersey present, please?

Do you basically agree with everything that's been said by the previous speaker?

H A R O L D E A S L E Y: I have a little different story, sir.

SENATOR LESNIAK: Okay.

MR. EASLEY: I'm Harold Easley, and I represent the Black Professional Insurance Agents of New Jersey and several other small and medium-sized agents appearing with me are Thomas Jarusalena (phonetic spelling) whom you heard speak in the back.

T H O M A S J A R U S A L E N A: Because of Affirmative Action, I'm told to come here.

MR. EASLEY: We decided that this was such--

SENATOR LESNIAK: I was going to say, are you a member of the Black Professional Insurance Agents?

MR. JARUSALENA: Yes, sir.

MR. EASLEY: Don't be fooled by the name. The reason that-- Let me just make it clear to you that the reason it's named the Black Professional Insurance Agents of New Jersey is because--

SENATOR LESNIAK: You service black areas?

MR. EASLEY: No, sir. It's because we couldn't get involved on this level with some of the other associations. So, the intent here is strictly to bring up some facts. I think I have some of the information you were asking for from Tom -- from the New Jersey Brokers.

Let me just start by saying-- And I'll make this as brief as I can because I don't want to cover the same ground. But, I have -- first -- to start with 1984, when the JUA was instituted. We lost -- we brokers in New Jersey lost -- 35% of our basic income because the surcharges were taken away - commissions on surcharges -- number one. That went directly to the Division of Motor Vehicles for what? To redo administration. To rehab their policies, and programs, and buildings, and so on. So, we lost that money.

Also, during the same period, for the first three to four months most of us had to finance our own operations with our own capital because we weren't paid through the JUA -- because we didn't get our money.

The next thing you should know is that the 13% they offered during that period was not a windfall to agents, by any means. Please understand, because of the changes in the law, because of the training that was necessary, because of the study that was necessary, because you now had to contact each

client, because you really had to do a whole lot of new things, you really lost money in the transaction. The agents were fooled when they thought they made money.

If you do the math -- which I can do with you sometime -- you'll see that in itself lost us money.

I did a study on behalf of the Black Professional Insurance Agents that comprised the following -- or came from the following places. These facts came from "Rough Notes" in the industry magazine, "A.M. Best" -- which we all know of, hopefully -- the 1980 census, some professional legal opinions, and "The York Insurance Information Institute."

You asked for some figures, which I hope to get to in a second. But first, let me say to you that the urban community is generally afforded substandard coverage at the highest cost, and we all know this because not only are they never afforded voluntary markets for automobile insurance, but they have to work through substandard companies in every other line -- from the Federal Plan, from the JUA, from surplus lines, and from anything else.

SENATOR LESNIAK: The JUA coverage for autos is the same as for the voluntary market.

MR. EASLEY: Well, it may be. I'm not quite sure. I think there are two policies that exist in this State, aren't there? I think I'm right because on January 4 it was changed from the family automobile policy to the present policy.

But, the fact of the matter is that they're working through a broker and our brokers, if you understood the hardship that we have in sustaining-- I have to question each and every one of you if whether or not you could sustain, or run your office, on a competent level, in a good location, and pay the things that are necessary at 11%? I don't think there's one efficiency expert in this State that could tell me you can run a business on 11%.

But, let me move a little further.

SENATOR LESNIAK: Ken Merin thinks you could do it on 7% for renewals.

MR. EASLEY: Well, I can understand that. But, if we were getting 15% as they do in the voluntary market, and 7% on renewal, that's 22%. It all adds up the same.

But, let me go a little further. According to the 1980 census, there were 7.4 million people in the State of New Jersey. In urbanized areas which consisted of areas that had a population of 2800 or more, there were 6,200,000 'x', and, of course, there were 5.5-- Not of course, but 5.5 million residents were considered on the urban fringe. Of this, 1.8 of these people were minorities. Urban brokers and agents service about 75%. Now, notice I said urban brokers, agents, and minorities. We could care less. This action transcends black and white, suburban and urban as an economic issue.

Now, 60% of all insurance consumers in urbanized areas and urban fringe are serviced by urban brokers and agents because if you take a look at it, most people do business where they work. For instance, if we take a town that doesn't have any industry, you'll find that their retail downtown hurts.

All right, I'm going to go further quicker. I'm going to go into the numbers you asked Mr. Gurrera for. Let's take a look at the -- a typical agent and our urban agent in this situation. This information comes from "Rough Notes" agency profit report from 1985 for the East Coast -- or the Northern East section. We used a small agent or broker, and you should know that his volume is $1.25 million, and our typical agent, or broker "B" is $1.25 million. In other words, they both earned the same thing.

Take a look at some of these statistics. See if you can visualize what I'm saying.

Homeowners commission: Our agent and/or broker -- and we're talking about brokers now because most of us don't have any markets -- earns about 10% on homeowners because he has to

broker this through some agent who may be of a second-third generation variety.

Auto Insurance is 11%.

Other personal lines are about 7.5%.

And other commercial is about 7%.

Our agent, who has voluntary markets, such as -- what? -- the Allstate agents, Pru agents, State Farm agents, second-third generation agents -- earns an average of 19% on homeowners, 15% on auto, 16% on other personal lines, 15% on commercial, or an average percentage of 15%, and our average percent on earnings is 8%. If we go down to this--

What makes this very significant and to help get these numbers right for you, my agent broker -- the person I'm representing -- because he has no specific markets of his own, at least 75% of his business is done in auto insurance; whereas, we take our agent "B," and only 28% of his income is derived from auto insurance. Now, these figures are definitely straight from the book, and I have copies.

SENATOR LESNIAK: What you're saying is absolutely true, but it would appear to me that the remedies for that go certainly beyond this legislation. You would agree with that?

MR. EASLEY: I would agree with that.

SENATOR LESNIAK: Now, what about Senator Cardinale's suggestion that we require either a year financing, or a year premium? How would you feel about that?

MR. EASLEY: I could say that, first of all, you should understand that the paperwork involved in the administration of auto insurance far surpasses that in the commercial lines and in the other areas.

I also suggest if you take a look at the history of finance companies -- auto premium finance companies -- in this State, you'll find that they've gone out of business on a continuous basis, and they've also been an administrative nightmare to all concerned -- unnecessary and false

cancellations, misappropriation of funds, but most of all--

SENATOR LESNIAK: How about Beneficial Finance?

MR. EASLEY: (repeating) --but, most of all, creating another tremendous amount of paperwork. Now, if we're having difficulty surviving on 11% now, what would it be like? I mean, every day we're adding something.

For instance, let me give you a good idea of what's happening to us. When the JUA gave up this urban commission -- or when the legislation put it back, they had to figure out how to get this money back. And what they've done is this: They created more paperwork by taking advantage of a section of the administration which says that you can be canceled for non-cooperation. And cancellation for non-cooperation would encompass such things as not getting a vehicle inspected, not answering a request for information. And oftentimes you will find that this information had been supplied to the insurer and it's a make work situation, so that they cancel the policy and pay on a pro rata basis as opposed to a full premium.

I'm only saying to you that the paperwork right now is so humongous that it is beyond anybody's dream that is not in the personal lines business.

SENATOR LESNIAK: If it's canceled, then you don't get the full premium?

MR. EASLEY: If you cancel for that reason. So, what you'll find is that all of a sudden reinstatements are very easy now. Before commissions were earned, reinstatements were very difficult.

You'll find that before, when there was a request for information, there was a lag. Now it might be about 15 times the amount as requested, only creating more paperwork and, of course, the ability to do work.

The insurance companies earn their money no matter what. It's just less work for them. In other words-- Let me show you what I mean. I saw you squint a little.

SENATOR LESNIAK: No, no, no. I'm trying to think of a way out of the morass--

MR. EASLEY: Am I speaking too quickly for you?

SENATOR LESNIAK: No, no. I'm trying to think of a way out of the morass that you're painting.

MR. EASLEY: It's a very difficult problem. I have to agree with Mr. Gurrera, that if you take a look at the communities that involved, there are no voluntary markets, and you'll find that even though there are provisions under 17:30E to provide service referral stations and centers, this will be inadequate. It will have a devastating effect on communities when there is no insurance. As we learned from the commercial liability crisis, when there is no insurance, people do go out of work. Industry will not come in, and it just won't happen. You'll find that if you destroy the quasi-apartheid system that they're using -- which is us for free. I mean, this is almost for free. You'll find that you're destroying a distribution system that was working good for them.

Last week when I was here, an Allstate person, or somebody representing them, said, "Look, they could virtually care less about this administration as it stands because they're making money." Anyone that has an insurance background, and you should--

SENATOR LESNIAK: Is that what he said?

MR. EASLEY: They said, "Look, we're making money. We're going to make money, regardless," is what they said. And they are because they're locked into administration and service fees, and they're locked into expense money and claims money. If you or anybody in this room has any insurance background, you'll recall some years ago when insurance companies said, "Look, I'm sorry I need a rate increase because I only want to make 8% on my underwriting." Well, at this point, not only do they make 8% and more, they don't even take any losses. So, why not? This is a great system for them.

SENATOR LESNIAK: The JUA you're taking about?

MR. EASLEY: Sure. I mean, just think about it. The insurance companies today can not take any sort of loss in this State. That's why they don't want a voluntary market. It's more profitable than a voluntary market. They can eliminate the independent agent, or the small agent. I think this bill is discriminatory too. I think it is to the detriment of the public because we're not going to be here to service them. And I think the entrepreneurial spirit that the Governor has asked for is going to be gone. I think that those legislators who get involved, and hurt us, and put the little guy out of business, is only going to be in a for a great shock when this whole industry -- the auto insurance industry -- is monopolized by the Allstates, the Prudentials, and the State Farms.

I, for one, am in favor of the SR-61 going through -- that an insurance study commission be put forth, and perhaps mandatory liability be abolished, because I'm certain that the current insurance companies that are operating the monopoly in this State, and who dreamed up the JUA, do not want it to take place. You'll even find them threatening you, saying, "We'll leave the State," but they can't. Don't be fooled. They're locked in with other lines and everything else.

SENATOR LESNIAK: I think one-- I know that, and I've told them that. But I think at least one of them is in favor of nonmandatory liability.

MR. EASLEY: It's a good idea that we look into it, and I think that perhaps those people-- You see, right now I'd venture to say that some years ago I thought it was strictly against black people -- that we couldn't get companies. And it was, for the most part. And we all know that.

But here, lately, under the current situation, it has abolished all the lines. It is why Tom can sit next to me. It is why Tom can talk to me. It's why we've decided to put together a coalition and root out those legislators who are involved in eliciting legislation to "screw" everybody.

MR. EASLEY: We're going to take a look at the people, just like Jerry Falwell did, and we're going to make certain that those people do not get back in office again.

SENATOR LESNIAK: Well--

MR. EASLEY: So, you united us and I appreciate it. But, more than that, I'd venture to say I have statistics here for you that are available to you.

SENATOR LESNIAK: I've got to say this. We will listen to your views very seriously, okay?

MR. EASLEY: And I'd like to be involved.

SENATOR LESNIAK: We are not going to be concerned about your threats.

MR. EASLEY: Did I threaten you?

SENATOR LESNIAK: You didn't threaten me, that's for sure.

MR. EASLEY: No, I didn't. I don't recall threatening anyone.

SENATOR LESNIAK: Well, when you talk about rooting out legislators who don't do what you want them to do, that sounds to me a little bit like a threat.

MR. EASLEY: No. I'm not even threatening. What I'm--

SENATOR LESNIAK: Just a little advice, if I may.

MR. EASLEY: I wouldn't threaten anybody.

SENATOR LESNIAK: Just a little advice, if I may. I don't think too many legislators -- certainly no Senators -- are going to vote one way or the other based on whether somebody is going to try to root them out.

MR. EASLEY: I'm not interested in threats. All I want is an equal opportunity to compete, no more no less. I spend all my money. I got rid of every stock I own. My savings accounts are gone. My children's trust funds are gone. I had four offices, with 18 employees. I have two, with six. And I would venture to say that there are people smaller than me who are going to be devastated and knocked out. I

six. And I would venture to say that there are people smaller than me who are going to be devastated and knocked out. I think the public is going to be upset by it as well. And if you felt that I was threatening you, I wasn't.

SENATOR LESNIAK: No, no. Believe me, in terms of me personally, you can say whatever you want.

MR. EASLEY: No. I came here--

SENATOR O'CONNOR: His nickname is Rambo.

MR. EASLEY: I came here-- (laughter)

SENATOR LESNIAK: You can say whatever you want. You can--

MR. EASLEY: I came here with an olive leaf in my mouth, asking you gentlemen to consider the poor little guy and take heed that we are performing a service. There is nobody that's going into Union City, Jersey City, Newark, Irvington, Plainfield, or Atlantic City. Hey, this is not going to work. Nobody knows the pulse of those communities as well. Nobody else can stand the problems that they do. But, more than that, 11% is not a lot of money.

In reference to Senator Cardinale's suggestion -- or question asking what do we do, I think it would be better if we did issue an I.D. card for the time frame for which you've paid, with a small period in-between for the mail or something else, which would allow you to do that.

I disagree that anybody in this State should be running around without insurance if they have the means to support themselves.

SENATOR LESNIAK: And I'm sure the Division of Motor Vehicles can adequately implement that program as well.

MR. EASLEY: Yes.

SENATOR LESNIAK: Well, anyway, believe me, your testimony was well received.

MR. EASLEY: I have one more thing to say, and that is that in reference to SR-61 -- Senate Resolution 61 -- we would

like to-- I think it calls for some Senators to appoint some people. It calls for the Insurance Department to appoint some people. It calls for the Governor to appoint some people. If we cannot be one of the public members, or one of the industry members, we would like to be an assistant or an alternate to that committee, and perhaps participate on the ground level. I don't think you're really getting the picture from where the little guys are coming from.

I think the lobbyists with the money-- I think the people that have the wherewithal to send people to deal with you on a regular basis have a monopoly on it. And I think that perhaps it may help if you get some people from the ground floor to help one time. Thank you.

SENATOR LESNIAK: Thank you very much.

W A L L A C E L E E: I have a prepared speech here. I think one of the reasons the JUA is in such trouble is because the insurance companies are making exorbitant profits and milking the fund dry.

The board of directors -- when it first started -- from the JUA consisted of 17 members, eight of whom were employees of insurance companies. Also, the chairman of the board of the JUA when it first started came from Continental Insurance. And the general manager--

SENATOR LESNIAK: The chairman of the board now is an insurance agent.

MR. LEE: I'm talking about the very beginning.

SENATOR LESNIAK: Now he's an insurance agent, isn't he?

MR. LEE: He's now an insurance agent, but at the very beginning he was a member of Continental Insurance.

The general manager was also a member of the insurance industry. He came from the insurance industry -- by the way, Continental Insurance.

Now, these board of directors got together and

petitioned the Insurance Commissioner, who at that time was Commissioner Joseph P. Kennedy -- who also happened to come from Continental Insurance - about their Commission, and this is what came down.

SENATOR LESNIAK: Joseph Murphy.

MR. LEE: Joseph Murphy.

The initial percentage on the total Association revenue -- this is nonmedical expense, okay? -- will be 10.9% of the liability -- and that was changed to 19.5% on June of this year -- and 11% for physical damage. Therefore, on a $1000 premium, the commission will be, for the servicing carriers -- the insurance companies -- $109.50. Hey, that's all right. No problem. But, it had claim expenses too. In other words, for all the money they give out, they get a piece of the action.

SENATOR LESNIAK: We are going to look at the entire JUA situation, well beyond this bill. This is not, as I said before, the last word on the JUA. And we really have limited time. I would like any additional testimony on this bill that has not been adequately covered to date. You will have plenty of time to vent your spleen on the JUA in the future, I guarantee that.

MR. LEE: Another thing, also. At one time I had five offices in the State -- scattered throughout the State. And because of the monopolistic control of the insurance oligarchy in this State drying up the markets, we now had to go down to two. And that means I had to pretty much lay off 12 to 13 people.

SENATOR CARDINALE: I'd like to just pursue that a little bit. I heard you say that from the back of the room. The impression I get -- and correct me if I'm wrong -- is that you were in a service business where automobile insurance might almost be considered a loss leader, or in some way an attraction to get people into your office so that you could

sell other lines of insurance, and that with those other lines drying up, it has had this kind of adverse impact on your auto business.

MR. LEE: Yes, sir.

SENATOR CARDINALE: And-- Okay. All right, I understood you properly then.

MR. LEE: I would just like to submit this report to the Committee so that you can take a look at the figures you asked for on what it costs to run an agency. The profit margin and other things are in here, and I'd like you to have it.

MR. DAVIS: I'll make copies and send it to the members. Thank you.

MR. LEE: Thank you.

SENATOR JACKMAN: (For the Chairman) Thank you.

Stanley Van Ness?

S T A N L E Y V A N N E S S: Senator, I'd like to introduce Sheila Reilly, Assistant Corporation Counsel for State Farm Insurance Company in Bloomington, Illinois. Sheila is here to help me fill in some of the gaps in my knowledge. I'm sure that it wouldn't surprise you gentlemen if you discovered that there were certain gaps.

Without trying to go over everything that we've said in a filed statement and in a letter, which I took the liberty of addressing to each of you in the hope that we would be on the record should this hearing be too long to accommodate us today, or should you have chosen not to continue hearing testimony which you might consider to be redundant-- We sent that letter.

To summarize our position, we start out with a commendation of the Dalton Committee. When I got into this business about a year and a half ago, I read everything I could find to read about some of these issues that have been plaguing the members of this Legislature for the last 10 years.

I believe that the exposition in the Dalton Report is the clearest exposition of the problems facing the auto buying, insurance buying, public in the State. And I found it to be extremely helpful to me, and I think it will be helpful to the general public and, I believe, to you gentlemen as well.

We do take some-- We have some quarrel with the extent to which the recommendations solve the problems after they've been defined. For instance, we believe that the discussion of the JUA -- the history of that -- is fine. We believe that the Committee, in recognizing the need for a two-tier system within the JUA goes a long way towards helping the problem, but it doesn't solve the problem. It's a good first step, and really not much more than that.

We would ask you, in considering the amendment to the JUA, to establish a two-tier system that you consider including within that second higher-paying tier, not only the bad or the irresponsible driver but those drivers who are in groups that we can reasonably classify as being a higher risk -- those people who have not had insurance for three years preceding. This is a conclusion which obviously impacts on the youthful driver, but the facts are there: The youthful driver has a higher accident rate and, hence, causes more expense to the overall system.

We think that there are other suggestions that you've made on the revenue side of the JUA that are good, but I repeat that all of them taken collectively will not solve the enormous problem of the deficit that's mounting in the JUA. And whether you look at that from a statutory insolvency basis or whether you look at it from a cash flow basis, I think everyone recognizes now that there will be a time in the not too distant future when that Association will not be able to make -- to pay the claims that are submitted to it, unless there are some very serious and important changes made in its structure.

The Chairman has indicated that this is not the be all and the end all of your considerations of the JUA. I'm sure that's the case and we hope as those further deliberations go on, we will have an opportunity to participate as well.

On the question of the maintenance of the no-fault system, we're very pleased that the Legislature has decided that is the way to go. I can say that both institutionally and personally. We were around in the old days when we did not have a no-fault system and found that maybe 30% or 35% of the people who were injured in automobile accidents were not able to pay their medical expenses or have any kind of income continuation. So, we think that the system is good, and we think that the Dalton Committee recognized the essential problem there, that is one of lack of balance.

The Department of Transportation, in considering the no-fault laws around the country, concluded that the New Jersey system was the worst with, on the one hand, unlimited medical benefits and, on the other hand, with the $200 tort threshold, which was the lowest in the country.

SENATOR LESNIAK: What about the person who is extremely, seriously injured who has the $10,000 limit?

MR. VAN NESS: I hadn't quite gotten to that point yet, but we think that is a way that you can balance. It is not the way that we have suggested the system be balanced. We have suggested that the institution of a mandatory verbal threshold is the best way to balance it.

On the one hand, you have a benefit; on the other hand, an expense.

SENATOR LESNIAK: Well, how much is that going to save the policyholder?

MR. VAN NESS: Well, Senator, it will vary from company to company, from book of business to book of business.

SENATOR LESNIAK: A ball park figure, on an average.

MR. VAN NESS: We testified before the Assembly Committee that on State Farm's book of business, it would save -- on the bodily injury portion of the premium -- about $55 on average across the State.

SENATOR LESNIAK: And how about the Dalton proposal for the optional verbal threshold?

MR. VAN NESS: That really hasn't been costed out, to my knowledge. I don't think that we have attempted to cost out the savings. We don't know how many people would opt for one or the other. If we continue the experience that we've had up to date, with the $1700 indexed level, I understand about 22% or 23% of the people have opted for that.

SENATOR LESNIAK: What is the savings on that option?

MR. VAN NESS: From the $200 to the $1700? I believe we're still arguing with the Department of Insurance about what that savings should be.

SENATOR LESNIAK: Well, you say it is--

MR. VAN NESS: We say it should be about 15%.

SENATOR LESNIAK: Which in dollar figures is--

MR. VAN NESS: It would be about $25.

SENATOR LESNIAK: And the Department of Insurance is saying?

MR. VAN NESS: It should be about 31%.

SENATOR LESNIAK: Which is?

MR. VAN NESS: Which will be twice that, I suppose -- $50.

SENATOR LESNIAK: Fifty-two dollars. So, according to the Department of Insurance -- Ken Merin, the Commissioner -- the savings on the $1700 option is $52?

MR. VAN NESS: Yes.

SENATOR LESNIAK: And you're saying that the savings on the mandatory threshold is $55.

MR. VAN NESS: Yes, that's our-- Our figure is based on our book of business.

SENATOR CARDINALE: If the same proportions, Senator, held true in terms of their estimate versus his, you'd have to double that for what Merin would probably estimate as the verbal.

MR. VAN NESS: We haven't heard his estimate on it.

SENATOR CARDINALE: So, you're talking $110.

SENATOR LESNIAK: No, it's also not accurate.

SENATOR CARDINALE: Probably. Because that probably comes out to more than the policy costs.

SENATOR LESNIAK: I'm sorry for that.

MR. VAN NESS: Well, you mentioned the medical benefit, and you can balance -- or probably introduce some balance into the system by reducing the benefits. We recognize that. As I say, it is not the option that we consider to be most preferable.

SENATOR LESNIAK: The balance is dollars and cents, isn't that what it is?

MR. VAN NESS: Yes. But on one hand you're taking away a benefit. On the other hand, we think you're taking away an expense, although by opting for the $500 threshold as opposed to the verbal threshold, we think you're missing an opportunity to save money which is an expense to the system and not a benefit. Now, I know that's an arguable point, but that's the position that we take.

SENATOR LESNIAK: Okay. Any questions?

SENATOR CARDINALE: Yes, I do. State Farm has done something about the issue we were talking about before -- at least I think you have. Now, most of your auto policies you issue on a six-month basis.

MR. VAN NESS: Yes.

SENATOR CARDINALE: And do you require people to pay for those up-front on the six months, or do you have a staged payment available?

MR. VAN NESS: I'm not sure. Sheila, can you answer that question?

S H E I L A R E I L L Y: In the voluntary market?

MR. VAN NESS: In the voluntary market? (speaking to Senator Cardinale)

SENATOR CARDINALE: Well, either.

MS. REILLY: Everyone has the four payment in the JUA.

MR. VAN NESS: Yes. In the JUA, everyone has four payments.

SENATOR CARDINALE: I see. So that--

MR. DAVIS: That's for the servicing carrier. They're not the insurer; they're the servicing carrier.

SENATOR CARDINALE: All right. Where you have this six month policy -- if that's in the voluntary market -- does everyone pay their policy up-front?

MR. VAN NESS: It would have to be paid then, yes.

SENATOR CARDINALE: They do pay that. You know, they're billed and--

MS. REILLY: We have a monthly payment plan, but I don't know if it's available for our voluntary market in New Jersey. I can get you that information. I don't know the answer to that.

SENATOR CARDINALE: All right. I want to ask you the same question from an insurance company's perspective. You know, I've asked it of the agents. But from your perspective, what would be the problems, or how would you look at a requirement that people only, first off, get the card -- the insurance card -- for the period of time that they have actually paid, unless they have paid through a borrowing program of some sort where they're responsible to a financial institution rather than, you know, to your company or to an agent?

MR. VAN NESS: Well, certainly, we have a compulsory insurance law on the books here, and if you have the law, I think people should be encouraged to comply with the law.

So, a sticker system would be something that we wouldn't be opposed to, but we'd have to point out that--

SENATOR LESNIAK: Are you familiar-- I mean, that's been tried in other states and failed.

MR. VAN NESS: I know. I was getting ready to say it hasn't worked in other places -- in Kentucky, for example.

SENATOR LESNIAK: An absolute administrative nightmare. I'm certain that our DMV, currently, is not competent in any way, shape, or form to be able to handle that additional load. We're talking about millions of stickers. You know, your idea has a lot of merit in the abstract. When you bring it down to the--

SENATOR CARDINALE: You're not talking about millions of stickers at all.

SENATOR LESNIAK: It sounds simple, doesn't it?

SENATOR CARDINALE: No. You're just talking about a slightly different method of payment.

SENATOR LESNIAK: I would suggest -- quite frankly, again, to save time because we're not going to deal with that suggestion today -- that you speak with Dale, and we'll get some information to you on some other states who have tried and failed. Maybe we can improve upon it, find out where they failed, and work it out. We're not going to resolve it today, though, at this hearing. I would ask that we--

SENATOR CARDINALE: No, but we're taking-- In all seriousness, we're taking testimony on how these changes in payments impacts on brokers. And what I'm suggesting is that we change not only that but we change something else.

And, forget about the stickers because I don't really think the stickers are the right approach. What I think is the right approach is, remove the requirement that they issue policies to people who have not fully paid. And we should cause people to, in some form, pay -- whether it's through a financing plan that is separate and apart, etc. -- so that we

never have uninsured drivers out there who have an insurance card sitting in their car that says they're insured for a certain period of time. They've got a sticker on their windshield which really already says if you've got your inspection, you're insured for this coming year. Because we make that a requirement when the car is inspected.

And, by coordinating those things and putting them all together in one package, we don't have any more work for Motor Vehicle to do, and at the same time we don't have uninsured motorists around and we solve the problem of these people getting canceled on commissions that they haven't earned, and so forth.

SENATOR LESNIAK: Well, I think what we ought to do is form that into a specific question and get comment from the Department, get comment from the industry and the brokers and agents, and maybe you just wrote yourself a bill.

SENATOR CARDINALE: I'd rather see it in this bill, Senator. It's-- We ought to try to do something comprehensive instead of piecemeal.

SENATOR LESNIAK: You know, the Special Auto Study Commission labored for seven months on this particular bill. I don't think in one afternoon we're going to be able to -- or two afternoons -- improve upon it that much.

But, Senator, I will give you my commitment to take that up whenever you're prepared to do that, and any other matters with regard to the JUA or auto insurance.

MR. VAN NESS: There are some other amendments that we proposed that are contained in our filed testimony, which we would commend to your attention.

I would like to say one--

SENATOR LESNIAK: Could you summarize that? Are they technical or substantive?

MR. VAN NESS: For instance, in section 6 of the bill, we believe you should drop the policy of compensating

out-of-pocket expenses caused by auto accidents once, and once only, and repaying the setoffs that are now in 38:68-4.3.

Section 9 of the bill spells out the provisions regarding income continuation. We think that it would make sense to amend that section to make it clear that the income continuation is for five years in the employment -- or the kind of activity that one is engaged in -- and then after five years, look to whether one would be actively employable in any activity.

MR. DAVIS: In the bill that's before us, that's not any different than the law is now.

MR. VAN NESS: No, we're suggesting an amendment.

MR. DAVIS: So, you'd be suggesting we change the present law.

MR. VAN NESS: Yes, we're suggesting an amendment to the present law.

SENATOR LESNIAK: That's for another day.

MR. VAN NESS: On the question of discounts for the--

SENATOR LESNIAK: Defensive driving course.

MR. VAN NESS: The defensive driving course, for instance, we think the law ought to read that it be clear that the principal operator must be the one that takes the defensive driving course, and not -- as it might be construed -- that the owner of the car, who might not be the principal driver, would also get the benefit. There would be no logical connection between that training and the operation of the vehicle.

The one close to home, in section 24, we recommend that the role of the Public Advocate be limited to situations where the rates are being reduced. We had enough trouble when I was around there, dealing with those situations where the rates were being increased. And it seems to me that if the rate is going down, if it's a question of insolvency resulting from it, that's classically the role of the Insurance Commissioner to deal with that. It's just a reduction in the

MR. VAN NESS: Yes. In Section 24, there's a prohibition against the involvement of the Public Advocate in those situations where rates are being reduced, and I believe it's an 18 month period of time. We think that the Section should read "a 24 month period," and the Public Advocate not be involved where the rates are restored up to and not beyond a prior approval of the Commissioner.

For instance, if the Commissioner has approved rate action and it's reduced, and then the insurance company seeks to return it to the upper level--

MS. REILLY: But not all the way.

MR. VAN NESS: But not all the way--

MR. DAVIS: The language says that.

MS. REILLY: It's only if it's going to be restored.

MR. VAN NESS: Only if it's going to be restored.

MR. DAVIS: It says restored up to the level.

MR. VAN NESS: Up to the level, okay.

MR. DAVIS: which means that it can be anywhere in-between.

MR. VAN NESS: In-between? All right, that's an interpretation problem we have then.

MR. DAVIS: As a matter of fact that is written in because we changed that before it was put in.

SENATOR LESNIAK: We have the same interpretation with regard to the principal driver as well. The way you're reading it, it could be either.

MR. VAN NESS: It could be either.

SENATOR LESNIAK: That's the way I read it too.

MR. DAVIS: Well, the way I read it, the named insured or the principal operator of the insured automobile, if other than the named insured--

MR. VAN NESS: If other than the named insured.

MR. DAVIS: Which means that it's either going to be the named insured or--

MR. VAN NESS: If other than the named insured.

MR. DAVIS: Which means that it's either going to be the named insured or--

SENATOR LESNIAK: Why wouldn't it just read, "by the principal operator of the insured automobile"? Why wouldn't it just read that way if that's what you want to say? That's what a judge is going to say.

MR. VAN NESS: That's what we would suggest.

MR. DAVIS: Yes. I think it says the same thing, but that's fine.

SENATOR LESNIAK: I mean, if you can say it that way, the judge is going to say, "Why didn't you say it the other way?" The only other reading it could be is that it's (indiscernible).

MR. VAN NESS: I think on the operative date of the bill, we would recommend that it be changed to 120 days after reenactment, and that the bill provide for a roll-on at renewal time, so that there isn't a master flood of mailing on the operative date. In other words, it would stage the implementation of the bill.

The others, I think, are of a more technical nature and we'd be pleased to sit down with staff and go over any of those.

SENATOR LESNIAK: Why don't you do that. I have a funny feeling that there may be some amendments coming down the road on other bills that may affect this bill. Oh, no. Not really.

SENATOR O'CONNOR: Well, we can work that out.

SENATOR LESNIAK: We can work that out. I'm sure we can.

Why don't you work that out with staff for future action?

MR. VAN NESS: I think that really concludes our prepared testimony. I'd be pleased to answer any questions you might have.

SENATOR LESNIAK: Are there any questions? (no response) Thank you very much.

Elmer Matthews or Wes Caldwell, you're waiving your right to testify today? (indiscernible response from audience)

Testimony that has been submitted for the record will be included in the record.

Barbara Scheffel, Medical Costs and Rehabilitation. Barbara, you're going to--

B A R B A R A S C H E F F E L: Talk fast.

SENATOR LESNIAK: You're going to echo the testimony of L.E.G.A.L. with regard to the--

MS. SCHEFFEL: I don't think so.

SENATOR LESNIAK: Okay.

MS. SCHEFFEL: You introduced Christopher Lynch. He is also going to testify with me.

Mr. Chairman--

SENATOR LESNIAK: Can I have some quiet in the room, please?

MS. SCHEFFEL: Mr. Chairman, Committee members, my name is Barbara Scheffel. I'm a Certified Rehabilitation Registered Nurse. I am also a Certified Insurance Rehabilitation Specialist, and I sit on Board of Directors of the National Head Injury Foundation.

I represent the New Jersey Affiliation for Medical Care and Rehab, which is a coalition of individuals and organizations that are interested in assuring that New Jersey drivers have appropriate medical care and funds for rehabilitation.

We've reviewed Senate Bill 2594, and we're uncomfortable with the $10,000 cap. We have also made a point of studying other states that have no-fault and who have limited medical coverage, and we're deeply concerned about what will happen to the drivers in this State who are seriously or catastrophically injured. Ten thousand dollars doesn't do a

whole lot medically. I have handed you an outline, and I'd like to go through some of these figures very quickly.

We're dealing with the DRG Code here in New Jersey which should make things fairly simple for us as far as knowing--

SENATOR LESNIAK: Can we stipulate for the record that this Committee realizes that there are numerous catastrophic injuries that will involve over the $10,000 coverage -- substantially over the $10,000 coverage? I think our figures have shown about how many-- What percentage is $10,000 or below?

MR. DAVIS: Around 95%.

SENATOR LESNIAK: Ninety-five percent.

SENATOR CARDINALE: I think it would be helpful to ask this witness if she agrees with that.

SENATOR LESNIAK: Well, those-- It's not a question of agreeing or not. Those are figures that are really--

MS. SCHEFFEL: I'd love to know where they came from. You know, I'm not questioning you but really we tried to find the same sort of figures because we heard that the last time we were here.

SENATOR LESNIAK: From just about any insurance company. I mean, their figures are given to the Department. I mean, that's easily established. I think those are pretty accurate. Certainly, you don't have any figures to the contrary?

MS. SCHEFFEL: No, I don't. I'd like to try to get them, but we've not been able to, to date. But I think the issue, too, is that if things that are fairly common injuries in motor vehicle accidents are the kind I've given to you in the list there -- compression, fractured pelvis, fractured tibia -- are all running close to, or well over $10,000 on a DRG Code. That does not include the physicians or the therapies, etc.

I also would like to tell you that one month of 24 hours a day registered nursing care is $16,800. College Hospital in Newark, if there's anyone in any kind of serious condition, demands R.N. care 24 hours a day because they don't have the nursing staffing.

Physical Therapy three times a week for three months is $1620.

SENATOR LESNIAK: What you're saying is if anybody takes this option it's probably an unwise choice?

MS. SCHEFFEL: The $10,000? Yes.

SENATOR LESNIAK: I was going to be a little more firm on that but--

MS. SCHEFFEL: Well, I think too-- We have also communicated with people in Pennsylvania, and I also do casework in New York. A $50,000 cap on a serious injury -- the insurance company sits back and may just as well sign a check for fifty grand and give it to you. They don't care about what happens to the individual.

SENATOR LESNIAK: Well, they're paying the bills, right? It's not that they do care or they don't care. It's really just--

MS. SCHEFFEL: They're doing what their policy says. I agree with that. Certainly. But also, in the State of Pennsylvania -- which went from unlimited medical to a $10,000 cap two years ago -- it was devastating to the people who were seriously injured.

SENATOR LESNIAK: No doubt.

MS. SCHEFFEL: There is no system. They've got a catastrophic fund that kicks in at $100,000, but that $90,000 in-between-- One of the points that I'd like to make is I do work with major medical insurance.

SENATOR LESNIAK: Pennsylvania has a catastrophic fund that--

MS. SCHEFFEL: That comes in at $100,000. But, for that $90,000, if the individual has chosen not to purchase $100 in auto coverage, they're on their own.

Major medical insurance companies have rigid guidelines about what they will or will not pay. You had said earlier 80-20, and that's the general. They will pay 80; you will pay 20. Some things they will just disallow completely. They will certainly not pay for home modifications for wheelchair accessibility. They will certainly not pay for vehicle modifications for wheelchair and/or hand controls. And I think that-- Certainly, I don't want to take the time and go through these case studies. And your point is, too, that there may not be as many of these people. But my concern is, what happens to them?

SENATOR LESNIAK: We recognize that.

MS. SCHEFFEL: I think it may be false economy to suggest that the individuals can't afford the unlimited medical. If that's true, how could they possibly afford the medical care that they're going to need?

I would like to know from the insurance people in the room what percentage of the drivers of New Jersey take the options that are now available to them -- like the increased wage replacement. Does anyone have figures like that? My concern is--

SENATOR LESNIAK: Yes.

MS. SCHEFFEL: Okay. We deal with the people after they're injured. I can tell you that almost 100% of the people I have ever dealt with that are covered by New Jersey no-fault have not known their coverage. They do not understand what they have. When I say to them, "You have unlimited medical coverage; you don't need to be concerned about your medical bills," they look at me like I'm crazy. If they don't know what they have now, how are they going to know how to deal with options?

And I think it really puts a burden on the agents. Not that that's my problem, but for an agent to have to explain the different options to people who are more concerned about a premium dollar cost saving, how are they going to give them the information about what they're giving up for a couple of dollars in savings on the premium? I think that's a very deep concern.

I would like to introduce Christopher Lynch -- and not take any more of your time myself -- who has been through a catastrophic injury.

C H R I S T O P H E R L Y N C H: My name is Christopher Lynch. I was injured about seven years ago. It was a workers compensation case but, nonetheless, the emotional and financial responsibilities that come at the end of the -- no matter what your coverage is, are pretty much the same, one way or the other.

At the time, I was employed by an interior design firm, which is a family-owned firm. I was struck by a 1000-pound roll of carpet. But, since that time--

SENATOR LESNIAK: Excuse me. Can you please be quiet in the back? (speaking to audience)

SENATOR JACKMAN: Hey, close the door.

MR. LYNCH: Since that time, I have gone through rehabilitation, vocational rehabilitation -- everything that could possibly be tied in with this.

I was very fortunate. I had good coverage. I was able to respond quickly and get back to being a working member of the public, which I think is of the utmost importance here.

You've talked about all the types of coverages that are available. This $10,000 cap, in my opinion, is almost a joke, really. There are so many people that will never accept the coverage with the idea of saving $40 to $49 on their policy, that it is just absolutely ridiculous. I think we're going to be caught in a major crisis in this State if it's allowed to go through.

People have no idea what their coverage is. They say, "I have major medical." That's fine. In my own case, it was over four years. And I will grant you that this is a low figure for a case of my type, but it was about $325,000 -- about $200,000 in medical, which is OT, PT, ADL, operations, whatever was necessary. It cost about $70,000 in home modifications alone, which would never be allowed under a $10,000 cap. You'd be out the door without it.

To put anyone who has done any kind of construction or who knows anything about it nowadays-- Just to put a single room on, or to go in and do minor construction on a home today is $25,000 or $30,000, let alone the extensive work that may be needed because most homes are about as well set up for a wheelchair as most public buildings are -- horribly.

I know there's been a great movement in the State and in the country in the last few years to try and rectify this situation, but the fact is that unless you own a ranch home at the time you're injured, you're going to need some kind of lift, which is a minimum of $10,000, probably, to get you up and down a set of stairs, or whatever. And let's face it, a ranch home is not the average home in New Jersey, by any means.

The point about whether or not the aid is going to be available to you in terms of vocational and-- Let's remember that. If people are on a $10,000 cap and they choose that, well who's going to pay for that at the time they are over $10,000? It's kind of robbing Peter to pay Paul, to use the old expression. We're going to be taking money, it's going to reflect back on DBR, on Medicaid. Major medical certainly will pick up some in some cases. Some people's major medical policies won't cover even the beginnings of what it is going to cost for someone to go through a major rehabilitation.

Now, I'm only a paraplegic. These numbers double, triple, quadruple, when you talk about a quadraplegic. I'm at

least-- I'm able to get back. I live on my own. I'm an independent individual. A lot of people rely on -- for the rest of their lives -- 24 hour-a-day aides.

Just to have a van modified can cost $30,000 -- just for the modifications on the van. Where do people come up with this kind of money? There's only so many Elks Clubs, and Lions Clubs, and Shriners, that will go out and buy these things for people, and these injuries are happening every day.

So, when we go back to DBR and Medicaid at the same time, even though we might be saving them a few dollars on the policy at the beginning, it's going out through taxpayers' dollars and it's going into agencies that are not able and not equipped to set up and handle these catastrophic cases.

Medicaid -- although they've made great strides over the past few years, I deal with them every day. They are in no way capable of handling these types of cases. They do not have the least idea of what's going on.

Barbara here operates a company where she's a rehab insurance nurse. She was a nurse. She goes out now. She is hired by the insurance companies, for the most part, to do case management for people. Now, if the insurance companies were so good at it themselves they'd be doing it with their own people. They're hiring outside people.

She will save them an enormous amount of money because she will get the people the care they need at the time they need it. And if I can just go into that for one moment, the timeliness of the care you get is so important-- If you talk to any doctor involved with rehabilitation at all, there's this magic number of two years they always throw to you. Any return you're going to get after an injury or paralysis, for instance, you'll get back within two years. That's true 90% of the time. Unfortunately, 90% of the time no one gets any return. But the people that do get it, that's great. But it's very important that they have the proper care at the proper time.

If you are taken and not put in a rehab hospital right off the bat-- I do a lot of peer counseling. I get calls in the middle of the night. People that are injured that know of me: "My son was injured. My daughter was injured. What should we do?" The first thing I tell them is, "Get them out of the hospital they're in and put them in a rehabilitation hospital where a minimum amount of damage will be done and the proper care will be given right off the bat."

You lose 3% of your body strength a day laying flat on your back. I was in and out of the hospital in three and a half months, and that's just about record time for getting out for in injury like this. Normally you'd be talking nine months to a year.

I didn't like the place. I wanted out. I wanted back on my own. Not to mention, at the same time, we're talking about auto insurance here where most of these people have gone through a windshield and kissed an oak tree someplace, or something of that nature, and they have major complications with their-- just perhaps their spinal cord injury. So, it's a long time just to get them stabilized enough where they can even think about putting them into a rehab situation.

But if you go through Medicaid or DBR, you can be in for six months of waiting time. Every time that you're not doing rehab you're going downhill, and it's that much longer. So for every day you lose, it's like losing three days. You've lost a day's worth of strength. You don't get to work that day back for another day, and then to gain where you should have been the other day, it's a third day. So every day you lose, you're going further and further down. And I'm not talking about a matter of days here. It could be matter of a year for somebody. So in one year, they haven't lost a year's worth of rehab; they've lost three years worth of rehab for where they should have been at that time.

I sit in a wheelchair that's about a $2000 wheelchair. Now, people think "Oh, you get a wheelchair through Medicaid." Sure you do, you get some $300 or $500 piece of junk that would be the equivalent of taking a pair of size 20 Army boots and walking around with them all day long. I don't think you'd enjoy it. It's not practical. It totally keeps your mobility down. It makes you not even want to be seen in public. I sit in a chair where-- I sit across from you and people don't even know I'm in a wheelchair when I first meet them. It's a big difference. It's a great lift for a lot of people who need the emotional boost in order to get out there and face people, which they may not have been able to do beforehand.

I just feel that if this $10K -- this $10,000 cap -- goes in, there's going to be a major crisis in the insurance in this State. People, even if they're offered the option, are going to say, "We've heard"-- I sat in here a week ago Monday and listened to testimony. I heard 93, 95, and 97 percent of the people, and then they said -- as a round number -- that over 90% of the people would not be affected by this. That's true. Those are the same numbers that the insurance agents are going to be giving the people. Everyone is going to think like everyone else: "It will never happen to me," until it happens to you. And they're not going to have this coverage. And I will tell you, then it's not going to be any 10% of the people that aren't going to be covered; it's going to be a large, large number.

And the people who aren't even thinking about these figures now -- nor where this money is going to come from -- and who have already strained Medicaid and the DBR budget -- if they're looking for the extra money -- as the Dalton Committee suggested -- out of the JUA, which is already seriously overtaxed and in bad financial situation-- I don't know where they're going to come up with this extra money for the

looking for the extra money -- as the Dalton Committee suggested -- out of the JUA, which is already seriously overtaxed and in bad financial situation-- I don't know where they're going to come up with this extra money for the catastrophic fund. I seriously doubt their figures, and I think we're going to have a major crisis here.

Are there any questions I can help you with?

SENATOR LESNIAK: Are there any questions? (no questions) Thank you very much.

I called our next witness earlier. He is here to testify now. Ed Gaffney?

E D W A R D J A M E S G A F F N E Y: Yes, thank you sir. Good afternoon, Senators. I appreciate very much being here. My name is Edward Gaffney. I am a licensed New Jersey insurance broker for almost five years. I am also the President of the New Jersey Consumers and Insurance Brokers Alliance. It is a small group in the Northern part of the State. It was formed in 1983.

I'll restrict my remarks strictly to the unearned portion of the bill. Now, there is an obvious problem which you are seeking to solve, and that is to shore up the JUA, financially.

Taking out the fully earned is not the fair and equitable way to do it. Our commissions in the JUA are always fully earned when canceled just for non-pay. There is already in place a law which was passed by this Legislature in 1983 -- Auto Insurance Reform -- which called for the JUA to work on a no profit, no gain situation. This existing legislation already calls for RMEC -- the Residual Market Equalization Clause.

If the JUA is in trouble financially, they go to the Insurance Commissioner and ask for a RMEC, a charge to be made on every car to help shore up the JUA, even on a no loss situation. That's the existing legal way to do it. I never

particularly cared for the RMEC. I know a lot of people don't, but that is the existing law that is in effect today.

The present and past Insurance Commissioners in their expert and experienced judgment have refused to this day to grant a RMEC. We have trust and confidence in our Insurance Commissioner and we stand behind his judgment. But parts of this bill, especially the fully earned, circumvents his judgment -- in my opinion -- and the purpose and intent of the existing legislation regarding the RMEC.

I feel if you're trying to solve an alleged problem that the JUA says exists, please don't use this type of approach, which I feel is unfair and it is not going to, certainly, do the job. Let the existing law regarding the RMEC come into play but only when it's absolutely necessary. When the Insurance Commissioners in their wisdom feel it is absolutely necessary, that's where the help should come from, from the law.

The amendment in this new bill regarding the fully earns, calls for a portion of the broker's fully earned commission to be turned over to the JUA. Now there are three basic entities to the JUA: The consumer; the producer; and the servicing carrier. The servicing carrier is the insurance company. The new amendment would force the consumers to give up some of their daily equity in the policy, and then the producer gives back their portion of their fully earned commission to the JUA.

If the present amendment is passed, it will cause a great undue hardship on JUA producers, which is exactly what happened in 1984 -- in 1985 -- when the JUA illegally kept our fully earned commissions. Now, if this bill does pass with this particular item about the fully earned in it, some of the JUA producers, in my opinion, will go out of business. All of us will have to lay off employees.

I have four offices myself. Some are in very suburban, rural areas. One is particularly in the inner city. I do have some experience on both ends of it.

When your gross income is cut from 30% to 40%, you have to cut somewhere to survive, and the first place any business cuts is with their help. That's where the biggest expense is. That's where the biggest taxes are.

Now my figures from trade magazines and from speaking with the Insurance Department are that there are approximately 40,000 agents and brokers in New Jersey that are licensed. Approximately 11,000 in the JUA are heavily involved in the JUA market. My business is 100% JUA. I don't write anything but JUA. It's a very specialized business, and it has to be that way. You almost have to specialize in it.

Now, taking these figures into consideration, if only two, or two and one-half persons per office were laid off, this would mean at least 25,000 to 27,000 people out of work. And I might mention at this time that most of them, I believe -- again, in my opinion because this is my case, my four offices, my people -- are single women, heads of households with children, people who came off welfare -- especially up in my area -- and they are people who came off unemployment. Some of them have been with me for three and four years.

This will be extremely detrimental, especially to those people -- to the consumers, the insurance brokers, and the insureds themselves that come from low-income and urban areas.

SENATOR LESNIAK: Ed, if these layoffs occur as you predict, who is going to write the policies? The demand is still going to be there.

MR. GAFFNEY: Yes.

SENATOR LESNIAK: For the coverage.

MR. GAFFNEY: Yes, and it's certainly part of the problem. If the number of producers are reduced, especially in

the urban and all service areas -- and this particular amendment seems to follow that phase of the law -- the problem is going to be that the consumers are not going to have-- They are certainly not going to have the service that they have now with the numbers of producers that are out there on the street. And, basically, what I'm talking about is your basic storefront operation that faces the people, that goes into the street, so to speak, and services the customers, the very consumers that the voluntary companies, the big companies -- some of them have testified -- won't even talk to these people. If you tried calling up now and asking for a voluntary policy, they'd probably hang up on you and wonder what it is.

I'm in the JUA for years and I've been clean for 20 years -- myself and my wife. But as far as the--

To make my own operation a microcosm, very quickly, I had two offices in 1982 and 1983 -- two offices under the assigned risk plan -- and they've done well. They pulled out of their first year okay and I hired more employees and smoothed out the operation. Then I went through a no fully earned experience in 1984 and 1985. I went through this experience with my two offices.

In 1984, I borrowed over $100,000 to continue. My tax returns will show a gross loss of over $80,000 in 1984 and 1985. Yet, they show a payroll of over $150,000, and $30,000 in Federal and State taxes.

Now, I've had this experience with the fully earned. That's why I'm bringing it up. Now, when the JUA finally began to adhere to the existing law -- 1722 -- which in 1971-- It's a 15-year-old law which calls for the fully earned for brokers, strictly for non-pay -- no other reason. Now, I wasn't there at the time. I wasn't in insurance at the time, but I'm sure the legislators had a good reason for passing that bill when they passed it.

But as far as the labor goes, in 1986 when they put back our fully earns, I went ahead, saw what was coming, relied on that in good faith. I opened up two new offices in early 1986, one in Elmwood Park and one in Phillipsburg, New Jersey, on the assumption, of course, that my income was going to remain fairly the same and I could rely on what the price of my product was going to be and what the price of my fair labor was going to be.

I opened the two offices and employed six more people in these new offices. These new offices are only eight or nine months old each. One is about eleven months old. They're very marginal operations right now. In the first year you're lucky if you break even. Then you get into renewals; you get more known in the area, and you start to move head.

Now, if this bill were passed and made effective in July, those offices could never sustain themselves by taking away the fully earned. Never. Right there, off the bat, would be a layoff of five to six people. That's in my new offices.

In my old offices I'm sure I'd hang on, do the best I can, put in the hours that I can, and have my family hang in there as much as we can, with the two old existing offices. They're more stabilized because they're older offices.

But the point I'm going to bring out is, this is merely, again, like a microcosm of the entire industry. I can't speak as an expert and give you expert statistics across the State. But I know what happened to me in '84 and '85, what the JUA did to us. I know what happened when the JUA put the fully earned back in. I don't believe it was done by legislation. They just turned around and put it back in again, which helped us to continue and encouraged me to open more offices and employ more people. If we go back to that, I'm only going to assume I'm going to go back to the same experience with the jobs.

SENATOR LESNIAK: Commissioner Merin is also interested in reducing your commission on JUA renewal.

MR. GAFFNEY: Yes. Well, the first I heard of that was today. So, I really haven't had time to consider how that--

SENATOR LESNIAK: Well, I don't think I'm revealing a secret. I hope I'm not, but it has to be talked about some time.

MR. GAFFNEY: That certainly is something that could be considered, definitely. But I would say honestly that it is certainly no harder to service a renewal, in my own particular operation, than it is to service a new deal. And it is probably easier. It is easier, in general. Sometimes people are hard to service no matter what you do.

But, getting back to the unemployment situation -- which I think is not a contrived deal by the brokers or anything else -- I think it is very, very real. I know it's real in my case, and I'm sure it's real in a lot of other cases.

Now, considering the number of brokers and the number of offices, we could be talking about 25,000 or 27,000 jobs. Now let's assume that my figures are all wrong. They're way off. It's in half. It's 10,000 jobs. That's still an awful lot of jobs, especially that are going to be lost to minorities. And in my experience, not only in my own operation but in other operations, they are usually women, single heads of households, supporting themselves. They come into this type of an operation. I, myself -- I can't speak for other brokers -- pay for their education and get them licensed. They're licensed, proud professionals. If this happens, some of them -- I know -- are going to go back on the welfare rolls, back on the unemployment rolls, and that's a shame. It's not a threat. If you don't have the income, you can't pay the people. And that's basically what it is.

Now I believe Pabst Blue Ribbon in Newark -- I'm not

sure of the exact figures -- laid off 1000 people and it was terrible, a horrible thing to happen. This is 25 times the magnitude of that.

Now to just briefly justify the fully earned commission, 15 years ago -- again, as I mentioned -- this law was passed, giving us the fully earned commission, but only on cancellation for non-pay, not for any other reason. The same law was, again, amended in 1979. It was amended again in 1981, the same little paragraph that sits by itself. Yet, the Legislature and the Governor never saw fit to amend the section that dealt with the fully earned commission. They never saw fit to amend that, so I assume they had a very, very good reason for it.

Governor Brendan Byrne also--

SENATOR LESNIAK: But, two years ago didn't the Administration, the Commissioner, and the Chairman of the Assembly, want to amend that section to delete the fully earned?

MR. GAFFNEY: I know there was talk of it in different bills, back and forth.

SENATOR LESNIAK: It was in a bill that--

MR. DAVIS: We passed it, didn't we?

SENATOR LESNIAK: That passed the--

SENATOR O'CONNOR: It passed. And then it came back, and it was, I think, amended, wasn't it?

SENATOR LESNIAK: Yes. It passed at least one of the Houses last year with the support of the Governor, the Commissioner, and the Chairman of the Assembly Insurance Committee. In our wisdom at the time, I guess we--

MR. GAFFNEY: The only information I had on the change came through the JUA. The only information that was fed to me -- as a broker or as a consumer -- was what I received from JUA, and from what I read in the newspapers.

But the basic point I'm trying to bring about is, the Assigned Risk Plan -- before I was involved -- was in existence

for two or three years -- no fully earns. Two or three years later -- as I can read the dates -- they put in the fully earns. Why? There must have been a good reason for it. And some of the basic reasons, I believe, were that--

SENATOR LESNIAK: There's got to be a reason.

MR. GAFFNEY: There has to be a reason. I lost my place here, I'm sorry. I'm trying to go quick. I know that time is tight. But the brokers do earn their full annual commission on the JUA policies. That's provided for in existing law.

Now they earn it because -- briefly -- number one, they are writing very difficult business in a very specialized insurance field for consumers who, again, the voluntary markets don't even want to talk to. They want nothing to do with them. We're out there servicing them, working the streets so to speak, doing business.

The brokers now receive only 11% commission on JUA business, while in the easier -- in my opinion -- voluntary market the agents receive at least 15%. Now, that's only a four point spread but it means a 36%-37% decrease in my income as compared to a voluntary agent. And I believe that the brokers under the JUA work a lot harder than the agents in the voluntary market. That's my opinion again.

Now another reason, and the last reason -- in summary -- is that the average cancellation rate for non-pay in the JUA market is approximately 30% to 40%, while in the voluntary market the cancellation rate is approximately 5%or even less.

The existing fully earned law -- the existing law -- merely helps serve to balance the inequities between the two markets. This law -- I believe perhaps that's why it was passed -- merely helps serve to balance the inequity between the smaller commission and the higher cancellation rates. I believe that's why it was written in '71, and again amended, as you brought up, Senator. It basically should stay in place.

However, when the Assigned Risk Plan was succeeded by the JUA in 1984, the JUA contracts to the producers and the JUA plan of operation ignored the law and illegally cut off the commissions. That practice continued for all of '84 and '85. Then, in '86 the JUA began to adhere to the law and paid the producers their fully earned, as was prescribed by the law all along -- for very good reasons. The provisions of this law should be left in place because I believe it is fair and it is equitable.

In a closing statement, we earn our fully earned commission when we're talking about JUA business because of the lower percentage rate and the higher cancellation rate. It is not unearned, the way I often hear the insurance companies refer to it. It's not unearned commission. The law says it's fully earned. Thank you. That's all I have.

I do have several other statements in writing which I'd like to leave as part of my testimony. It's too late to go into them.

SENATOR LESNIAK: Thank you.

Last but not least, the Division of Motor Vehicles. I promise, no wisecracks.

R O I A N N M O R F O R D: No wisecracks? Okay.

Mr. Chairman, members of the Committee, I'm Royann Moreford, Legislative Liaison for the Division of Motor Vehicles.

I appreciate the opportunity to speak to you today regarding S-2594, sponsored by Senator Dalton. We commend him for trying to deal with and/or initiate legislation to deal with the high cost of automobile insurance in this State. However, we would like to point out that we would have great difficulty in carrying out our responsibilities regarding the area of the insurance surcharge, if there were to be a reduction from the 20% that we currently receive for our operational obligations to the JUA.

In 1983, when the initial surcharge legislation was enacted, we had to go to the State and borrow $8.2 million in order to-- Or, not to the State, we went to the Unsatisfied Claim and Judgment Fund Board for start-up costs to implement the surcharge program.

To date, the Division has been able to repay $1.7 million. We are anticipating that the insurance surcharge should generate approximately $39 million for fiscal year '87. We would anticipate receiving $7.8 million as our 20% share for the administration of the program. We plan to pay $2.5 million on the loan.

The cost of administrating this program for fiscal year '87 would be approximately -- in salary and operating cost -- $4 million. If we're able to pay back the $2.5 million on the principal of the loan, we still would owe approximately in the neighborhood of $6 million on the loan.

Accordingly, if we receive more than our $7.8 million, any additional revenue will be put toward the principal of the loan.

As part of the Division's reform, we are looking at the surcharge collection program. At this time we are looking at the staffing and the operating cost of the program, and we feel that at this time it would be premature to call for a reduction in our share for administration of the program.

SENATOR CARDINALE: In terms of this $39 million that you say is being generated, gross -- of which you get a percentage -- why is it $39 million? Is it because that is the total amount that is potentially recoverable, or is it that only a very small percentage is, in fact, being recovered?

Let me tell you why I ask that. Back in '83 -- I think it was -- before this Committee, when the JUA was being put into place and all these surcharges were being put into place, the prediction was that in 1983 dollars we would have between $100 million and $150 million annually being collected

under that program. And the sponsor of the bill made every assurance to the rest of us on the Committee that those were really accurate numbers.

Now we're hearing much lower numbers and-- Are we just not collecting them? Are the surcharges-- Has something happened that missed us? Was that just a bad prediction that was made in the beginning? You know, the whole system just seems not to be working the way we were told it would.

MS. MORFORD: Senator, we are basing that on what we've been able to collect, keeping in mind that we had to go through a retroactive period also. So, we're basing those figures on-- Or, the Treasury is basing those figures on what we have been able to collect, to my knowledge.

SENATOR CARDINALE: Now, are you collecting that simply because there is a low collection rate? Is it an enforcement problem or is the total-- Are people driving more safely and not incurring the surcharges, or what's happening?

MS. MORFORD: I think you're seeing an overall safety or motorists being more careful on the road, for one thing.

SENATOR CARDINALE: If that's the case, if motorists are being more careful, and so forth, I think we would all applaud that, but then why are we having the deficiencies in the fund? Because it would seem to me we should be coordinating between safer driving and the impact on the insurance aspect of it. We hear, you know, that the fund is going bankrupt. And one of the reasons for the desire to take this money away from you is to put more of it into that fund so that it's going to be able to meet its obligations. At the same time, these numbers are way down. It's hard for us, from our perspective, to make some kind of sense of that. Can you -- for us -- make some kind of sense of that?

MS. MORFORD: Well, I-- All I can tell you is what I have been given. I think there may have been an over-prediction as to the amount of moneys that could actually

be generated initially, and also there is the fact that we're still in a stabilization program as it relates to DMV and what we're going through at this point in time.

SENATOR CARDINALE: What do you do with this money?

MS. MORFORD: What do we do with the money? We are-- At this point, my understanding is it is used for staff and for operating expenses. Anything that is left--

SENATOR CARDINALE: Staff and operating expenses directed to what activity?

MS. MORFORD: To the surcharge. Toward implementing the surcharge program and carrying out our obligations under the surcharge program.

SENATOR CARDINALE: So, essentially, you're acting like a collection agency, and it is that ratio of cost?

MS. MORFORD: Right.

SENATOR CARDINALE: And were we to take this money away from you, you feel that would have a negative impact on the overall moneys that it would be possible to collect?

MS. MORFORD: I can't answer that, only the fact that we know how much our loan is that we have to pay back. We know how much it costs, salary-wise, for this year and for operating expenses, and we can only anticipate that either it will stay constant or it will increase as far as our portion is concerned for the administration of this program.

SENATOR CARDINALE: What do you do to collect these surcharges?

MS. MORFORD: We initiate the billing process. We send second notices. When there is no response, then we suspend the license. And from there, we hope that enforcement will take effect if the person does not respond to us.

SENATOR CARDINALE: How does your cost of operation compare, let's say, to the billing department on a credit card, or a department store, or something like that?

MS. MORFORD: I-- That I can't answer at this time. I really don't know.

SENATOR CARDINALE: There are no comparisons like that available?

MS. MORFORD: Not to my knowledge.

SENATOR LESNIAK: Are you finished, Senator Cardinale?

SENATOR CARDINALE: Yes.

SENATOR LESNIAK: Thank you very much. The public hearing is over. The Committee will now start its regular session.

(HEARING CONCLUDED)

APPENDIX

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October 14, 1986

FEDERAL EXPRESS

Mr. Dale Davis
Legislative Services
State House Annex
Trenton, NJ 08625

Dear Mr. Davis:

Due to the shortness of time, I was unable to make known the views of State Farm at your committee meeting when SB 2594 was under consideration. We did file a statement and expect to participate when the hearing is continued on October 16th. However, I am writing this letter so that you will have an opportunity to weigh our comments in a timely fashion.

State Farm commends the Dalton Committee for its efforts in defining the very serious problems facing the auto-insurance buying public in this State. And, while we might suggest that the solutions proposed do not go far enough in some instances, we hasten to add that, for the most part, the bill which would implement the committee report contains many thoughtful and pragmatic steps which would help the situation. SB 2594 is a meaningful first step.

Let me be more specific. For example, the Dalton Committee proposes the establishment of a 2-tier system within the AFIUA as a means of augmenting the Association's revenues. This is an excellent suggestion, but we believe that, not only the bad and irresponsible driver should be included in the higher paying group, but also those who have not had a policy of insurance in the last three years. While the youthful driver would be impacted by such an inclusion, it is clear that this group produces an inordinate number of claims and hence costs.

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The other provisions dealing with the revenue side of the AFIUA problem are good. But they will not, individually, or collectively, produce enough money to stave off the imminent disaster facing the Association. Whether one employs the more prudent and time-tested indices of financial health provided by statutory insolvency tests, or the more expedient "cash flow" approach, it cannot be denied that the AFIUA will be unable to pay claims in the near future. All of the stop-gap measures proposed, and others which may be conjured up, will not take the place of rate-restructuring which will make it more expensive to be in the residual market than in the voluntary market.

Obviously, it is necessary to depopulate the Association of "clean risks" who would otherwise be penalized by rate restructuring. The modification of the "non-renewal" law proposed by this measure is helpful in that regard. However, significant reductions in the Association pool will not be obtained until a competitive climate is restored to the insurance industry.

We are pleased that the Dalton Committee recognized the need for continuing the No-Fault System. We owe the Committee a debt of gratitude for its clear and thoughtful statement on the necessity of balancing that system and believe that its recommendations for achieving that goal are for the most part salutary.

State Farm has long advocated a balanced system and has argued the adoption of a verbal threshold as the best means of achieving that end. It is, therefore, believed that legislation in this area should provide for a mandatory verbal threshold or, at the very least, it should establish the verbal threshold as the primary option, allowing those who desire it, to purchase a $500 threshold. This latter approach would be more in keeping with Senator Dalton's statement at your hearing, to the effect, that the Dalton Committee proposals were to provide the most affordable alternatives for the buying public. A substantial majority of that buying public has expressed the view, in several recent polls, that the high cost of auto insurance is a serious burden on family budgets. Clearly, the verbal threshold coupled with the $10,000 option on medical benefits, discussed below, is the most affordable package.

New Jersey, and Michigan, which has provided for a verbal threshold since the inception of No-Fault, have the most generous benefit packages in the nation. It is the unlimited medical

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benefit portion of New Jersey's law which, when coupled with the $200 tort threshold, creates the imbalance which the U.S. Dept of Transportation found to be the worst in the nation. SB 2594 would seek to establish a more balanced system by providing for a $10,000 medical benefit option. We recognize the efficacy of such a proposal.

State Farm supports the efforts toward medical cost containment provided by a fee schedule but must point out, that in many instances, the promulgation of a maximum fee schedule results in the elimination of any fees below the maximum. As a consequence, costs may be increased instead of contained. Whatever the cost containment device, State Farm strongly opposes any system of "balance billing" or allowing a provider to charge the consumer directly for amounts in excess of the schedule. The wording of SB 2594 should be modified to make clear that no such result is intended.

There are a number of other items in the bill which concern State Farm. In order to keep this letter to some manageable size, I refer you to our filed statement, which was forwarded under separate cover. State Farm believes that SB 2594 is a very encouraging proposal. We look forward to working with you as it is considered and improved.

Very truly yours,

Stanley C. Van Ness

SCV:fm

3x

AUGUSTUS NASMITH
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October 16, 1986

Statement in Opposition to
SJR-40

On behalf of the National Association of Independent Insurers, a national trade association representing over 450 member companies engaged in writing property and casualty insurance, we must record our opposition to the call in this resolution for "federal regulation of the business of insurance". Although SJR-40 merely memorializes Congress to take action and thus may be considered insubstantial in comparison with the other bills before your committee relating to changes in tort law, it is directly contrary to the declaration in the McCarran-Ferguson Act (P.L. 15, approved March 9, 1945): "...that the continued regulation and taxation by the several states of the business of insurance is in the public interest,...". This is the basic principle upon which NAII functions.

It is ludicrous for New Jersey to suggest that Federal regulation will have any bearing on the current "liability insurance crisis"---a State in which our judiciary rewrote insurance policies to cover Jackson Township, which is a leading nationwide horrible example of where the tort system has gone wrong (This fact is recognized by Senate No. 2325).

We protest the repitition in lines 4 through 17 of vague concerns expressed about unlawful boycott or conspiracy or coercion or intimidation of policy holders by seeking changes in the civil justice system. There have also been statements by the Public Advocate and others indicating that the insurance industry is exempt from Federal anti-trust regulation. It is important to note that the very insinuations in lines 4 through 12 are specifically under the jurisdiction of the Federal Department of Justice by virtue of Section 3(b) of McCarran-Ferguson which says:

> "Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation."

4X

The National Insurance Consumer Organization (hereafter "NICO") was the originator of these anti-trust charges, and the same material has been used as the basis for the subsequent expressions of concerns by our Public Advocate and several State Attorney Generals.

The Attorney General of the United States, has found no evidence of the alleged violations and found two statements relied on as establishing a cartel "nothing more than rank speculation". The Federal Trade Commission investigated similar charges by NICO and closed it because it was unable to find any evidence of collusion. (Letter to Jay Angoff, Esq. dated April 22, 1986 from Assistant Attorney General Ginsburg, and Wall Street Journal newsclip of 4/17/86 attached hereto as Exhibit A).

We request your committee not participate in beating this dead horse and that you do not release SJR-40 from committee.

Respectfully yours,

Augustus Nasmith

Augustus Nasmith

AN:gv
Enclosures

5x

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 22 1986

Jay Angoff, Esq.
National Insurance Consumer Organization
121 N. Payne Street
Alexandria, Virginia 22314

Dear Mr. Angoff:

The Attorney General has referred to me your letter of March 31, 1986. Your letter cites a number of trade publication reports of events and public statements by insurance industry participants and indicates your belief that those reports warrant an investigation by the Department of Justice to determine whether insurance industry members are engaged in collective boycotts and price collusion in violation of the federal antitrust laws.

The Federal Trade Commission has within the last six months investigated similar charges concerning the pricing and availability of certain lines of property and casualty insurance. The Commission's investigation, as you know, was opened in response to an earlier letter from your organization. I understand that the Commission has now closed the investigation because it was unable to find any evidence of collusion.

The outcome of the Commission's investigation should come as no surprise. The structure of the insurance industry is such as to make collusion among competitors unlikely. In the insurance industry, as in any other industry, the larger the number of competitors, the more difficult it is for a cartel to police its agreement and the more likely it is that one or more members will decide to "cheat," i.e., to price independently. Thus, in such an industry, collusion is highly unlikely because it is generally doomed to failure.

Existing studies indicate that the property and casualty insurance industry contains a large number of sellers and is unconcentrated. Sellers of property and casualty insurance

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typically offer a wide range of particular lines within that category, and it is quite easy for sellers offering certain lines to begin offering other lines as well. Sellers of one type of insurance can and frequently do begin selling other lines, with scant regulatory interference or other barriers. This suggests that all carriers writing any lines of property and casualty insurance are in effective competition with each other with respect to all lines of such insurance, and that the market in the absence of distorting regulation is likely to be competitive.

The Department does not believe that the information contained in your letter, in light of the Commission's recent investigation and the structure of the insurance industry, warrants the initiation of another investigation. Your letter cites 13 incidents of public statements or lack thereof over approximately an 18-month period by insurance company and trade association officials listed in what you describe as a "Crisis Creation Chronology" appended to your letter. Most of those incidents involve statements concerning the industry's perception of the current problems relating to the affordability and availability of certain property and casualty insurance lines. While you indicate your belief that those statements are misleading because they attribute the problems to deficiencies in our system of tort liability, you also recognize in your letter that collective efforts to present a point of view to the public and/or legislators do not violate the federal antitrust laws, regardless of whether the statements are true. See Eastern Railroads Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961).

Your letter provides only two incidents that might be deemed "direct evidence" relevant to the existence of a boycott or collective refusal to provide certain types of insurance. Those incidents involve public statements by two insurance company executives. Viewed by themselves, these few statements about premium pricing and coverage availability do not indicate the existence of illegal collusion. Given the significant amount of public discussion of property and casualty affordability and availability over the last year or so, it is not unusual for insurance executives to address such subjects in public discussion. The views expressed were uttered in public fora and were general in nature. Given the structure of the insurance industry, the inference that these statements were designed to, or could, serve to effectuate a cartel among insurance companies is nothing more than rank speculation.

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A more plausible explanation of the current problems in the property and casualty insurance industry is that they are a result, for the most part, of the problems in the tort liability system. Uncertainty concerning the probability of liability and the amount of damages that will be assessed where liability is found to exist have made the business of assessing liability risks extremely difficult, and at times impossible. Moroever, these problems have been exacerbated to some degree by the sharp reduction in interest rates, which until recently provided a significant supplement to insurance companies' premium income.

In light of the various considerations noted above, it is my judgment that a commitment of the Division's resources necessary to conduct an investigation is not warranted at this time. I hasten to add, however, that should we become aware of any new information indicative of boycott or of price fixing in the insurance industry not exempt from the antitrust laws under the McCarran-Ferguson Act, the Division will take appropriate action.

Sincerely,

Douglas H. Ginsburg
Assistant Attorney General

Lawyers Enc[illegible] Government and Law

preserving [illegible]ce of law for the public interest

EXECUTIVE DIRECTOR

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TESTIMONY PRESENTED TO SENATE LABOR

INDUSTRY AND PROFESSIONS COMMITTEE

TRENTON, NEW JERSEY

OCTOBER 16, 1986

APPEARING:

KATIE HARTMAN

10x

Chairman Lesniak, and members of the Committee, good afternoon. I am Katie Harman and I thank you for allowing LEGAL Lawyers Encouraging Government And Law to appear before you today. We are a special interest group of three thousand attorneys whose special interest parallels that of the public. By that I mean, if the court houses are closed, lawyers would be out of a job. However, lawyers could get another form of employment--but not so the quadraplegics, paraplegics and other victims. If the court house doors are closed, they have no place else to go.

Appearing with me today is Nancy Burns, who is a victim and a client of one of our member attorneys.

We are here to discuss Senate Bill 2594 which deals with automobile insurance.

Before we get into the specifics of the bill, I would like to bring certain facts to your attention.

1. New Jersey automobile insurers make more money and more profits than auto insurers in all the other forty-nine states. This fact comes from the National Association of Insurance Commissioners (NAIC) and the National Insurance Consumers Organization (N.I.C.O.) It was told to me by the President of N.I.C.O., J. Robert Hunter, former Federal Insurance Administrator under Presidents Carter and Ford.

2. In New Jersey in 1984, automobile insurance companies, recoreded a profit of $56 million dollars in the regular insurance market, accordi to the New Jersey Information Service and the Insurance Information Institute from figures compiled by A.M. Best & Co.

3. On September 8, 1986, Insurance Commissioner Kenneth D. Merin urged four automobile insurance companies that are making substantial profits in New Jersey to lower their rates for private passenger cars. Under the Financial Disclosure and Excess Profits Act (P.L. 1983, c. 2 the Commissioner also required Royal Globe Insurance Company to retur $82.00 to each of its policy holders because of excess profits.

4. Automobile insurance rates nationally have increased 14.1% in the last year alone. This information comes from the Insurance Informatio Institute as reported in the September 5, 1986, issure of The Journal of Commerce.

5. In New Jersey, automobile insurance rates have stabilized for the last three years since the inception of the 1983 reforms. Premiums have not gone up.

6. In New Jersey in 1984, rates even decreased for those insureds taking the option of a higher dollar threshold. The rates for these drivers have decreased 35% on the Bodily Injury portion of their premiums. (Of course, some auto insurance companies are still balking at this. For example, State Farm Mutual, the second largest independent

car insurance company in the state, contends that it should only be required to give a 15% reduction in the Bodily Injury liability rate to its 42,164 customers who chose the $1,700 lawsuit threshold instead of the $200 lawsuit threshold. The Insurance Department said the reduction should be 32% off the Bodily Injury liability rate, while the Public Advocate contends it should be a 35% reduction. The issue is now being heard before administrative lawjudges.)

It is obvious from these facts, that the reforms of 1983 are working. Rates have not increased and the companies have made profits, substantial profits and excess profits.

As for a strict verbal threshold, no actuary anywhere in North America has ever come forward to state what a verbal threshold will save in premium dollars.

A verbal threshold is not responsible for reducing rates in Florida, Michigan or New York. The real facts are:

FLORIDA. The rates went down in Florida, because at the same time that a verbal threshold was enacted, so were cost containing measures--such as eliminating unlimited medical benefits and capping them at a maximum of ten thousand dollars per accident.

In New Jersey we currently enjoy unlimited medical benefits which makes it possible, for example, for people who have been injured in an accident and can't walk, to get therapy so they can function in a wheelchair instead of in a bed, and to get from that wheelchair into leg braces and walk independently. Unlimited medical

coverage provides this.

NEW YORK. Prior to the enactment of a verbal threshold, New York had "open rating." Open rating means that the companies can charge whatever they want. With the enactment of a verbal threshold in New York, also came legislation that provided for rates to be approved by the Commissioner of Insurance. So of course, the rates came down. The companies were not allowed to charge whatever they wanted anymore. This has nothing to do with a verbal threshold.

New York also has a $50,000 maximum limit on medical benefits as opposed to the unlimited medical benefits that we have in New Jersey.

MICHIGAN. In Michigan, the policy holders are not saving money because a verbal threshold was enacted. The ones who are saving money in Michigan are the ones who opt to make their own health care benefits primary. Their health care insurer pays their bill--not their automobile carrier.

S-2594 is attempting to lower automobile insurance rates for the drivers of New Jersey (for which the sponsor of the bill should be commended) but it is doing so at the expense of lowering benefits, reducing coverage and taking away one's right to sue without giving anything in return.

We therefore suggest a MANDATORY RATE REDUCTION. Go after the profiteering companies--not the drivers who pay the highest rate in the nation and not the victims of atuomobile accidents.

We suggest a MANDATORY RATE REDUCTION for those insureds opting for the $500 threshold and we also suggest a MANDATORY RATE REDUCTION for those insureds opting for the verbal threshold. And we especially

and strongly suggest a MANDATORY RATE REDUCTION for all of those insur[illegible] listed at the back of the Final Report of the Senate Special Committee on Automobile Insurance Reform. The examples stated at the back of the Report should all be written into this legislation, since the Report states that these examples will save a certain amount of dollars for taking certain options. Those REDUCTIONS should absolutely be MANDATED into the legislation so that the automobile insurance buying public is not duped. They should get their reductions and premium savings and they should have it be a matter of law.

We also suggest that the optional verbal threshold be modified to include those poeple who have been injured and whose injuries include fractures, soft-tissue injuries, and whose normal activities have been interrupted for at least 90 days out of the first 180 days following their accident.

It is cruel to exclude from suit, people who suffer fractures, soft-tissue injuries and whose normal daily activities have been changed and drastically interrupted. Such a person is sitting next to me. Her name is Nancy Burns and she is the victim of an automobile accident. She is here to tell you her story, her pain, her injuries and her life since the accident.

AMERICAN INSURANCE ASSOCIATION

85 John Street
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October 3, 1986

Hon. Raymond Lesniak
Chairman
Labor, Industry & Professions Committee
New Jersey State Senate
State House Annex
Trenton, NJ 08625

Re: Senate 2594

Dear Senator Lesniak:

Senate 2594, which represents the recommendations of the Senate Special Committee on Automobile Insurance Reform, is scheduled for consideration by your Committee on October 6. As you know, our Association represents 171 property and casualty insurers that account for a third of New Jersey's automobile insurance market. Consequently, we have a strong interest in the provisions of this proposal, which will have a major impact on New Jersey's auto market.

At the outset, we should note that Senator Dalton's Special Committee deserves a good deal of credit for the comprehensive effort that is apparent from the Committee report and the proposed legislation. We think many of the recommendations are positive solutions that should go a long way in improving New Jersey's auto insurance system. Specifically, we strongly support giving insureds the option of a fixed dollar amount of no-fault medical benefits as an alternative to unlimited coverage. We also support the establishment of a medical fee schedule, although this will be a major undertaking. Likewise, we favor limiting the Public Advocate's role in the rate filing process, easing the present nonrenewal restrictions, and studying alternatives to the prior approval rating system. As to the JUA proposals, we support a two-tier rating system and a reduction in the DMV collection fees. Lastly, we support the proposal to study and reassess the desirability of New Jersey's mandatory liability insurance law. In our view, it would make more sense to mandate personal injury protection and uninsured motorist benefits only.

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A number of the other proposals, such as eliminating the twenty percent PIP offset or increasing the statutory fines for failure to maintain liability insurance, we consider to be purely matters of legislative public policy judgment. In fact, there are only three proposals in this bill that we consider objectionable. The remainder of this letter will outline our concerns about these proposals.

The proposal to raise the optional tort threshold from $200/$1,700 to $500/verbal, in our view, will only perpetuate an ill-advised system. In fact, this proposal may even tend to increase the cost of PIP benefits by providing a higher monetary target for plaintiffs' doctors. An optional threshold system also requires the maintenance of a relatively expensive (in relation to the amount of premium transferred) redistribution mechanism for premium differentials called the Automobile Insurance Risk Exchange. Currently, about twenty percent of New Jersey's private passenger auto policyholders opt for the higher threshold, but we do not believe that this percentage reflects informed consumer judgment. First, we don't believe that many insureds really understand the option. Second, insurance agents have an understandable two-fold interest in pushing the lower threshold. Obviously, the higher premium payment yields a higher commission, but more importantly, the lower threshold removes any possibility of a subsequent claim against the agent under his professional liability coverage. For these reasons, we continue to support a mandatory verbal threshold applicable to all tort claimants.

We also object to two similar proposals that we believe are inconsistent with other provisions of the bill. Mandatory premium discounts for anti-theft devices and defensive driving courses are legislative ratemaking proposals that would further restrict the ability of insurers to establish rates based on the loss experience of their chosen markets. Legislative rating restrictions in current law are a key factor in the limited size of New Jersey's voluntary market as compared to its residual auto insurance market. The provisions to limit the role of the Public Advocate in the ratemaking process, to restudy the prior approval rating system, and to relax nonrenewal restrictions are all aimed at enhancing competition. Mandatory rating discounts point in the opposite direction and force insurance underwriters to avoid underpriced risks. For your information, we have enclosed a copy of our Memorandum in Opposition to Assembly 1470, which also would mandate defensive driving discounts.

Thank you for your consideration of our views. If you have any questions or we can provide any additional information, please let us know.

Very truly yours,

Wesley S. Caldwell, III
Vice President
New York/New Jersey Region

cc: Labor, Industry & Professions Committee Members
Elmer M. Matthews, Esq.
Mr. John K. Reid

AMERICAN INSURANCE ASSOCIATION

85 John Street
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AMERICAN INSURANCE ASSOCIATION
MEMORANDUM IN OPPOSITION TO
NEW JERSEY ASSEMBLY BILL 1470
DEFENSIVE-DRIVING CREDITS

OVERVIEW

The National Safety Council, a private, nonprofit organization concerned with accident prevention, embarked some years ago on a national campaign to promote its defensive-driving course through legislation mandating automobile insurance premium discounts. Assembly Bill 1470 would require insurers to offer premium discounts to policyholders who have completed a recognized motor vehicle accident-prevention course. The purpose of the Bill is to encourage motorists to enroll in an approved motor vehicle accident prevention course. An approved course is defined as one that meets or exceeds the standards of the National Safety Council's defensive-driving course.

The American Insurance Association is comprised of over 170 property and casualty insurers that together write approximately one-third of the automobile insurance market in New Jersey. We have staunchly supported safety and loss programs relating to automobile insurance as well as to other insurance lines. To cite just a few examples, we were early supporters of seatbelts, bumper standards, and airbags. We contribute funds to public-interest safety organizations like the Insurance Institute for Highway Safety. But we are opposed to Assembly Bill 1470.

Major reasons for our opposition, which will be discussed in greater detail, can be summarized as follows:

- Existing safe-driver plans, which are keyed to actual driver performance and loss experience, provide a more precise mechanism for measuring, encouraging, and rewarding safe driving.

- What little credible statistical evidence there is to support the proposed discount suggests that any significant cost-justification for defensive driving course credits diminishes after the first year -- A. 1470's three-year discount period following course completion is too long.

- It is inappropriate for the legislature to guarantee the National Safety Council that its course will always qualify for the discount regardless of quality or to delegate regulatory authority to the NSC as the arbiter of standards for other valid safety programs.

- It is inappropriate to mandate a discount for multi-driver policies when only one driver has completed a defensive-driving course.

ANALYSIS OF ASSEMBLY BILL 1470

Many insurance companies offer lower rates for safe drivers. The essence of these plans is that after a certain period of accident-free driving, a

policyholder is entitled to insurance at more favorable rates. There is no guarantee that such a driver will not sustain future losses, but a recent record of safe-driving has been proven statistically to be a reasonable indicator of lower losses in the future.

In contrast, there are no reliable statistics to demonstrate that completion of a defensive-driving course is a consistent predictor of improved driving performance or reduced losses over a long period of time. This problem is exacerbated by Assembly 1470, which would require the discount for multiple-driver policies when only one driver (the named insured) has completed an approved course. One of our members, Colonial Penn, has offered a defensive-driving discount in most states for years. Although the Company continues to offer this program, Colonial Penn's statistics only marginally support their three-year discount, and the Company is opposed to mandatory discount legislation.

One of the basic questions that arises in evaluating the efficacy of a driver-improvement course is whether the course itself produces safer driving or whether the course merely attracts and identifies drivers who are motivated to improve their driving or who are better drivers in the first place. If a discount is made mandatory and is broadly advertised, many persons are likely to take the course solely to achieve insurance savings and not to improve their driving habits.

Assembly Bill 1470 makes an attempt at resolving the problem of actuarial justification. The Bill requires the discount to be "an amount justified by . . . actuarial experience . . ." Read in context, however, this provision raises more questions than it answers. The preceding sentence mandates that: "Every rating system . . . shall provide an appropriate reduction in premium charges . . ." The sentence continues by requiring that the discount shall apply "for a three year period after the date of completion of an approved motor vehicle accident prevention course . . ." Since there is no existing adequate statistical support for a three year discount, companies must offer discounts initially without the actuarial justification required by other language in the Bill. Furthermore, what will happen in the future when sufficient data has been collected if it indicates that a discount is not actuarially justified or that the discount is not justified for a full three year period? The Bill assumes as truth the supposition of the National Safety Council that its course will reduce losses, since the Bill has no mechanism for eliminating the discount or reducing the time period in the event that the facts prove inconsistent with the law.

What litte data exists indicate that a three-year discount period is not justified if a substantial discount is provided for each year. For example, Colonial Penn's statistics show that the discount appears to be significantly cost-justified during the first year and marginally cost-justified during the second year, while by the third year the effect of the course appears to have

all but worn off. An insurer should retain the right to modify the discount as its experience dictates. Assembly 1470 would deny or limit this ability. In evaluating mandatory drivng courses for motor vehicle offenders, the California Department of Motor Vehicles (DMV) found that the duration of improved driving skills was even shorter than that indicated by Colonial Penn's data. The California DMV found that the effect of such courses weras off in about six months. Of course, the preferred risk class of senior citizens insured by Colonial Penn and the motor vehicle offenders in the California study are likely to produce different results, but in any event we know that the three-year discount period required by Assembly 1470 has no credible statistical support.

To the extent that any insurance discount is not actuarially justified, it amounts to unfair discrimination. Requiring an unjustified discount for some insureds means that their losses must be subsidized by other insureds. Some insureds may not be able to take a course. And, undoubtedly there are many excellent drivers who simply do not need a defensive-driving course. Yet all drivers who, for whatever reasons, do not take a defensive-driving course will be asked to subsidize the discounts for those who do take such a course. Even demonstrably "bad" drivers, such as frequent offenders with numerous surchargeable accidents and violations, will be eligible for the discount under Assembly Bill 1470. In fact, the only category of drivers not entitled to the discount will be those forced to take a DMV Driver Improvement Program as a result of motor vehicle violations. Assembly Bill 1470 may encourage drivers to enroll in the National Safety Council's defensive-driving course, but it will also create unfairness in automobile insurance rates.

The National Safety Council is a fine organization. The AIA and its member companies have supported its activities. Yet one begins to suspect that the principle motivation behind the Bill is financial rather than social. Although it is a nonprofit organization dedicated to safety, the National Safety Council is a private organization, not a governmental entity. Passage of this Bill would automatically stamp the National Safety Council's course with the imprimatur of government approval, since by definition the NSC course will meet its own standards. Furthermore, the Bill would effectively delegate regulatory authority to the National Safety Council, since its program would be the standard by which all others are measured.

In summary, Assembly 1470 is unnecessary and unfair. The bill would primarily encourage attendance at defensive-driving courses offered by the National Safety Council's program based on the unsupported claim that such courses will actually improve the loss experience of insureds who complete such courses so as to justify a three year discount. Moreover, the Bill would create a number of problems under the guise of social progress. Stripped of its patina of respectability, Assembly Bill 1470 is special legislation designed to benefit a private interest group, and it should be defeated.

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The Black Professional Agents of N.J. has a membership which spans throughout the state.

Our purpose is to promote understanding, cooperation, continuing education, and to attract other men and women into the Insurance profession. While cooperating with local and national organizations in programs which further the aims of the Insurance profession, ultimately to provide quality service and products to the insuring public.

The following facts and concerns have been furnished for your information:

Conversion to JUA from AIP produced financial loss to brokers and agents.

25% reduction in income as a direct result of losing commission on surcharges.

Untimely production processing and lack of timely payment and once a month, commission payment.

All agents are forced to sign JUA contract without alteration or opportunity to negotiate.

No Black or Minority Insurance representatives on any JUA committee or member of any board.

No access to Joint Producers council,

Depopulation in present plan form is detrimental to the Urban Community, brokers and agents.

No uniform accounting and statement policy, no two companies the same.

Commission to producers who are limited to auto insurance specialization without voluntary market is inadequate.

JUA designed specifically to eliminate small companies and small brokers and/or agents.

Direct writers conspire to monopolize the entire auto insurance industry in this state, have control of the rates, underwriting and control commission payout.

Loss of earned commission for 2 years, broke the back of the urban and minority personal lines brokers.

JUA has caused extreme financial hardships.

JUA servicing carrier's commissions compared to the broker's is inequitable and excessive.

Seems to be collusion to eliminate urban and minority agents and brokers in favor of service referral stations and direct writer agents.

No licensed Black or Minority Insurance agents on any State Insurance Committee.

No access to industry representatives.

No participation in insurance rating organizations.

Need committee to study affirmative action and fair share attitudes of the industry.

Urban agents suffer as second class citizens especially Minorities and Blacks.

Inability to diversify.

Lack of basic voluntary markets.

Lack of industry support regardless of technical or production ability or by accepted industry loss ratio standards.

Lack of consistent technical support by the state insurance department.

No conceived economic development program or support by industry or state.

JUA use of cash methods vs. accruel methods.

Take appropriate action to eliminate inadequate operational practices.

Order cease and decist as it relates to JUA accounting methods.

Require JUA to produce timely annual reports, made available to BPIA.

Determine number of vacancies on study commission.

Great percentage of NJAC 17:30E was written without sufficient regard to the future of urban consumbers or it's representatives.

Severability of certain provisions of 17:30E.

Industry engaged in unfair methods of competition and unfair and deceptive acts.

Abolishment of all forms of unfair competition.

Clarification of the state position toward the NJAC 17:22-6.14A as it pertains to JUA commissions payment policy for the years 1984, 1985, and 1986.

Timely and fair JUA claims settlement.

The inability to communicate directly with state insurance officials.

Zealous persecution and harrassment of urban and particulary minority brokers and agents.

Urban community doesn't have an opportunity to choose or qualify for standard voluntary coverages.

Urban community and it's insurance representatives boycotted by design.

Urban community generally afforded substandard coverage at highest cost.

Urban communities post the largest contribution to the industries cash flows.

Urban community treated as second class citizens.

Elimination of urban and minority brokers and agenst will produce a destabilizing effect on all communities.

Governor made aware of the BPIA and it's request to seek advice and consent of senate to appoint fourth public member to the NJAFIUA board.

An equal opportunity to compete.

2.4 billion dollars written in auto insurance premium in N.J. in 1985.

New Jersey total population approximately 7,400,000,000.

Urbanized areas inhabited by 6,291,000,000 residents.

5,528,000,000 residents considered on urban fringe.

1.8 million re: minorities.

Urban brokers and agents service 75& of the states minority population.

60% of all insurance consumers in urbanized areas and urban fringe are serviced by urban brokers and agents.

67.5% of all insurance consumers in the state are serviced by urban brokers and agents.

1.6 billion of the $2.4 billion in automobile insurance liability was produced by urban brokers and agents.

These figures do not reflect percentage of Suburban clientele.

As shown in Illustrations 1, 2, and 3 the BPIA is being denied an equal opportunity to compete, and to serve the public in a fashion that is customary.

Also please note the inequity in commission income, caused by the despairity in commission percentages.

Also please note in the miscellaneous data section that the urban agent and broker does not have the same access as does the typical agent.

Also please note the bottom line, in illustrations 1 and 2.

In illustration number 3 if the same commission percentage that is earned by the typical agents was applied to the mix of the urban agent and broker, please note the change in income.

In illustration number 4 please note the cost to run a personal lines agency, even under the auspicious it cost more money to successfully run this type agency..

9/26/16/sl

CL-0059
SR-0014
TR-

A SENATE RESOLUTION establishing a commission to study mandatory liability insurance.

WHEREAS, The New Jersey Legislature adopted mandatory automobile liability insurance in 1972 as part of the establishment of the no-fault system; and

WHEREAS, In the years since the adoption of no-fault, there have been ever-increasing numbers of uninsured drivers in the State as the cost of insurance increases; and

WHEREAS, As a result of the automobile insurance risk classification system presently in use in the State, the drivers who pay the highest insurance premiums are frequently those with the fewest assets to protect and, therefore, the least in need of liability coverage; and

WHEREAS, Because certain other states have seen fit to abolish mandatory liability insurance, it would seem necessary for the Legislature to reexamine the operation of the mandatory liability system in this State; now, therefore,

BE IT RESOLVED by the Senate of the State of New Jersey:

1. There is created a commission to study the feasibility of eliminating mandatory liability insurance in New Jersey, which shall consist of five members to be

appointed by the President of the Senate as follows: two members of the Senate, of different political parties, who shall serve during the two-year legislative session during which they are appointed; one attorney, one representative of the insurance industry; and one public member. Vacancies in the membership shall be filled in the same manner as the original appointment.

2. It shall be the duty of the commission to study the operation of the present mandatory liability insurance requirement for motor vehicles in this State, and to study the feasibility, and the effect, of eliminating that requirement.

3. The commission shall organize as soon as possible after the appointment of its members and shall elect a chairman and a vice chairman from among its members. The chairman shall appoint a secretary who need not be a member of the commission.

4. The commission shall be entitled to call to its assistance and avail itself of the services of employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. The commission shall further be entitled to employ counsel and stenographic and

clerical assistants and to incur traveling and other miscellaneous expenses as it may deem necessary in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for its purposes.

The commission shall report its findings, conclusions and recommendations to the Governor and the New Jersey State Senate as soon as practicable, but no later than one year following the enactment of this resolution.

6. The commission shall have all of the powers provided by chapter 13 of Title 52 of the Revised Statutes.

7. This resolution shall take effect immediately and shall expire one year after enactment.

STATEMENT

This resolution establishes a commission to study the operation of the mandatory liability insurance law and the feasibility of eliminating mandatory liability insurance.

INSURANCE-PROPERTY AND CASULTY

Establishes commission to study mandatory liability insurance.

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INSURANCE-PROPERTY
AND CASULTY

A SENATE RESOLUTION establishing a commission to study mandatory liability insurance.

46X

THE NEW JERSEY AFFILIATION
FOR
MEDICAL CARE AND REHABILITATION

My name is Christopher Lynch. I presently work in rehabilitation sales and am a designer of wheelchair accessible environments. I participate in a number of peer counseling groups as well.

Seven years ago on September 27, 1979, I had an accident which forever changed my life. A 1,000 pound roll of carpet went out of control while being unloaded off a truck and landed on me. As a result of this incident, I am a complete T 11-12 paraplegic.

Although my injury was covered under a worker's compensation claim rather than no-fault, the emotional trauma and substantial financial obligations incurred remain unchanged. Unless you have experienced this situation firsthand, there is no way you can even begin to imagine what is involved. One literally has to relearn everything you have spent a lifetime learning. How to walk, to transfer from one spot to another, to drive, even how to go to the bathroom. Perhaps, even how to talk and breath depending on the severity of your injury.

Of course the object of any rehabilitation program is to return the individual to the fullest life possible, to make them as indpendent as their condition allows and to do it in as short amount of time as possible. Some of the services involved in this undertaking are nursing a person back to health, teaching them to handle their daily grooming and medical needs, modifying their living quarters to make them accessible and practical, providing them with transportation, vocational training, and counseling of various types.

The costs of all of these services are staggering. Take my case as an example. During the first four years after my injury, approximately $325,000 was spent on my total rehabilitation. This included $200,000 in medical, $70,000 in home modifications, and $20,000 for a modified van among other things. There is nothing unusual about these costs; in fact, they are considerably less than normal. This is because I was only in the hospital for 3.5 months instead of the usual 8-12 months.

As important as all these different programs are, just as important is the timeliness with which they are applied. Getting a person the proper care and help as soon as possible after an injury is imperative. Helping them to accept their condition and shoulder as much of the responsibility as they physically and mentally are able can go a long way in reducing the potential impact of the injury.

It is because of the needs and costs involved that I feel eliminating the unlimited medical from the required no-fault coverage would be a serious mistake. The same $10,000.00 cap being proposed here was instituted in Pennsylvania in 1984

and the results have been disastrous. If this $10,000.00 cap becomes reality, proper and adequate care will be unobtainable by the average person. People will be forced to use alternative forms of funding such as Medicaid and Major Medical. Services such as home and vehicle modifications, peer and psychological counseling, and vocational rehabilitation will either be completely eliminated or available only on a limited basis. What is more important is that even when these services are offered, because of the time required to obtain approval through a system which is not designed to handle these types of cases, the effectiveness of the service may be greatly reduced. We must also consider that the atlernative funding sources are taxpayer funded so even though we are saving a few dollars on our premiums, we will be paying more in taxes to cover the increased burden being placed on the state's systems.

The argument for the $10,000.00 cap is that people have the option to purchase the unlimited medical. This is true but the simple fact is many or most people will not. When given the opportunity to save $40-49, a large percentage of people will jump at the chance. These people have no idea what they are giving up for the small amount this coverage costs. The results will be absolutely devastating to the many New Jersey familites that will have to face the crisis on their own.

I urge you to consider the tradeoff between what you are giving up and what you are saving. Go to a rehabilitation center and see firsthand what is involved in rebuilding a person's life and I am sure you will agree the tradeoff is just not worth it.

Christopher Lynch
623 Lake Shore Drive
Hewitt, New Jersey
(201) 853-7042

THE NEW JERSEY AFFILIATION
FOR
MEDICAL CARE AND REHABILIATION

My name is Barbara Scheffel. I am a Certified Rehabilitation Registered Nurse and a Certified Insurance Rehabilitation Specialist. I am also a Member of the Board of Directors of the National Head Injury Foundation.

I represent The New Jersey Affiliation for Medical Care and Rehabilitation which is a coalition of individuals and organizations interested in assuring that New Jersey drivers have access to adequate medical and rehabiliation care.

We have reviewed Senate Bill 2594 and we are uncomfortable with the $10,000.00 medical cap. Noone really believes they will be seriously injured, yet many people are. When seriously or catastrophically injured, medical and rehabilitative care matters for the rest of ones life.

The cost of medical care has not been discussed. I would like to address this issue.

New Jersey has the DRG System which was initially intended to have many purposes. The point I would like to make is that with the DRG system hospital costs are set according to a diagnostic code. Here are a few examples of hospital costs with the DRG system in place. These costs do not include physician's fees or follow up care and rehabilitation.

CODE	DIAGNOSIS	LENGTH OF STAY	COST
458	Third degree burns, back and hands	8 days	$15,874.15
003	Concussion	11 days	$5,720.08
211	Fractured Pelvis	44 days	$15,180.41
253	Fractured Tibia	18 days	$6,445.05

468	Other (includes secondary diagnosis) Cervical strain, facial laceration	3 days	$5,976.63

A few other, often necessary costs include:

One month of 24 hour a day registered nursing care is $16,800.00.

Physical Therapy three times a week for three months is $1620.00.

I would also like to discuss serious or catastrophic injuries. The most important issue involved in these injuries is the timeliness of medical and rehabilitation care.Let me site a few examples of people who would have been seriously effected if we had a $10,000.00 cap on medical coverage. The following are actual cases in New Jersey and not uncommon in auto accidents:

John P. was injured on November 21, 1980 at age 20. He sustained a brain stem injury and remains in coma at this time. His family chose to return him home after attempts were made to rehabilitate him. He remains at home with round-the-clock RN care. The cost of his care to date is $1,150,000.00. If John did not have unlimited medical coverage under New Jersy No-Fault but depended on the families health insurance coverage this amount of coverage might not be available. If the coverage were available the family would most likely have had to pay 20% which amounts to $230,000.00 to date.

Brian H. was injured on September 20, 1982 at age 23. He sustained a closed head injury and was initially in a coma. He was rehabilitated at a specialized head injury treatment center out of state and is now working as a file clerk. His medical and rehabilitation care cost $335,000.00. If Brian had health insurance coverage which provided for rehabilitation (which may policies do not) his 20% would have been $67.000.00.

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Susan I. was injured on October 15, 1982 at age 39. She sustained a low back injury which was associated with traumatic subluxation complex and exacerbated a congenital condition (spondylolisthesis). She continues to receive treatment and is currently undergoing a physical restoration program for chronic pain. She has been unable to work or manage her home and family. The cost of her treatment to date is $35,000.00. The health insurance portion of 20% paid by the individual would have been $7,000.00.

Tom D. was injured on May 17, 1985 at age 45. He sustained a cervical strain, lumbosacral strain and a pinched sciatic nerve. He has completed his treatment and returned to work. The total cost of his treatment was $14,500.00; the 20% in a health insurance situation would have been $2,900.00.

Henry S. was injured on August 31, 1984 at age 66. He sustained a spinal cord injury at the thoracic-5 vertebra and is paraplegic. He received acute medical and rehabilitative care in New Jersey and is currently at home with day time nursing care. He was retired at the time of the injury but has been seriously restricted in his activites around the home and yard. His treatment is on-going with maintainence therapies and urological care. Cost of treatment to date is $455,000.00 which includes modifying a home for wheelchair accessibility. The 20% portion under health insurance coverage would have been $91,000.00.

Although we were unable to obtain data from New Jersey we have no reason to believe that the information from a Michigan study from 1978 to 1983 would be different here. In that study 68.4% of those catastrophically injured were under 30 years of age.

These people are in the prime of their lives and would be on public subsidies for 30 years or more if they are unable to receive adequate meical and rehabilitative services. A study of 410 catastrophically injured (an update of a U.S. Department of Transoprtation Report) estimated the average ultimate costs of adequate medical and rehabilation care were $408,700.00.

Our concern is that Senator Dalton's Committee in it's Final Report on Auto Insurance released on September 16, 1986 asserts "...that there are those who cannot afford (the current) such extensive coverage as well as those who do not need such coverage because it is duplicative of health insurance coverage which they already have."

We are less concerned about those drivers who have duplicative insurance coverage if comparable health insurance is already available. We do,however, believe that there should be documentation on a case by case basis that the coverage truly is comparable.

We believe it to be false economy to suggest that individuals cannot afford the current unlimited medical coverage. If they cannot afford the premium for the coverage how can they be expected to afford the medical care.

Somebody will pay or somebody will go untreated. We find it unacceptable to deny needed treatment for anyone let alone people with many years of projected life expectancy.

The issue of optional coverage is a difficult one. Those of us who work with the injured drivers can tell you very few are aware of their coverage or their options. With options the responsibility is placed on the insurance agent to fully explain coverage issues to a public who have difficulty understanding how to balance coverage with premium cost.

In brief we think that a medical/rehabiliation cap is shortsighted and will save limited money upfront at the cost of long range disastrous care.

For further information contact:

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Marilee Bush, RN 201-272-1200

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Respectfully submitted by:

THE NEW JERSEY AFFILIATION FOR MEDICAL CARE AND REHABILITATION

For more information contact:

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Before you vote to change medical coverage in private passenger automobile insurance, become aware of medical costs involved for automobile accident victims:

DIAGNOSIS: Acute low back pain associated with Traumatic Subluxation Complex — COST: $35,000.00

AGE: 43 DATE OF INJURY: 10/15/82

CURRENT STATUS: Undergoing physical restoration program. Unable to work or manage home and family.

DIAGNOSIS: Brain Stem injury. — COST: $1,150,00.00

AGE: 26 DATE OF INJURY: 11/21/80

CURRENT STATUS: At home with round-the-clock nurses; comatose.

DIAGNOSIS: Cervical strain, lumbosacral strain; pinched sciatic nerve. — COST: $14,500.00

AGE: 46 DATE OF INJURY: 5/17/85

CURRENT STATUS: No further treatment. Returned to work.

DIAGNOSIS: Closed head injury; coma. — COST: $335,000.00

AGE: 27 DATE OF INJURY: 9/20/82

CURRENT STATUS: Rehabilitated; now working as a file clerk.

DIAGNOSIS: Paraplegic, T-5. — COST: $455,000.00

AGE: 68 DATE OF INJURY: 8/31/84

CURRENT STATUS: Retired; treatment ongoing.

Become aware that:

* Single car accidents accounted for 48% of victims who were catastrophically injured in a Michigan study from 1978-1983.1

* Ages of most catastrophically injured victims in the Michigan study from 1978-1983 were:

AGE	NUMBER	PERCENTAGE
Under 16	114	12.2%
Between 16 & 20	245	26.3
Between 21 & 25	175	18.7
Between 26 & 30	104	11.2
Total, 30 and below	638	68.4% 2

* In 1982, 1,269,000 people suffered motor-vehicle-accident-related injuries for which they were taken to a medical facility. Of this number, 156,00 were seriously injured and 43,945 died. One-third of all motor vehicle accident victims were 15-24 years of age, and more than an additional one-fifth were 25 to 34 years of age. A large number of these youthful victims did not have a comprehensive health insurance plan or more than the minimun required amount of auto insurance. 3

* A study of 410 catastrophically injured persons in 3 states estimated the average ultimate cost of each would be $408,700.00. 4

IN THE ABSENCE OF ADEQUATE MEDICAL COVERAGE IN AUTO INSURANCE THE NECESSARY RESOURCES NEEDED TO MEDICALLY TREAT THESE YOUTHFUL VICTIMS AND PROVIDE THEM THE REHABILITATION PROGRAMS NECESSARY TO PRODUCE ANY SIGNIFICANT IMPROVEMENT IN THEIR CONDITION WOULD NOT BE AVAILABLE.

OUR CONCERN IS THE VICTIM.

CAN THE STATE MEDICAID AND DIVISION OF VOCATIONAL REHABILITATION SYSTEM PROVIDE THE CARE NEEDED? AT WHAT COST TO THE TAXPAYER; AT WHAT QUALITY OF CARE?

********** PROTECT THE DRIVERS OF NEW JERSEY **********

REFERENCES

1 & 2

Report of the Michigan Catastrophic Association (MCCA November 1983, p.1.

3

Compensating Auto Accident Victims: 1984 Follow up Report on No-Fault Auto Insurance Experiences. The US Department of Transportation.

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Statement on

Senate Bill 2594

1986

By: STANLEY C. VAN NESS

October 6, 1986

57x

Mr. Chairman, my name is Stanley Van Ness. I am a partner in the law firm of Jamieson, Moore, Peskin and Spicer which serves as legislative counsel to State Farm Mutual Auto Insurance Company here in New Jersey.

On behalf of State Farm, I thank you for this opportunity to comment on Senate Bill 2594. At the outset, I wish to commend Senator Dalton and the other members of the Senate Select Committee on Auto Insurance Reform who produced this legislative proposal only after a series of exhaustive hearings and the extensive fact gathering activities of Committee staff. When one considers the widely divergent views which members of the Dalton Committee expressed during the early meetings, it is highly significant that unanimity could be obtained on so many far-reaching proposals as are found in the final report of the Committee and which are are contained in this bill. Such a willingness to put aside personal preferences and to come together, is a tribute to the awareness of the members that, indeed, the high cost of auto insurance is one of the most pressing public policy concerns in the State. Parenthetically, I might note that three independent polls taken during the last year confirm the fact that the cost of auto insurance is a matter of deep concern to a substantial majority of our citizens. Further, the same polls show that they are looking to the legislature for a solution. The end result of those efforts, Senate Bill 2594, should not, and will not, be lightly criticized

by me, although I will offer some suggestions which might warrant further consideration.

First, let me underscore those areas where State Farm is in substantial agreement with the Dalton Committee, and, thus with Senate Bill 2594. This discussion contained in the Dalton Committee report about the development of the Automobile Full Insurance Underwriting Association (AFIUA) is a lucid and accurate account of the history of the residual market and an honest appraisal of the problems facing the AFIUA today. The recommendation that revenues be augmented by the creation of a second tier within the AFIUA consisting of bad and irresponsible drivers, is an excellent first step. We would urge its adoption and request that consideration be given to including, within that tier, all drivers who have not been insured for three consecutive years prior to the year in which a policy is sought. History has taught us that it is this group which generates an inordinate number of claims.

The Committee recognized that the statutory surcharges have never produced the income for the AFIUA which was anticipated. Senate Bill 2594 would increase the amount flowing to the AFIUA by reducing the percentage of revenues retained by the Division of Motor Vehicles from 20% to 10%. We support this proposal as a modest improvement over the current situation. We note, however, that New Jersey is the only state imposing surcharges which does not require the insurance industry to collect them. In other states, if the surcharge is not paid, the insurance lapses. We

respectfully suggest that this linkage provides more effective collection results.

The problem of over-population in the AFIUA is also recognized by the Dalton Committee. The proposed solution-modification of the non-renewal law will provide some incentive for insurers to depopulate the association, if the removal of this barrier, is coupled with changes in the AFIUA rate structure.

On the subject of No-Fault, the Dalton Committee clearly recognized the need for balance in the system. Simply stated, the Committee's position was that we cannot afford unlimited medical benefits and a $200 threshold for litigation. Senate Bill seeks to correct the imbalance by offering options in regard to both the Benefits level - $10,000.00 vs. Unlimited, and the Threshold level - $500.00 vs. Verbal.

State Farm has long advocated a balanced system and has urged the adoption of a verbal threshold as the best means of achieving balance in New Jersey's Tort and No-Fault laws. We have just an consistently recognized that it is the Legislature's decision to make as to how that balance is to be achieved. Senate Bill 2594 would make the $10,000.00 medical benefit level and the $500.00 threshold the primary options. Yet, the most affordable policy would seem to be one where the $10,000.00 benefit package was coupled with a verbal threshold. But whatever combination of options are offered, if the final result is a balanced system, State Farm will support it.

We have these further suggestions for improvement:

In Section 6 of the Bill, we recommend you adopt a policy of compensating out-of-pocket expenses caused by auto accidents once only. and retain the set-off's now in §38:6A-4.3

Section 9 of the Bill spells out income continuation, death and funeral benefits without time limits. This is not consistent with insurance law. Technical changes are needed.

State Farm prepares rate filings on all rates on all lines in every state. Because of the volume of filings and associated data collection and paperwork, we strongly recommend you add a limitation to Section 18 which allows the commissioner to dictate the format of rate filings, but not to require the insurer to report data other than data it ordinarily collects, and in a format it ordinarily records.

Savings occasioned by auto theft devices are closely related to the car make and model. An across-the-board discount in premium for these devices does not reflect actual experience. We recommend you delete §20 of the Bill.

The Section creating discounts in premium for defensive driver courses is not consistent with the usual provisions on this issue, and technical changes are needed.

Section 24 limits the role of the Public Advocate where rates have been reduced. We recommend the prohibition in §24 be amended to include restoration of rates "at or below" a level which had been previously approved by the Commissioner within 24 months.

The overworked Division of Motor Vehicles would waste their efforts in processing the volume of reports which would be generated by §25. Most of the vehicles reported would have paid their premium within the grace period, or reinstated the policy, or obtained a new policy before the Division could act on the reports. Very few of the reports would justify enforcement action. We, therefore, recommend you delete §25.

We recommend that the operative date of the Bill in §26 be changed to 120 days after enactment, and that the Bill provide for a roll-on at renewal time to avoid a mass mailing on the operative date.

There are other suggestions, largely of a technical nature which we will make to committee staff. Suffice to say that we believe that this Bill is a good beginning. We look forward to working with you as it is considered and improved.