

Automobile Insurance Reform—Amendments to Statutory Law—Insurance—1986 N.J. Sess. Law Serv. 520 (West)

On January 21, 1986, the New Jersey Legislature amended the New Jersey Automobile Insurance Reform Act of 1982,¹ the New Jersey Automobile Full Insurance Availability Act,² and the New Jersey Automobile Reparation Reform Act.³ This amendatory Act⁴ was passed in reaction to the State's continuing insurance crisis which has made auto insurance unavailable to some and expensive to most. The amendments imposed additional restrictions upon the insurers, and surcharges upon policyholders, as well as clarified provisions in the earlier Acts. In short, the legislature amended a series of Acts to improve the statutory and regulatory insurance scheme in New Jersey.

The Act amended the Automobile Insurance Reform Act⁵ to create a merit rating accident surcharge system for auto insurance in both the voluntary market and the New Jersey Full Insurance Underwriting Association (JUA). The JUA, an unincorporated nonprofit association, is composed of all licensed automobile insurers. All insurers must participate in the system equally within the rules of the JUA.⁶ For the insurer to levy a surcharge on an insured, the insured must have been at fault in an accident which resulted in the insurer paying a claim of at least three hundred dollars for property damage or any claim involving bodily injury from a collision with a pedestrian within a three-year period. The funds generated by the surcharges are retained by the insurer.

In addition, the Division of Motor Vehicles (DMV) can levy a surcharge on any driver who has accumulated six or more motor vehicle points for three years preceding February 10, 1983, in the State or any other jurisdiction. These surcharges shall be levied for the year in which the driver has six or more points. The fee will be no less than one hundred dollars for six points and twenty-five dollars for each additional point. The surcharges

¹ N.J. STAT. ANN. §§ 17:29A-33 to -41 (West 1985).

² N.J. STAT. ANN. §§ 17:30E-1 to -24 (West 1981).

³ N.J. STAT. ANN. §§ 39:6A-1 to -35 (West 1973).

⁴ 1986 N.J. Sess. Law Serv. 520 (West) [hereinafter amendatory Act or Act].

⁵ N.J. STAT. ANN. § 17:29A-35 (West 1985).

⁶ N.J. STAT. ANN. § 17:30E-4 (West 1985).

shall be levied annually for a three year period. The Commissioner of Insurance (Commissioner) is given the power to increase the fee. If the insured has paid all or part of the surcharge due to the same motor vehicle violation or conviction, the Commissioner may defer all or part of the surcharge. For surcharge purposes, the refusal to take a chemical test to determine if the driver is intoxicated is a violation in itself.⁷

After written notification from the DMV has been mailed to the last known address of the driver and he fails to pay the surcharge, the DMV may suspend his license until the surcharge is paid. If the driver can prove that his failure to pay is due to poverty, the DMV can authorize payment on an installment for a period not to exceed ten months. The level of poverty shall be defined by the Director of the DMV.

Funds generated by the surcharge payments will be collected by the DMV with eighty percent going to the JUA. The remaining twenty percent is to be retained by the DMV for administrative expenses and modernization of its operations and improvement of its efficiency. Any residual funds at the end of the fiscal year will be transferred to the general fund for general state purposes.

In addition to having the power to increase the surcharges, the Commissioner may increase the scope of the offenses subject to surcharges and reduce the number of points for which surcharges may be assessed. The surcharges are required to be uniform for all drivers across the state without consideration of classification or territory. The effective dates of any surcharge regulation cannot be retroactive, and such surcharge regulations are effective on the date of publication in the New Jersey Register or the date announced in that publication, whichever is later.

This Act also made some changes in the statutory scheme as established by the New Jersey Automobile Full Insurance Availability Act.⁸ The JUA receives income and pays expenses and claims through individual insurers or servicing carriers. Income includes earned premiums, surcharges levied, and investment income. Since the JUA cannot operate at a profit or a loss, this zero balance shall be achieved by a residual market equalization

⁷ N.J. STAT. ANN. § 39:4-50.4a (West Supp. 1986).

⁸ N.J. STAT. ANN. § 17:30E-8 (West Supp. 1986).

charge which is collected by the insurer from the insured on a per car or per coverage basis and transferred to the JUA. This fee must be certified by the insurers on a monthly basis. No premium taxes, company expenses, or insurance commissions can be deducted from or paid on the surcharges or the residual market equalization charges. Individual voluntary insureds over the age of sixty-five are exempted from the rate equalization charge. Premiums are paid to the JUA net of all commissions, taxes, and expenses. All claim payments are disbursed through the insurers by means of drafts drawn on JUA's funds. Individual insurers have no liability on claims or policies written by the JUA.

The New Jersey Automobile Reparation Reform Act was also amended to better equip insurance consumers to make informed decisions about their insurance plan.⁹ Insurers are required to offer a range of deductibles up to a minimum of at least two thousand dollars for private automobile collision and comprehensive coverages. Insurers are also required to provide written notice of available coverages and rate credits for deductibles, exclusions, setoffs, and tort limitation options with every new auto insurance policy issued or renewed within one hundred eighty days of the effective date of the Act.

This notice must be in the form of a buyer's guide and coverage selection form. This document must briefly describe all available policy coverage and benefit limits, and identify mandatory and optional coverages as well as deductibles, exclusions, setoffs, and tort limitation options offered by the insurer. The coverage selection form shall state the range of premium rate credit and dollar savings and shall provide the applicant the opportunity to indicate which options are desired.

Any insurer with at least two percent of the private auto insurance market, including the JUA, must provide written notice advising the applicant or insured that if he has any questions concerning his policy, coverage, or premiums, he may contact his agent or broker, or the insurer directly by the toll-free telephone number given in the notice. If the number changes, the insureds must be notified of this change.

The amendatory Act also addresses the issue of rate changes

⁹ N.J. STAT. ANN. § 39:6A-1 (West Supp. 1986).

and the procedure for them.¹⁰ Insurers may request a rate change from the Commissioner if they have sufficient cause as demonstrated by financial data to merit the change. The Commissioner shall allow any changes only if they are reasonable, adequate, and not discriminatory.

Any proposed changes in the rates could result in a hearing should the insurer, the Public Advocate, or the Commissioner decide one is necessary. These hearings must be held thirty days after public notice has been given and on consecutive working days unless waived by the Commissioner with good cause. The Commissioner may conduct the hearing himself or transfer the matter to the Office of Administrative Law (OAL). The Commissioner or Director of the OAL shall notify all interested parties of the date of the hearing within ten days of the hearing. If the matter is transferred to OAL, the administrative law judge must come to a finding and recommendation within thirty days unless granted an extension by the Commissioner for no more than an additional thirty days. Insurers shall pay the costs of the hearings.

The amendatory Act also permits insurers and the JUA either to deny collision or comprehensive coverage or both, or to refuse to reissue at standard market rates either coverage, for any driver who is classified as dangerous or who has excessive claims. The level of claims considered to be excessive shall be determined by the Commissioner. In making this determination, the Commissioner shall consider the total driving record of the driver including serious driving offenses and at-fault auto accidents within a three-year period.

Consistent with the New Jersey Automobile Reparation Act, which allows for payment of benefits on liability insurance regardless of negligence or fault,¹¹ this amendatory Act clarified the coverage options to which an insured is entitled.¹² These include a deductible for medical expense benefits which lowers the cost of premium, and a setoff provision which allows the payee insurer to recover up to twenty percent of the medical expense benefits.¹³ Premium credits must be provided for each deducti-

¹⁰ N.J. STAT. ANN. § 17:29A-14 (West Supp. 1986).

¹¹ N.J. STAT. ANN. § 39:6A-4 (West Supp. 1986).

¹² N.J. STAT. ANN. § 17:29A-15.1 (West Supp. 1986).

¹³ N.J. STAT. ANN. § 39:6A-4.3 (West Supp. 1986).

ble exclusion and setoff on personal injury coverage, and tort limitation options on bodily injury liability coverage. These credits must be presented to the insured in a manner which clearly states the premium charged and breaks down the credit into the percentage of each coverage option. It must be uniform for each insurer in New Jersey. The election of a deductible, exclusion, or setoff shall have no effect on the commission or compensation paid to the agent or broker.

The amendatory Act continued the provision that if an injured party fails to maintain medical insurance, he would be subject to a fifteen hundred dollar tort threshold or exemption and a twenty percent setoff option for noneconomic loss.¹⁴ The recovery for noneconomic loss would be limited to amounts over two hundred dollars excluding hospital, x-ray, and diagnostic expenses if the injury did not involve bone fractures or vital organ injury, and involved only soft tissue injuries. For noneconomic loss involving non-soft tissue injuries, the limit is fifteen hundred dollars. There is no exemption for death, permanent disability, significant disfigurement, or loss of bodily function. This provision does not apply to immediate family members or those persons required to maintain personal injury protection coverage as part of the New Jersey Automobile Insurance Reparation Act.¹⁵

This amendatory Act also extended the time in which benefits are payable to insureds and their resident relatives under additional personal injury protection coverage.¹⁶ Insurers must offer, at least annually to the insured and their resident relatives, additional personal injury protection coverage. This benefit is payable for any death from any injury resulting from an auto accident occurring within two years of that accident.¹⁷ The previous provision provided payments only for deaths occurring within ninety days of the accident. Income continuation coverage must also be offered for up to thirty-five thousand dollars per year as long as the insured is disabled. The Commissioner can regulate this plan of income continuation insurance as to the amounts and terms as needed.

The amendatory Act also provides a means by which the

¹⁴ N.J. STAT. ANN. § 39:6A-8 (West Supp. 1986).

¹⁵ N.J. STAT. ANN. § 39:6A-4 (West Supp. 1986).

¹⁶ N.J. STAT. ANN. § 39:6A-10 (West Supp. 1986).

¹⁷ N.J. STAT. ANN. § 17:29A-35 (West Supp. 1986).

payee insurer can recover against tortfeasors.¹⁸ The insurer paying the claim to the injured party is entitled under this Act to recover, within two years of the filing of the insured's claim, from the tortfeasor who has failed to maintain insurance coverage. If the tortfeasor did maintain insurance, then the payee insurer may recover from the tortfeasor's insurer for the amount of the claim. The means of recovery shall be settlement, or arbitration if no settlement can be achieved.

New Jersey insurers are required to provide insurance to non-New Jersey drivers when their vehicles are operated in the state. This includes both United States and Canadian drivers. The level of insurance must satisfy all the requirements of New Jersey insurance law as well as regulations for liability, uninsured motorist and personal injury protection. This shall cover any named insured and his immediate family. The insurers have thirty days after the effective date of this amendatory Act to certify to the Commissioner that they have complied with these provisions.

The amendatory Act also includes motorized bicycles, or more popularly "mopeds," under the insurance provisions.¹⁹ Moped owners must maintain personal injury protection coverage for pedestrians who are injured by a collision with a moped or who are struck by anything propelled by one in its operation. Also, insurance coverage is required for moped owners for bodily injury, death, and property damage.

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¹⁸ N.J. STAT. ANN. § 39:6A-9.1 (West Supp. 1986).

¹⁹ N.J. STAT. ANN. § 17:28-1.3 (West Supp. 1986).