

***Automobile Insurance—Reform—N.J. Stat. Ann. §§ 17:29A-15.2, -35, -44 to -47; 17:30E-6.1, -6.2, -8.1, -13, -13.1, -17.1; 39:6A-4.6; 39:6B-2 (West Supp. 1989).***

The Act revises and adds new provisions to the financial structure of the New Jersey Automobile Full Insurance Underwriting Association (JUA), bestows new powers to the Commissioner of Insurance to oversee the JUA, and also allows for multi-tier rating plans.<sup>1</sup>

The Act creates mandatory rate increases upon new and renewed policies of the JUA for applicants who, within three years prior to application of renewal, have either been convicted of two or more moving violations or have received four or more Motor Vehicle points, whichever is less, or have had one or more at-fault accidents.<sup>2</sup> On January 1, 1989, the Commissioner will adjust the territorial base rates used by the JUA so that they exceed by ten percent the rates used by the rating bureau that files rates for the greatest number of insurers in the voluntary market.<sup>3</sup> On January 1, 1990 the adjustment will be increased to exceed the territorial base rate by twenty percent.<sup>4</sup> On January 1, 1991 the adjustment will be increased to exceed the territorial base rate by thirty percent.<sup>5</sup> On January 1, 1992 the adjustment will be increased to exceed the territorial base rate by forty percent.<sup>6</sup> The Commissioner of Insurance, in 1990, 1991, and 1992, may reduce the rate increases if he believes the JUA is not in need of such increases.<sup>7</sup> New applications and renewal policies that do not fall into one of the two driving risk categories will not be subject to rate increases, but will be rated under the same plan as standard insureds.<sup>8</sup>

The Act requires the board of directors of the JUA to establish collision and comprehensive rates based on past and prospective loss experience in those areas to be approved by the

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<sup>1</sup> N.J. STAT. ANN. § 17:29A-15.2, -35, -44 to -47; 17:30E-6.1, -6.2, -8.1, -13, -13.1, -17.1; 39:6A-4.6; 39:6B-2 (West Supp. 1989).

<sup>2</sup> N.J. STAT. ANN. § 17:30E-13(a).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 17:30E-13(b).

<sup>5</sup> *Id.* § 17:30E-13(c).

<sup>6</sup> *Id.* § 17:30E-13(d).

<sup>7</sup> *Id.* § 17:30E-13(a)-(b).

<sup>8</sup> *Id.*

Commissioner.<sup>9</sup> The approved rates will then be applied to qualified applicants and JUA insureds who have had, within the last three years, driving records that include the two risk categories.<sup>10</sup>

The Act states that the board must, within sixty days of the effective date of the Act, contract for the establishment of a data bank to provide information regarding the risks to all insurers who transact in the business of private passenger automobile insurance.<sup>11</sup> The board must establish the information to be made available to insureds.<sup>12</sup>

The Act provides that the Commissioner has up to ninety days in order to formulate a fee schedule for the reimbursement of medical care services, which may no longer be based on the injury sustained, but upon the service provided.<sup>13</sup>

As of January 1, 1990 there must be new limits on private passenger automobile insurance in the voluntary market.<sup>14</sup> Coverage for bodily injury and property damage may have a maximum annual increase no greater than the statewide average rate of the last published increase in medical care service components in the Consumer Price Index (CPI) plus three percentage points.<sup>15</sup> The annual increase of physical damage coverage is to be limited to a statewide average not more than the last published increase in the automobile maintenance and repair components of the national CPI plus three percentage points.<sup>16</sup> If the Commissioner believes that the increases will create excessive rates he may lower the rate change for this section.<sup>17</sup> An applicant for a change in rate must file, with the Commissioner, a statement of the reasons for the increase including at least the claim and expense experience of the filer.<sup>18</sup> The Commissioner will monitor the use of this rating system and file a report of his findings and legislative proposals<sup>19</sup> no later than January 1, 1992,

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<sup>9</sup> *Id.* § 17:30E-13.1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* § 17:30E-6.1(a).

<sup>12</sup> *Id.* § 17:30E-6.1(b).

<sup>13</sup> *Id.* § 17:30E-4.6.

<sup>14</sup> *Id.* § 17:29A-44(a).

<sup>15</sup> *Id.* § 17:29A-44(a)(1).

<sup>16</sup> *Id.* § 17:29A-44(a)(2).

<sup>17</sup> *Id.* § 17:29A-44(d).

<sup>18</sup> *Id.* § 17:29A-44(e).

<sup>19</sup> *Id.* § 17:29A-44(g).

to the Senate Labor, Industry, and Professions Committee and to the Assembly Insurance Committee. The report will include an evaluation of the system, how it has affected the availability of insurance for the private sector, and if it has decreased the number of insured in the JUA.<sup>20</sup>

The Act enables every insurer planning to transact in private passenger insurance to file a rating plan, which may include a good driver discount plan for standard risks, non-standard risks, or both.<sup>21</sup> The Act necessitates that every insurer who intends to use more than one rate, file the rate plans within thirty days of the passage of the Act with the Commissioner.<sup>22</sup> As of the effective date of this act, if the insurer plans to add a rating plan by merely adjusting the rates of an existing plan on file, he need only make a filing of the added plan with a percentage increase or decrease.<sup>23</sup> All plans filed in accordance with the Act will be deemed approved if not disapproved by the Commissioner within sixty days.<sup>24</sup> All subsequent modifications, other than annual rate increase allowances or percentage increases or decreases of an existing rate, are subject to the Makers of Rates—Licenses Act.<sup>25</sup>

The Act requires insurers to file underwriting rules with the commissioner which will be subject to his approval and which may not be based on the territory where the insured resides.<sup>26</sup> The rules must be written so that an insured could not be placed in more than one of an insurer's rating plans.<sup>27</sup> Any violation by the insurer in abiding by its filed rules will result in a fine of not less than \$500 for each violation.<sup>28</sup> The rules must be made available for public review and must be applied uniformly across the state to guarantee that those who abide by the rules will not be refused insurance.<sup>29</sup>

The Act provides that any person being denied insurance

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* § 17:29A-45(a).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* § 17:29A-45(b).

<sup>24</sup> *Id.* § 17:29A-45(c).

<sup>25</sup> *Id.* § 17:29A-45(d). *See also id.* § 17:29A-36.

<sup>26</sup> *Id.* § 17:29A-46(a), -46(b).

<sup>27</sup> *Id.* § 17:29A-46(d).

<sup>28</sup> *Id.* § 17:29A-46(a).

<sup>29</sup> *Id.* § 17:29A-46(b).

must be notified in writing of the reasons for refusal and whether a known affiliate may be able to insure him.<sup>30</sup>

The Act amends the distribution of surcharge monies collected under the New Jersey Merit Rating Plan.<sup>31</sup> It provides that the lesser of ten percent or the actual administrative cost of collection be retained by the Division of Motor Vehicle and the remainder be remitted to the JUA.<sup>32</sup>

The Act calls for an audit of the JUA and a report by the Commissioner to the legislature. The report is to include at least the claims handling practices of the JUA's carriers.<sup>33</sup>

The Act provides that any JUA carrier that knowingly violates any plan, rule, or guideline, with respect to claims or the underwriting of policies, or has overcharged the JUA, must repay the JUA within fifteen days of notification or be charged an additional rate of interest.<sup>34</sup> If any carrier wilfully violates the Act, it will be liable for treble damages.<sup>35</sup>

The Act enables the Commissioner, after January 1, 1989, to annually determine whether the income provided for by the Sources of Income Act<sup>36</sup> and the residual market equalization charge are or will be sufficient for the next year's obligations.<sup>37</sup> If insufficient, the Commissioner may request the board to formulate a plan to pay no less than fifty percent of the aggregate residual bodily injury losses for the next twelve months.<sup>38</sup> The balance will be paid with interest at a rate pursuant to subsection (a) R.S. 31:1-1 for plans with no written contract.<sup>39</sup> The Commissioner may also request a deferral payment plan not to exceed twelve months for claims of property damage which are subject to subrogation.<sup>40</sup> There may be no charge in excess of the market equalization charge levied prior to the Act unless the Commissioner believes that the procedures set forth in the Act do not

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<sup>30</sup> *Id.* § 17:29A-47.

<sup>31</sup> *Id.* § 17:29A-35(b).

<sup>32</sup> *Id.* § 17:29A-35(b)(2).

<sup>33</sup> 1988 N.J. Sess. Law Serv. 156 § 10 (West Supp. 1988).

<sup>34</sup> N.J. STAT. ANN. § 17:30E-17.1.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* § 17:30E-8.

<sup>37</sup> *Id.* § 17:30E-8.1(a).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* § 17:30E-8.1(b).

provide for sufficient revenue to meet the association's liabilities.<sup>41</sup>

The board will amend its plan of operation to establish a Task Force to conduct audits of the carriers to determine if they have properly followed prudent and normal industry standards in the handling of claims.<sup>42</sup> The audits and recommendations will be reported to the board and Commissioner at least semiannually.<sup>43</sup> The Commissioner will annually report the findings and recommendations of the Task Force in regard to the servicing of claims to the legislature.<sup>44</sup>

The Act adds that whether an insurer elects tort option (a) or tort option (b) of the Tort Exemption Act,<sup>45</sup> the dollar amount of commission paid to the producer for residual body damage will be equal.<sup>46</sup>

The Act amends the punishments for motorists who operate automobiles without liability insurance. For the first offense, the penalty is a \$300 fine, a court determined period of community service, and loss of license for one year.<sup>47</sup> For any subsequent violation, the fine will be \$500, fourteen days of incarceration, thirty days of community service and two years loss of license for each violation.<sup>48</sup>

The Act repeals sections 29 and 30 of the Automobile Insurance Reform Act.<sup>49</sup> The Act became effective on November 14, 1988 except for sections 6 and 7 which became effective 365 days from that date.<sup>50</sup>

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<sup>41</sup> *Id.* § 17:30E-8.1(c).

<sup>42</sup> *Id.* § 17:30E-6.2(a).

<sup>43</sup> *Id.* § 17:30E-6.2(b).

<sup>44</sup> *Id.* § 17:30E-6.2(c).

<sup>45</sup> *Id.* § 39:6A-8.

<sup>46</sup> *Id.* § 17:29A-15.2.

<sup>47</sup> *Id.* § 39:6B-2.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* § 17:29A -42, -43.

<sup>50</sup> *Id.* § 17.