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1989d

PUBLIC HEARING

before

ASSEMBLY INSURANCE COMMITTEE

ASSEMBLY CONCURRENT RESOLUTION NO. 140 (1R)

(Amends the Constitution to mandate passage of Michigan automobile insurance rates to a level of 20% below rates in effect on January 1, 1987.)

ASSEMBLY CONCURRENT RESOLUTION NO. 142 (1R)

(Amends the Constitution to reduce automobile insurance rates to a level 20% below rates in effect on January 1, 1987.)

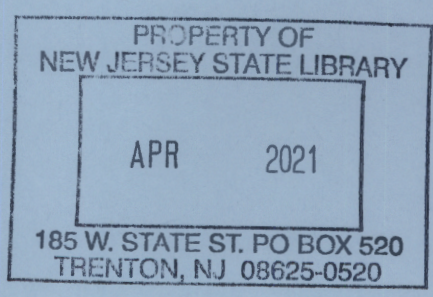
June 26, 1989  
Room 449  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT

Assemblyman Gerald Zecker, Chairman  
Assemblyman Clare M. Farragher, Vice Chairman  
Assemblyman Michael F. Adubato  
Assemblyman Joseph Charles, Jr.

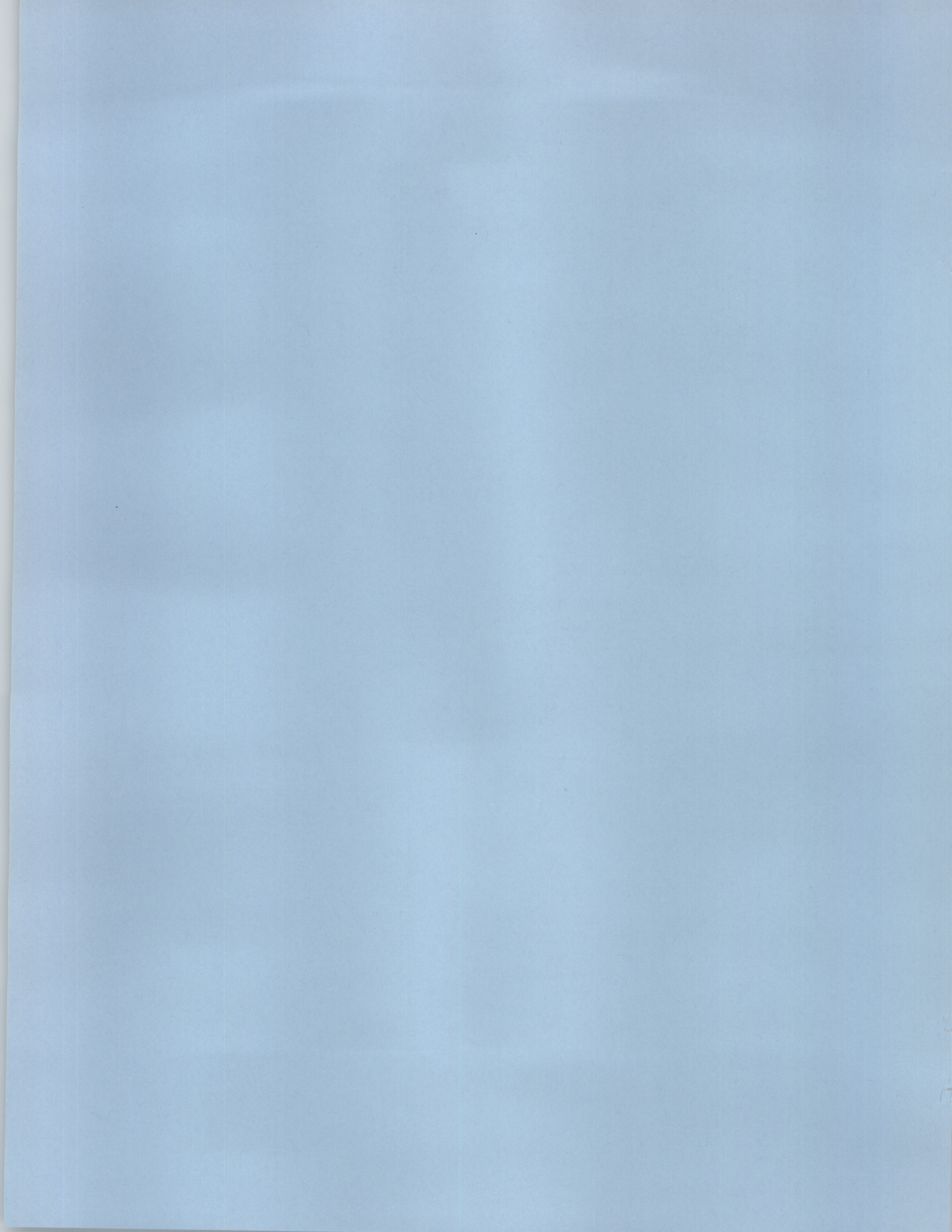
ALSO PRESENT:

Thomas K. Musick  
Office of Legislative Services  
Aide, Assembly Insurance 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**  
**ASSEMBLY INSURANCE COMMITTEE**

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

**GERALD ZECKER**  
*Chairman*  
**CLARE M. FARRAGHER**  
*Vice-Chairman*  
**C. RICHARD KAMIN**  
**MICHAEL F. ADUBATO**  
**JOSEPH CHARLES, JR.**

June 16, 1989

**NOTICE OF PUBLIC HEARING**

**ASSEMBLY INSURANCE COMMITTEE**

**PUBLIC HEARING ON:**

**ACR-140**

(ASSEMBLYMAN FRANKS)

(AMENDS THE CONSTITUTION TO MANDATE PASSAGE OF MICHIGAN  
AUTOMOBILE INSURANCE SYSTEM AND TO REDUCE AUTOMOBILE  
INSURANCE RATES TO A LEVEL 20% BELOW RATES IN  
EFFECT ON JANUARY 1, 1987)

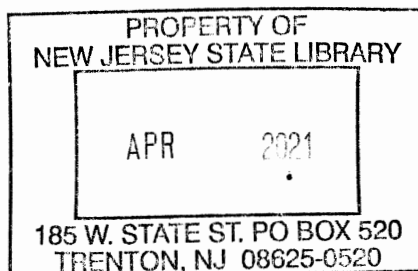
**ACR-142**

(ASSEMBLYMEN ADUBATO AND BROWN)

(AMENDS THE CONSTITUTION TO REDUCE AUTOMOBILE INSURANCE  
RATES TO A LEVEL 20% BELOW RATES IN EFFECT  
JANUARY 1, 1987)

The Assembly Insurance Committee will hold a public hearing on Monday, June 26, 1989, beginning at 10:00 A.M., in Room 449, State House Annex, Trenton, New Jersey.

Address any questions and requests to testify to Thomas K. Musick (609) 984-0445, State House Annex, Trenton, New Jersey 08625. Typed copies of testimony are helpful to the committee (ten copies) just prior to the oral presentation, if at all possible. The chairman may find it necessary to limit the number of witnesses or the time available for each witness.





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mjz: 1-42  
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[FIRST REPRINT]  
ASSEMBLY CONCURRENT RESOLUTION No. 140

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1989

By Assemblyman FRANKS

1 A *CONCURRENT RESOLUTION* proposing to amend Article IV,  
Section VII, of the Constitution of the State of New Jersey by  
3 adding a new paragraph thereto.

5 BE IT RESOLVED *by the General Assembly of the State of  
New Jersey (the Senate concurring):*

7 1. The following proposed amendment to the Constitution of  
the State of New Jersey is agreed to:

9

PROPOSED AMENDMENT

11 Amend Article IV, Section VII, by adding the following  
paragraph:

13 12. a. No later than <sup>1</sup>[July 1, 1990] December 1, 1990<sup>1</sup>, the  
Legislature shall pass laws <sup>1</sup>in accordance with this Article,<sup>1</sup>  
15 establishing a private passenger automobile insurance system <sup>1</sup>[,  
which system shall be substantially]<sup>1</sup> similar <sup>1</sup>[, in all material  
17 respects,]<sup>1</sup> to the automobile insurance system <sup>1</sup>[established by  
the laws of] in operation in<sup>1</sup> the State of Michigan <sup>1</sup>[in effect]<sup>1</sup>  
19 on the date on which this paragraph becomes part of the  
Constitution <sup>1</sup>. In passing such laws, the Legislature may amend,  
21 supplement or repeal the laws of this State with respect to  
automobile insurance, as appropriate, to effectuate the provisions  
23 of this paragraph and may, in its discretion, adopt only such  
elements of, or make such modifications in, the system in  
25 operation in the State of Michigan on the date on which this  
paragraph becomes part of the Constitution as it determines to  
27 be practicable and in the best interests of the people of this  
State<sup>1</sup>, including:

29 (1) a no-fault reparations system for injuries incurred as a  
result of accidents involving private passenger automobiles,  
31 which system shall include (a) unlimited medical expense benefits  
payable without regard to fault; (b) the verbal tort threshold; and

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Assembly AIN committee amendments adopted June 15, 1989.

- 1 (c) physical damage coverage payable without regard to fault;
- 2 (2) <sup>1</sup>[a law which is substantially the same as the Michigan
- 3 Essential Insurance Act, which shall provide] an essential
- 4 insurance system which provides<sup>1</sup> that all private passenger
- 5 automobiles shall be insured in the voluntary market unless the
- 6 insured owner of the vehicle falls within the purview of a specific
- 7 statutory exemption;
- 8 (3) <sup>1</sup>[a law providing for]<sup>1</sup> a risk classification system, rating
- 9 system, and statistical plan;
- 10 (4) a file and use competitive rating system in place of the
- 11 present prior approval system; and
- 12 (5) <sup>1</sup>[a law providing for]<sup>1</sup> a residual market mechanism.
- 13 b. Notwithstanding the enactment of any laws pursuant to this
- 14 paragraph, and effective immediately upon this paragraph
- 15 becoming part of the Constitution <sup>1</sup>and for a period of 12 months
- 16 thereafter<sup>1</sup>, the base rates applicable to all private passenger
- 17 automobile insurance written in the voluntary market by insurers
- 18 licensed to transact the business of private passenger automobile
- 19 insurance in this State <sup>1</sup>[and written in the residual market by the
- 20 New Jersey Automobile Full Insurance Underwriting Association
- 21 created by P.L.1983, c.65 (C.17:30E-1 et seq.)]<sup>1</sup> shall not exceed
- 22 the base rates in effect on January 1, 1987, reduced by 20%.
- 23 c. Notwithstanding any of the foregoing, <sup>1</sup>during that
- 24 12-month period,<sup>1</sup> the Commissioner of Insurance may establish
- 25 rates in excess of those authorized pursuant to this paragraph for
- 26 any insurer in the voluntary market to the extent that said
- 27 insurer can demonstrate that the imposition of the rates
- 28 authorized pursuant to this paragraph would result in <sup>1</sup>[the
- 29 insolvency of] rates which are confiscatory, which are not fair
- 30 and reasonable, and which do not provide a fair rate of return to<sup>1</sup>
- 31 the insurer <sup>1</sup>and, in the case of base rates applicable to private
- 32 passenger automobile insurance written in the residual market by
- 33 the New Jersey Automobile Full Insurance Underwriting
- 34 Association created by sections 13 through 34 of P.L.1983, c.65
- 35 (C.17:30E-1 et seq.), the commissioner may establish rates in
- 36 excess of those established by law, which are reduced as a result
- 37 of the rates authorized for insurers in the voluntary market
- 38 pursuant to this paragraph, to the extent that the New Jersey
- 39 Automobile Full Insurance Underwriting Association can

1 demonstrate that the imposition of such reduced rates in the  
2 residual market would result in a cash shortfall to the  
3 association<sup>1</sup>.

(cf: N.J.Const. Art.IV, Sec.VII)

5 2. When this proposed amendment to the Constitution <sup>1</sup>[is] and  
6 the amendment proposed in Assembly Concurrent Resolution No.  
7 142 of 1989 are<sup>1</sup> finally agreed to pursuant to Article IX,  
8 paragraph 1 of the Constitution, <sup>1</sup>[it] this proposed amendment<sup>1</sup>  
9 shall be submitted to the people at the next general election  
10 occurring more than three months after the final agreement and  
11 shall be published at least once in at least one newspaper of each  
12 county designated by the President of the Senate, the Speaker of  
13 the General Assembly and the Secretary of State, not less than  
14 three months prior to the general election.

15 3. This proposed amendment to the Constitution shall be  
16 submitted to the people at that election in the following manner  
17 and form:

18 There shall be printed on each official ballot to be used at the  
19 general election, the following:

20 a. In every municipality in which voting machines are not used,  
21 a legend which shall immediately precede the question, as follows:

22 If you favor the proposition printed below make a cross (X),  
23 plus (+) or check (✓) in the square opposite the word "Yes." If you  
24 are opposed thereto make a cross (X), plus (+) or check (✓) in the  
25 square opposite the word "No."

b. In every municipality the following question:

1  
3 CONSTITUTIONAL AMENDMENT MANDATING  
4 PASSAGE OF A PRIVATE PASSENGER  
5 AUTOMOBILE INSURANCE SYSTEM  
6 <sup>1</sup>[SUBSTANTIALLY]<sup>1</sup> SIMILAR TO THE  
7 PRIVATE PASSENGER AUTOMOBILE  
8 INSURANCE SYSTEM <sup>1</sup>[ESTABLISHED BY THE  
9 LAWS OF] IN OPERATION IN<sup>1</sup> THE STATE OF  
10 MICHIGAN AND MANDATING AN IMMEDIATE  
11 REDUCTION IN AUTOMOBILE INSURANCE  
12 RATES

13  
14 YES. Shall the amendment to the Constitution,  
15 agreed to by the Legislature, to require the  
16 Legislature, by <sup>1</sup>[July 1, 1990] December 1,  
17 1990<sup>1</sup>, to pass laws establishing a private  
18 passenger automobile insurance system <sup>1</sup>[, which  
19 is substantially]<sup>1</sup> similar <sup>1</sup>[, in all material  
20 respects,]<sup>1</sup> to the private passenger automobile  
21 insurance system in <sup>1</sup>[effect] operation<sup>1</sup> in the  
22 State of Michigan at the time the amendment  
23 becomes part of the Constitution; to require that,  
24 notwithstanding the enactment of any such laws,  
25 effective immediately upon the amendment  
26 becoming part of the Constitution <sup>1</sup>and for a  
27 12-month period thereafter<sup>1</sup>, private passenger  
28 automobile insurance base rates in <sup>1</sup>[both]<sup>1</sup> the  
29 voluntary <sup>1</sup>[and residual markets] market<sup>1</sup> in this  
30 State shall not exceed the base rates in effect on  
31 January 1, 1987, reduced by 20%; and to permit  
32 the Commissioner of Insurance to adjust the rates  
33 of an insurer <sup>1</sup>during that 12-month period<sup>1</sup> only  
34 upon a demonstration that the imposition of said  
35 rates will result in <sup>1</sup>[the insolvency of] rates  
36 which are confiscatory, which are not fair and  
37 reasonable, and which do not provide a fair rate  
38 of return to<sup>1</sup> the insurer,<sup>1</sup> and, in the case of  
39 base rates applicable to private passenger  
40 automobile insurance written in the residual  
41 market by the New Jersey Automobile Full  
42 Insurance Underwriting Association, to permit  
43 the commissioner to adjust the rates during that  
44 12-month period only upon a demonstration that  
45 the imposition of reduced rates in the residual  
46 market would result in a cash shortfall to the  
47 association,<sup>1</sup> be approved?

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## INTERPRETIVE STATEMENT

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NO. This constitutional amendment requires the Legislature, by <sup>1</sup>[July 1, 1990] December 1, 1990<sup>1</sup>, to pass laws establishing a private passenger automobile insurance system <sup>1</sup>{, which would be substantially<sup>1</sup> similar <sup>1</sup>{, in all material respects.<sup>1</sup> to the private passenger automobile insurance system in <sup>1</sup>{effect} operation<sup>1</sup> in the State of Michigan on January 1, 1990; requires that, effective <sup>1</sup>for a 12-month period beginning<sup>1</sup> January 1, 1990, private passenger automobile insurance base rates in <sup>1</sup>{both}<sup>1</sup> the voluntary <sup>1</sup>{and residual markets} market<sup>1</sup> in this State would not exceed those in effect on January 1, 1987, reduced by 20%; and permits the Commissioner of Insurance to adjust the rates of an insurer <sup>1</sup>during that 12-month period<sup>1</sup> only upon a demonstration that the imposition of the reduced rates will result in <sup>1</sup>{the insolvency of} rates which are confiscatory, which are not fair and reasonable, and which do not provide a fair rate of return to<sup>1</sup> the insurer <sup>1</sup>and, in the case of base rates applicable to private passenger automobile insurance written in the residual market by the New Jersey Automobile Full Insurance Underwriting Association (JUA), permits the commissioner to adjust the rates during that 12-month period only upon a demonstration that the imposition of reduced rates in the residual market would result in a cash shortfall to the association. This constitutional amendment, if it is approved by the voters, will become part of the Constitution on January 1, 1990, but only if it receives a greater number of affirmative votes than any other constitutional amendment relating to automobile insurance proposed at this general election. Any other proposed amendment relating to automobile insurance and receiving a lesser number of affirmative votes at this election, even if approved by the voters, shall be deemed not approved<sup>1</sup>.

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## SCHEDULE

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This constitutional amendment shall, if <sup>1</sup>it is<sup>1</sup> approved by the voters, <sup>1</sup>and if it receives a greater number of affirmative votes than any other amendment relating to automobile insurance at the general election held in November, 1989,<sup>1</sup> become a part of the Constitution on January 1, 1990. <sup>1</sup>Any other such proposed amendment receiving a lesser number of affirmative votes, even if approved by the voters, shall be deemed not approved.<sup>1</sup>

57

1       14. This concurrent resolution shall be effective immediately  
2       but shall remain inoperative until final agreement to Assembly  
3       Concurrent Resolution No. 142 of 1989.<sup>1</sup>

5

LEGISLATURE

7

Insurance - Automobile

9       Amends Constitution to mandate passage of Michigan automobile  
10       insurance system and to reduce automobile insurance rates to a  
11       level 20% below rates in effect on January 1, 1987.

ASSEMBLY INSURANCE COMMITTEE  
STATEMENT TO  
ASSEMBLY CONCURRENT RESOLUTION No. 140

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1989

The Assembly Insurance Committee favorably reports Assembly Concurrent Resolution No. 140, with committee amendments.

This concurrent resolution, as introduced, proposed an amendment to the Constitution of the State of New Jersey which would, if adopted, mandate the passage of laws by July 1, 1990, establishing a private passenger automobile insurance system substantially similar to the system in effect in the State of Michigan, and would require that, effective January 1, 1990, private passenger automobile insurance base rates be established in both the voluntary and residual markets in this State at rates not in excess of the rates in effect on January 1, 1987, reduced by 20%. Under the original version of the proposed amendment, the Commissioner of Insurance would be authorized to adjust the rates of an insurer only upon a demonstration that imposition of the reduced rates would result in the insolvency of the insurer.

The committee amended the resolution to permit the Legislature to exercise its discretion in passing laws based on the Michigan system and to make appropriate modifications in that system as it determines to be practicable and in the best interests of the people of the State. It also extended the date by which the Legislature is required to pass such laws to December 1, 1990.

The Michigan-type system to be established would include:

(1) a no-fault system including (a) unlimited medical expense benefits payable without regard to fault; (b) a "verbal" tort threshold; and (c) property damage coverage payable without regard to fault;

(2) an essential insurance system, which would provide that all private passenger automobiles be insured in the voluntary market unless the insured owner of the vehicle falls within the purview of a specific statutory exemption;

(3) a risk classification system, rating system, and statistical plan;

- (4) a file and use competitive rating system; and
- (5) a residual market mechanism.

With respect to the rate reduction provisions, the committee amended the proposal to provide that any reduction would remain in effect for 12 months and that it would affect only voluntary market rates directly. It is anticipated that there will be a corresponding reduction in rates in the residual market for insurance written by the New Jersey Automobile Full Insurance Underwriting Association (JUA) inasmuch as its rates are established by statute as a function of the rates in the voluntary market. The amendments also replace the standard for an adjustment in the reduced rates from one of insolvency to a standard prohibiting rates which are confiscatory and permitting a fair rate of return to insurers. This amendment was adopted in recognition of the recent decision in California regarding the rate rollback provisions of Proposition 103. The committee amendment also permits a rate adjustment in the residual market if the resulting reduced rates would result in a cash shortfall to the JUA.

Finally, the committee adopted amendments concerning the submission of the proposed constitutional amendment to the people. As amended, the proposal will only be submitted to the voters if the amendment proposed in Assembly Concurrent Resolution No. 142 is also agreed to by the Legislature. Moreover, the schedule was amended to provide that the amendment will become part of the Constitution only if approved by the voters by a greater number of affirmative votes than any other amendment relating to automobile insurance considered at the November, 1989 general election, and that any other such proposed amendment, even if approved, will be deemed not approved if it receives a lesser number of affirmative votes. Similar procedural amendments have also been made to ACR 142, reported in conjunction with this concurrent resolution.

ASSEMBLY CONCURRENT RESOLUTION No. 142

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1989

By Assemblymen ADUBATO, BROWN, Cimino, Zangari, Doyle, Pascrell, Hudak, Patero, Villapiano, Duch, Spadaro, Charles, Smith, Assemblywoman Bush, Assemblymen Schwartz, Naples, Gill, Mazur, Baer, Salmon, Kenny, Doria, Kronick, Mattison, Bryant, Menendez, Karcher, Imprevuto, Marsella, Girgenti, Foy, McEnroe, Deverin, Otlowski, Roberts, Riley, Pelly, Assemblywoman Kalik, Assemblymen Watson and Zecker

1 A *CONCURRENT RESOLUTION* proposing to amend Article V,  
2 Section IV, of the Constitution of the State of New Jersey by  
3 adding a new paragraph thereto.

5 BE IT RESOLVED *by the General Assembly of the State of*  
*New Jersey (the Senate concurring):*

7 1. The following proposed amendment to the Constitution of  
8 the State of New Jersey is agreed to:

9

PROPOSED AMENDMENT

11

12 Amend Article V, Section IV, by adding the following  
13 paragraph:

14 7. The Commissioner of Insurance shall, by regulation filed in  
15 accordance with paragraph 6 of this section, establish automobile  
16 insurance rates in both the voluntary and residual private  
17 passenger automobile insurance markets in this State for all  
18 insurers writing private passenger automobile insurance in this  
19 State and for the New Jersey Automobile Full Insurance  
20 Underwriting Association, which rates shall not exceed the rates  
21 in effect for those respective insurers and the New Jersey  
22 Automobile Full Insurance Underwriting Association on January  
23 1, 1987, reduced by 20%; and the Commissioner of Insurance shall  
24 further eliminate, by regulation, all subsidies charged to insureds  
25 under policies of private passenger automobile insurance and  
26 inuring to the New Jersey Automobile Full Insurance  
27 Underwriting Association, which subsidies were not in effect on  
28 January 1, 1987.

29 Notwithstanding the foregoing, the Commissioner of Insurance

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
1 Assembly AIN committee amendments adopted June 15, 1989.

1 may establish rates in excess of those authorized pursuant to this  
paragraph for any insurer in the voluntary market to the extent  
3 that said insurer can demonstrate, to the satisfaction of the  
commissioner, that the imposition of the authorized rates would  
5 result in the insolvency of the insurer. The amount of any  
shortfall in revenue to the New Jersey Automobile Full Insurance  
7 Underwriting Association resulting from the imposition of  
reduced rates and the elimination of subsidies pursuant to this  
9 paragraph shall be recovered by the commissioner by an  
assessment on all insurers writing private passenger automobile  
11 insurance in this State, which assessment shall be based upon the  
insurer's proportionate share of the aggregate number of private  
13 passenger automobile exposures written in the total private  
passenger automobile insurance market in this State on December  
15 31, 1983.

The reduction in rates and elimination of subsidies mandated by  
17 this paragraph shall take effect on January 1, 1990 and shall  
remain in effect for a period of twelve months.

19 (cf: N.J.Const. Art.V, Sec.IV)

2. When this proposed amendment to the Constitution <sup>1</sup>[is] and  
21 the amendment proposed in Assembly Concurrent Resolution No.  
140 of 1989 are<sup>1</sup> finally agreed to pursuant to Article IX,  
23 paragraph 1 of the Constitution, <sup>1</sup>[it] this proposed amendment<sup>1</sup>  
shall be submitted to the people at the next general election  
25 occurring more than three months after the final agreement and  
shall be published at least once in at least one newspaper of each  
27 county designated by the President of the Senate, the Speaker of  
the General Assembly and the Secretary of State, not less than  
29 three months prior to the general election.

3. This proposed amendment to the Constitution shall be  
31 submitted to the people at that election in the following manner  
and form:

33 There shall be printed on each official ballot to be used at the  
general election, the following:

35 a. In every municipality in which voting machines are not used,  
a legend which shall immediately precede the question, as follows:

37 If you favor the proposition printed below make a cross (X),  
plus (+) or check (✓) in the square opposite the word "Yes." If you  
39 are opposed thereto make a cross (X), plus (+) or check (✓) in the  
square opposite the word "No."

1 b. In every municipality the following question:

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CONSTITUTIONAL AMENDMENT MANDATING  
AUTOMOBILE INSURANCE RATE REDUCTIONS  
AND ELIMINATION OF JUA SUBSIDIES

7

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YES. Shall the amendment to the Constitution, agreed to by the Legislature, to require the Commissioner of Insurance to establish automobile insurance rates at an amount equivalent to the rates in effect on January 1, 1987, reduced by 20%, and to eliminate any subsidies payable to the New Jersey Automobile Full Insurance Underwriting Association not in effect on that date, for a period of one year beginning on January 1, 1990, to permit the commissioner to adjust the rates of an insurer during that period only upon a demonstration that the imposition of said rates will result in the insolvency of the insurer, and to assess against private passenger automobile insurers of this State, on the basis of their share of the total private passenger automobile insurance market on December 31, 1983, any shortfall in revenue to the New Jersey Automobile Full Insurance Underwriting Association resulting from the imposition of reduced rates and elimination of subsidies pursuant to the amendment, be approved?

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## INTERPRETIVE STATEMENT

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NO. This constitutional amendment requires the Commissioner of Insurance to establish automobile insurance rates at a level equivalent to the rates in effect on January 1, 1987, reduced by 20%, and to eliminate any subsidies payable to the New Jersey Automobile Full Insurance Underwriting Association (JUA) not in effect on that date, for a period of one year beginning on January 1, 1990, it permits the Commissioner of Insurance to adjust the rates of an insurer during that period only upon a demonstration that the imposition of the required rates would result in the insolvency of the insurer, and permits the Commissioner to assess private passenger automobile insurers, for any shortfall in revenue to the JUA resulting from the reduction in rates and elimination of subsidies pursuant to the amendment, on the basis of their share of the total private passenger automobile insurance market on December 31, 1983. <sup>1</sup>This constitutional amendment, if it is approved by the voters, will become part of the Constitution 30 days after this election, but only if it receives a greater number of affirmative votes than any other constitutional amendment relating to automobile insurance proposed at this general election. Any other proposed amendment relating to automobile insurance and receiving a lesser number of affirmative votes at this election, even if approved by the voters, shall be deemed not approved.<sup>1</sup>

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<sup>1</sup>SCHEDULE

This constitutional amendment shall, if it is approved by the voters, and if it receives a greater number of affirmative votes than any other amendment relating to automobile insurance at the general election held in November, 1989, become a part of the Constitution on the thirtieth day after the election. Any other such proposed amendment receiving a lesser number of affirmative votes, even if approved by the voters, shall be deemed not approved.<sup>1</sup>

<sup>14</sup>. This concurrent resolution shall be effective immediately but shall remain inoperative until final agreement to Assembly Concurrent Resolution No. 140 of 1989.<sup>1</sup>

1

LEGISLATURE

Insurance-Automobile

3

Amends the Constitution to reduce automobile insurance rates to  
a level 20% below the rates in effect on January 1, 1987.

5



ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY CONCURRENT RESOLUTION No. 142

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1989

The Assembly Insurance Committee favorably reports Assembly Concurrent Resolution No. 142, with committee amendments.

This concurrent resolution proposes an amendment to the Constitution of the State of New Jersey which would, if adopted, require the Commissioner of Insurance to establish automobile insurance rates at a level equivalent to the rates in effect on January 1, 1987, reduced by 20%, and to eliminate any subsidies payable to the New Jersey Automobile Full Insurance Underwriting Association (JUA) not in effect on that date, for a period of one year, beginning on January 1, 1990. It would permit the commissioner to adjust the rates of an insurer during that period only upon a demonstration that the imposition of the required rates would result in the insolvency of the insurer, and to assess private passenger automobile insurers for any shortfall in revenue to the JUA resulting from the imposition of reduced rates and elimination of subsidies pursuant to the amendment, on the basis of their share of the total private passenger automobile insurance market on December 31, 1983.

The committee amended the concurrent resolution concerning the submission of the proposed constitutional amendment to the people. As amended, the proposal will only be submitted to the voters if the amendment proposed in Assembly Concurrent Resolution No. 140 is also agreed to by the Legislature. Moreover, a schedule was added to provide that the amendment will become part of the Constitution only if approved by the voters by a greater number of affirmative votes than any other amendment relating to automobile insurance considered at the November, 1989 general election, and that any other such proposed amendment, even if approved, will be deemed not approved if it receives a lesser number of affirmative votes. Similar procedural amendments have also been made to ACR 140, reported in conjunction with this concurrent resolution.



ASSEMBLYMAN GERALD ZECKER (Chairman): Excuse me. May I have your attention, please? We are ready to start the meeting, if you will all take a seat. If there are going to be any private conversations, please conduct them out in the hallway.

The purpose of today's meeting is to conduct a public hearing on ACR-140 and ACR-142. I will ask for a roll call. Mr. Musick?

MR. MUSICK: (Committee Aide) Assemblyman Charles?

ASSEMBLYMAN CHARLES: Here.

MR. MUSICK: Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: Here.

MR. MUSICK: Assemblywoman Farragher?

ASSEMBLYWOMAN FARRAGHER: Here.

MR. MUSICK: Assemblyman Kamin?

ASSEMBLYMAN ZECKER: Assemblyman Kamin is in an Appropriations meeting, and advises that he will be in attendance. So, he will just be stopping in.

MR. MUSICK: Chairman Zecker?

ASSEMBLYMAN ZECKER: Here.

Are there any Assemblymen in the audience who would like to join us at the table? If you would like, you may bring your chairs up-front. Assemblyman Adubato, are there any members of your caucus who would care to join us?

ASSEMBLYMAN ADUBATO: I don't see them in the room.

ASSEMBLYMAN ZECKER: All right. Well if there are, would you please make them aware of the fact--

ASSEMBLYMAN ADUBATO: Sure. Where would you like them to sit?

ASSEMBLYMAN ZECKER: If they are in the rear section, if they like, they may bring a chair up.

Before we begin-- Assemblyman Adubato, I was just advised that Senate Bill No. 3680 and Senate Bill No. 3681 were acted upon by the Senate this morning in their committee. Were

you aware of any of these pieces of legislation? Had you been contacted?

ASSEMBLYMAN ADUBATO: What are 3680 and 81? Is that the Lynch bill you're talking about?

ASSEMBLYMAN ZECKER: Yes.

ASSEMBLYMAN ADUBATO: No. I found out about it from a newspaper reporter Thursday. He called me and told me about it. I haven't seen the bills; I haven't read them. I have been briefed, and I have been briefed to the extent that I was told that they are supposed to represent the position of the two gubernatorial candidates. That is as far as I know.

I don't know if that's accurate. Again, I haven't seen the bills. I'm not sure what positions either one of them has, quite frankly, so I don't know how it was put into a bill. But, that is beside the point.

ASSEMBLYMAN ZECKER: Thank you. This side has not been contacted for any input into these two pieces of legislation either.

ASSEMBLYMAN ADUBATO: Well, I think we need all the help we can get, and I commend the Senate in trying to be helpful.

ASSEMBLYMAN ZECKER: Thank you. I note that Assemblyman Gill will be joining us at the table, and any other Assemblymen who come to the meeting, you know, are welcome.

Mr. Franks -- Assemblyman Franks -- has advised that he is tied up at a meeting, but he will be joining us to comment on his particular ACR. For now, I'll ask that Tom Musick, of OLS, give a brief description of the intent of ACR-140, introduced by Assemblyman Franks.

MR. MUSICK: Okay. Assembly Concurrent Resolution No. 140 proposes an amendment to the Constitution of the State of New Jersey which would, if adopted, mandate the passage of laws by December 1, 1990 establishing a private passenger automobile insurance, similar to the system in effect in the State of

Michigan on that date, and would require that effective January 1, 1990, private passenger automobile insurance base rates be established in the voluntary market at rates not in excess of the rates in effect on January 1, 1987, reduced by 20%.

The resolution permits the Legislature to exercise its discretion in passing laws based on the Michigan system, and to make appropriate modifications in that system as it determines to be practicable and in the best interest of the people of this State.

With respect to the rate reduction provisions, the proposal provides that any reduction would remain in effect for 12 months, and that it would affect only voluntary market rates directly. The standard of an adjustment for rates -- in other words, the standard under which the Commissioner of Insurance could grant an adjustment from this reduced rate -- would be if the rates are demonstrated to be confiscatory or do not permit a fair rate of return to the insurers.

As amended by the Assembly Insurance Committee, both this constitutional amendment and the one proposed by ACR-142, would be submitted to the voters only if the other constitutional amendment is also agreed to by the Legislature. Moreover, the schedule provides that the amendment will become part of the Constitution only if it is approved by the voters by a greater number of affirmative votes than any other constitutional amendment relating to automobile insurance which is considered at the November 1989 election, and that any other such proposed amendment, even if approved, will be deemed not approved if it receives a lesser number of affirmative votes.

ASSEMBLYMAN ZECKER: Thank you. I should have prefaced my comments by saying we are going to let the public address ACR-140 and ACR-142, unlike the Insurance Committee meetings. So, you will be able to address either ACRs.

At this particular time, I will call upon Assemblyman Adubato, the prime sponsor of ACR-142, for a brief description. Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: Thank you, Mr. Chairman. At the outset, let me say that both constitutional amendments, as was pointed out by Mr. Musick, are tie-barred, and hopefully the people of New Jersey will have an opportunity to be heard this November, and whatever resolution receives the most affirmative votes would then go into effect for 12 months. So, in that respect, it shows the harmony and cooperation between all members of the Assembly working in the interest of the public, and not in partisan politics.

I want to commend Mr. Franks. I would also like to commend you, Mr. Chairman, for your cooperation. I certainly want to commend the entire Democratic Assembly as well, for co-sponsoring this bill. And I would be remiss, Mr. Chairman, if I did not acknowledge that you have also graciously co-sponsored Assembly Resolution No. 142, and we are very proud to have you--

ASSEMBLYMAN ZECKER: Thank you for making me a part of it.

ASSEMBLYMAN ADUBATO: --on that resolution. It truly shows that we are doing things that we think are in the best interest of the public, when we act in that manner.

Specifically, ACR-142 would roll back rates 20% below the rates that were in effect on January 1, 1987 in both markets; that is, both the voluntary market and the residual market. That is done because we have a philosophy that says a good driver is a good driver, whether he is in the residual market or the voluntary market, if he has the same record. And because the people of New Jersey have not been given access to the voluntary market, they shouldn't be labeled as bad drivers, because they weren't allowed to buy coverage as their neighbors have bought with the same driving record.

So, I want to make that very clear; that both propositions, while they deal with a 20% rollback-- Resolution 142 deals not with base rates, not with just the voluntary

market; it deals across the entire spectrum of good drivers, regardless of what market they're in. In addition to that, where we differ is that the implementation of our legislation is not predicated upon the Legislature passing any system, whether it be Michigan, New York, or any other panacea. It is for 12 months, the same as the other resolution, but it is not subject to any other trigger mechanism. We believe that the rates are very highly inflated, and we intent to prove it.

In addition, ACR-142 is not predicated on the language saying that a company must have a reasonable profit. The fact of the matter is, in New Jersey, the companies have had unreasonable profit for over five years. Profit is a misnomer. When you deal with profit in any other business, it is predicated on what you take in and what you have left after you deliver your service or your product. That is not the way auto insurance works, unfortunately. If it were that simple, we wouldn't be here today. Unfortunately, the insurance industry has raped the public by keeping these subsidies, that they weren't allowed to keep from day one. And to cover that up, there were implemented two increases called RMECs, that amount to \$152 per car, with full coverage. That \$152 is on top of the \$70 that everyone was paying in the old assigned risk. That \$152 and that \$70 -- 222 bucks, whatever it is combined -- doesn't deliver any value. It is abhorrent to the free enterprise system, in that the people are paying that \$152 and are not receiving anything in return -- absolutely nothing. ACR-142 eliminates the \$152 subsidy called the RMEC.

In addition to that, ACR-142 realizes that with all the good intentions of the entire Legislature, and the Governor, when the original JUA bill passed unanimously in both houses, and was signed by the Governor, we extended an olive branch to the industry. Today, that olive branch is literally a branch of thorns for the people of this State. The insurance industry has proven that they are not ready for an open

market. The insurance industry has proven that they are not ready to participate in free enterprise, the way we would like to see free enterprise work.

Before we can get to that step, I submit that we in government have the responsibility to protect the public. That is why we are elected. In doing that -- in keeping with that -- it is very difficult for me, because I am the one who insisted that we should not assess the companies for losses in the residual market; that they should be allowed to make a profit based on the business they wanted to write. So I insisted, and New Jersey became the only state in America that did not assess the insurance companies for any losses in the residual market beginning January 1, 1984. It was not a quid pro quo. The industry, in fact, didn't even ask for it. It was never a deal.

Unfortunately, while we eliminated the assessments, the industry failed to take out the good drivers, as we all know today, for many reasons, not the least of which is that the Insurance Department of this State is truly brain-dead. Everyone knows that today. So that's why we're doing what we're doing. We have no choice; we have no choice. The assessments must go back because instead of 300,000 cars being insured in the JUA, we have over 50% of the people there. Hopefully, these constitutional amendments will give us that 12-month period to analyze this, regardless of who the Governor may be; regardless of who controls the Assembly, because I don't think we ought to politicize this any more than it has been politicized for the last three-and-a-half years.

No one can accuse the Assembly of politicizing this issue. While they can, it has no credibility; absolutely none. We are not looking for this concurrent resolution to solve the problem. We are looking for these resolutions to put a halt, to put a stop to the abuse of the people for 12 months, and to send a signal to whoever the next Governor may be, to

the insurance industry and whoever the next Insurance Commissioner may be, that when we pass laws, we expect you to implement them. And if you don't implement them, regardless if Gerry Zecker is the Chairman, or if a Democrat is the Chairman, you are going to be investigated immediately. No hanky-panky from here on out.

So, the assessments are necessary, and those assessments are going back to December 31, 1983. What this means, is that-- Mr. Chairman, as we know, California was the catalyst for this revolt across this nation. And it's interesting, because California, historically, in my 15-plus years down here, was always projected by the industry as the state that we should emulate. So, I'm agreeing with them, and I am following the industry's advice. We are sure going to try and emulate California. And I want to thank the industry because, you know, I am a little slow. It took me many years to understand what the industry was saying. Now I know what they were saying. I think the only solution -- the only solution -- the public demands, not the rhetoric, not Ping-Pong -- okay?-- But we in the Assembly, I am convinced, Mr. Chairman, are going to pass both of these resolutions, and I hope they pass unanimously in our house. Whether you agree with one or the other is not the point; is not the issue. The issue is that the public should have a right to choose between them.

So I today say on the record, I do not speak for the Democratic Party in the Assembly, nor do I speak for the gubernatorial candidate. I speak for Mike Adubato. In speaking for Mike Adubato, I implore the Democrats, and I implore the Democratic candidate, to support the ACRs going on the ballot, as I implore the Republican candidate to do it. This is certainly beyond the issue. Neither one of these people are elected. They are seeking the office. If we are going to allow them to determine what we are going to do, maybe we ought to give them the budget, too.

So, with that I ask both candidates and the Senate to keep hands off, and to stop playing politics. But that is certainly for the record, Mr. Chairman, so we are clear about this, my opinion and my position, and not the position of anybody else.

Thank you very much, Mr. Chairman, for this time.

ASSEMBLYMAN ZECKER: Thank you.

Our first witness will be Joe Tomeo, representing New Jersey AIR. Mr. Tomeo?

J O S E P H A. T O M E O: Mr. Chairman, I have a chart. May I put it up?

ASSEMBLYMAN ZECKER: Please.

MR. TOMEO: Mr. Chairman, members of your Committee: I am honored to appear in front of you today on behalf of New Jersey AIR and our friends and members in 21 counties throughout New Jersey.

We support Assembly Concurrent Resolution ACR-140, before you today. This monumental legislative effort would amend the Constitution and allow the citizens of New Jersey the right to vote on an issue that critically affects every home, and is long overdue.

The benefits of having a true no-fault law, as in Michigan, is well-known and documented beyond a shadow of a doubt. Commissioners of Insurance, in Michigan and New Jersey, have testified in front of Congressman Jim Florio's Subcommittee -- Consumer Protectionism (sic) -- in Washington, and they have clearly and actuarially supported our position, not New Jersey AIR.

According to the New Jersey Department of Insurance, if the citizens had had the Michigan no-fault law in 1987, we would have saved, according to that body, \$287 million alone, in 1987.

Every clearly worded and well-researched editorial by all newspapers in this and surrounding states demonstrate the

cost-effectiveness of an auto insurance plan like Michigan's, which simply works. It has worked for 16 years. You should not have to seek the counsel of a lawyer to find out who will pay yours or your family's medical bills, if you are injured in an accident. You also should not worry about feeding your family if you are hurt, because in Michigan your wages are paid for three years, as demonstrated by this chart behind me.

According to the "Consumer Report" magazine, October 1988, the state that had the best no-fault laws, as far as benefits to victims, was Michigan, and why; and the State that was the worst in the nation was New Jersey, and why. I hit you, you hit me, and your medical bills are paid, again supporting the position of the Assembly concurrent resolutions before you today.

The collective wisdom of the New Jersey Legislature has failed to give the drivers in this State the fair, affordable insurance laws that we deserve. ACR-140 is not another Band-Aid approach to reform, but an uncomplicated, common-sense approach to an equitable insurance system, a system that we want the citizens to vote on in November. If there ever was a classic case of the rationale for an initiative and referendum in the State of New Jersey, it is auto insurance, and it is now. The day of reckoning is fast approaching, and we are asking this Committee and your colleagues in the New Jersey Senate to let the voters decide this issue, and help, please, to restore the confidence that has been lost in these hallowed halls.

We welcome the opportunity to reach the citizens with a message of hope, simply stated: The 1989 New Jersey State Legislature gave the people of this great State an opportunity to vote on this issue -- ACR-140, Michigan no-fault, and ACR-142.

I want to thank you very kindly for the opportunity of being here to testify before your Committee. Any questions you may have, I would certainly entertain.

ASSEMBLYMAN ZECKER: Any questions?

ASSEMBLYMAN ADUBATO: I would like to make very brief comments, in keeping--

ASSEMBLYMAN ZECKER: Sure.

ASSEMBLYMAN ADUBATO: Mr. Tomeo, I want to thank you for taking the time to come here today. I know you have been involved in this for a long time, and I am happy that today we both agree that the people should be given an opportunity to be heard. I hope you will continue the battle, because I honestly think the Assembly is going to act very responsibly, and the real battle is going to take place after the tenth.

So, anything you can do to muster your troops would be appreciated.

MR. TOMEIO: Thank you, Assemblyman.

ASSEMBLYMAN ZECKER: Thank you.

MR. TOMEIO: Assemblyman Zecker, I would just like to reenforce what I said by giving you this chart and this statement, if I may be so bold. It is a condensed version of about 25 pages of law -- of the Constitution of Michigan. Simply put, it provides the people protection. The people have only wanted one thing, and that is fair, affordable insurance. Again, many people in this State, Mr. Chairman, are not criminals, although according to reliable sources, 300,000 to 400,000 -- whatever the figure is -- are uninsured. Not all of them are criminals. They have to feed their families, and many people, according to the Bureau of Labor Statistics -- 13% in the State of New Jersey -- are making under \$12,000 a year. When we stop fighting, and when the Assembly or the Senate stop fighting for the rights of all of our citizens, something is wrong. And, like the ruling on the American flag, sometimes people in responsible positions are out of touch with the working men and women and their needs.

I want to thank you again.

ASSEMBLYMAN ZECKER: Thank you.

Next I will call upon Assemblyman Gill.

A S S E M B L Y M A N L O U I S J. G I L L: Thank you very much, Mr. Chairman, for allowing me to join you to testify this morning.

As a co-sponsor of Assembly Concurrent Resolution 142, I join with the people of New Jersey in asking that ACR-142 be placed on the November 7, 1989 ballot.

I would also like to commend Assemblyman Adubato for being the prime sponsor for ACR-142, and for the countless hours and the effort he has put into it. Mr. Adubato, my hat's off to you for this wonderful, wonderful piece of legislation.

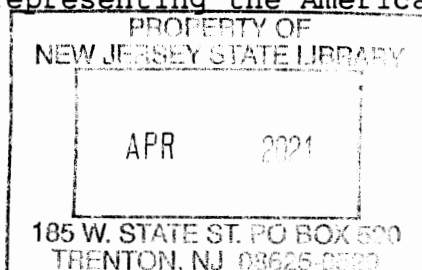
The four components of ACR-142 taken together, will guarantee auto insurance reform, and will guarantee hundreds of dollars in savings for all good drivers. These four components are: One, a 20% reduction below auto insurance rates that were in effect on January 1, 1987; two, elimination of the RMEC which is paid on every private passenger motor vehicle and equals \$152 per car for maximum coverage; three, a freezing of rates on January 1, 1990 for one year, unless an insurer can demonstrate that it will force insolvency without additional revenues; and four, assessment of the auto insurance industry for JUA shortfalls, and not the assessment of good drivers.

If it is good enough for the people of California to be heard on reducing auto insurance rates, it is certainly proper for the people of New Jersey to have the same opportunity. While I support ACR-142, I also believe that ACR-140 should be placed on the November 7 ballot, so that the people can be heard on this proposal as well.

Thank you very much, Mr. Chairman.

ASSEMBLYMAN ZECKER: Thank you, Assemblyman Gill. Any questions from any members of the Committee? (no response)

Hearing none, I will call on William R. Healey, of the State Chamber of Commerce. Mr. Healey? (no response) Apparently he isn't in the audience. Rick Reinecke, representing the American Association of Retired Persons?



D e W I T T R E I N E C K E: Mr. Chairman and members of the Committee: My name is DeWitt Reinecke. I am Vice Chairman of the New Jersey State Legislative Committee of the American Association of Retired Persons -- the AARP -- with over one million members in New Jersey, and 30 million nationwide.

The New Jersey State Legislation Committee actively supports constitutional amendment ACR-142, sponsored by Assemblyman Michael Aduato, the entire Democratic Assembly, and co-sponsored by the Chairman of this Committee, Republican Assemblyman Gerald Zecker. This is in the true spirit of nonpartisan politics.

It is time to give the people of New Jersey a chance to express themselves on automobile insurance. They must be given the opportunity to vote on their choice of either ACR-140 or ACR-142. The cooperation toward that goal demonstrated by Republican Assemblymen Bob Franks and Gerry Zecker, Democrat Mike Aduato, and others on this Committee, is loudly applauded by AARP.

This amendment procedure would not be necessary today, if over the last four years the executive branch and the majority parties in the Senate and Assembly had acted in the public interest, instead of reducing coverage, but increasing rates at the same time. This is why we support ACR-142; not because it will solve the auto insurance crisis, but because it will force the Legislature to act in the 12-month period provided. We hope this time it will be in the public interest.

AARP supports: One, the 20% rollback of rates from January 1, 1987; two, elimination of the \$152 RMEC; and three, assessment of every insurance company in accordance with its percentage of business in New Jersey on December 31, 1983, the day before the JUA was implemented.

The original JUA bill -- A-1696 -- which passed unanimously in both houses, sponsored by Assemblyman Aduato and Congressman Gallo, gave the insurance companies an

opportunity for a fair and just profit, and truly treated the good drivers in New Jersey in a fair and equitable manner. The distortion of the original JUA bill was brought about by the failure of the executive branch of government to implement the law as it was written. This failure allowed the insurance companies to hide over \$1.2 billion in the voluntary market, that rightfully belonged to the JUA. The JUA insurance companies also overcharged the JUA nearly \$1 billion for administrative and claims costs. This money belongs to the people, and must be returned by the insurance companies.

In addition to these accusations by Assemblyman Adubato and others, including the Public Advocate's Office, on March 28 of this year, during the Ad-Hoc Committee hearing, Co-chairman Gerry Zecker stated:

"I believe that the insurance industry is responsible for over \$1 billion in fraudulent claims. There have been so many blatant incidents of disregard for law, that if we pointed each and every one out today, we would not have time for this hearing. However, I feel it is my responsibility to point out to this Committee that the original JUA law called for:

"1) Depopulation: If the Insurance Commissioner had implemented the law as it was intended, there would be 300,000 persons insured by the JUA today, instead of two million -- about 1/2 the total insured in the State.

"2) An oversight commission with full subpoena power. This was never implemented by the executive branch of government.

"3) Annual audits, which were not made."

But, we are not here today to discuss these failures, but to ask Chairman Zecker to continue the investigation by the Ad-Hoc Committee with Assemblyman Adubato at the earliest possible time.

In closing, I would like to compliment the entire Assembly, Democrats and Republicans alike, for putting aside

partisan politics and agreeing to put both constitutional amendments ACR-140 and ACR-142 on the November ballot to give the people a choice. AARP urges the Senate to follow this example, and hopes that the action taken by Senator Lynch last week will not result in blocking ACR-140 and ACR-142 from the ballot.

Finally, I would also like to congratulate The Newark Star-Ledger for its editorial of May 18, which said the people of New Jersey are entitled to a binding referendum. I also congratulate all the other media that may have supported the right of the people to choose by constitutional amendment, of which I may not be aware.

Thank you, Mr. Chairman and Committee, for this opportunity to testify, and to take part directly in the legislative process.

ASSEMBLYMAN ZECKER: Thank you very much. Do any members of the Committee have any questions? Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: Yes, very briefly. First of all, thank you, Mr. Reinecke. I know you, for the past year or so -- maybe a little longer than that -- have been attending all the meetings in both houses. I think that is what we need. Unfortunately, most people are not aware of the process and how it really works. I want to commend you for taking the time.

I don't know if you said it in your statement, but I wanted to ask you: What is the membership of the AARP in New Jersey?

MR. REINECKE: It is over one million.

ASSEMBLYMAN ADUBATO: Over one million in New Jersey. And what is the AARP nationally?

MR. REINECKE: Over 30 million.

ASSEMBLYMAN ADUBATO: Over 30 million. Well, Mr. Reinecke, I hope you can get some of those millions to ask the Senate to stay out of the way of the people. Thank you.

MR. REINECKE: We are going to try to do that. Thank you.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN ZECKER: Thank you. I note that Mr. Healey has come into the room. He was out of the room. I am going to call upon Assemblyman Marsella, and then Mr. Healey next. Assemblyman Marsella?

A S S E M B L Y M A N A N T H O N Y S. M A R S E L L A:  
Thank you very much, Mr. Chairman, for giving me the opportunity to speak on Assembly Concurrent Resolution 142. I come here as the Democratic Conference Chairman to tell you that the entire Democrat delegation of 39 members supports this resolution as being fair to the voters and to the public of the State of New Jersey.

I would also like to compliment one of my colleagues, Michael Adubato, for being courageous enough to sponsor this legislation -- for being the chief sponsor. Additionally, I would like to compliment you, as the Chairman of the Committee, for coming on as one of the co-sponsors of this legislation.

ACR-142 is an important piece of legislation because we feel, as the Democrats in the Assembly, that this will bring a partnership between the general public, the Assembly Democrats, and the Assembly Republicans, to bring true auto insurance reform to the State of New Jersey.

Additionally, this bill is very important because we all know that we have a new person who is going to be our Governor in 1990. And what this ACR-142 would do, is stop all the special interests from getting involved with the executive branch and the legislative branch of government for one year. This bill very clearly tells the Legislature what to do when it is passed by the voters. It would give us an opportunity, as I stated earlier, to have one year to study this proposal very seriously.

Mr. Chairman, I would also like to tell you that the Democrats in the Assembly support ACR-140. We feel that both ACR-140 and ACR-142 should be voted on in our house, sent over to the Senate, and hopefully, through all the people who will speak here today, and from us talking with our Senators, we can get this bill passed in the Senate -- both resolutions passed in the Senate -- and put before the voters of the State of New Jersey.

Thank you very much.

ASSEMBLYMAN ZECKER: Thank you, Assemblyman. Do any members of the Committee have any questions? Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: Thank you, Mr. Chairman. I have to say thank you to our Conference Chairman, Mr. Marsella. I have always been proud to be a Democrat, but I am prouder yet just to be a member today of the Assembly, when you see our Conference Chairman come here today and publicly state what Mr. Franks and I and you have been trying to say; that whether we agree with ACR-142 or with ACR-140, hopefully the Assembly will vote unanimously to let both of these resolutions get out, and not play games, and just give them the minimum 48 votes. That really sends a message, and I want to compliment our Conference Chairman for stating that today publicly.

ASSEMBLYMAN MARSELLA: Thank you very much.

ASSEMBLYMAN ZECKER: I would like to echo Assemblyman Adubato's statements, too.

ASSEMBLYMAN MARSELLA: Thank you, Mr. Chairman.

ASSEMBLYMAN ZECKER: Thank you very much for coming today.

Next I will call upon Mr. William Healey, State Chamber of Commerce.

W I L L I A M R. H E A L E Y: Mr. Chairman, thank you. I am William Healey. I am the Director of Government Relations for the New Jersey State Chamber of Commerce. I would like to

thank you for the opportunity this morning to present the views of the State Chamber and our Insurance Task Force on the crucial subject of auto insurance in the Garden State. Certainly a lot has been said about it.

Our comments expressed with regard to both bills -- ACR-140 and ACR-142 -- speak to two points: our belief that the Legislature itself must deal with this issue, and our traditional opposition to the process of I&R.

As inviting a prospect as the 20% -- or maybe, in effect, 30% -- rollback of auto insurance rates may sound, we must question the real impact this type of effort may have. For well over a decade, the Legislature has battled over the question of true auto insurance reform. The State Chamber feels that solutions to the problem have been clearly identified and defined. It's the Legislature that must act. The Assembly already has, certainly with regard to passing a mandatory verbal threshold bill, but the Senate must complete the job.

I think it certainly would be wonderful if we could wave a magic wand and roll back auto insurance rates to 1987, or even to the 1967 levels. However, we can't responsibly do that, much as we would like to.

However, let's put our criticism aside, and give you the business community's thoughts on the substantive issues that can be addressed by the 120 members of this Legislature and both the present administration and the one that is going to come into office in January.

For many years, the New Jersey State Chamber of Commerce has advocated the passage of a mandatory verbal threshold. We feel this is the key to true auto insurance reform. In the past year, we've seen that the vast majority of drivers have chosen this option when renewing their policies.

It's time that the Legislature acted to make verbal threshold the foundation of automobile insurance reform. Substantive action is what the citizens deserve, not more delay.

Secondly, the Legislature should act to replace New Jersey's "Rolls-Royce" auto insurance coverage. It's misleading for the public to believe they can get every possible benefit under the sun, and not have to pay for the same coverage.

We would suggest that a fee schedule be created for benefits associated with motor vehicle accidents, as both a way of cutting down on costs and as a means to unclog our court calendars. Benefits must go to those who truly deserve and need them. People should be made whole for losses in property and personal injury, but New Jersey's system of what we will call "litigation lottery," is just too costly for all of the participants involved.

The system we have today, unfortunately, benefits no one. It has only created more cynicism about our legislative system. These bills, along with others just introduced last week in the Senate, are not likely to change that feeling.

That brings me to a final point about I&R: It's no secret that the New Jersey State Chamber of Commerce remains very much opposed to the process of initiative and referendum in New Jersey. Tossing the tough issues over to the voters is not something that legislators should want to do. The citizens have a right to expect their legislators to act as their representatives. We feel that proposals such as these -- ACR-140 and ACR-142 -- would needlessly clutter the Constitution.

It's our belief that New Jersey would not be well-served through lawmaking by slogan, bumper stickers, or sound bite, with regard to the I&R issue, on auto insurance or any other type of issue. We need only look to the State of California to see the worst features of I&R.

It's our belief that, as slow and as painful as it is, meaningful auto insurance reform can only take place in the legislative arena. Placing on the ballot premium rollback

proposals with predictable outcomes does not, in our view, represent responsible governing.

I would like to thank you for allowing the State Chamber of Commerce to present its views on this important subject. The State Chamber and its Insurance Task Force members stand ready to assist you in this job.

ASSEMBLYMAN ZECKER: Thank you. Do any members of the Committee have any questions?

ASSEMBLYMAN ADUBATO: Yes, sir.

ASSEMBLYMAN ZECKER: Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: Thank you very much for coming here today and sharing your thoughts with us.

I am just curious if you are aware of what has happened in Michigan recently with the package of seven bills that was introduced just two weeks ago?

MR. HEALEY: I understand that Michigan is looking at things like New Jersey's.

ASSEMBLYMAN ADUBATO: Like -- well, yeah. Are you aware then that they have put in a seven-bill package that mandates a 20% rollback from their current rates?

MR. HEALEY: Assemblyman, I must be honest with you. I am not aware of the specifics.

ASSEMBLYMAN ADUBATO: Well, that is in the legislature now in Michigan, the state that already has the so-called verbal threshold. They are saying, in Michigan -- the legislature is saying, in Michigan -- that their rates are inflated by 20%, with the verbal threshold they have. They are mandating a 20% rollback, and in addition to that, they are going to a regulatory process. I don't know if you are aware of that.

MR. HEALEY: Not the specifics, no, I'm not. I understand, certainly, that we have a difference of opinion on this issue.

ASSEMBLYMAN ADUBATO: I'm not trying to be argumentive. I just wanted to know if you were aware, because you are submitting Michigan -- which is fine -- as the way to go. But I submit to you that chances are that even with that system, you know, those people are asking for a 20% rollback. The interesting thing -- not to belabor it-- Are you aware of what is happening in Pennsylvania?

MR. HEALEY: Somewhat. I understand they are--

ASSEMBLYMAN ADUBATO: The Assembly already passed a package of bills that mandates a 25% rollback. It is in the Senate. I just wonder if you are aware of that?

MR. HEALEY: No, I'm not. I have been spending a lot of time on this issue in this State.

ASSEMBLYMAN ADUBATO: Oh, okay. Hopefully, New Jersey will join them. Thank you.

ASSEMBLYMAN ZECKER: Thank you.

MR. HEALEY: Thank you very much.

ASSEMBLYMAN ZECKER: Next I will call upon Karen Bendix, representing Assemblyman Bill Schluter. Karen?

K A R E N B E N D I X: I will read Bill Schluter's testimony.

ASSEMBLYMAN ADUBATO: Excuse me for interrupting. Mr. Chairman, for the record, I didn't hear; I wasn't paying attention. This is testimony given for Assemblyman Bill Schluter?

ASSEMBLYMAN ZECKER: Yes. This is Karen Bendix. She is the Legislative Aide to Assemblyman Bill Schluter, and she will be--

ASSEMBLYMAN ADUBATO: And this is his position?

ASSEMBLYMAN ZECKER: Exactly.

ASSEMBLYMAN ADUBATO: Thank you.

MS. BENDIX: "I wish to register my strong opposition to both ACR-140 and ACR-142, which are the subject of this hearing. Both measures propose to change the New Jersey Constitution to achieve a 20% reduction in automobile insurance rates.

"It doesn't take a genius to predict the results of the referenda proposing these two constitutional amendments. They will pass overwhelmingly. The only question is: Which proposal will have more yes votes, and thereby be the operative amendment?

"This is an exercise in political gamesmanship. Who are we pandering to by this act of procrastination?

"Moreover, there are constitutional and operational questions which cast serious doubts on the efficacy of either referendum.

"Can you imagine the carnival atmosphere of the campaigns which would accompany these referenda? Expenditures, without limitation, by insurance companies, trial lawyers, and other interest groups would grossly distort the other election campaigns of 1989. Or, is that the intent of these proposals?

"Instead of spending any more time on these two resolutions, I suggest that the General Assembly embark on a three-point program to really address automobile insurance. I would hope that the State Senate would also participate in this program:

"1) We should clearly define a set of goals that must be achieved in order to implement true auto insurance reform.

"2) We should conduct a series of informational sessions for all Assembly members; two full days per week for four weeks. These sessions are essential to give members the fundamentals of automobile insurance, so that enlightened action can be taken. I have found that we are all woefully uninformed, or misinformed, on the basic elements of auto insurance. As a result, we offer too many simplistic solutions which serve no other purpose than to delay the inevitable.

"3) We should meet continuously for at least two full days each week, using the knowledge gained from the informational sessions, and develop a true auto insurance reform package which will result in the same cost reductions

anticipated by the two proposed constitutional amendments. Auto insurance coverage under such a plan, moreover, should not be compromised to the point where risk exposure to our citizens is excessive.

"I strongly urge this Committee to reject both resolutions. It will be a sad day indeed for the State of New Jersey when the Legislature abrogates its responsibility over such an important subject as auto insurance. Adding to the sadness will be the trivialization of our great Constitution by amendment.

"Surely, we legislators should have more courage and perserverance. Bill Schluter, Assembly District 23"

ASSEMBLYMAN ZECKER: Thank you. Do any members of the Committee have any comments?

ASSEMBLYMAN ADUBATO: The only comment, I guess, is, we are not going to have a unanimous vote.

ASSEMBLYMAN ZECKER: It would appear so.

ASSEMBLYMAN ADUBATO: That's one down.

ASSEMBLYMAN ZECKER: Thank you. Our next witness will be Charles Bernardini, Associate Counsel for the Allstate Insurance Company.

ASSEMBLYWOMAN FARRAGHER: Mr. Chairman?

ASSEMBLYMAN ZECKER: Assemblywoman?

ASSEMBLYWOMAN FARRAGHER: Before Mr. Bernardini begins, I have to leave for another meeting. I have to go to Appropriations.

ASSEMBLYMAN ZECKER: Thank you, and thank you for attending. I realize the schedule you have today. Thank you for spending the time with us.

Mr. Bernardini, would you relinquish your position to Assemblyman Pascrell? He has to go back to another meeting, and I am sure his testimony will be brief and concise, as it usually is.

C H A R L E S   R .   B E R N A R D I N I ,   E S Q . : Absolutely.

A S S E M B L Y M A N   W I L L I A M   J .   P A S C R E L L :  
Thank you, Assemblyman. How are you? Good morning, Committee.

Mr. Chairman, as a co-sponsor of Assembly Concurrent Resolution 142, I support placing it on the November 7 ballot as a guarantee to the motorists of New Jersey that all good drivers will receive hundreds of dollars in savings. I do not think it is a lesson in futility. I believe it is an adequate response to the problem that faces us in auto insurance.

ACR-142, the chief sponsor of which is Assemblyman Michael Aduato, contains four cost-saving components: There would be a 20% reduction below the rates that were in effect on January 1, 1987. In addition, the \$152-per-car subsidy, known as the RMEC, would be eliminated. Number three, beginning January 1, 1990, these reduced rates would be frozen for one year, unless an insurer can demonstrate it will face insolvency without additional revenue. Beginning January 1, 1990, insurance companies would be assessed for any shortfall in the JUA, not the good drivers of this State.

These measures are immediate steps, Mr. Chairman, to provide rate relief, and represent only the beginning of our effort to enact true reform.

Although I support ACR-142, I must admit that if the executive and legislative branches of government had taken the necessary steps, auto insurance would not be in the mess it is today. This is why ACR-142 is necessary. It puts a halt to past mistakes, and gives the legislative and executive branches of government elbow room to achieve long-term reform.

I support ACR-142. I also believe ACR-140 should be placed before the people on November 7, 1989 -- that, of course, is Assemblyman Franks' bill -- making a clear and distinct effort to change things finally in the State of New Jersey. I believe, Mr. Chairman, that we have gone through a lot of smoke and mirrors, and it is time for us to put some teeth into what we say. If we truly want reform, I think this is a good step. It will bind us to make those changes.

I am available for any questions.

ASSEMBLYMAN ZECKER: Thank you, Assemblyman Pascrell. Any questions from the Committee members?

ASSEMBLYMAN ADUBATO: No, but again I have to thank Assemblyman Pascrell for taking the time to come here, as the other Assemblymen have done.

ASSEMBLYMAN ZECKER: Thank you. Mr. Bernardini, if you don't mind, I have Assemblyman Salmon here, who also has another committee meeting, and I am going to allow him to testify. Assemblyman Salmon?

A S S E M B L Y M A N E D W A R D H. S A L M O N: Thank you very much, Mr. Chairman and members of the Committee.

First of all, I appreciate the opportunity to speak on what you are facing today -- the two concurrent resolutions you are considering today. I have the utmost respect for anybody who serves on the Insurance Committee, because, as we all know, it is the number one issue that is facing all of us in the State of New Jersey.

In 1987, I had the honor of being elected from the First District, which is Cape May and Cumberland County. In that election, I made a commitment to the citizens of my district that I would vote, "Yes," on anything that would provide meaningful auto insurance reform in the State of New Jersey.

There were two bills up in 1988, as we know, that did get passed by both houses and signed by the Governor. I did not vote for those bills. I voted, "No," because I did not think they would provide meaningful auto insurance reform. I think many of the reservations I had about those bills became reality. Many of the citizens in my district said that they felt the, "No," vote was the right vote, because we haven't had true auto insurance reform in our State.

What you are considering today, with both of these concurrent resolutions, I feel is a step in the right

direction. That is why I support both of them. I won't reiterate what has been said before, but I especially want to commend you, Mr. Chairman, and Mike Adubato, for co-chairing the hearing on the JUA. I read that entire testimony, because of the concern of the residents of my district. I thought what came out of that testimony was unbelievable. I think there has been -- has been for a long time -- a need for auto insurance reform in this State. I think you are committed to that, and I think this Committee is committed to that. I look forward to working with you as a freshman Assemblyman.

I appreciate the opportunity to give you my feelings.

ASSEMBLYMAN ZECKER: Thank you very much for taking the time to join us today. Do any of the Committee members have any questions? (no response) Hearing none, thank you.

ASSEMBLYMAN SALMON: Thank you.

ASSEMBLYMAN ZECKER: Assemblyman Duch, do you have another committee to go back to?

A S S E M B L Y M A N T H O M A S J. D U C H: Yes, I do.

ASSEMBLYMAN ZECKER: Please. Assemblyman Duch.

ASSEMBLYMAN DUCH: Mr. Chairman and members of the Assembly Insurance Committee: I come before you today to express the concerns not only of the people of my district -- Assembly District 36 -- but also, I think, the concerns of the people of the State of New Jersey. I come, not to make a very extensive statement, or a very long statement, but rather I hope to make a very short and meaningful statement.

The statement is simply this: You have before you ACR-140 and ACR-142, each of which represents the ideas put forth by each of the political parties that are in power. I come before the Committee to ask you, on behalf of the people of our State, to please put partisanship aside, and to move both bills -- ACR-140 and ACR-142 -- to see that both bills are submitted to the entire General Assembly, so that the entire General Assembly can have the option of debating which of the two, or if both should be put on the ballot in November.

I would like to believe that when this does hit the floor of the General Assembly, that all of our colleagues will put partisanship aside, and that we will give the people of the State of New Jersey a true chance and a true opportunity to determine which of the two ballot questions they feel would be the best insurance relief and insurance reform.

So, that is my purpose, Mr. Chairman, for appearing. I want to thank you for taking me. I do have a bill on in another committee, and I do have another committee meeting. I want to thank you for deferring and for allowing me this opportunity to speak. I encourage and I implore the members of this Committee to vote both bills out to allow significant debate on the floor of the General Assembly, so that the people of New Jersey can ultimately be delivered true insurance reform.

Thank you for your work today.

ASSEMBLYMAN ZECKER: Thank you for taking the time to join us. Any questions? (no response) Hearing none, I thank you.

ASSEMBLYMAN DUCH: Thank you, Mr. Chairman.

ASSEMBLYMAN ZECKER: Next we will have Mr. Charles Bernardini, who has been kind enough to acquiesce his time to other individuals. You understand that the Assemblymen have committee meetings.

MR. BERNARDINI: Absolutely; absolutely, sir. Is this the microphone I should use?

ASSEMBLYMAN ZECKER: They're all connected.

MR. BERNARDINI: Okay. Thank you, Mr. Chairman and members of the Committee, for the opportunity to appear before you today. My name is Charles Bernardini, an attorney with Allstate Insurance Company, with New Jersey headquarters located in Basking Ridge. Allstate employs approximately 2000 people in New Jersey, and has approximately 16% of the private auto insurance market in the State.

Allstate appears before you today to, first of all, congratulate you on the effective beginning of reform of the auto insurance problems in the State. I am referring not to the bills in front of you today, but to the measures which passed in 1988 allowing consumers to choose a verbal threshold, and establishing deductibles and co-payments for personal injury protection benefits.

For Allstate policyholders, those reforms have thus far resulted in an average decrease in costs for all auto insurance coverages of 17.5%, or \$115 average reductions off premiums. Upwards of 90% of Allstate policyholders are choosing the verbal threshold, and we commend you for making that possible.

I start with that point to buttress the view of Governor Kean, who has stated: "If the Legislature wants automobile insurance reform, then it should legislate, and not pursue public referendums." Your efforts last year have been helpful, and we urge you to continue working towards a responsible legislative solution to the continuing cost issue.

The second point I would like to make very clearly this morning, is with regard to California Proposition 103, on which both of these referenda before us are patterned. There has been no rate rollback in California. In fact, rates for many citizens in that state could go up as a result of Proposition 103. The California Supreme Court ruled that insurers are entitled to a fair and reasonable return on each line of business, and allowed companies to immediately file rates which provide that return.

Based on the California Supreme Court decision, it is doubtful that the citizens of New Jersey will ever receive the rollbacks now being promised here. As the recent report from your own Insurance Department states: "Any attempt to repeal flex rating or mandate a Proposition 103 type rollback would prove disastrous," and, "The reality is that we can't repeal

the basic laws of economics by dictating inadequate rates to avoid the true costs."

New Jersey has had a "cap" on urban rates since 1983. It has had a strict prior approval rating law, plus a Public Advocate procedure, for many years. In addition, it has the strictest excess profits law in the country. If, through some unlikely set of circumstances, a company has had rates approved by the Insurance Bureau which are somehow excessive, they are required to refund premiums if profits turn out to be more than 2-1/2% above those which were approved. Most companies received no increases during the period 1983 through 1988. This rate rollback provision, therefore -- as has been pointed out by the agents' associations -- really amounts to rolling rates back 20% from 1983 figures for many of those companies. Again, referring to the report of your own Insurance Department of April 10, 1989:

"The reality is that proposals to reduce premiums by reducing profits, will not lower premiums to any great extent. While the excess profits filings show a few small insurers with decent results, overall the auto insurance industry is losing money in New Jersey."

We suggest that you not waste your time and the public's on these referenda. Rather, we would like to suggest a few simple, positive ways in which you can really reduce premiums for your constituents.

Allstate takes the position that an effective way to deal with the issue of affordability of auto insurance is to allow consumers "freedom of choice" regarding the coverages they purchase.

For many people, the mandatory purchase of liability insurance represents an unnecessary expenditure of their insurance dollars. Individuals with limited means have no significant need for liability coverage which will only pay others, who may have already had their expenses reimbursed by their own auto and health insurers.

We recommend the elimination of all compulsory liability insurance, and instead allow people to select the coverages that they need to protect their assets. The average Allstate insured in New Jersey could save between \$190 and \$255 by dropping mandatory liability coverage.

Similarly, with regard to PIP coverage, we believe that the State should allow freedom of choice, and should allow consumers to purchase smaller PIP packages, if they so desire. Instead of requiring unlimited medical benefits for all, regardless of need, a lower amount could be required for everyone -- \$10,000 for example -- and insureds could have the option of purchasing PIP coverage above that, all the way to unlimited.

An additional step you could take to reduce costs would be to establish collection of the RMEC by the Division of Motor Vehicles, rather than by insurers, so that uninsured motorists could not avoid paying the RMEC, as is currently the case.

Finally, you could look at the example of states such as Illinois, which contains a number of densely populated urban areas, and which has allowed competition to regulate rates. Illinois has no prior approval of rates or excess profits law, or public advocate, but is twenty-fifth in the nation in average auto insurance premiums, while the two states with the highest rates -- Massachusetts and New Jersey -- have the heaviest regulation of practically every aspect of the insurance business. Michigan is another example of a state which allows companies to charge the rates it deems necessary, and relies on competition to be the best protector of the consumer regarding price.

In summary, let me just say that the ideological nature of these proposals is inconsistent with the free enterprise system on which our nation's economy is based, and which has served the State of New Jersey so well in other

areas, where it has been allowed to flourish. No other state legislature in the country, including California, has voted to adopt any such measures, either before or after the passage of Proposition 103. We urge you to simply do what many legislators have acknowledged to us privately is the right thing, and defeat these measures.

I thank you for the opportunity to appear before you today.

ASSEMBLYMAN ZECKER: Thank you. Do any members of the Committee have any questions or comments? Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: Thank you very much for coming back. You are a very courageous person, Mr. Bernardini. While we may have honest disagreements of perception and philosophy, I respect your opinion and your insights, because truly I believe that the condition in this country makes us all losers, the people in the companies included. Hopefully, we are going to get to a point in time where the companies' and the people's interests are the same.

I realize that is a very optimistic attitude, but from the standpoint of clarification on some of the statements in here, no other state has proposed what we have proposed because, to the best of my knowledge, nobody in the legislature in any other state has accused, publicly, the insurance industry of stealing \$2 billion. No other state in the country has ever done that, and that is on the record. As you know, the SCI is investigating that right now in this State. As you know, Mr. Zecker is going to begin again the hearings that took place on March 28, to clarify and to give the industry folks an opportunity to respond.

So, these are very serious accusations that we have made in this State, that I don't think any other state has made. In addition to that, when we talk about the great State of Illinois, as I said to you the last time you were here, it is my understanding that there is a movement in Illinois to

have compulsory liability insurance, and yet you are projecting that, in its current form, but you are not telling us about what is happening in Illinois. You are also not telling us, when you are talking about Michigan, that in Michigan they have introduced legislation to mandate, by law, a 20% rollback, and they have the verbal threshold.

So, I just say these things for the record to bring your statement up-to-date, because people have a right to know that everything is not peachy-creamy in Illinois, and it is not peachy-creamy in Michigan. And guess what? It is not peachy-creamy in any one of the 50 states, including New Mexico -- where there is a movement to reduce rates -- South Carolina, North Carolina, and Pennsylvania. I mean, this is not New Jersey's problem. The thing that is different, is that in New Jersey, the industry has been publicly accused of stealing. That is a very serious charge, and hopefully -- hopefully -- we will be able to get into a position, with either one of these propositions, if they pass--

You know, I know you are not going to agree with this, but I honestly think that by putting in these propositions, by putting the people up there at bat, not trying to solve the problem, because we are not solving any problem-- I would concur with that statement; we're not. Neither one of these propositions solves the problem. What the proposition says, in effect, is: "We know this isn't solving the problem, but the people of New Jersey have been beaten up enough. Stop!" And we are going to stop you for 12 months. Hopefully, we will bring you back to the bargaining table, where we can have give and take. And you know, I would hope that New Jersey can become the model, because I submit to you that we shouldn't be looking at Michigan; we shouldn't be looking at California; we shouldn't be looking at Illinois. We should get ourselves out of that box; those lines that restrict our thought and our process, and start to become more innovative.

I think we must become more innovative, not only in New Jersey, but across this country. We should allow that innovation, and stop playing games. I submit to you that when I talk to our colleagues in other states, they tell me that when Allstate testifies there, they tell them that they have the worst state, in every state they testify in. So, that's interesting. Wherever you are testifying, that's the worst state. That's why I can't get upset any more when you come here, because I know you say the same thing in every state in America.

But, thanks for coming.

ASSEMBLYMAN ZECKER: Mr. Bernardini, I can't pass up the opportunity of giving one comment: When I went back onto this Committee in January, I initially gave it a lot of thought and I wasn't going to come back on the Committee as Chairman. This wasn't the happiest place for a legislator to be. Even though Mr. Aduato is stuck here -- he was on the Committee already -- I didn't have to come back. But when I did come back as Chairman, I went out to many of the insurance carriers in the State of New Jersey -- many of the companies -- and I told them that the stage we were at now -- which in January was the insurance-- What we were doing was bashing attorneys. It was attorney bashing. I said that was going to come to an end very shortly, and the insurance companies would be taken to task. I said I would welcome any cooperation that insurance companies could give me, either after five o'clock or on the record. They could put their suggestions on plain white.

I've got to tell you, Mr. Bernardini, I was a little bit disappointed. You know, being a person who had been in the industry for 23 years, I thought the companies would believe me. I thought they would go back to their home offices. I thought they would go back to their experience in dealing in all of the states in the United States, and come back to New Jersey with some good suggestions. That did not happen. It's

funny that we have to have a hearing of this sort, to bring an insurance company out to the bargaining table.

I just tell you, we are not adversaries here. We would rather that it did not come to this point. There are no Assemblymen or, I think, any Senators, who want to have an adversarial relationship with insurance companies. But it is truly a shame that the companies have not taken on the responsibility that they truly have in dealing in the State of New Jersey, both with the legislators and the general public.

Even though you many times look upon us as adversaries, you certainly have an obligation to the five million drivers in this State, and I wish you would take that message back to Allstate. Don't think it is just addressed to your company. I have sent that message back to many companies that do business. They have not cooperated. They figure that we are going to be here today and gone tomorrow, but maybe people like Assemblyman Adubato, Assemblyman Charles, myself will be here for a couple more years, and you are going to have to face up to us sooner or later, because we are not going to stop.

Thank you.

MR. BERNARDINI: Mr. Chairman, I appreciate those comments. We will try to be more cooperative in the future, to the extent we haven't been. If we haven't provided enough information in the past, I apologize. We will try to better that record. Thank you.

ASSEMBLYMAN ZECKER: Thank you.

I believe we have gone through our list. Wait a second, somebody stole my list. I don't know if he is present -- Ray Kalainikas, private citizen? (no response) I have Mr. Sam Perelli, of United Taxpayers; Mr. Stephen Carrellas; and Gus Nasmith. I will call upon Mr. Perelli first.

S A M U E L P E R E L L I: Thank you, Mr. Chairman, for allowing me to make some comments with regard to the

possibility of having a referendum on this all-important automobile insurance issue.

By the way, am I in the right room? You are talking about automobile insurance? We're not talking about--

ASSEMBLYMAN ZECKER: No, we're talking about ACR-140 and ACR-142.

MR. PERELLI: Oh. For a moment, I thought we were talking about initiative and referendum, because I see a lot of people slamming the notion that the public can't be trusted, and expressing their fears that this argument -- God forbid -- should actually hit our workplaces and our homes. I hear this argument that we shouldn't allow this to happen in New Jersey. We shouldn't allow the television cameras--

ASSEMBLYMAN ZECKER: We are here on ACR-140 and ACR-142, and we would like the testimony to zero in on them.

MR. PERELLI: We should suspend the entire political system, because, by golly, everyone in the room--

ASSEMBLYMAN ZECKER: Mr. Perelli, ACR-140 and ACR-142.

MR. PERELLI: Oh, okay.

ASSEMBLYMAN ZECKER: That is the order of the day.

MR. PERELLI: I sort of got that on the record. By the way, one thing more I can get on the record--

ASSEMBLYMAN ZECKER: Mr. Perelli, ACR-140 and ACR-142.

MR. PERELLI: Our organization has been in the forefront of making certain that the public has the opportunity--

ASSEMBLYMAN ZECKER: How do you feel about ACR-140 and ACR-142? (laughter)

MR. PERELLI: I am elated to hear words like "initiative and referendum," to hear words like "referendum," to hear words like "having the voters express their choices," on this all-important question. The most important thing that I think we should remember here today, is that this is only the first stage. Any of the adversaries who come up here and say

to you, "Look at the damage that this thing is going to do -- these bills are going to do to the industry--" I would take it back to 1978, and Proposition 13, and California was slipping into the ocean, at that time, if you listened to the insurance companies. If you listened to all of the opponents of citizens having the right to do things like this, California would have been in the ocean by now.

So, let's not take that testimony as very credible, because they are just doing their, "Chicken Little, the sky is falling down" routine.

I know that the only people in the State of New Jersey who will oppose this piece of legislation, are an organization called the, "We know what's best for you gang." They live right here in Trenton. They come to the halls of Trenton daily, to make sure that only the 120 minds get influenced, and that no argument should dare get on the ballot, so that the voters -- the intelligent voters, and all voters are intelligent-- I never met a stupid voter in this State. I'm certain that they made some damned good choices.

By the way, even if the voters of the State make a bad choice-- Give us a chance to make a bad choice, instead of the Legislature making the bad choices. We can correct them, just like you can.

I thank you for the opportunity. I can also say, there are a couple of bills over in the Senate, that are about this thick.

ASSEMBLYMAN ZECKER: Excuse me, Mr. Perelli. You didn't check off whether you are in favor of or opposed. I assume you are in favor of ACR-140 and--

MR. PERELLI: I will personally help you to carry the legislation to wherever it has to be carried. But I would tell you, the Senate bills are about this thick (demonstrates). I have an engineer friend of mine, who assured me that if you place something this size under a freight train, you can derail

it. That is the little message I am giving to the New Jersey Senate. That paper could derail a freight train.

Thank you.

ASSEMBLYMAN ZECKER: Thank you, Mr. Perelli.

Mr. Stephen Carrellas, representing Citizens for Rational Traffic Laws.

S T E P H E N G. C A R R E L L A S: Well done.

ASSEMBLYMAN ZECKER: You printed. I could read your handwriting. Thank you.

MR. CARRELLAS: Mr. Chairman, members of the Committee: I am Steve Carrellas, New Jersey Chapter Coordinator for Citizens for Rational Traffic Laws, a nationally based driver advocacy organization.

All of us are here today because of an auto insurance crisis. Auto insurance companies are petrified by today's subject matter. Radical change is around the corner, and they are having a difficult time responding to an organized assault on their industry.

California's Proposition 103 has, in a major sense, turned into New Jersey's ACR-140 and ACR-142. Both of these bills are essentially agreeing to a 20% reduction to January 1987 rates. As for the two bills, ACR-142 is superior. First, it cuts rates across-the-board. In ACR-140's case, the higher rating schedule will still exist for the supposed bad drivers in the JUA, based on the farce criteria of four points in the last three years. Those are Motor Vehicle points. Twenty percent of our driving population who fall into the higher rating schedule, most of them not bad drivers, will still suffer with ACR-140. On top of this, if the JUA can't operate at these lower rates, the rates for all JUA drivers get raised before the one-year period is over.

This isn't a problem in ACR-142. If a JUA shortfall occurs, it will be recovered by an assessment on all insurers, with the proportional share based on the number of

policyholders on December 31, 1983. Now, the insurance industry has been fearing this for years. That is one of the reasons for the JUA's overpopulation to begin with. Why would they want to write more direct business, if an assessment like this could happen? Fortunately, ACR-142 picked a past date.

Second, ACR-142 gets rid of most of the surcharges. The authors knew what people wanted. These surcharges probably bother people more than the rates do. Aside from what ACR-140 doesn't do, it gives the impression of locking New Jersey into the Michigan system. While there are some good things to draw upon from Michigan's laws, New Jersey still has its unique problems, that need more than a Michigan solution.

A few words on rate rollbacks: They are initially popular, but most often create more problems down the road. In the case of these bills, the Legislature has one year to put a system in place that sustains the initial reduction. The drivers of the State are becoming educated. They recognize that more has to be done beyond a rate rollback. Let's not forget this, as these bills progress.

The CRTL believes in sound actuarial rates based on valid risk criteria. We are still waiting for a valid criteria. This is one of the principal reasons for the current industry dilemma -- customer alienation. This alienation is more the cause than the result of premium escalation. They have simply reached a point where escalating premiums further alienate customers, and they retaliate in ways that further escalate losses in subsequent premiums. How can this cycle be broken?

There is common ground where insurers and their customers can achieve mutual benefits in terms of reasonable premiums, improved profitability, and reduced confrontation. However, that common ground will never be explored if the insurance industry and its regulators pursue policies based on the assumption that all policyholders are dishonest or that the

road to profitability is founded on arbitrary discrimination or surcharges for occasional routine traffic violations.

Our message to the industry is to respond to the challenges presented by Proposition 103; not on how society should change to alleviate the insurance crisis, but rather how the insurance industry should change to meet the challenges presented by a dynamic society.

Thank you for this opportunity to speak before you today.

ASSEMBLYMAN ZECKER: Thank you, Mr. Carrellas. Do any members of the Committee have any questions of the witness? Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: Mr. Chairman, through you, it is not really a question. I don't know-- Have you ever testified before here in Trenton?

MR. CARRELLAS: Yes.

ASSEMBLYMAN ADUBATO: Before this Committee?

MR. CARRELLAS: Before your counterpart on the Senate side.

ASSEMBLYMAN ADUBATO: But, in the Assembly, were you ever--

MR. CARRELLAS: Before the Public Safety Committee.

ASSEMBLYMAN ADUBATO: But not before this Insurance Committee?

MR. CARRELLAS: Correct.

ASSEMBLYMAN ADUBATO: Have we ever spoken, on the phone, or -- about auto insurance?

MR. CARRELLAS: Probably, unfortunately, not.

ASSEMBLYMAN ADUBATO: We have not?

MR. CARRELLAS: No.

ASSEMBLYMAN ADUBATO: First of all, I want to commend you on your presentation, and I wish you wouldn't hide from us. We need people like you. We want to know who you are. I asked staff if they ever spoke to you, and they said no. The

way you have analyzed these bills, to me is incredible. Obviously, you did it on your own. You read the bills and you analyzed them.

I would appreciate it very much if you would leave your phone number and how to contact you, with our staff. We would like to stay in communication with you. And thank you for coming down today.

ASSEMBLYMAN ZECKER: Would it be possible to get your testimony? Do you have written testimony you could present to us?

MR. CARRELLAS: I can make a copy.

ASSEMBLYMAN ZECKER: Make a copy of it, if you would. We would appreciate it. Is it typewritten or handwritten?

MR. CARRELLAS: This became a-- The schedule required it be a weekend project without my computer.

ASSEMBLYMAN ZECKER: If you could have it typewritten and given to our staff.

ASSEMBLYMAN ADUBATO: Staff can do that.

ASSEMBLYMAN CHARLES: This will be on the record.

ASSEMBLYMAN ZECKER: Yeah, but I don't know how fast the record will be typed.

MR. CARRELLAS: I'll get something to Tom (referring to Committee Aide)

ASSEMBLYMAN ZECKER: We would appreciate it. Thank you.

ASSEMBLYMAN ADUBATO: Thank you again.

ASSEMBLYMAN ZECKER: Next will be Mr. Gus Nasmith, representing the National Association of Independent Insurers. Mr. Nasmith?

AUGUSTUS NASMITH, ESQ.: Thank you, Mr. Chairman. I will be extremely brief, because I doubt the members of this Committee would rescind their prior vote. My purpose here is-- I would like to submit for the record a statement discussing the constitutional issues we see creating

problems in these two concurrent resolutions. I merely invite your attention, on page 4, to the quotation from Sheeran v. Nationwide Mutual Insurance Company, which I think casts doubt--

ASSEMBLYMAN ADUBATO: Excuse me, Mr. Nasmith, may I interrupt you? Do we have his statement in front of us? Is this it here?

ASSEMBLYMAN ZECKER: I have a copy in front of me, Assemblyman.

MR. MUSICK: I put copies in the folders.

ASSEMBLYMAN ADUBATO: Oh, okay. I'm sorry, Mr. Nasmith, for interrupting you. Thank you.

ASSEMBLYMAN ZECKER: Page 4-- You're alluding to page 4?

MR. NASMITH: Yes. As I read that opinion, in our Supreme Court, which has not been necessarily pro insurance, as far as I have observed, I think that quotation casts a doubt on the standards in ACR-142, which says you've got to go insolvent before you can get any relief.

ASSEMBLYMAN ADUBATO: I am not going to interrupt you. I am going to wait until you are finished.

MR. NASMITH: That's all I have to say.

ASSEMBLYMAN ZECKER: Thank you. Mr. Nasmith has submitted six pages of written testimony which this Committee can read at its leisure. Any comments on his comments? Mr. Nasmith, you said you were going to keep your testimony brief. You alluded to page 4, and you're done. Assemblyman Adubato?

ASSEMBLYMAN ADUBATO: I just want to thank Mr. Nasmith again. Mr. Nasmith was here before I got here. In fact, he was one of the first people I met in 1974, when we used to meet down in the basement, in the Banking and Insurance Committee. I just wanted to thank him.

MR. NASMITH: It was almost as hot as this.

ASSEMBLYMAN ADUBATO: That's right, Gus. I just want to thank you. Even though most of the time -- not all the

time, but most of the time -- we disagree, I respect your input very much.

Just for the record, ACR-142 does not say that a company must become insolvent. What it says is, if the Commissioner determines that an insurance company could face insolvency, it would not be implemented. In addition, what it says, as opposed to California-- As you know -- I'm sure you know -- Proposition 103 originally dealt with the guideline of insolvency. The courts in California overruled that proposition, as you rightly pointed out -- if you didn't, let me point it out for you--

MR. NASMITH: I--

ASSEMBLYMAN ADUBATO: They said, in California-- Well, I didn't know if you were speaking about California. I thought you were talking about New Jersey here, on page 4.

MR. NASMITH: I was. I thought I would bring some local fresh air into the picture.

ASSEMBLYMAN ADUBATO: Fine. The point I want to make to you about the fresh air, is that your industry has been stinking up the atmosphere for so long. That is why these propositions have been introduced, because unlike California, and unlike this decision that you brought us, in 1979, no one accused the industry of stealing \$2 billion then; not in California or in New Jersey in 1979.

Both of these cases were decided based on their merits. I submit to you, Gus, that the courts of New Jersey are very wise -- extremely wise. I have all the confidence in the world in them. I believe totally that if the people of New Jersey are given an opportunity, ACR-142 is going to become the law here. I hope you take us to court right away, because in that brief, hopefully we will get to the fact of your audits; we will get to the fact of what you have done with the \$2 billion you took, immorally, unethically, if not illegally, and

that is the premise we are working on in New Jersey -- that the industry has been a bunch of thieves. Maybe the courts will determine, and we will be able to decide that.

But, I appreciate your coming very much. You're not a thief. I have a lot of respect for you. I also have a lot of respect for people in the industry, and it saddens me to say this, especially since I have been in the insurance business since 1960. I believe the industry does so much good; it really does, economically and every other way. But you're so obstinate, and you're so stubborn. You think you're bigger than the people. And guess what? You're not. You're not bigger than the people, and neither is the Senate. Nobody is bigger than the people.

That is why you need a swift kick in the rear, and that is what we hope we are going to do to you. But, thanks for coming, Gus. (laughter)

MR. NASMITH: May I respond?

ASSEMBLYMAN ZECKER: Well, how long will the response be, Gus?

MR. NASMITH: Very brief again.

ASSEMBLYMAN ZECKER: Please respond.

MR. NASMITH: For the record--

ASSEMBLYMAN ZECKER: Yes?

MR. NASMITH: The reference by Assemblyman Adubato as to stealing by the industry is not relevant to this hearing on ACR-140 and ACR-142. It would not be relevant to any litigation attacking ACR-140 and 142 in the courts. If there is litigation, it is a free country, a free State, and someone could start litigating and stop these extravagant charges.

Getting to the specific record, ACR-142, page 2, line 1, authorizes "rates in excess of those authorized pursuant to this paragraph. For any insurer in the voluntary market to the extent that said insurer can demonstrate to the satisfaction of

the Commissioner that the imposition of the authorized rates would result in the insolvency of the insurer." Unquote, that speaks for itself.

ASSEMBLYMAN ADUBATO: That's exactly what I said. Thank you.

MR. NASMITH: I didn't understand.

ASSEMBLYMAN ADUBATO: Thank you for the confirmation.

ASSEMBLYMAN ZECKER: Thank you, Mr. Nasmith.

ASSEMBLYMAN ADUBATO: Thank you, Mr. Nasmith.

ASSEMBLYMAN ZECKER: Next we have Assemblyman Franks. Assemblyman Franks.

A S S E M B L Y M A N R O B E R T D. F R A N K S: Mr. Chairman, members of the Committee, ladies and gentlemen: I understand that there has already been a good deal of testimony concerning ACR-142, Assemblyman Adubato's initiative. Let me indicate from the start, that when that measure comes to a vote on the floor of the General Assembly, I intend to vote for that measure. I would urge my Republican colleagues to vote for that measure. I would urge the Senate President to post that measure. And I would urge the Senate Republicans to join in moving that initiative to the ballot in November.

As the prime sponsor of the constitutional amendment which would grant the right of initiative and referendum to the people of New Jersey, I feel there's absolutely nothing inconsistent with being the sponsor of one of the companion measures, yet offering up a choice to the people of New Jersey to define the direction that automobile insurance policy ought to take. I am not afraid of the people's judgment. Nor am I in any way chilled by the fact that, ultimately, only that measure which secured the greatest number of affirmative votes would actually be put into practice. So if that is a -- somewhat inconsistent for the sponsor of another measure to be coming from that direction, I won't apologize. I'll simply indicate that it's the manner in which I believe we can best

resolve the automobile insurance dilemma that our 4.2 million motorists find themselves in.

For the record, Mr. Speaker -- Mr. Chairman--

ASSEMBLYMAN ADUBATO: Is that of things to come or--

ASSEMBLYMAN FRANKS: I was giving you a promotion. Who knows what the future may portend. (laughter)

ASSEMBLYMAN ADUBATO: Well if you keep the majority, it wouldn't be a bad choice, you know. (laughter)

ASSEMBLYMAN FRANKS: I indicated at the Committee meeting--

ASSEMBLYMAN ZECKER: I'm telling Chuck.

ASSEMBLYMAN FRANKS: Mr. Chairman, I indicated at the Committee meeting last week, that of all the problems confronting New Jersey, perhaps the most unacceptable and inexcusable is the crisis in our auto insurance system. It's unacceptable and inexcusable because it is, in fact, man-made.

In the vast majority of cases, I am proud of the work that the State government has done for the people of New Jersey. In the fields of education, the environment, and the war on drugs, New Jersey is a national leader and serves as a model for other states.

In the area of auto insurance, however, our reputation is one of a State system that's out of control. Year after year our 4.2 million motorists are reminded that they are paying the highest rates in the nation.

So the auto insurance crisis represents one of those rare instances when the institutions of the State government have been largely paralyzed by pressures from highly influential special interest groups. Simply put, it appears now that the consensus needed to adopt comprehensive reform may not develop within the institutions of State government. I have recently come to the conclusion that New Jersey needs to employ extraordinary means if we ever hope to resolve this insidious problem.

That's why I have introduced Assembly Concurrent Resolution 140. It provides the means of by-passing our stalemated legislative process and allows our voters an opportunity to decide directly on how and whether to reduce auto insurance premiums.

Yes, a constitutional amendment is a highly unusual approach to correcting social ills. But in this case, five years of legislative and executive paralysis warrants such drastic action. The constitutional ballot question represents the only way in which a citizen can exert a direct influence on this product which is consuming an ever greater portion of every New Jerseyan's household budget.

Briefly, ACR-140 would accomplish four objectives: First, it would establish an auto insurance system in New Jersey that would be substantially similar to the system in place in Michigan as of January 1, 1990, including: First, a no-fault system providing for unlimited medical benefits payable regardless of fault, a universal mandatory verbal threshold which would limit lawsuits for pain and suffering to only serious injuries that result in death, serious impairment of body function, or permanent serious disfigurement, and physical damage coverage payable without regard to fault.

Secondly, the system would contain an essential insurance system that guarantees consumers access to insurance in the voluntary market, unless they are disqualified because they fit into certain narrow statutory classifications; for example, if they have been convicted of insurance fraud on a claim application, or if they have accumulated an excessive number of Motor Vehicle points.

Thirdly, a risk classification system and statistical plan. The risk classification system sets forth the criteria that may be used to classify a risk, and prohibits the use of sex or marital status as a basis for classification. The statistical plan which classifies these criteria on the basis of age or mileage driven is another component.

Fourth, the new system would include a file-and-use competitive rating system which would permit companies to file rates and use them on an effective date unless they had been disapproved by the Commissioner. This will provide for greater competition in the marketplace, and consumers will still be protected because of the strengthened excess profits law.

Lastly, it would provide for a residual market mechanism. In terms of our rates, my ACR would roll back auto insurance rates to the rates that were effective on January 1, 1987, and then reduce that rate by some 20%. It would authorize the State Commissioner of Insurance to adjust the rates of an insurer, only if it can be demonstrated that the reduced rates would result in rates that are confiscatory, which are not fair and reasonable, and do not provide a fair rate of return; or in the JUA, if it can be shown that reduced rates would result in a cash shortfall.

This standard for voluntary market writers conforms with the California Supreme Court decision on Proposition 103. It holds, in my judgment, the very real promise of reducing premium rates while allowing our motorists to enjoy the top-quality, blue-chip benefits that they've become accustomed to.

The common denominator in the long debate over auto insurance reform has been the broad based editorial support and the enthusiasm of observers of the insurance marketplace for the Michigan no-fault system. A brief comparison of the Michigan and New Jersey systems points up the reasons for this enthusiasm. New Jersey and Michigan both adopted no-fault systems at the same time, in 1973. However, the two states took substantially different routes.

Under the New Jersey no-fault law, motorists received unlimited medical benefits and the right to sue for injuries if their medical expenses, except for hospital and diagnostic costs, were more than \$200. Since then, inflation and rising

medical costs have sliced the \$200 threshold down to \$63 in 1973 terms, so that motorists have enjoyed a virtually unlimited right to sue.

Michigan also adopted a system with unlimited medical benefits. But in contrast to New Jersey, it also included a mandatory verbal threshold. Under this mandatory verbal threshold an injured party is allowed to sue for pain and suffering only if the injury sustained in an accident resulted in death, serious impairment of body function, or permanent serious disfigurement.

Michigan's system more closely parallels the original concept of no-fault: A system that would provide prompt compensation for the economic losses of auto insurance victims in exchange for a limitation on a person's right to sue for pain and suffering.

The diverse results achieved by the two states are worth noting. Between 1973 and 1985, Michigan experienced a 32% decline in the number of auto negligent suits filed -- from 12,952 to 8756 -- while New Jersey, on the other hand, with its \$200 monetary threshold, experienced a 69% increase in negligence cases from 16,430, during the same time, to 27,765. During that same time, the total liability premium in Michigan rose from approximately \$450 million to about \$950 million, while in New Jersey it soared from \$425 million to \$1.7 billion.

In addition, the level of recovery is lower in Michigan even though the amount of each individual award may be higher. In 1987, the number of bodily injury claims in Michigan was 2.35 per 1000 insured cars, while in New Jersey, it was 9.64 per 1000 insured cars. The average amount paid out, per claim, was \$16,377 in Michigan, while it was \$13,611 in New Jersey.

In a further effort to lower auto insurance premiums, even though the Michigan system mandates that unlimited medical coverage be provided, the insured is given the option of allowing his health insurance to provide primary coverage.

For various reasons, some justified and some very selfish, the population of the JUA has grown to unwieldy proportions and now includes fully 50% of New Jersey's insured motorists. This large number of JUA insured drivers, New Jersey's lack of a mandatory verbal threshold, in some cases inadequate rates, but also allegedly corrupt and highly deceptive practices, have all combined to produce a nearly \$3 billion deficit for the JUA.

I continue to believe, Mr. Chairman, that a mandatory universal verbal threshold holds one of the keys to real and lasting reform, and that Michigan's type of no-fault law is a model which New Jersey should strive to achieve. My ACR would establish a more consistent and truer no-fault law than the system currently in existence, would once again provide for full medical protection coverage for all drivers, and pay all medical bills from dollar one to unlimited claims. Secondly, as discussed, it limits lawsuits to serious injuries. Thirdly, it pays lost wages that would have been earned for up to three years, and up to \$20 per day in addition for replacement services. Funeral expenses are provided by the insurance policy with a minimum of \$1750 up to \$5000; survivor benefits of \$20 per day up to \$1475 in a 30-day period for the first three years.

Mr. Chairman, I think it's important to note that before this Committee moves the two ACRs to the floor, where they will be taken up on July 10, as I understand it, some changes take place to my proposal aimed at giving the New Jersey Legislature maximum flexibility in following the lead that is established when you examine the Michigan system. My ACR does not require that the Legislature in New Jersey adopt a system identical to Michigan's. It allows the Legislature, while being guided by the system in effect in Michigan, to pick and choose from among the strongest elements of the Michigan system. Therefore, if a particular provision can be shown to

be inappropriate for the marketplace of the State of New Jersey, the Legislature would not be required to adopt that provision. Nonetheless, we have the ability to shop from the laundry list of differences that make up the Michigan, as opposed to the New Jersey, system.

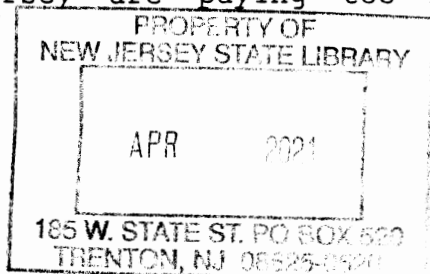
So maximum flexibility is now retained. Secondly, rather than requiring that the legislation be adopted by July 1 of 1990, we extended that deadline by six months to give a full one-year period to the legislative process to make its most comfortable and competent evaluation of the two systems and adopt the one that appears to be in the best interests of New Jersey motorists at that point in time.

My amendment, while giving until December 1, 1990 to pass these laws, would give, I think, sufficient flexibility to make sure that we ended up with a system that had been based on a successful model, but that could also be proven to be able to reduce rates.

To give voters a true choice, we have tied the two constitutional amendments sponsored by Assemblyman Adubato and myself -- that we're considering today -- in order that they both appear on the ballot at the same election. We've also provided that whichever question receives a greater number of affirmative votes will become part of the Constitution, while the other will be deemed to have failed. This will give the voters the opportunity to make the operant decision.

However, I am aware that as we conduct this public hearing this morning, a Senate committee has considered two auto insurance proposals which were introduced in the upper house last Thursday. These so-called binding referenda are merely playing more politics with the issue of auto insurance.

Those bills try to divert attention away from the real issue, that of providing rate relief to New Jersey's drivers. It's all too clear what the problem is: The motorists of New Jersey are paying too much for their auto insurance. The



Senate proposals do nothing to require that rates be brought down. The Senate proposals seek to deny the voters of this State the opportunity to make decisions with respect to what they want in auto insurance. They presuppose, Mr. Chairman, that these two magic bills released from Senate committee today will not meet the same fate in these legislative corridors and with confrontation with the executive; that somehow these two bills are going to sail through both houses and be signed by Tom Kean.

Mr Chairman, that is, at very best, a naive and, in fact, a very cruel representation. Nothing in the record of this Legislature in the last five years points to the likelihood that two measures on this highly volatile topic of auto insurance can meet with expeditious treatment, be signed by the Governor, and put on the ballot this November. The drivers of New Jersey should not be asked to wait any longer to effectuate a policy that will lower their rates.

The constitutional amendments proposed by Assemblyman Aduato and myself, will upon presentation to the people in November directly in a self-executing manner, lead to a reduction in automobile insurance premiums. The Senate gamesmanship that we witnessed today is an empty promise. It, in some naive manner, assumes that these two bills are magic and will not suffer the same fate that virtually every other effort has met with in this Legislature over the past number of years. I don't think that hope offered by those Senate proposals is a real one. The real opportunity for significant reform exists with Assemblyman Aduato's and my own, constitutional amendments.

I hope that the people of New Jersey see that what is being done by the Senate today, is a means by which to bottle-up in these dark hallways, the effort to lower automobile insurance premiums. In fact, it's nothing more than that.

We should act today and on the 10th of July. Make presentation to the Senate of these two constitutional amendments which are tied together, which offer real relief to our motorists. They don't require Ping-Pong amendments to go back and forth between the Senate and the Assembly, and back again, and dealing with the possibility of conditional veto. That's not real. What's real is ACR-140 and 142. The relief promised is significant.

Mr. Chairman, I thank you very much for calling this public hearing and offering the opportunity for the Assembly to deal with these two constitutional amendments on the 10th of July. I would also want to, once again, to tell the truth about some of these issues that I think are important. And one important truth is, that while on occasion I have differed with my friend Michael Adubato, it's not often been the case in auto insurance reform. And he has been extremely helpful to me in educating me relative to this issue.

The fact that these two measures take a somewhat different approach does not speak to any belief on my part that there is not good to be found in both of these initiatives. And I, both want to thank publicly and applaud, Assemblyman Adubato for his continuing efforts to bring about significant substantive reform; something that we haven't found today in our colleagues in the other house.

ASSEMBLYMAN ZECKER: Thank you, Assemblyman Franks. Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: Thank you, Mr. Chairman. For the record, this process that's taking place right now between both parties in the interest, truly, of the people is what I think we're here for. And I must say that in my eight terms now -- 15-plus years in office -- I've never been prouder than to be part of this process; not as a Democrat, but as one member of the process.

I think it's unfortunate that the actions of the Senate do not meet those standards, in my opinion, of the public good. And I'm sad by that. I'm very sad by it.

And, as I said before, we need all the help we can get. We're two houses. And I certainly would have welcomed an opportunity to work with the Senate, if they had allowed that. I must say for the record, that on May 18, when Assembly Resolution 142 was introduced, at 10:30 in the morning, one half-hour before the press conference announcing that resolution, copies of the concurrent resolution were delivered to the Senate President and to Mr. Lynch. They had copies of those resolutions before they were introduced. So they knew exactly what we were doing. There was no secret. Unfortunately, I received a phone call Thursday from a reporter telling me of the Senate's action. And that speaks for itself.

This is not a Democrat/Republican issue. This is a people issue. And in keeping with that, the public's right to know. For the record, Mr. Franks, I want to commend you in your participation yesterday on your television show -- what was the name of it; "On the Record," or something like that? -- on New Jersey Television. It's unfortunate that we never had an opportunity to discuss our initiative and referendum on New Jersey Public Television. But they're consistent. I must give them that. They've been very consistent in keeping the public's information to a minimum.

I must say, for the record, officially, Mr. Chairman I'm asking you today to hold an inquiry into New Jersey Public Television. When they produced a 90-minute special on auto insurance prior to the primary they received seven contacts in 90 minutes. Five questions were answered and the phones were staffed by Allstate employees. The ethics and the dignity of this State demand better. While I believe totally in First Amendment rights and the free press as one of the most important and crucial things in our free society, I think the

blatant abuse by New Jersey Network of having employees from an insurance company man those phones when citizens call, speaks for itself.

I ask you, officially, to hold an inquiry into that. And specifically, I want to know if Allstate paid them anything, as sponsorship; how much they've contributed?

ASSEMBLYMAN ZECKER: Excuse me, Assemblyman Adubato. Until you've brought this up I don't have any knowledge--

ASSEMBLYMAN ADUBATO: I've never discussed it with you before, Mr. Chairman. I've never discussed it publicly before.

ASSEMBLYMAN ZECKER: Assemblyman Adubato, I--

ASSEMBLYMAN ADUBATO: But for the record--

ASSEMBLYMAN ZECKER: Yes.

ASSEMBLYMAN ADUBATO: --I am saying it now as their cameras are shooting me, but naturally, they'll edit this too as they always edit the truth, from day one. New Jersey Public Television leaves something to be desired. Not only-- And the reason why I bring it here today is that this didn't happen isolated. They go back to 1974.

ASSEMBLYMAN ZECKER: Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: I mean I don't want to get into that.

ASSEMBLYMAN ZECKER: Assemblyman Adubato. And I know that you know, and I am very liberal in what I allow to be addressed at this meeting.

ASSEMBLYMAN ADUBATO: Right.

ASSEMBLYMAN ZECKER: You're bringing up a topic that I know nothing about. I'm a little bit handicapped. I would be glad to meet with you. If an inquiry is necessary, you know, I will request an inquiry.

ASSEMBLYMAN ADUBATO: Well, I've already made the request. But I'll meet with. But it's an official request as the ranking Minority--

ASSEMBLYMAN ZECKER: Well, you'll have--

ASSEMBLYMAN ADUBATO: --member.

ASSEMBLYMAN ZECKER: Yes, you'll have to--

ASSEMBLYMAN ADUBATO: It's an official request, now.

ASSEMBLYMAN ZECKER: Okay, but you will have to fill me in a little bit on the details.

ASSEMBLYMAN ADUBATO: Oh, I'll be very happy to fill you in.

ASSEMBLYMAN ZECKER: Thank you.

ASSEMBLYMAN ADUBATO: In concluding--

ASSEMBLYMAN ZECKER: Yes.

ASSEMBLYMAN ADUBATO: --my statement with your permission, Mr. Chairman--

ASSEMBLYMAN ZECKER: On ACR-140 and 142.

ASSEMBLYMAN ADUBATO: --on the process. On ACR-140 and 142.

ASSEMBLYMAN ZECKER: Yes.

ASSEMBLYMAN ADUBATO: You're absolutely right. Mr. Franks did a television show yesterday on ACR-140. Now I'm talking about ACR-140 and the public right to know.

ASSEMBLYMAN ZECKER: And they didn't allow--

ASSEMBLYMAN ADUBATO: That's why we're having a public hearing.

ASSEMBLYMAN ZECKER: And they didn't allow any testimony?

ASSEMBLYMAN ADUBATO: No, not only didn't they allow it. But I spoke to Mr. Franks after I spoke to the producer. The producer of that show told me that they did it as a last minute thing. He did it, and they scurried around to have someone there. And I called Mr. Franks and I asked him, "Why weren't we allowed?" And Mr. Franks said to me that he asked why I wasn't being allowed. And the statement he got from Mr. Stuelpnagel was that they had already addressed the Adubato proposal when they discussed the car issue, and it was the same thing. So there was no need to have the Democratic proposal aired.

That is an outrage. That is an abuse of the First Amendment rights. And I've had it with them. That's why, in spite of the fact they had Allstate manning their phones, and people sitting out there in this room today call me because they couldn't get through on the air. You follow me? Their seven contacts and five calls-- I logged 22 calls at my house, personally. People called me in those 90 minutes, couldn't get through. I spoke to other legislators around this State who couldn't get through. That must be investigated. Not might; must be.

ASSEMBLYMAN ZECKER: Assemblyman Adubato, I had no knowledge of--

ASSEMBLYMAN ADUBATO: They don't own--

ASSEMBLYMAN ZECKER: Assemblyman--

ASSEMBLYMAN ADUBATO: --the airways.

ASSEMBLYMAN ZECKER: Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: The people do.

ASSEMBLYMAN ZECKER: I had no knowledge of this. I'll discuss it with you in private and we'll take whatever action is necessary.

ASSEMBLYMAN ADUBATO: And public. I want to discuss it publicly, not just privately.

ASSEMBLYMAN ZECKER: All right, well in--

ASSEMBLYMAN ADUBATO: The people have a right to know what's going on. That's what they're there for.

ASSEMBLYMAN ZECKER: We have Assemblyman-- Thank you, Assemblyman Franks.

ASSEMBLYMAN ADUBATO: And thank you, Mr. Franks. It was a pleasure working with you.

ASSEMBLYMAN FRANKS: Thank you, Assemblyman.

ASSEMBLYMAN ZECKER: How come you couldn't get me on the television show? I'm the Chairman of the Committee.  
(laughter)

ASSEMBLYMAN ADUBATO: You know, I know you're making light of it, but Mr. Chairman--

ASSEMBLYMAN ZECKER: No, I'm not. I'm not.

ASSEMBLYMAN ADUBATO: You know, I know--

ASSEMBLYMAN ZECKER: I didn't know--

ASSEMBLYMAN ADUBATO: I wish you wouldn't get cavalier about it.

ASSEMBLYMAN ZECKER: Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: I really do.

ASSEMBLYMAN ZECKER: I didn't know anything-- Yeah, but I didn't know anything about it. You never discussed it with me.

ASSEMBLYMAN ADUBATO: Well, don't make that snide remark about getting on television. I don't have to be on television.

ASSEMBLYMAN ZECKER: That was a remark to Assemblyman Franks, not a snide remark to you.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN ZECKER: Thank you. I still am taken aback when he addressed me as Speaker before. And I'm going to tell Chuck Hardwick--

ASSEMBLYMAN ADUBATO: Well, you have my vote on that if I could do it.

A S S E M B L Y M A N G E R A R D S. N A P L E S:  
Besides, he's the State Chairman here.

ASSEMBLYMAN ADUBATO: Mr. Naples, if you have a minute, we'd like to be heard.

ASSEMBLYMAN ZECKER: Yes, please.

ASSEMBLYMAN NAPLES: Thanks a lot.

ASSEMBLYMAN ZECKER: Assemblyman Naples.

ASSEMBLYMAN NAPLES: Mr. Adubato, honored me, and you did too, Mr. Chairman, with the privilege of being here. I've been identified over the years with health, insurance and education. And I'm here in support of Mike's bill. As the

Assemblyman stated, this is not a Democratic and Republican issue -- or Republican issue, I stand corrected. It's a people issue. A Democratic dollar differs no differently from a Republican dollar. Political rhetoric states that some have more of them than others, but I won't get into that.

But this is a good resolution. It addresses the problem. There is no verbal threshold in here. This is my own viewpoint, which I think would be deleterious in the long run, and not give the consumer the most for their tax dollars.

This would result in a 20% reduction without a verbal threshold. And I could go on and enumerate the component parts, including the RMEC, but I won't. But let me say this: The key to this is the fact, I repeat, that there is no verbal threshold to obviate the right to sue for damage to certain tissue which cannot be detected on an x-ray.

I'm going to stop there and just add that besides that, this is true automobile reform. You might say, then, what is the funding source, as it were for this, if it's not a verbal threshold. I'll come right to the point and I don't care who airs it or who likes it, the verbal-- The funding source is outrageous profiteering. And I think this will be aired subsequently, and I give the Assemblymen and the Chairperson all the credit in the world for forcing this issue. Finally, we're grabbing the bull by the horns rather than by the tail, and getting gored. Speaking of gored I've got to see Senator Gore tonight at a fund raiser and I've got to leave in about three hours.

Thank you very much.

ASSEMBLYMAN ZECKER: Thank you very much, Assemblyman Naples. Assemblyman Charles had asked for some time.

ASSEMBLYMAN NAPLES: Mr. Chairman, if I may?

ASSEMBLYMAN ZECKER: Yes.

ASSEMBLYMAN NAPLES: Assemblyman Adubato wants me -- wanted me to come and listen to all the testimony become--

I'll never become as availed of his or your knowledge on the subject, but to be a little bit more availed than I am. And I'm a quasi member of the panel. If you don't mind, I'd like to stay here. I'm learning a lot.

ASSEMBLYMAN ZECKER: Please. No, please.

ASSEMBLYMAN NAPLES: And I appreciate it very kindly.

ASSEMBLYMAN ZECKER: Assemblyman Charles, is he in the hall?

ASSEMBLYMAN ADUBATO: Assemblyman Charles?

ASSEMBLYMAN ZECKER: Yes?

ASSEMBLYMAN ADUBATO: I don't know, excuse me. Is Mr. Charles there? (Assemblyman Adubato goes into the hall to confer with Assemblyman Charles.)

ASSEMBLYMAN ZECKER: Yes,

ASSEMBLYMAN ADUBATO: No, Mr. Charles has no statement to make at this time.

ASSEMBLYMAN ZECKER: (Assemblyman Charles re-enters) Assemblyman Charles, did you have any concluding comments?

ASSEMBLYMAN CHARLES: No concluding comments, Mr. Chairman.

ASSEMBLYMAN ZECKER: At this point, we have addressed all of the witnesses who submitted statements and have requested to testify. Was there anyone else? Sir, I see you raising your hand. Did you want to testify today?

D A V I D G. P A U L, E S Q.: Briefly, if I may.

ASSEMBLYMAN ZECKER: Yes, would you please come forward. Is there anyone else other than this gentleman who wishes to testify? (no response) This will be our final witness. Your name, sir?

MR. PAUL: Assemblyman Zecker, my name is David Paul. I have no--

ASSEMBLYMAN ZECKER: How do you spell that?

MR. PAUL: P-A-U-L.

ASSEMBLYMAN ZECKER: P-A-U-L.

MR. PAUL: I have no prepared statement. I didn't intend to testify until I saw--

ASSEMBLYMAN ZECKER: Do you represent any organization or group?

MR. PAUL: No, I do not Chairman Zecker. I worked with the Department of the Public Advocate for ten years in the Division of Rate Counsel.

ASSEMBLYMAN ZECKER: You did or you do?

MR. PAUL: I did. I left 1986. I am currently an attorney in private practice.

ASSEMBLYMAN ZECKER: And in what town? For your address just for the record.

MR. PAUL: Sure, sure. My address is R.D. 3, Box 542, Stockton, New Jersey. I'm a New Jersey citizen. I've been a New Jersey citizen for over 35 years.

ASSEMBLYMAN ZECKER: You're speaking as a private citizen.

MR. PAUL: I'm speaking as a private citizen. I have no connection with an Insurance Department, no connection with an insurance industry, no connection with an insurance agent, any kind or organization at all connected with the industry. This is strictly on my own as someone who has some familiarity with the insurance business through my work at the Public Advocate for, as I mentioned, nearly 10 years, all of that in the Division of Rate Counsel, which did participate in insurance rate proceedings before the Department of Insurance.

Again, I state that I was not prepared to testify today. And the reason why I am, is because today I went down to the Bill Room and picked up a copy of ACR-140 and I noticed the amendments to ACR-140 that were made, apparently adopted on June 15, 1989.

The original ACR-140 had language in it that suggested that if that proposition were passed by the citizens of this State, that the Michigan system would be adopted in substantial

part. That there was no discretion -- very little discretion that the Legislature had in adopting, what I believe, is a very significant improvement to the insurance system here in New Jersey.

I'm not talking about the 20% reduction in rates. I think that's good. And as a selfish insurance purchaser I would welcome any rate relief that would come down the pike. But I think the important part of the Michigan system that was apparently mandated in the initial version of Assemblyman Franks' resolution was the provision that would require insurance companies to sell policies to drivers with a good driving record. And the definition of "good" is something that we could debate.

But the plain fact is, that my experience with the Public Advocate tells me that rate regulation and its method of insuring that insurance rates are fair, does not work. It doesn't work because the numbers are soft. It doesn't work because, ultimately, with the insurance companies' ability to forecast losses, to play around with investment income projections, to play around with expenses that are incurred on a nationwide basis but allocated to New Jersey and to the private passenger business aside from all the other lines of business that they may also sell, that rate regulation is simply inadequate. We don't know today for sure whether the insurance companies are making a profit or whether they're not. There are accusations both ways; that they're losing money; that they're making money hand over fist.

I would submit to you, that if insurance could be priced like other goods and services in this country, that is through a system of competition where both the buyers of the product and the sellers of the product are on an equal footing, -- that the result would be rates that, if not affordable, at least we would know that they are fair. We don't regulate rates in just about any other segment of the economy except for public utilities, and there is a reason why we do that.

I would submit to you that that reason does not call forth for the insurance industry. I think that the JUA, is as large as it is, simply because the insurance companies do have the ability to turn down risks, which for one reason or another they don't want to insure.

If a system were in place that would require insurance companies to sell insurance to drivers with a good record, you would see the JUA shrink simply by virtue of that alone. There wouldn't be any need for quotas, for depopulation committees or any such nonsense of that kind.

What disturbs me is to see that the ACR proposed by Assemblyman Franks has been changed to the extent that -- now the Legislature does have the discretion to choose which provisions of the Michigan system that are appropriate for New Jersey. I would suggest to you that that laundry list has been available for the Legislature here in New Jersey to select for years, and no action has been taken on it.

Representatives from Michigan testified in 1986 before Senator Dalton, the Senate Select Committee on Automobile Insurance Reform. That system was described to them in detail. No action was taken.

And I would suggest that the ACR, as ACR-140 is presently, would essentially bring us no further down the road towards any kind of solution than we are right now. The discretion that the Legislature could exercise, they have. They haven't in the past, and I would suggest that there's nothing in ACR-140 that would make them do anything differently than they already have.

I've looked at 140 and 142. They are slightly different. I think in the long run they are more similar than they are different. I don't know whether it's possible now, my only suggestion would be to untie the two, not submit Assemblyman Franks' ACR-140.

Assemblyman Adubato's ACR is well worded. It's concise. It says everything that needs to be said right now. And my fear is that both resolutions, if they do get through to the ballot in November, would simply add confusion to the voters. I think that one ACR, as presently worded -- one ACR -- one ACR is plenty.

And again, I just want to state that I'm disappointed to see that Assemblyman Franks' initial version was watered down to the extent that it was.

ASSEMBLYMAN ZECKER: Thank you. Do any members of the Committee have any questions of the witness? (no response) Comments? (no response) Thank you very much.

MR. PAUL: Thank you.

ASSEMBLYMAN ZECKER: That concludes today's public hearing. I'll allow for any closing comments by members of the Committee. Assemblyman Adubato, any comments?

ASSEMBLYMAN ADUBATO: The only comment I have to make, Mr. Chairman, is I want to thank you for your patience. And it's unfortunate that we wasted three-and-a-half years playing Ping-Pong with people's lives, in the Assembly, as well as the Senate, in dealing with those three bastardizations of the original JUA bill that was supported by the Senate Majority and the Assembly Majority. That was a cover-up. I'm specifically talking about S-2790, S-2637, and A-3702. And I say here for the record, on the record, that if we get the opportunity for the ACRs to go on the ballot, the first thing we will do is eliminate those three bills entirely, for the record.

ASSEMBLYMAN ZECKER: Thank you.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN ZECKER: That concludes the public hearing. I thank the members of the Committee and the various departments that made this possible. Thank you.

(HEARING CONCLUDED)

**APPENDIX**



**"LET VOTERS DECIDE  
AUTO INSURANCE  
SOLUTION!"**

**MICHIGAN NO-FAULT .....NJAIR**

**NOW**



STATEMENT BY CHARLES R. BERNARDINI, ASSOCIATE COUNSEL  
ALLSTATE INSURANCE COMPANY

New Jersey Assembly Public Hearing  
Monday, June 26, 1989

Mr. Speaker and members of the Assembly, thank you for the opportunity to appear before you today. My name is Charles R. Bernardini, an attorney with Allstate Insurance Company, with New Jersey headquarters located in Basking Ridge. Allstate employs approximately two thousand people within the State of New Jersey and has approximately sixteen percent of the private auto insurance market in the state.

Allstate appears before you today to, first of all, congratulate you on the effective beginning of reform of the auto insurance problems in the state. I am referring not to the bills in front of you today, but to the measures which passed in 1988 allowing consumers to choose a verbal threshold and establishing deductibles and co-payments for personal injury protection benefits.

For Allstate policyholders, those reforms have thus far resulted in an average decrease in costs for all auto insurance coverages of 17.5%, or \$115 average reductions off premiums. Upwards of 90% of Allstate policyholders are choosing the verbal threshold, and we commend you for making that possible.

I start with that point to buttress the view of Governor Kean, who has stated that: "If the legislature wants automobile insurance reform, then it should legislate and not pursue public referendums." Your efforts last year have been helpful, and we urge you to continue working towards a responsible, legislative solution to the continuing cost issue.

The second point I would like to make very clearly this morning is with regard to California Proposition 103, on which both of these referenda before us are patterned. There has been no rate rollback in California. In fact, rates for many citizens in that state could go up as a result of Proposition 103. The California Supreme Court ruled that insurers are entitled to a fair and reasonable return on each line of business and allowed companies to immediately file rates which provide that return. Based on the California Supreme Court decision, which ruled under both the U.S. and California constitutions, it is doubtful that the citizens of New Jersey will ever receive the rollbacks now being promised here. As the recent report from your own Insurance Department states, "any attempt to repeal flex rating or mandate a Proposition 103 type rollback would prove disastrous . . ." (Executive summary - page 9) and "the reality is that we can't repeal the basic laws of economics by dictating inadequate rates to avoid the true costs." (page 66).

New Jersey has had a "cap" on urban rates since 1983. It has had a strict prior approval rating law, plus a public advocate procedure, for many years.

In addition, it has the strictest excess profits law in the country. If, through some unlikely set of circumstances, a company has had rates approved by the Insurance Bureau which are somehow excessive, they are required to refund premiums if profits turn out to be more than 2-1/2% above those which were approved. Most companies received no increases during the period 1983 through 1988. This rate rollback provision, therefore, really amounts to rolling rates back 20% from 1983 figures for those companies. Again referring to the report of your own Insurance Department of April 10, 1989 (page 13):

"Another misconception is that insurance company profits are "excessive" and are a major element of the problem. In fact, according to figures compiled by the National Association of Insurance Commissioners, during the last ten years auto insurers had underwriting loss in New Jersey of \$1.5 billion, and net loss after investment income of \$452 million. In 1987, the most recent reported year, auto insurers had a net loss of \$120 million in the state.

The reality is that proposals to reduce premiums by reducing profits . . . will not lower premiums to any great extent. While the excess profits filings show a few small insurers with decent results, overall the auto insurance industry is losing money in New Jersey."

We suggest that you not waste your time and the public's on these referenda. Rather, we would like to suggest a few simple, positive ways in which you can really reduce premiums for your constituents.

Allstate takes the position that an effective way to deal with the issue of affordability of auto insurance is to allow consumers "freedom of choice" regarding the coverages they purchase.

For many people, the mandatory purchase of liability insurance represents an unnecessary expenditure of their insurance dollars. Individuals with limited means have no significant need for liability coverage which will only pay others (who may have already had their expenses reimbursed by their own auto and health insurers).

Allstate recommends the elimination of all compulsory liability insurance, and instead allowing individuals to select the coverages that they need to protect their assets. The average Allstate insured in New Jersey could save between \$190 and \$255 dollars by dropping mandatory liability coverages.

Similarly, with regard to Personal Injury Protection (PIP) coverage, we believe that the state should allow freedom of choice and should allow consumers to purchase smaller PIP packages, if they so desire. Instead of requiring unlimited medical benefits for all, regardless of need, a lower

amount could be required for everyone (\$10,000, for example) and insureds could have the option of purchasing PIP coverage above that, all the way to unlimited.

An additional step you could take to reduce costs would be to establish collection of the RMEC by the Division of Motor Vehicles, rather than by insurers, so that Uninsured Motorists could not avoid paying the RMEC as is currently the case. In addition, you could eliminate the Unsatisfied Claim and Judgment Fund and replace it with a catastrophic fund which would be funded through a registration fee, rather than through insurers, again to require Uninsured Motorists to pay into the fund.

Finally, you could look at the example of states such as Illinois, which contains a number of densely populated urban areas, and which has allowed competition to regulate rates. Illinois has no prior approval of rates or excess profits law, but is twenty-fifth in the nation in average auto insurance premiums, while the two states with the highest rates - Massachusetts and New Jersey - have heavy regulation of practically every aspect of the insurance business. Michigan is another example of a state which allows companies to charge the rates it deems necessary and relies on competition to be the best protector of the consumer regarding price.

Finally, let me just say that the ideological nature of these proposals is inconsistent with the free enterprise system on which our nation's economy is based and which has served the State of New Jersey so well in other areas, where it has been allowed to flourish. No other state legislature in the country, including California, has voted to adopt any such measures, either before or after the passage of Proposition 103. We urge you to simply do what many have acknowledged to us privately is the right thing, and defeat these measures and get on to addressing the real issues confronting the auto insurance market in this state. Thank you for the opportunity to appear today.

Statement on Behalf of the  
National Association of Independent Insurers  
Public Hearing on ACR-140 and ACR-142  
Assembly Insurance Committee  
June 26, 1989

The National Association of Independent Insurers is a trade association comprising over 500 property and casualty insurance companies in the United States. It views passage of ACR-140 and ACR-142 as unwise and unconstitutional.

I. Wisdom

Since wisdom is subjective we will be short on the subject, except to ask if it is wise to peremptorily add physical damage no-fault, which we have never had, by a one-line phrase (ACR-140, page 2, line 1); or to eliminate "all subsidies" inuring to the JUA (ACR-142, page 1, line 24), which were not in effect on January 1, 1987, and leave it to the Commissioner to recover any shortfall by assessments to be devised by him (page 2, lines 9-15), notwithstanding the specifics of N.J.S.A. 17:30E-8?

II. Separation of Powers

Two political leaders, Governor Kean and Senate Majority Leader Lynch, have publicly suggested these proposed constitutional amendments are "not the way to go" (see attached Star-Ledger article of June 20, 1989). Of course, as you know, the Governor does not have the power to approve or veto an Assembly Concurrent Resolution -- and the personal opinions of Senator Lynch have no direct impact on our independent General

Assembly, because the progressive New Jersey Constitution of 1947 very carefully provided in Article III:

**"1. Branches of government**

1. The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."

Both ACRs use the device of a constitutional amendment to shoot the political promise of a 20 percent reduction in automobile rates straight between the powers of the legislature and executive, thus passing the buck to the judicial branch to unravel the conflict between the existing statutory scheme for regulation of insurance and this "quick fix."

**III. Legislative Power**

Article IV of the Constitution succinctly states:

**"1. Legislature**

1. The legislative power shall be vested in a Senate and General Assembly."

ACR-140 directs that "the Legislature shall pass laws ... establishing a private automobile insurance system, similar to the automobile insurance system in operation in the State of Michigan ... ", with modification allowed. It violates Article IV in two respects. First, we have a mandate to a new 1990 session of the General Assembly as to what it shall enact; second, an abdication of power by delegation to a sister state.

The only restraints upon state legislative power are (1) in respect of powers delegated to the federal government by the U.S. Constitution, and (2) as such exercise may be limited by

the State Constitution. Smith v. Penta, 81 N.J. 65,74 (1979). ACR-140 directly infringes upon the powers guaranteed to the 1990 session of the General Assembly and is defective unless the proposed constitutional amendment also includes an amendment to Article IV.

ACR-142 follows a different path. It abdicates legislative responsibility to the Commissioner of Insurance who shall by regulation (1) establish rates to be reduced by 20 percent and (2) eliminate "subsidies" (undefined) even though specifically authorized by statute. This action shall take effect on January 1, 1990 (before the new General Assembly convenes), and shall remain in effect for a period of twelve months. The duration provision also impinges upon the powers of the forthcoming new Legislature.

#### IV. The Executive Branch

It also runs contrary to the intent of Article V of the Constitution to strengthen the power of the Executive and provide for centralization of his authority. It was desired to stop the practice of creating new and independent agencies by the Legislature to perform various special functions. In practical effect, ACR-142 gives such function to the Insurance Commissioner and places him beyond the control of the Governor with respect to automobile insurance. See Commentary on the New Jersey Constitution of 1947, by Leon S. Milmed.

## V. Due Process of Law

ACR-142 authorizes relief from the mandatory rate reductions only if their imposition "... would result in the insolvency of the insurer ..." The same harsh test was provided in California's Proposition 103, which its Supreme Court found confiscatory and unconstitutional on its face. The same will hold true in New Jersey.

In Sheeran v. Nationwide Mutual Insurance Company, Inc., 80 N.J. 548 (1979) our Supreme Court held that requiring the insurance company to renew all its automobile policies as a condition to retain its license to transact automobile insurance was not an unconstitutional condition on the right to do business in New Jersey. However, the court made clear that an opportunity to obtain adequate rates is essential, at page 560:

"Insofar as defendant's complaints are based upon the unprofitability of its automotive operations, the proper remedy lies not in challenging the renewal requirements. Rather, defendant should seek the Commissioner's approval for increased rates. Clearly, defendant is entitled to a reasonable profit. See Helmsley v. Fort Lee Bor., 78 N.J. 200 (1978), cert. den ----- U.S. -----, 99 S. Ct. 1782, 60 L. Ed. 2d ---- (1979). Inability to obtain reasonable rates would, of course, justify judicial correction." (emphasis supplied.)

## VI. Constitutional Amendments

The procedure for submission of these amendments to the people is flawed. It is spelled out in Article IX, Paragraphs 4-7, as follows:

### "4. **Submission to people of proposed amendments**

4. The proposed amendment or amendments shall then be submitted to the people at the next general election in the manner and form provided by the Legislature.

**5. Multiple amendments; form of submission to people**  
5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

**6. Approval by people; effective date of amendments**  
6. If the proposed amendment or amendments or any of them shall be approved by a majority of the legally qualified voters of the State voting thereon, the same shall become part of the Constitution on the thirtieth day after the election, unless otherwise provided in the amendment or amendments.

**7. Resubmission of rejected amendments**  
7. If at the election a proposed amendment shall not be approved, neither such proposed amendment nor one to effect the same or substantially the same change in the Constitution shall be submitted to the people before the third general election thereafter."

Assuming that the form of presenting the questions meets the test of paragraph 4 in both proposed amendments, and that the effective date of January 1, 1990 in ACR-140, meets the provisions of paragraph 6, the provision in the "SCHEDULE" that the amendment will become a part of the Constitution "if it receives a greater number of votes than any other amendment relating to automobile insurance" is a fatal defect.

It violates the provision in paragraph 5 that the people may vote for each amendment "separately and distinctly" and in paragraph 6 that any amendment approved by a majority shall become effective. The last phrase in paragraph 6 -- "unless otherwise provided" refers only to the effective date of the Amendment and not to the question of a majority vote.

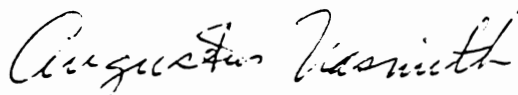
The Constitution of 1947 did contain a SCHEDULE for its own implementation in Article XI, but there is no provision for a "Schedule" in the Amendment Article. There is precedent for including a timetable in the implementation of other Amendments, but to designate a novel, unauthorized manner of proportional

voting -- a radical matter of substance -- as a time-related procedure is misleading (we recognize that the interpretative statement discloses this new approach). It may be authorized in other states, but it is novel here. In our view it is not authorized in New Jersey.

We believe it is the duty of the Legislature, if there is a policy question worthy of constitutional amendment, to agree upon one version to be submitted to the people for an up or down vote. Both the limited subject matter and the grab-bag procedure set forth in ACR-140 and ACR-142 were not contemplated when Article IX of the Constitution was framed nor has it been followed by other Legislatures to date.

In conclusion, we submit that these proposals are also unwise based on the examples mentioned by Senator Lynch and unconstitutional for the reasons outlined above.

Respectfully submitted,

  
Augustus Nasmith



**Testimony Before Assembly Insurance Committee**  
June 26, 1989

Stephen G. Carrellas, P.E.  
*New Jersey Chapter Coordinator*  
*Citizens for Rational Traffic Laws*

Citizens for Rational Traffic Laws is a nationally-based drivers advocacy organization.

All of us are here today because of an auto insurance crisis. Auto insurance companies are petrified by today's subject matter. Radical change is around the corner and they are having a difficult time responding to an organized assault on their industry.

California's Proposition 103 has, in a major sense, turned into New Jersey's ACR 140 and 142. Both of these bills are essentially agreeing to a 20% reduction of January 1987 rates.

As for the two bills, ACR-142 is superior.

First, it cuts rates across the board. In ACR-140's case, the higher rating schedule will still exist for the supposed "bad" drivers in the JUA based on the farce criteria of four points in the last three years. Twenty percent of our driving population who fall into the higher rating schedule, most of them NOT "bad" drivers, will still suffer under ACR-140.

And, on top of this, if the JUA can't operate at these lower rates, the rates for all JUA drivers get raised before the one year period is over.

This isn't a problem in ACR-142. If a JUA shortfall occurs, it will be recovered by an assessment on all insurers with the proportional share based on the number of policy holders on December 31, 1983.

The insurance industry has been fearing this for years — that's one of the reasons for the JUA's overpopulation. Why would they want to write more direct business if an assessment such as this could happen? Fortunately, ACR-142 picked a past date.

Second, ACR-142 gets rid of most of the surcharges. The authors knew what the people wanted. These surcharges probably bother people more than the rates do.

Aside from what ACR-140 doesn't do, it gives the impression of locking New Jersey into the Michigan system. While there are some good things to draw upon from Michigan's laws, New Jersey still has its unique problems that need more than a Michigan solution.

A few words on rate rollbacks. They are initially popular but most often create more problems down the road. In the case of these bills, the legislature has one year to put a system in place that sustains the initial reduction.

The drivers of this state are becoming educated — they recognize that more has to be done beyond a rate rollback. Let's not forget this as these bills progress.

CRTL believes in sound actuarial rates based on VALID risk criteria. We're still waiting for valid criteria.

This is one of the principal reasons for the current industry dilemma; customer alienation. This alienation is more the cause than the result of premium escalation. We have simply reached a point where escalating premiums further alienate customers and they retaliate in ways that further escalate losses and subsequent premiums. How can this cycle be broken?

There is common ground where insurers and their customers can achieve mutual benefits in terms of reasonable premiums, improved profitability and reduced confrontation. However, that common ground will never be explored if the insurance industry and its regulation pursue policies based on the assumption that all policy holders are dishonest or that the road to profitability is founded on arbitrary discrimination or surcharges for occasional routine traffic violations.

Our message to the industry is to respond to the challenges presented by Proposition 103, not on how society should change to alleviate the insurance crisis but rather how the insurance industry should change to meet the challenges presented by a dynamic society.

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