APPENDIX A1 - PRE-AICRA STATUTES

UNSATISFIED CLAIM AND JUDGMENT FUND LAW

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39:6-61. Title. This act shall be known and may be cited as the "unsatisfied claim and judgment fund law."

39:6-62. Definitions. As used in this act:

"Executive director" means the official designated by and serving at the pleasure of the commissioner to administer to and be in charge of the Unsatisfied Claim and Judgment Fund and who shall be responsible to the Unsatisfied Claim and Judgment Fund Board.

"Treasurer" means the state treasurer of New Jersey acting as the custodian of the unsatisfied claim and judgment fund.

"Commissioner" means the commissioner of insurance.

"Unsatisfied claim and judgment fund" or "fund" means the fund derived from the sources specified in this act.

"Unsatisfied claim and judgment fund board" or "board" means the board created in section 4 [39:6-64] of this act.

"Qualified person" means a resident of this state or the owner of a motor vehicle registered in this state or a resident of another state, territory, or federal district of the United States or province of Canada or of a foreign country, in which recourse is afforded, to residents of this state, of substantially similar character to that provided for by this act; provided, however, that no person shall be a qualified person where such person is an insured under a policy provision providing coverage for damages sustained by the insured as a result of the operation of an uninsured motor vehicle in a form authorized to be included in automobile liability policies of insurance delivered or issued for delivery in this state, pursuant to the provisions of, or any supplement to, chapter 28 of Title 17 of the Revised Statutes or in a form substantially similar thereto.

"Uninsured motor vehicle" means a motor vehicle as to which there is not in force a liability policy meeting the requirements of section 3 or 26 of the "Motor Vehicle Security-Responsibility Law," P.L. 1952, c. 173 (C. 39:6-25 or C. 39:6-48), and which is not owned by a holder of a certificate of self-insurance under said law.

"Person" includes natural persons, firms, co-partnerships, associations and corporations.

"Insurer" means any insurer authorized in this state to write the kinds of insurance specified in paragraphs d and e of R.S. 17:17-1.

"Net direct written premiums" means direct gross premiums written on policies, insuring against legal liability for bodily injury or death and for damage arising out of the ownership, operation or maintenance of motor vehicles, which are principally garaged in this state, less return premiums thereon and dividends paid to policyholders on such direct business.

"Registration license year" means the period beginning June 1, 1956, and ending May 31, 1957, and each subsequent 12 month period, beginning June 1 and ending the following May 31.

Amended. L. 1985, c. 148, §3, effective April 24, 1985.

39:6-63. Creation of fund. For the purpose of creating and maintaining the fund:

(a) (Deleted by amendment, P.L. 1968, c. 323, §3.)

(b) (Deleted by amendment, P.L. 1968, c. 323, §3.)

(c) (Deleted by amendment, P.L. 1968, c. 323, §3.)

(d) On December 30 in each year, the commissioner shall calculate the probable amount which will be needed to carry out the provisions of this act during the ensuing registration license year. In such calculation, he shall take into consideration the amount presently reserved for pending claims, anticipated payments from the fund during said year, anticipated payments from the fund for medical expenses to be made pursuant to section 2 of P.L. 1977, c. 310 (C. 39:6-73.1), during the 2 years after said year, anticipated amounts to be reserved for claims pending during said year, amounts transferred to the Division of Motor Vehicles pursuant to section 28 of P.L. 1952, c. 174 (C. 39:6-88) and the desirability of maintaining a surplus over and above such anticipated payments and present and anticipated reserves, such surplus not to exceed the amount actually paid from the fund during the 12 full calendar months immediately preceding the date of calculation. Such probable amount which will be needed to carry out the provisions of this act shall be assessed against insurers for such year's contribution to the fund. Such probable amount needed shall be initially apportioned on an estimated basis among such insurers in the proportion that the net direct written premiums of each bear to the aggregate net direct written premiums of all insurers, including the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to P.L. 1983, c. 65 (C. 17:30E-1 et seq.), and the Market Transition Facility created pursuant to section 88 of P.L. [1990]. c. [8] (C. [17:33B-11]) (now pending in the Legislature as this bill), during the preceding calendar year as shown by the records of the commissioner as an estimate. Each insurer shall pay the sum so assessed to the treasurer on or before March 31, next following. Such estimated sum shall be subject to adjustment on March 31 next following payment based upon the proportion that the net direct written premiums of each insurer bear to the aggregate net direct written premiums of all insurers, including the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P.L. 1983, c. 65 (C. 17:30E-1 et seq.), and the Market Transition Facility created pursuant to section 88 of P.L. [1990]. c. [8] (C. [17:33B-11]) (now pending in the Legislature as this bill), during the year the estimated assessment was paid as shown by the records of the commissioner.

(e) Whenever any of the provisions of this act concerning the method and sources of assessments on insurers, including the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to P.L. 1983, c. 65 (C. 17:30E-1 et seq.), and the Market Transition Facility created pursuant to section 88 of P.L. [1990]. c. [8] (C. [17:33B-11]) (now pending in the Legislature as this bill), the maximum amounts payable from the fund, eligibility or qualifications of claimants, or amounts to be deducted from payments made from the fund are amended by law, between January 1 and April 30 in any year, the commissioner may, if he deems it necessary, rescind any assessment on insurers, including the New Jersey Automobile Full Insurance Underwriting Association, created pursuant to P.L. 1983, c. 65 (C. 17:30E-1 et seq.), and the Market Transition Facility created pursuant to section 88 of P.L. [1990]. c. [8] (C. [17:33B-11]) (now pending in the Legislature as this bill), made on December 30 of the preceding year. He shall then, within 15 days of the adoption of such amendment, recalculate the probable amount which will be needed to carry out the provisions of this act during the ensuing registration license year, in accordance with the provisions of

subsection (d) of this section. If, in his judgment, the estimated balance of the fund at the beginning of the next registration license year will be insufficient to meet such needs, he shall determine the contributions of insurers, if any, in accordance with the provisions of subsection (d) of this section. In the event of a rescission and reassessment subsequent to March 1 in any year, insurers shall pay the sum so assessed, if any, to the treasurer within 90 days of the date of such assessment.

Amended. L. 1983, c. 125, §1; L. 1985, c. 148, §4; L. 1988, c. 119, §2, effective January 1, 1989; L. 1990, c. 8, §85, effective March 12, 1990.

39:6-63.1. Assessment rescinded; fee. Any assessment made under the provisions of subparagraph (2), of paragraph (d) of section 3 [39:6-63] of the act of which this act is amendatory which has not been collected prior to the effective date of this act, is hereby rescinded and shall not be collected. Every person registering an uninsured motor vehicle in this state, during the period commencing June 1, 1956 and ending May 31, 1957, shall pay at the time of registering the same, in addition to any other fee prescribed by any other law, a fee of $8.00.

39:6-63.2. Repealed.

39:6-64. Unsatisfied claim and judgment fund board. There is hereby established in, but not as part of, the Department of Insurance an unsatisfied claim and judgment fund board consisting of the commissioner and four representatives of insurers. Such representatives of insurers shall be designated annually by the commissioner. He shall designate one representative of each of the following classes of companies:

(a) The American Insurance Association, or its successor organization;

(b) The Alliance of American Insurers, or its successor organization;

(c) The National Association of Independent Insurers, or its successor organization;

(d) Any insurers which are licensed in this State and are not members or subscribers of any of the above mentioned organizations.

A person designated as a representative shall be an employee or officer of an insurer of the class which he represents. None of the members of the board shall receive any compensation or remuneration from the fund. Such board shall maintain an office in this state, administer the fund subject to the provisions of this act, determine its cash requirements, and the amounts, if any, available for investment, and shall have the power to employ such clerical and other help as may be necessary to the proper discharge of the duties of the board. The Director of the Division of Motor Vehicles in the administration of the motor vehicle security-responsibility law and the board in the administration of this act shall cooperate in order to avoid duplication and to achieve efficiency and economy. The board shall reimburse the Department of Insurance semiannually for the reasonable and appropriate costs and expenses incurred in performing any service for the board under this act. Expenses so incurred by the board or by any department, division or agency of the state on behalf of the board shall be assessed annually by it, against insurers pro rata in proportion to premium writings as provided in section 3 (d) [39:6-63(d)].

Amended. L. 1985, c. 148, §5, effective April 24, 1985.

39:6-64a. Unsatisfied Claim and Judgment Fund transferred. The Unsatisfied Claim and Judgment Fund Board in the Division of Motor Vehicles of the Department of Law and Public Safety, established pursuant to P.L. 1952, c. 174

(C. 39:6-61 et seq.), together with all its functions, powers and duties, and the Unsatisfied Claim Judgment Fund are transferred from the Department of Law and Public Safety to the Department of Insurance.

Adopted. L. 1985, c. 148, §1, effective April 24, 1985.

39:6-64b. Rights unaffected by transfer. Except as otherwise provided by law, the transfer of the Unsatisfied Claim and Judgment Fund Board and the Unsatisfied Claim and Judgment Fund to the Department of Insurance shall not affect any rights or protection afforded persons under any employment contracts or under any pension or retirement plan, or any outstanding obligations of, or claims against the board or fund.

Adopted. L. 1985, c. 148, §2, effective April 24, 1985.

39:6-64.1. Rules and regulations; services of attorneys, others; payment. The board may, from time to time, adopt, amend and enforce all reasonable rules and regulations necessary or desirable in its opinion in connection with its functions, duties and responsibilities in administering this act [R.S. Cum. Supp. 39:6-62 et seq.].

Notwithstanding the provisions of P.L. 1944, c. 20 (C. 52:17A-1 et seq.), the board, with the approval of the attorney general, shall have the power to engage the services of such attorneys and other persons as may be deemed necessary or desirable for the purpose of suing for, enforcing, collecting and taking any other action for the collection of moneys due to the commissioner or treasurer on any right, claim, agreement, judgment, assignment and other obligation arising out of the application of this act. After repayment to the commissioner or treasurer of all sums paid from the fund and all moneys due to the commissioner and treasurer on any 1 claim, agreement, judgment, assignment or other obligation, the commissioner or treasurer may assign to the original claimant, judgment creditor or other person entitled thereto all of the right, title and interest that the commissioner or treasurer has in and to the balance due upon such obligation. Any attorney so engaged shall not be deemed an employee of the board or the state of New Jersey, shall not be subject to the civil service laws as contained in title 11 of the Revised Statutes of New Jersey and shall not have any right to continue employment in such capacity. The compensation of an attorney so engaged for services rendered shall be deemed an expense of the board under section 4 [39:6-64] of the act and shall be paid out of the moneys recovered on the obligation in connection with which the services were rendered, upon such terms as may be authorized by the board with the approval of the attorney general.

Amended. L. 1985, c. 148, §6, effective April 24, 1985.

39:6-65. Notice of accident and intention to file claim. Any qualified person, or the personal representative of such person, who suffers damages resulting from bodily injury or death or damage to property arising out of the ownership, maintenance or use of a motor vehicle in this state on or after April 1, 1955, and whose damages may be satisfied in whole or in part from the fund, shall, except in cases in which the claim is asserted by actions brought under section 18 [39:6-78] of this act pursuant to section 19 [39:6-79] of this act, within 90 days after the accident, as a condition precedent to the right thereafter to apply for payment from the fund, give notice to the board, the form and contents of which shall be prescribed by the board of his intention to make a claim thereon for such damages if otherwise uncollectible; provided, any such qualified person may, in lieu of

giving said notice within said time, make proof to the court on the hearing of the application for the payment of a judgment (a) that he was physically incapable of giving said notice within said period and that he gave said notice within 90 days after he became physically capable to do so or in the event he did not become so capable, that a notice was given on his behalf within a reasonable period, or (b) that he gave notice to the board within 15 days of receiving notice that an insurer had disclaimed on a policy of insurance so as to remove or withdraw liability insurance coverage for his claim against a person or persons who allegedly caused him to suffer damages. A copy of the complaint shall be furnished to the board if an action has theretofore been brought for the enforcement of such claim. Such person shall also notify the board of any action thereafter instituted for the enforcement of such claim within 15 days after the institution thereof and such notice shall be accompanied by a copy of the complaint.

The Director of the Division of Motor Vehicles is hereby authorized and empowered, the provisions of any other law relating to the confidential nature of any reports or information furnished to or filed with the division notwithstanding, to furnish to the board upon its request, for such use, utilization and purposes as the board may deem reasonably appropriate to administer this act [R.S. Cum. Supp. 39:6-61 et seq.] and discharge its functions hereunder, any reports or information filed by any person or persons claiming benefits under the provisions of this act, that the director has with regard to any accident, and any operator or owner of a motor vehicle involved in any accident, and as to any automobile or motor vehicle liability insurance or bond carried by an operator or owner of any motor vehicle.

Amended. L. 1985, c. 148, §7, effective April 24, 1985.

39:6-66. Investigation and defense of claims. (a) The board shall assign to insurers for investigation and defense, all default actions described in section fourteen [39:6-74] and all actions against the treasurer brought under section eighteen [39:6-78].

(b) Any time after the receipt of notice of intention to make a claim as provided in section five [39:6-65], the board may also assign such of said claims as in the judgment of the board it is advisable to investigate, to insurers for the purpose of making such investigation. At any time after receipt of notice of the institution of an action against the operator or owner of a motor vehicle as provided in section five, the board may also assign such of said actions as in its judgment it is advisable to defend, to insurers for the purpose of conducting such defense.

(c) All assignments made under this section shall be made to insurers in proportion to their premium writings subject to assessment hereunder. Each insurer shall at its own expense (1) make such investigation as may be appropriate of any claim or action and (2) cause to be conducted on behalf of the fund the defense of any action assigned to it.

(d) After consultation with insurers the commissioner shall approve a reasonable plan for such equitable apportionment among such insurers of claims against operators and owners of motor vehicles, for investigation and defense, in accordance with this act. When any such plan has been so approved all insurers shall subscribe thereto and participate therein.

39:6-67. Defense of actions against motorists. The insurer to whom any action has been assigned may through counsel enter an appearance on behalf of the defendant, file a defense, appear at the trial or take such other steps as it may

deem appropriate on the behalf and in the name of the defendant, and may thereupon, on the behalf and in the name of the defendant, conduct his defense, take recourse to any appropriate method of review on behalf of, and in the name of, the defendant, and all such acts shall be deemed to be the acts of such defendant; provided, however, that nothing contained herein shall deprive defendant of the right to also employ his own counsel and defend the action. All expense incurred by such insurer in connection with any review prosecuted or defended by it from a judgment rendered in such action, shall be borne by the fund, and its attorneys' fees in connection therewith, unless agreed to between the board and the attorney, shall be subject to approval by the court.

39:6-68. Co-operation of defendant. In any case in which an insurer has assumed under this act, the defense of any action, the defendant shall cooperate with such insurer in the defense of such action. In the event of his failure to do so, such insurer may apply to the court for an order directing such co-operation.

39:6-69. Application for payment of judgment. When any qualified person recovers a valid judgment in any court of competent jurisdiction in this state, against any other person, who was the operator or owner of a motor vehicle, for injury to, or death of, any person or persons or a similar valid judgment in such court against such a defendant for an amount in excess of $500.00, exclusive of interest and costs, for damage to property, except property of others in charge of such operator or owner or such operator's or owner's employees, arising out of the ownership, maintenance or use of the motor vehicle in this state on or after April 1, 1955, and any amount remains unpaid thereon in the case of a judgment for bodily injury or death, or any amount in excess of $500.00 remains unpaid thereon in case of a judgment for damage to property, such judgment creditor may, upon the termination of all proceedings, including reviews and appeals in connection with such judgment, file a verified claim in the court in which the judgment was entered and, upon 10 days' written notice to the board may apply to the court for an order directing payment out of the fund, of the amount unpaid upon such judgment for bodily injury or death, which does not exceed, or upon such judgment for damage to property which exceeds the sum of $500.00 and does not exceed—

(a) The maximum amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident, and

(b) The maximum amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to, or death of, more than one person, in any one accident, and

(c) The maximum amount or limit of $5,000.00 exclusive of interest and costs, for damage to property in any one accident.

Amended. L. 1983, c. 362, §21; L. 1988, c. 119, §15, effective January 1, 1989.

39:6-70. Hearing on application for payment of judgment. The court shall proceed upon such application, in a summary manner, and, upon the hearing thereof, the applicant shall be required to show

(a) He is not a person covered with respect to such injury or death by any worker's compensation law, or the personal representative of such a person,

(b) He is not a spouse, parent or child of the judgment debtor, or the personal representative of such spouse, parent or child,

(c) He was not at the time of the accident a person (1) operating or riding in a motor vehicle which he had stolen or participated in stealing or (2) operating or riding in a motor vehicle without the permission of the owner, and is not the personal representative of such a person,

(d) He was not at the time of the accident, the owner or registrant of an uninsured motor vehicle, or was not operating a motor vehicle in violation of an order of suspension or revocation,

(e) He has complied with all of the requirements of section 5 [39:6-65],

(f) The judgment debtor at the time of the accident was not insured under a policy of automobile liability insurance under the terms of which the insurer is liable to pay in whole or in part the amount of the judgment.

(g) He has obtained a judgment as set out in section 9 [39:6-69] of this act, stating the amount thereof and the amount owing thereon at the date of the application,

(h) He has caused to be issued a writ of execution upon said judgment and the sheriff or officer executing the same has made a return showing that no personal or real property of the judgment debtor, liable to be levied upon in satisfaction of the judgment, could be found or that the amount realized on the sale of them or of such of them as were found, under said execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized,

(i) He has caused the judgment debtor to make discovery under oath, pursuant to law, concerning his personal property and as to whether such judgment debtor was at the time of the accident insured under any policy or policies of insurance described in subparagraph (f) of this section,

(j) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of personal or real property or other assets, liable to be sold or applied in satisfaction of the judgment,

(k) By such search he has discovered no personal or real property or other assets, liable to be sold or applied or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be sold and applied and that he has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized,

(l) The application is not made by or on behalf of any insurer by reason of the existence of a policy of insurance, whereby the insurer is liable to pay, in whole or in part, the amount of the judgment and that no part of the amount to be paid out of the fund is sought in lieu of making a claim or receiving a payment which is payable by reason of the existence of such a policy of insurance and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify the insurer in respect of any amount paid or payable by the insurer by reason of the existence of such a policy of insurance.

(m) Whether or not he has recovered a judgment in an action against any other person against whom he has a cause of action in respect of his damages for bodily injury or death or damage to property arising out of the accident and what amounts, if any, he has received by way of payments upon the judgment, or by way of settlement of such cause of action, in whole or in part, from or on behalf of such other person.

(n) In order to recover for noneconomic loss, as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2) for accidents to which the benefits of sections 7 and 10 of P.L. 1972, c. 198 (C. 39:6-86.1 and C. 39:6-86.4) apply, the injured person shall have sustained an injury described in subsection a. of section 8 of P.L. 1972, c. 70 (C. 39:6A-8).

Whenever the applicant satisfies the court that it is not possible to comply with 1 or more of the requirements enumerated in subparagraphs (h) and (i) of this section and that the applicant has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may dispense with the necessity for complying with such requirements.

The board or any insurer to which the action has been assigned may appear and be heard on application and show cause why the order should not be made.

Amended. L. 1983, c. 362, §2; L. 1988, c. 119, §19, effective January 1, 1989.

39:6-71. Order for payment of judgment. The court shall make an order directed to the treasurer requiring him to make payment from the fund of such sum, if any, as it shall find to be payable upon such claim, pursuant to the provisions of and in accordance with the limitations contained in this act, if the court is satisfied, upon the hearing:

(a) Of the truth of all matters required to be shown by the applicant by section 10 [39:6-70],

(b) That the applicant has fully pursued and exhausted all remedies available to him for recovering damages against all persons mentioned in subparagraph (m) of section 10 by

(1) Commencing action against all such persons against whom the applicant might reasonably be considered as having a cause of action in respect of such damages and prosecuting every such action in good faith to judgment and

(2) Taking all reasonable steps available to him to collect on every judgment so obtained and by applying the proceeds of any judgment or recovery so obtained towards satisfaction of the amount due upon the judgment for payment of which the claim is made.

Any amount which the plaintiff has received or can collect by way of payments upon the judgment or by way of settlement of the cause of action, in whole or in part, from or on behalf of any person other than the judgment debtor, described in subparagraph (m) of section 10, shall be deducted from the amount due upon the judgment for payment of which claim is made.

39:6-72. Settlement of actions against motorists. (a) In any action against an operator or owner of a motor vehicle for injury to or death of any person or for damage to property arising out of the ownership, maintenance or use of said vehicle in this state on or after April 1, 1955, pending in any court of competent jurisdiction in this state, the plaintiff may upon notice to the board file a verified petition with the court alleging:

(1) the matters set forth in subparagraphs (a), (b), (c), (d), (e) and (f) of section 10 [39:6-70];

(2) that the petition is not presented in behalf of an insurer under circumstances set forth in subparagraph (1) of section 10;

(3) that he has entered into an agreement with the defendant to settle all claims set forth in the complaint in said action and the amount proposed to be paid to him pursuant thereto;

(4) that the said proposed settlement has been entered into with and by the consent of the Superior Court and approved by the executive director of the fund;

(5) that the defendant has executed and delivered to the board a verified statement of his financial condition;

(6) that a judgment against the defendant would be uncollectible;

(7) that the defendant has undertaken in writing to repay to the treasurer the sum that he would be required to pay under such settlement, and has executed a confession of judgment in connection therewith.

If the court be satisfied of the truth of the allegations in said petition and of the fairness of such proposed settlement, it may enter an order approving the same and directing the treasurer, upon receipt of the undertaking and confession of judgment mentioned in subparagraph (7) of this section, to make payment to the plaintiff of the amount agreed to be accepted.

(b) An insurer to whom a claim has been assigned may settle any claim involving the payment of less than $5,000.00 with the approval of the executive director of the fund or any claim involving payment of $5,000.00 or more with the approval of the board, without court approval, if satisfied:

(1) that the claimant is not a person of the character described in subparagraphs (a), (b), (c), (d), (e) and (f) of section 10;

(2) that the settlement is not made on the behalf of an insurer under circumstances set forth in subparagraph (1) of section 10; and

(3) that a judgment against the owner or operator of the motor vehicle involved in the accident would be uncollectible, and that such owner or operator has consented to such settlement, executed and delivered to the board a verified statement of his financial condition and undertaken in writing to repay to the treasurer the sum to be paid under the settlement, and executed a confession of judgment in connection therewith. Any settlement so made shall be certified by the board to the treasurer, who shall, upon receipt of said undertaking to repay and confession of judgment, make the required payment to claimant out of the fund.

Amended. L. 1985, c. 148, §8, effective April 24, 1985.

39:6-73. Limitations on amounts payable from fund; medical expense benefits excepted. Except with respect to medical expense benefits paid pursuant to section 2 of P.L. 1977, c. 310 (C. 39:6-73.1), no order shall be made for the payment and the treasurer shall make no payment, out of the fund, of

(a) Any claim for damage to property for less than $500.00,

(b) The first $500.00 of any judgment for damage to property or of the unsatisfied portion thereof, or

(c) The unsatisfied portion of any judgment which, after deducting $500.00 therefrom if the judgment is for damage to property, exceeds

(1) the maximum or limit of $15,000.00 exclusive of interest and costs, on account of injury to, or death of, one person in any one accident, and

(2) the maximum amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00 exclusive of interest and costs, on account of injury to, or death of, more than one person, in any one accident, and

(3) the maximum amount or limit of $5,000.00, exclusive of interest and costs, for damages to property in any 1 accident; provided, that such maximum amounts shall be reduced by any amount received or recovered as specified in subparagraph (m) of section 10 [39:6-70].

(d) Any claim for damage to property which includes any sum greater than the difference between said maximum amounts and the sum of $500.00, and any amount paid out of the fund in excess of the amount so authorized may be recovered by the treasurer in an action brought by him against the person receiving the same.

Amended. L. 1983, c. 362, §22; L. 1988, c. 119, §16, effective January 1, 1989.

39:6-73.1. Reimbursement of excess medical expense benefits. In the event medical expense benefits paid by an insurer, in accordance with subsection a. of section 4 of P.L. 1972, c. 70 (C. 39:6A-4), are in excess of $75,000.00 on account of personal injury to any one person in any one accident, the Unsatisfied Claim and Judgment Fund shall assume such excess up to $250,000 and reimburse the insurer therefor in accordance with rules and regulations promulgated by the commissioner; provided, however, that this provision is not intended to broaden the coverage available to accidents involving uninsured or hit-and-run automobiles, to provide extraterritorial coverage, or to pay excess medical expenses.

Amended. L. 1985, c. 148, §9, effective April 24, 1985; L. 1990, c. 8, §14, effective March 12, 1990.

39:6-74. Default and consent judgments. No claim shall be allowed and ordered to be paid out of the fund if the court shall find, upon the hearing for the allowance of the claim, that it is founded upon a judgment which was entered by default unless (1) the claimant shall have complied with the requirements of section 5 [39:6-65], and (2) prior to the entry of such judgment the board shall have been given notice of intention to enter the judgment and file a claim thereon against the fund and shall have been afforded an opportunity to take such action as it shall deem advisable under section 15 [39:6-75].

If the court, upon a hearing for the allowance of any claim against the fund, finds that it was a claim which was not assigned by the board to an insurer in accordance with section 6 [39:6-66], or that the action upon such claim was not fully and fairly defended, or that the judgment thereon was entered upon the consent or with the agreement of the defendant, the court shall allow such claim but shall order it to be paid only in such sum as the court shall determine to be justly due and payable out of the fund, on the basis of the actual amount of damages for which the defendant was liable to the plaintiff under the cause of action, upon which the judgment was rendered and reduced by any amount received from any person mentioned in subparagraph (m) of section 10 [39:6-70], notwithstanding that the judgment is for a greater amount.

39:6-75. Defense of default actions. When the board receives notice, as provided in section fourteen [39:6-74], the insurer to which such action has been assigned may through counsel enter an appearance, file an answer, appear at the trial, defend the action or take such other action as it may deem appropriate on the behalf and in the name of the defendant, and take recourse to any appropriate method of review on behalf of, and in the name of, the defendant.

In event that the time allowed for filing an answer has expired or judgment has been entered by default in any such action, the insurer to which the action has been assigned shall be granted a reasonable time after the receipt of notice by the board to answer or to make application for relief against the judgment and leave to answer and defend such action.

39:6-76. Collusive judgments. No claim against the fund shall be allowed in any case in which the court shall find, upon hearing for the allowance of the claim, that the judgment upon which the claim is founded was obtained by fraud, or by collusion of the plaintiff and of any defendant in the action, relating to any matter affecting the cause of action upon which such judgment is founded or the amount of damages assessed therein.

39:6-77. Assignment of judgments to commissioner. The treasurer shall not pay any sum from the fund, in compliance with an order made for that purpose, in any case in which the claim is founded upon a judgment, except a judgment obtained against the commissioner under this act [R.S. Cum. Supp. 39:6-61 et seq.], until the applicant assigns the judgment to the commissioner and, thereupon, the commissioner shall be deemed to have all the rights of the judgment creditor under the judgment and shall enforce and collect the same for the full amount thereof with interest and costs and if more money is collected upon any such judgment than the amount paid out of the fund, the commissioner shall pay the balance, after reimbursing the fund, to the judgment creditor. Upon assignment of a judgment to the commissioner the board may, on behalf of the commissioner enter into agreement with the defendant for reimbursement of the fund by lump sum or installment payments, including waiver of interest and subordination of the lien of the judgment where the same is determined to be advantageous in obtaining reimbursement of payments made by the fund. Any such agreement may be annexed to an application for a court order made pursuant to section 27(b) [39:6-87(b)].

Amended. L. 1985, c. 148, §10, effective April 24, 1985.

39:6-78. "Hit-and-run" cases. When the death of, or personal injury to, any person arises out of the ownership, maintenance or use of a motor vehicle in this state on or after April 1, 1955, but the identity of the motor vehicle and of the operator and owner thereof cannot be ascertained or it is established that the motor vehicle was, at the time said accident occurred, in the possession of some person other than the owner without the owner's consent and that the identity of such person cannot be ascertained, any qualified person who would have a cause of action against the operator or owner or both in respect to such death or personal injury may bring an action therefor against the commissioner in any court of competent jurisdiction, but no judgment against the commissioner shall be entered in such an action unless the court is satisfied, upon the hearing of the action, that—

(a) The claimant has complied with the requirements of section 5 [39:6-65],

(b) The claimant is not a person covered with respect to such injury or death by any worker's compensation law, or the personal representative of such a person,

(c) The claimant was not at the time of the accident the owner or registrant of an uninsured motor vehicle, or was not operating a motor vehicle in violation of an order of suspension or revocation,

(d) The claimant has a cause of action against the operator or owner of such motor vehicle or against the operator who was operating the motor vehicle without the consent of the owner of the motor vehicle,

(e) All reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and operator thereof and either that the identity of the motor vehicle and the owner and operator thereof cannot be established, or that the identity of the operator, who was operating the motor vehicle without the owner's consent, cannot be established,

(f) The action is not brought by or on behalf of an insurer under circumstances set forth in paragraph (1) of section 10 [39:6-70].

Amended. L. 1983, c. 362, §2.1; L. 1985, c. 148, §11, effective April 24, 1985.

39:6-79. Other "hit-and-run" cases. When in an action in respect to the death of, or personal injury to, any person, arising out of the ownership, maintenance or use of a motor vehicle in this state on or after April 1, 1955, judgment is rendered for the defendant on the sole ground that such death or personal injury was occasioned by a motor vehicle—

(a) The identity of which, and of the owner and operator of which, has not been established, or

(b) Which was in the possession of some person other than the owner or his agent without the consent of the owner and the identity of the operator has not been established, such cause shall be stated in the judgment and the plaintiff in such action may within 3 months from the date of the entry of such judgment bring an action upon said cause of action against the commissioner in the manner provided in section 18 [39:6-78].

Amended. L. 1985, c. 148, §12, effective April 24, 1985.

39:6-80. Impleading commissioner in "hit-and-run" cases. When an action has been commenced in respect of the death or injury of any person arising out of the ownership, maintenance or use of a motor vehicle in this state on or after April 1, 1955, the plaintiff shall be entitled to make the commissioner a party thereto if the provisions of section 18 or 19 [39:6-78, 39:6-79] shall apply in any such case, and the plaintiff has made the application and the court has entered the order provided for in section 18.

Amended. L. 1985, c. 148, §13, effective April 24, 1985.

39:6-81. Defense of such actions by commissioner. In any action brought under sections 18 and 19 [39:6-78, 39:6-79] of this act, the commissioner may appear by counsel for the insurer to whom such action has been assigned. He shall for all purposes of the action be deemed to be the defendant. He shall have available to him any and all defenses which would have been available to said operator or owner or both if the action had been brought against them or either of them and process upon them or either of them had been duly served within this state, but he shall be entitled to defend in all cases without asserting any specific facts.

Amended. L. 1985, c. 148, §14, effective April 24, 1985.

39:6-82. Settlement of actions against the commissioner. In any action brought against the commissioner pursuant to an order by the court entered in accordance with the provisions of section 18 [39:6-78], the plaintiff may file a verified petition alleging that he has entered into an agreement with the board to settle all claims set forth in the complaint in said action and the amount proposed to be paid to him pursuant thereto. If the court be satisfied of the fairness of such proposed settlement, it may enter an order approving such settlement and enter a judgment against the commissioner for the amount so agreed to be paid thereunder.

Amended. L. 1985, c. 148, §15, effective April 24, 1985.

39:6-83. Credits against judgment. A judgment against the commissioner shall be reduced by any amounts which such plaintiff has received from any person mentioned in subparagraph (m) of section 10 [39:6-70].
Amended. L. 1985, c. 148, §16, effective April 24, 1985.

39:6-84. Judgment against commissioner. When a judgment is obtained against the commissioner, in an action brought under this act, upon the determination of all proceedings including appeals and reviews, the court shall make an order directed to the treasurer directing him to pay out of the fund to the plaintiff in the action in the amount thereof which does not exceed $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person and, subject to such limits for the death of, or injury to, any one person, does not exceed $30,000.00, exclusive of interest and costs, on account of the injury to, or death of, more than one person, in any one accident, provided that such maximum amount shall be reduced by any amount received or recovered by the plaintiff as specified in subparagraph (m) of section 10 [39:6-70].
Amended. L. 1985, c. 148, §17, effective April 24, 1985.

39:6-84.1. Applicability of increased amounts. The provisions of sections 9, 13 and 24 of the act of which this act is supplementary (C. 39:6-69, 39:6-73 and 39:6-84) as amended by sections 3, 4 and 5 of P.L. 1972, c. 198 which increase the maximum amounts payable from the fund shall be applicable only to claims made by qualified persons, or the personal representatives of such persons, who suffered damages resulting from bodily injury or death or damage to property arising out of the ownership, maintenance or use of a motor vehicle in this state on or after January 1, 1973, and whose damages may be satisfied in whole or in part from the fund.

39:6-85. Subrogation. When judgment has been obtained against the commissioner in an action brought under this act [R.S. Cum. Supp. 39:6-61 et seq.], the commissioner shall, upon payment from the fund of the amount of the judgment to the extent provided in this act, be subrogated to the cause of action of the judgment creditor against the operator and owner of the motor vehicle by which the accident was occasioned and shall bring an action against either or both of such persons for the amount of the damage sustained by the judgment creditor when and in the event that the identity of either or both of such persons shall be established, and shall recover the same out of any funds which would be payable in respect to the death or injury under any policy of insurance, which was in force at the time of the accident and in event that more is recovered and collected in any such action than the amount paid out of the fund by reason of the judgment, the treasurer shall pay the balance, after reimbursing the fund, to the judgment creditor.
Amended. L. 1985, c. 148, §18, effective April 24, 1985.

39:6-86. Repealed.

39:6-86.1. Personal injury coverage. When any person qualified to receive payments under the provisions of the "Unsatisfied Claim and Judgment Fund Law," suffers bodily injury or death as a pedestrian, as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2), caused by a motor vehicle, including an automobile as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2), and a motorcycle, or by an object propelled therefrom, or arising out of an accident while occupying, entering into, alighting from, or using an automobile, registered or principally garaged in

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

a. Medical expense benefits. Payment of all reasonable medical expense benefits in an amount not exceeding $250,000 per person per accident. In the event of death, payment shall be made to the estate of the decedent.

Medical expense benefit payments shall be subject to a deductible of $250.00 on account of injury in any one accident and a copayment of 20% of any benefits payable between $250.00 and $5,000.00.

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

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

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

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

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

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

Amended. L. 1983, c. 362, §3; L. 1988, c. 119, §5, effective January 1, 1989; L. 1990, c. 8, §101, effective March 12, 1990.

39:6-86.2. Payment of benefits; notice and proof of loss; deductions. The benefits provided in sections 7 [39:6-86.1] and 10 [39:6-86.4], shall be payable as loss accrues, upon written notice of such loss including reasonable proof of such loss, except that benefits collectible under:

a. Employees' temporary disability benefit statutes and medicare provided under Federal law shall be deducted from the benefits collectible under sections 7 and 10 [39:6-86.1 and 39:6-86.4]; and

b. Any hospital, medical or dental benefit plan or policy coverage with benefits similar to those provided under section 7, in an amount not to exceed in the aggregate $2,500.00 for any one accident; shall be deducted from the benefits collectible under sections 7 and 10.

Evidence of benefit payments collectible under subsections a. and b. of this section shall not be admissible in a civil action by the claimant for recovery of damages for bodily injury from the fund.

The amount of $2,500.00 shall be deemed to have been exceeded whether the amount is paid or benefits in that amount are provided to one or more persons eligible for benefits under the hospital, medical or dental plan or policy, for injuries sustained in any one accident.

Amended. L. 1983, c. 362, §4; L. 1984, c. 40, §2, effective May 15, 1984.

39:6-86.3. Conduct precluding benefits. Any qualified person entitled to receive benefits as provided in section 7 [39:6-86.1] of this act shall be precluded from receiving such benefits where such person's conduct contributed to his personal injuries or death in any of the following ways:

a. While committing a high misdemeanor or felony or seeking to avoid lawful apprehension or arrest by a police officer; or

b. While acting with specific intent of causing injury or damage to himself or others.

39:6-86.4. Conditions where payments made by unsatisfied claim and judgment fund. When the death of or personal injury to any person arises out of the ownership, maintenance or use of an automobile in this state on or after the effective date of this act, but the identity of the automobile and of the operator and owner thereof cannot be ascertained or it is established that the automobile was at the time said accident occurred, in the possession of some person other than the owner without the owner's consent and that the identity of such person cannot be ascertained, any person qualified to receive payments under the provisions of the "Unsatisfied Claim and Judgment Fund Law" shall be entitled to receive payment under sections [39:6-86.1] and 10 [39:6-86.4] of this act, provided that:

a. The claimant is not a person covered with respect to such injury or death by any worker's compensation law, or the personal representative of such a person,

b. The claimant was not at the time of the accident the owner or registrant of an uninsured motor vehicle, or was not operating a motor vehicle in violation of an order of suspension or revocation,

c. The claimant was not at the time of the accident:

(1) a person operating or riding in a motor vehicle which he had stolen or participated in stealing, or

(2) operating a motor vehicle without the permission of the owner, and is not the personal representative of such a person,

d. All reasonable efforts have been made to ascertain the identity of the motor vehicle and of the owner and operator thereof and either that the identity of the

motor vehicle and the owner and operator thereof cannot be established, or that the identity of the operator, who was operating the motor vehicle without the owner's consent, cannot be established, or

e. Deleted by amendment, P.L. 1983, c. 362, §5.

f. The action or claim is not brought by or on behalf of an insurer.

Amended. L. 1983, c. 362, §5, effective October 4, 1983, but inoperative until January 1, 1984.

39:6-86.5. Payments to qualified persons. Any qualified person seeking to receive benefits as provided in sections 7 [39:6-86.1] and 10 [39:6-86.4] of this act shall comply with the provisions of section 5 of P.L. 1952, c. 174 (C. 39:6-65) and payment under these sections shall be payable to the qualified person entitled to receive such benefits, as the loss accrues, upon receipt of reasonable proof of such loss and without the need of a judgment as to damages, or a hearing as provided in section 10 of P.L. 1954, c. 174 (C. 39:6-70) or an order for payment as provided in section 11 of P.L. 1954, c. 174 (C. 39:6-71).

39:6-86.6. Recovery by commissioner of fund. The commissioner shall be entitled to recover on behalf of the unsatisfied claim and judgment fund for all payments made by it pursuant to sections 7 [39:6- 86.1] and 10 [39:6-86.4] of this act, regardless of fault, from any person who owned or operated the automobile involved in the accident and whose failure to have the required insurance coverage in effect at the time of the accident resulted in the payment of personal injury protection benefits. If the identity of the owner and operator is not ascertained until after personal injury protection benefits have been paid then the commissioner shall be entitled to recover for such payments, regardless of fault, from the operator if he was driving without the owner's permission or from the operator and the owner if he was driving with the owner's permission or, in either case, from the insurer if there is an insurance policy providing personal injury protection benefits that was in effect at the time of the accident with respect to such automobile.

The commissioner is authorized to bring an action, which shall be a summary proceeding, in the Superior Court to reduce the right provided by this section to judgment.

Amended. L. 1985, c. 148, §19, effective April 24, 1985.

39:6-87. Registration, etc. not restored until fund is reimbursed. Where the license or privileges of any person, or the registration of a motor vehicle registered in his name, has been suspended or cancelled under the motor vehicle security-responsibility law of this state, and the treasurer has paid from the fund any amount in settlement of a claim or towards satisfaction of a judgment against that person, or for the payment of personal injury protection benefits as provided in section 7 [39:6-86.1] and section 10 [39:6-86.4] of this act, the cancellation or suspension shall not be removed, nor the license, privileges, or registration restored, nor shall any new license or privilege be issued or granted to, or registration be permitted to be made by, that person until he has

(a) Repaid in full to the treasurer the amount so paid by him together with interest thereon at 8% per annum from the date of such payment; and

(b) Satisfied all requirements of said motor vehicle security-responsibility law in respect of giving proof of ability to respond in damages for future accidents, provided, that the court in which such judgment was rendered may, upon 10 days' notice to the board, make an order permitting payment of the amount of such

person's indebtedness to the fund, to be made in installments, or in the event the fund makes personal injury protection benefit payments, such person and the fund by agreement may provide for repayment to the fund to be made in installments, and in such case, such person's driver's license, or his driving privileges, or registration certificate, if the same have been suspended or revoked, or have expired, may be restored or renewed and shall remain in effect unless and until such person defaults in making any installment payment specified in such order. In the event of any such default, the Director of the Division of Motor Vehicles shall upon notice of such default suspend such person's driver's license, or driving privileges or registration certificate until the amount of his indebtedness to the fund has been paid in full.

Amended. L. 1981, c. 175, §1; L. 1985, c. 148, §20, effective April 24, 1985.

39:6-88. Fund to be held in trust. All sums received by the treasurer pursuant to any of the provisions of this act shall become part of the fund and shall be held by the treasurer in trust for the carrying out of the purposes of this act and for the payment of the cost of administering this act, and for the payment of the costs of the Division of Motor Vehicles of implementing the New Jersey Merit Rating Plan pursuant to section 6 of P.L. 1983, c. 65 (C. 17:29A-35). The Director of the Division of Motor Vehicles shall certify to the treasurer the amount necessary to implement the New Jersey Merit Rating Plan pursuant to that section, and the treasurer shall thereupon disburse that amount from the fund. Moneys transferred to the Division of Motor Vehicles pursuant to this section shall be repaid, with interest at the prevailing rate as determined by the board, out of sums appropriated to the Division of Motor Vehicles from surcharges assessed in accordance with the New Jersey Merit Rating Plan established pursuant to section 6 of P.L. 1983, c. 65 (C. 17:29A-35). Said fund may be invested and reinvested in the same manner as other State funds and shall be disbursed according to the order of the treasurer, as custodian of the fund.

Amended. L. 1983, c. 125, §2; L. 1985, c. 148, §21, effective April 24, 1985.

39:6-89. Reimbursement of general state fund. The treasurer shall, on or before the thirtieth day of June in each year in which this act has been operative, determine what amount, if any, shall be paid into the general state fund in repayment, in whole or in part, of the costs paid or incurred by the general state fund for administering this act during the current fiscal year and such amount shall be transferred from the fund to the general state fund of the treasury accordingly.

39:6-90. Penalty for false statements. Any person and any agent or servant of such person, who knowingly files with the fund, board or treasurer, or any or either of them, any notice, statement or other document required under this act, which is false or untrue or contains any material misstatement of fact shall be subject to a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or imprisonment for not more than thirty days, at the discretion of the court.

39:6-90.1. Effect of partial invalidity. In the event any section, term or provision of this act or of the act to which this act is amendatory and supplementary [R.S. Cum. Supp. 39:6-61 et seq.] shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term or provision of said acts, but the remaining sections, terms and provisions shall be and remain in full force and effect.

39:6-91. Effective date. This act [R.S. Cum. Supp. 39:6-61 et seq.] shall take effect April first, one thousand nine hundred and fifty-five, except that it shall become effective immediately, so far as to permit the treasurer and director to receive and collect the fees and assessments specified in section three [39:6-63], to permit the taking of such measures and the making of such expenditures as shall be necessary to administer the provisions of this act prior to April first, one thousand nine hundred and fifty-five, and to make such preparations as may be necessary to provide for the administration of said act after said date.

Chapter 6A. COMPULSORY AUTOMOBILE LIABILITY INSURANCE—NO FAULT PROVISIONS.

Note. This chapter was enacted by L. 1972, c. 70, approved June 20, 1972.

Section

39:6A-1. Short title. This act [chapter] may be cited and known as the "New Jersey Automobile Reparation Reform Act."

39:6A-2. Definitions. As used in this act:

a. "Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pick-up body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

b. "Essential services" means those services performed not for income which are ordinarily performed by an individual for the care and maintenance of such individual's family or family household.

c. "Income" means salary, wages, tips, commissions, fees and other earnings derived from work or employment.

d. "Income producer" means a person, who at the time of the accident causing personal injury or death, was in an occupational status, earning or producing income.

e. "Medical expenses" means expenses for medical treatment, surgical treatment, dental treatment, professional nursing services, hospital expenses, rehabilitation services, X-ray and other diagnostic services, prosthetic devices, ambulance services, medication and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery pursuant to R.S. 45:9-1 et seq., dentistry pursuant to R.S. 45:6-1 et seq., psychology pursuant to P.L. 1966, c. 282 (C. 45:14B-1 et seq.) or chiropractic pursuant to P.L. 1953, c. 233 (C. 45:9-41.1 et seq.) or by persons similarly licensed in other states and nations or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

f. “Hospital expenses” means:

(1) the cost of a semiprivate room, based on rates customarily charged by the institution in which the recipient of benefits is confined;

(2) the cost of board, meals and dietary services;

(3) the cost of other hospital services, such as operating room; medicines, drugs, anaesthetics; treatments with X-ray, radium and other radioactive substances; laboratory tests, surgical dressings and supplies; and other medical care and treatment rendered by the hospital;

(4) the cost of treatment by a physiotherapist;

(5) the cost of medical supplies such as prescribed drugs and medicines; blood and blood plasma; artificial limbs and eyes; surgical dressings, casts, splints, trusses, braces, crutches; rental of wheelchair, hospital bed or iron lung; oxygen and rental of equipment for its administration.

g. “Named insured” means the person or persons identified as the insured in the policy and, if an individual, his or her spouse, if the spouse is named as a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage shall be extended to the spouse for the full term of any policy period in effect at the time of the cessation of residency.

h. “Pedestrian” means any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks.

i. “Noneconomic loss” means pain, suffering and inconvenience.

j. “Motor vehicle” means a motor vehicle as defined in R.S. 39:1-1, exclusive of an automobile as defined in subsection a. of this section.

Amended. L. 1983, c. 362, §6, effective October 4, 1983, but inoperative until January 1, 1984.

39:6A-3. Compulsory automobile insurance coverage; limits. Every owner or registered owner of an automobile registered or principally garaged in this state shall maintain automobile liability insurance coverage, under provisions approved by the commissioner of insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile wherein such coverage shall be at least in:

a. an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

b. an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and

c. an amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any one accident.

No licensed insurance carrier shall refuse to renew the required coverage stipulated by this act of an eligible person as defined in section 25 of P.L. [1990], c. [8] (C. [17:33B-13]) (now pending in the Legislature as this bill except in accordance with the provisions of section 26 of P.L. 1988, c. 119 (C. 17:29C-7.1) or with the consent of the commissioner of insurance.

Amended. L. 1988, c. 119, §9, effective January 1, 1989; L. 1990, c. 8, §3, effective March 12, 1990.

39:6A-4. Personal injury protection coverage, regardless of fault. Every automobile liability insurance policy, issued or renewed on or after January 1, 1991, insuring an automobile as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2) against loss resulting from liability imposed by law for bodily injury, death and

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

"Personal injury protection coverage" means and includes:

a. Medical expense benefits. Payment of reasonable medical expense benefits in an amount not to exceed $250,000 per person per accident. In the event benefits paid by an insurer pursuant to this subsection are in excess of $75,000.00 on account of personal injury to any one person in any one accident, such excess shall be paid by the insurer in consultation with the Unsatisfied Claim and Judgment Fund Board and shall be reimbursable to the insurer from the Unsatisfied Claim and Judgment Fund pursuant to section 2 of P.L. 1977, c. 310 (C. 39:6-73.1).

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

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

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

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

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

Benefits payable under this section shall:

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

(2) Not be assignable, except to a provider of service benefits under this section in accordance with policy terms approved by the commissioner, nor subject to levy, execution, attachment or other process for satisfaction of debts.

Medical expense benefit payments shall be subject to a deductible of $250.00 on account of injury in any one accident and a copayment of 20% of any benefits payable between $250.00 and $5,000.00.

No insurer or health provider providing benefits to an insured shall have a right of subrogation for the amount of benefits paid pursuant to any deductible or copayment under this section.

Amended. L. 1981, c. 562, §1; L. 1983, c. 362, §7; L. 1984, c. 40, §3; L. 1988, c. 119, §3, effective January 1, 1989; L. 1990, c. 8, §4, effective March 12, 1990; L. 1997, c. 151, §31, effective January 1, 1998.

39:6A-4.1. Reduced premiums for additional vehicles. When a named insured is the owner and only designated operator of two or more automobiles and the only licensed driver residing in the household, he shall be charged a reduced personal injury protection premium for each automobile listed in addition to the principal automobile on the policy in an amount determined by the commissioner for the benefits provided in section 4 of P.L. 1972, c. 70 (C. 39:6A-4). Three years after the initial reduction in such premiums the personal injury protection premium for such additional automobiles shall be determined by the loss experience of the rate filer with respect to the payment of personal injury protection benefits which are attributable to such additional automobiles.

Adopted. L. 1983, c. 212, §1, effective June 15, 1983.

39:6A-4.2. Primacy of coverages. Except as provided in subsection d. of section 13 of P.L. 1983, c. 362 (C. 39:6A-4.3), the personal injury protection coverage of the named insured shall be the primary coverage for the named insured and any resident relative in the named insured's household who is not a named insured under an automobile insurance policy of his own. No person shall recover personal injury protection benefits under more than one automobile insurance policy for injuries sustained in any one accident.

Adopted. L. 1983, c. 362, §12, effective October 4, 1983, but inoperative until January 1, 1984. **Amended.** L. 1990, c. 8, §5, effective March 12, 1990.

39:6A-4.3. Personal injury protection coverage options. With respect to personal injury protection coverage provided on an automobile in accordance with section 4 of P.L. 1972, c. 70 (C. 39:6A-4), the automobile insurer shall provide the following coverage options:

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

b. The option to exclude all benefits offered under subsections b., c., d., and e. of section 4 [39:6A-4];

c. (Deleted by amendment, P.L. 1988, c. 119.)

d. For policies issued or renewed on or after January 1, 1991, the option that other health insurance coverage or benefits of the insured, including health care services provided by a health maintenance organization and any coverage or benefits provided under any federal or State program, are the primary coverage in regard to medical expense benefits pursuant to section 4 of P.L. 1972, c. 70 (C. 39:6A-4). If health insurance coverage or benefits are primary, an automobile

insurer providing medical expense benefits under personal injury protection coverage shall be liable for reasonable medical expenses not covered by the health insurance coverage or benefits up to the limit of the medical expense benefit coverage. The principles of coordination of benefits shall apply to personal injury protection medical expense benefits coverage pursuant to this subsection.

Insurers shall offer the options provided by subsections a. and b. of this section at appropriately reduced premiums. For policies issued or renewed prior to January 1, 1992, insurers shall offer the option provided by subsection d. of this section at a discount of not less than 25% from the base rate applicable to the first $250,000 of medical expense benefits, and for policies issued or renewed on or after January 1, 1992, insurers shall offer the option at an appropriate discount from the base rate for the amount of medical expense benefits coverage taken.

Any named insured who chooses the option provided by subsection d. of this section shall provide proof that he and members of his family residing in his household are covered by health insurance coverage or benefits in a manner and to an extent approved by the commissioner. Nothing in this section shall be construed to require a health insurer, health maintenance organization or governmental agency to cover individuals or treatment which is not normally covered under the applicable benefit contract or plan. If it is determined that an insured who selected or is otherwise covered by the option provided in subsection d. of this section did not have such health coverage in effect at the time of an accident, medical expense benefits shall be payable by the person's automobile insurer and shall be subject to any deductible required by law or otherwise selected as an option pursuant to subsection a. of this section, any copayment required by law and an additional deductible in the amount of $750.

An option elected by the named insured in accordance with this section shall apply only to the named insured and any resident relative in the named insured's household who is not a named insured under another automobile insurance policy, and not to any other person eligible for personal injury protection benefits required to be provided in accordance with section 4 of P.L. 1972, c. 70 (C. 39:6A-4).

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

Medical expense benefits payable in any amount between the deductible selected pursuant to subsection a. of this section and $5,000.00 shall be subject to a copayment of 20%.

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

The Commissioner of Banking and Insurance shall adopt rules and regulations to effectuate the purposes of this section and may promulgate standards applicable to the coordination of personal injury protection medical expense benefits coverage.

Adopted. L. 1983, c. 362, §13. **Amended.** L. 1984, c. 40, §1; L. 1988, c. 119, §38, effective January 1, 1989; L. 1990, c. 8, §6, effective March 12, 1990; L. 1997, c. 151, §32, effective January 1, 1998.

39:6A-4.4. Application of 39:6A-4.3 amendments. The amendments to section 13 of P.L. 1983, c. 362 (C. 39:6A-4.3) contained in section 1 of this amendatory and supplementary act shall apply to any accident occurring on or after the effective date of this amendatory and supplementary act involving an automobile insurance policy in force on, or issued on or after that date, under which the named insured has elected a medical expense deductible in accordance with subsection a. of section 13 of P.L. 1983, c. 362 (C. 39:6A-4.3). Any additional premium that may be owing on an existing policy by reason of the application of those amendments shall be debited to the account of the named insured and shall be payable at the time of payment of the next policy premium.
Adopted. L. 1984, c. 40, §4, effective May 15, 1984.

39:6A-4.5. Loss limitations for those who fail to maintain medical expense benefits coverage. a. Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of P.L. 1972, c. 70 (C. 39:6A-4) shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile**.**

b. Any person who is convicted of, or pleads guilty to, operating a motor vehicle in violation of R.S.39:4-50, section 2 of P.L. 1981, c. 512 (C.39:4-50.4a), or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident.

c. Any person acting with specific intent of causing injury to himself or others in the operation or use of an automobile shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident arising from such conduct.
Adopted. L. 1985, c. 520, §14. **Amended.** L. 1988, c. 119, §4, effective January 1, 1989; L. 1997, c. 151, §13, effective June 30, 1997.

39:6A-4.6. Medical fee schedules. a. The Commissioner of Banking and Insurance shall, within 90 days after the effective date of P.L. 1990, c. 8, (C. 17:33B-1 et al.), promulgate medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is to be made by an automobile insurer under personal injury protection coverage pursuant to P.L. 1972, c. 70 (C. 39:6A-1 et seq.), or by an insurer under medical expense benefits coverage pursuant to section 2 of P.L. 1991, c. 154 (C. 17:28-1.6). These fee schedules shall be promulgated on the basis of the type of service provided, and shall incorporate the reasonable and prevailing fees of 75% of the practitioners within the region. If, in the case of a specialist provider, there are fewer than 50 specialists within a region, the fee schedule shall incorporate the reasonable and prevailing fees of the specialist providers on a Statewide basis. The commissioner may contract with a proprietary purveyor of fee schedules for the maintenance of the fee schedule, which shall be adjusted biennially for inflation and for the addition of new medical procedures.

b. The fee schedule may provide for reimbursement for appropriate services on the basis of a diagnostic-related (DRG) payment by diagnostic code where appropriate, and may establish the use of a single fee, rather than an unbundled fee, for a group of services if those services are commonly provided together. In the case of multiple procedures performed simultaneously, the fee schedule and

regulations promulgated pursuant thereto may also provide for a standard fee for a primary procedure, and proportional reductions in the cost of the additional procedures.

c. No health care provider may demand or request any payment from any person in excess of those permitted by the medical fee schedules established pursuant to this section, nor shall any person be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules established pursuant to this section.

Adopted. L. 1988, c. 119, §10. **Amended.** L. 1988, c. 156, §4, effective November 14, 1988; L. 1990, c. 8, §7, effective March 12, 1990; L. 1991, c. 154, §6, effective October 5, 1991; L. 1997, c. 151, §33, effective June 30, 1997.

39:6A-5. Payment of personal injury protection coverage benefits. a. An insurer may require written notice to be given as soon as practicable after an accident involving an automobile with respect to which the policy affords personal injury protection coverage benefits pursuant to this act. In the case of claims for medical expense benefits, written notice shall be provided to the insurer by the treating medical provider no later than 21 days following the commencement of treatment. Notification required under this section shall be made in accordance with regulations adopted by the Commissioner of Insurance and on a form prescribed by the Commissioner of Insurance. Within a reasonable time after receiving notification required pursuant to this act, the insurer shall confirm to the treating medical provider that its policy affords the claimant personal injury protection coverage benefits as required by section 5 of P.L.1972, c.70 (C.39:6A-5).

b. For the purposes of this section, notification shall be deemed to be met if a treating medical provider submits a bill or invoice to the insurer for reimbursement of services within 21 days of the commencement of treatment.

c. In the event that notification is not made by the treating medical provider within 21 days following the commencement of treatment, the insurer shall reserve the right to deny, in accordance with regulations established by the Commissioner of Insurance, payment of the claim and the treating medical provider shall be prohibited from seeking any payment directly from the insured. In establishing the standards for denial of payment, the Commissioner of Insurance shall consider the length of delay in notification, the severity of the treating medical provider's failure to comply with the notification provisions of this act based upon the potential adverse impact to the public and whether or not the provider has engaged in a pattern of noncompliance with the notification provisions of this act. In establishing the regulations necessary to effectuate the purposes of this subsection, the Commissioner of Insurance shall define specific instances where the sanctions permitted pursuant to this subsection shall not apply. Such instances may include, but not be limited to, a treating medical provider's failure to provide notification to the insurer as required by this act due to the insured's medical condition during the time period within which notification is required.

d. A medical provider who fails to notify the insurer with 21 days and whose claim for payment has been denied by the insurer pursuant to the standards established by the Commissioner of Insurance may, in the discretion of a judge of the Superior Court, be permitted to refile such claim provided that the insurer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of notification of denial of payment

and shall be made upon motion based upon affidavits showing sufficient reasons for the failure to notify the insurer within the period of time prescribed by this act.

e. For the purposes of this section, "treating medical provider" shall mean any licensee of the State of New Jersey whose services are reimbursable under personal injury protection coverage, including but not limited to persons licensed to practice medicine and surgery, psychology, chiropractic, or such other professions as the Commissioner of Insurance determines pursuant to regulation, or other licensees similarly licensed in other states and nations, or the practitioner of any religious method of healing, or any general hospital, mental hospital, convalescent home, nursing home or any other institution, whether operated for profit or not, which maintains or operates facilities for health care, whose services are compensated under personal injury protection insurance proceeds.

f. In instances when multiple treating medical providers render services in connection with emergency care, the Commissioner of Insurance shall designate, through regulation, a process whereby notification by one treating medical provider to the insurer shall be deemed to meet the notification requirements of all the treating medical providers who render services in connection with emergency care.

g. Personal injury protection coverage benefits shall be overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 60 days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where, within 60 days of receipt of notice of the claim, the insurer notifies the claimant or his representative in writing of the denial of the claim or the need for additional time, not to exceed 45 days, to investigate the claim, and states the reasons therefor. The written notice stating the need for additional time to investigate the claim shall set forth the number of the insurance policy against which the claim is made, the claim number, the address of the office handling the claim and a telephone number, which is toll free or can be called collect, or is within the claimant's area code. For the purpose of determining interest charges in the event the injured party prevails in a subsequent proceeding where an insurer has elected a 45-day extension pursuant to this subsection, payment shall be considered overdue at the expiration of the 45-day period or, if the injured person was required to provide additional information to the insurer, within 10 business days following receipt by the insurer of all the information requested by it, whichever is later.

For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

h. All overdue payments shall bear interest at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money. All automobile insurers shall provide any claimant with the option of submitting a dispute under this section to binding arbitration. Arbitration proceedings shall be administered and subject to procedures established by the American Arbitration Association. If the

claimant prevails in the arbitration proceedings, the insurer shall pay all the costs of the proceedings, including reasonable attorney's fees, to be determined in accordance with a schedule of hourly rates for services performed, to be prescribed by the Supreme Court of New Jersey.

Adopted. L. 1972, c. 70, §5. **Amended.** L. 1983, c. 362, §8; L. 1990, c. 8, §8, effective March 12, 1990; L. 1995, c. 407, §1, effective January 10, 1996, but it shall remain inoperative for 180 days and shall apply to accidents occurring after that date.

39:6A-6. Collateral source. The benefits provided in section 4 [39:6A-4] and section 10 [39:6A-10], shall be payable as loss accrues, upon written notice of such loss and without regard to collateral sources, except that benefits collectible under worker's compensation insurance, employees' temporary disability benefit statutes, medicare provided under federal law, and benefits, in fact collected, that are provided under Federal law to active and retired military personnel shall be deducted from the benefits collectible under section 4 and section 10.

If an insurer has paid those benefits and the insured is entitled to, but has failed to apply for, workers' compensation benefits or employees' temporary disability benefits, the insurer may immediately apply to the provider of workers' compensation benefits or of employees' temporary disability benefits, for a reimbursement of any section 4 and section 10 benefits it has paid.

Amended. L. 1981, c. 95, §1; L. 1983, c. 362, §9, effective October 4, 1983, but inoperative until January 1, 1984.

39:6A-7. Exclusions. Insurers may exclude a person from benefits under section 4 [39:6A-4] and section 10 [39:6A-10], where such person's conduct contributed to his personal injuries or death occurred in any of the following ways:

(1) while committing a high misdemeanor or felony or seeking to avoid lawful apprehension or arrest by a police officer; or

(2) while acting with specific intent of causing injury or damage to himself or others.

b. An insurer may also exclude from section 4 and section 10 benefits any person having incurred injuries or death, who, at the time of the accident:

(1) was the owner or registrant of an automobile registered or principally garaged in this State that was being operated without personal injury protection coverage;

(2) was occupying or operating an automobile without the permission of the owner or other named insured.

Amended. L. 1983, c. 362, §10, effective October 4, 1983, but inoperative until January 1, 1984.

39:6A-8. Tort exemption; limitation on the right to non-economic loss. One of the following two tort options shall be elected, in accordance with section 14.1 of P.L. 1983, c. 362 (C. 39:6A-8.1), by any named insured required to maintain personal injury protection coverage pursuant to section 4 of P.L. 1972, c. 70 (C. 39:6A-4);

a. Every owner, registrant, operator or occupant of an automobile to which section 4 of P.L. 1972, c. 70 (39:6A-4), personal injury protection coverage, regardless of fault, applies, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for noneconomic loss to a person who is subject to this subsection and who is either a person who is required to maintain the coverage mandated by this act, or is a person who has a right to receive benefits under section 4 of P.L. 1972, c. 70 (C. 39:6A-4), as a result of bodily injury, arising out of the ownership, operation, maintenance or use

of such automobile in this state, unless that person has sustained a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment; or

b. As an alternative to the basic tort option specified in subsection a. of this section, every owner, registrant, operator, or occupant of an automobile to which section 4 of P.L. 1972, c. 70 (C. 39:6A-4) applies, and every person or organization legally responsible for his acts or omissions, shall be liable for noneconomic loss to a person who is subject to this subsection and who is either a person who is required to maintain the coverage mandated by P.L. 1972, c. 70 (C. 39:6A-1 et seq.) or is a person who has a right to receive benefits under section 4 of that act (C. 39:6A-4), as a result of bodily injury, arising out of the ownership, operation, maintenance or use of such automobile in this State.

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

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

The tort option provisions of subsections a. and b. of this section as provided in this 1988 amendatory and supplementary act shall apply to automobile insurance policies issued or renewed on or after January 1, 1989 and as otherwise provided by law.

Amended. L. 1983, c. 362, §14; L. 1985, c. 520, §15; L. 1988, c. 119, §6, effective January 1, 1989; L. 1990, c. 8, §9, effective March 12, 1990.

39:6A-8.1. Election of tort option. a. Election of a tort option pursuant to section 8 of P.L. 1972, c. 70 (C. 39:6A-8) shall be in writing and signed by the named insured on the coverage selection form required by section 17 of P.L. 1983, c. 362 (C. 39:6A-23). The form shall state the percentage difference in the premium rates or the dollar savings between the two tort options. The tort option elected shall apply to the named insured and any immediate family member residing in the named insured's household. "Immediate family member" means the spouse of the named insured and any child of the named insured or spouse residing in the named insured's household who is not a named insured under another automobile insurance policy.

b. If the named insured fails to elect, in writing, any of the tort options offered pursuant to section 8 of P.L. 1972, c. 70 (C. 39:6A-8), the named insured shall be deemed to elect the tort option of subsection a. of that section 8.

c. The tort option elected by a named insured for an automobile policy issued or renewed on or after January 1, 1989 shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed form electing the other tort option.

d. The tort option elected by the named insured shall apply to all automobiles owned by the named insured and to any immediate family member who is not a

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

e. Notwithstanding any other provision of law to the contrary, no person, including, but not limited to, an insurer, an insurance producer as defined in section 2 of P.L. 1987, c. 293 (C. 17:22A-2), a servicing carrier or non-insurer servicing carrier acting in that capacity pursuant to P.L. 1983, c. 65 (C. 17:30E-1 et seq.), and the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P.L. 1983, c. 65 (C. 17:30E-1 et seq.), shall be liable in an action for damages on account of the election of a tort option by a named insured or on account of the tort option imposed pursuant to subsection b. of this section or otherwise imposed by law. Nothing in this subsection shall be deemed to grant immunity to any person causing damage as the result of his willful, wanton or grossly negligent act of commission or omission.

In the case of automobile insurance policies in force on January 1, 1989, notice of the tort options available pursuant to the aforesaid section 8 shall be given in accordance with section 17 of P.L. 1983, c. 362 (C. 39:6A-23).

Adopted. L. 1983, c. 362, §14.1. **Amended.** L. 1988, c. 119, §7, effective January 1, 1989.

39:6A-9. Subrogation. Any insurer paying benefits in accordance with the provisions of section 4 [39:6A-4] and section 10 [39:6A-10], personal injury protection coverage, regardless of fault, shall be subrogated to the rights of any party to whom it makes such payments to the extent of such payments. Such subrogated insurer may only by intercompany arbitration or by intercompany agreement exercise its subrogation rights against only the insurer of any person liable for such damages in tort provided, however, that such insurer may exercise its subrogation rights directly against any person required to have in effect the coverage required by this act and who failed to have such coverage in effect at the time of the accident. The exemption from tort liability provided in section 8 [39:6A-8] does not apply to the insurers' subrogation rights. On and after 2 years from the effective date of this act the provisions of this section shall be inoperative.

39:6A-9.1. Insurer recovery. An insurer, health maintenance organization or governmental agency paying benefits pursuant to subsection a., b. or d. of section 13 of P.L. 1983, c. 362 (C. 39:6A-4.3) or personal injury protection benefits in accordance with section 4 or section 10 of P.L. 1972, c. 70 (C. 39:6A-4 or C. 39:6A-10), as a result of an accident occurring within this State shall, within two years of the filing of the claim, have the right to recover the amount of payments from any tortfeasor who was not, at the time of the accident, required to maintain personal injury protection or medical expense benefits coverage, other than for pedestrians, under the laws of this State, including personal injury protection coverage required to be provided in accordance with section 18 of P.L. 1985, c. 520 (C. 17:28-1.4), or although required did not maintain personal injury protection or medical expense benefits coverage at the time of the accident. In the case of an accident occurring in this State involving an insured tortfeasor, the determination as to whether an insurer, health maintenance organization or governmental agency is legally entitled to recover the amount of payments and the

amount of recovery, including the costs of processing benefit claims and enforcing rights granted under this section, shall be made against the insurer of the tortfeasor, and shall be by agreement of the involved parties or, upon failing to agree, by arbitration.

Adopted. L. 1983, c. 362, §20. **Amended.** L. 1985, c. 520, §17, effective January 21, 1986; L. 1990, c. 8, §10, effective March 12, 1990.

39:6A-10. Additional personal injury protection coverage. Insurers shall make available to the named insured covered under section 4 of P.L. 1972, c. 70 (C. 39:6A-4), and, at his option, to resident relatives in the household of the named insured, suitable additional first-party coverage for income continuation benefits, essential services benefits, death benefits and funeral expense benefits, but the income continuation and essential service benefits shall cease upon the death of the claimant, and shall not operate to increase the amount of any death benefits payable under section 4 of P.L. 1972, c. 70 (C. 39:6A-4) and such additional first party coverage shall be payable only to the extent that the claimant establishes that the amount of loss sustained exceeds the coverage specified in section 4 of P.L. 1972, c. 70 (C. 39:6A-4). Insurers may also make available to named insureds covered under section 4 of P.L. 1972, c. 70 (C. 39:6A-4), and, at their option, to resident relatives in the household of the named insured or to other persons provided medical expense coverage pursuant to section 4 of P.L. 1972, c. 70 (C. 39:6A-4), or both, additional first party medical expense benefit coverage. The additional coverage shall be offered by the insurer at least annually as part of the coverage selection form required by section 17 of P.L. 1983, c. 362 (C. 39:6A-23). Income continuation in excess of that provided for in section 4 must be provided as an option by insurers for disabilities, as long as the disability persists, up to an income level of $35,000.00 per year, provided that a. the excess between $5,200.00 and the amount of coverage contracted for shall be written on the basis of 75% of said difference, and b. regardless of the duration of the disability, the benefits payable shall not exceed the total maximum amount of income continuation benefits contracted for. Death benefits provided pursuant to this section shall be payable without regard to the period of time elapsing between the date of the accident and the date of death, if death occurs within two years of the accident and results from bodily injury from that accident to which coverage under this section applies. The commissioner of insurance is hereby authorized and empowered to establish, by rule or regulations, the amounts and terms of income continuation insurance to be provided pursuant to this section.

Amended. L. 1981, c. 533, §1; L. 1985, c. 520, §16, effective January 21, 1986, but inoperative for 90 days following enactment or until adoption of appropriate regulations by the Commissioner of Insurance or the Director of the Division of Motor Vehicles, whichever shall occur first; L. 1990, c. 8, §11, effective March 12, 1990.

39:6A-11. Contribution among insurers. If two or more insurers are liable to pay benefits under sections 4 and 10 [39:6A-4 and 39:6A-10] of this act for the same bodily injury, or death, of any one person, the maximum amount payable shall be as specified in sections 4 and 10 [39:6A-4 and 39:6A-10] if additional first party coverage applies and any insurer paying the benefits shall be entitled to recover from each of the other insurers, only by inter-company arbitration or inter-company agreement, an equitable pro-rata share of the benefits paid.

39:6A-12. Inadmissibility of evidence of losses collectible under personal injury protection coverage. Except as may be required in an action brought pursuant to section 20 of P.L. 1983, c. 362 (C. 39:6A-9.1), evidence of the amounts collectible or paid pursuant to sections 4 and 10 of P.L. 1972, c. 70

(39:6A-4 and 39:6A-10), to an injured person, including the amounts of any deductibles, copayments or exclusions, including exclusions pursuant to subsection d. of section 13 of P.L. 1983, c. 362 (C. 39:6A-4.3), otherwise compensated, is inadmissible in a civil action for recovery of damages for bodily injury by such injured person.

The court shall instruct the jury that, in arriving at a verdict as to the amount of the damages for noneconomic loss to be recovered by the injured person, the jury shall not speculate as to the amount of the medical expense benefits paid or payable by an automobile insurer under personal injury protection coverage to the injured person, nor shall they speculate as to the amount of benefits paid or payable by a health insurer, health maintenance organization or governmental agency under subsection d. of section 13 of P.L. 1983, c. 362 (C. 39:6A-4.3).

Nothing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss sustained by the injured party.

Amended. L. 1983, c. 362, §11; L. 1988, c. 119, §44, effective January 1, 1989; L. 1990, c. 8, §12, effective March 12, 1990.

39:6A-13. Discovery of facts as to personal injury protection coverage. The following apply to personal injury protection coverage benefits:

a. Every employer shall, if a request is made by an insurer or the unsatisfied claim and judgment fund providing personal injury protection benefits under this act against whom a claim has been made, furnish forthwith, in a form approved by the commissioner of insurance, a signed statement of the lost earnings since the date of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

b. Every physician, hospital, clinic or other medical institution providing, before and after the bodily injury upon which a claim for personal injury protection benefits is based, any products, services or accommodations in relation to such bodily injury or any other injury, or in relation to a condition claimed to be connected with such bodily injury or any other injury, shall, if requested to do so by the insurer or the unsatisfied claim and judgment fund against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

c. The injured person shall be furnished upon demand a copy of all information obtained by the insurer or the unsatisfied claim and judgment fund under the provisions of this section, and shall pay a reasonable charge, if required by the insurer and the unsatisfied claim and judgment fund.

d. Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection benefits, such person shall, upon request of an insurer or the unsatisfied claim and judgment fund submit to mental or physical examination by a physician or physicians, or chiropractor or chiropractors. Only a licensed chiropractor may determine the clinical need for further chiropractic treatment by performing a chiropractic examination and this determination shall not depend solely upon a review of the treating chiropractor patient records in cases of denial of benefits. The costs of any examinations requested by an insurer or the unsatisfied claim and judgment fund shall be borne entirely by whomever makes such request. Such examination shall be conducted within the municipality of residence of the injured person. If there is no qualified

physician or chiropractor to conduct the examination within the municipality of residence of the injured person, then such examination shall be conducted in an area of the closest proximity to the injured person's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection coverage policies for mental and physical examinations of those claiming personal injury protection coverage benefits.

e. If requested by the person examined, a party causing an examination to be made, shall deliver to him a copy of every written report concerning the examination rendered by an examining physician or chiropractor, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him, or his representative, concerning any examination, previously or thereafter made of the same mental or physical condition.

f. The injured person, upon reasonable request by the insurer or the unsatisfied claim and judgment fund shall sign all forms, authorizations, releases for information, approved by the commissioner of insurance, which may be necessary to the discovery of the above facts, in order to reasonably prove the injured person's losses.

g. In the event of any dispute regarding an insurer's or the unsatisfied claim and judgment fund's or an injured person's right as to the discovery of facts about the injured person's earnings or about his history, condition, treatment, dates and costs of such treatment, or the submission of such injured person to a mental or physical examination, the insurer, unsatisfied claim and judgment fund or the injured person may petition a court of competent jurisdiction for an order resolving the dispute and protecting the rights of all parties. The order may be entered on motion for good cause shown giving notice to all persons having an interest therein. Such court may protect against annoyance, embarrassment or oppression and may as justice requires, enter an order compelling or refusing discovery, or specifying conditions of such discovery; the court may further order the payment of costs and expenses of the proceeding, as justice requires.

Amended. L. 1993, c. 186, §1, effective July 16, 1993.

39:6A-13.1. Statute of limitations. a. Every action for the payment of benefits set forth in sections 4 [39:6A-4] and 10 [39:6A-10] of this act, except an action by a decedent's estate, shall be commenced not later than 2 years after the injured person or survivor suffers a loss or incurs an expense and either knows or in the exercise of reasonable diligence should know that the loss or expense was caused by the accident, or not later than 4 years after the accident whichever is earlier, provided, however, that if benefits have been paid before then an action for further benefits may be commenced not later than 2 years after the last payment of benefits.

b. Every action by a decedent's estate for the payment of benefits set forth in sections 4 and 10 of this act shall be commenced not later than 2 years after death or 4 years after the accident from which death results, whichever is earlier, provided, however, that if benefits had been paid to the decedent prior to his death then an action may be commenced not later than 2 years after his death or 4 years after the last payment of benefits, whichever is earlier, provided, further, that if the decedent's estate has received benefits before then an action for further benefits shall be commenced not later than 2 years from the last payment of benefits.

39:6A-14. Compulsory uninsured motorist protection. Every owner or registrant of an automobile registered or principally garaged in this state shall

maintain uninsured motorist coverage as provided in P.L. 1968, c. 385 (C. 17:28-1.1).

39:6A-15. Penalties for false and fraudulent representation. In any claim or action arising under section 4 [39:6A-4] of this act wherein any person, obtains or attempts to obtain from any other person, insurance company or unsatisfied claim and judgment fund any money or other thing of value by (1) falsely or fraudulently representing that such person is entitled to benefits under section 4 or, (2) falsely and fraudulently making statements or presenting documentation in order to obtain or attempt to obtain benefits under section 4 or, (3) cooperates, conspires or otherwise acts in concert with any person seeking to falsely or fraudulently obtain, or attempt to obtain, benefits under section 4 may upon conviction be fined not more than $5,000.00, or imprisoned for not more than 3 years or both, or in the event the sum so obtained or attempted to be obtained is not more than $500.00, may upon conviction, be fined not more than $500.00, or imprisoned for not more than 6 months or both, as a disorderly person.

In addition to any penalties imposed by law, any person who is either found by a court of competent jurisdiction to have violated any provision of P.L.1983 c.320 (C.17:33A-1 et seq.) pertaining to automobile insurance or been convicted of any violation of Title 2C of the New Jersey Statutes arising out of automobile insurance fraud shall not operate a motor vehicle over the highways of this State for a period of one year from the date of judgment or conviction.

Amended. L. 1997, c. 151, §9, effective June 30, 1997.

39:6A-16. Construction and severability. This act shall be liberally construed so as to effect the purpose thereof. The provisions of this act shall be severable and if any phrase, clause, sentence or provision of this act is declared to be contrary to the constitution of this state or of the United States or the applicability thereof to any person, government, agency or circumstance is held invalid, the validity of the remainder of this act and the applicability thereof to any person, government, agency or circumstance shall not be affected thereby.

39:6A-17. General repeal of inconsistent statutory provisions. All laws or parts of laws which are inconsistent with the provisions of this act are repealed and superseded to the extent of such inconsistency.

39:6A-18. Reduction of rates. Bodily injury insurance rates in effect on July 1, 1972 shall be reduced by at least 15% and shall become effective upon the effective date of this act.

39:6A-19. Rules and regulations by commissioner of insurance. The commissioner of insurance is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce such reasonable rules and regulations as may be required to effectuate the purposes of this act.

39:6A-20. Powers of commissioner of insurance. For the purpose of implementing and enforcing this act, the commissioner of insurance shall possess all of those general powers as enumerated in Title 17 of the Revised Statutes.

39:6A-21. The New Jersey Automobile Insurance Risk Exchange: membership, board of directors. There shall be created, within 45 days of the operative date of this act, an unincorporated association, to operate on a nonprofit-nonloss basis, to be known as the New Jersey Automobile Insurance Risk Exchange, with its headquarters to be located within the State of New Jersey. Every insurer licensed to transact private-passenger automobile insurance in this

State shall be a member of the exchange and shall be bound by the rules of the exchange as a condition of the authority to transact insurance business in this State. The New Jersey Automobile Full Insurance Underwriting Association created pursuant to section 16 of P.L. 1983, c. 65 (C. 17:30E-4) shall also be a member of the exchange and shall be bound by the rules of the exchange. Any insurer which ceases to transact automobile insurance business in this State shall remain liable for any amounts due to the exchange for business transacted prior to the effective date of its cessation of business in the State.

The exchange shall adopt a plan of operation which shall become effective upon approval by the Commissioner of Insurance. The business affairs of the exchange shall be governed by a board of directors to be comprised of 12 members. Ten members shall be appointed, from a list of names submitted by the Commissioner of Insurance, by the Governor, with the advice and consent of the Senate, of whom two shall represent the Alliance of American Insurers, or its successor organization; two shall represent the National Association of Independent Insurers, or its successor organization; two shall represent the American Insurance Association, or its successor organization: two shall represent the independent companies; one shall be an insurer representative on the board of directors of the New Jersey Automobile Full Insurance Underwriting Association; and one shall be a public member. The Speaker of the General Assembly and the President of the Senate shall each appoint one public member. The board shall elect a chairman who shall be a representative of an insurer domiciled in New Jersey. No insurer shall represent more than one organization on the board of directors of the exchange.

All appointments shall be made for two year terms, except that of the directors first appointed, five of the insurer representatives and one of the public members shall be appointed for one year terms. Vacancies on the board of directors of the exchange shall be filled for the remainder of the term in the same manner as the original appointments. Public members shall be compensated in an amount to be determined by the commissioner, and shall be reimbursed for necessary expenses actually incurred in the performance of their duties. All expenses incurred by the board shall be payable from moneys collected by exchange.

The term of office of any person appointed to the board of directors prior to the effective date of this amendatory and supplementary act, shall be deemed to begin on that date.

Adopted. L. 1983, c. 362, §15. **Amended.** L. 1985, c. 520, §10, effective January 21, 1986.

39:6A-22. Powers of exchange. a. The exchange shall be empowered to raise sufficient monies to (1) pay its operating expenses, and (2) to compensate members of the exchange for claims paid for noneconomic loss, and associated claim adjustment expenses, which would not have been incurred had the tort limitation option provided in subsection b. of section 8 of P.L. 1972, c. 70 (C. 39:6A-8) or, in the case of policies issued or renewed on or after January 1, 1989, subsection a. of section 8 of P.L. 1972, c. 70 (C. 39:6A-8), been elected by the injured party filing the claim for noneconomic loss.

b. In order to enable the exchange to meet its obligations under subsection a. of this section, every member insurer or servicing carrier of the New Jersey Automobile Full Insurance Underwriting Association, shall forward on a monthly basis, within 15 days of the close of the member's accounting month, a charge, to be known as the AIRE charge, in an amount and manner to be prescribed by the board of directors.

AIRE charge amounts required to be paid to the exchange in accordance with this subsection shall, in the case of those amounts determined by the board of

directors to be applicable during the period from July 1, 1984 to the effective date of P.L. 1985, c. 520, be paid to the exchange within 60 days of that date.

A 10% per annum penalty charge shall be assessed by the exchange on any overdue AIRE charges.

c. The board of directors shall establish guidelines by which members or servicing carriers and the exchange may verify the tort limitation options elected by claimants.

d. Moneys collected by or otherwise available to the exchange shall be invested as hereinafter provided in section 12 of P.L. 1985, c. 520 (C. 39:6A-22.1).

e. The exchange shall have such powers as may be necessary or appropriate to effectuate the purposes of the exchange.

Adopted. L. 1983, c. 362, §16. **Amended.** L. 1985, c. 520, §11; L. 1988, c. 119, §31, effective January 1, 1989.

39:6A-22.1. Investment; report. Moneys collected by or available to the exchange shall be invested by the board of directors in accordance with the liabilities of the fund and the statutory limitations on insurer investments in Title 17 of the Revised Statutes; except that the board shall invest moneys of the exchange in New Jersey or in equity securities or debt obligations of businesses incorporated in New Jersey for operations in the State, if at least equivalent to any alternative investment opportunities outside New Jersey, with respect to risk exposure, rates of return and other investment objectives established by the board.

The exchange shall at least annually file a report with the Commissioner of Insurance and the chairmen of the Assembly Banking and Insurance Committee and the Senate Labor, Industry and Professions Committee, or the successors of those committees, setting forth, among other things, the income, claims and investment experience of the exchange. The commissioner shall prescribe, by regulation, the contents and form of the report.

Adopted. L. 1985, c. 520, §12, effective January 21, 1986.

39:6A-23. Written notice - buyer's guide and coverage selection form. a. No new automobile insurance policy shall be issued on or after the 180th day following the effective date of P.L. 1985, c. 520, unless the application for the policy is accompanied by a written notice identifying and containing a buyer's guide and coverage selection form. The buyer's guide shall contain a brief description of all available policy coverages and benefit limits, and shall identify which coverages are mandatory and which are optional under State law, as well as all options offered by the insurer.

The buyer's guide shall also contain a statement on the possible coordination of other health benefit coverages with the personal injury protection coverage options, the form and contents of which shall be prescribed by the Commissioner of Insurance.

The coverage selection form shall identify the range of premium rate credit or dollar savings, or both, and shall provide any other information required by the commissioner by regulation.

The applicant shall indicate the options elected on the coverage selection form which shall be signed and returned to the insurer.

b. (Deleted by amendment, P.L. 1985, c. 520).

c. Any notice of renewal of an automobile insurance policy with an effective date subsequent to July 1, 1984, shall be accompanied by a written notice of all policy coverage information required to be provided under subsection a. of this section.

The Commissioner of Insurance shall, within 45 days following the effective date of this act, promulgate standards for the written notice and buyer's guide required to be provided under this section.

d. Written notices provided by any insurer writing at least 2% of the New Jersey private passenger automobile market, including the New Jersey Automobile Full Insurance Underwriting Association established pursuant to section 16 of P.L. 1983, c. 65 (C. 17:30E-4), shall also contain a statement advising that if the insured or applicant has any questions concerning his automobile insurance policy, including questions as to coverage or premiums, he may contact his producer, or the company directly, by using a toll free number which shall be set forth in the notice. Written notice shall be given to all insureds of any change in the toll free number.

e. A properly completed and executed coverage selection form shall be prima facie evidence of the named insured's knowing election or rejection of any option.

f. Each named insured of an automobile insurance policy shall, at least annually or as otherwise ordered by the commissioner, receive a buyer's guide and coverage selection form.

g. On and after January 1, 1991, each buyer's guide and coverage selection form shall be written in plain language.

Adopted. L. 1983, c. 362, §17; L. 1985, c. 520, §5. **Amended.** L. 1988, c. 119, §35, effective January 1, 1989; L. 1990, c. 8, §13, effective March 12, 1990.

39:6A-23.1. Publication of representative sample of premiums charged in each territory. Within nine months of the effective date of this 1988 amendatory and supplementary act, the Commissioner of Insurance shall cause to have published a representative sample of the premiums being charged by insurers in each territory to facilitate price comparison by insureds or prospective insureds who are seeking new coverage. The commissioner may act to make comparative premium data available to all insureds and prospective insureds.

Adopted. L. 1988, c. 119, §36, effective January 1, 1989.

39:6A-24. Legislative purpose to establish settlement process for automobile tort claims. The purpose and intent of this act is to establish an informal system of settling tort claims arising out of automobile accidents in an expeditious, and least costly manner, and to ease the burdens and congestion of the State's courts.

Adopted. L. 1983, c. 358, §1, effective October 4, 1983, but inoperative until January 1, 1984 or until adoption of rules by the Supreme Court, whichever is later.

39:6A-25. Arbitration of certain claims. a. Any cause of action filed in the Superior Court after the operative date of this act, for the recovery of noneconomic loss, as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2), or the recovery of uncompensated economic loss, other than for damages to property, arising out of the operation, ownership, maintenance or use of an automobile, as defined in that section 2, shall be submitted, except as hereinafter provided, to arbitration by the assignment judge of the court in which the action is filed, if the court determines that the amount in controversy is $15,000.00 or less, exclusive of interest and costs; provided that if the action is for recovery for both noneconomic and economic loss, the controversy shall be submitted to arbitration if the court determines that the amount in controversy for noneconomic loss is $15,000.00 or less, exclusive of interest and costs.

b. Notwithstanding that the amount in controversy of an action for noneconomic loss is in excess of $15,000.00, the court may refer the matter to arbitration, if all of the parties to the action consent in writing to arbitration and

the court determines that the controversy does not involve novel legal or unduly complex factual issues.

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

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

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

Adopted. L. 1983, c. 358, §2, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-26. Statute of limitations tolled. Submission of a controversy to arbitration shall toll the statute of limitations for filing an action until the filing of the arbitration decision in accordance with section 7 [39:6A-30] of this act.

Adopted. L. 1983, c. 358, §3, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-27. Selection of arbitrators. a. The number or selection of arbitrators may be stipulated by mutual consent of all of the parties to the action, which stipulation shall be made in writing prior to or at the time notice is given that the controversy is to be submitted to arbitration. The assignment judge shall approve the arbitrators agreed to by the parties, whether or not the designated arbitrators satisfy the requirements of subsection b. of this section, upon a finding that the designees are qualified and their serving would not prejudice the interest of any of the parties.

b. If the parties fail to stipulate the number or names of the arbitrators, the arbitrators shall be selected, in accordance with the rules of court adopted by the Supreme Court of New Jersey, from a list of arbitrators compiled by the assignment judge, to be comprised of retired judges and qualified attorneys in this State with at least seven years negligence experience and recommended by the county or State bar association.

Adopted. L. 1983, c. 358, §4, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-28. Court rules to govern arbitrator compensation, attorney's fees, offers of judgment. Compensation for arbitrators shall be set by the rules of the Supreme Court of New Jersey. The Supreme Court may also establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings. Attorney's fees may exceed these limits upon application made to the assignment judge in accordance with the rules of the court for the purpose of determining a reasonable fee in the light of all the circumstances.

The Supreme Court may adopt rules governing offers of judgment by the claimant or defendant prior to the start of arbitration, including the assessment of the costs of arbitration proceedings and attorney's fees, where an offer is made but refused by the other party to the controversy.

Adopted. L. 1983, c. 358, §5, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-29. Subpoenas. The arbitrators may, at their initiative or at the request of any party to the arbitration, issue subpoenas for the attendance of witnesses and

the production of books, records, documents and other evidence. Subpoenas shall be served and shall be enforceable in the manner provided by law.
Adopted. L. 1983, c. 358, §6, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-30. Award. Notwithstanding that a controversy was submitted pursuant to subsection a. of section 2 of this act [39:6A-25], the arbitration award for noneconomic loss may exceed $15,000.00. The arbitration decision shall be in writing, and shall set forth the issues in controversy, and the arbitrators' findings and conclusions of law and fact.
Adopted. L. 1983, c. 358, §7, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-31. Confirmation. Unless one of the parties to the arbitration petitions the court, within 30 days of the filing of the arbitration decision with the court, a. for a trial de novo, or b. for the modification or vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title 2A of the New Jersey Statutes, or an error of law or factual inconsistencies in the arbitration findings, the court shall, upon motion of any of the parties, confirm the arbitration decision, and the action of the court shall have the same effect and be enforceable as a judgment in any other action.
Adopted. L. 1983, c. 358, §8, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-32. Trial de novo, arbitrator fees. Except in the case of an arbitration decision vacated by the court or offers of judgment made pursuant to court rules, the party petitioning the court for a trial de novo shall pay to the court a trial de novo fee in an amount established pursuant to the Rules of Court, which shall be utilized by the judiciary to pay the costs of arbitration including the fees of the arbitrators.
Adopted. L. 1983, c. 358, §9. **Amended.** L. 1993, c. 88, §1, effective March 19, 1993.

39:6A-33. Trial de novo, use of prior proceedings. No statements, admissions or testimony made at the arbitration proceedings, nor the arbitration decision, as confirmed or modified by the court, shall be used or referred to at the trial de novo by any of the parties, except that the court may consider any of those matters in determining the amount of any reduction in assessments made pursuant to section 11 [39:6A-34] of this act.
Adopted. L. 1983, c. 358, §10, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-34. Trial de novo, costs. The party having filed for a trial de novo shall be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorney's fees, investigation expenses and expenses for expert or other testimony or evidence, which amount shall be, if the party assessed the costs is the one to whom the award is made, offset against any damages awarded to that party by the court, and only to that extent; except that if the judgment is more favorable to the party having filed for a trial de novo, the court may reduce or eliminate the amount of the assessment in accordance with the extent to which the decision of the court is more favorable to that party than the arbitration decision, and as best serves the interest of justice. The court may waive an assessment of costs required by this section upon a finding that the imposition of costs would create a substantial economic hardship as not to be in the interest of justice.
Adopted. L. 1983, c. 358, §11, effective October 4, 1983, but inoperative until January 1, 1984 or adoption of rules by the Supreme Court, whichever is later.

39:6A-35. Duties of Supreme Court; Administrative Office of the Courts. The Supreme Court of New Jersey shall adopt rules of court appropriate or necessary to effectuate the purpose of this act. The Administrative Office of the Courts shall not later than March 1 of each year file with the Governor and Legislature a report on the impact of the implementation of this act on automobile insurance settlement practices and costs, and on court calendars and workload.
Adopted. L. 1983, c. 358, §12, effective October 4, 1983.

Chapter 6B. COMPULSORY MOTOR VEHICLE INSURANCE.

Section

39:6B-1. Compulsory liability insurance; minimum coverage. Every owner or registered owner of a motor vehicle registered or principally garaged in this state shall maintain motor vehicle liability insurance coverage, under provisions approved by the commissioner of insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle wherein such coverage shall be at least in: a. an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and b. an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and c. an amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any one accident.

39:6B-2. Violations; punishment. Any owner or registrant of a motor vehicle registered or principally garaged in this state who operates or causes to be operated a motor vehicle upon any public road or highway in this state without motor vehicle liability insurance coverage required by this act, and any operator who operates or causes a motor vehicle to be operated and who knows or should know from the attendant circumstances that the motor vehicle is without motor vehicle liability insurance coverage required by this act [chapter] shall be subject, for the first offense, to a fine of not less than $300 nor more than $1,000 and a period of community service to be determined by the court, and shall forthwith forfeit his right to operate a motor vehicle over the highways of this state for a period of one year from the date of conviction. Upon subsequent conviction, he shall be subject to a fine of up to $5,000 and shall be subject to imprisonment for a term of 14 days and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall forfeit his right to operate a motor vehicle for a period of 2 years from the date of his conviction, and, after the expiration of said period, he may make application to the director of the division of motor vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director. The director's discretion shall be based upon an assessment of the likelihood that the individual will operate or cause a motor vehicle to be operated in the future without the insurance coverage required by this act [chapter]. A complaint for violation of this

act [chapter] may be made to a municipal court at any time within 6 months after the date of the alleged offense.

Failure to produce at the time of trial an insurance identification card or an insurance policy which was in force for the time of operation for which the offense is charged, creates a rebuttable presumption that the person was uninsured when charged with the violation of this section.

Amended. L. 1983, c. 141, §1; L. 1987, c. 46, §1; L. 1988, c. 156, §15, effective November 14, 1988; L. 1990, c. 8, §49, effective March 12, 1990; L. 1997, c. 151, §12, effective June 30, 1997.

39:6B-3. The Uninsured Motorist Prevention Fund. The Uninsured Motorist Prevention Fund (hereinafter referred to as the "fund") is established as a non-lapsing, revolving fund into which shall be deposited all revenues from the fines imposed pursuant to section 2 of P.L. 1972, c. 197 (C. 39:6B-2). Interest received on moneys in the fund shall be credited to the fund. The fund shall be administered by the Division of Motor Vehicles in the Department of Law and Public Safety. Moneys in the fund shall be allocated and used for the purpose of the administrative expenses of the fund and enforcement of the compulsory motor vehicle insurance law, P.L. 1972, c. 197 (C. 39:6B-1 et seq.) by the Division of Motor Vehicles.

Adopted. L. 1983, c. 141, §2, effective April 20, 1983.

INSURANCE PROVISIONS

Section

17:28-1.1. Uninsured, underinsured motorist coverage. a. No motor vehicle liability policy or renewal of such policy of insurance, including a liability policy for an automobile as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2), insuring against loss resulting from liability imposed by law for bodily injury or death, sustained by any person arising out of the ownership, maintenance or use of a motor vehicle, shall be issued in this State with respect to any motor vehicle registered or principally garaged in this State unless it includes coverage in limits for bodily injury or death as follows:

(1) an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident, and

(2) an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of more than one person, in any one accident, under provisions approved by the Commissioner of Insurance, for payment of all or part of the sums which the

insured or his legal representative shall be legally entitled to recover as damages from the operator or owner of an uninsured motor vehicle, or hit and run motor vehicle, as defined in section 18 of P.L. 1952, c. 174 (C. 39:6-78), because of bodily injury, sickness or disease, including death resulting therefrom, sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured or hit and run motor vehicle anywhere within the United States or Canada; except that uninsured motorist coverage shall provide that in order to recover for non-economic loss, as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2), for accidents to which the benefits of section 4 (C. 39:6A-4) of that act apply, the tort option elected pursuant to section 8 (C. 39:6A-8) of that act shall apply to that injured person.

All motor vehicle liability policies shall also include coverage for the payment of all or part of the sums which persons insured thereunder shall be legally entitled to recover as damages from owners or operators of uninsured motor vehicles, other than hit and run motor vehicles, because of injury to or destruction to the personal property of such insured, with a limit in the aggregate for all insureds involved in any one accident of $5,000.00, and subject, for each insured, to an exclusion of the first $500.00 of such damages.

b. Uninsured and underinsured motorist coverage shall be provided as an option by an insurer to the named insured up to at least the following limits: $250,000.00 each person and $500,000.00 each accident for bodily injury; $100,000.00 each accident for property damage or $500,000.00 single limit, subject to an exclusion of the first $500.00 of such damage to property for each accident, except that the limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage, respectively.

Rates for uninsured and underinsured motorist coverage for the same limits shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.

c. Uninsured and underinsured motorist coverage provided for in this section shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

d. Uninsured motorist coverage shall be subject to the policy terms, conditions and exclusions approved by the Commissioner of Insurance, including, but not limited to, unauthorized settlements, nonduplication of coverage, subrogation and arbitration.

e. For the purpose of this section, (1) "underinsured motorist coverage" means insurance for damages because of bodily injury and property damage resulting from an accident arising out of the ownership, maintenance or use of an underinsured motor vehicle. Underinsured motorist coverage shall not apply to an uninsured motor vehicle. A motor vehicle is underinsured when the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies available to a person against whom recovery is sought for bodily injury or property damage is, at the time of the accident, less than the applicable limits for underinsured motorist coverage afforded under the motor vehicle insurance policy held by the person seeking that recovery. A motor vehicle shall not be considered an underinsured motor vehicle under this section unless the

limits of all bodily injury liability insurance or bonds applicable at the time of the accident have been exhausted by payment of settlements or judgments. The limits of underinsured motorist coverage available to an injured person shall be reduced by the amount he has recovered under all bodily injury liability insurance or bonds;

(2) "uninsured motor vehicle" means:

(a) a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident;

(b) a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is bodily injury liability insurance in existence but the liability insurer denies coverage or is unable to make payment with respect to the legal liability of its insured because the insurer has become insolvent or bankrupt, or the Commissioner of Insurance has undertaken control of the insurer for the purpose of liquidation; or

(c) a hit and run motor vehicle as described in section 18 of P.L. 1952, c. 174 (C. 39:6-78).

"Uninsured motor vehicle" shall not include an underinsured motor vehicle; a motor vehicle owned by or furnished for the regular use of the named insured or any resident of the same household; a self-insurer within the meaning of any financial responsibility or similar law of the state in which the motor vehicle is registered or principally garaged; a motor vehicle which is owned by the United States or Canada, or a state, political subdivision or agency of those governments or any of the foregoing; a land motor vehicle or trailer operated on rails or crawler treads; a motor vehicle used as a residence or stationary structure and not as a vehicle; or equipment or vehicles designed for use principally off public roads, except while actually upon public roads.

Adopted. L. 1968, c. 385, §2. **Amended.** L. 1972, c. 204, §1; L. 1983, c.65, §5; L. 1983, c. 362, §1, 1988, c. 119, §11.

17:28-1.2. Repealed.

Repealed. L. 1972, c. 204, §2.

17:28-1.3. Coverage for pedestrians. Every liability insurance policy issued in this State on a motor vehicle, exclusive of an automobile as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2), but including a motorcycle, or on a motorized bicycle, insuring against loss resulting from liability imposed by law for bodily injury, death, and property damage sustained by any person arising out of the ownership, operation, maintenance, or use of a motor vehicle or motorized bicycle shall provide personal injury protection coverage benefits, in accordance with section 4 of P.L. 1972, c. 70 (C. 39:6A-4), to pedestrians who sustain bodily injury in the State caused by the named insured's motor vehicle or motorized bicycle or by being struck by an object propelled by or from the motor vehicle or motorized bicycle.

Adopted. L. 1983, c. 362, §19. **Amended.** L. 1985, c. 520, §19.

17:28-1.4. Mandatory coverage. Any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the liability insurance requirements of

section 1 of P.L. 1972, c. 197 (C. 39:6B-1) or section 3 of P.L. 1972, c. 70 (C. 39:6A-3), the uninsured motorist insurance requirements of subsection a. of section 2 of P.L. 1968, c. 385 (C. 17:28-1.1), and personal injury protection benefits coverage pursuant to section 4 of P.L. 1972, c. 70 (C. 39:6A-4) or of section 19 of P.L. 1983, c. 362 (C. 17:28-1.3), whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

Any liability insurance policy subject to this section shall be construed as providing the coverage required herein, and any named insured, and any immediate family member as defined in section14.1 of P.L. 1983, c. 362 (C. 39:6A-8.1), under that policy, shall be subject to the tort option specified in subsection a. of section 8 of P.L. 1972, c. 70 (C. 39:6A-8).

Each insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State and subject to the provisions of this section shall, within 30 days of the effective date of P.L. 1985, c. 520, file and maintain with the Department of Insurance written certification of compliance with the provisions of this section.

"Automobile" means an automobile as defined in section 2 of P.L. 1972, c. 70 (C. 39:6A-2).

Adopted. L. 1985, c. 520, §18. **Amended.** L. 1988, c. 119,§1.

17:28-1.5. Definitions. As used in this act:

"Commissioner" means the Commissioner of Insurance.

"Hospital expenses" means:

a. The cost of a semiprivate room, based on rates customarily charged by the institution in which the recipient of benefits is confined;

b. The cost of board, meals and dietary services;

c. The cost of other hospital services, such as operating room; medicines, drugs, anesthetics; treatments with X-ray, radium and other radioactive substances; laboratory tests, surgical dressings and supplies; and other medical care and treatment rendered by the hospital;

d. The cost of treatment by a physiotherapist;

e. The cost of medical supplies, such as prescribed drugs and medicines; blood and blood plasma; artificial limbs and eyes; surgical dressings, casts, splints, trusses, braces, crutches; rental of wheelchair, hospital bed or iron lung; oxygen and rental of equipment for its administration.

"Medical expenses" means expenses for medical treatment, surgical treatment, dental treatment, professional nursing services, hospital expenses, rehabilitation services, X-ray and other diagnostic services, prosthetic devices, ambulance services, medication and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery pursuant to R.S.45:9-1 et seq., dentistry pursuant to R.S.45:6-1 et seq., psychology pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.) or chiropractic pursuant to P.L.1953, c.233 (C.45:9-41.4 et seq.) or by persons similarly licensed in other states and nations or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

"Motor bus" means an omnibus, as defined in R.S.39:1-1, except that "motor bus" shall not include:

a. Vehicles engaged in the transportation of passengers for hire in the manner and form commonly called taxicab service unless such service becomes or is held out to be regular service between stated termini;

b. Hotel buses used exclusively for the transportation of hotel patrons to or from local railroad or other common carrier stations including local airports;

c. Buses operated for the transportation of enrolled children and adults only when serving as chaperones to or from a school, school connected activity, day camp, summer day camp, nursery school, child care center, pre-school center or other similar places of education, including "School Vehicle Type I" and "School Vehicle Type II" as defined in R.S.39:1-1;

d. Any autobus with a carrying capacity of not more than 13 passengers operated under municipal consent upon a route established wholly within the limits of a single municipality or with a carrying capacity of not more than 20 passengers operated under municipal consent upon a route established wholly within the limits of not more than four contiguous municipalities within any county of the fifth or sixth class, which route in either case does not in whole or in part parallel upon the same street the line of any street railway or traction railway or any other autobus route;

e. Autocabs, limousines or livery services as defined in R.S.48:16-13, unless such service becomes or is held out to be regular service between stated termini;

f. Any vehicle used in a "ridesharing" arrangement, as defined by the "New Jersey Ridesharing Act of 1981," P.L. 1981, c. 413 (C. 27:26-1 et al.); or

g. Any motor bus owned and operated by the New Jersey Transit Corporation.

"Noneconomic loss" means pain, suffering and inconvenience.

"Passenger" means any person occupying, entering into or alighting from a motor bus, except employees of the owner or operator of the motor bus while they are on duty.

Adopted. L. 1991, c. 154, §1.

17:28-1.6. Owner, operator of motor bus to maintain medical expense benefits coverage. a. Every owner, registered owner or operator of a motor bus registered or principally garaged in this State shall maintain medical expense benefits coverage, under provisions approved by the commissioner, for the payment of benefits without regard to negligence, liability or fault of any kind, to any passenger who sustained bodily injury as a result of an accident while occupying, entering into or alighting from a motor bus.

b. Medical expense benefits coverage shall include the payment of reasonable medical expenses in an amount not to exceed $250,000 per person per accident. In event of death, payments shall be made to the estate of the decedent.

Adopted. L. 1991, c.154, §2.

17:28-1.7. Exemption from tort liability for owner, registrant, operator of motor bus. Every owner, registrant or operator of a motor bus registered or principally garaged in this State and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for noneconomic loss to a passenger who has a right to receive benefits under section 2 of this act as a result of bodily injury arising out of the ownership, operation, maintenance or use of a motor bus in this State, unless that person has sustained a personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment.

Adopted. L. 1991, c. 154, §3.

17:28-1.8. Evidence of amounts collectible, paid to injured passenger inadmissible in civil action. Evidence of the amounts collectible or paid to an injured passenger pursuant to section 2 of this act is inadmissible in a civil action against an owner, registrant or operator of a motor bus for recovery of damages for bodily injury by such injured passenger.

The court shall instruct the jury that, in arriving at a verdict as to the amount of the damages for noneconomic loss to be recovered by the injured passenger, the jury shall not speculate as to the amount of the medical expense benefits paid or payable under section 2 to the injured passenger.

Nothing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss sustained by the injured passenger.

Adopted. L. 1991, c. 154, §4.

17:28-1.9. Immunity from liability for certain auto insurance providers. a. Notwithstanding any other provision of law to the contrary, no person, including, but not limited to, an insurer, an insurance producer, as defined in section 2 of P.L.1987, c.293 (C.17:22A-2), a servicing carrier or non-insurer servicing carrier acting in that capacity pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or section 88 of P.L.1990, c.8 (C.17:33B-11), the New Jersey Automobile Full Insurance Underwriting Association created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), the Market Transition Facility created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), and any plan established pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1), shall be liable in an action for damages on account of the election of a given level of motor vehicle insurance coverage by a named insured as long as those limits provide at least the minimum coverage required by law or on account of a named insured not electing to purchase underinsured motorist coverage, collision coverage or comprehensive coverage. Nothing in this section shall be deemed to grant immunity to any person causing damage as the result of his willful, wanton or grossly negligent act of commission or omission.

b. The coverage selection form required pursuant to section 17 of P.L.1983, c.362 (C.39:6A-23) shall contain an acknowledgement by the named insured that the limits available to him for uninsured motorist coverage and underinsured motorist coverage have been explained to him and a statement that no person, including, but not limited to, an insurer, an insurance producer, as defined in section 2 of P.L.1987, c.293 (C.17:22A-2), a servicing carrier or non-insurer servicing carrier acting in that capacity pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or section 88 of P.L.1990, c.8 (C.17:33B-11), the New Jersey Automobile Full Insurance Underwriting Association created pursuant to section 16 of P.L.1983, c.65 (C.17:30E-4), the Market Transition Facility created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11), and any plan established pursuant to section 1 of P.L.1970, c.215 (C.17:29D-1), shall be liable in an action for damages on account of the election of a given level of motor vehicle insurance coverage by a named insured as long as those limits provide at least the minimum coverage required by law or on account of a named insured not electing to purchase underinsured motorist coverage, collision coverage or comprehensive coverage, except for that person causing damage as the result of his willful, wanton or grossly negligent act of commission or omission.

Adopted. L. 1993, c. 156, §1, effective June 29, 1993.