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PUBLIC HEARING
before
SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE
ASSEMBLY BILLS NO. 3701, 3702, AND 3703
(Automobile Insurance Reform)

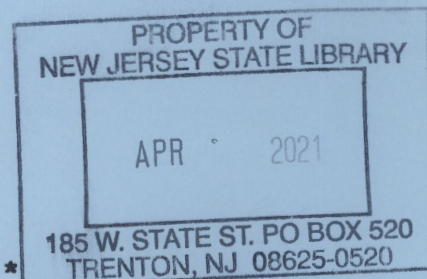
October 20, 1988
Room 334
State House Annex
Trenton, New Jersey

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

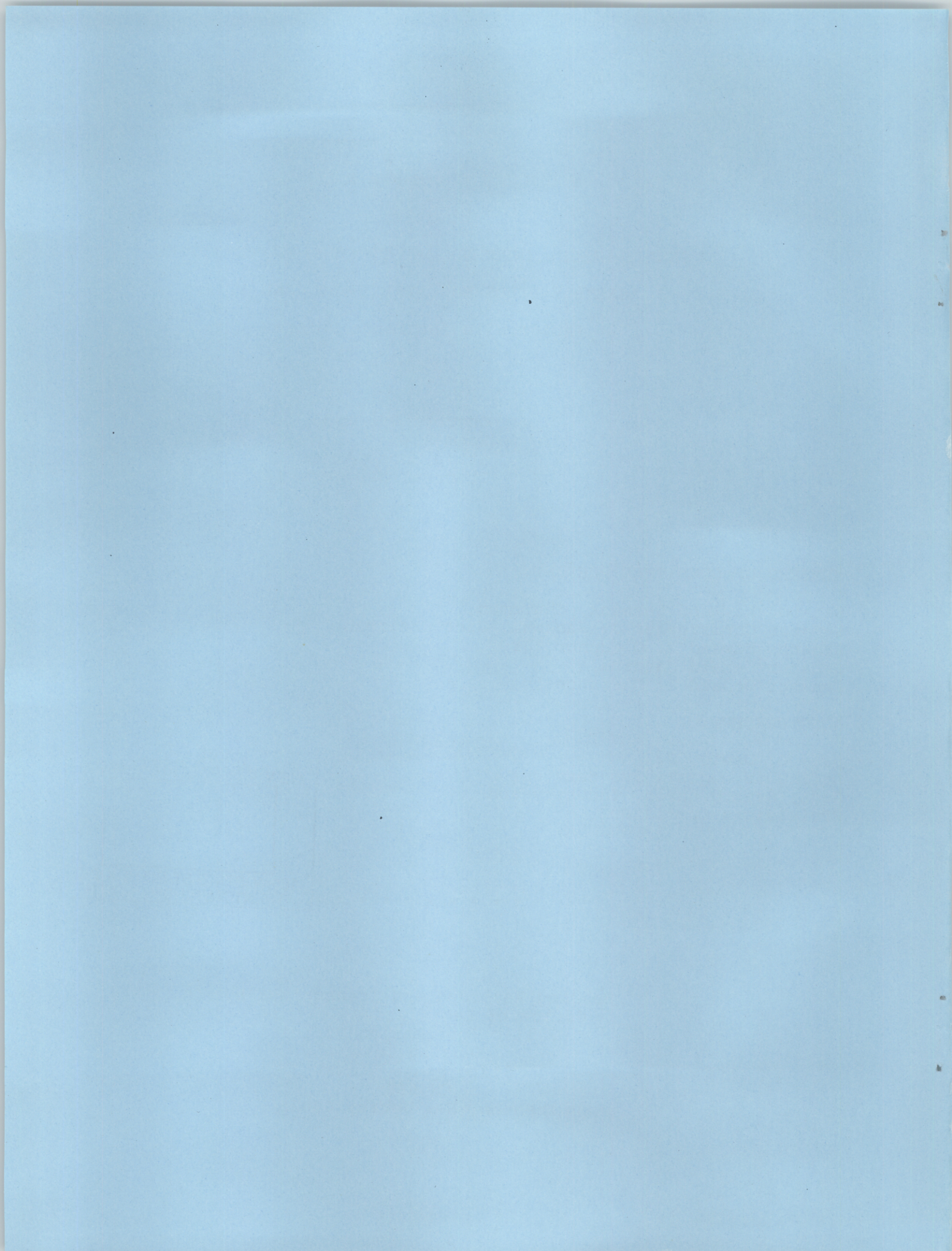
ALSO PRESENT:

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



* * * * *

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625





New Jersey State Legislature

RAYMOND LESNIAK
Chairman
CHRISTOPHER J. JACKMAN
Vice-Chairman
EDWARD T. O'CONNOR, JR.
GERALD CARDINALE
DONALD T. DiFRANCESCO

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 984-0445

October 11, 1988

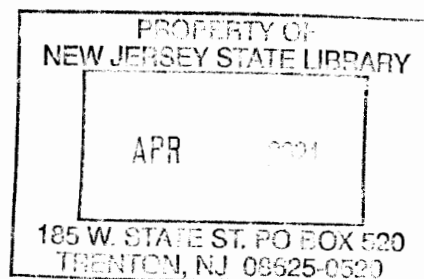
NOTICE OF PUBLIC HEARING

The Senate Labor, Industry and Professions Committee will hold a public hearing on Thursday, October 20, 1988 at 2:00 P.M. in Room 334, State House Annex, on the following bills:

A-3701 Loveys/Littell	Eliminates the residual market equalization charge.
A-3702 Hardwick/Haytaian	Makes various changes in the laws governing automobile insurance.
A-3703 Zecker/Kelly	Creates a prosecutor in but not of the Department of Insurance to investigate and prosecute automobile insurance fraud; appropriates \$500,000.

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

Please provide 12 copies of any written testimony to be submitted to the committee.



ASSEMBLY, No. 3701
STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 1, 1988

By Assemblymen LOVEYS, LITTELL, Haytaian and Felice

1 AN ACT concerning private passenger automobile insurance, and
amending and supplementing various parts of the statutory law.

3

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

1. Section 20 of P.L.1983, c.65 (C.17:30E-8) is amended to
7 read as follows:

20. a. The association shall derive income from the following
9 sources for the payment of expenses, losses, and the provision of
adequate, actuarially sound reserves for unpaid losses and loss
11 adjustment expenses, including incurred but not reported losses,
in connection with association business: (1) net premiums earned;
13 (2) income generated from any association accident surcharge
system permitted or required by law; (3) that percentage of
15 surcharges collected by the Division of Motor Vehicles and
deposited with the association pursuant to subsection b. of
17 section 6 of the "New Jersey Automobile Insurance Reform Act
of 1982" (P.L.1983, c.65; C.17:29A-35); (4) income collected by
19 members of the association and by the association from the
residual market equalization charge or flat charges (also referred
21 to as capitation fees or policy constants, but not including
premiums for uninsured motorists or towing coverage, or
23 flattened tax and expense fees implemented pursuant to section 8
of P.L.1983, c.65 (C.17:29A-37)) levied prior to the effective
25 date of this 1988 amendatory and supplementary act, and levied
on a per car and per coverage basis; and (5) income from
27 investment of moneys collected pursuant to paragraphs (1), (2),
(3) and (4) of this subsection. Residual market equalization
29 charges collected on behalf of the association shall on a monthly
basis be certified to by the carrier and shall be transferred to the
31 association in accordance with the plan of operation. No
producer commissions or premium taxes shall be paid on, or
33 company expenses or servicing carrier compensation deducted

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

Matter underlined thus is new matter.

1 from, the residual market equalization charge. No servicing
2 carrier compensation or commissions shall be paid by the
3 association on violation surcharges deposited by the Division of
4 Motor Vehicles with the association. All premiums received by
5 servicing carriers on behalf of the association shall on a monthly
6 basis be certified to by the carrier and shall be transferred to the
7 association in accordance with the plan of operation. Premiums
8 shall be transferred to the association net of commissions paid,
9 all premium taxes, and servicing carrier compensation, except as
otherwise required by law.

11 All claims and claim expense payments paid on association
12 business shall be disbursed by the servicing carriers or the
13 association through drafts drawn on association funds in
14 accordance with the plan of operation. Servicing carriers, as
15 agents of the association, shall have no individual liability on
claims or policies written by the association.

17 b. At least annually, the board shall file its experience with
18 the commissioner, which experience shall include the projected
19 income, expenses, losses and reserve requirements of the
20 association for the ensuing year, any adjustment in previously
21 established reserves for unpaid losses and loss adjustment
22 expenses necessary to make such reserves adequate and
23 actuarially sound, and the initial filing shall include the
24 experience of the automobile insurance plan established pursuant
25 to P.L.1970, c.215 (C.17:29D-1). [Except in the case of the
26 initial or other filing applicable to the first year of operation of
27 the association, the board shall include in its filing with the
28 commissioner, for his approval, a computation of the residual
29 market equalization charge per insured vehicle to be collected by
30 each member from its voluntary insureds, exclusive of principal
31 operators 65 years of age or older, and by each servicing carrier
32 from association insureds, exclusive of principal operators 65
33 years of age or older, to offset the anticipated losses of the
association.]

35 At the end of the first 12 months of the operation of the
36 association and at least annually thereafter, the board shall also
37 include in its filing with the commissioner a review of the
38 previous year's experience, setting forth the income, losses, and
39 reserve requirements, including any adjustment in previously

1 established reserves for unpaid losses and loss adjustment
expenses necessary to make such reserves adequate and
3 actuarially sound, and expenses of the association during the
previous year. [If a profit is found by the commissioner to have
5 been realized, such amount shall reduce the residual market
equalization charge levied on policyholders pursuant to subsection
7 d. of this section. If a loss is found by the commissioner to have
occurred, such amount shall increase the charge levied on
9 policyholders pursuant to subsection d. of this section.] The filing
shall be accompanied by such statistics and other information as
11 the commissioner may deem necessary. The commissioner shall,
within 60 days of such filing, [approve or disapprove the filing,
13 except that the commissioner may, for good cause, extend by not
more than 60 days the period for approving or disapproving the
15 filing. Failure to act within the period allowed for the
commissioner's review of the filing shall be deemed approval of
17 the filing, except that the running of the period shall be tolled by
a request for] determine whether the residual market
19 equalization charge which is charged to insureds is sufficient or
whether it is in excess of the needs of the association. In the
21 event that the commissioner determines that the charge is
excessive, he shall order an appropriate reduction, which shall be
23 applicable to all policies issued or renewed on or after the date of
the commissioner's order. The commissioner may request
25 additional information [by the commissioner or until] from the
association and if the association notifies the commissioner that
27 it will not provide such additional information, [together with] it
shall state the reason for not supplying the information. [Failure
29 to comply with a reasonable request for information may be a
ground for disapproving all or part of the filing. If the
31 commissioner disapproves all or part of the filing, he shall state
the reasons for such disapproval, and indicate such portion of the
33 filing he approves. Such disapproval shall be subject to review by
the Appellate Division of the Superior Court.]

35 c. [The residual market equalization charge last approved by
the commissioner shall continue to apply while the application for
37 the revised charge is being processed by the commissioner
pursuant to this section.] (Deleted by amendment, P.L. .C. .)

1 d. The residual market equalization charge per insured vehicle
shall be collected [following the effective date of such approval.]
3 by the insurer from its policyholders, exclusive of principal
operators 65 years of age or older, on a uniform net direct car
5 year of liability exposure basis and a net direct car year of
physical damage exposure basis. Any insurer or rating
7 organization making a residual market equalization charge
pursuant to this subsection shall, 15 days prior to the date of the
9 implementation of the proposed rate adjustment, make an
informational filing with the commissioner, documenting
11 compliance with the established method of distributing such
residual market equalization charge.

13 e. Any insurer licensed to transact automobile insurance after
the effective date of this act shall become a member of the
15 association upon receiving such license and the determination of
any such insurer's participation in the association shall be made
17 as of the date of such membership in the same manner as for all
other members of the association.

19 f. For the purposes of this section and any other applicable
provision of law, except as provided in section 2 of P.L.1968,
21 c.158 (C.17:29C-7), the residual market equalization charge shall
not be considered insurance premium unless otherwise
23 specifically provided therein.

(cf: P.L.1985, c.520, s.3)

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

27 25. Notwithstanding the provisions of section 7 of P.L.1983,
c.65 (C.17:29A-36), the rates used by the association shall be as
29 follows:

a. On January 1, 1989, the territorial base rates used by the
31 association for policies issued or renewed following that date for
qualified applicants or association insureds who, for the three
33 years preceding the date of issuance or renewal, (1) have been
convicted of two or more moving violations, or have received
35 four or more motor vehicle points, whichever is less; or (2) have
had one or more at-fault accidents shall be adjusted by the
37 commissioner so that they exceed the territorial base rates under
the rating plan for standard insureds which is used by the rating
39 bureau which files rates for the greatest number of insurers

1 transacting private passenger automobile insurance in the
voluntary market in this State by 10%. Qualified applicants or
3 association insureds who have not had such accidents or moving
violations or motor vehicle points in the three years preceding
5 the issuance or renewal shall be rated under the rating plan for
standard insureds which is used by the rating bureau which files
7 rates for the greatest number of insurers transacting private
passenger automobile insurance in the voluntary market in this
9 State.

b. On January 1, 1990, the territorial base rates used by the
11 association for policies issued or renewed following that date for
qualified applicants or association insureds who, for the three
13 years preceding the date of issuance or renewal, (1) have been
convicted of two or more moving violations, or have received
15 four or more motor vehicle points, whichever is less; or (2) have
had one or more at-fault accidents shall be adjusted by the
17 commissioner [based on the needs of the association pursuant to a
filing made with the commissioner by the association no later
19 than October 1, 1989. The commissioner may adjust the
association rates] so that they exceed the territorial base rates
21 under the rating plan for standard insureds which are used by the
rating bureau which files rates for the greatest number of
23 insurers transacting private passenger automobile insurance in
the voluntary market in this State by [no more than] 20%.
25 Qualified applicants or association insureds who have not had
such accidents or moving violations or motor vehicle points in the
27 three years preceding the issuance or renewal shall be rated
under the rating plan for standard insureds which is used by the
29 rating bureau which files rates for the greatest number of
insurers transacting private passenger automobile insurance in
31 the voluntary market in this State.

c. On January 1, 1991, the territorial base rates used by the
33 association for policies issued or renewed following that date for
qualified applicants or association insureds who, for the three
35 years preceding the date of issuance or renewal, (1) have been
convicted of two or more moving violations, or have received
37 four or more motor vehicle points, whichever is less; or (2) have
had one or more at-fault accidents shall be adjusted by the
39 commissioner [based on the needs of the association pursuant to a

1 filing made with the commissioner by the association no later
2 than October 1, 1990. The commissioner may adjust the
3 association rates] so that they exceed the territorial base rates
4 under the rating plan for standard insureds which are used by the
5 rating bureau which files rates for the greatest number of
6 insurers transacting private passenger automobile insurance in
7 the voluntary market in this State by [no more than] 30%.
8 Qualified applicants or association insureds who have not had
9 such accidents or moving violations or motor vehicle points in the
10 three years preceding the issuance or renewal shall be rated
11 under the rating plan for standard insureds which is used by the
12 rating bureau which files rates for the greatest number of
13 insurers transacting private passenger automobile insurance in
14 the voluntary market in this State.

15 d. On January 1, 1992, the territorial base rates used by the
16 association for policies issued or renewed following that date for
17 qualified applicants or association insureds who, for the three
18 years preceding the date of issuance or renewal, (1) have been
19 convicted of two or more moving violations, or have received
20 four or more motor vehicle points, whichever is less; or (2) have
21 had one or more at-fault accidents shall be adjusted by the
22 commissioner [based on the needs of the association pursuant to a
23 filing made with the commissioner by the association no later
24 than October 1, 1991. The commissioner may adjust the
25 association rates] so that they exceed the territorial base rates
26 under the rating plan for standard insureds which are used by the
27 rating bureau which files rates for the greatest number of
28 insurers transacting private passenger automobile insurance in
29 the voluntary market in this State by [no more than] 40%.
30 Qualified applicants or association insureds who have not had
31 such accidents or moving violations or motor vehicle points in the
32 three years preceding the issuance or renewal shall be rated
33 under the rating plan for standard insureds which is used by the
34 rating bureau which files rates for the greatest number of
35 insurers transacting private passenger automobile insurance in
36 the voluntary market in this State.

37 e. On January 1, 1993, the commissioner shall direct the board
38 to prepare, adopt and file with the commissioner rates which are
39 based upon past and prospective loss experience of the risks

1 underwritten by the association and the expenses attendant
thereto, and which maintain the association on a self-sustaining
3 basis. The commissioner shall approve or disapprove the rates
filed by the board pursuant to the provisions of P.L.1944, c.27
5 (C.17:29A-1 et seq.).

Nothing contained in this subsection shall be deemed to affect
7 the commissioner's ability to continue to maintain any flat
charges (also known as flat capitation fees or policy constants)
9 pursuant to section 1 of P.L.1984, c.1 (C.17:29A-37.1) or any
residual market equalization charge pursuant to section 20 of
11 P.L.1983, c.65 (C.17:30E-8) approved on or before [48 months
following] the effective date of this 1988 amendatory and
13 supplementary act.

f. Nothing contained in subsections a. through e. of this
15 section shall operate to cause the rates charged by the
association to result in revenues to the association which exceed
17 the needs of the association in meeting its obligations and
expenses.

g. The commissioner may order the adjustment of association
19 rates in any territory in which the relationship between the rates
used by the association and the rates used by insurers in the
21 standard voluntary market is such that the voluntary market is
adversely affected.
23

h. The commissioner may order the establishment of
25 association rates which are higher than the rates which are
otherwise provided for by this section, which rates would be
27 applicable to certain drivers, based on their accident or violation
records. The rates applicable to these drivers shall be established
29 additively to the rates otherwise authorized for the use of the
association. shall be spread equably across all classes and
31 territories and may, at the discretion of the commissioner, vary
as to the extent of the at-fault accident or violation records of
33 the drivers.

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

35 3. (New section) a. There is created, in the Department of the
Treasury, the Special Automobile Joint Underwriting Association
37 Loan Reserve Fund. The reserve fund shall be administered by
the State Treasurer in the same manner as other State funds.
39 The reserve fund shall consist of moneys as provided for in this

1 section and the investment income which is earned on those
moneys.

3 b. Beginning with fiscal year 1989, and for the six fiscal years
thereafter, there shall be deposited in the reserve fund all of the
5 proceeds from insurance premium taxes collected pursuant to the
provisions of P.L.1945, c.132 (C.54:18A-1 et seq.) which are
7 attributable to taxes on motor vehicle insurance.

c. The Treasurer shall notify the Commissioner of Insurance at
9 least quarterly as to the balance in the fund.

4. (New section) a. If the commissioner determines that the
11 income of the association is not or will not be sufficient to meet
the obligations of the association after the plan provided for in
13 section 12 of P.L. ,c. (C.) (now pending in the
Legislature as Assembly Bill No. 3702 of 1988), he shall approve,
15 and certify to the State Treasurer, an amount to be drawn from
the reserve fund established pursuant to section 3 of this 1988
17 amendatory and supplementary act.

b. The repayment of any moneys drawn from the fund pursuant
19 to this section which represents money collected in the reserve
fund pursuant to subsection b. of section 3 of this act shall
21 commence no later than five years following the date of the
withdrawal of the money from the reserve fund. Repayment shall
23 be in accordance with an amortization schedule which shall
provide for repayment in not less than six years.

5. (New section) The Commissioner of Insurance may
25 promulgate rules and regulations as he deems necessary to
27 effectuate the purposes of this act.

6. This act shall take effect immediately.

29

31 STATEMENT

33 This bill amends the law creating the New Jersey Automobile
Full Insurance Underwriting Association (P.L.1983, c.65;
35 C.17:30E-1 et seq.) to eliminate the imposition of residual
market equalization charges beyond those in effect as of the
37 effective date of the act.

The bill also establishes a loan fund from the proceeds of the
39 insurance premium tax imposed by P.L.1945, c.132 (C.54:18A-1

1 et seq.) for the use of the joint underwriting association as an
alternative source of funds.

3

5 INSURANCE
Insurance - Automobile

7

Eliminates the residual market equalization charge.

ASSEMBLY, No. 3702
STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 1, 1988

By Assemblymen HARDWICK and HAYTAIAN

1 AN ACT concerning private passenger automobile insurance, and
revising various parts of the statutory law.

3

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

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

25. Notwithstanding the provisions of section 7 of P.L.1983,
9 c.65 (C.17:29A-36), the rates used by the association shall be as
follows:

11 a. On January 1, 1989, the territorial base rates used by the
association for policies issued or renewed following that date for
13 qualified applicants or association insureds who, for the three
years preceding the date of issuance or renewal, (1) have been
15 convicted of two or more moving violations, or have received
17 four or more motor vehicle points, whichever is less; or (2) have
19 had one or more at-fault accidents shall be adjusted by the
commissioner so that they exceed the territorial base rates under
21 the rating plan for standard insureds which is used by the rating
23 bureau which files rates for the greatest number of insurers
25 transacting private passenger automobile insurance in the
27 voluntary market in this State by 10%. Qualified applicants or
association insureds who have not had such accidents or moving
violations or motor vehicle points in the three years preceding
the issuance or renewal shall be rated under the rating plan for
standard insureds which is 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
29 State.

b. On January 1, 1990, the territorial base rates used by the
31 association for policies issued or renewed following that date for
qualified applicants or association insureds who, for the three
33 years preceding the date of issuance or renewal, (1) have been

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

Matter underlined thus is new matter.

1 convicted of two or more moving violations, or have received
2 four or more motor vehicle points, whichever is less; or (2) have
3 had one or more at-fault accidents shall be adjusted by the
4 commissioner [based on the needs of the association pursuant to a
5 filing made with the commissioner by the association no later
6 than October 1, 1989. The commissioner may adjust the
7 association rates] so that they exceed the territorial base rates
8 under the rating plan for standard insureds which are used by the
9 rating bureau which files rates for the greatest number of
10 insurers transacting private passenger automobile insurance in
11 the voluntary market in this State by [no more than] 20%.
12 Qualified applicants or association insureds who have not had
13 such accidents or moving violations or motor vehicle points in the
14 three years preceding the issuance or renewal shall be rated
15 under the rating plan for standard insureds which is used by the
16 rating bureau which files rates for the greatest number of
17 insurers transacting private passenger automobile insurance in
18 the voluntary market in this State.

19 c. On January 1, 1991, the territorial base rates used by the
20 association for policies issued or renewed following that date for
21 qualified applicants or association insureds who, for the three
22 years preceding the date of issuance or renewal, (1) have been
23 convicted of two or more moving violations, or have received
24 four or more motor vehicle points, whichever is less; or (2) have
25 had one or more at-fault accidents shall be adjusted by the
26 commissioner [based on the needs of the association pursuant to a
27 filing made with the commissioner by the association no later
28 than October 1, 1990. The commissioner may adjust the
29 association rates] so that they exceed the territorial base rates
30 under the rating plan for standard insureds which are used by the
31 rating bureau which files rates for the greatest number of
32 insurers transacting private passenger automobile insurance in
33 the voluntary market in this State by [no more than] 30%.
34 Qualified applicants or association insureds who have not had
35 such accidents or moving violations or motor vehicle points in the
36 three years preceding the issuance or renewal shall be rated
37 under the rating plan for standard insureds which is used by the
38 rating bureau which files rates for the greatest number of
39 insurers transacting private passenger automobile insurance in

1 the voluntary market in this State.

3 d. On January 1, 1992, the territorial base rates used by the
association for policies issued or renewed following that date for
5 qualified applicants or association insureds who, for the three
years preceding the date of issuance or renewal, (1) have been
7 convicted of two or more moving violations, or have received
four or more motor vehicle points, whichever is less; or (2) have
9 had one or more at-fault accidents shall be adjusted by the
commissioner [based on the needs of the association pursuant to a
filing made with the commissioner by the association no later
11 than October 1, 1991. The commissioner may adjust the
association rates] so that they exceed the territorial base rates
13 under the rating plan for standard insureds which are used by the
rating bureau which files rates for the greatest number of
15 insurers transacting private passenger automobile insurance in
the voluntary market in this State by [no more than] 40%.
17 Qualified applicants or association insureds who have not had
such accidents or moving violations or motor vehicle points in the
19 three years preceding the issuance or renewal shall be rated
under the rating plan for standard insureds which is used by the
21 rating bureau which files rates for the greatest number of
insurers transacting private passenger automobile insurance in
23 the voluntary market in this State.

e. On January 1, 1993, the commissioner shall direct the board
25 to prepare, adopt and file with the commissioner rates which are
based upon past and prospective loss experience of the risks
27 underwritten by the association and the expenses attendant
thereto, and which maintain the association on a self-sustaining
29 basis. The commissioner shall approve or disapprove the rates
filed by the board pursuant to the provisions of P.L.1944, c.27
31 (C.17:29A-1 et seq.).

Nothing contained in this subsection shall be deemed to affect
33 the commissioner's ability to continue to maintain any flat
charges (also known as flat capitation fees or policy constants)
35 pursuant to section 1 of P.L.1984, c.1 (C.17:29A-37.1) or any
residual market equalization charge pursuant to section 20 of
37 P.L.1983, c.65 (C.17:30E-8) approved on or before 48 months
following the effective date of this 1988 amendatory and
39 supplementary act.

1 f. Nothing contained in subsections a. through e. of this
section shall operate to cause the rates charged by the
3 association to result in revenues to the association which exceed
the needs of the association in meeting its obligations and
5 expenses.

g. The commissioner may order the adjustment of association
7 rates in any territory in which the relationship between the rates
used by the association and the rates used by insurers in the
9 standard voluntary market is such that the voluntary market is
adversely affected.

11 h. The commissioner may order the establishment of
association rates which are higher than the rates which are
13 otherwise provided for by this section, which rates would be
applicable to certain drivers, based on their accident or violation
15 records. The rates applicable to these drivers shall be established
additively to the rates otherwise authorized for the use of the
17 association, shall be spread equably across all classes and
territories and may, at the discretion of the commissioner, vary
19 as to the extent of the at-fault accident or violation records of
the drivers.

21 (cf: P.L. __, c. __, s.21)

2. Section 22 of P.L. __, c. __ (C. __) (now pending in
23 the Legislature as Senate Bill No. 2637 of 1988) is amended to
read as follows:

25 22. Notwithstanding any other provision of law to the
contrary, within 60 days of the effective date of this section, the
27 board of directors of the association shall establish rates for
collision and comprehensive coverages based on the past and
29 prospective loss experience of the association for those
coverages, which shall be filed for approval by the commissioner
31 pursuant to P.L.1944, c.27 (C.17:29A-1 et seq.). Any and all
proceedings relating to a filing made pursuant to this section
33 shall be completed on an expedited basis no later than 30 days
after the date of the filing, and upon terms and conditions
35 established by the commissioner. The rates so established shall,
upon their approval by the commissioner, be applied to all
37 qualified applicants and association insureds who, for the three
years preceding the date of the approval by the commissioner, (1)
39 have been convicted of two or more moving violations, or have

1 received four or more motor vehicle points, whichever is less; or
2 (2) have had one or more at-fault accidents.

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

4 3. Section 23 of P.L. __, c. __ (C. __) (now pending in the
5 Legislature as Senate Bill No. 2637 of 1988) is amended to read
6 as follows:

7 23. a. The [plan of operation] board shall [provide] , within 60
8 days following the effective date of this 1988 amendatory and
9 supplementary act, contract for the establishment of an
10 association data bank to facilitate the dissemination of
11 information regarding association risks to all insurers transacting
12 the business of private passenger automobile insurance in the
13 voluntary market.

14 b. The [plan of operation] board shall establish the type of
15 information which may be made available to insurers, which may
16 include, but not be limited to, the name, address, and
17 classification of the insured, a description of the vehicle, the loss
18 history of the insured, the limits of coverage on the policy, and
19 the producer of record.

20 c. The board shall make this data available to all insurers
21 writing private passenger automobile insurance in the voluntary
22 market in a nondiscriminatory manner to facilitate the insurers'
23 depopulation of the association.

24 d. The establishment of this data bank may be incorporated in
25 the plan of operation of the association, but it shall not require
26 the approval of the commissioner. The data bank[, as established
27 in the plan .] shall be fully operational within [six] five months of
28 the effective date of this section.

29 (cf: P.L. __, c. __ s.23)

30 4. Section 10 of P.L. __, c. __ (C. __) (now pending in the
31 Legislature as Senate Bill No. 2637 of 1988) is amended to read as
32 follows:

33 10. The Commissioner of Insurance shall, within [180] 90 days
34 after the effective date of this 1988 amendatory and
35 supplementary act, promulgate medical fee schedules on a
36 regional basis for the reimbursement of health care providers
37 providing services or equipment for medical expense benefits for
38 which payment is required to be made under the personal injury
39 protection coverage provided for in section 4 of P.L.1972, c.70

1 (C.39:6A-4). These fee schedules shall be promulgated on the
basis of the type of [injury sustained or] service provided, and
3 shall be reviewed biannually by the commissioner.

(cf: P.L. __, c. __ s.10)

5 5. (New section) a. Beginning July 1, 1989, a filer may charge
rates for private passenger automobile insurance in the voluntary
7 market which are not in excess of the following:

(1) For private passenger automobile personal injury protection
9 coverage, residual bodily injury and property damage insurance,
the maximum permissible annual rate increase applicable to each
11 rate level utilized by an insurer in the voluntary market pursuant
to section 6 of P.L. __, c. __ (C. __) (now pending in the
13 Legislature as this bill) shall be a Statewide average rate change
of not more than the last published increase in the medical care
15 services components of the national Consumer Price Index, all
urban consumers, U.S. city average, plus three percentage points.

17 (2) For private passenger automobile physical damage
coverage, the maximum permissible annual rate increase
19 applicable to each rate level utilized by an insurer in the
voluntary market pursuant to section 6 of P.L. __, c. __ (C. __) (now
21 pending in the Legislature as this bill) shall be a Statewide
average rate change of not more than the last published increase
23 in the automobile maintenance and repair components of the
national Consumer Price Index, U.S. city average, plus three
25 percentage points.

b. For the purposes of this section, "Statewide average rate
27 change" means the total Statewide premium for all coverages
combined at the rates in effect at the time of the filing for each
29 rate level.

c. Any change in excess of the rate changes permitted by
31 paragraphs (1) and (2) of subsection a. shall be subject to the
provisions of P.L.1944, c.27 (C.17:29A-1 et seq.)

33 d. If, at any time, the commissioner believes that an increase
in either or both of the published indices will produce rate levels
35 which are excessive, he may modify the Statewide average rate
change which may be used pursuant to this section.

37 e. A filer may implement a change in rate level, pursuant to
subsection a. of this section, in whole or in part, in a single or in
39 multiple filings by making an informational filing with the

1 commissioner in a manner and form approved by the
commissioner. The filing shall include a statement of the reason
3 or reasons for the change in rate level, including, but not limited
to, the claim and expense experience of the individual filer.

5 f. Other than filings made pursuant to subsection c. of this
section, neither the provisions of subsection c. of section 14 of
7 P.L.1944, c.27 (C.17:29A-14), nor the provisions of section 19 of
P.L.1974, c.27 (C.52:27E-18), shall apply to any filing made
9 pursuant to this section.

g. The commissioner shall monitor the implementation and use
11 of flex rating pursuant to this section and shall report his findings
to the Senate Labor, Industry and Professions Committee and the
13 Assembly Insurance Committee, or their successors, including any
legislative proposals, no later than July 1, 1992. This report shall
15 provide an evaluation of the use of this rating mechanism and its
impact on the availability and affordability of private passenger
17 automobile insurance in this State and the depopulation of the
New Jersey Automobile Full Insurance Underwriting Association
19 and shall include any legislative proposals or other
recommendations of the commissioner.

21 6. (New section) a. Notwithstanding the provisions of
P.L.1944, c.27 (C.17:29A-1 et seq.) to the contrary, every insurer
23 transacting or proposing to transact private passenger automobile
insurance may file rating plans in the voluntary market for
25 standard risks, or non-standard risks, or both. A rating plan may
include a good driver discount plan. Within 30 days following the
27 effective date of this 1988 amendatory and supplementary act,
every insurer writing private passenger automobile insurance in
29 this State which intends to write coverage in the voluntary
market using more than one rate level shall file with the
31 commissioner the rates and underwriting rules which are
applicable to each rate level.

33 b. An insurer which intends to use more than one rating plan
and which has a rating plan on file as of the effective date of this
35 1988 amendatory and supplementary act, may make an initial
filing for the additional rating plan in which the modification of
37 the plan on file is expressed as a percentage increase or decrease
of the existing rate level.

39 c. Notwithstanding any other law to the contrary, any rates

1 filed pursuant to subsection b. of this section shall be deemed to
be approved if not disapproved by the commissioner within 60
3 days. Any subsequent modification of any rate level other than
that provided for in section 5 of this 1988 amendatory and
5 supplementary act, or any initial rate level which is not expressed
as a percentage increase or decrease of an existing rate level as
7 provided for in this section, shall be subject to the provisions of
P.L.1944, c.27 (C.17:29A-1 et seq.).

9 d. Any limitation on rates established by the provisions of
section 7 of P.L.1983, c.65 (C.17:29A-36) shall apply separately
11 to each rate level established pursuant to subsection a. of this
section.

13 e. Every insurer shall maintain such data for each rate level as
may be required by the commissioner by regulation for the
15 purpose of determining excess profits pursuant to the provisions
of P.L. c. (C.) (now pending in the Legislature as
17 Senate Bill No. 124 of 1988).

7. (New section) a. Insurers shall put in writing all underwriting
19 rules applicable to each rate level utilized pursuant to section 6
of this 1988 amendatory and supplementary act. No underwriting
21 rule shall operate in such a manner as to assign a risk to a rating
plan solely on the basis of the territory in which the insured
23 resides. An insurer which knowingly fails to transact automobile
insurance consistently with its underwriting rules shall be subject
25 to a fine of not less than \$500.00 for each violation.

b. All underwriting rules applicable to each rate level as
27 provided for in section 6 of this 1988 amendatory and
supplementary act shall be filed with the commissioner and shall
29 be subject to his prior approval. All underwriting rules shall be
subject to public inspection. Insurers shall apply their
31 underwriting rules uniformly and without exception throughout
the State, so that every applicant or insured conforming with the
33 underwriting rules will be insured or renewed, and so that every
applicant or insured not conforming with the underwriting rules
35 will be refused insurance or be nonrenewed.

c. Affiliated insurers shall not adopt underwriting rules for
37 automobile insurance contracts providing identical coverages
which would permit a person to be insured for automobile
39 insurance with more than one of the affiliated insurers.

1 d. An insurer with more than one rating plan for automobile
insurance contracts providing identical coverages shall not adopt
3 underwriting rules which would permit a person to be insured
under more than one of the rating plans.

5 8. (New section) Every insurer which refuses an application for
automobile insurance shall inform the applicant of the reasons for
7 the refusal in writing, and shall include a statement as to whether
the applicant may qualify for insurance from an affiliate of the
9 insurer.

9 9. (New section) The association shall mail to each
11 policyholder on or before January 1, 1990 the following notice,
printed in at least a 10-point type, separately from any other
13 mailing to the policyholder:

15 "Your automobile insurance policy is issued by the New Jersey
automobile joint underwriting association. The purpose of the
association is to insure high risk drivers. As a policyholder of
17 the association, you should be aware that the rates charged on
policies issued by the association will increase substantially
19 over the next four years, until the association becomes
self-supporting. If you are not in the category of high-risk
21 driver, you should be able to buy automobile insurance
coverage with another insurance company at lower rates. To
23 avoid the association rate increases, you should attempt to buy
this coverage elsewhere."

25 10. (New section) The commissioner shall cause to have an
independent full financial and operational audit made of the
27 association. The audit shall include the servicing operations
conducted by its servicing carriers, including, but not limited to,
29 the claims handling practices of those carriers. The audit shall
be completed and a report made to the Legislature no later than
31 November 1, 1988.

33 11. (New section) If any servicing carrier is determined to
have knowingly violated the plan of operation, or any rule of
practice or guideline which has been established in connection
35 therewith, with respect to the handling of claims or the
underwriting of the policies of the association, or if a servicing
37 carrier has been determined to have overcharged the association
with respect to servicing carrier compensation, the servicing
39 carrier shall repay any money owed to the association within 15

1 business days of notification by the association that such money
is due, or shall pay the association interest on the money due at a
3 rate determined by the commissioner. If the servicing carrier is
determined to have willfully violated the plan of operation, or
5 any rule of practice or guideline which has been established in
connection therewith, with respect to the handling of claims or
7 the underwriting of the policies of the association, or has
willfully overcharged with respect to servicing carrier
9 compensation, the servicing carrier shall be liable for treble
damages.

11 12. (New section) a. Beginning January 1, 1989 and annually
thereafter, the commissioner shall determine whether the income
13 of the association as provided for in paragraphs (1), (2), (3), and
(5) of section 20 of P.L.1983, c.65 (C.17:30E-8), and the residual
15 market equalization charge levied pursuant to paragraph (4) of
that section prior to the effective date of this 1988 amendatory
17 and supplementary act is or will be sufficient to meet its
obligations in the ensuing year. If the commissioner determines
19 that the association has insufficient resources to meet its
obligations, he shall request the board of the association to
21 formulate a plan for the payment of no less than 50% of the
aggregate residual bodily injury losses for which the association is
23 to make payment during the ensuing 12 month period, which plan
shall provide for the payment of these losses in no more than four
25 annual installments. The board shall submit the plan to the
commissioner for his approval. Interest on the balance of the
27 unpaid claim shall be paid at the rate established by subsection
(a) of R.S.31:1-1 for loans in which there is no written contract.

29 b. In addition to the plan provided for in subsection a. of this
section, the commissioner may also request the submission of a
31 plan by the board for the deferral, for a period not to exceed
twelve months, of payments by the association of property
33 damage claims which are subject to subrogation.

c. No residual market equalization charge in excess of the
35 charge levied prior to the effective date of this 1988 amendatory
and supplementary act shall be approved by the commissioner
37 unless the procedures established pursuant to subsection a. or b.
of this section do not provide sufficient revenue for the
39 association to pay its obligations.

27

31 This bill makes a number of revisions to the laws governing
automobile insurance. The bill makes a number modifications to
33 the Governor's conditional veto of Senate Bill No. 2637. It
modifies the provisions of that conditional veto regarding the
35 financial structure of the New Jersey Automobile Full Insurance
Underwriting Association created pursuant to P.L.1983, c.65
37 (C.17:30E-1 et seq.). The bill would require automatic rate
increases of 10% per year for a period of four years until the
39 association's rates become self sustaining. These rate increases

1 would apply only to those drivers in the association who have,
within a three year period, two or more moving violations or four
3 or more motor vehicle points, whichever is less, or who have
at-fault accidents. In addition, the rates for collision and
5 comprehensive coverage written by the association would be
increased for those drivers who have such accidents and
7 violations or motor vehicle points.

The bill would require that a notice be sent to all drivers who
9 have joint underwriting association policies informing them that
the rate levels in the association will increase substantially and
11 that they may wish to try to find coverage in the voluntary
market.

13 The bill gives the Commissioner of Insurance the authority to
require the board of the joint underwriting association to
15 formulate a plan for the payment of no less than 50% of the total
association payments for residual bodily injury coverage to
17 insureds in no more than four annual installments. This device
will help to alleviate the association's cash flow problems and
19 will obviate the need for further residual market equalization
charges (RMECs) to fund the association's anticipated cash
21 shortfall. The board would also be given the authority to defer
certain payments which are subject to subrogation. The
23 commissioner would be precluded from instituting a RMEC until
the deferral procedure had been employed.

25 The bill also provides for an audit of the joint underwriting
association, and penalties for association servicing carriers who
27 violate the plan of operation of the association.

The bill amends the language of the conditional veto of Senate
29 Bill No. 2637 to require the establishment of the joint
underwriting association data bank in a more timely manner, and
31 leaves this task to the board of the association. The purpose of
the data bank is to eliminate, or at least meliorate, the unfair
33 advantage which servicing carriers might have over other insurers
in terms of selecting insureds to take out of the association. For
35 this reason, it is deemed necessary to bring this about as
expeditiously as possible.

37 The bill modifies the flex rating provision of the conditional
veto by establishing a flex rating index based on the Consumer
39 Price Index. The bill also permits the establishment of a

1 multi-tier rating system in the voluntary market. The purpose of
this provision is to ameliorate the effect of writing higher risk
3 drivers in the voluntary market; if the voluntary market had only
one rate level, the losses of the higher risk drivers being newly
5 written in the voluntary market would increase that rate level
substantially. Insurers would be required to have underwriting
7 rules for each rate level approved by the commissioner, and
would be required to apply them uniformly, in a
9 non-discriminatory manner.

11

INSURANCE

13

Insurance - Automobile

15

Makes various changes in the laws governing automobile
insurance.

ASSEMBLY, No. 3703
STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 1, 1988

By Assemblymen ZECKER, KELLY, Palaia, Miller,
Stuhltrager, Penn, Littell, Schluter, Kavanaugh,
Roma and Assemblywoman Randall

1 **AN ACT** creating an insurance fraud prosecutor in but not of the
2 Department of Insurance to investigate and prosecute
3 automobile insurance fraud, supplementing Title 17 of the New
4 Jersey Statutes and making an appropriation.

5

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

8 1. a. There is created in but not of the Department of
9 Insurance an insurance fraud prosecutor to investigate and
10 prosecute all civil and criminal violations of P.L.1983, c.65
11 (C.17:30E-1 et seq.) and the plan of operation of the New Jersey
12 Automobile Full Insurance Underwriting Association created
13 pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) and P.L.1983,
14 c.320 (C.17:33A-1 et seq.) which involve claims for payment or
15 other benefits pursuant to an automobile insurance policy.

16 b. The insurance fraud prosecutor created by this act shall be
17 appointed by the Governor with the advise and consent of the
18 Senate, and shall serve during the term of office of the Governor
19 appointing him and until his successor is appointed and has
20 qualified. The insurance fraud prosecutor shall receive an annual
21 salary in the same amount as that payable to a judge of the
22 Superior Court.

23 2. a. Notwithstanding any law to the contrary, the insurance
24 fraud prosecutor created pursuant to this act shall have full
25 power and independent authority to exercise all investigative and
26 prosecutorial functions and powers of the Commissioner of the
27 Department of Insurance, the Attorney General and any other
28 officer or employee of the Department of Insurance or the
29 Department of Law and Public Safety.

30 b. These investigative and prosecutorial functions and powers
31 include:

- 32 (1) conducting proceedings before State grand juries;
- 33 (2) participating in court proceedings and engaging in any
34 litigation, including civil and criminal matters, that the insurance
35 fraud prosecutor deems necessary;

1 (3) appealing any decision of a court in any case or proceeding
in which the insurance fraud prosecutor participates in an official
3 capacity;

4 (4) reviewing all documentary evidence available from any
5 source;

6 (5) determining whether to contest the assertion of any
7 testimonial privilege;

8 (6) initiating and conducting prosecutions in any court of
9 competent jurisdiction, framing and signing indictments and
handling all aspects of any case, in the name of the State of New
11 Jersey; and

12 (7) consulting with the United States attorney for the district
13 in which any violation of law within the prosecutorial jurisdiction
of the insurance fraud prosecutor is alleged to have occurred.

14 3. The insurance fraud prosecutor may appoint, fix the
15 compensation, and assign the duties of such employees as he
16 considers necessary, including investigators, attorneys, and
17 part-time consultants.

18 4. The insurance fraud prosecutor may request assistance from
the Department of Insurance and the Department of Law and
21 Public Safety in carrying out his functions and the Department of
Insurance and the Department of Law and Public Safety shall
23 provide this assistance, including access to any records, files, or
other materials relevant to matters within the prosecutorial
25 jurisdiction of the insurance fraud prosecutor and the use of the
resources and personnel necessary to perform his duties.

26 5. a. The insurance fraud prosecutor may ask the Attorney
27 General to refer matters within his prosecutorial jurisdiction, and
the Attorney General shall refer these matters. If the Attorney
29 General refers a matter on the Attorney General's own
initiative, the insurance fraud prosecutor may accept the referral
31 if the matter relates to his prosecutorial jurisdiction.

32 b. The insurance fraud prosecutor may refer any matter within
his prosecutorial jurisdiction to the Attorney General, in which
35 event the Attorney General shall accept the matter and conduct
all investigations and proceedings regarding the matter.

36 c. Whenever a matter is in the prosecutorial jurisdiction of the
insurance fraud prosecutor or has been accepted by him, the
39 Department of Law and Public Safety and the Attorney General

1 shall suspend all investigations and proceedings regarding such
2 matter, except insofar as the insurance fraud prosecutor agrees
3 in writing that the investigations or proceedings may be
4 continued by the Department of Law and Public Safety and the
5 Attorney General.

6. In any action brought pursuant to this act, in addition to any
7 criminal penalty that might be imposed, the court may also
8 impose the civil penalties provided in section 5 of P.L.1983, c.329
9 (C.17:33A-5).

10. The insurance fraud prosecutor created pursuant to this act
11 shall report annually to the Governor, the Legislature and the
12 Department of Insurance concerning his activities.

13 8. Each insurer shall pay an annual fee of \$.50 for each insured
14 automobile for the purpose of funding the office of the insurance
15 fraud prosecutor created pursuant to this act.

16 9. There is appropriated to the Department of Insurance from
17 the General Fund the sum of \$500,000 to effectuate the purposes
18 of this act.

19 10. This act shall take effect immediately.

20 STATEMENT

21
22 This bill creates an insurance fraud prosecutor in, but not of
23 the Department of Insurance to investigate and prosecute
24 automobile insurance fraud, including consumer fraud and
25 violations the plan of operation of the New Jersey Automobile
26 Full Insurance Underwriting Association, the "JUA". The
27 insurance fraud prosecutor shall be appointed by the Governor
28 with the advise and consent of the Senate and shall serve during
29 the term of office of the appointing Governor.

30 The insurance fraud prosecutor shall have full power and
31 independent authority to exercise all investigative and
32 prosecutorial functions and powers of the Commissioner of the
33 Department of Insurance and the Attorney General including
34 conducting State grand jury and court proceedings.

35 The insurance fraud prosecutor may request assistance from
36 the Departments of Insurance and Law and Public Safety and
37 these departments shall provide assistance including access to

1 any records, files or other materials relevant to matters within
the prosecutorial jurisdiction of the insurance fraud prosecutor.

3 Whenever a matter is in the prosecutorial jurisdiction of the
insurance fraud prosecutor, the Attorney General shall suspend
5 all investigations and proceedings unless the insurance fraud
prosecutor agrees in writing that they may be continued. The
7 insurance fraud prosecutor may refer matters to the Attorney
General and the Attorney General may refer matters to the
9 insurance fraud prosecutor.

The bill appropriates \$500,000 to the Department of Insurance
11 to carry out the purposes of the act and imposes a \$.50 surcharge
on insurance companies for each insured automobile to fund the
13 office of the insurance fraud prosecutor.

15

STATE GOVERNMENT

17

State Officers and Boards

19 Creates a prosecutor in but not of the Department of Insurance
to investigate and prosecute automobile insurance fraud:
21 appropriates \$500,000.

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* * * * *

SENATOR RAYMOND LESNIAK (Chairman): May I please have everyone's attention? The Committee hearing will come to order. I wanted to wait for the Commissioner to appear to begin the hearing, because I think he is pivotal to the discussions on these bills. But, since he is not here at this moment, we will begin the hearing without him. As soon as he comes in, he will be called to testify.

I would like to also enter into the record three statements on behalf of people who requested that they be entered, but who will not be here personally to testify on the bills: First, from Feather O'Connor, the State Treasurer, who submits her position on A-3701; A-3701 being Assemblymen Lovey's and Littell's bill, which eliminates the residual market equalization charge. The statement says: "The Department of the Treasury is opposed to A-3701."

The Association of Trial Lawyers of America have sent their comments on A-3702 and A-3703. They will be entered into the record.

Also, the Public Advocate has a statement on A-3702. It appears to be on just A-3702. That will be entered into the record. Could you distribute this statement to the Committee members, so that they can consider it at this time?

MR. DAVIS: (Committee aide) Yes.

SENATOR LESNIAK: I will start off again, until the Commissioner arrives, with Ed McCool, from Common Cause.

E D W A R D A. M c C O O L: Thank you very much, Mr. Chairman. I just have questions, essentially, about the legislation as proposed.

SENATOR LESNIAK: See, that is one of the reasons why I wanted the Department of Insurance and the sponsors to testify first. Do you want to wait until--

MR. McCOOL: Sure. Well, if it means that I speak now and do not get the answers, yeah, I would rather wait and find out some answers.

SENATOR LESNIAK: Okay, maybe we will hold you off, then. How about Brian Kelly, from the New Jersey Bar Association?

B R I A N J. K E L L Y, E S Q.: Thank you, Mr. Chairman.

In reviewing this legislation, it is clear that this is an attempt to remove some of the perceived inequities in Chapter 119, which has already been enacted. The attempt is to eliminate the inequities by eliminating additional surcharges, by creating a JUA data bank, so that--

SENATOR JACKMAN: What bill are you talking about?

MR. KELLY: I am actually speaking on A-3701 and A-3702, because they do interrelate.

SENATOR JACKMAN: All right.

MR. KELLY: The thrust of the legislation, it appears to me, is to eliminate the subsidization of bad drivers by good drivers. But there is an illogical--

SENATOR LESNIAK: Excuse me. (consultation among Committee members). Go ahead.

MR. KELLY: Although the thrust of the bill is to prevent, or to discontinue the subsidization of bad drivers by good drivers, the provision I am the most concerned about -- the Bar Association is most concerned about -- is the provision of A-3702 which would essentially perpetuate this subsidization by requiring that if the JUA had a shortfall, payments for residual injury would be structured. The result of that is that-- The illogicality of it is that an individual who is insured in the voluntary market, and who is hit by someone -- is injured by someone -- insured in the JUA, would be covered to a less extent -- a lesser extent than someone who is in a reverse situation.

It is simply not fair. It almost rises to a constitutional question of equal protection. You've got a situation where an individual has paid his entire premium. He has a contract to receive full benefit. That is interfered

with by virtue of this legislation. He would not get full recovery, but rather would get a structured payout of something he is entitled to, that he has been awarded by a jury.

We have a tremendous objection to that. We think that defeats the civil justice system. It simply perpetuates the subsidization of bad drivers by good drivers, when all of these bills seem to be leaning toward doing just the opposite of that.

With respect to Assembly Bill 3703, which creates essentially a special prosecutor, we strongly believe that the Attorney General has the authority at the present time to conduct such an investigation, and we think the authority of the Attorney General is sufficient. We think that the resources that the Attorney General has at his disposal can very well accomplish this, without setting up a separate officer to do it.

Others, I know, will speak about other portions of the legislation. But, we are very sensitive to this issue of structured payouts. We hope the Committee can see that the inequity in these bills is eliminated, so that such a result does not occur.

We also have a problem with the General Treasury coming to the aid of the Joint Underwriting Association, because that further spreads the risk to people, in fact, who do not even drive. It is a burden on all taxpayers when the JUA is bailed out by general revenues.

So, for those reasons, we would oppose all of these bills.

SENATOR LESNIAK: Are there any questions? Senator Cardinale?

SENATOR CARDINALE: It occurs to me that the reason structured payments are suggested, is that the money that is going to be used to take care of the individual's problem as a result of an accident-- It is not going to be spent all in one day. It is going to be spent over a period of time, so that

the victim, or the person who is being awarded those sums, is not really disadvantaged in a cash flow sense at all, because he will be able to get treatment, or whatever.

But, the point you make about contract rights being interfered with-- If we pass this legislation, then that becomes an anticipated portion of the contract, and the major overall thrust of this seems to me to be a response to a public desire to have lower premiums, whether they are lowered, or just not increased as much in the future. Provisions such as this seem to me to become part of the contract and to respond to the public's asking for lower rates.

Now, I just don't see how you can indicate that it is an interference with the contract rights, when this actually is an amendment, in a sense, to the contract, that people are going to get now and are going to get in the subsequent plan.

MR. KELLY: I think my point really is, these are people who have been injured and who, in fact-- You talk about cash flow. These people perhaps have experienced already the so-called pain and suffering that we talk about. They have experienced that, and they are entitled to be compensated for it. This would prohibit that.

I could suggest an amendment perhaps which would solve that problem, which would give the injured person his due, and at the same time solve the problem with the JUA. That would be to allow the insurance company to pay their insured that full amount, and then to allow the insurance company to stand in the shoes of the person who was injured, and to receive that structured payout from the Joint Underwriting Association. I might suggest that that might be a way.

If you are inclined to do that -- and we would suggest that you don't structure payouts -- it is a way to give a person who has been injured, and who has been awarded that money, his due, and at the same time satisfy the problems which you have identified in the Joint Underwriting Association.

SENATOR CARDINALE: Do you believe an insurance company would be able to lower the rates if they received a structured payment and made the cash available immediately?

MR. KELLY: Well, I think that is between--

SENATOR CARDINALE: Would you do that? Would you lend me \$100,000 and take a structured payment of \$10,000 a year?

MR. KELLY: It's not a fair analogy. We're talking about insurance companies that have been profitable. And we're talking about the rights of an insurance company, as opposed to the rights of a person who has been injured, and who has insured himself against injury. I think that is-- When I balance the inequities, I come out on the side of the person who has been injured.

SENATOR LESNIAK: Are there any other questions from the Committee members? (no response) Thank you, Mr. Kelly.

Dennis Crowley, Department of Law and Public Safety? At least we have one department here.

UNIDENTIFIED SPEAKER FROM AUDIENCE: He has not arrived yet.

SENATOR LESNIAK: Oh, okay. Ed, are the departments boycotting this hearing?

MR. McCOOL: No.

MR. DAVIS: There are too many other meetings.

SENATOR JACKMAN: What do you mean he's not here?

SENATOR LESNIAK: I construe him not being here as he is not here.

SENATOR JACKMAN: Is he coming? I'll subpoena him.

MR. DAVIS: No, he's coming.

SENATOR LESNIAK: Okay. Ed Palsho, New Jersey Manufacturers?

E D W A R D R. P A L S H O, E S Q.: Mr. Chairman and members of the Committee: I am going to be very brief, because I assume a lot of people are going to have a lot to say about all of these bills. In general terms, you know, we oppose

A-3701, a-3702, and A-3703, but, if I may, I would like to confine my comments to just two of the provisions in A-3702.

We support the idea that the good driver discount plan in A-3702 is optional, rather than mandatory. We like the flexibility that gives the companies, and New Jersey Manufacturers historically has always favored that type of system. At the same time, we oppose strongly the mandatory underwriting guidelines for basically the same reasons that we support the optional good driver discount. The current law, the conditional veto of S-2790, has a present mandatory good driver discount and, if possible, we would like to see that amended to make it optional.

I really have nothing else to add, other than the comments that are contained in my written statement, which has been distributed.

SENATOR LESNIAK: Are there any questions from the Committee? (no response) All right, thank you. Your statement will be entered into the record.

Gus Nasmith, National Association of Independent Insurers?

AUGUSTUS NASMITH, ESQ.: Mr. Chairman, I won't read my statement; I will try to summarize it. I guess I would say that we suggest that A-3701 not be released, nor A-3703. At minimum, we suggest section 7 of A-3702 be deleted.

With respect to A-3701, it pledges about \$50 million or \$60 million to the JUA deficit from the motor vehicle portion of insurance premium taxes. But, in our opinion, based on City of Camden v. Byrne, one of our Supreme Court decisions, I think, in 1980, this legislative pledge is not binding because appropriations into or from the general State revenues have to be done through the appropriation bill process.

With respect to A-3703, we think it creates an insurance prosecutor as a roving czar. We think the waters have been muddied already with the Public Advocate's

jurisdiction, and we think to further muddy the waters with this new creation is unproductive.

As to A-3702, like New Jersey Manufacturers, we believe that to place the Commissioner in full charge of all underwriting rules-- We specified how they would all be engraved in bronze if you follow this. No company could have any leeway, either to give an insured a break or to exclude somebody whom I think any person might agree was a bad risk. But if your rules didn't specify that particular characteristic, you couldn't keep them out. You would have to give them a better right than they deserve.

I think that summarizes our position, and I hope you will read the statement.

SENATOR LESNIAK: Okay, your statement will be entered into the record. Any questions from the Committee? (no response) Thank you, Mr. Nasmith.

Does anyone know where the Insurance Commissioner is? Does anyone have any idea?

UNIDENTIFIED SPEAKER FROM AUDIENCE: I placed a phone call and left a message for him to--

SENATOR JACKMAN: That's why we have the problems we have today, because guys don't want to show up.

SENATOR LESNIAK: Wesley Caldwell, Alliance of American Insurers?

SENATOR JACKMAN: And they get paid 95 big ones a year. (laughter)

SENATOR LESNIAK: By the way, just to keep Dale Davis in line, what I'm doing is going in reverse order of the way he listed the witnesses.

W E S L E Y S. C A L D W E L L, III, E S Q.: That's very nice of you, Mr. Chairman. When I want to go last, you put me on early.

Good afternoon, Mr. Chairman and members of the Committee. I am Wes Caldwell. I am an attorney with the law

firm of LeBoeuf, Lamb, Leiby & MacRae, and I represent the Alliance of American Insurers. We support the ongoing efforts of the legislative leadership and the Governor to continue efforts at auto insurance reform. Your bill, Senator, was a good step in the right direction, but certainly improvements can be made, and I think the bills before the Committee are intended to do so.

I would like to deal with the easy bills first. Assembly Bill 3703, which would establish a new special prosecutor, in our view, should not be given serious consideration. We remember not too long ago, when the Legislature felt the need to address the issue of insurance fraud, and created a new division in the Department of Insurance charged with that task. The cost of that division is passed on to the insurance industry in the form of assessments, and its budget has grown quite rapidly over the last five years.

Assembly Bill 3701, I think, is another one that is relatively easy to discuss. In some respects, it overlaps 3702, but its salient feature is the creation of a backup loan fund within the General Fund. We support this because we believe, for a number of reasons, the JUA may still face a cash crisis as we go through the depopulation program.

We know that some of the reforms that were recently enacted, of necessity will reduce JUA cash flow to the extent that PIP coverage has been reduced, and to the extent that we now have a stronger threshold and higher collision and comprehensive deductibles. Premiums will be reduced in the JUA. At the same time, we will be taking out drivers from the JUA, so that the number of premium payers will be reduced. We don't have any actuarial study, but I think those simple facts indicate to us that a cash crisis is likely, and that a backup loan mechanism might be a good idea.

I would like to turn now to the more difficult bill to discuss, which is Assembly Bill 3702. In our view, A-3702 has

some good features and some bad ones. On the plus side, there is a stronger flex rating provision in the bill with the linkage of the percentage range that might be allowed to various components of the Consumer Price Index. We are very concerned that under the existing law-- Senator Lesniak, I might note for the record that when the Senate passed -- repassed -- your bill after the first time when it came back from the Assembly, the provisions on the flex rating were the Assembly provisions -- the stronger ones -- that wound up in your bill as it went back to the Assembly. But we are concerned that the Commissioner may be making political decisions in establishing the flex range. We would like to see his discretion curtailed to some extent by a linkage -- an even stronger linkage with the CPI. We think it should be mandatory.

Secondly, the multi-tiered rating that is authorized under this bill, we believe, is a good idea. The current law mandates good driver discount plans, but does not make any provision for substandard rates. We are convinced that in order for the voluntary market to open up and to work effectively, there must be a provision for the poorer risks that come out of the JUA to be written at substandard rates. If not, if those substandard drivers, as we dig into the JUA barrel deeper and pull out risks-- If companies have to write them at standard rates, what will happen is that the costs for standard rates will go up and, in effect, the standard drivers will be subsidizing the substandard drivers. We don't think that will be any more popular with the public than the residual market equalization charges.

Another good provision of the bill is a stronger set of provisions dealing with the decoupling of JUA rate levels with the voluntary market. The law we have today mandates a 10% increase in JUA rate levels in January, but thereafter allows the Commissioner discretion to go up two additional 10% rate increases in future years. The bill before you would

mandate these additional 10% increases. The goal in either case is the same. It is to get to self-sustaining rates in the JUA. But getting there is not going to be easy, and we don't think it should be subject to, again, political decisions.

So, if the law simply mandates the increases to that extent, the Commissioner is off the hook politically for what happens as the JUA tries to reach a self-sustaining level. Negatives in the bill, in our view-- There are two provisions which will have a direct negative impact on JUA income. One would exempt good drivers from the self-sustaining collision and comprehensive rates that are mandated by the new law. And the second would exempt good drivers from future JUA rate level increases. Our position is not really based on social policy, but the question is, if we are correct that the other factors we have discussed earlier will have a likelihood of creating a cash crisis in the JUA, then these provisions will just move up the timetable and the likelihood of that occurring.

To some extent, your decision on these particular provisions may be directly related to whether you favor the idea of a backup loan fund, because all of these things that will have a negative impact on JUA cash income can be counterbalanced by some ability of the JUA to get over the hurdle as the depopulation program unfolds.

The most worrisome provision in the bill, from our standpoint, is the provision that requires prior approval of underwriting guidelines. We doubt whether the Insurance Department can cope with approving complex sets of underwriting guidelines from every insurer writing auto insurance in New Jersey. We are not sure whether all of us can cope with what is required under the new legislation, but adding another monumental task does not strike us as a particularly good idea.

I think to some extent the drafters may have forgotten some of the lessons of history in New Jersey. We remember not too many years ago when New Jersey was in the midst of a

commercial liability crisis, and the Commissioner of Insurance and the Governor announced emergency regulations aimed at abuses and cancellations and nonrenewals. The original regulation required prior approval of underwriting guidelines. Within a few months of what was then a jittery commercial insurance market, it became one of total chaos. The reason was simple: It was regulatory paralysis. Well-meaning public servants at the Insurance Department simply did not know what underwriting guidelines to approve or disapprove, so they did nothing. Nobody knew what the rules were. Everybody scrambled to protect themselves. And eventually after some months, the Insurance Department realized that it was more a part of the problem than the solution, and it revised the regulation, so that now under the commercial cancellation regulation, insurers may use their own underwriting guidelines, so long as they are consistent with the general standard which prohibits arbitrary, capricious, or unfairly discriminatory guidelines.

We think there is a lesson to be learned, and that there is no need here for another new burdensome, bureaucratic mechanism for approving underwriting guidelines.

There are also two technical problems in the bill. They deal with the requirement that there be mutually exclusive rating tiers for companies that use multi-tiered rating. One problem is that there will be forced nonrenewals. As we read the legislation, if a risk no longer meets the guidelines upon renewal, you must nonrenew it. This could definitely conflict with the 2% limitation on nonrenewals, but it would also inhibit companies from changing underwriting guidelines. Any time you made a change, you may be excluding a new group of people from your underwriting guidelines, and that would mandate that you nonrenew them.

We think the solution to this technical problem is to-- Oh, there is another one, I'm sorry. I forgot to mention that we don't know what to do with assignments that may be

coming to companies that won't meet the underwriting guidelines. The solution, in our view, is if the wording requiring mutually exclusive rating categories-- That should only apply to new policies, and only to policies that are voluntarily written by the companies, rather than the ones assigned to them.

There is also a second technical problem. Some time ago, I submitted some language to your staff that I think would correct it. As worded now, section 7 b. of A-3702 seems to require that a company write every risk that is presented to it that meets underwriting guidelines. This would take no account of a company's capacity, for example. A given company may decide that in a year its surplus can expand its writings in New Jersey by 10%, but the wording in the bill seems to say that if suddenly everybody wants to become a State Farm insured, and they knock on State Farm's door, State Farm must write the policy. But as I have said, I have submitted language to your staff that would correct that problem.

I would be happy to answer any questions.

SENATOR LESNIAK: Are there any questions from the Committee? (no response) Thank you, Wes.

And now, the moment we have all been awaiting. The Commissioner of the Department of Insurance, Ken Merin, makes his appearance. Can we have Assemblyman Hardwick and Assemblyman Loveys come to the fore, because they will be called after the Commissioner?

COMMISSIONER KENNETH D. MERIN: Mr. Chairman, members of the Committee: First, let me apologize if there has been any confusion. I have been fighting a losing battle with the flu, or some kind of a bug, all week. I was under the impression that I was the second or third speaker. So, I do apologize.

SENATOR LESNIAK: You were the third witness under Senator Davis' schedule. (laughter)

COMMISSIONER MERIN: I apologize for any delay.

SENATOR JACKMAN: We had a subpoena out for you.

COMMISSIONER MERIN: I know how accurate Senator Davis' schedule usually is.

With me today is Bob King, who is legislative counsel for the Department. What I would like to do, if it is okay with you, is just kind of rattle off some of the concerns we have about the proposal, as well as some of the positive things we have to say about it. I will try not to elaborate in too much detail, but if you do have further questions, I would be happy to try to respond to them.

One provision of A-3701 calls for the establishment of a loan fund that would be established by dedicated motor vehicle insurance premium taxes. I don't think there is any commissioner in this administration that would speak on the dedication of premium taxes. At least I say that I don't feel comfortable doing that. That is an area that, in my opinion, has always been left to the Governor's office and to the Treasurer's office -- the Director of Taxation. I know there is money that is necessary to fund the JUA. If the State, in its infinite wisdom, decides that premium taxes, or some other tax is the way to go, so be it, but I do not have a preference for one source of funding. If premium taxes are to be used, that is a question for the administration, since it is the Governor's office and the Treasurer's office that put together the budget.

Another section of both A-3701 and A-3702 deals with the identification of poor risks as those JUA's insureds who, during a three-year period, would have been convicted of two or more violations, or acquired four or more Motor Vehicle points, or had one or more at-fault accidents. This would include only 40% of the JUA. As a matter of fact, it would probably be less than that, since only 60% of the JUA drivers have physical damage coverage. Therefore, since their increase is in both

physical damage, as well as in the liability coverages, this provision would limit the flexibility that the Commissioner of Insurance might have to deal with producing those revenues necessary to ensure that another RMEC would not be necessary.

Another proposal would require the JUA Board to contract for a data bank within 60 days of enactment of the bill, and would require the data bank to be operational within five, rather than six months, as is the case under the current legislation. We are currently working to put that data bank together. We do not think that five months gives us sufficient time.

The other important thing to note here is, under the current law, the plan has to be adopted within the JUA plan of operation, which gives the Department of Insurance some leverage, or some control. The proposal would give it totally to the Board of Directors of the JUA. Obviously, we feel that we would like as much control over that as possible. If you choose to go with the bill, that is really the key issue: Where do you want the control?

The medical fee schedule issue-- This proposal would call for the fee schedule to be established within 90 days of January 1, 1989, and it eliminates reference to fees based upon the type of injury sustained. We have no intention of doing this based on the type of injury sustained, so we have no objection to that portion of the bill. I do not think it is possible to adopt a fee schedule within 90 days. The current schedule says 180 days. We are, as I said, attempting to implement that. We will be contracting with specialists from the private sector. Although I would like to do this within 90 days, I just don't think it is possible for us to do it. But again, I would support the second segment of that proposal.

SENATOR DiFRANCESCO: That's 90 days from January 1?

COMMISSIONER MERIN: Yes, or 180 days from January 1 under the conditional vehicle.

The next proposal is the indexed flex bands. This would establish the flex bands, tying it to specific components of the Consumer Price Index, plus 3%. The current law allows the Commissioner to set the flex bands.

The current proposal -- the current law, I'm sorry -- does give due consideration to the CPI. That is a segment of the recently enacted legislation. While the CPI index does work well in times of inflationary stability, it can cause dramatic changes should the economic environment change. The advantage of the current law is that, again, there is more flexibility. Had this provision been in effect since 1983, the rate increases over the years would have resulted in a 57% increase in liability coverage, and a 37% increase in physical damage coverage.

SENATOR LESNIAK: Could you repeat that?

COMMISSIONER MERIN: A 57% increase in--

SENATOR LESNIAK: The whole statement; the whole statement from the beginning.

COMMISSIONER MERIN: Had this provision been in effect since 1983 -- in other words, since -- or January 1, 1984, when the JUA was established -- the permissive rate increases would have resulted in a 57.8% affluent increase for liability, and a 37% increase in physical damage coverage.

SENATOR LESNIAK: How much, in fact, did the rates go up over that period of time?

COMMISSIONER MERIN: The rates went up less than that. For the JUA, the rates probably should have gone up more for liability and more for physical damage.

SENATOR LESNIAK: But during that four-year period of time, how much, in fact, did the rates go up in both?

COMMISSIONER MERIN: The only ISO rate increase granted from January 1, 1984 until now was the recently approved-- What was the recent rate increase? (addressed to his associate sitting beside him; response indiscernible) I forget the most recently enacted--

SENATOR LESNIAK: It was around 13% -- somewhere around there.

COMMISSIONER MERIN: It was somewhere around 13%, 12% or 13% -- 13.1%, 13.4%, or something like that. The flex bands for the JUA, however-- The needs would have been greater than this. The only thing I am trying to say is-- I am not even trying to speak for it or against it. I am just trying to say there is more flexibility, I think, inherent in the proposal we have right now. This one, we are just kind of linked to whatever happens with the CPI. It could turn out to be extremely low. The CPI could increase by a very small rate, in which case the band could be as low as 3%, 4%, or 5%. We could enter a period of deflation, in which we could have the reverse take effect. I cannot predict the economy. I think most economists generally have trouble predicting the economy, and I am just a lawyer.

SENATOR DiFRANCESCO: May I ask a question now, or do you want me to wait?

SENATOR LESNIAK: Sure, Don.

SENATOR DiFRANCESCO: On that point -- forget about since 1983 -- under the bill that passed recently, as opposed to this bill, would you have more flexibility with the one in effect now than you would with this bill?

COMMISSIONER MERIN: Yes.

SENATOR DiFRANCESCO: You say, "Yes." Now, flexibility meaning you can go higher with the present law than you can with this bill?

COMMISSIONER MERIN: There is no cap under the current -- under the CV.

SENATOR DiFRANCESCO: You can go as high as you want to?

COMMISSIONER MERIN: Right.

SENATOR DiFRANCESCO: And, this one has a cap?

COMMISSIONER MERIN: With this bill, the cap is 3% more than the CPI. That 3% measure is because of the tendency of the factors involved in auto insurance to outpace the CPI.

SENATOR DiFRANCESCO: Okay. I understand that, then.

COMMISSIONER MERIN: Again, my comments are not directly for or in opposition to this. I am just trying to let you know what we see the impact as being.

Allowing insurers to establish voluntary market rating plans for standard risks, substandard risks, or both-- Currently, under the law, that was not addressed in the conditional veto. Under current law, there is no provision which permits the establishment of a substandard market. But there is no provision in the law which prohibits the establishment. I have had inquiries from various insurance companies about the possibility of establishing a substandard company in this State. I have told those companies that if they were to submit a proposal, I would not have an instant negative reaction. As a matter of fact, I would look to see what the essence of their proposal was; who they would be focusing their attention on; who would be underwritten in that group; and what the rates would be. Those are the relevant factors. I agree that this proposal will encourage insurers to write more voluntary business, and thus depopulate the JUA. On the other hand, insurers could take insureds from the JUA and, instead of putting them in the voluntary market, put them in the substandard companies and charge rates comparable to those in the JUA.

So, I would suggest that as you consider this proposal, you understand that I would construe this to mean that I would have the authority to limit the number -- not the number, but limit the types of people who could be written in substandard companies, and to ensure that the rates in the substandard companies would be lower than the rates in the JUA. The purpose for taking people from the JUA and putting

them in a substandard company is a good one, in the sense that you would insulate the people who are good drivers in the voluntary market from having all of their rates go up. That is the salutary purpose.

On the other hand, if we do implement this, we want to make sure that the people taken from the JUA get into an outfit that is going to provide a lower rate for those in the JUA. I would have to construe the legislation in that fashion.

The next provision mandates a 10% per year rate differential between ISO and the JUA rates between January 1, 1990 through January 1, 1992. Under the current law, the 10% differential is mandated for January 1, 1989 -- for that year. However, the discretionary differential until the JUA becomes self-sufficient is basically up to an additional 10% per year. In other words, the differential can be up to 20% for January 1, 1990, up to 30% for January 1, 1991, and 40% for 1992. It is an "up to." This locks in the additive 10%.

Currently, the trend rate for incurred loss in the JUA is running, I think, between 12% and 16%. There is no doubt that the 10% we have established for January 1, 1989 is valid. My guess is that it is also going to be valid for '90 and '91. What we are trying to do is give ourselves some flexibility. In the event that it was less than 10%, we would have that flexibility. However, if you wish to establish it at 10%, again, I have no problem. It may very well be that that is what the Commissioner does in those years anyway.

The independent financial and operational audit of the JUA by November 1, 1988-- We currently have an audit under way. That audit will be completed by April or May of 1989. We would find it impossible--

SENATOR LESNIAK: Do you mean that you can't do it in 16 days? Let's say you stayed 10 days -- 10 days.

SENATOR DiFRANCESCO: They have been doing it for several months, right?

SENATOR LESNIAK: You can't do it in 10 days?

COMMISSIONER MERIN: It has been under way for about-- We have been trying to contract with people who, we believe, are competent to do this. The two firms we have engaged for this are under way now. They have been at work for well over a month. In their estimation, it is going to take at least six or seven months.

SENATOR LESNIAK: If you had to do an audit by November 1, could you comment on what the quality of that audit would be?

COMMISSIONER MERIN: I just don't think it could be done by November 1, based on what I have been told by the people we are--

SENATOR LESNIAK: That's 10 days away, right? Today is the 20th.

SENATOR JACKMAN: I want to ask something. These three bills that are before us today--

COMMISSIONER MERIN: Yes?

SENATOR JACKMAN: There have been some amendments made to them. Have you read them?

SENATOR LESNIAK: No, there aren't any amendments before this Committee as of yet. There haven't been any amendments proposed by any legislator on this Committee.

SENATOR JACKMAN: I see a thing here that says, "Amendments."

SENATOR LESNIAK: Nobody has moved them yet.

SENATOR JACKMAN: Well, I mean, but they are there.

SENATOR LESNIAK: Do you mean proposed amendments that may or may not be made?

SENATOR JACKMAN: Well, I want to know if they are aware of them, that's all.

COMMISSIONER MERIN: I am not aware of any amendments, Senator.

SENATOR LESNIAK: Okay.

SENATOR JACKMAN: Let me ask a stupid question, okay? Through you, Mr. Chairman. The original intent of the JUA, to my understanding, and I am here 22 years now -- okay? -- was for the bad driver. Is that true, or isn't it?

COMMISSIONER MERIN: That is correct, Senator.

SENATOR JACKMAN: Okay. Why is it today that there are an awful lot of good drivers in the JUA, who were not accepted by the insurance companies?

COMMISSIONER MERIN: Since 1968, the insurance companies have felt that various commissioners were too tough on rates, and they refused to write people in the voluntary market. In 1968 -- two years after you arrived in the Legislature, Senator -- there was 6% of the State population in the JUA. By 1973, that had grown to around 11%; by 1974, I believe, it had grown to 16%. Between 1974 and 1984 -- in that 10-year period -- it grew from 16% to 40%. Since 1984, it has grown from 40% to 48%. In my mind, there is no earthly reason why we allowed that to grow from 6% in 1968 to 48% now. The conditional veto that was just enacted authorizes me to order the companies to write these people in a voluntary market. Massachusetts, right now, has 55% of its drivers in their residual market. There is no earthly reason why that should happen.

SENATOR JACKMAN: Okay. That is one of the things that has always struck me--

SENATOR LESNIAK: Commissioner-- Oh, I'm sorry.

SENATOR JACKMAN: That's okay.

SENATOR LESNIAK: Commissioner, since we are on that subject, if the JUA had not operated under a cash flow accounting system, but an accrual accounting system, as other insurance companies, would we now have a 2.8 or a 2.5 or whatever billion dollar deficit?

COMMISSIONER MERIN: No, Senator. We would have rates that would be double or triple what they are right now in the

JUA, and the voluntary market rates would also be a lot higher.

SENATOR LESNIAK: But, of course, we could not have had those rates under the law, because they were coupled to the voluntary market rates.

COMMISSIONER MERIN: Correct.

SENATOR LESNIAK: Therefore, you would have had to come to the Legislature earlier for some type of insurance reform?

COMMISSIONER MERIN: Yes.

SENATOR LESNIAK: I'm sorry, did we interrupt?

SENATOR JACKMAN: Well, you gave me--

SENATOR LESNIAK: I mean we interrupted the Commissioner. Is he finished?

SENATOR JACKMAN: That's okay; there is no problem. I was-- I just wanted, again-- It is important to me because, you see, when you go back home -- and I am not being facetious when I say this -- the average person wants to know why they are paying \$1400 and \$1500 for insurance, for example, in Hudson County. Someone said, "The reason Hudson County is so high is because so many cars are stolen up there. Essex County is high because so many cars are stolen up there. That does not make sense to me, when someone gives me that kind of an answer, when a guy is a good driver, has no record, and has been driving for 15 years. I have letters, documentation, that say, "Here I am. I am paying \$1700 a year to have a car." That does not make sense to me.

SENATOR DiFRANCESCO: He is getting the same letters.

SENATOR JACKMAN: Pardon?

SENATOR DiFRANCESCO: He gets the same letters that we get.

COMMISSIONER MERIN: Senator, may I give you the two reasons I tell people when they ask me that question?

SENATOR JACKMAN: Sure, go ahead.

COMMISSIONER MERIN: I did a radio show the other night. I got those questions, and I know all of you get those questions. There are two reasons why the rates are as high as they are: The first reason is, in 1980, the population density in the United States was 64 people per square mile. In 1980, the New Jersey population density was 966 people per square mile. Right now, the population density in this State is over 1000 people per square mile. The least densely populated counties in New Jersey are Salem and Cumberland Counties. In 1980, they had 280 people per square mile, or four and a half times the national average. We have more square miles of road per square miles of State; more cars per square mile of road. We've got a lot of cars in a small area, and they bang into each other. That does not mean that we are bad drivers. It just means that when you put that many cars in that small an area, that is what is going to happen, which means that everybody's rates are going to be high.

The second reason is, in 1973, we came up with this great no-fault system we have. I keep asking myself, "What is so great about it?" We took a State that had the highest costs, or among the highest costs in the country in the 1960s, and we said to the people of this State, "We are going to leave you with virtually an unlimited right to sue." Whether you were for or against that, that was a fact. "On top of that, we are going to give you the most comprehensive package of health care benefits in the world." There is no other state that provides 100% of everything for medical benefits like we have had since 1973. The problem is, prior to 1973 -- or '74 when it was implemented-- What happened? People who were on Medicare who had claims used to let Medicare fund it, so the money came out of the Federal Treasury. If you were on Medicare, then the State government paid its share. If you were working, your employer probably paid 50% of it, and your employer took a tax break on that, so really, Uncle Sam wound up footing the bill.

So, we got this great package which is costing us all about 150 bucks per car, and it probably should cost about 250 to 300 bucks for the JUA -- for people in that category. We're saying to people, "Here is this great health care package, but you have to pay for it." In virtually every other state in the country, they provide almost nothing. Twenty-six states provide nothing. Seven of the other 24 states do not force people to buy anything, and in the remaining 17 states, they provide \$5000 of protection or less.

So, that is why our rates are high. In the highest cost State in the country, we are forcing people to buy the most comprehensive package of insurance. It is not the companies, and it is not the lawyers, and it is not the agents. It is not the Republicans, and it is not the Democrats, and it is not the commissioners. It is just the fact that that is the kind of a State we are, with that kind of population, and that kind of a law. While we can nitpick around the edges, the fact is that the rates are always going to be high. Those are the two reasons for it.

SENATOR LESNIAK: Vis-a-vis the rest of the country, how does New Jersey fare with regard to rate of injuries arising out of automobile accidents?

COMMISSIONER MERIN: Very high, Senator. I cannot tell you that we are number one, but we are in the top few states.

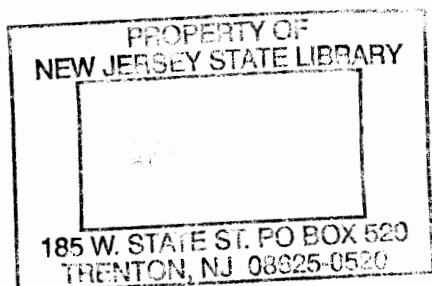
SENATOR LESNIAK: We have amongst the higher number of injuries per mile.

COMMISSIONER MERIN: I think we also have the highest rate of those people who are injured who sue. I believe we are the highest or the second highest.

SENATOR LESNIAK: We did.

COMMISSIONER MERIN: We did through January 1.

SENATOR LESNIAK: Okay.



COMMISSIONER MERIN: I'm sorry, Senator, for launching into that, but I--

SENATOR JACKMAN: No, no, no. I don't ask the lawyer questions -- no disrespect to my colleagues, you understand that.

SENATOR LESNIAK: Commissioner, are you finished?

COMMISSIONER MERIN: I have some more comments. At least one more is important. I support very strongly that provision of this bill that would allow for a deferral of some of the payments through the structured settlement process. This would allow the deferral of at least \$300 million -- at least \$300 million -- in 1989, and possibly even more than that. This money would have to be paid in the years -- in the four years, I believe -- succeeding 1989. The important thing, though, is that as the revenues rise in the JUA-- Remember, under the CV, and also under this bill, we don't raise the rates in the JUA to the amount we need to pay the claims. It is still underfunded, and will be for another four years. So, this will allow us to defer those dollars until we have enough money to pay for it. I think that is a very, very important and positive feature of this legislation.

There are a number of other provisions in here that I will go through real quickly. It requires the task force to audit service and carriers, and report at least semiannually. I have no problem with that. There have been audits ongoing, and if we want to formalize that, it's fine.

Reform uniform dollar amount for producer commissions attributable to BI coverage: It is not spelled out how that would be apportioned. I have no problem with that, so long as it does not increase producer commissions.

Establishing an independent insurance fraud prosecutor: I believe the Attorney General, or his office, will have some comment on that.

In the interest of time--

SENATOR LESNIAK: I just have one substantive question.

COMMISSIONER MERIN: Yes, sir?

SENATOR LESNIAK: With regard to the loan fund in A-3701, sponsored by Assemblyman Loveys, the bill calls for no additional RMEC. It also calls for no rate increases amongst good drivers in the JUA. The way it purports to make up for any revenue loss is the structured payment that you mentioned, and also the loan fund from the premium tax, and I guess the Treasurer pays out about \$44.8 million. Do you have any idea as to whether that provides enough money to keep the JUA afloat?

COMMISSIONER MERIN: I know that the firm of Millman and Robertson, which are the actuaries for the JUA, believe that this is sufficient. I know they had done a study, and it was their opinion--

SENATOR LESNIAK: How long have they been the JUA actuaries?

COMMISSIONER MERIN: About two years.

SENATOR LESNIAK: Oh.

COMMISSIONER MERIN: They believe this is sufficient. I do not concur with them. My opinion would differ from M&R. I am not an actuary. My problem is that we have relied on the JUA's actuaries. Part of the reason why we are all paying this surcharge right now, is that their predictions of the losses over the last couple of years were way, way below what they were. When I was being told the losses were \$275 million to \$350 million in a year, that was manageable. Legislation which you sponsored, Senator, has allowed us to save \$400 million -- close to \$400 million -- in JUA costs.

SENATOR LESNIAK: That is why we had this public hearing, so I could get that in writing in the transcript.

COMMISSIONER MERIN: That's true. And we solved the problem. We knew there was a deficit. We said we could do that. We thought we could do that without going to the consumers and without asking the consumers to raise their

rates. What happened was, it turned out that the deficit was closer to \$600 million a year, not the \$275 million to \$350 million that we had been led to believe.

I know that M&R has a much better grasp on the data now than they did before. We also have additional people in our Department whom I have a great deal of respect for. I think the situation is improving. I think the fact that this legislation -- this CV -- was signed by itself improves things. I think there are elements of this bill that are very positive, that I would encourage you to sign. I also stated previously that when it comes to spending the premium tax dollar, it is the Governor's office, not my shop. But I am just saying to you that Millman and Robertson -- in response to your question -- does believe that this would work. I am not sure I agree with them.

SENATOR LESNIAK: There is one other question I would like to ask you. There is a scenario going around -- being bandied about -- that may make some sense; that is that the insurance industry is going to depopulate a lot quicker than the legislation requires, at least in the first year, because the first people you pull out are the best drivers, and then you get greater and greater risks. And of course, if that does occur, even as an additional financial crunch on the JUA-- What are your views on that?

COMMISSIONER MERIN: I have heard that scenario. As a matter of fact, the scenario I have heard is that the bigger carriers, particularly the servicing carriers, will depopulate their entire three-year quota in one year, because they know right now who the good drivers are.

I do not think that is likely to happen. I know that some companies -- one of the major carriers in this State -- just told its agents that it could write an additional, I think, six policies a month. That does not look to me like the signs of a massive depopulation. I believe that some servicing

carriers may indeed try to depopulate some very good drivers quickly, but I don't think it is an orchestrated effort by the industry. I don't think we are likely to see that happen across-the-board. Clearly, in a theoretical sense, if that were to happen, then we would lose a ton of cash flow much more quickly than we expected, and the operating budget of the JUA would be in severe financial straits.

SENATOR LESNIAK: Okay. I have no other questions. Are there any questions from the Committee members? (no response) Thank you, Commissioner.

Is Speaker Hardwick here? (no response) Majority Leader Haytaian is here. You are not on the scheduled list of speakers. Do you intend to testify?

A S S Y. G A R A B E D "C H U C K" H A Y T A I A N:
(speaking from audience) No. It's my bill with the Speaker, so I will--

SENATOR LESNIAK: Are you coming up with the Speaker?

ASSEMBLYMAN HAYTAIAN: If you don't mind, and with Ralph Loveys.

SENATOR LESNIAK: All three of you at once?

ASSEMBLYMAN HAYTAIAN: Why not?

SENATOR LESNIAK: We'll have a lot of beef sitting at the table then.

SENATOR JACKMAN: Get another chair. Hi, Loveys. That's my man.

A S S E M B L Y M A N R A L P H A. L O V E Y S: Senator, how are you? Just tell me, what do you want me to do?

SENATOR LESNIAK: Now, are we going to have three separate statements?

ASSEMBLYMAN LOVEYS: No. The Speaker will be here in one moment, Senator. He has a statement to make.

SENATOR LESNIAK: Okay. What are you folks going to do?

ASSEMBLYMAN LOVEYS: Well, we have a few comments, too.

SENATOR LESNIAK: After he gives his statement?

ASSEMBLYMAN LOVEYS: Yes.

SENATOR LESNIAK: Okay. So we are supposed to sit in paralysis until he arrives?

ASSEMBLYMAN LOVEYS: No. He was waiting. He thought he would be up here earlier. He was, in fact, outside waiting.

SENATOR LESNIAK: That's too bad. Nobody told me he was here.

ASSEMBLYMAN LOVEYS: He was right outside, waiting to be told to come up.

SENATOR JACKMAN: Yeah, we were waiting for him. He had the first shot.

SENATOR LESNIAK: Is he that shy?

ASSEMBLYMAN HAYTAIAN: No one asked him to come up earlier.

SENATOR JACKMAN: He had the first shot. Here he is. Hi, Chuckie. (everyone speaking at once here; unable to transcribe)

SENATOR LESNIAK: Good afternoon, Speaker.

A S S E M B L Y M A N C H U C K H A R D W I C K: Good afternoon, Mr. Chairman.

SENATOR LESNIAK: You're on.

ASSEMBLYMAN HARDWICK: Thank you. This is the first time that the Speaker of the Assembly has come over to testify before this distinguished body, I guess because of the importance of the issue. Auto insurance is of paramount concern. There is nothing that we in the Assembly have worked on any harder. It is an extremely complex issue. How to put the JUA back on a solid footing is something that we very much want to do, as well as address the overall insurance problem, which has been a long-term serious problem that we have inherited and which this Committee has inherited. It has existed in this State for a long time.

The reforms which were signed into law last month by Governor Kean are an important first step in the reform of the JUA. I want to commend you and this Committee, Chairman Loveys, and the other people who worked on that bill. The fruits of your efforts will have a positive impact on New Jersey's drivers. There is no doubt about that.

But today, focusing on the JUA, we know we have a \$2.7 billion, or more, debt that remains from claims which have already been filed. That debt must be addressed. Everyone who owns a car in New Jersey is now paying a JUA subsidy of \$220 -- some \$800 million a year -- to defray the costs. So, there is still a rough and rocky road ahead for us and for the approximately 50% of New Jersey drivers who are now in the JUA -- good drivers and bad drivers.

If we do nothing further, if we leave things as they are, if we do not pass the bills that are before you, and the JUA continues to conduct business as usual, then three very unfortunate things are likely to occur:

First, a rate increase will be filed next month -- in less than two weeks -- if we do not act on Assembly Bill No. 3702, that will hit more than half of the drivers with yet another rate increase in January.

Second, we will see more and more RMECs forecast in 1990 and 1991. I am certain of that, and anyone who takes a close look at the actuarial tables will come to the same conclusion.

And third, if we do not take action, we will be unable to make significant headway toward reducing the JUA deficit in the years ahead. Assembly Bill No. 3702 gives the JUA a positive cash flow five or six years down the road, that will actually give us the power, we hope, to roll back existing RMECs.

The numbers do not lie. I have presented to you a chart and the actuarial tables on the condition of the JUA for

the next five years under two sets of conditions -- with passage of A-3702 and without passage of A-3702. These numbers were developed by Laurine Purola, who is here, and who will assist in answering any questions you may have about them.

You can see for yourselves what happens. Beginning sometime next year, the JUA will experience a negative cash balance. That financial condition will continue until sometime in 1992, when the reforms we put into place through the Governor's conditional veto begin to have a meaningful impact.

Personally, you may rather see the JUA go bankrupt than to continue business as usual and guarantee more RMECs, further rate increases on good drivers in the JUA, and a continuation of the deficit as far into the future as anyone can see. However, a JUA which is bankrupt leaves thousands of motorists, who in good faith have been buying their insurance and have been insured through the JUA, with unpaid claims and unfair hardships.

Assembly Bill No. 3702 which is before you today provides an alternative and a better way to deal with the JUA's cash problems. Most significantly, A-3702 provides a means of eliminating the Association's cash shortfall, while at the same time preventing the good drivers in the JUA from paying the substantial rate increases which are scheduled to be imposed shortly.

If you look at the charts that I have provided, you will see a dramatically different situation in JUA cash flow. There remains at all times with A-3702 in place a positive cash flow. That means that no additional RMECs will be necessary to help the Association pay its claims. This is accomplished by providing for the payment of some of the bodily injury claims -- in other words, payments for pain and suffering -- in installments. This approach is not new. Structured settlements are used in the courts. Mr. Chairman, in fact, you had a bill sometime ago with mandated structured payments. It was a good idea when you had it; it is a good idea today.

Paying half of the bodily injury claims in installments has a dramatic effect on the financial situation of the JUA. The Association now pays out over \$600 million in bodily injury claims every year. Under the installment proposal, it immediately saves itself cash payments of over \$300 million the first year. At the same time, no beneficiary is deprived of anything. Everyone will be paid in full, with interest.

Moreover, under Assembly Bill No. 3702, the improvement in the Association's cash flow is accomplished by limiting the forthcoming rate increases to only the bad drivers insured by the Association. I think this is extremely important.

Many people now insured by the JUA are there through no fault of their own. Most of them are good drivers without accidents or violations. It is unfair to ask them to pay significantly higher rates to keep the Association afloat. If these rate increases are extended to everyone, as the present law does, all of our talk about insurance reforms will seem to those people who are asked to pay more to be a sham.

If A-3702 is passed, we can protect these people while putting the JUA on a much more sound financial footing. The bill not only solves the temporary cash flow problem, but it also protects good drivers against unwarranted rate increases and protects the public at large from the threat of additional RMECs.

Assembly Bill No. 3702 contains other very important provisions: It requires an audit of the JUA and the creation of a task force to audit claim settlements on an ongoing basis to ensure the proper conduct of servicing carriers.

It establishes penalties for servicing carriers who violate the plan of operation.

It requires written notice to all insureds of prospective rate increases. Many people do not know that they are insured by the Association.

It requires more timely implementation of the JUA data bank. This is important, so that servicing carriers do not have an unfair advantage in selecting the best risks for depopulation.

It requires a multi-tiered rate level system in the voluntary market. As the JUA is depopulated, we do not want the higher risks to be charged the same rate as the better risks. The so-called "good driver discount" of the recently passed law is not adequate. We need several rate levels in the voluntary market, as the majority of other states have. To accomplish this, the bill requires insurers to make their underwriting standards public.

It links the flexible rating system to an indexing mechanism. This will ensure that the rates which are charged are based on economic factors, and not on political or other considerations.

We think this bill represents comprehensive reform. I know you agree with me. I cannot emphasize how important this is for the people of our State. We hope that the Senate will act expeditiously. We simply cannot stand by while good drivers in New Jersey get socked with another round of rate increases.

So I hope, Mr. Chairman, we can say that there is light at the end of the JUA tunnel. That is why as Speaker, for the first time, I wanted to come over to the Senate and bring that message personally, accompanied by the co-sponsor of the legislation, Chuck Haytaian, Majority Leader, and our distinguished Chairman of the Assembly Insurance Committee, Ralph Loveys, who I believe wants to speak on the companion measure.

SENATOR LESNIAK: Okay, I will call the witnesses. Assemblyman Loveys? (laughter)

ASSEMBLYMAN HARDWICK: Do you mean that the stories I have heard about you are true? I thought Don was exaggerating.

SENATOR LESNIAK: The only time a chairman in the Assembly has priority over the Majority Leader, is when it is the Insurance Committee Chairman speaking before this Committee. Any other time, Mr. Majority Leader, you will go first.

ASSEMBLYMAN HAYTAIAN: Fine.

ASSEMBLYMAN LOVEYS: Senator, with your permission, I would just like to make a few remarks regarding A-3702 -- if that is all right with you.

At the outset, allow me to say this: I think the information -- the policies that we were trying to derive from A-3701 would have been in A-3702, if we thought, in fact, the administration would be favorable to that act. We did have some questions. That is why we separated the two, and I will get into that later.

Nevertheless, I think A-3702, as the Speaker indicated, is of very, very paramount importance to all of us today, because if we don't act in this area, probably approximately 80% of those people who are presently in the JUA, will have to anticipate increases that we don't think good drivers should have to experience. There will be a 10% differential in JUA rates versus the voluntary market rates for everyone in the JUA. We don't think that is the way it should be. The legislation reads that only those people who will be categorized -- the 20%, if you will -- as bad drivers, should be paying that 10% differential. If this legislation is enacted, then only those bad drivers will be faced with this new charge.

At the same time, in the legislation of A-3500, which we introduced earlier, we had some language about the self-sustaining aspect for automobiles over \$30,000, as far as collision and comprehensive were concerned. Now we find in the CV, language that states that a self-sustaining effort will be met by all drivers of the JUA if, in fact, this legislation

goes without being amended, or the new legislation is not passed.

What that could do, I might add-- In some instances in the JUA, I think as the Insurance Commissioner testified, there might be a deficiency in some areas of 75% to 80%. That could -- I am not saying it would, but it could -- increase rates in this area as much as \$250.

Now, we are told by the Commissioner that it would probably be more in the 20% range, but even with that it would be close to \$100. This is unheard of, and we cannot allow this to take place. Once again, only those drivers who we consider to be poor drivers, or bad drivers -- I emphasize the words "bad drivers" -- should be faced with that self-sustaining effort in this area.

I think these are two key points in this legislation that have to be addressed.

SENATOR LESNIAK: Assemblyman, that projected increase does not include any decreases as a result of the legislation that was recently enacted. Is that correct?

ASSEMBLYMAN LOVEYS: That's right. This would be above and beyond--

SENATOR LESNIAK: Any decreases that would occur because of the change.

ASSEMBLYMAN LOVEYS: Correct. Allow me to just touch on a couple of other points. I came in in the middle of the Commissioner's testimony, but I think one of the most important key points in A-3702 is the JUA data bank which would be established almost immediately, because this would preclude unfair practices for those servicing companies now which have the information and would naturally pick out the best drivers to immediately move into the voluntary market. We feel that all of the companies that are going to be involved in this depopulation program should have the same information and be able to go out and more or less bid, if you will, for those people to be in the depopulation program.

SENATOR LESNIAK: That data bank is not established now?

ASSEMBLYMAN LOVEYS: No, but I am told that it could be in effect in 60 days.

SENATOR LESNIAK: Does the JUA have such a data bank?

ASSEMBLYMAN LOVEYS: They do not, but they--

SENATOR LESNIAK: The question is, how in the world do the actuaries get their projected figures of bad drivers who are going to be affected? How do they make their projections?

ASSEMBLYMAN LOVEYS: There has been data processing of companies that have been talking to the JUA, which indicates to them that they could produce this information in a 60-day period.

SENATOR LESNIAK: The point is, the actuarial figures that this bill's underpinnings are based on had to make a determination with regard to cash flow. Restricting increases to bad drivers certainly affects the cash flow. One of the concerns we have about the legislation, and it was echoed by the Commissioner, before you, Mr. Speaker, is that the loan -- the amount of money available on the loan, even if the Governor does approve it, and the structured payments, and the 10% increase, is still not going to be sufficient to put the JUA -- to avoid a future RMEC.

Now I know-- I understand that your actuaries say that it will. My concern is, I don't know how they can say that without that information in terms of how many bad drivers there are.

ASSEMBLYMAN HARDWICK: I think-- Didn't they borrow that information from the private sector, and make the same assumptions from the voluntary market as would apply to the JUA? That is my understanding, isn't it Laurine? (addressed to Ms. Purola, from the OLS staff, but with no response)

ASSEMBLYMAN LOVEYS: Senator, let me clarify the position I am taking now. What I am suggesting with the data

bank is only to allow companies to have information on those people in the JUA -- their driving records -- so they can depopulate the JUA. That is the only point I am making.

SENATOR LESNIAK: Could you just request from -- or maybe Dale Davis would request, or your staff-- What is the name of the firm?

MR. DAVIS: Millman and Robertson.

SENATOR LESNIAK: Request from Millman and Robertson how they ascertained the number of bad drivers in the JUA, as defined in the bill?

ASSEMBLYMAN HARDWICK: We don't even know that. We got that number from--

MS. PUROLA: (speaking from audience) From the servicing carriers.

ASSEMBLYMAN HARDWICK: In the voluntary market.

SENATOR LESNIAK: Okay, I'm sorry. You specifically, Laurine, gave those figures to the actuary?

MS. PUROLA: To the actuary of the JUA. The JUA maintains no hard data themselves, but the servicing carriers did have estimates to narrow this down effectively to \$400,000 and \$500,000.

SENATOR LESNIAK: Okay. So they did go into the servicing carriers' data.

ASSEMBLYMAN LOVEYS: May I continue?

SENATOR LESNIAK: Go ahead.

ASSEMBLYMAN LOVEYS: Thank you. The Commissioner also indicated that he thought he might need additional time, rather than the 90 days, for a medical fee schedule. I personally do not think he needs additional time. I am not here to disagree completely with the Commissioner of Insurance, but there are fee schedules available. We anticipated that he would be able to do a lot quicker scheduling than 180 days. I am just pointing that out to this Committee.

Also, as far as the fluctuating is concerned-- This is something that you and I have spoken about a good number of times, Senator. I can see the concern the Commissioner has. In a given year, with the medical cost components, and the auto maintenance components, they could be such that it would raise the rates sky high, but we give latitude in this legislation. I am not sure if the Insurance Department realizes that we gave him the latitude -- the Commissioner -- to cap, at any point that he feels it is necessary. So, for example, it will not rise 30%, 40%, or 50% in a given year, or two years. It can't happen.

SENATOR DiFRANCESCO: Cap what?

ASSEMBLYMAN LOVEYS: He could cap the flex band rating to where he thought the increase--

SENATOR DiFRANCESCO: Yeah, but he can't cap the cost. You just--

ASSEMBLYMAN LOVEYS: No, that he can't, but the CPI would dictate what the rate would be, and he has the ability to control what rate it would be.

SENATOR LESNIAK: Well, doesn't he have that ability under the current law?

ASSEMBLYMAN LOVEYS: I'm not sure he does. I think he does under A-3702.

SENATOR LESNIAK: If that is the case, how is it different from the current law -- if he has the ability to override the index?

ASSEMBLYMAN LOVEYS: When I heard him testify, I did not hear him say that he had that ability. That is the only point I am trying to bring out.

SENATOR DiFRANCESCO: He said this is a more restrictive flex than the other -- in the present law.

SENATOR LESNIAK: I am not sure. You may very well be right, Ralph. If you are correct, I don't know why we would do anything, because he already has the ability to set the flex.

What you're saying is, we give him an index, but he can override the index, which is the same thing as saying the flex to begin with.

ASSEMBLYMAN LOVEYS: Okay, but that-- (several people speaking at once; unable to transcribe)

SENATOR LESNIAK: Are you saying that under your bill he can go below the index, and he can set it?

ASSEMBLYMAN LOVEYS: That is correct. That is what he said.

MR. DAVIS: Under Assemblyman Loveys' bill, you have the index, and he can lower that -- the Commissioner can. Under the present law, the Commissioner sets it, which means that he can set it below or above what the present CPI is. So there would be more flexibility under the current law.

ASSEMBLYMAN LOVEYS: In the area of the multi-tier, as Ken Merin indicated, I think it is so important that that good driver that Senator Jackman referred to gets a preferred rate. Those people who normally would be in the voluntary market in the standard area, who are good risks, would be in the standard group. If we then allow a non-standard tier in the voluntary market, it is going to do two things: It is going to hasten the population of the JUA to allow people to go into the voluntary market, and at the same time, if this person is a slightly poor risk, he does not necessarily have to dislodge -- dismantle -- the good rate that the standard driver has. Therefore, he could pay slightly more, but still be in the voluntary market and take the burden off our back in the JUA.

I think this is a very, very important area. I just mention that-- Again, I think it is something that is--

SENATOR LESNIAK: I think that is the one major, really strong concern hammered by your bill, Assemblyman. I may be reading it wrong. Correct me if I am wrong.

ASSEMBLYMAN LOVEYS: Senator, let me go one step further. This is the one thing I wanted to make clear. I

think it is key to the three-tier system, or a four-tier system, or a two-tier system, whatever you choose to go with. We are asking for underwriting standards to define -- to give definition to that driver. The insurance company then can't take -- cannot take, I'll emphasize -- a person from the JUA and inadvertently put him in the non-standard group, because he is going to be classified and defined by underwriting standards. He has to go in a preferred group, a standard group, or a non-standard group, or the JUA. They cannot arbitrarily move them from any section or any tier.

SENATOR LESNIAK: But can't those underwriting standards include the residence where the vehicle is domiciled?

ASSEMBLYMAN LOVEYS: Say that again.

SENATOR LESNIAK: Can't those underwriting standards include where you live? Therefore, can't everybody--

ASSEMBLYMAN LOVEYS: I don't know. Do we really want to do that?

SENATOR LESNIAK: That is what I am afraid you are going to allow the insurance companies to do. Everyone who comes out of the JUA who lives in Elizabeth is a substandard risk. That is my concern under this proposal.

ASSEMBLYMAN LOVEYS: That is not my understanding of what the underwriting standard group will do. They are not talking about where the person lives. It is what his driving record shows.

SENATOR LESNIAK: An underwriting standard, though, if not specifically defined.

MR. DAVIS: It says "solely," but you could do a combination of things.

SENATOR LESNIAK: Okay. My concern is the language on page 8. I thought we discussed--

ASSEMBLYMAN LOVEYS: It is not the intention, Senator, to allow that particular--

SENATOR LESNIAK: Okay. My concern is page 8, section 7, (New section) a., the second line: "No underwriting rule shall operate in such a manner as to assign a risk to a rating plan solely on the basis of the territory in which the insured resides." You know, my concern is, if they use anything else -- "and the territory" -- then we are going to-- The people in urban areas are going to get burnt.

ASSEMBLYMAN LOVEYS: Well, I would have to concur, but that is not the intention.

SENATOR LESNIAK: Take "solely" out?

ASSEMBLYMAN LOVEYS: Well, I would think--

SENATOR DiFRANCESCO: Then how would it read?

SENATOR LESNIAK: "No underwriting rule shall operate in such a manner as to assign a risk to a rating plan on the basis of the territory in which the insured resides." That is how I would propose that it read.

ASSEMBLYMAN LOVEYS: Would that be all right? If that is the language you would like to see, I would have no objection to that. It was not the intention.

SENATOR LESNIAK: I'm sure we agree that is going to happen without that in there.

SENATOR DiFRANCESCO: In other words, you are not suggesting that it is not a factor. You don't want it to be the major factor.

SENATOR LESNIAK: No. For the substandard market--

SENATOR DiFRANCESCO: Right?

SENATOR LESNIAK: --my concern -- and I think it is a real concern -- is that-- I am taking what the Commissioner is saying and refining it a little bit; that is, when insurance companies pull the insured out of the JUA -- which they will have to do -- and the insured is a good driver--

SENATOR DiFRANCESCO: Right?

SENATOR LESNIAK: --but an urban good driver--

SENATOR DiFRANCESCO: An Elizabeth driver.

SENATOR LESNIAK: Boom, right into the substandard category, which could be a higher rate.

ASSEMBLYMAN LOVEYS: I know what your concern is in this area, but if you read further, too, this underwriting definition of technique has to be approved by the Commissioner of Insurance, and I don't think that he, in his wisdom -- whomever he may be -- would allow this to happen.

SENATOR LESNIAK: You, the Speaker, I, the entire Legislature, at times, have criticized the Insurance Commissioner for one reason or another, and have disagreed with the Commissioner for one reason or another. Sometimes we're right, and sometimes we're wrong. I don't want to, in terms of the people I represent -- also, not only the people I represent, but just to fairly treat those people who live in urban areas -- just rely on the good graces of the Commissioner on that.

SENATOR DiFRANCESCO: All right. We're taking that word out -- "solely."

SENATOR LESNIAK: That certainly would be--

SENATOR DiFRANCESCO: You are suggesting that that be taken out.

SENATOR LESNIAK: --an amendment I would propose.

ASSEMBLYMAN LOVEYS: Another area that might--

SENATOR O'CONNOR: May I just--

SENATOR LESNIAK: Yes.

SENATOR O'CONNOR: On the issue of the guidelines, Wes Caldwell -- a few speakers ago -- made the point of the unmanageability of the prior approval by the Commissioner, with all of the different companies coming up with all of their guidelines. It is not just something that they have to promulgate. It then has to be approved by the Commissioner. He makes the point that in the past, when this was required, it was an impossible task for the Department to comply with. Are we going down that same road again?

ASSEMBLYMAN LOVEYS: Senator, I think if you listened to Ken Merin speak a year ago versus how he speaks today about his Department, a great many things have changed; a great many things have happened. I think Ken meant that a lot of the difficulties -- trouble we did have with automobile insurance-- His Department was not operating to the degree that he wanted to see it operate. I think he has done an awful lot in this area. I realize that this bill would be a difficult one for him to administer, but he has to. They are hiring people to do these jobs. It has to be done this way. I think it is better for competition in the long run, in order to get the depopulation of the JUA without us having to assign. That is the one thing none of us want to have to do. I don't think we will have to do it if we have the multi-tier system.

SENATOR LESNIAK: Assemblyman, just a technical thing with regard to drafting. I understand there are territorial differences -- I am not going to change territorial differences, as much as I would like to -- for the standard risk. If we just take out "solely," as I am reading here right now, that would also eliminate territorial classification for the standard risk as well. As much as I would like to do that, I don't think I can do that. So, Dale, you would have to draft an amendment -- using your creative genius -- to have the non-standard risks not be rated on the basis of the territory in which the insured resides.

See, if we just eliminated "solely," that would apply to the standard risk as well.

SENATOR DiFRANCESCO: Yeah, yeah, that wouldn't do it.

MR. DAVIS: Could you keep them mutually exclusive then, though, is the problem.

MS. PUROLA: (speaking from audience) No, because you're really saying-- You are not talking about the differentials within the territorial base rate. You are just saying that no underwriting which is different than the

territorial rating system -- no underwriting rule which assigns you to one of these territorial rating systems-- I don't think that is a problem.

SENATOR LESNIAK: So then it is okay to just to take out the "solely"?

MS. PUROLA: Yes.

ASSEMBLYMAN LOVEYS: One other point in the Speaker's bill, and I think it is so important and essential-- A good number of the people I speak to do not realize that they are in the JUA. The reason they don't realize it -- as we all know -- is because they are paying the same for insurance premiums. The fact that there will be a differential now, is notification to anybody-- The servicing carrier has to notify the people that they are in the JUA. I think it is a very, very good, and certainly a fine--

SENATOR LESNIAK: What is the fiscal note on that, do we know?

ASSEMBLYMAN LOVEYS: Did they ask for a fiscal note?

SENATOR LESNIAK: Is it a lot?

MR. DAVIS: You'll have \$1.8 million left, won't you, by that time?

SENATOR LESNIAK: About \$300,000 to do the mailing -- for the postage only.

MR. DAVIS: And then letters and--

SENATOR LESNIAK: Which the insured has to pay for. It is part of the rate base. That's a lot of money.

MR. DAVIS: The JUA has to pay.

SENATOR LESNIAK: Is it worth it?

ASSEMBLYMAN HARDWICK: Mr. Chairman, if I may respond on that, I think the main concern that I have heard voiced on that is the particular language in our bill which, while you are amending the bill, you may want to take a look at. The agents or brokers who have been dealing with customers in the JUA have raised a pretty good point, that that language is

explosive in its content. While I think the policyholders should be notified--

SENATOR LESNIAK: Explosive might be the right word.

ASSEMBLYMAN HARDWICK: I think it is. They have raised the point that, while they understand someone being notified that they are in the JUA -- I would be open to amendments to that part of the bill -- it should just notify them without quite the explosiveness of the language.

SENATOR LESNIAK: I don't know about you, but I, and people in my office, have received bomb threats.

ASSEMBLYMAN HARDWICK: I haven't been threatened. There have been no threats, but I have gotten some pretty well recent--

SENATOR LESNIAK: Well, we've gotten bomb threats. "We know where you live. We'll bomb your secretary's car," and all that kind of stuff.

SENATOR JACKMAN: No kidding?

SENATOR LESNIAK: Yeah.

ASSEMBLYMAN HARDWICK: Do you mean personal threats against you?

SENATOR LESNIAK: And my office workers.

SENATOR JACKMAN: What are they going to use, dynamite or what?

SENATOR LESNIAK: It's nothing new. It happened when I sponsored garbage legislation, regarding organized crime. But then I took it seriously. This time, I don't.

SENATOR JACKMAN: That doesn't happen where we come from.

SENATOR LESNIAK: No, they don't threaten. (laughter)

ASSEMBLYMAN HARDWICK: They never know what hit them over there.

ASSEMBLYMAN LOVEYS: Senator, one last point I would make on A-3702 is, realistically, I know the audit cannot be completed by November 1. As the Commissioner indicated, it

will probably be six months before we get that audit, but that audit ought to be all-inclusive. I think the Speaker wants to--

SENATOR LESNIAK: I'm sorry, Assemblyman. Do you want to change the date? Obviously, November 1 is not realistic.

ASSEMBLYMAN LOVEYS: You are going to have to change the date, yes.

SENATOR LESNIAK: What date do you want, Assemblyman? Whatever your heart desires.

ASSEMBLYMAN LOVEYS: Well, I think the Insurance Commissioner indicated that it would be approximately six months, and I think that is a--

UNIDENTIFIED SPEAKER FROM AUDIENCE: April 1.

SENATOR LESNIAK: April 1? April 15?

UNIDENTIFIED SPEAKER FROM AUDIENCE: April or May -- somewhere around there.

SENATOR LESNIAK: May 1? Is that what you want, Assemblyman?

MR. DAVIS: Why don't you make it June 1?

SENATOR LESNIAK: What does the Assemblyman want?

ASSEMBLYMAN LOVEYS: May 1 is fine.

SENATOR LESNIAK: May 1?

ASSEMBLYMAN HAYTAIAN: If I may, Mr. Chairman, chime in for a minute, I think Senator DiFrancesco said that this has been hopefully an ongoing situation for the Commissioner -- the audit. Back in February, we had a resolution in the Assembly asking for an independent audit, so I have to assume that the Commissioner is well on his way to completing that audit. Or at least if he is not, maybe there ought to be some questions as to why not.

So, I don't know whether I would want to go into May in the bill.

SENATOR LESNIAK: What date do you want?

ASSEMBLYMAN HAYTAIAN: I think it is very important--

SENATOR LESNIAK: We're easy. This is a very accommodating Committee.

ASSEMBLYMAN HAYTAIAN: --that if we can't do it November 1, then January 1 should be the date. We want it done -- period.

SENATOR JACKMAN: What is your recommendation?

ASSEMBLYMAN HAYTAIAN: January 1.

SENATOR LESNIAK: You want these poor guys, and women, working over the Christmas holidays?

ASSEMBLYMAN HAYTAIAN: Yeah, I sure do.

SENATOR LESNIAK: I mean, where's your spirit?

ASSEMBLYMAN HAYTAIAN: Mr. Chairman, I think the people in this State want them to work it out.

SENATOR LESNIAK: Stop posturing, please. (laughter)

ASSEMBLYMAN HAYTAIAN: I'm not; I'm just telling you. You're asking a question, and I'm telling you the answer.

SENATOR LESNIAK: All right. Let's get a reasonable date.

SENATOR JACKMAN: All right. Look--

SENATOR LESNIAK: We'll put in a reasonable date, Assemblyman.

SENATOR JACKMAN: Listen, why don't you--

ASSEMBLYMAN HAYTAIAN: February 1.

SENATOR JACKMAN: Why not make it-- You talked about May and June and everything. Make it March. (laughter)
(Senators and Assemblymen all speaking at once here.)

SENATOR LESNIAK: March? February? February 15?

SENATOR JACKMAN: March. St. Patrick's Day, March 17.

SENATOR LESNIAK: All right. I will exercise the Chairman's prerogative and make it February 15. There we go. As usual, I am making nobody happy.

SENATOR JACKMAN: That's par for the course.

SENATOR LESNIAK: Assemblyman Loveys, anything else?

ASSEMBLYMAN LOVEYS: No. As far as A-3702 is concerned, I--

ASSEMBLYMAN HAYTAIAN: Mr. Chairman, I thank you very much for bringing these bills up, because I think it is important. As we all know, people in this State have written letters to you, as they have written letters to me, and called on the telephone. They are irate with what is happening in the State. We started in a bipartisan way, between the Senate and the Assembly, with the most recent piece of legislation to reform automobile insurance. This is a continuation. I would hope that this Committee would release the bills, with the amendment you are talking about. I don't know if there are additional amendments. I heard Senator Jackman say, "Well, we have other amendments here," and I am not sure that we have received any indication of other amendments.

I would hope that we could get these bills out of this Committee and on the Senate floor, so we can have the relief we need in the JUA.

SENATOR LESNIAK: Okay, thank you, Assemblyman. Any questions? (no response)

Now, back to the list. Ed, do you want to go now? Ed McCool, Common Cause.

MR. McCOOL: Yes. Thank you, Mr. Chairman. I would like to thank you and the members of this Committee for holding hearings on these bills because, unfortunately, we didn't get a chance to raise some of the questions that I would like to raise today when they were brought up in the Assembly. The atmosphere of emergency was basically used, and they never did receive any kind of public airing.

I have a couple of questions. One of them has to do with A-3701, wherein the increases of 10%, 20%, 30%, and 40% are made mandatory, as opposed to the original language, which said: "Not more than 10%, 20%, 30%, and 40%." My question is simply: Why was that change made?

SENATOR LESNIAK: That certainly is a good question. It would appear to me-- (Senator Lesniak and Mr. Davis refer to A-3701) Well, I certainly can't answer for the sponsors, but one thing certainly does make sense, in any event.

MR. McCOOL: It would seem to make it an automatic increase of 20%, 30%, and 40%, rather than no more than, so--

SENATOR LESNIAK: It's probably academic, but I think we should have language in here, Dale, stating that only if required to--

MR. DAVIS: We will go back to the language we have in the present law, keep it on these drivers, but only if it is needed by the JUA. Is that what you mean?

SENATOR LESNIAK: Yes.

MR. DAVIS: The first 10% is mandatory under current law. After that, it is as needed by the JUA.

SENATOR LESNIAK: It doesn't make any sense to-- Although, quite frankly, it is probably going to go with that amount anyway. But it doesn't make any sense if it is not necessary to have it.

MR. DAVIS: So, do you want to go back to having the Commissioner adjust the -- if it is not needed?

SENATOR LESNIAK: Yes.

MR. McCOOL: My other comments have to do with A-3702, beginning with the statement, which in the first paragraph, line 38, says: "The bill would require automatic rate increases of 10% per year for a period of four years, until the Association's rates become self-sustaining." That schedule of 10%, 20%, 30%, and 40% is not 10% per year. The statement should reflect that accurately. It is deliberately-- Well, let's say it is misleading to indicate that they are only 10% increases. If you begin with a base of \$1000 and increase it 10% each year, you wind up with \$1464 at the end of four years, or a 50% increase. At the schedule it calls for, beginning at \$1000 a year, you wind up with \$2400, or a 150% increase, which is what the JUA rates are scheduled to go up.

MR. DAVIS: The statement in the statement is true.

MR. McCOOL: Well, I disagree with that, but that's all right.

MR. DAVIS: Well, it's 10% per year. It is going up 10% the first year; 20% the next.

SENATOR LESNIAK: The rate would go up 10% a year, even though--

MR. DAVIS: Yeah.

SENATOR LESNIAK: --the effect is more.

MR. DAVIS: Yeah.

SENATOR LESNIAK: The effect is more.

MR. McCOOL: Yeah, it is.

MR. DAVIS: From the initial base year, but it is actually going up 10%--

MR. McCOOL: Excuse me, but in year one, it goes up 10%. In year two, it goes up 20%. If it were to go up 10%, it would be 10% of year one.

MR. DAVIS: It goes up 10% from what it was the year before. That is why this statement is--

MR. McCOOL: So it's not 20% of the base year, and then 30% of that increase, and then 40% of the previous increase?

MR. DAVIS: In the end, you are going to go up 40%.

MR. McCOOL: That's all?

MR. DAVIS: What?

MR. McCOOL: The way I read it, it is a 150% increase at the end of four years. Maybe I am confused.

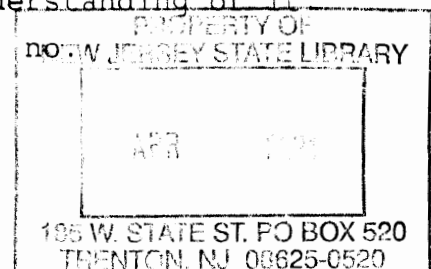
MR. DAVIS: A hundred and fifty percent?

MR. McCOOL: If you start at \$1000--

SENATOR O'CONNOR: He's saying it goes up 10% the first year, then 20% the second year, 30% the third, and 40% the fourth. Is that right? Is that what you're saying?

MR. McCOOL: Yeah, that is my understanding of it.

SENATOR LESNIAK: No, no, no, no, no.



MR. McCOOL: That's not what it does?

SENATOR LESNIAK: No.

MR. McCOOL: Okay, all right.

SENATOR LESNIAK: What we are talking about is the differential between the JUA rates and the voluntary market rates, that differential being 10%, 20%, 30%, 40%, so it's 10% each year.

MR. McCOOL: Ten percent each year?

MR. DAVIS: Whatever the ISO rate is, it is going to be 10% over, and then 20% over the year after that. So essentially, if you keep the thing, it is going to be 10% a year.

MR. McCOOL: Okay. Thank you for clarifying that. The other thing is, the bill does not distinguish among moving violations, in that a person will be considered a high risk for making a left turn without properly using his signal, or a ticket given at five miles over the speed limit, as opposed to--

SENATOR DiFRANCESCO: That's four points, isn't it?

MR. McCOOL: Excuse me?

SENATOR DiFRANCESCO: Doesn't it say "four points or more"?

SENATOR LESNIAK: No, it has two or more group moving violations.

SENATOR DiFRANCESCO: Two or more?

MR. McCOOL: Yeah.

SENATOR LESNIAK: Moving violations, regardless of what the moving violation is.

MR. McCOOL: But there are different types of moving violations. It doesn't necessarily indicate that.

SENATOR DiFRANCESCO: No, I realize that, but if you do it, you know, you have two, or four points.

MR. DAVIS: Or four more points, whichever is less.

SENATOR DiFRANCESCO: Or four points. You could have one. You could have one if it is a four-point violation--

MR. McCOOL: I understand that.

SENATOR DiFRANCESCO: --which is driving at a high rate of speed.

MR. McCOOL: Right.

SENATOR LESNIAK: Ed's remark is that you could have two very minor moving violations, I guess.

MR. McCOOL: And it might be worth it to protect the consumer, to distinguish between the types of moving violations. Not all moving violations indicate that the person is a high risk driver. That is cause for them--

SENATOR LESNIAK: Do all moving violations bring with them points?

SENATOR DiFRANCESCO: Yes.

SENATOR LESNIAK: They do? What is the minimum amount of points?

SENATOR DiFRANCESCO: Two.

SENATOR LESNIAK: It's the same thing.

SENATOR DiFRANCESCO: What do you mean?

SENATOR LESNIAK: Two or more moving violations, or have received four or more points.

SENATOR DiFRANCESCO: Well, there are several violations--

SENATOR LESNIAK: All moving violations are at least two points. That's four points. So, you're saying the same thing.

MR. DAVIS: Or you could just get one four-pointer.

SENATOR LESNIAK: Or one four-pointer. But I'm saying--

MR. McCOOL: There are a lot of minor two pointers that you can get nailed on.

The other thing is, in terms of the letter--

SENATOR LESNIAK: Or one four-pointer. I'm sorry.

MR. McCOOL: --that was referred to--

SENATOR O'CONNOR: So, we are not doing anything on what he has suggested?

SENATOR LESNIAK: We haven't taken it up yet, Senator.

MR. McCOOL: The letter that would go to the safe drivers that are already in the JUA, telling them that they are in the JUA, and that they should be insurable in the voluntary market, strikes me as kind of meaningless, because they did not put themselves in the JUA to begin with. I was wondering with respect to the data bank that is called for in the bill-- I see that that refers to a data bank for insurers. I am wondering, wouldn't it be more useful, or as useful, that in addition to safe drivers who are in the JUA being notified that they should be insurable in the voluntary market, that they also get a shopper's guide as to what the various companies are charging, depending on the types of classification of vehicle, driver, and all that?

SENATOR LESNIAK: That's in the current law, the one I sponsored.

MR. McCOOL: It is in the current law that has been passed?

SENATOR LESNIAK: Yes, yes.

MR. McCOOL: Okay. And that would be provided along with this letter?

SENATOR LESNIAK: Well, I am not sure if this letter is even going to be provided.

MR. McCOOL: Okay. But if some sort of notice goes out to them, it would be good to hook that with that, so it is not a two-step process involved, where they actually have to then--

SENATOR LESNIAK: Supposedly, upon the renewal of their policy now they will be getting the new "Buyer's Guide" that is contained in the--

MR. McCOOL: That does not necessarily show what various company rates are for various classifications, though, does it? It's not like a shopper's guide, is it?

MR. DAVIS: As far as I remember, it is a separate thing.

SENATOR LESNIAK: There are representative costs in there, under the legislation. The representative costs will be included in there.

MR. McCOOL: Okay. What I was thinking was, you could look up the company and you could look up where you are and see who is charging the least rates and go shop for it.

SENATOR LESNIAK: Insureds will be getting that.

MR. McCOOL: Okay. And the third is the criteria which was just discussed. Why leave it to the carriers? Why not objectify it and put it in the legislation as to, you know, what criteria puts you into what assigned category?

SENATOR LESNIAK: Actually, we are leaving it to the Commissioner, really. That is what the insurance industry testified against. They don't want him to have prior approval of these underwriting rules, but this bill does do that. I don't know if it is proper for the Legislature to get involved in drafting underwriting rules.

MR. McCOOL: Except that you did touch on where you live.

SENATOR LESNIAK: Standards, you know, guidelines, but not the specifics of it. There are thousands of them.

MR. McCOOL: Well, maybe more standards then.

The last has to do with, since the previous statements that were made were dependent upon the continuing financial difficulty of the JUA, I was struck by the fact that the last surcharge that was levied, the Department of the Public Advocate said that it was not needed at all, and the Department of Insurance differed. It was \$73 or \$76. I was wondering if enough time has gone by that by looking at the cash balance of the JUA, was such a surcharge necessary? That is a question that touches directly on these bills, because the arguments were just made that the financial situation will continue to

worsen unless these things are adopted. I am wondering, since there was such a wide divergence of opinion on the last one that was levied, is there enough evidence in right now to see whether it was warranted or not?

SENATOR LESNIAK: I am not so sure that there was such a wide divergence of opinion. It seems to me that the Public Advocate was standing alone on the issue, in terms of the financial condition of the JUA.

Notwithstanding that, the structured payment part of the legislation only goes into place if the JUA has insufficient revenues. Is that correct?

MR. DAVIS: That's right, yes. They have to have insufficient revenues.

SENATOR LESNIAK: And the loan program only goes into place if that is the case.

MR. DAVIS: The loan--

SENATOR LESNIAK: Just say, "Yes," Dale. (laughter)

MR. DAVIS: Not quite, because there is a divergence between the two bills. Basically, with A-3702, you would have to have the deferral of payments before you could then issue another RMEC, whereas A-3701 says you can't have any increase in the RMEC.

SENATOR LESNIAK: Right.

MR. DAVIS: And you have to have the deferrals, and then you borrow money from the premium taxes.

SENATOR LESNIAK: The answer was yes.

MR. DAVIS: The answer was yes.

SENATOR LESNIAK: So anyhow, the answer is yes.

SENATOR O'CONNOR: Senator Lesniak, the JUA deficit is probably going to be just about as predictable as taxes and death -- things that definitely happen.

SENATOR LESNIAK: About as predictable as the World Series.

MR. DAVIS: We know it is coming, but we don't know when.

MR. McCOOL: Well, there is an easy way to find out. Ask the Department of Insurance whether or not it was necessary, based on the cash flow.

SENATOR LESNIAK: Well, I mean, I think they are on record as saying that it was.

MR. McCOOL: At the time it was levied. I am wondering now if there is enough in. I know you don't know. I am just saying--

SENATOR O'CONNOR: Bring them back.

SENATOR LESNIAK: The answer to that is very simple, quite frankly, because then they can reduce it. I mean, that RMEC stays in place, unless it is reduced. Gee, if it's enough, then it can go down next year, you're right, without this legislation.

Thank you. Are there any questions? (no response)

MR. McCOOL: Thank you.

SENATOR O'CONNOR: Dennis Crowley is here. He can probably answer that last question.

SENATOR LESNIAK: Okay, I will take him out of place, because he is representing the Attorney General, who may be the next Governor of the State of New Jersey, so-- Dennis Crowley?
D E N N I S P. C R O W L E Y: Was that the representative who is going to be the next Governor? I am not prepared. Give me another four years.

SENATOR LESNIAK: Wait a second. What are you carrying there? We just want a simple statement. We don't want--

MR. CROWLEY: We are opposed to A-3703.

SENATOR JACKMAN: Are you going to talk on 703?

MR. CROWLEY: A-3703, Senator.

SENATOR JACKMAN: A-3703. Okay. So that means you're okay on A-3701 and A-3702.

MR. CROWLEY: We have no comment on A-3701 or A-3702.

SENATOR JACKMAN: Okay.

MR. CROWLEY: We just think that A-3703 is a far more sweeping gesture on the part of the Legislature to attack what is a real problem, and that is the insurance problem. We are much more supportive of your earlier actions in creating the Insurance Fraud Act, creating the Division of Insurance Fraud in the Department of Insurance, and providing them, just last January, with sufficient access to resources to pay for their operations, which include, in an administrative way -- include the cost of prosecuting through our office the fraud cases they uncover in their investigations.

We really feel, quite candidly, that creating a layer, which frankly is superficial, on top of what you have already done in the area of insurance fraud, by creating a special prosecutor, is just a far more Draconian measure to attack a problem. It would create confusion on the part of the industry, and would create confusion on the part of the Department of Insurance, upon all of us, and may well cause, in fact, more problems than you are hoping to solve by it.

We suggest that that bill, while it was probably well-intentioned to, in a sense, signal the seriousness of insurance fraud-- It probably ought to be held here until such time as your earlier actions in the Insurance Fraud Act have proven clearly to be defective beyond repair. So, we would suggest that you hold that bill -- A-3703 -- until that time comes.

Thank you.

SENATOR LESNIAK: Okay.

SENATOR O'CONNOR: That's Speaker Hardwick's bill, right?

SENATOR LESNIAK: Well, we wouldn't want to do anything to Speaker Hardwick's bill.

MR. CROWLEY: That's Assemblyman Zecker's bill.

MR. DAVIS: Zecker's -- 3703.

SENATOR LESNIAK: Oh, yeah.

MR. CROWLEY: By the way, I might want to suggest, while you are there -- which may explain something that Dale may have distributed -- early on when this package of bills was being written by the Assembly, we were asked to provide some input into them and what could be done to strengthen the Insurance Fraud Act. We did provide them with some alternatives in the form of codifying the administrative relationship we have with the Department of Insurance in the area of determining the prosecutorial costs of that Act. That is a piece of language that you may want to consider at some other time. But the bill at hand before you -- A-3703 -- we clearly do not support that bill.

Later, you may want to consider some alternatives for strengthening further the Insurance Fraud Act, but that is probably the subject of a later meeting.

SENATOR LESNIAK: Dennis, in the event that the bill is released from Committee, it has to go to Revenue, Finance and Appropriations, because it means a \$500,000 appropriation. That is just for information purposes.

MR. CROWLEY: I'm sorry, Senator?

SENATOR LESNIAK: In the event the bill is released from Committee, it does not go to the floor of the Senate for second reading. It goes into the Revenue, Finance and Appropriations Committee, because it has a \$500,000 appropriation.

MR. CROWLEY: A \$500,000 appropriation, which is one of the reasons why it is unadvisable.

SENATOR DiFRANCESCO: What's wrong with a \$500,000 appropriation?

MR. CROWLEY: It is taking \$500,000 of new money and spending it, when we are already spending--

SENATOR DiFRANCESCO: Okay.

SENATOR JACKMAN: Well, that is why we're sending it to the Appropriations Committee, because Weiss doesn't put money out that easily. (laughter) Okay?

MR. CROWLEY: Tell me about it, Senator. Try getting a \$378 million budget through his Committee.

Thank you.

SENATOR LESNIAK: Thank you, Dennis. Stephen Carrellas, Citizens for Rational Traffic Laws, Inc.?

STEPHEN G. CARRELLAS: Thank you for inviting me here today. I am Steve Carrellas, the New Jersey Chapter Coordinator for Citizens for Rational Traffic Laws. Citizens for Rational Traffic Laws, or CRTL, was founded in 1982 on a national basis, and is supported by individual, family, and business memberships. Our goal is to advocate, protect, and represent the interests of American motorists; in this case, New Jersey motorists.

Right to the point, A-3702 is aimed at restructuring the JUA and, as I told the Auto Insurance Study Commission last week, the JUA needs radical restructuring to the point where it doesn't resemble what we see today. A-3702 won't do that, but it does have one very important element: It recognizes that many, many good drivers were put in the JUA, and it tries to protect them from the higher rates that the truly bad drivers should be paying. The problem is, the criteria for good versus bad is totally unsatisfactory.

Now, A-3702 defines the criteria to be put in this higher rate structure and, Mr. Chairman, you alluded to it a moment ago. The statement in the bill is a rewording of the criteria currently used by the voluntary market to deny motorists to its ranks. Two or more moving violations, or four or more points, in the past three years, is another way of achieving the voluntary market's call for no more than one, two-point violation, again in the past three years. Some insurance agents have reported that only 25% of applicants pass this criteria.

Now, I think we have heard a lot about the 80% of the two million drivers in the JUA being good drivers, 10% having borderline driving records, and the last 10%, or 200,000, being the truly bad drivers. Looking at residual markets in other states -- to give you an idea of what they consider a number of bad drivers -- Maryland's contains 98,000 drivers, while in California about 1%, or 136,000, of the 13.6 million insured drivers are in their residual market. The current JUA depopulation goals of reaching 500,000 to 800,000 drivers, still outpace any residual market in the country.

A-3702's criteria will only continue to penalize good drivers. Now, what does having an accident, or two violations in the three years prior to a policy being issued or renewed, have to do with being a high risk driver? And, to make this definition clear, not high risk as in where you might live, but as related to your driving record. To answer that question, I think you need a closer examination of each element, and let me briefly touch upon some.

Violations: The violation points aspect of A-3702 seems to be a perpetration of the insurance surcharge system administered by the DMV, a money-making scheme which has been averaging \$35 million a year, far less than the anticipated \$100 million. Now, with this system, motorists pay a given fee for three years for specific violations, including an improperly displayed license plate, which may result from going to the car wash and getting it bent. More generally, motorists pay \$100 each year they have six or more points on their record for the immediate past three-year period. Now, the point reduction provision of the existing law -- the one that was passed in the '70s -- where three points were subtracted from the point total every time you didn't have a violation in a year, or a suspension-- They do not apply to these point totals for surcharges.

To make matters worse, the driver improvement plan went into effect in 1988 for drivers insured through the JUA. This plan did similar things, but it is harsher. Basically, it collects surcharges and has nothing to do with driver improvement.

The key question you probably want to know the answer to is, what do violations have to do with accident risk, or being a high risk driver? A look at the "Motorists' Guide to the DMV" shows that 70% of the listed violations are two-point violations. The vast majority of these rules of the road make sense and are generally complied with. A key point: Committing a few two-point violations, especially with no accidents, does not appear to represent deviant behavior, unless it is continually repeated by a minority of offenders, or results in accidents. Now, under the normal point system, with the annual three-point reduction provision, a motorist could accrue a few points every few years, and typically never reach the six-point threshold, where the DMV goes to the trouble of sending a warning note out saying you are approaching the 12-point suspension level.

Basically, much of the good intent and fairness of the point system has disappeared as the insurance system needed an excuse to collect more money for its problems. A-3702, while well-intended, seems to be doing the same sort of thing. It's real easy money, to get someone with a couple of violations over a period of time.

Now, as far as the accident risk element-- Here are some examples of poor correlation of points to accident risk. Ed McCool touched on a couple of them when he was speaking. The first one: The point scheme for leaving the scene of an accident -- two points for no personal injury; eight with injury. That is a case of no correlation to accident risk. These points do not reflect an accident risk because the offense is a post-accident incident. (pause here; Chairman consulting with Mr. Davis)

SENATOR O'CONNOR: I'm listening.

SENATOR LESNIAK: I'm sorry.

MR. CARRELLAS: Thank you.

SENATOR LESNIAK: Eddie will listen; we are amending the legislation.

MR. CARRELLAS: To better highlight the often minimal correlation of points to risk, consider an illegal right on red. Failing to see an unobstructed sign is not a legal excuse, but do the conditions at the time of violation constitute an accident risk? Did the motorist stop first? Was there any traffic in sight such that accident risk was zero?

Similar questions can be raised for scenarios involving other violations. Even violations with higher point values don't always address their purported intent. The CRTL has extensive experience with the correlation of accident risk and penalty schemes to speed limits. Now, this isn't the Committee for changing speed limits, but here is an important perspective: Underposted limits also skew the point system associated with speeding. This is most prevalent on limited access divided highways posted at 55, which are our State's safest roads, with 85th percentile speeds averaging in the middle 60s. Basically, the 85th percentile speed is where traffic engineers would base the speed limit, if there weren't political considerations in mind. So, my basic point on this, is how easy the moneymaking is as a result of 55 -- the ticket, the eventual penalty surcharges.

The last element is accidents. Regarding at-fault accidents as a criteria, numerous sources reveal that no method currently exists to predict with accuracy the crash involvement of individuals, even when crash records are augmented by other variables such as age and sex. So, that's a tough problem.

In light of what I have just discussed, CRTL recommends the following, a couple of which have implications beyond A-3702:

First, maintain the intent and practice of the standard point system and the resulting driver record, so that good behavior on the part of a driver is reflected with point reductions.

Second, use accident mileage rate, and not just the number of accidents when using at-fault accidents over time as a risk criteria.

Third, don't use violations and point values as part of a risk assessment when there is no clear tie to accident risk.

Two implications beyond the bill are: Repeal the insurance surcharge penalty system that is administered by the DMV, and repeal the driver improvement plan.

My written testimony has some other detailed recommendations which start getting technical, so I won't repeat them here.

In closing, an important message, I think: Setting a rational criteria for a high risk driver is critical to the fair treatment of all drivers. The good drivers in the JUA should not be subjected to higher rates that do not reflect their accident risk. Those not in the JUA should not be subjected to the carryover of an ill-conceived risk criteria into the voluntary market, which A-3702 touches upon, as in having rates in the voluntary market that relate to higher risk.

That is my statement.

SENATOR LESNIAK: We do have your testimony in full, and it will be entered into the record. Are there any questions from the Committee? Senator Cardinale?

SENATOR CARDINALE: I just want to make an observation for the witness that, I understand what you are driving at -- minor violations -- but it is not very difficult to determine when making a right turn or a left turn in opposition to the signaling at that particular intersection-- When is that dangerous behavior, and when is it less dangerous behavior? I

mean, that causes lots of accidents. I daresay that that might even cause more accidents than going five or ten miles over the speed limit causes, if you are on an open highway, or it is in the middle of the night. Maybe a 20-mile speed limit violation is not as dangerous as making a right on red where you are not supposed to, because those signs were posted with some degree of knowledge, in most instances, and maybe the people posting the signs didn't exercise proper judgment.

MR. CARRELLAS: Oh, yes.

SENATOR CARDINALE: We can't, you know, equate all of those things. We have to rely on some of the people that we set out to do some of that work. I just see that a wrong turn, a turn at an intersection, where the signage indicates otherwise-- Other drivers are depending on, or may be depending on, the behavior pattern that they expect, and that causes accidents.

MR. CARRELLAS: I understand what you're saying, and this, in its use here, is strictly an example, you know, to depict that if someone got caught doing that -- and as I said, there is no legal excuse for not seeing a sign, unless it is obstructed -- if there were absolutely no cars around, but there was a police officer waiting to say, "You violated this," for that person -- and you can take another violation; I said there are others where you can use similar arguments-- That does not necessarily reflect an accident risk.

Now, you are absolutely right about the right turns on red, even when you are supposed to do it -- you can do it. They can cause problems. But the point is, they do not always reflect accident risks. In looking at all of the points -- all of the numerous two-point violations -- they were there because you need something to say, "Hey, there is a law," and we have something to say, "Yes, if you did this, you broke the law, and I want to remind you about that." If there is an accident involved, you have to be able to charge someone, to say they

broke the law. You can point to this and say, "There is a penalty associated with it." But relating it to accident risk, you know, by accumulating a couple of two-point violations, it just may not fly. I don't think it does.

SENATOR CARDINALE: Isn't that what insurance is all about? Doesn't insurance penalize every driver who doesn't have an accident by making him pay money, even though he never had an accident, because some people have accidents? You want to be able to compensate the people who do. I mean, that is the whole theory behind this. You can't say you are only guilty of a violation and become a high risk driver, if that specific violation caused an accident.

MR. CARRELLAS: No. I know what you're saying.

SENATOR CARDINALE: It is the risk of causing an accident that we are trying to measure here.

MR. CARRELLAS: I understand. Yet, I guess my message is, when you look at the intent of what points are there for, it takes on a different perspective than what was attempted in this bill.

SENATOR CARDINALE: Maybe that is what you are looking at -- whether the point system is still appropriate today, in light of what is being used.

MR. CARRELLAS: That's right.

SENATOR LESNIAK: Are there any other questions by the Committee?

SENATOR JACKMAN: It's half-past four. (laughter)

SENATOR LESNIAK: Any other questions from the Committee? (no response) Okay. Thank you for your testimony, Mr. Carrellas.

Karen Kotvas, Lawyers Encouraging Government and Law. Here you thought you were near the top of the list, and all of a sudden I went in reverse order.

K A R E N K O T V A S: That's okay.

SENATOR LESNIAK: Actually, you were right in the middle anyway, so--

MS. KOTVAS: Is it really four-thirty?

SENATOR JACKMAN: Four-thirty.

MS. KOTVAS: Is that a hint?

SENATOR LESNIAK: I'll tell you what: In exchange for you just submitting this testimony-- Why don't I make a deal on this? (laughter)

MS. KOTVAS: Okay, I'll go for that.

SENATOR O'CONNOR: Make it a good one, Karen.

MS. KOTVAS: Okay. I would love to do that. I will not talk about the 25 points I wanted to raise about these bills.

SENATOR LESNIAK: No, no, please go ahead.

MS. KOTVAS: No, no, no, I want to take this deal. It's the best deal I have ever had. (laughter)

I will mention one thing that I feel we are the most opposed to in the bill -- it is about the surcharges -- and then I will talk about what I would love to have for an amendment.

The one thing that we are definitely opposed to in the first bill -- A-3701-- We're talking about the surcharges, and the bill talks about eliminating all future surcharges. It says nothing about the current surcharges that we have right now -- that are in place -- that Jack Trope, the Director, says may have to be in place for seven years; where the Public Advocate, in a letter to the Insurance Commissioner in January, said there were overcharges; and in July, he said that that second surcharge was not necessary. I have put all of those things in my testimony for you.

SENATOR LESNIAK: Isn't it strange, that one person would say that they have to be in place for seven years -- and it would involve a lot of money, hundreds of millions of dollars -- and yet, on the other hand, someone says it is unnecessary. One of those two people are really screwed up. (laughter)

MS. KOTVAS: Far be it for me--

SENATOR CARDINALE: You can look at it in another way. It is the Public Advocate's job to say it is wrong.

SENATOR LESNIAK: No, I'm not looking at it any way. I just want to make the point that one of those two is way off base.

MS. KOTVAS: Yes. I think we could find out if we looked at the monthly cash flow statement. And of course, all that is taking place right now. But I really think that those are questions that should be asked about the current surcharges. When you have a Public Advocate who is saying that they have overcharged by "X" number of dollars -- and I realize these audits are going on; the Commissioner said perhaps May or June-- The bill does not take into account those audits and what they might result in. For example, if servicing carriers did overcharge, and if a surcharge, especially the second one, was not necessary, then what happens? I mean, we were overcharged. The JUA was overcharged; people were overcharged. That is what I would like to raise with you.

And if in the world of "Candide," in all possible worlds, I was allowed to ever, ever get the amendment I wanted in the whole world, if it were my Christmas wish list, I would love to see the State exemption for insurance companies repealed across-the-board, so that we don't have an ISO target rate, even for the companies under 1%; so that companies have to underwrite; they have to do their own data; they have to compete in the market; and the companies that are not efficient would fall by the wayside. The other companies would have to lower prices to compete, and then you would see some price changes.

That is my Christmas wish.

SENATOR LESNIAK: Do you know how many companies would not be allowed to use the ISO rates, under my bill?

MS. KOTVAS: I have that information back in my office. The Insurance Commissioner came out with the companies-- Do you remember the complaint list? He listed all of the companies and how many complaints they got. What was wonderful about that was that he also listed the percentage of the market they wrote. It is interesting, because some companies write 0.01% of the market. How many policies is that? I mean, why are they out there? How efficient could they be?

SENATOR LESNIAK: Why are people buying insurance from them? Okay. Thank you, Karen.

MS. KOTVAS: Thank you.

SENATOR LESNIAK: Elmer?

E L M E R M A T T H E W S, E S Q.: Good evening. (laughter) I appreciate that the hour is late. Let me introduce myself for those who don't know me. My name is Elmer Matthews. I am the New Jersey counsel for the American Insurance Association. I have been before you before on this issue, so I won't beat to death the same things I have talked about. But I do confess to a certain feeling of deja vu, because I can remember sitting -- and a lot of these faces were here -- when we put through the JUA bill and talked about the necessity for a two-tier rate and the necessity for notifying the members of the JUA that they would be susceptible to a RMEC, and things like that. So, those things are out there, but I don't want to talk about them today.

I want to talk about the fact that these bills, no matter what they try to do, really are not facing, right up-front, what we have to face up to, and that is this deficit in the JUA, which was 2.6 and has increased every month since we heard the 2.6 figure. Granted, by 1994, or 1995, we will begin to swallow up that figure if we accept the actuarial projections that have been thrown at us. But between 1988 and 1994 or 1995 -- "There is a lot of slip between the cup and the

lip." And there are a lot of changes that are going to take place in the JUA; a lot of changes on the impact of that as a company, and a lot of changes on the cash flow.

It concerned us at AIA so much, that in August, after the Governor's conditional veto message came out, we took the conditional veto message and the assumptions that go along with that message, to Tillinghast & Company, which is an actuarial firm in New York, which were the original actuaries for the JUA, and who left the JUA as actuaries at the time when the JUA went to cash flow financing. We gave them the Governor's conditional veto message, and we asked them to project the impact of the message on the insurance marketplace in New Jersey, taking into effect all of the things that are in the Governor's message.

As a result of that, the company advised us that the significance is that the Governor's bill has a chance to get the JUA to a point where it begins an annual break-even operating result in 1990; that is, positive net income, including the subsidies from the voluntary market. However, the statutory deficit rose substantially in the interim from \$2.4 billion in 1987 -- that is the figure we have been using -- to \$3.5 billion by the end of 1990.

Also, a negative cash flow will still prevail under that scenario, hitting more than a \$500 million cash deficit by the end of 1990. This mandates an additional and early infusion of cash. It is also critical that the JUA obtain that sequence of increasing surcharges above the voluntary market rates to begin to retire the huge statutory deficit in 1990. What that means is, all of the things that are in the Governor's conditional veto, and to some extent are in Speaker Hardwick's bill, should be in place. In other words, we should be thinking a 110, 120, 130, 140 differential of rates between the voluntary market and the JUA over the next four-year period.

But the most startling thing that was in the letter from Tillinghast & Company -- and I am glad I am a witness so late in the afternoon, because all the press has gone and they won't hear what I have to say-- They addressed us, and said finally, "The current and continuing negative cash flow would appear to require an additional cash basis RMEC of \$70 per car, beginning on January 1, 1989. This may still require short-term borrowings or delayed claim payments to cover the possibility of a negative cash position in the latter part of 1988."

So, do these bills stop RMECs? I hope so. I hope for all of our sakes that they do. But based on what we have paid a company -- a reputable actuarial company -- to tell us, it looks like it is still a rocky road ahead.

SENATOR LESNIAK: Are you submitting that to the Committee?

MR. MATTHEWS: It is a draft. I am afraid-- I will give it to you on a confidential basis.

SENATOR LESNIAK: Well then, could you give me--

MR. MATTHEWS: I will give it to you on a confidential basis, but not for total release because it has assumptions in it. It also has assumptions of the--

SENATOR LESNIAK: Well, I hate to tell you this, but this is a public hearing.

MR. MATTHEWS: What I have said is a matter of public record. It's a matter of public record. I am talking about the stabilizing facts behind it, that are based on assumptions. And I will give you that on a confidential basis.

SENATOR LESNIAK: I would like to see the final, quite frankly, as well as the draft.

MR. MATTHEWS: Okay. The reason I brought it forward is, we learned it, and we think you are entitled to know this. It points up the fact that the real item in rates now, is the part of the rates which go to reduce the deficit, or to meet

the cash flow obligations of the JUA. We've got to face that sooner or later.

SENATOR LESNIAK: One observation that should be made, is that prior to the legislation which was enacted, the projected additional RMEC was 350.

MR. MATTHEWS: No question about it.

SENATOR LESNIAK: So it is now down to 70.

MR. MATTHEWS: We said it was a good first step, but it really, really does not go far enough. I don't want to go into the bill, because a lot of it has been talked about. As far as fraud prosecution is concerned, as the AG indicated, we have a Division of Fraud in the Insurance Department, which we just put into effect, or just beefed up within the last 12 months -- it is funded by the companies; we have the Attorney General; and there is really no need for an additional bureau of State government, again funded at 50 cents a car, to do what the Attorney General and the Fraud Division can do.

At the risk of taking a position on the bill, I think that this bill might be a little bit of surplusage. I won't go into A-3701, but I would like to point out to you what Dale has probably already indicated to you. There is an inconsistency between the two bills. You can't report both of them as is, as far as postponement of future RMECs are concerned.

SENATOR LESNIAK: Who says we can't? (laughter)

MR. MATTHEWS: Unless you want to be brilliantly inconsistent. Going into the bill itself, I would just like to make a few comments. One is on the mandated rate increases in the JUA. I think it is important that you do allow these mandated rate increases. The Commissioner has the right to impress a safety valve on these rate increases, and you have the additional safety valve of the excess profits law, the general arbitrary and capricious statute in New Jersey. So, I would not temper the increase that the actuaries have projected. I would not temper these increases, because of the

possibility that when we get into an election year, we do have the habit in New Jersey -- and I say this with all due respect to you -- to make rates that are more political than actuarial.

So, if we mandate the increases that were called for in the calculations, and let the Commissioner roll them back if he finds them excessive, I think it would be helpful.

SENATOR DiFRANCESCO: If they had told us in '84 that we had more of a problem, you know, which was a year before the election, we might be in better shape now. So, I mean, you are talking to the wrong people here, I think.

MR. MATTHEWS: The Hardwick bill also removes the actual experience rates for collision and comprehensive, again, for those people who are not four-point drivers, or accident drivers. In both of these programs, you are taking substantial cash out of the JUA. That would visit a considerably more deleterious effect on the projections done for us by Tillinghast, if these figures do come out.

Now, granted -- granted -- the Speaker's bill has this method of postponing payment of BI claims; 50% of BI claims over a four-year period on an annual payout, plus the statutory rate of interest in 31:1-1, which is 6%, by the way. But that, I think, will visit a substantial effect, and may cause more RMEC problems before you want to have them.

On the medical fee schedule, I have the concern that if we put a medical fee schedule into effect, we have done nothing to stop the secondary billing of those same medical fees or expenses to the policyholder or to the consumer. All we are doing is controlling the amount of money that the carrier is paying out. In other words, if a doctor wants to charge the patient more, he can still charge the patient more. In New York, I think the situation is variant.

SENATOR DiFRANCESCO: Well, this is not a change.

MR. MATTHEWS: No, it is not a change, but if you-- You are restricting, but you are only restricting it as far as

the payment of the policy is concerned. You are not restricting it as far as the individual is concerned. So a doctor could still charge \$75 for this one, and get \$35 from the carrier, and there is an overbilling.

SENATOR LESNIAK: Okay.

MR. DAVIS: So, what is the point?

SENATOR LESNIAK: Not only does he make up the agenda, but he schedules the way the Chairman starts asking questions.

MR. DAVIS: I'm sorry.

SENATOR O'CONNOR: Chairman Davis. (laughter)

MR. MATTHEWS: I would like to get to the-- You're getting a little bit tired, but I would like to get to the underwriting guidelines section. This bill requires that not only underwriting rules and guidelines be filed with the Commissioner, but that they be subject to his prior approval. I asked somebody today to check this out. There is not one state in the entire country that requires prior approval of underwriting guidelines. I endorse completely what Wes Caldwell said about the confusion and desperation in the Insurance Department when guidelines had to be filed for commercial insurance. They left the field very, very quickly, because they found they could not do it.

Now, another thing that people don't understand about underwriting guidelines is, this is the method, believe it or not, by which companies compete with one another. So, to some extent, guidelines, as strange as this may sound, are proprietary information, just the same as Mrs. Munsonlyner's (phonetic spelling) rye bread has a different amount of yeast in it than anybody else's. So, in framing your policies, and in fixing the costs of your policies, your guidelines do a lot to shape the costs of your policies. If you want everybody to sell policies that are cookie-cut policies and restrict competition, this is the way to do it, by prior approval. I think it is a mistake, and I don't think you ought to carry through this kind of a restriction on companies.

There are other things which, if the hour were earlier, I would discuss, but I think they are the most important issues. I think if you can't do it in this legislation, you've got to do it in some other legislation. Approach the idea of trying to cut this JUA deficit away from where it is now. It is an albatross around the necks of the consumers of New Jersey.

SENATOR LESNIAK: Do you have any suggestions?

MR. MATTHEWS: Well, you and I have talked about suggestions over the last six to nine months. A lot of them are like castor oil.

SENATOR LESNIAK: The gasoline tax.

MR. MATTHEWS: The gasoline tax, tax on new cars, tolls, things of that nature.

SENATOR LESNIAK: We didn't talk about tolls.

MR. MATTHEWS: Preliminary borrowing.

SENATOR DiFRANCESCO: Do you mean that he wants to increase the tolls?

SENATOR LESNIAK: We didn't talk about tolls. I suspect--

MR. MATTHEWS: I mean, all of them are like castor oil.

SENATOR DiFRANCESCO: At one of these secret meetings?

MR. MATTHEWS: Yes, very, very secret.

SENATOR LESNIAK: Elmer, thank you.

MR. MATTHEWS: We have a Judy Stanley.

SENATOR LESNIAK: I suspect that you may be right. We may be-- I guess the JUA bailout one was two years ago -- the one I sponsored, that the Commissioner said saved \$400 million, or thereabouts. JUA bailout two is the one that was recently enacted into law, that the Governor and I collaborated on. And this is going to be -- if it gets through both houses and signed into law -- JUA bailout three. And I presume there will be a fourth, at least.

MR. MATTHEWS: I don't envy you your position, really. You have one of the toughest issues that anyone could have. It is a castor oil situation.

SENATOR LESNIAK: Thank you. Are there any questions? (no response) All right, let's get to work.

MR. DAVIS: You have another person.

SENATOR LESNIAK: Oh, I left someone out? I'm sorry. James Klagholz. I'm sorry, that was unintentional. I thought you had testified; I'm sorry.

J A M E S K L A G H O L Z: Thank you, Senator. I am James Klagholz. I am the immediate past President of the Independent Insurance Agents of New Jersey. I have submitted my testimony, so I won't read it to you, but there are a couple of points I would like to go over with respect to all three bills under consideration.

A-3701 had three main features: freezing the RMEC where it currently is; modification of JUA rate increases that were stipulated in the Governor's conditional veto; and utilization of premium taxes generated by auto insurance premiums.

With respect to freezing the RMEC, we would like to express our opposition to that. As distasteful as the RMEC is to all of the parties involved in the insurance arena, we think that mandatorily freezing it where it currently is simply ties the hands of the State of New Jersey and the Commissioner to respond in the future to the very, very real possibility that the cash generated from its operations in the absence of any future RMEC would not be sufficient. If that isn't the case, the RMEC can remain on the books, and simply not be used. Certainly, I'm sure the executive branch of government would not institute it if it weren't necessary. But to mandate that there shall be no future RMEC simply ties the hands of the Commissioner.

With respect to the modification of JUA rate increases, as it stands in the conditional veto, we would also like to oppose that, for two reasons: First of all -- and it has been expressed earlier several times -- the assumptions made regarding the future cash needs of the JUA were based on the increasing rates of all participants. Although we do not applaud rate increases, in the case of the JUA, in order to get into a position where it is self-sustaining four years from now, we believe that rate increases for everyone in the JUA are necessary.

The second reason for our opposition to that, is that rate increases provide the environment for a natural flow of insured people in the JUA out of the JUA and into the voluntary market. It would create a natural market response. It was stated earlier than many people don't know that they are in the JUA simply because the rates are the same as they are in the voluntary market. It is unwise for the JUA to continue to try to compete with the voluntary market. By increasing rates, there is an incentive for people to seek coverage through the voluntary market and get out of the JUA.

The third major feature of A-3701 is the utilization of premium tax dollars generated by auto insurance premiums for the JUA. We support this wholeheartedly. We do, however, wish that it would not terminate mandatorily six years from now. We would like to see this as a possible beginning of the solution to the accumulated deficit. We think that premium taxes from automobile insurance should be dedicated to the beginning of the retirement of the JUA deficit. But we do support the utilization of the premium taxes.

With respect to A-3702, that has many features. Here again, it modifies the JUA rate increases over the conditional veto. It establishes JUA comprehensive and collision rates based on JUA experience. It allows non-standard auto insurers into the market.

SENATOR LESNIAK: You're taking the time to testify to tell us what these bills do? We have just been listening to this for four hours. Do you want to tell us what your comments are on the bills?

MR. KLAGHOLZ: Okay. For the same reason that I mentioned about the rate increases for liability coverage, our opposition to that, we are opposed to the proposed amendment of comprehensive and collision coverages based upon JUA experience. We laud the idea that it is based upon JUA experience, but we think that should apply to all coverages, not simply comp and collision.

With respect to non-standard insurers in the market, we support that. We feel that in other states -- they do operate in other states, but not currently in New Jersey -- they provide an important market for another segment of the automobile driving community. The benefit to the JUA is that it would relieve the JUA from responsibility for providing coverage for high risk drivers, who often have accidents and create the cash flow problems.

In A-3702, the financial plan for the JUA to meet its day-to-day obligations -- and here I am speaking of the potential delayed loss settlement provision-- We are very, very opposed to that. The question was raised earlier about how the complexion of the JUA would change had it operated on an actuarial basis versus the fact that it is operating on a cash basis. Now, we see that as another means of simply draining the JUA of the cash flow it needs to operate, and delaying the ultimate loss payments that the JUA must ultimately face. For this reason, we do not at all support the provision for delayed loss settlements.

Flex rating: We think the flex rating system in S-2637 should be given time to prove itself. We believe it is superior over the flex rating system that is proposed in A-3702. That one is seriously flawed. As an example of one of

the flaws in the rating system, it ties property damage rates to the medical care component of the Consumer Price Index, and obviously there is no relationship between the two. So we think S-2637 has a far superior chance of success than A-3702.

Depopulation of the JUA: Here again we support the provisions of S-3627, because we think the Department of Insurance should be the authority to exercise control over the depopulation plan, the publishing of the lists, and the data bank and the dissemination of that information.

We think that A-3701 and A-3702 taken together, although each have their pluses and their minuses-- In their present form, we are opposed to both, but through a process of culling, there are important provisions in both, where the legislation, if it were done properly, could be supported.

Finally, with respect to Assembly Bill No. 3703, on behalf of the Independent Insurance Agents of New Jersey, I would like to say that we are opposed to all types of insurance fraud, and we support the concept of an independent insurance fraud prosecutor.

SENATOR LESNIAK: Okay. Any questions? (no response) I would propose that we close the public hearing, and open the Committee meeting.

(HEARING CONCLUDED)

APPENDIX



State of New Jersey
DEPARTMENT OF THE TREASURY
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DEPARTMENT OF TREASURY

POSITION ON: A-3701

SENATE LABOR, INDUSTRY & PROFESSIONS

COMMITTEE MEETING

October 20, 1988

The Department of Treasury is opposed to A-3701.

Even though no appropriation is included in the bill, it would have an impact on the General Fund. Beginning with Fiscal Year 1989, the total revenues available for appropriation would be reduced because the taxes collected from insurance companies which are attributable to the taxes on motor vehicle insurance would be diverted to the Special Automobile Joint Underwriters Association Loan Reserve Fund.

The Division of Taxation indicates that in Fiscal Year 1988, \$44.8 million has been realized from this tax.

Barbara W. Steele, Assistant State Treasurer
Office of Legislative Affairs



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Michael A. Cohan

Marvin Pincus

Francis J. Hartman

Myron W. Kronisch

Lowell F. Curran Jr.

George J. Duffy

Morris Brown

Thomas E. Weinstock

Rocco W. LoPiano

Herbert E. Greenstone

Frederick Freeman

Robert P. London

Matthew W. Parks

Jerry M. Finn

Albert W. Seaman

Jerome L. Yesko

Mortimer Wald

John A. Laird

ASSISTANT EXECUTIVE DIRECTOR

Cornelius J. Larkin

EXECUTIVE DIRECTOR

October 20, 1988

TO: Members of the Senate Labor, Industries and Professions Committee

FROM: Joseph D. O'Neill, President
Association of Trial Lawyers of American
New Jersey Affiliate

RE: Comments on A-3702 and A-3703

1. The Association of Trial Lawyers of American - New Jersey Affiliate (ATLA-NJ) wishes to call your attention to Section 12 of A-3702, a bill that makes various changes in the laws governing automobile insurance.

Section 12 would provide for a form of structured settlements, an arrangement we believe is unfair to victims. Structured settlements cannot meet the real needs of seriously injured victims nearly as well as individually tailored awards.

By allowing the JUA to mandate a pre-determined method for making an award, Section 12 would limit the ability of intelligent judges to determine how award money should be spent.

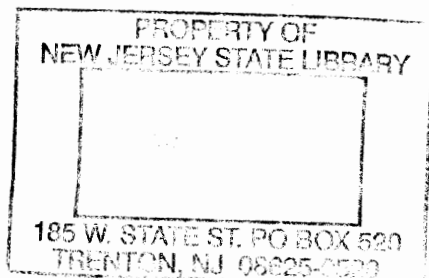
Our members work with seriously injured people every day. We know that appropriate settlements reflect the unique needs of the injured individual and the particular family involved. A structured settlement is sometimes the most appropriate solution, but only when it is agreed upon by all the parties involved.

By allowing the JUA to mandate how a settlement is to be structured, this section would preclude the court from determining the individual's actual needs and distributing the award accordingly. We are concerned, for example, that the yearly payments may not allow a kitchen or bathroom to be made wheel-chair accessible. Would the annual allotment mandated by the JUA be sufficient to purchase expensive products and services such as a home access ramp or van with a hydraulic lift? And shouldn't the elderly victim be immediately and fully compensated, rather than allow half the payment to only benefit the heirs?

The injustice imposed by Section 12 is compounded by the fact that many, many New Jersey drivers with good records are arbitrarily placed in the JUA by their insurance companies. Why should they be treated differently from their peers? People involved in accidents where the JUA is responsible for paying the recovery would be treated as a separate class, a disparity that we believe raises the question of due process and equal protection under the law.

For these important reasons, ATLA-NJ strongly urges you to remove Section 12 from the bill.

2. ATLA-NJ opposes A-3703, a bill which creates a prosecutor in but not of the Department of Insurance to investigate and prosecute automobile insurance fraud. Investigations and prosecution of automobile insurance fraud are currently being handled through the Attorney General's Office; we believe they should continue to be handled this way. The appropriation called for in the legislation, \$500,000, would be a wholly unnecessary expenditure.



STATEMENT
OF
ALFRED A. SLOCUM
PUBLIC ADVOCATE OF NEW JERSEY

BEFORE
THE
SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

OCTOBER 20, 1988

GOOD AFTERNOON CHAIRMAN LESNIAK AND MEMBERS OF THE COMMITTEE.

ASSEMBLY BILL 3702 CONCERNS PRIVATE PASSENGER AUTOMOBILE INSURANCE--A TOPIC OF GREAT CONCERN TO NEW JERSEY'S CITIZENS. IT AMENDS THE RECENTLY ENACTED AUTOMOBILE INSURANCE REFORM BILL.

SECTION 5 OF A-3702 AMENDS THE SO-CALLED "FLEX RATING SYSTEM" TO ESTABLISH THE "MAXIMUM PERMISSIBLE ANNUAL RATE INCREASE APPLICABLE TO EACH RATE LEVEL WHICH SHALL BE A STATEWIDE AVERAGE RATE CHANGE OF NOT MORE THAN THE . . . CONSUMER PRICE INDEX . . . PLUS THREE PERCENTAGE POINTS." CURRENTLY THE STATUTE GRANTS THE COMMISSIONER OF INSURANCE THE AUTHORITY TO SET BY REGULATION THE FLEX RATE PERCENTAGE INCREASE TO BE PERMITTED EACH YEAR.

INASMUCH AS ALL FUTURE RATES WILL BE INDEXED TO THE INITIAL RATE, IT IS CLEAR THAT UNDER THE PROPOSED SYSTEM THE ESTABLISHMENT OF AN APPROPRIATE AND REASONABLE INITIAL RATE IS CRUCIAL TO ADEQUATELY AND FAIRLY PROTECT THE PUBLIC INTEREST.

FIRST, THE NEW LAW REDUCES THE AMOUNT OF INSURANCE WHICH THE AUTO INSURANCE CARRIERS PROVIDE IN RETURN FOR A REDUCTION IN PREMIUMS. THEREFORE, BEFORE AN INSURER UTILIZES THE NEW FLEX

RATING SYSTEM, THE INITIAL RATE SHOULD BE RECOMPUTED AND ADJUSTED DOWNWARD TO REFLECT THE REDUCTION IN COVERAGES UNDER S-2637. OTHERWISE THERE WILL BE REDUCED COVERAGE WITHOUT RATE REDUCTIONS. THIS SHOULD BE A PREREQUISITE BEFORE AN INSURER USES THE FLEX RATING SYSTEM. HOW OR WHEN THIS WILL OCCUR HAS NOT BEEN ADDRESSED.

NEXT, AS THE FLEX RATE SYSTEM NOW STANDS, THE COMMISSIONER OF INSURANCE CAN QUANTIFY THE ANNUAL RATE INCREASES PERMITTED AT ANY LEVEL AS HE WISHES. THESE PROPOSED AMENDMENTS DIRECT THE USE OF A SPECIFIC FORMULA WITH A FIRM AND DEFINITE LIMIT. THIS IS AN IMPORTANT CHANGE FOR THE BETTER. NONETHELESS, EVEN THREE PERCENT WILL HAVE A COMPOUNDING EFFECT OVER TIME. FOR EXAMPLE, IN THE CASE OF AUTOMOBILE PHYSICAL DAMAGE COVERAGE, THE NATIONAL CONSUMER PRICE INDEX (CPI) PLUS 3% WOULD RESULT IN INSURANCE PREMIUMS INCREASING AT TWICE THE RATE OF THE UNDERLYING CPI COMPONENTS. OVER TIME, THIS CAN LEAD TO GROSSLY EXCESSIVE PREMIUMS.

IN SETTING THE NEW STATEWIDE MAXIMUM PERMISSIBLE ANNUAL RATE INCREASES, ONE RATE IS ESTABLISHED FOR PRIVATE PASSENGER AUTOMOBILE PERSONAL INJURY PROTECTION COVERAGE, RESIDUAL BODILY INJURY AND PROPERTY COVERAGE, AND ANOTHER FOR PHYSICAL DAMAGE COVERAGE. THESE TWO MAXIMUMS WOULD BE BASED ON THE MEDICAL CARE

SERVICES COMPONENTS OF THE CPI PLUS THREE PERCENTAGE POINTS FOR PERSONAL INJURY UNDERWRITING AND THE AUTOMOBILE MAINTENANCE AND REPAIR COMPONENTS OF THE NATIONAL CPI, PLUS THREE PERCENTAGE POINTS FOR PHYSICAL DAMAGE COVERAGE. IT IS USEFUL TO EXAMINE WHAT EFFECT THIS TYPE OF RATE SETTING WOULD HAVE OVER A PERIOD OF SEVERAL YEARS.

IN THE FOUR YEAR PERIOD FROM 1983 TO 1986, THE CPI MEDICAL CARE COMPONENT ROSE 32 PERCENT; WHEN AN THE ADDITIONAL THREE PERCENTAGE POINTS PER YEAR IS FACTORED IN, THE INCREASE IN PREMIUMS PERMITTED OVER THE SAME FOUR YEAR PERIOD WOULD HAVE BEEN 47 PERCENT.¹ WITH RESPECT TO PHYSICAL DAMAGE RATE, THE AUTOMOBILE MAINTENANCE AND REPAIR COMPONENT OF THE CPI INCREASED BY 14.9 PERCENT OVER THE SAME FOUR YEARS. WITH THE ADDITION OF THE THREE PERCENTAGE POINTS THE INCREASE IN PREMIUMS PERMITTED WOULD HAVE RESULTED IN A 28.8 PERCENT INCREASE IN RATES.² THUS, AS TIME PASSES, THE DIVERGENCE BETWEEN UNDERLYING COSTS AND PREMIUMS INCREASES PERMITTED GROWS TO SIGNIFICANT LEVELS.

1. 1988 STATISTICAL SOURCE REPORT, TABLE NO. 739, U.S. DEPARTMENT OF COMMERCE, P. 450.

2. IBID., P. 450.

PERHAPS IN RESPONSE TO THAT FACT, SECTION 5D OF THE BILL GRANTS THE COMMISSIONER OF INSURANCE THE DISCRETIONARY POWER TO ADJUST RATE LEVELS DOWNWARD IF THE FLEX SYSTEM WOULD RESULT IN EXCESSIVE RATES. WE, THEREFORE, THINK THERE OUGHT TO BE A SYSTEMATIC CHECK ON THE COMMISSIONER'S ROLE IN MAKING SUCH ADJUSTMENTS. SOME THIRD PARTY ENTITY OUGHT TO PRESENT EVIDENCE TO THE INSURANCE COMMISSIONER TO URGE HIM TO ACT ON HIS DISCRETIONARY POWERS. IF NOT THE PUBLIC ADVOCATE, THEN SOME OTHER AGENCY OUGHT TO BE DESIGNATED.

WE WOULD AGREE THAT THE NEED FOR CONSUMER REPRESENTATION WITHIN THE CONFINES OF A NARROW FLEX RATING SYSTEM IS MORE LIMITED. THIS BILL WOULD ALLOW THE INSURANCE COMMISSIONER TO SUSPEND OR MODIFY A FLEX RATE FILING, OR DEPART FROM UNDERLYING AUTOMATIC STANDARDS. AT THAT POINT, THERE IS A ROLE FOR AN ADVOCATE, BECAUSE THE INSURANCE COMMISSIONER'S ROLE CEASES TO BE PURELY MINISTERIAL.

ANOTHER SECTION OF THE BILL PROVIDES FOR UNDERWRITING RULES APPLICABLE TO EACH RATE LEVEL UTILIZED. AS THE BILL IS WORDED, PEOPLE WHO MAY BE WRONGFULLY DENIED INSURANCE THROUGH IMPROPER UNDERWRITING PROCEDURES HAVE NO INDIVIDUAL MEANS OF RECOURSE AGAINST THE CARRIER. WERE INSURERS TO BE SUBJECT TO CIVIL PENALTIES, PAYABLE TO THE INJURED PARTY, FOR FAILURE TO ADHERE TO

THEIR OWN UNDERWRITING STANDARDS, PRIVATE CITIZENS WOULD HAVE A MEANS OF PROTECTING THEIR RIGHTS AND THE UNDERWRITING RULES WOULD BE MORE CLOSELY ADHERED TO.

THE BILL'S LANGUAGE PROVIDING ENFORCEMENT AND PENALTIES FOR KNOWING AND CONSISTENT VIOLATION OF UNDERWRITING STANDARDS IS OVERLY VAGUE. FOR EXAMPLE, IT IS UNCLEAR WHO WILL PROVIDE THE ENFORCEMENT, AND HOW THE AMOUNT OF THE FINE IS TO BE DETERMINED.

THE BILL ALSO ADDRESSES PENALTIES FOR KNOWING VIOLATION OF A PLAN OF OPERATION, BUT IT FAILS TO ADDRESS THE NEGLIGENT VIOLATION OF A PLAN. IN OUR VIEW, LIMITING ENFORCEMENT TO CASES IN WHICH KNOWING VIOLATION IS ESTABLISHED OVERLY RESTRICTS ENFORCEMENT; ASSESSMENT OF PENALTIES FOR ESTABLISHED NEGLIGENT VIOLATION WIL PERMIT MORE EFFECTIVE AND CONSISTENT ENFORCEMENT.

THE POTENTIAL FOR RELIEF FROM RMEC'S FOR THE POPULATION AS A WHOLE IS ADDRESSED BY LIMITING PROPERTY DAMAGE CLAIMS AND PAYMENTS TO PEOPLE WITH BODILY INJURIES. IF A LARGE SHORTFALL IN THE JUA EXISTS, IT IS UNEQUITABLE TO CURE IT BY PENALIZING THE INJURED. THE BUDGET OF THE JUA SHOULD NOT BE BALANCED ON THE BACKS OF THE INJURED. THE RESPONSIBILITY MUST LIE WITH THE SERVICING CARRIERS. TO THE EXTENT THERE IS A SHORTFALL, THE

SERVICING CARRIERS MUST BE PART OF THE PLAN TO MAKE THE JUA SOLVENT.

FINALLY, SECTION 13 ESTABLISHES A TASK FORCE TO CONDUCT FULL FILE AUDITS OF SERVICING CARRIERS. THE DEPARTMENT OF THE PUBLIC ADVOCATE CONCURS IN THE JUDGMENT IMPOSING THIS AUDIT. UNDER CURRENT PRACTICE, SERVICING CARRIERS HAVE NO FINANCIAL INCENTIVES TO LIMIT PAY-OUTS ON JUA CLAIMS AS THEY DO ON POLICIES WRITTEN IN THE VOLUNTARY MARKET.

A GOAL OF SUCH AUDITS SHOULD BE TO ESTABLISH WHETHER EACH OF THE SERVICING CARRIERS' PRACTICES IN HANDLING JUA CLAIMS IS IDENTICAL TO THE PRACTICES EMPLOYED BY THE VERY SAME CARRIER IN HANDLING ITS VOLUNTARY MARKET CLAIMS. THE GOAL OF THE AUDIT, THEREFORE, SHOULD BE TO ASSURE THAT EACH SERVICING CARRIER IS AS CAREFUL IN HANDLING THE JUA'S MONEY AS IT IS IN HANDLING ITS OWN MONEY.

IN CONCLUSION, WE AGREE THAT SOME LIMITING MECHANISM WILL IMPROVE THE "FLEX RATING" SYSTEM. IN ADDITION, HOWEVER, WE BELIEVE THAT THERE ARE SEVERAL STAGES IN THE FLEX RATING SYSTEM PROCESS, E.G., THE INITIAL RATE SETTING STAGE, AT WHICH PUBLIC PARTICIPATION AND ADVOCACY IS ESSENTIAL TO APPROPRIATE PUBLIC CONFIDENCE IN AUTOMOBILE INSURANCE RATES.

NEW JERSEY MANUFACTURERS
INSURANCE COMPANY

WEST TRENTON, NEW JERSEY 08628-0118

AREA CODE 609
883-1300

October 20, 1988

The Honorable Raymond Lesniak
Senator, District 20
Senate Labor, Industry
and Professions Committee
State House Annex
Trenton, NJ 08625

Re: A-3701, A-3702, A-3703

Dear Chairman Lesniak:

On behalf of the policyholders of New Jersey Manufacturers Insurance Company, we offer the following comments on A-3702.

According to A. M. Best's latest survey we are presently the second largest writer of automobile insurance for New Jersey drivers with 8.2% of the market share. We presently have approximately 145,000 policies in force covering 245,000 automobiles. Our continued significant growth is evidenced by the fact that when we offered comments on similar issues presented by provisions contained in S-2790, we had 130,000 policies in force covering 220,000 automobiles. The Insurance Company was incorporated in 1913 and continues to operate as a specialty carrier, concentrating on business categorized as commercial and personal automobile insurance, residence coverages and workers' compensation insurance. Over 99% of our business remains within the boundaries of the State of New Jersey. The operations of New Jersey Manufacturers Insurance Company are conducted in the mutual fashion for the exclusive service and benefit of our policyholders who have shared in the financial success of the Company through dividends declared annually since 1918. The uninterrupted payment of dividends over the past seventy years exceed well over \$1 billion.

While we oppose the enactment of all three bills on today's agenda, we anticipate lengthy and broad comments from others and therefore are limiting our observations to sections 6 and 7 of A-3702. Section 6 allows insurers to file rating plans in the voluntary market for standard risks, non-standard risks, or both. The legislation also provides "A rating plan may include a good driver discount plan [Emphasis added.]" As we indicated in our testimony on S-2790 regarding merit rating accident surcharges, throughout our history we have presented an insurance program which was void of the inequities we perceive to exist in such a surcharge plan. Policyholders purchase insurance to protect against the possibility of occasionally being involved in an accident. In our opinion the imposition of a surcharge or the denial of eligibility for a discount to the premium paid amounts to an unwarranted punishment of such a prudent individual.

The Honorable Raymond Lesniak

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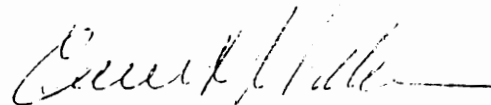
October 20, 1988

Additionally, mandatory surcharges and discount plans may result in less open and honest exchanges of information between the insured and his or her carrier should an accident occur. Arguably, an insured will be reluctant to concede fault if such a concession will result in increased premiums. Such a system does little to facilitate the quick settlement of claims.

We favor the concept contained in A-3702 that good driver discount plans are permissive over the mandatory imposition of such a plan as required by Chapter 119 of the Laws of 1988. (S-2637; Governor's Conditional Veto). We therefore recommend that section 30 of that Act be amended to read "may" instead of "shall" to facilitate the ability of private insurance companies to rate their exposures in the most equitable way possible within the unfairly discriminatory prohibitions of existing law.

We oppose the provisions concerning underwriting guidelines contained in section 7 as strongly as we endorse the permissive use of good driver discounts. Initially, it should be observed that requiring the Insurance Department to review and approve the underwriting rules of hundreds of companies will lead to nothing short of a regulatory nightmare. More importantly, the establishment of such rigid standards and the resulting total abolition of underwriting flexibility can only create additional problems for our already troubled insurance market and is inconsistent with the legislatures' ongoing attempts at meaningful automobile insurance reform.

Very truly yours,



Edward R. Palsho
Assistant Vice President and Attorney

ERP:dob

cc: The Honorable Christopher J. Jackman
The Honorable Edward T. O'Connor, Jr.
The Honorable Gerald Cardinale
The Honorable Donald T. DiFrancesco

STATEMENT ON BEHALF OF THE NATIONAL ASSOCIATION OF
INDEPENDENT INSURERS

The NAII is a trade association representing over 550 property and casualty insurance companies. We must express some reservations about the three bills on your agenda today.

1. A-3701 would eliminate new residual market equalization charges. They have been a major source of income to reduce the huge JUA deficit.

In lieu thereof A-3701 contains a pledge that an estimated \$50 to \$60 million of motor vehicle insurance premium taxes will be deposited in a reserve fund for six years. Unfortunately, we do not believe this promise is binding either upon this session of the Legislature, should the 1989 Appropriations Committee choose otherwise, nor upon the next two Legislatures. Article VII, Sec. II, Par. 2 of the New Jersey Constitution prevents the expenditure or allocation of state moneys through separate statutes not otherwise integrated with the general appropriation act. City of Camden v. Byrne 82 N.J. 133, 146 (1980).

2. We favor the provisions in Section 6 of A-3702 that encourage different voluntary market rate levels and agree with the rationale of the sponsors in supporting them, namely to encourage depopulation of the JUA by providing a secondary rate level so that the loss experience of less

than the best risks will not drive up the rates of all drivers in the voluntary market. As indicated in the explanation accompanying A-3702 when introduced, most other states have more than one rate level.

However, we don't know of any other state with the requirements contained in Section 7 which subjects the underwriting rules of an insurer to prior approval by the commissioner. We believe underwriting policy and rules should be left to business judgment rather than controlled by government. For example, USAA has chosen to specialize in writing active or retired military personnel. Should the commissioner be empowered to deny approval of an implementing underwriting rule because in his judgment coverage should be afforded, let us say, to civilian personnel at New Jersey bases? Foremost specializes in writing insurance for motor homes and recreational vehicles. Should the commissioner have indirect power to force them into motorcycles? There are other insurance companies that seek after particular segments of the population such as teachers , farmers or non-drinkers. Of course, most selective insurance companies have the ultimate protection against an overly zealous commissioner of withdrawal from the State, but this is not a constructive solution.

Section 7 further specifies that there shall not be discrimination in the application of these underwriting rule. "Insurers shall apply their underwriting rules uniformly and without exception ... so that every applicant

or insured conforming ... will be insured ... and ... every applicant or insured not conforming ... will be refused insurance or be non-renewed." Discretion is absolutely eliminated. A 20 year spotless policy holder who has a bad accident or motor vehicle violation year can't be given a break. On the other hand, an acknowledged bad risk can't be turned down if the rule doesn't contain a specific reference to his situation.

In summary, Section 7 attempts to legislate management policy, business judgment, ethics and morality through fixed written rules open to public inspection, after prior approval by the commissioner. Shouldn't insurance regulation be confirmed to broad controls over rates, solvency, policy forms and unfair trade practices? Is it necessary or wise to engrave underwriting rules in bronze?

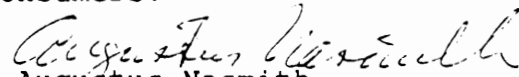
We offer one final comment on A-3702. The provisions in Section 1 to limit annual rate level increases and the initial increase in collision and comprehensive coverages to "bad drivers" as written may work against depopulation. The last sentence of paragraphs a., b., c. and d. guarantees JUA applicants or insureds ISO rates; these could be lower than those provided in the private market by many insurers.

3. A-3703 would create an insurance fraud prosecutor as a czar in but not of the Department of Insurance, with the salary of a Superior Court Judge, the power to stop proceedings by the Attorney General and to requisition such resources and personnel as he demands from the Insurance

Department. His functions are to be financed by a fee of \$.50 levied on each insured automobile.

At present there is a Division of Insurance Fraud Prevention in the Department of Insurance and a recently formed Insurance Fraud Unit in the Division of Criminal Justice, Department of Law and Public Safety. We believe they can do the job.

One of the present administrative problems within the Department of Insurance is the overlapping jurisdiction of the Department of the Public Advocate --- see for example Senator Dalton's S-1519 which would preclude the Public Advocate from intervening in any automobile rate filing which requests an overall rate decrease. We don't see that adding another cook will produce a better soup for New Jersey automobile insurance consumers.


Augustus Nasmith
172 West State Street
Trenton, NJ 08608
October 20, 1988

Statement
of
Alliance of American Insurers
Before
Senate Labor, Industry and Professions Committee

State House Annex
Trenton, New Jersey
October 20, 1988

Good afternoon. My name is Wes Caldwell. I am an attorney with the law firm of LeBoeuf, Lamb, Leiby & MacRae, and I represent the Alliance of American Insurers. The Alliance is a national property and casualty trade association whose member companies write 25 percent of New Jersey's auto insurance market.

Let me begin by assuring the Committee that we fully support the ongoing efforts of the legislative leadership and the Governor to work together in seeking legislative changes that will improve the State's auto insurance system. The passage of Senate 2637 was a good first step in the right direction, but no one would deny that the new law could be improved. We appreciate the opportunity to appear today to offer our comments on Assembly bills 3701, 3702, and 3703.

Let's start with the easy bills. With all due respect to the sponsors, Assembly 3703 does not merit serious consideration. It appears to be a "knee-jerk" reaction to the perception, which we believe is an accurate one, that auto insurance fraud is costing us all money. But there are already tools in place to deal with this problem. During the last effort at auto insurance reform some years ago, the Legislature created a new division within the Department of Insurance specifically charged with the task of investigating insurance fraud. The costs of operating the Insurance Fraud Division are assessed on the insurance industry. And, the budget for the

division has expanded considerably since its inception. The responsibility of prosecuting insurance fraud cases lies with the Attorney General and the county prosecutors. If the Insurance Fraud Division and the State's law enforcement officers need improved statutory powers or enhanced operating budgets, then they should come forward with appropriate legislative proposals. There is simply no need, however, for a new insurance fraud investigative and prosecutorial bureaucracy.

Another easy proposal to discuss is Assembly 3701. The salient feature of this bill is a provision that would create a special JUA loan reserve fund through the dedication of insurance premium taxes. We support his proposal because we believe that a combination of factors is likely to create a cash crisis in the JUA during the depopulation program. We need no actuarial analysis to tell us a few simple facts. First, as depopulation proceeds, the number of premium payers in the JUA will decline significantly over the next few years. Second, reduced PIP coverage, higher collision and comprehensive deductibles, and a stronger tort threshold will have a negative impact on premium income. If the JUA were operated like an insurance company, these prospective changes would not pose a problem. But the JUA was been operated on a cash-flow basis, which means there are no reserves for about \$2.5 billion in incurred claims that must be paid during the depopulation program. Under this scenario, a backup loan

mechanism makes sense. Moreover, once the JUA achieves self-sustaining rates, any loan could be repaid by the continuation of some portion of the current RMEC charges.

The more difficult bill to discuss is Assembly 3702. The bill contains some good features and some bad ones. On the plus side of the ledger, there is a stronger flex-rating provision than the one enacted in Senate 2637. The basic linkage of the flex range to components of the Consumer Price Index would reduce the likelihood that political pressures would force the Commissioner to promulgate an unrealistically low percentage range. The practical effect of an unrealistic range for rate competition would be a continuation of New Jersey's cumbersome prior approval system. This provision should be further strengthened by a mandatory linkage with the CPI.

Another aspect of Assembly 3702 that we strongly support is the provision authorizing multi-tiered rating plans. The bill would allow insurers to have standard rates, non-standard rates, and a good-driver discount plan. By contrast, Senate 2637 merely mandates good-driver discount plans. Presumably, drivers taken out of the JUA in the beginning may be categorized as standard or good risks. As we dig deeper into the barrel, however, we will be insuring drivers whose experience should justify a higher, non-standard rate. But if insurers must write these non-standard risks at standard rates,

the costs will be passed on to other drivers in the standard class as a hidden subsidy. We believe that such a subsidy would be unfair to many drivers. There's no reason to believe that voluntary market risks will appreciate this type of subsidy any more than they now appreciate the RMEC charges they pay to subsidize JUA risks.

Another feature of Assembly 3702 that merits support is a strengthening of the current law with respect to the decoupling of JUA rates from voluntary market rates. Senate 2637 mandates a 10 percent increase in JUA rate levels in January, but thereafter merely permits the Commissioner to increase JUA rate levels up to 10 percent a year. Assembly 3702 mandates 10 percent increases every year until the rates are self-sustaining. The goal in either case is to reach self-sustaining JUA rate levels. But the process of getting there is not one for the timid. For this reason, we believe the law should not permit the Commissioner to exercise such broad discretion, which inevitably will lead to political decision-making on JUA rates.

Assembly 3702 contains two provisions that will have a direct, negative impact on JUA income. The bill would exempt good drivers in the JUA from paying the self-sustaining rates for collision and comprehensive coverage, which are mandated by Senate 2637. The bill also would exempt good drivers in the JUA from future JUA rate level increases. Again, we have no

actuarial projections, but these provisions when coupled with those features of Senate 2637 that will reduce JUA income, will only move up the timetable and increase the likelihood of a cash-flow crisis. In part, your decision on these issues may depend on whether you are willing to authorize the back-up loan fund that would be created under Assembly 3701. There is also another way to deal with the cash-flow problem, which would be to stretch out the depopulation program from four to perhaps six years. A more gradual reduction in the JUA population would result in a more gradual reduction in JUA income.

The most worrisome provision of Assembly 3702 is Section 7(b) dealing with prior approval of underwriting rules and restrictions on underwriting prerogatives. This section mandates that insurers that use multiple rating tiers establish mutually exclusive underwriting standards for each class of driver to be written at each rate level. The standards must be approved by the Commissioner. First of all, we question how the Insurance Department realistically can cope in a timely manner with the review and approval of complex sets of underwriting guidelines filed by every insurer writing private passenger auto insurance in New Jersey. Some of us have serious doubts about whether the industry and the Department can cope with the many new tasks needed to implement Senate 2637, but an additional monumental task could grind the process to a halt through regulatory paralysis. The Commissioner currently has authority to require auto insurers to file their

underwriting guidelines, which are subject to a statutory prohibition against being "arbitrary, capricious or unfairly discriminatory." See N.J.S.A. 17:22-6.14(a)(1).

We know that those who forget the lessons of history are doomed to repeat history's mistakes. The drafters of this provision seem to have forgotten the lessons of New Jersey's effort to prevent unjustified cancellations and nonrenewals during the recent commercial liability crisis. With great fanfare and the finest of intentions, the Governor and the Commissioner announced emergency rules aimed at commercial cancellation and nonrenewal abuses. The original regulation required the prior approval of underwriting guidelines. Within the next few months, the jittery commercial market in New Jersey had entered a new phase of total chaos. Why? regulatory paralysis. Well-meaning public servants at the Insurance Department couldn't decide on what underwriting guidelines to approve, so they approved none of them. No one knew what the rules were, and everyone scrambled to protect themselves by whatever means were available.

Eventually the bureaucracy realized it was part of the problem rather than the solution, and the unworkable prior approval requirement was removed from the regulation. Now, without prior approval, commercial insurers are permitted to use their own underwriting guidelines for cancellation and nonrenewal, provided those guidelines are not "arbitrary,

capricious or unfairly discriminatory." N.J.A.C. 11:1-20.4(d). This standard coupled with the Commissioner's existing authority to require the filing of auto insurance underwriting guidelines should be sufficient to curb any potential abuses. There is no need to repeat the mistakes of the commercial underwriting guidelines in the area of private passenger auto insurance. This is especially so at a time when the industry and the Department will be trying to cope with an ambitious depopulation program under a timetable that will not permit any unnecessary administrative delays.

The requirement of mutually exclusive rating tiers and underwriting guidelines also creates two technical problems that should be addressed. First, the requirement of exclusivity on renewals is in conflict with the two percent nonrenewal limitation. When the character of a risk changes so that it no longer meets an insurer's underwriting guidelines it must be nonrenewed. Yet if more than two percent of the risks in a territory change characteristics they cannot be nonrenewed. Moreover, this conflict will inhibit companies from changing their underwriting guidelines since revised guidelines will force nonrenewals. Lastly, what do we do with risks assigned to an insurer that do not meet its underwriting guidelines? We would suggest that this Catch 22 situation be resolved by limiting the exclusivity of underwriting guidelines to new policies written voluntarily by each insurer. The other technical problem is that the wording of this provision would

seem to require an insurer to write every risk submitted that meets its underwriting guidelines regardless of the insurer's capacity. We don't believe that this was the intent of the drafters, and we have submitted suggested amendments to your staff to clarify the bill.

Thank you again for the opportunity to present the views of the Alliance of American Insurers. I would be happy to answer any questions you may have.

Respectfully submitted,

ALLIANCE OF AMERICAN INSURERS

By: 

Wesley S. Caldwell, III

LeBoeuf, Lamb, Leiby & MacRae

Testimony Before The
Senate Labor, Industry and Professions Committee
By Chuck Hardwick, Speaker, New Jersey Assembly
October 20, 1988

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE.

THERE IS A LIGHT AT THE END OF THE JUA TUNNEL.

ALL OF US WHO HAVE WRESTLED WITH THE COMPLEX ISSUE OF HOW TO PUT THE JUA BACK ON SOLID FOOTING WOULD LIKE NOTHING MORE THAN TO PUT IT BEHIND US AND PUT NEW JERSEY DRIVERS BACK ON THE ROAD TO FAIR AND EQUITABLE INSURANCE RATES.

WE ARE MAKING PROGRESS.

THE REFORMS SIGNED INTO LAW BY THE GOVERNOR LAST MONTH ARE A FIRST STEP IN THE REFORM OF THE JUA. LET ME COMMEND THE WORK PERFORMED BY YOU, MR. CHAIRMAN, AND BY ASSEMBLYMAN RALPH LOVEYS. IN TIME, THE FRUITS OF YOUR EFFORTS WILL HAVE A POSITIVE IMPACT ON NEW JERSEY'S DRIVERS.

WE MUST REMEMBER THAT A \$2.7 BILLION DEBT REMAINS FOR CLAIMS WHICH HAVE ALREADY BEEN FILED. THAT DEBT MUST BE PAID.

EVERYONE WHO OWNS A CAR IN NEW JERSEY IS NOW PAYING A JUA SUBSIDY OF \$220 -- SOME \$800 MILLION A YEAR -- TO DEFRAY THE DEBT.

SO THERE IS STILL A ROUGH AND ROCKY ROAD AHEAD FOR MORE THAN 50 PERCENT OF NEW JERSEY'S DRIVERS WHO ARE NOW IN THE JUA -- GOOD DRIVERS AND BAD DRIVERS.

IF WE DO NOTHING, IF WE LEAVE THINGS AS THEY ARE, IF WE DO NOT PASS THESE BILLS AND THE JUA CONTINUES TO CONDUCT BUSINESS AS USUAL, THEN THREE VERY UNFORTUNATE THINGS ARE LIKELY TO OCCUR:

FIRST, IF WE DO NOT ACT ON ASSEMBLY BILL 3702, A RATE INCREASE WILL BE FILED NEXT MONTH -- IN LESS THAN TWO WEEKS -- THAT WILL HIT MORE THAN HALF OF OUR DRIVERS WITH YET ANOTHER RATE INCREASE IN JANUARY.

SECOND, WE WILL SEE MORE AND MORE REMCs IN 1990 AND 1991. I AM CERTAIN OF THAT AND ANYONE WHO TAKES A CLOSE LOOK AT THE ACTUARIAL TABLES WILL COME TO THE SAME CONCLUSION.

AND THIRD, IF WE DO NOT TAKE ACTION, WE WILL BE UNABLE TO MAKE SIGNIFICANT HEADWAY TOWARD REDUCING THE JUA DEFICIT IN THE YEARS AHEAD. ASSEMBLY BILL 3702 GIVES THE JUA A POSITIVE CASHFLOW FIVE, SIX YEARS DOWN THE ROAD THAT WILL ACTUALLY GIVE US THE POWER TO ROLL BACK EXISTING REMCs.

THE NUMBERS DO NOT LIE. I HAVE PRESENTED TO YOU A CHART AND THE ACTUARIAL TABLES ON THE CONDITION OF THE JUA FOR THE NEXT FIVE YEARS UNDER TWO SET OF CONDITIONS -- WITH PASSAGE OF A-3702 AND WITHOUT PASSAGE.

YOU CAN SEE FOR YOURSELF WHAT HAPPENS. BEGINNING SOMETIME NEXT YEAR, THE JUA WILL EXPERIENCE A NEGATIVE CASH BALANCE. THAT FINANCIAL CONDITION WILL CONTINUE UNTIL SOMETIME IN 1992 WHEN THE REFORMS WE PUT INTO PLACE THROUGH THE GOVERNORS CONDITIONAL VETO BEGIN TO HAVE A MEANINGFUL IMPACT.

I PERSONALLY WOULD RATHER SEE THE JUA GO BANKRUPT THAN TO CONTINUE BUSINESS AS USUAL AND GUARANTEE MORE REMCs, FURTHER RATE INCREASES ON GOOD DRIVERS IN THE JUA, AND A CONTINUATION OF THE DEFICIT AS FAR INTO THE FUTURE AS ANYONE CAN SEE.

HOWEVER, A JUA WHICH IS BANKRUPT LEAVES THOUSANDS OF MOTORISTS WITH UNPAID CLAIMS AND UNFAIR HARDSHIPS.

ASSEMBLY BILL 3702 WHICH IS BEFORE YOU TODAY, PROVIDES AN ALTERNATIVE, AND BETTER, WAY TO DEAL WITH THE JUA'S CASH PROBLEMS.

MOST SIGNIFICANTLY, A 3702 PROVIDES A MEANS OF ELIMINATING THE ASSOCIATION'S CASH SHORTFALL WHILE AT THE SAME TIME PREVENTING THE GOOD DRIVERS IN THE JUA FROM PAYING THE SUBSTANTIAL RATE INCREASES WHICH ARE SCHEDULED TO BE IMPOSED SHORTLY.

IF YOU LOOK AT THE CHARTS THAT I HAVE PROVIDED FOR YOU, YOU WILL SEE A DRAMATICALLY DIFFERENT SITUATION IN JUA CASH FLOW. WITH A3702 IN PLACE, THERE REMAINS AT ALL TIMES, A POSITIVE CASH FLOW. THIS MEANS NO ADDITIONAL RMECs WILL BE NECESSARY TO HELP THE ASSOCIATION PAY ITS CLAIMS.

THIS IS ACCOMPLISHED BY PROVIDING FOR THE PAYMENT OF SOME OF THE BODILY INJURY CLAIMS -- IN OTHER WORDS, PAYMENTS FOR PAIN AND SUFFERING -- IN INSTALLMENTS.

THIS APPROACH IS NOT NEW -- STRUCTURED SETTLEMENTS ARE USED IN THE COURTS EVERYDAY. MR. CHAIRMAN, YOUR BILL WHICH MANDATED STRUCTURED PAYMENTS WAS A GOOD IDEA WHEN YOU INTRODUCED IT, AND IT'S A GOOD IDEA NOW.

PAYING HALF OF THE BODILY INJURY CLAIMS IN INSTALLMENTS HAS A DRAMATIC EFFECT ON THE FINANCIAL SITUATION OF THE JUA. THE ASSOCIATION NOW PAYS OUT OVER \$600 MILLION IN BODILY INJURY CLAIMS EVERY YEAR -- UNDER THE INSTALLMENT PROPOSAL, IT IMMEDIATELY SAVES ITSELF CASH PAYMENTS OF OVER \$300 MILLION IN THE FIRST YEAR.

AT THE SAME TIME, NO BENEFICIARY IS DEPRIVED OF ANYTHING. EVERYONE WILL BE PAID IN FULL, WITH INTEREST.

MOREOVER, UNDER ASSEMBLY BILL 3702, THE IMPROVEMENT IN THE ASSOCIATION'S CASH FLOW IS ACCOMPLISHED BY LIMITING THE FORTHCOMING RATE INCREASES TO ONLY THE BAD DRIVERS INSURED BY THE ASSOCIATION. I THINK THIS IS EXTREMELY IMPORTANT.

MANY PEOPLE NOW INSURED BY THE JUA ARE THERE THROUGH NO FAULT OF THEIR OWN. MOST OF THEM ARE GOOD DRIVERS WITHOUT ACCIDENTS OR VIOLATIONS. IT IS UNFAIR TO ASK THEM TO PAY SIGNIFICANTLY HIGHER RATES TO KEEP THE ASSOCIATION AFLOAT. IF THESE RATE INCREASES ARE EXTENDED TO EVERYONE, AS THE PRESENT LAW DOES, ALL OF OUR TALK ABOUT INSURANCE REFORMS WILL SEEM TO THE PUBLIC TO BE A SHAM.

IF A 3702 IS PASSED, WE CAN PROTECT THESE PEOPLE WHILE PUTTING THE JUA ON A MUCH MORE SOUND FINANCIAL FOOTING. THE BILL NOT ONLY SOLVES THE TEMPORARY CASH FLOW PROBLEM, BUT IT ALSO PROTECTS GOOD DRIVERS AGAINST UNWARRANTED RATE INCREASES AND PROTECTS THE PUBLIC AT LARGE FROM THE THREAT OF ADDITIONAL RMECs.

ASSEMBLY BILL 3702 CONTAINS OTHER VERY IMPORTANT PROVISIONS.

IT REQUIRES AN AUDIT OF THE JUA AND THE CREATION OF A TASK FORCE TO AUDIT CLAIMS SETTLEMENTS ON AN ONGOING BASIS TO INSURE THE PROPER CONDUCT OF SERVICING CARRIERS.

IT ESTABLISHES PENALTIES FOR SERVICING CARRIERS WHO VIOLATE THE PLAN OF OPERATION.

IT REQUIRES WRITTEN NOTICE TO ALL INSURED OF PROSPECTIVE RATE INCREASES. MANY PEOPLE DO NOT KNOW THAT THEY ARE INSURED BY THE ASSOCIATION.

IT REQUIRES MORE TIMELY IMPLEMENTATION OF THE JUA DATA BANK. THIS IS IMPORTANT, SO THAT SERVICING CARRIERS DO NOT HAVE AN UNFAIR ADVANTAGE IN SELECTING THE BEST RISKS FOR DEPOPULATION.

IT REQUIRES A MULTI-TIER RATE LEVEL SYSTEM IN THE VOLUNTARY MARKET. AS THE JUA IS DEPOPULATED, WE DO NOT WANT THE HIGHER RISKS TO BE CHARGED THE SAME RATE AS THE BETTER RISKS. THE SO-CALLED "GOOD DRIVER DISCOUNT" OF THE RECENTLY PASSED LAW IS NOT ADEQUATE -- WE NEED SEVERAL RATE LEVELS IN THE VOLUNTARY MARKET, AS THE MAJORITY OF OTHER STATES HAVE. TO ACCOMPLISH THIS, THE BILL REQUIRES INSURERS TO MAKE THEIR UNDERWRITING STANDARDS PUBLIC.

IT LINKS THE FLEX RATING SYSTEM TO AN INDEXING MECHANISM. THIS WILL ENSURE THAT THE RATES WHICH ARE CHARGED ARE BASED ON ECONOMIC FACTORS, AND NOT ON POLITICAL OR OTHER CONSIDERATIONS.

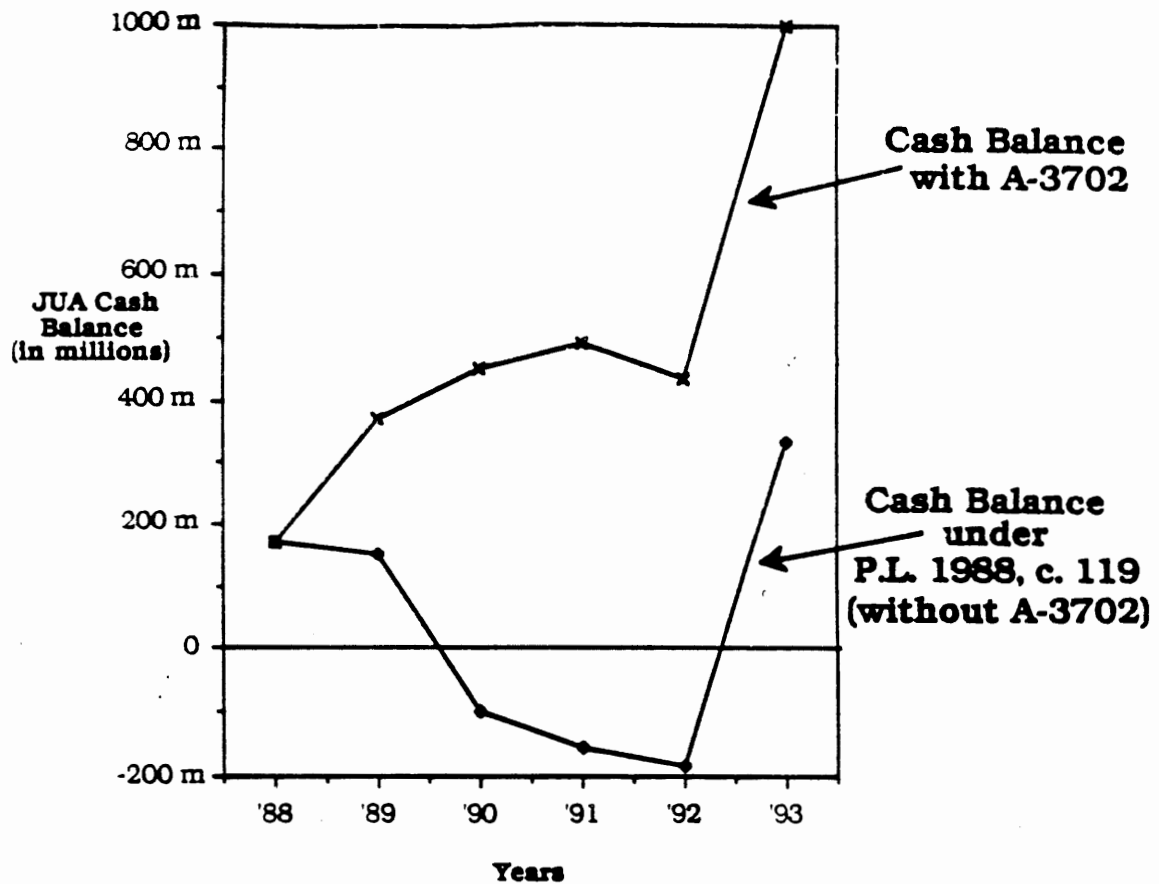
THIS BILL REPRESENTS COMPREHENSIVE REFORM.

Page 4

I CANNOT EMPHASIZE ENOUGH HOW IMPORTANT IT IS THAT THE SENATE ACT EXPEDITIOUSLY. WE SIMPLY CANNOT STAND BY WHILE GOOD DRIVERS IN NEW JERSEY GET SOCKED WITH ANOTHER ROUND OF RATE INCREASES.

THANK YOU.

JUA Cash Flow, 1988-93



Summary

- Under A-3702, it is estimated that the JUA will have a positive cash flow of approximately \$1 billion by 1993.
- Without A-3702, cash shortfalls from 1990-1992 will have to be made up through additional RMECs.

Notes:

1. Projections based on the compilation of actuarial data of the effect of A-3702 on the cash flow of the JUA prepared for the Assembly by Robert Aldorizio of Milliman & Robertson, Consulting Actuaries.
2. The JUA's current statutory deficit represents claims which have been filed but are not due and payable. As the JUA's cash flow becomes positive, reserves may be set aside to reduce and eliminate the JUA's deficit.

Exhibit A

NEW JERSEY AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION

ALL COVERAGES CASH FLOW EXHIBIT

ASSUMING ONLY \$139 ANNUAL 1, 1988 DUEC IS COLLECTED

(FIGURES IN COLUMNS 2 THROUGH 15 IN 1,000 DOLLARS)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
CALENDAR	COLLECTED	NOV	DUEC	POLICY		TOTAL				TOTAL		CASH		ACCUMULATED
YEAR	PREMIUM	INCOME	INCOME	CONSTANT	INVESTMENT	INCOME	PAID	PAID	PAID	EXPENSES	OTHER	INCOME	ACCUMULATED	ASSETS
				INCOME	INCOME	SUM 2 TO 6	EXPENSES	LOBBIES	LAE	SUM 8 TO 10	INCOME	(7)-(11)+(12)	SUM OF (13)	INCLUDING
														FLOAT *
1984	664,984	18,582	0	179,289	9,725	844,420	235,609	193,378	44,845	473,824	0	390,596	390,596	417,934
1985	1,034,359	19,874	0	265,845	54,299	1,374,377	322,423	719,433	148,389	1,190,445	22	183,955	574,551	618,517
1986	1,176,168	43,549	0	271,755	73,495	1,544,946	326,975	1,129,697	208,821	1,645,492	88	(108,439)	476,112	544,333
1987	1,363,126	63,808	0	281,351	32,495	1,740,773	329,824	1,519,992	228,487	2,119,502	12,116	(324,613)	149,499	234,762
1988	1,598,578	63,800	352,422	318,684	13,763	2,327,244	327,791	1,881,847	240,118	2,449,756	51,321	(71,189)	78,310	172,216
1989	1,545,045	63,800	548,818	282,167	11,831	2,450,861	276,345	2,054,255	159,867	2,498,467	26,577	(13,030)	65,281	153,952
1990	1,363,285	63,800	548,818	282,167	5,965	2,264,035	267,435	2,032,284	133,456	2,413,175	23,582	(125,557)	(60,277)	22,429
1991	1,263,684	63,800	548,818	282,167	(13,954)	2,134,515	231,588	1,979,665	123,383	2,334,626	21,775	(158,336)	(218,613)	(139,151)
1992	1,239,852	63,800	548,818	282,167	(13,712)	2,118,925	218,828	2,001,522	185,642	2,323,984	28,280	(186,779)	(403,392)	(325,209)
1993	2,222,391	63,800	548,818	282,167	349	3,117,525	333,337	2,054,442	188,824	2,496,603	19,973	640,895	237,583	335,601

JUA cash flow analysis under provisions of P.L. 1988, c. 119 (Senate bill 2637).

Impact of cash flow illustrated by column 14.

*Float disallowed by Department of Insurance (float includes money in transit).

Exhibit B

NEW JERSEY AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION
ALL COVERAGES CASH FLOW EXHIBIT
ASSUMING ONLY \$139 AUGUST 1, 1988 RMEC IS COLLECTED
(FIGURES IN COLUMNS 2 THROUGH 15 IN 1,000 DOLLARS)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
CALENDAR	COLLECTED	DMV	RMEC	POLICY	INVESTMENT	TOTAL	PAID	PAID	PAID	TOTAL	OTHER	CASH	ACCUMULATED	ACCUMULATED
YEAR	PREMIUM	INCOME	INCOME	CONSTANT	INCOME	INCOME	EXPENSES	LOSSES	LAE	EXPENSES	INCOME	(OUTGO)	ASSETS	ASSETS
				INCOME		SUM 2 TO 6				SUM 8	INCOME	(7)-(11)+(12)	SUM OF (13)	INCLUDING
										TO 10				FLOAT *
1984	664,904	10,582	0	179,209	9,725	864,420	235,609	193,370	44,845	473,824	0	390,596	390,596	417,934
1985	1,034,359	19,874	0	265,845	54,299	1,374,377	322,423	719,633	148,389	1,190,445	22	183,955	574,551	618,337
1986	1,176,168	43,549	0	271,755	73,493	1,564,966	326,975	1,129,697	208,821	1,665,492	88	(100,439)	474,112	544,333
1987	1,363,126	63,800	0	281,351	32,495	1,740,773	329,024	1,519,992	228,487	2,077,502	12,116	(324,613)	149,499	234,742
1988	1,598,578	63,800	332,422	318,684	13,763	2,327,246	327,791	1,881,847	240,118	2,449,756	51,321	(71,189)	78,310	172,236
1989	1,499,360	63,800	548,818	282,167	18,341	2,412,486	271,128	1,798,094	159,867	2,229,089	26,577	209,974	288,284	370,136
1990	1,356,970	63,800	548,818	282,167	27,818	2,279,573	247,949	1,835,767	133,456	2,217,172	23,582	85,983	374,267	452,477
1991	1,326,059	63,800	548,818	282,167	31,936	2,252,780	237,120	1,874,328	123,383	2,234,831	21,775	39,724	413,991	491,929
1992	1,311,440	63,800	548,818	282,167	31,285	2,237,510	223,455	1,990,405	103,642	2,317,502	20,280	(59,711)	354,279	433,208
1993	2,237,082	63,800	548,818	282,167	54,251	3,186,118	331,429	2,047,009	108,824	2,487,262	19,973	718,830	1,071,109	1,171,061

JUA cash flow analysis under provisions of A-3702.

Impact of cash flow illustrated by column 14.

*Float disallowed by Department of Insurance (float includes money in transit)

JULIAN Z ROBERTSON INC 32X CONSULTING ACTUARIES



Citizens for Rational Traffic Laws, Inc.

New Jersey State Chapter

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October 18, 1988

The Honorable Raymond Lesniak
Chairman
Senate Labor, Industry and Professions Committee
State House Annex
Trenton, New Jersey 08625

Dear Mr. Lesniak:

Thank you for the opportunity to provide testimony for your committee's hearing on October 20, 1988 related to A-3702. While I regret that I cannot attend in person, I am enclosing written testimony for the committee's consideration.

With the introduction of A-3702, the criteria was changed for being placed in the JUA's higher rate structure. The very vague statement in A-3700, "*those with at fault accidents or moving violations,*" was changed to the more specific statement "*those, who for the three years preceding the date of issuance or renewal, (1) have been convicted of two or more moving violations, or have received four or more motor vehicle points, whichever is less; or (2) have had one or more at-fault accidents.*"

A-3702 made the language more specific but still resulted in an unsatisfactory definition for a high risk driver. It reads as though it were written in a vacuum or by the insurance industry.

The enclosed testimony details the problems with this new definition and provides overall recommendations. To summarize, this new definition is no different from the current criteria that led to the overpopulation of the JUA and the definition can only be intended to raise revenue rather than reflect accident risk. The more realistic estimates of the number of bad drivers in the JUA still exceeds those of states with similar to three times the number of drivers.

The current insurance surcharge penalty system administered by the DMV and the Driver Improvement Plan (DIP) are specific revenue-only programs that have clouded the good intent and fairness of the standard point system. Committing a few two-point violations over the years doesn't represent deviant behavior and a number of violations on the books have a poor correlation to accident risk.

We recommend repealing the insurance surcharge penalty system and DIP and we offer other alternatives and considerations that are much more equitable. A key recommendation is that the intent of the standard point system be maintained so that good behavior on the part of a driver is reflected with point reductions and the resulting record used more directly.

Politically or administratively expedient manipulations of the traffic law penalty system are seriously undermining the average citizens' belief and confidence in their government. No other class of law touches as many New Jerseyans as does traffic law.

Sincerely yours,

Stephen G. Carrellas, P.E.

New Jersey Chapter Coordinator

Enclosure

**Testimony Before
Senate Labor, Industry and Professions Committee
October 20, 1988**

Stephen G. Carrellas, P.E.
*New Jersey Chapter Coordinator
Citizens for Rational Traffic Laws*

Introduction

Citizens for Rational Traffic Laws, or CRTL, was founded in 1982 as a small single purpose coalition with the primary goal of returning speed limit authority to state government. Over the years we have evolved to a broad based drivers advocacy organization with a National presence and a growing system of state chapters.

The CRTL is recognized as a credible source of expertise and our efforts are funded by our members and not by any financially motivated special interest groups.

Why does one of the safest states in the nation have the highest costs for auto insurance? NJ may always have higher insurance costs than many other states but it shouldn't be this bad and it shouldn't be blamed on the driver when the system is at fault. The driver is the loser right now as the structure of the insurance system has forced discrimination, unjustified penalty surcharges and totally unwarranted costs that all drivers are forced to bear.

The citizens of this state are reaching the conclusion that the problems are so out of hand that only drastic changes will make a significant impact. The problems cross many boundaries and there are lessons to be learned from the past.

In conjunction with the committee's consideration of A-3702, I will focus my remarks on the issue of the definition of a high risk driver.

What Is the Definition of a High Risk Driver?

Current programs and some recently proposed legislation for restructuring the JUA show a grossly inadequate understanding of what constitutes a high risk driver.

Current Programs

Let's start with the insurance surcharge system administered by the DMV. This is a money making scheme which has been averaging \$35 million per year, far less than the \$100 million legislators had anticipated when the surcharge system became law along with the JUA.

One provision of this system has motorists paying \$100 each year they have six or more points on their record for the immediate past three-year period. The point reduction provision of the law (i.e., three points subtracted from the point total for every year without a point violation or suspension) does not apply to the point total used for surcharges.

To make matters worse, a Driver Improvement Plan (DIP) went into effect in 1988 for drivers insured through the JUA. This plan collects surcharges only and has nothing to do with driver improvement or the Driver Improvement Program which is an instruction program. JUA policyholders who have four motor vehicle points in the 38 months prior to renewal are surcharged \$55 each year this occurs and the annual point reduction provision does not apply here either.

To appreciate the impact, imagine a JUA driver with no points and a well maintained car getting a four point speeding ticket for being the only car on the road while traveling at the same speed as traffic earlier that day. Three years of surcharges for what?

New Legislation

New proposed legislation aimed at restructuring the JUA has attempted to address the definition of a high risk driver. Bill A-3700 contained the criteria "*those with at fault accidents or moving*

violations." The CRTL recommended that the criteria be more specific and not leave broad interpretation to state administrators and the insurance industry.

Bill A-3702 made the language more specific but still resulted in an unsatisfactory definition for a high risk driver. A-3702 contains a rewording of the criteria currently used by the voluntary market to deny a motorist into its ranks — **no more than one accident or one two-point violation in the past three years**. These definitions read as though they were written in a vacuum or by the insurance industry.

The Residual Market

This year, about half of the insured drivers in NJ are in the JUA, up from 37% in 1983. It's reported that 80% of the two million drivers in the JUA are good drivers, 10% have borderline driving records and 10% (i.e., 200,000) are the truly bad drivers.

Looking at residual markets in other states, Maryland's contains 98,000 drivers while in California, about 1% or 136,000 of the 13.6 million insured drivers are in the residual market. The current JUA depopulation goals of reaching 500,000 to 800,000 drivers still outpace any residual market in the country.

Violations

What do violations have to do with accident risk or being a high risk driver. A look at the *Motorists Guide to the DMV* shows that 70% of the listed violations in Section 5 are two-point violations. The vast majority of these "rules of the road" make sense and are generally complied with. The large number of two-point violations allows fault to be determined should an accident occur as a result of an offense.

Committing a few two-point violations, especially with no accidents, doesn't appear to represent deviant behavior unless it is continually repeated by a minority of offenders or results in accidents. Under the normal point system with the annual three-point reduction provision, a motorist could accrue a few points every few years and typically never reach the six point threshold where the DMV warns of an approaching 12-point suspension level.

Much of the good intent and fairness of the point system has disappeared as the insurance system needed an excuse to collect more money for its problems. It's been real easy money to get someone with a couple of violations over time.

The following are some examples of the poor correlation of points to accident risk.

- The point scheme for leaving the scene of an accident (2 points for no personal injury and 8 if there is personal injury) is a case of no correlation to accident risk. These points don't reflect an accident risk since the offense is a post-accident incident.
- To better highlight the often minimal correlation of points to risk, consider an illegal right on red. Failing to see an unobstructed sign is not a legal excuse, but do the conditions at the time of violation constitute an accident risk? Did the motorist stop first? Was there any traffic in sight such that accident risk was zero?

Similar questions can be raised for scenarios involving other violations. These examples add further support to why 70% of typical violations are for two points and the annual point reduction scheme is in place.

Violations with higher point values don't always address their purported intent. The CRTL has extensive experience with the correlation of accident risk and penalty schemes to speed limits and lane discipline (keep right, pass left).

Speed Limits

The CRTL supports speed limits based on sound engineering criteria and public consensus. Underposted speed limits on any road produce a higher accident risk since compliance is frequently irregular or very low. That's why traffic engineers base speed limits on the 85th percentile speed

where the accident risk is lowest, compliance is very good, and the resulting traffic flow is smoother and safer.

Underposted limits also skew the point system associated with speeding. This is most prevalent on limited access divided highways (LADH) posted at 55 mph — our state's safest roads with 85th percentile speeds *averaging* in the middle sixties. In fact, minimum accident risk occurs for speeds between the average speed of the road and the 85th to 90th percentile speed. The point system cannot reflect the safer 85th percentile speed with the present 55 mph speed limit in NJ.

A survey of State Police radar logs will reveal that ticketing generally starts at 70 mph and up. A speed of 69 mph on a LADH posted at 55 mph would result in a two-point violation while 70 would result in four points.

How easy the money-making is as a result of 55 — the ticket, the eventual surcharge, and the increased rates for those good drivers in the JUA who are looking for safe and efficient travel on LADHs! Then there are the lawyer fees and potential lost productivity should the motorist decide to fight the injustice.

If the speed limit were 65 mph, 5-7 mph over the limit (e.g., for passing to avoid tight packs of cars or to move on to resume effective cruise control use) would cover the low end of the range established for a two-point violation. This is considered the enforcement tolerance.

Lane Discipline

NJ should have the best lane discipline in the nation since its laws don't allow passing on the right on roads with multiple lanes in the same direction and call for motorists in the left lane to yield to overtaking vehicles.

Unfortunately, such is not the case. The pervasive use of the pass on the left rule can help minimize accident risk through the consistency of traffic movement and lane changing. Unfortunately, the underposted speed limit is discouraging pass on the left behavior. Those left lane travelers moving below the speed of the road are hazardous!

With proper speed limits and good lane discipline, NJ's roads can be even safer and smoother flowing with fewer incidences of drivers weaving in and out of traffic.

Accidents

Regarding at-fault accidents as a criteria, numerous sources including the Insurance Institute for Highway Safety reveal that no method currently exists to predict with accuracy the crash involvement of individuals even when crash records are augmented by other variables such as age and sex. One factor is the huge variation in police accident reporting procedures. However, even with better measures of crash experience, the predictive accuracy for *individuals* would remain low.

This is not to say that there are not identifiable *groups* of drivers with elevated crash risk. Problem drivers with very deviant records are several times more likely to crash than other drivers, however, these people account for only a small segment of all crashes that do occur.

Recommendations

In light of the above discussion, the CRTL recommends the following:

1. Repeal the Insurance Surcharge Penalty System that was created with the JUA and is administered by the DMV.
2. Repeal the Driver Improvement Plan.
3. The intent of the standard point system should be maintained so that good behavior on the part of the driver is reflected with point reductions.
4. When using at-fault accidents over time as a risk criteria, use accident rate (i.e., accidents per vehicle miles traveled), not just the number of accidents.

5. Accidents should be classified by severity when keeping tally of a driver's accident record and subsequent consideration of risk.
6. Violations and point values should be better tied to accident risk.
7. Based on A-3702's proposed criteria for numbers of violations and points over time and the recommendation above to preserve the standard point system, the following alternative is offered for an *over-time* based criteria. A driver is not considered high risk if in the past-most three of four years the point total in any year (including reductions) has not exceeded 9 points, and if so, the point total in the most recent past year has not exceeded 6. In trying numerous scenarios, this scheme seems to better reflect the spirit of the standard point system.
8. Enforcement should place more emphasis on ticketing for failure to yield to an overtaking vehicle rather than for passing on the right. Additionally, passing on the right is a four-point violation while failure to yield to an overtaking vehicle is only two points. The point assignment should be reversed.
9. The speed limit on all of NJ's federally eligible roads should be increased to 65 mph.
10. On limited access divided highways where federal monetary sanctions make it difficult for the state to set a higher, more realistic, and safer speed limit, the current penalty criteria for speeding should be based on the actual speed of the road and not on the arbitrary 55 mph limit.
11. Hidden speed traps should be abolished and only visible patrol cars should be used for speed enforcement. The difference — revenue generation vs. safety considerations.

Conclusion

Setting a rational criteria for a high risk driver is critical to the fair treatment of all drivers. The good drivers in the JUA should not be subjected to higher rates that don't reflect their accident risk. Those not in the JUA should not be subjected to the carryover of an ill-conceived risk-criteria into the volunteer market (see A-3702).

Politically or administratively expedient manipulations of the traffic law penalty system are seriously undermining the average citizens' belief and confidence in their government. No other class of law touches as many New Jerseyans as does traffic law.

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SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

PUBLIC HEARING

A-3701

A-3702

A-3703

October 20, 1988

Testifying for LEGAL: Karen Kotvas

Thank you, Chairman Lesniak and members of the Senate Labor, Industry and Professions Committee for allowing LEGAL to testify here today. I am Karen Kotvas and I represent LEGAL which is an organization of attorneys whose goal is to preserve the private practice of law for the public interest. Our special interest is to keep open the court house door and protect the civil jury system.

We are here today to testify against all three bills, A-3701, A-3702 and A-3703 for the following reasons and to offer suggestions for improvement.

Assembly Bill 3701 prohibits future RMECs. We oppose this bill because it retains all existing automobile insurance subsidies, which include the policy constant and the current RMECs and surcharges. In a letter to Commissioner Merin dated January 12, 1988, (attached) Deputy Public Advocate, Donald Bunda, stated that the servicing carriers' fees were "too lofty" and that they were overcharging the JUA by tens, if not hundreds, of millions of dollars. These monies would have offset any RMECs. He also criticized at that time the practice of the servicing carriers keeping the premiums for three months instead of turning them over to the JUA immediately.

In a letter sent to the Commissioner on July 18, 1988, the Public Advocate's division of rate counsel said that the JUA does

not need the second surcharge to keep it operating through 1988.

(News clip attached.)

In addition, according to Jack Trope the Chairman of the Joint Underwriting Association, New Jersey's four million drivers will continue to pay the existing surcharges for at least the next seven years. (News clip attached.)

When the Public Advocate says that one is unnecessary and the Chairman says they will continue for another seven years, we say A-3701 does not go far enough. There is no provision for restitution of all overcharges by the insurance industry to the JUA, in spite of the fact that the JUA Board of Directors on August 26, 1988, admitted there were overcharges!

This bill also permits another rate increase for certain JUA insureds--motorists who have been convicted of two or more moving violations, or who have received 4 or more motor vehicle points, whichever is less, or who have had one or more at-fault accidents. This would result in rate increases for motorists convicted twice for "operating 5 miles over the speed limit" or "making an illegal right turn" as well as for "hit and run" and "reckless driving". There is no distinction for different and more severe violations. Furthermore, rate increases would be permitted for at-fault accidents regardless of the dollar amount of property damage or the severity of personal injuries incurred. Present surcharges for at-fault accidents require at least a \$300 payment in a property damage liability claim.

We are certainly in favor of protecting good drivers while the JUA is being depopulated and respectfully request a legislative

description of clean risk that is more equitable than the standards set forth in A-3701. Such a definition might encompass the following:

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

(a) A person whose driver's license to operate an automobile is under suspension or revocation;

(b) A person who has been convicted within the immediate preceding five-year period of fraud or intent to defraud involving an automobile insurance claim or an application for automobile insurance; or a person who has been successfully denied, within the immediately preceding five-years, payment by an insurer of a claim in excess of \$1,000.00 under an automobile insurance policy, if there is evidence of fraud or intent to defraud involving an automobile insurance claim or application;

(c) A person who has been convicted of theft of a motor vehicle;

(d) A person whose automobile insured or to be insured under the automobile insurance policy fails to meet the safety requirements pursuant to R.S. 39:8-1 et seq.;

(e) A person whose policy of automobile insurance has been canceled because of nonpayment of premium or financed premium within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy;

(f) A person who fails to obtain or maintain membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues, charges, or other conditions for membership are not expressed as a percentage of premium, and do not vary with respect to the rating classification of the member except for the purpose of offering a membership fee to family units. Membership fees may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees; or

(g) A person whose driving record for the three-year period immediately preceding application for or renewal of a policy, has an accumulation of more than six motor vehicle points as provided in Title 39 of the Revised Statutes or has been convicted pursuant to R.S. 39:4-50 or section 2 of P.L. 1981, c. 512 (C.39:4-50.4a) or for offenses of a substantially similar nature committed in another jurisdiction.

As a matter of fact we feel that all "clean risks" should be immediately written in the voluntary market.

Lastly, concerning Assembly Bill 3701 we are against the state subsidizing the insurance industry. We are strongly against the provision for the State to loan the JUA all of the proceeds from insurance premium taxes which are attributable to taxes on motor vehicle insurance. Currently, this sum amounts to \$60 million. At this level over the six year period the State could subsidize the biggest financial conglomerates in the world for 360 million dollars. Additionally, the legislation in question does not mention whether repayment of this loan would or would not include payment of interest.

It is a very bad precedent to use taxpayers' funds to bail out individual companies.

We respectfully request restitution of the overcharges made by the servicing carriers.

By the way, every other state with a residual market assesses the companies--not the citizens. Perhaps we could charge the industry \$60 million until we find out exactly how much was overcharged.

LEGAL strongly opposes Assembly Bill 3702 because it is extremely unfair and not equitable to drivers.

Automatic rate increases for JUA insureds who have "any at-fault accidents or moving violations" are permitted. There is absolutely no differentiation between such offenses and no dollar amount of property damage or severity of personal injury incurred tied to an at-fault accident. This is really not fair. Also, the rate differences will be based on a new voluntary rate level called "standard", which is not defined.

The bill creates a third surcharge system for JUA insureds on top of the existing system created in the 1983 law and the "DIP" plan which took effect on January 1, 1988. This means that the JUA driver could now be surcharged three times for the same offense, while a motorist in the voluntary market would be surcharged only once. Do we really want to do this?

Collision and comprehensive rates will increase for JUA drivers who have "any at-fault accidents or moving violations". Again there is no differentiation between such offenses (Can we really compare a hit and run driver with someone going 5 miles over the speed limit?) and no dollar amount of property damage or severity of personal injury incurred tied to at-fault accidents. We do not think that this is equitable or fair.

This bill also amends the flex rating provision of Chapter 119. The flex rating change in this bill is based strictly

on designated Consumer Price Indexes, not set by the Commissioner of Insurance and not to be challenged by the Public Advocate, plus three percentage points. The Commissioner may modify the statewide average rate change if he believes it will produce excessive rates. Under the flex rating formula, 1988 projected rate increases would equal 8.4% for personal injury protection, bodily injury and property damage coverage, and 12.4% for physical damage coverage (Based on statistics from the Federal Bureau of Labor). On a \$1,000 policy policy, with P.I.P., B.I. and P.D. equaling 55% of total premium, and physical damage 45% of total premium, rates for 1988 would automatically increase at least \$100 without the prior approval of the Commissioner of Insurance. This would occur automatically every year. And, the Public Advocate could not challenge this increase!

We are not against multi-tier rating systems as long as the criteria for such are determined by the legislature and not determined by the insurance industry. We agree with Governor Kean when he stated in his Conditional Veto Message of S-2637 on August 4, 1988, that this provision "simply gives too much to the industry and would aggravate the basic inequities this bill seeks to resolve."

The notification provision in Assembly Bill 3702 should be improved. We applaud the concept of notifying drivers that they are in the J.U.A.; however, there is no mandate that good drivers or clean risks be written in the voluntary market, as described earlier in this testimony along with suggested criteria for the legislature to describe a "clean risk".

We applaud the concept of an audit, even though the J.U.A. has been required to perform annual audits; however there is no provision for restitution of overcharges by the servicing carriers, which as we said earlier, may be "hundreds of millions of dollars" according to the Public Advocate in a letter of January 12, 1988, to Commissioner Merin.

We also applaud the section dealing with servicing carrier overcharges. However, this provision is for future overcharges. There is no mention of restitution of past overcharges.

Structured settlements should not be left to the Commissioner of Insurance and the J.U.A. Board.

An audit by the J.U.A. Board of servicing carriers is very chilling to us. Haven't they been monitoring them from the onset of the J.U.A.

We would also like to know the fiscal impact of the dollar amount of commissions paid to a producer for residual bodily injury coverage.

Last, but not least, Assembly Bill 3703 establishes a Special Prosecutor to be appointed by the Governor. This is absolutely unnecessary because the Attorney General already has this power and the Governor appointed him. There is absolutely no compelling reason to spend \$500,000 of New Jersey citizens' money for what is already in place.

Thank you for allowing us to testify here today. We positively believe that to solve the automobile insurance problem in New Jersey today that the state exemption to the anti-trust law for insurance companies must be repealed. This would bring about true competition in the market place and rates would come down while the consumer could comparison shop.

If all companies were not allowed to use ISO (Insurance Service Office) "advisory rates" in New Jersey, we would force each company to carefully monitor their own costs and to use their own judgment about what will happen in the future and to price base on their own costs and judgment. Because the auto industry is competitively structured, i.e., no one firm is large enough to exercise power over price--the absence of all companies using the ISO bench mark would force real competition to break out, and would force insurers to become more efficient--i.e., to lower their costs and lower their prices in order to survive.

ALFRED A. ROCUM
PUBLIC ADVOCATE

State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE
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JAN 13 1988

January 12, 1988

State of New Jersey
Department of the Public Advocate

NJAFIUA

Honorable Kenneth D. Merin
Commissioner of Insurance
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

COMPLIMENTS OF

ASSEMBLYMAN

MICHAEL F. ADUBATO
28th LEGISLATIVE DISTRICT
341 ROSEVILLE AVENUE
NEWARK, N.J. 07107

Re: New Jersey Full Insurance Underwriting Association
Rate Counsel File No. 88-PPA-1
July 21, 1987 RMEC Filing (201) 482-1079

Dear Commissioner Merin:

After a careful review of the above-captioned matter, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") recommends that a sixty dollar (\$60) residual market equalization charge (RMEC) be approved, subject to a downward modification corresponding to any increase approved in the pending Insurance Services Office's rate filing (DOI File No. 87-1256, Rate Counsel File No. 87-PPA-6).

A review of the data submitted in this proceeding confirms the allegation by the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) that it will run out of cash in 1988 unless increased funds are collected. As detailed in the accompanying report prepared by J. Robert Hunter, Rate Counsel's actuarial consultant in this proceeding, the indicated RMEC ranges from \$53 to \$64, assuming that a zero percent (0%) rate increase is approved in the above noted ISO rate filing. Given the statutory scheme governing the RMEC and NJAFIUA's current cash position, a \$60 RMEC, slightly above the midpoint of the indicated range, is recommended.

Although the available data justifies the imposition of a \$60 RMEC at this time, Rate Counsel believes that, if the concerns raised by Rate Counsel since the inception of the NJAFIUA had been addressed, no RMEC would now be required. For example, Rate Counsel has been critical of the fee mechanism established for NJAFIUA's servicing carriers.

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ASSEMBLYMAN

MICHAEL F. ADUBATO

28th LEGISLATIVE DISTRICT

341 ROSEVILLE AVENUE

NEWARK, N.J. 07107

(201) 482-1079

Honorable Kenneth D. Marin
January 12, 1988
Page Two

While these servicing carriers' fees have been reduced from their initial lofty levels, tens, if not hundreds, of millions of dollars would have been available to offset any needed RMEC had reasonable servicing carriers' fees been established at the inception of the NJAFIUA. Currently the Department of Insurance in the midst of initiating a competitive bidding process for these servicing carriers' duties; had this process been initially installed, or at least more expeditiously completed, no RMEC would likely be needed at this time (see page 3 of Mr. Hunter's accompanying report). Rate Counsel strongly urges the immediate implementation of this competitive bidding process and other necessary changes* so that the NJAFIUA can efficiently and effectively serve its insureds.

Respectfully submitted,

ALFRED A. SLOCUM
PUBLIC ADVOCATE

By: Donald W. Bunda
Donald W. Bunda
Deputy Public Advocate

DWB/jb

Enclosure

cc: Jasper Jackson, Deputy Commissioner
Verice Mason, Assistant Commissioner
Richard Boar, Chief, Rating Bureau
Jack Trope, Chairman (NJAFIUA)
Neil Pearson, Accounting Manager (NJAFIUA)

Other changes would include an examination as to why it averages almost 3 months for NJAFIUA to receive the premium dollars that it writes..

INDEPENDENT INSURANCE

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AGENTS OF NEW JERSEY

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POSITION STATEMENT

ON

ASSEMBLY BILLS 3701, 3702 & 3703

OCTOBER 20, 1988

The Independent Insurance Agents of New Jersey welcomes the opportunity to comment for the first time on the merits of Assembly Bills 3701 and 3702 which deal with the New Jersey Automobile Full Insurance Underwriting Association, (JUA), and Assembly Bill 3703 which deals with the establishment of a special insurance fraud prosecutor.

Before commenting directly on those bills, it is important to note that the recent passage of S-2637 with the amendments recommended by the Governor's conditional veto represents an important first step on the road to meaningful auto reform in New Jersey. But the legislation is just that --- an important first step --- and much more remains to be done.

One area of weakness in S-2637 is that it fails to adequately address the huge deficit at \$2.5 billion.

While charges and countercharges attempt to afix the blame for the deficit, there is universal agreement that the deficit exists. The deficit will not go away over night and sound fiscal policy demands that the deficit be addressed in a responsible manner so that the taxpayers of this state are not ultimately burdened with it.

Both A-3701 and A-3702 appear to make light of that deficit and that is the primary reason the Independent Insurance Agents of New Jersey is in opposition to both of these bills in their present form.

Our specific comments on each of the bills follows.

A-3701

A-3701 has three main features which are of concern to our organization:

- * Freezing of Residual Market Expense Charge at current levels
- * Modification of the JUA rate increases stipulated by S-2637
- * Utilization of premium tax dollars generated by auto insurance premiums by JUA

We are concerned about these items for the following reasons:

- * Freezing of the Residual Market expense Charge

The ReMEC has been the saving grace for the JUA in recent months as expenses far exceeded income. Without the ability to set a

fair ReMEC at the time the JUA would have been unable to meet its obligations and thousands of motorists/voters would have been denied speedy settlement of their losses.

With an agreed upon multi-billion deficit, it appears fiscally irresponsible to limit the JUA's ability to generate additional revenue to meet its basic obligations should its financial condition continue to deteriorate at the same or at an accelerate pace.

We strongly urge that the flexibility to approve emergency ReMECs be left with the Commissioner of Insurance as is now the case.

*** Modification of the JUA rate increases stipulated by S-2637**

S-2637 mandated a 40% rate increase for all JUA drivers over a 4 year period on the supposition that such a rate increase will make the JUA self-supporting by then.

A-3701 modifies that by limiting the rate increase solely to those who meet certain criteria contained in the legislation.

We object to this provision on the grounds that one of the objectives of S-2637 was to use these mandatory increases as an incentive for a person to pressure his agent to move him out of the JUA to the voluntary market where the rates would be cheaper.

A-3701 removes that incentive and thus provides a discentive which will perpetuate the JUA's disproportionate share of the market.

*** Utilization of premium tax dollars generated by auto insurance premiums by JUA**

This new feature of the legislation has promise because it provides the JUA with additional funds which are not generated by a premium increase.

However, the IIANJ feels that the provision that limits this procedure to only 6 years should be removed and that it be allowed to continue until such times as the accumulated deficit of the JUA is eliminated.

Admittedly, this procedure would take a very long time to accomplish the desired result. However, it would mark the first time that an effort is to be made to eliminate the deficit and we feel that the insurance industry would act positively to this sign by opening the market beyond what is called for in S-2637. Such an action would say to in the insurance companies that the legislature is willing to live up to existing law prohibiting the assessing of companies for the JUA deficit.

A-3702

The bill numbered 3702 has much in common with 3701 prompting the questions of why two bills. Similarities exists either in whole or in part with the treatment of the freezing of the ReMEC, (although 3702 does provide some flexibility which will be discussed later), and in the treatment of the JUA rate increases stipulated by S-2637 (identical).

The issues of concern for the IIANJ are as follows:

- * **Modification of JUA rate increases stipulated by S-2637**
- * **Establishment of JUA comprehensive and collision coverages based on JUA experience**
- * **admittance of non-standard auto insurers into the market**
- * **Financial plan for JUA to meet its day-to-day obligations**
- * **Flex rating**
- * **Depopulation of JUA**

Our specific comments on each area of concern are as follows:

- * **Modification of JUA rate increases stipulated by S-2637**

We reiterate our comments made on a similar provision found in A-3701: this proposal would defeat the depopulation of the JUA by creating a market which would be competitive with the voluntary market. The JUA, as a market of last resort for the poorer driving risk, should have rates which are an accurate reflection of its total insured population. The JUA should not be a competitive force in the market.

- * **Establishment of JUA comprehensive and collision coverages based on JUA experience**

We applaud the attempt to make the JUA use its own loss experience to calculate its rates. However, we question why only those who meet certain criteria will be affected by those rates. Since a goal of insurance is to spread the risk all JUA insureds should feel the effects of any rate increase. Sufficient methods, (e.g., surcharges, rating factors, etc.), exists to ensure that the dangerous driver pays an appropriate premium.

It should be noted that part on the JUA's problem lies in the fact that its own loss experience was previously not included in any rate calculations which created artificially low rates.

The provision is an important step forward but due to the large number of JUA insured vehicles it should be extended to all coverages, not just comprehensive and collision.

- * **Admittance of non-standard insurers into the market**

The IIANJ applauds this provision of the bill as a positive way to achieve depopulation of the JUA. Non-standard carriers, who specialize in the writing of high risk drivers, play a significant role in other states, keeping many insureds out of the residual market. Insurance producers would be in a position to develop close working relationships with such companies similar to what they have with their usual markets, thereby improving service to the insured.

- * **Financial plan for JUA to meet its day-to-day obligations**

Unlike A-3701 which permits the JUA to use the premium tax revenues generated to pay its daily obligations, A-3702 uses an elaborate scheme of delayed loss payments as a means of staying afloat.

These provisions are merely delaying the inevitable and do not come to grips with the problem of the JUA's deteriorated financial condition.

To its credit A-3702 does permit the raising of the ReMEC as a matter of last resort but the bill does not deal with the acknowledged \$2.5 billion deficit.

Somewhere, some how the funding of that deficit must be addressed and not casually brushed aside.

*** Flex rating**

A-3702 attempts to modify the flex rating procedure called for by S-2637.

The IIANJ feels that it is premature to modify the rating plan at this time; we feel that S-2637 should be allowed to operate in the manner intended.

*** Depopulation of the JUA**

S-2637 sets depopulation goals to be reached over the next four years but leaves the development of the plan to the Department of Insurance. A-3702 appears to indicate a lack of confidence in the Department of Insurance in carrying out the legislative mandate of S-2637 by establishing an elaborate scheme that calls for the generation of a list of eligible JUA policyholders who could be moved to the voluntary market. The IIANJ feels that this dictatorial approach is a smack in the face of the Department of Insurance and does not permit the flexibility needed to develop a plan which can effectively carry out the depopulation objectives. The long established legal doctrine which states that in the absence of any contractual language to the contrary, the producer is the owner of the policies placed through his or her agency must be recognized and maintained.

IIANJ recommends that the Department of Insurance be allowed to develop a plan which is in accord with S-2637 but free of the encumbrances of A-3702.

In conclusion, the Independent Insurance Agents of New Jersey assert that, when taken either separately or in concert, neither A-3701 nor A-3702 provide proper relief for the JUA, refuse to address the JUA deficit and should not be released from committee in present form.

The IIANJ recommends that the positive aspects of A-3701 and A-3702 be culled from those bills and be combined into a single piece of legislation which will be beneficial to the motoring public of our state.

A-3703

On the other hand, the Independent Insurance Agents of New Jersey is opposed to insurance fraud and supports the establishment of an insurance fraud prosecutor.

CONCLUSION

The Independent Insurance Agents of New Jersey stand ready to work with the legislature, the Department of Insurance and the Administration to achieve solutions to the automobile situation in the state which are fair and equitable to all concerned parties, but most especially to the New Jersey motorists.

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