FILE CONTENTS FILE NAME HB 227 ref. 3/30/7

#	Date In	Doc. Type	Date	DESCRIPTION Subject	From	Distrib.
1	3-31-7	Bill	3/30/7	HB 227 3 pgs.	Doc	✓
2	2-5-8	Memo	1-25-7	to all Reps.	Taylor	
3		H Res Ag	2-2-7	RR 87.080 Solutions to Ins. Crisis		
4		Newspaper		We the People		
5	2-5	FN	2-5	DCED		
6	2-8	Memo +	2-8	Bill Review - Staff Harrison		
7	2-8	FN		DCRA		
~~8~~	~~2-8~~	~~PP~~		~~DCRA~~		
A	2/14	Min	2/8	Minutes		
B	2/10	W.R	2/8	Wit Reg		
8	2/17	P~~LTR~~	2/17	AML	Scott B.	
9	2/19	PP.		DCED	Wild	
10	2/19	Bill Amd	2/?	DCED - prop amendments	Wild	
1.1	3/15	CS FN		DCRA		
1.2	3/15	CS FN		DCED - INS		
11	3/15	C Rpt.		4 DP		
12	3/15	Memo		Legal Svcs		
13	3/15	CS		CS final		

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House	C+RA	2-8-88	3:00 p.m.
"	"	3-14-88	3:00 p.m

(DC14) ~~R~~ ~~S~~ ~~N~~

BILL PREPARATION/ACTION*

Bill # HB 227 Date Referred: 3/30/87 Out: / /

Title: Joint Insurance Arrangement

Taylor Referrals: CRA L&C JUD

CONTACTS:**

Name		Organization Address	Phone Attend/Remarks	Date Contacted
DCRA	Plasman	(FN) √2/8 PR 2/1 req.;	2/3 [2/8]; 2/5 req again; 2/8 coming FN	
AML	Burgess 586-1325	2/3 msg; will be there 2/3;	2/17 msg. [2/19];	
DCED - Ins	Linda Wild 2505	PP (FN) 2/3 msg Stephanie Randall; 2/5 Stephanie DCED/on its way;	2/13 FN coming 2/8; 2/5 msg FN; rcvd FN 2/5 3:45; 3/15 FN okay for CS, will call 3/16 to verify, after Koch gets back;	
Taylor		2/3 - [*2/8]; 2/3 bu coming Elena; rcvd bu	2/5 -; 2/17 [2/19];	
Don Koch	Div. Ins. DCED 2515	10 days req. - Elena will face music then no	2/5 PP; 2/17 msg. [2/19];	

****

REMARKS:

ANALYSIS: Completed:

MEETINGS:**

Date	Action
*2/8/8	Needs more discussion. Kohl work w/Taylor. Sched next wk.
3/14/8	CS HB 227 (CRA) 4 DP

*See other side for additional information. CONTAC.TXT

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: MON., March 14, 1988

SIGN-IN

Subject of meeting:

~~HB 429 Tax Exemption/Old Bldgs Removed from Land~~

HB 227 Joint Insurance Arrangements

*~~HB 422 Payment for Purchases; Schools/Municip.'s~~

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Scott Burgess	Juneau	6-1325	AML	Yes
Rep. Taylor				

HOUSE COMMITTEE REPORT

(11) CS HB 227

(5)

Date referred: 3/30/87

FURTHER REFERRALS: Labor & Commerce
Judiciary

MAR 14 1988

DATE: ____________

The Community and Regional Affairs Committee has considered HB 227

"An Act relating to joint insurance arrangements."

RECOMMENDS:

[X] replace with CS HB 227 (CRA)   [ ] the same title

[ ] attached amendment(s)   [ ] a new title

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ____________ Committee

ADOPTS: [ ] ________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[X] zero fiscal notes (2)

[ ] zero with analysis

[ ] same as previous fiscal note published ____________

[ ] same as previous zero fiscal note published ____________

SIGNING DO PASS:

Bette Cato — Cato

J. Collins — Collins

James E. Zawacki — Zawacki

Heinrich Springer — Springer

Springer

SIGNING OTHER RECOMMENDATIONS:

Heinrich Springer

~~Bettye Cato~~

Chairman's signature

(12) CS HB 227

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM March 15, 1988

SUBJECT: Joint insurance arrangements
CSHB 227(C&RA)

TO: Representative Heinrich Springer

FROM: Michael F. Ford
Legislative Counsel M. F.

I wanted to point out two concerns with CSHB 227(C&RA) as passed out of the committee. On page 2, line 16, the word "authorized" should be "unauthorized", in order to allow the board additional authority to purchase insurance. Also, the new language in section 5, is redundant when compared with the last sentence of that section. The last sentence should be deleted.

Please contact me if you have further questions.

MFF:gc
WKG2:54

(1.1) (cs) HB 227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : CS HB 227
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : "An act relating to joint insurance arrangements."
Sponsor : Taylor
Requestor :

Agency Affected : Community & Regional Affairs
BRU :

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Jim Plasman

Prepared by : Jim Plasman, Deputy Director
Phone : 465-4750
Division : Municipal & Regional Assistance
Date :

Approved by Commissioner :
Date :
Agency : Community & Regional Affairs

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ____ of ____

(1.2)(c.) HB 227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS HB 227
PUBLISH DATE: 03/30/87

FISCAL NOTE

REQUEST:

Revision Date: 02/05/88
Title: An Act relating to joint insurance arrangements
Sponsor: Taylor
Requester:

Agency Affected: Commerce & Economic Dev.
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director
Phone: 465-2515
Division: Division of Insurance
Date: February 5, 1988

Approved by Commissioner: J. Anthony Smith
Date: February , 1988
Agency: Department of Commerce and Economic Development

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

dg1/0645K/020588a

File Contents

HB 227 - Joint Insurance Arrangements

No.	Description
1.	Bill - HB 227
2.	To: All Legislators, From: Sen. Kelly Update on Municipal Ins. Pooling Program
3.	Solutions to Insurance Crisis - House Research Request 87.080
4.	"We the People" - publication
5.	Zero Fiscal Note - DCED, Division of Insurance
6.	Bill Review - HCRA Staff, Harrison
7.	DCRA - Zero Fiscal Note
8.	Position Paper - AML
9.	Position Paper - DCED (Commerce)
10.	Bill Analysis/Proposed AMENDMENTS - DCED

HB227.FIL
02/19/88

BILL: HB 227 05:40 PM 03/30/87
NAME:
TITLE: "AN ACT RELATING TO JOINT INSURANCE ARRANGEMENTS."

PRIME SPONSOR: TAYLOR

CURRENT STATUS: (H) CRA STATUS DATE: 03/30/87

03/30/87	(H)	674	READ THE FIRST TIME - REFERRAL(S)
03/30/87	(H)	674	C&RA, LABOR & COMMERCE, JUDICIARY

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: Monday, Feb. 8, 1988

SIGN-IN

Subject of meeting: (B) HB 227

HB 357

*HB 392

*HB 227 Joint Insurance Arrangements

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Rep. Adri Taylor	Here for 3 more months			✓
Scott Burgess		6-1325	AML	Yes ✓
DON KOCH	P.O. BOX D JNU	2577	DIV. OF INSURANCE	YES

ALASKA STATE SENATE

SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS
SENATOR BETTYE FAHRENKAMP
FAIRBANKS

SENATOR RICK UEHLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

fw/CRA

(2) HB 227

JAN 26 1988

MEMORANDUM

TO: All Legislators

FROM: Senator Tim Kelly TDK
Chairman, Senate Labor & Commerce Committee

DATE: January 25, 1988

RE: Update on Municipal Insurance Pooling Program

Enclosed is a summary of the presentation from the Municipal League. I thought you would find this of interest.

Phil Younker, Chairman, Board of Trustees of the Alaska Municipal League Joint Insurance Arrangement, gave a brief presentation regarding pooling insurance. Mr. Younker was joined in the committee meeting by several of the Board of Trustees. Mr. Younker explained that the program came about after legislation was passed by the Legislature permitting the Municipal League to create the joint insurance arrangement. Mr. Younker went on to say that a few years ago, the League attempted to put together an insurance pool. The insurance market had gotten very hard and the availability to the municipalities in Alaska was almost impossible. The price was totally prohibitive in some cases. The League backed off and left it alone for about five years. About four years ago, the market hit one of its all time hard spots. Mr. Younker stated that the municipality he served had a half a million dollar rate increase in one year. Many municipalities in Alaska were forced to give up carrying insurance. The Municipal League again began its efforts to start a joint insurance arrangement. It worked through the staff of the Municipal League and the Board of Directors to promote the legislation and allow the pools to be created in Alaska. After the legislation was adopted, the Municipal League immediately went through the Frank B. Hall Company and began to develop the joint insurance arrangement. In the interim there were municipalities who could not buy insurance, especially some of the rural municipalities, so a joint purchase agreement was formed through the broker at the Old Republican Insurance Company in Pennsylvania. They were able to place 109 municipalities and rural school districts in that program for two years.

Mr. Younker stated that last year the goal was to begin to write insurance July 1, 1987. In the early spring of 1987, the Trustees met and reviewed the program. There was a problem because there were no excess carriers available and there wasn't a way to set up financial reserves. The Board of Trustees decided to delay the pool one year. In less than two weeks after that decision was made, they got a letter from the Old Republican Insurance Company cancelling 109 communities in the state. The League hustled to get the Old Republican Insurance Company to come back into the market in Alaska for at least another year until the pool could be put together. They agree to do that. The League was then able to provide coverage for 52 communities in the state.

Mr. Younker further stated that as of July 1, 1988, the Municipal League will issue its first policies. A solution was found in the excess markets for the financial reserves. The markets are available at reasonable costs. They can reinsure themselves through those excess companies so that they can control their liability. Mr. Younker stated that they can do this at a rate that will save the municipalities money or at least be competitive in the market place.

Mr. Younker stated that the pools throughout the nation have proven that the availability of insurance through the pools have been very stable. He further stated that fifty percent of all public entities in the United States are now under some form of pool. While the availability looks very stable to the municipalities and school districts, the price begins to stable out too. The pool is nonprofit and the money will not be shipped outside. The reserves will be kept in Alaska. As the reserves grow, they will buy less excess coverage and have more total self-control.

Mr. Younker explained that he felt they would be up and operating July 1, 1988.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

③ HB 227

February 2, 1987

MEMORANDUM

TO:

ATTN:

FROM: Penelope Weyhrauch
Legislative Analyst

RE: **Solutions to the Insurance Crisis**
Research Request 87.080

You asked for a discussion of what caused the insurance crisis and a presentation of possible solutions, other than tort reform, to the crisis.

What Caused the Insurance Crisis

The insurance crisis, which began in 1985, is generally considered a crisis because of the lack of available and affordable insurance for some consumers. Most groups which have studied the insurance crisis attribute its occurrence to insurance companies' policy of cash flow underwriting. Cash flow underwriting is the practice of charging inadequate premiums to generate cash for investment, and then relying upon investment returns to offset underwriting deficits.

During the late 1970s and the early 1980s, insurance companies offered premiums at bargain levels to attract more money for investments. Table 1 shows insurance companies' income from underwriting and investments for the years 1981 to 1984. In 1984, interest rates began to fall and investment income no longer offset expenses and underwriting losses. Insurance companies began to increase premiums and to select the risks they would underwrite with greater caution.

Table 1
U.S. Insurance Industry
Underwriting Loss and Investment Return Rates

	1981	1982	1983	1984
Underwriting Loss (in billions of dollars)	6.3	10.3	13.3	21.0
Investment Returns (in billions of dollars)	13.2	14.9	15.8	17.3
Net Gain (Loss)	6.9	4.6	2.5	(3.7)

SOURCE: Council of State Governments, December 1985.

* * * * *

According to a report done by the National Conference of State Legislatures (NCSL), "The large increase in premiums in recent months is due to the fact that premiums paid in the early 1980s did not accurately reflect the real cost of insurance and insurance companies are now trying to make up for losses." The NCSL, which has done extensive research on insurance, also reports that other factors which influenced a legitimate increase in insurance costs include an increase in sales and property values, an expansion in business activities, and general economic growth.[1]

Insurance has also become more difficult to obtain because foreign-based companies who share part of the risk with domestic insurance companies began to withdraw from the U.S. market. The withdrawal of reinsurers was the result of underwriting losses and a strong U.S. dollar.

Insurers say that underpricing in combination with severe claim losses in 1980-1984 caused the current crisis. They claim that the major factor in underpricing was insurers' inability to predict the losses they would have to pay. Insurers have lobbied for tort reform, contending that courts are including coverages never intended in policies and that million dollar jury awards are becoming common, forcing insurers to increase premium costs.

Arguments regarding the need for tort reform in addressing the insurance crisis were considered to be valid by the federal Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in

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[1]Brenda Tolin, "Controlling Liability Insurance Costs: State Initiatives in the Area of Insurance Regulation." <u>State Legislative Report</u>, National Conference of State Legislatures, May 1986.

Insurance Availability and Affordability, in their report of February 1986. The group stated that developments in tort law are a major cause of sharp premium increases. The group further stated that "...there is little to suggest that the recent massive increases in premiums is related solely to these losses, or that the cost of liability insurance will decline significantly as the industry limits its underwriting losses and restores its desired level of overall profitability."

Addressing the Insurance Crisis

Many states have addressed the insurance crisis by enacting **reforms to their civil justice systems** (tort reform), while others have looked at tightening regulations on the insurance industry or establishing new state insurance mechanisms. Attachment A is a summary of 1986 legislative action on the liability insurance issue in the fifty states.

New insurance mechanisms and strategies that some states are considering include allowing the pooling of risks, allowing joint underwriting associations, and developing market assistance plans. These terms are defined beginning on the next page. Attachment B identifies states which are implementing new insurance mechanisms and strategies. **Insurance regulatory reforms** being considered by states include: expanding data submitted by insurers; permitting policy cancellation only with cause; requiring the mandatory notice of nonrenewals, cancellations and rate increases; and instituting studies which estimate tort reform savings. Attachment C identifies states which have instituted insurance regulation reforms.

Alaska Legislation

Tort Reform. The 1986 Alaska Legislature passed a tort reform bill (Ch 139, SLA 86) which, among other things, limits the recovery of damages in a civil action, provides for the reduction of future damages to present value, requires the apportionment of damages for multiple defendants, and limits the joint liability of certain parties. Don Koch, with the Department of Commerce and Economic Development, Division of Insurance, said that while insurance companies have not responded to the tort reforms with rate decreases, there has been an improvement in availability. Mr. Koch believes that most insurance companies will wait to see how the new reforms work before they reduce their rates. Other tort reform legislation that was considered by the legislature but was not passed included a bill on the periodic payment of judgments (HB 490) and a bill on verdicts, damages and liability in civil actions (HB 481).

Insurance Reform. In addition to tort reform legislation recently enacted or introduced in Alaska, the 1985-1986 Legislature also considered the following bills which addressed the insurance crisis:

HB 356	Assignment of Group Insurance Policies
HB 506	Reinsurance Fund and Insurance Pooling
HB 522	Unfair Insurance Claims Settlement Practices
HB 547	Health Insurance Pool for High Risk People
HB 585	Joint Self-Insurance for School Districts
HB 702	State Reinsurance Fund
SB 88	Alaska Life/Disability Insurance Guarantee Assoc.
SB 156	Form of Payment for Insurance Settlements
SB 288	Liquor License Holders' Insurance Corporation
SB 366	Cancellation of Insurance Policies
SB 404	Joint Insurance Arrangements
SB 445	Miscellaneous Changes in Insurance Laws
SCR 20	Availability of Marine Insurance

Two bills listed here, HB 356 and HB 506, were signed into law. The other bills listed here, excluding HB 522, did not progress out of committees in their house of origin. House Bill 522 died in the Senate Rules Committee. Shari Kochman--aide to Representative John Sund, who sponsored HB 522--said that the bill was not high on the list of priorities last year, but that it is considered a priority this year. The bill related to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and medical malpractice insurance for nurses and nurse midwives, among other things. Attachment D includes a complete summary of insurance-related legislation introduced in 1985-1986, additional information on insurance legislation passed during that time and House Bill 522.

Solutions to the Insurance Crisis, Other than Tort Reform

In researching solutions to the insurance crisis, I gathered information from the National Conference of State Legislatures, the Conference of Insurance Legislators, the Congressional Quarterly, the Council of State Governments, and the National Insurance Consumer Organization (NICO). I discussed some alternatives with Don Koch to get his reponse on how these solutions might work in Alaska. The alternatives that follow are gathered from these sources and are divided into two sections: Insurance Mechanisms and Strategies, and Insurance Regulation. The alternatives listed in each section are in no particular order.

Insurance Mechanisms and Strategies

1. **Allowing the State to act as an insurance company** could provide consumers with insurance when none is otherwise available to them. The State could act as an insurance company in a manner similar to

those states that self-insure worker's compensation. Mr. Koch said that implementation of this alternative would put the State in the position of replacing private markets. He said that this would be similiar to the implementation of the Medical Indemnity Corporation of Alaska (MICA).

The MICA is a statutorily created insurance company which insures physicians and hospitals in Alaska (AS 21.88.020--Attachment E). The MICA was capitalized with State funds and operates with low-interest State loans (with a borrowing limit of $6 million). The MICA has already borrowed $5 million, and according to Mr. Koch, has been a financial concern for the State. Mr. Koch said that because MICA was created by the State, the corporation believed it was their obligation to offer insurance to anyone, even very poor risks. Although MICA is now more selective, Mr. Koch is still concerned for MICA's financial stability. If MICA goes out of business, the State will not recover the $5 million loaned to the corporation.

2. **Allowing the State to act as a reinsurance** company could provide insurance companies with a reinsurer when one might otherwise not be available. Reinsurance is the mechanism by which the original insurer transfers part or all of the liability to a second insurer (the reinsurer).

   A system of State or federal reinsurance, similar to that used during the race riots of the 1960s, could be established. During that time, insurers were pulling out of the inner city areas of the nation. The federal government agreed to offer reinsurance for riot damages, and in return, insurers formed pools to assure full coverage (including fire, liability, etc.) in distressed areas. The federal government collected a reinsurance premium and also required the insurers to impose certain safety standards for risks they undertook. The federal government made a $125 million profit operating this insurance program.[2]

   According to Mr. Koch, if the State acts as a reinsurance company, the State would be liable for insurance losses if an insurance company went bankrupt. He believes this would be a risky position for the State to be in, particularly in light of the present budget deficit. He also mentioned that setting aside funds for future liability payments could violate Alaska's constitutional prohibition on the dedication of funds.

3. **Allowing banks to sell insurance** will increase competition in the insurance market and provide more alternatives to consumers. The Florida legislature recently passed legislation which allows

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[2]There is no state, according to Jay Angoff of the National Insurance Consumers' Organization, that is considering acting as a reinsurance company.

financial institutions to enter the reinsurance business. Mr. Koch believes that allowing banks to insure will give them too much leverage. His primary concern is that banks may attempt to coerce people into buying insurance in order to get a loan.

4. **Authorizing the establishment of joint underwriting** associations may aid in providing coverage of risk that individual insurers do not want to cover. Joint underwriting associations (JUAs) are established by state law and require that insurers insure certain risks. There are no JUAs in Alaska, though the automobile and worker's compensation assigned risk plans operate on a similar principle. Mr. Koch believes that establishing JUAs in Alaska will adversely affect the availability of voluntary underwriting in Alaska.

5. **Allowing insurance pools** affords consumers with common insurance needs a way to reduce insurance costs. In a pool, the group is often responsible for a portion of the losses experienced by individuals within the group. Savings result from both partial self-insurance and economies of scale. Tennessee and Michigan indicate that savings have been realized by allowing consumers to pool; buyers have obtained higher amounts of coverage and smaller municipalities have been able to insure at rates lower than those that would have been available to them on an individual basis. However, Utah reports that pooling legislation enacted in 1976 has not changed the availability or affordability of insurance in the state. Alaska allows the pooling of insurance for school districts and municipalities by statute (Ch 136, SLA 86). There have not been any pools set up under the statute, to Mr. Koch's knowledge.

   Another form of "pooling" called "reciprocal insurance" is defined in AS 21.75. By statute, ten or more persons in the state may organize as a reciprocal insurer. Financial accountability is the primary difference between the pooling of insurance and reciprocal insurers. Pools set up under Ch 136, SLA 86 are free from State surveillance; reciprocal insurers in Alaska have certain financial requirements which they must meet--such as adequate capitalization--in order to begin operating. Mr. Koch hopes that if the legislature decides to allow other entities to pool outside of the reciprocal insurer mechanism in AS 21.75, they require such pools to have adequate capitalization and some government regulation.

6. **Establishing Market** Assistance Plans **(MAPS)** will provide information on markets available for high risk and unique consumers. MAPS are developed through state insurance regulatory agencies in an effort to coordinate those seeking insurance and those willing to sell often hard-to-get types of insurance.

The Division of Insurance responded to the unavailability of day care insurance in Alaska by coordinating with the Department of Health and Social Services (DHSS). This effort, the Coordination of Alaska Day Care Insurance Search (CADIS), has been successful in finding appropriate and affordable insurance for day care providers in Alaska. The CADIS worked by making inspection reports completed by the DHSS available to day care providers. Day care providers were then able to provide specific information (compiled by a neutral party) to insurance brokers, who in turn were able to provide the information to insurers. Mr. Koch said that a lack of information was one of the main factors deterring insurers from insuring day care providers. Making inspection reports available to day care providers also provided them with information regarding their deficiencies, which providers often corrected.

7. **Developing an interstate organization** may increase the availability of insurance. NICO suggests that states group together and agree to license insurance companies in their state only if they agree to write insurance in all the states within the group. Western states--such as California, Oregon, Washington and Alaska--could band together to demand insurance availability in their states. Mr. Koch said that some state insurance commissioners are politically motivated and believes it would be difficult to successfully coordinate an interstate insurance organization.

8. **Establishing a State office of insurance consumer advocacy** will provide consumers with an advocate to represent the interests of consumers in regard to rate increases and other insurance issues. Mr. Koch said that the Division of Insurance has a consumer advocacy specialist who is responsible for representing the interests of consumers in insurance issues.

9. **Employing mediation and arbitration** usually reduces the costs of lawsuits, which means lower litigation expenses for insurance companies. This may ultimately lead to lower insurance rates for consumers. The use of alternative forms of dispute resolution, such as mediation and arbitration, may also create incentives to settle disputes at the earliest possible time and to refrain from filing frivolous cases. The State of Michigan recently enacted a law which requires pretrial mediation of all medical malpractice cases and of other personal injury claims for more than $10,000.

10. **Urging the federal government's involvement in insurance regulation** may result in federal legislation addressing the insurance crisis. Both Congress and the Reagan administration have considered federal tort reform legislation. The administration developed tort reform legislation and sent it to Capitol Hill, but Congress has not been willing to act on national insurance legislation. This reluctance to act may be because insurance has traditionally been an area of state regulation. The last major congressional legislation

on the subject was the McCarran-Ferguson Act, which was passed to overcome a 1940 Supreme Court decision authorizing federal regulation of insurance.

One suggestion for federal legislation is to subject the insurance industry to both federal and state antitrust laws. Under the McCarran-Ferguson Act, insurance companies are exempt from federal antitrust rules. This exemption makes it harder to stop companies if they act in concert to raise prices for a particular line of insurance. Another suggestion is that the federal government act as a reinsurer, much the same as it did during the race riots of the 1960s. This alternative has not been seriously considered by Congress.

11. **Authorizing the development of captive insurers** creates another opportunity for self-insurance. Captive insurance companies are subsidiaries set up to provide insurance for the parent corporations. Vermont, Colorado, and Tennessee have all authorized the formation of captive insurers. The Conference of Insurance Legislators believes that use of this vehicle has been effective in regard to the availability and affordability of insurance.

12. **Increasing state regulatory staff** may provide greater surveillance of the insurance industry and result in more consistent insurance rates for consumers. According to the NCSL, many state regulatory agencies are understaffed. State regulatory agencies are often expected to act as a watchdog over insurance companies, act as a consumer advocate, and act as an insurance clearinghouse between both groups, as well as supply a number of other necessary regulatory functions. Mr. Koch would like to increase surveillance over insurance companies and provide additional insurance information to consumers, but said he requires additional staff to do so.

Insurance Regulation

1. **Expanding reporting requirements for insurance companies** may help state regulatory agencies monitor the insurance industry. Insurance companies could provide information such as how much is reserved for claims as compared to the amount actually awarded, and specific information on how civil justice doctrines affect insurance companies.

   State regulatory agencies often have little information from insurance companies which would allow them to understand the industry's methods. Terminology and accounting methods used by the industry often differ from the general understanding of such concepts. For example, reports of industry losses for 1985 have been calculated at anywhere from a $5.5 billion loss to a $1.7 billion profit. The

NCSL believes that the discrepancies are due, in part, to industry accounting methods on certain types of income, including returns on investments.

In a study done by the Conference of Insurance Legislators (applicable sections appear in Attachment F), the State of Oregon reported that there is no lack of available medical malpractice insurance in Oregon. This is primarily due to information obtained from closed claims data filed pursuant to the state's 1975 medical malpractice reform law, which showed loss trends. Distribution of this information aided in establishing a climate where medical malpractice insurance is available in the private market. Tennessee reported that its 1977 law requiring the filing of closed claims data is effective in making medical malpractice insurance available in Tennessee. Several states, including Pennsylvania, Delaware and Lousiana, are increasing their state disclosure requirements. According to Mr. Koch, the State of Alaska has fairly strict disclosure standards as compared with other states.

2. **Requiring cancellation, nonrenewal and policy termination notification** will allow consumers an opportunity to seek other insurance without a gap in insurance coverage. The current lack of available and affordable insurance for some consumers stems from abrupt cancellations and the nonrenewal of coverage by insurers. It has been suggested that insurance companies be permitted to cancel or refuse to renew coverage only in certain clearly defined circumstances, such as the nonpayment of premiums or fraud on the part of the insured. Requirements which address the timely notification of a cancellation or nonrenewal of a policy may cut down on the exposure and/or disruption of business caused by the sudden cessation of liability coverage.

   Oregon, Maryland and Nevada have enacted requirements which address the cancellation and renewal of insurance policies. According to the Conference of Insurance Legislators, it is not known how these requirements affect insurance availability and affordability. The state of Alaska does not currently have requirements which address the timely notification of a policy cancellation or nonrenewal. Commercial policies can be cancelled with a ten-day notice, and often premiums are not returned to the policy holder for 60 to 90 days. As a result, policy holders can experience a gap in insurance coverage and not have sufficient funds to purchase a new policy.

   Mr. Koch said that the Division of Insurance has supported a cancellation/nonrenewal notification bill for the past two years. He believes that a 45 to 60-day cancellation notice with a requirement that the policy continue until the company returns the premium to the policy holder would be a benefit to policy holders.

3. **Amending Alaska law to decrease deposit requirements for companies not licensed in Alaska** will increase the availability of insurance in the state. According to Mr. Koch, AS 21.34.040 allows companies not licensed in Alaska to do business in the state only if they have a deposit of $3.5 million in trust in the United States. Mr. Koch said that only two foreign-based companies can meet this requirement, and 88 other foreign-based companies are barred by this statute from doing business in Alaska. Mr. Koch suggested that a deposit level of $1.5 million, which is the deposit level in most states, be established. Mr. Koch cautioned that amending this law should not include a decrease in the amount of capitalization and surplus funds required to do business in the state.

4. **Requiring insurance companies to itemize state-by-state** expenses may eventually lead to insurance companies basing state rates on what occurs in that state. Mr. Koch is not sure how the logistics of a state-by-state itemization by insurance companies would work. He believes that it would be difficult for some companies to attribute expenses for business conducted in Alaska if only a small percentage of their business is in the state.

5. **Regulating prices** may aid in keeping the insurance industry on an even keel. However, Mr. Koch believes that setting limits on what insurers may charge will also limit the availability of insurance.

6. **Establishing rate regulation laws** could ensure that rates are adequate, reasonable and not unfairly discriminatory. The three types of rating laws are prior approval, file and use, and open competition. Alaska utilizes the most stringent of these approaches, a prior approval law, which requires the Division of Insurance to approve insurance rate changes before they can be implemented.

* * * * *

I hope this information is helpful to you. Attachment F, referenced in this memorandum, contains additional information on states which have implemented some of the alternatives suggested here. Attachment G is a compilation of alternatives on what states should do to address the crisis on what states are considering doing. If you have any questions or require additional information, please contact our agency.

Attachments

ATTACHMENT A -

1986 STATE LEGISLATIVE ACTION:
LIABILITY INSURANCE
(NCSL)

CIVIL LAW + ACTIONS
Liability +
Tort Reform

National Conference of State Legislatures info·key

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<u>Summary</u>

1986 State Legislative Action:

Liability Insurance

The attached summary represents various actions taken or planned for the interim by state legislatures. This list highlights legislative activity and some regulatory initiatives. It is not a comprehensive survey of all enacted legislation.

We have attempted to briefly summarize action taken in legislatures which have already adjourned their 1986 sessions.

This information has been produced through the cooperation of state legislative staff personnel in each state.

Michael Bird/Brenda Trolin
March 10, 1986 (original report)

UPDATE: September 25, 1986

ALABAMA

1986 Session Completed

Enacted

SB 239 - Authorizes two or more counties to establish self-funded insurance funds for the purpose of providing liability protection for member counties and employees acting in the line and scope of their employment.

HB 202 - Requires insurance companies which sell medical liability insurance to report to the appropriate state licensing agencies any judgment or settlement resulting from a claim for personal injury caused by an error, omission or negligence in the performance of professional services.

HB 178 - Grants immunity from suit to the Board of Medical Examiners and the Medical Licensure Commission.

SB 369 - Grants immunity to the Board of Dental Examiners, certain members, agents, employees, consultants and others in connection with hearing investigations.

Legislation Considered - Not Passed

- o House Bills 213-219 comprised a legislative package proposing to:
  - o HB 213 - establish noneconomic damage caps at $250,000; modify the collateral source rule; limit attorneys' contingency fees; permit structured settlements; and alter the standard of proof.
  - o HB 215 - allow introduction into evidence the amount of reimbursed expenses related to a pending civil suit.
  - o HB 217 - amend the "scintilla" rule by increasing the minimum standards of proof needed to be met to bring about a tort liability action.
  - o HB 218 - cap liability for punitive damages in civil actions at $250,000 or the amount of non-punitive damages, whichever was less. Would have changed burden of proof from preponderance of the evidence to beyond a reasonable doubt.

ALASKA

1986 Session Completed

Enacted

SB 377 - [illegible] limits of $500,000 for noneconomic damages for each claim based o[illegible] separate injury or incident. It also:

- Bars a person who suffers personal injury or death from recovering damages if the injury or death occurs in the commission of a felony.

- Provides for itemization of damages between economic and noneconomic losses.

- Provides for periodic payment in certain circumstances.

- Limits liability of members of board of directors of nonprofit corporations; public or nonprofit hospitals; school districts; and citizens advisory committees of a municipality.

- Modifies joint and several liability by making contributory fault (chargeable to the claimant) diminish the amount of damages proportionate to his fault.

- Allows a defendant to introduce into evidence the amount of compensation from collateral sources.

- Establishes prejudgment interest accrual principle.

HB 506 - authorizes municipalities, school districts and regional educational areas to self-insure jointly or purchase coverage on a group basis.

SB 442 - authorizes the Department of Commerce to provide technical assistance to individuals intending to form reciprocal insurers for provision of marine liability insurance.

ARIZONA

1986 Session Completed

<u>Enacted</u>

Seven tort reform bills were sent to the Governor. Five were vetoed. The two which have been enacted into law include:

- HB 2377 - establishes penalties for unjustified actions and raises limits for mandatory arbitration.

- HB 2170 - prescribes liability for liquor to a certain intoxicated person or minor; defines "obviously intoxicated" and prescribes certain liability limitations.

- HB 2375 - modifies insurance regulation and provides for alternative insurance options as follows:

  1. self-insurance for boards of directors of non-profit organizations;

  2. pooling for political subdivisions;

  3. self-insurance for schools;

4. conditions for non cancellation of policies for commercial and industrial risks;

5. a temporary joint underwriting association for all lines;

6. the Department of Insurance to set rules and regulations for disclosure of loss experience.

7. provides authority for profit and non-profit corporations to ensure directors and officers against certain liability.

8. establishes a study commission on insurance.

- HB 2418 - authorizes the establishment of a joint underwriting association for provision of medical malpractice coverage for licensed midwives and registered nurses.

Among the legislation vetoed were bills calling for structured settlements (SB 1378), limitation of joint and several liability (HB 2013), collateral source rule modification (HB 2163) and scheduled contingent attorneys fees (HB 2376).

Interim

A petition to refer to the people a proposal to invoke legislative authority to place caps on damages has received over 200,000 signatures and will appear on the November, 1986 ballot. This petition, Proposition 103, also calls for periodic payments and scheduled attorneys fees.

CALIFORNIA

Under Consideration

- No less than 40 bills have been introduced thus far, including legislation extending all provisions of the state's medical malpractice laws to general tort liability.

- AB 4406 would expand the annual information provided by insurers to theInsurance Commissioner to include total premiums paid (by individual lines of coverage), total reinsurance ceded and premiums paid, claims made or occurence base policy identification, trial and judgment incidence, lines of coverage provided, average settlements and judgments, etc.

- AB 4407 would compel all admitted insurers to offer, in California, every category of direct commercial liability insurance or reinsurance for commercial liability insurance offered by the insurer anywhere in the U.S. Similar provisions are stipulated for surplus line providers.

- AB 3554 would establish a State fund for providing excess liability coverage for local governments and liability insurance for nonprofit organizations.

- o AB 3875 would require 45 days notice of intent to renew a policy conditioned upon a premium increase.

- o SB 1538 seeks to establish an assigned liability risk pool and SB 1581 would create a rate review board.

Previous Action

- o Proposition 51, which passed by a margin of 62% - 38%, will eliminate joint and several liability in all suits seeking noneconomic damages.

- o Restricted attorneys' contingency fees, an issue upheld by the U.S. Supreme Court in 1985.

COLORADO

1986 Session Completed

Enacted

- o SB 67 will reduce awards by sums from specific collateral sources.

- o SB 67 will limit damages for non-economic loss to $250,000 unless a court finds "clear and convincing evidence," in which case up to $500,000 can be awarded. Eliminates awards for derivative non-economic loss except when court finds "clear and convincing evidence" and may award up to $250,000. Provides that an action against an architect, engineer or land surveyor must be certified by similar professionals.

- o SB 69 will make uniform most statutes of limitations at three years. Time limits for bringing tort actions are either 1 or 2 years.

- o SB 70 will eliminate the doctrine of joint and several liability. Limits liability of a defendant to his proportionate share of negligence or fault.

- o SB 76 extends "good Samaritan" laws to limit the liability of individuals, businesses and corporations, directors of non-profit organizations and government entites when they volunteer their time without pay or enforce a policy or regulation to protect another person.

- o SB 86 limits the liability of vendors to $150,000 if liquor has been served to an intoxicated patron or a minor. (Became law without Governor's signature). Actions can be brought only by individuals other than the intoxicated person.

- o SB 1167 permanently extends the division of risk management and its fund which were scheduled to expire 6/30/86. Requires purchase of property or liability insurance policies by state agencies to be approved by the division.

- o HB 1185, 1186 and 1187 limit liability for employers, shareholders, officers and board members resulting from the flow of water from a reservoir. Establishes immunity for state engineers and employees when monitoring reservoirs.

- o HB 1192 limits liability of manufacturers of firearms when products are operated properly.

- o HB 1196 clarifies the immunity of public entities and their employees.

- o HB 1197 ties punitive damages to actual damages in a one-to-one ratio with 2/3rd paid to injured parties and 1/3rd to the state general fund.

- o HB 1201 limits liability for mental health professionals when they use an accepted standard of care but fail to anticipate a patient's violent behavior.

- o HB 1204 permits exemptions to notice of intent to cancel, nonrenew, change benefits or increase rates. Authorizes the Insurance Commissioner to inspect any rate, underwriting rule, policy form or contract and prohibit those deemed hazardous to the public/policyholders. Also requires claims-made policy forms to be filed on or after 1-1-87 except for public entity self-insurance pools.

- o HB 1206 changes the regulation of investments of assets by domestic insurers based upon model NAIC legislation.

- o HB 1205 limits a homeowner's liability when property is entered illegally.

- o 1193 lengthens notice provisions for midterm cancellations of commercial and medical malpractice policies from 45 or 60 days to 90 days. Requires 90 day notice of a unilateral premium increase or coverage reduction and an explanation for said action. Allows cancellations and coverage deductions only with cause.

- o HB 1358 authorizes the Insurance Commissioner to promulgate rules requiring insurers to file supplemental reports or closed - claim files or both for any line, class or subclass, authorizes permissive public hearings to review rates and investigations of availability affordability problems. Sunsets 7-1-89.

CONNECTICUT

1986 Session Completed

Enacted

Public Act 86-338 accomplishes the following:

- o increases from 30 days to 60 days notice of nonrenewal of commercial and personal liability insurance policies.

- o increases from 30 days to 60 days notice of rate or coverage changes for insured risks paying an annual premium of $50,000 or less.

- establishes 8 grounds for cancellation of policies including nonpayment of premiums, substantial loss of reinsurance, material misrepresentations, etc. Cancellations are prohibited unless one or more of these grounds are substantiated.

- requires insurers to submit data on multi peril, general liability and auto coverage lines which includes information comparing aggregate premiums charged and premiums established through rating mechanisms.

Substitute HB 6134 would accomplish the following civil justice changes:

- modify joint and several liability.
- reimpose modified sovereign immunity for municipal governments.
- allow all judgments (currently limited to medical malpractice) to be reduced by sums awarded through collateral sources.
- impose a penalty, which could include defense costs, for filing suits in absence of probable cause.
- impose periodic payments on future economic and noneconomic damages exceeding $200,000.
- schedule attorneys contingency fees (a five-tiered approach commencing at 33% of the first $300,000 and finishing at 10% of any amount exceeding $1.2 million).

- Recovery is not barred if the plaintiff's negligence was not greater than the combined negligence of the person or persons against whom recovery is sought. Damages shall be diminished in proportion to the plaintiff's percentage of negligence. A defendant is liable to claimant for only his percentage of fault. Provision is made for reallocation of uncollectible amounts among defendants.

- Liquor liability
  (a) Sellers (to intoxicated persons) are liable to the person injured for not more than $20,000 or not more than an aggregate of $50,000 to all injured parties. (b) A rebuttable presumption that the seller who sold alcoholic liquor to the intoxicated person is solely liable for any damages payable to the injured person is established.

- Directors, Officers, Trustees
  Any person who serves as a director, officer, or trustee of a nonprofit organization qualified as tax-exempt under IRS provisions and who not compensated for services shall be immune from civil liability for acts or omissions resulting in injury (provided that person is acting in good faith and within the course and scope of his or her official duties).

Previous Action

Established a market assistance plan and statutorily authorized the creation of joint underwriting associations.

Interim Studies

Public Act 86-338 instructs a legislative committee to analyze underwriting standards, classification systems and premium development techniques. It further instructs the committee to make recommendations re: the claims-made form and potential return to prior approval.

DELAWARE

1986 Session Completed

Enacted

- SB 533 - limits personal liability of directors of corporations in cases where directors are accused by shareholders of violating their "duty of care."

- HB 470 requires expanded disclosure of information by property/casualty insurers on a line by line basis for the state of Delaware and as total.

- HB 444 alters cancellation and nonrenewal notice requirements for commercial, municipal and professional liability policies. Notices must be delivered a minimum of 60 days prior to the effective date of the cancellation or nonrenewal. HB 444 prohibits cancellations or nonrenewals unless one or more of ten reasons (such as premium nonpayment or breach of contractual duties) exists. Suspension of insurer cancellation/nonrenewal authority occurs after the Commissioner has deemed unavailability to be critical.

FLORIDA

1986 Session Completed

Enacted

The Tort Reform and Insurance Act of 1986 accomplishes the following:

- It freezes rates for all commercial property and liability coverages in Florida at their May 1, 1986 levels from July 1, 1986 until January 1, 1987;

- It requires a 40 percent roll-back of insurance premiums applicable to one-fourth of the policy-term premium of all commercial liability policies in Florida, pro-rated for the period that such policies are in effect from October 1, 1986 until January 1, 1987; and

- It requires that all commercial property and liability insurers file new rates with the department which are based upon the rates that were in effect on January 1, 1987.

During the period from July 1, 1986 until January 1, 1987, the applicable insurers would be prohibited from cancelling or nonrenewing their insureds at a rate greater than 30 percent of their cancellation and nonrenewal rates for the previous 24 months during any 30 day period. Insurers would be permitted to escape the roll-back provisions to the extent that they could show that the resulting rates would be inadequate or would impair their solvency. Lastly, the rates to be implemented on January 1, 1987 would be based on 1984 rates but would be adjusted upward (or downward) as justified by each insurer to comply with actuarial principles.

- Authorizes financial institutions to participate in reinsurance and Florida insurance exchanges.
- Authorizes commercial liability risks to be group insured.
- Increases the department's rate review and enforcement authority.
- Creates a property/casualty insurance excess profits law.
- Authorizes creation of a commercial property/casualty joint underwriting association.
- Expands the types of health care providers that can self-insure and authorizes CPAs, architects, engineers, veterinarians, land surveyors and insurance agents to self-insure.
- eEtablishes notice requirements for cancellation, nonrenewal and renewal of premium of commercial liability policies.
- Authorizes the creation of commercial self-insurance funds.
- Modifies the application of the doctrine of joint and several liability.
- Limits when punitive damages may be pled, specifies to whom they are to be distributed, and caps the maximum amount of such damages in certain cases.
- Caps noneconomic damages in civil actions at $450,000.
- Requires, under certain circumstances, periodic payment of future damages exceeding $250,000.
- Creates a five member Academic Task Force for Review of the Insurance and Tort Systems.

<u>Interim</u>

Insurers and three industry trade groups are challenging the constitutionality of Florida's new law.

GEORGIA

1986 Session Completed

Enacted

- SB 369 and SB 440 - respectively authorize local governments and school boards to join together for purposes of securing liability insurance.
- HB 1146 - (Act No. 1670) compels plaintiffs found to have filed frivolous suits to pay fees and costs incurred by defendants.
- HB 1185 - (Act No. 1486) regards dismissal of actions for frivolous suits.
- HB 1471 - (Act No. 1619) clarifies sovereign immunity of municipal corporations.
- HB 1549 - (Act No. 1422) and HB 1526 (Act. No. 1621) establish immunity for governmental employees and officials.
- HB 1503 - (Act No. 1456) places tighter restrictions on cancellation and renewal of policies by insurance companies.
- SB 553 - (Act No. 1457) establishes assigned risk pools for certain property/casualty insurance risks and authorizes the insurance commissioner to order a refund of portions of premiums.
- SB 384 - (Act No. 1518) requires insurers to file itemized annual reports.

HAWAII

1986 Session and Special Session Completed

Enacted

- HB 1993-86 - provides for additional exceptions to the state's tort claims act.
- HB 2238-86 - provides a statutory mechanism for ensuring that child care providers will be able to secure liability insurance.
- HB 1695-86 - authorizes mass merchandising of motor vehicle, property casualty insurance to the employees of any employer or to the members of any association or organization under a mass merchandising plan audited by the insurance commissioner.
- HB 1694-86 - authorizes the licensure and operation of pure captive insurance companies and association captive insurance companies.
- HB 2549-86 - allows for the formation of workers' compensation self-insured groups.

- S1-86, special session legislation, accomplishes the following:
- Beginning October 1, 1986, all authorized insurers transacting commercial liability insurance shall implement a 10% rate reduction, excepting motor vehicle and medical malpractice policies (new rates in effect through September 30, 1987). The Insurance Commissioner is empowered to except companies who petition and show that such rates affect solvency of company.
- Beginning October 1, 1987, all authorized insurers providing commercial liability insurance shall implement a 12% rate reduction, excepting motor vehicle policies only effective through September 30, 1988.
- Effective October 1, 1988, all authorized insurers shall implement a 15% rate reduction, excepting motor vehicle policies, effective through September 30, 1989.
- Provides for a closed claim study which could result in rebates or credits to insureds if premiums are excessive.
- Prohibits cancellation of the insured prior to expiration of agreed term or one year from effective date of the policy or renewal, with 8 specific exceptions.
- Provides for nonrenewal of policies if insurer gives 45 days notice with reasons for nonrenewal.
- Provides that insurance contracts shall not cover punitive or exemplary damages unless specifically included.
- Provides for limitation of attorneys' fees for plaintiff and defendant to a reasonable amount (determined by court of jurisdiction).
- Provides that plaintiff or defendant in a settlement may request attorneys' fees be subject to approval of court of jurisdiction.
- Provides that attorneys' contingent fees in any action for medical tort are subject to court of jurisdiction approval.
- Provides that courts may assess either party a reasonable sum for attorneys' fees if the court finds that the party's claim or defense was frivolous (amount shall not exceed 25% of amount originally prayed for).
- Provides for periodic payment of damages in excess of $1,000,000 if defendant is the State, political subdivision of the state or any governmental agency.
- Provides for a statute of limitations on medical torts; no suit can be brought more than 2 years after the plaintiff discovers or should have discovered the injury, and not more than 6 years after the date of the alleged act or ommission causing the injury (exception for minors).

- o Provides for payment of valid liens (arises out of claim for payment made from collateral sources for costs and expenses arising out of injury) from special damages recovered.

- o Abolishes joint and several liability with four specific exceptions.

- o Provides standard for determination of loss or impairment of earning capacity.

- o Places a $375,000 cap on non-economic damages.

- o Establishes a court annexed arbitration program for cases having a probable jury award of $150,000 or less.

- o Abolishes cause of action for serious emotional distress arising from damage to property or material objects.

- o Appropriates $100,000 for subsidy payments covering liability insurance premiums of certain obstetricians and gynecologists.

- o Appropriates $400,000 for the insurance commissioner to carry out purposes of this act and hire additional staff.

- o Appropriates $200,000 to implement court annexed arbitration program.

- o Provides for closed case reports prior to 1988 and 1989 sessions, evaluating the effects of the act along with recommendations for change or repeal of provisions.

- o Provides for the chief justice to prepare a report on court annexed arbitration prior to 1987 regular session.

IDAHO

1986 Session Completed

Enacted

- o SB 1439 - limits dram shop and social host liability.

- o HB 1469 - places limits on attorney contingency fees.

Legislation Considered - Not Passed

A major proposal (SB 1297) calling for establishment of a state insurance fund was among the bills not passing.

ILLINOIS

1986 Session Completed

Enacted

SB 1200, passed on the final day of session, accomplishes the following:

- Joint and several liability. It retains joint liability in cases of medical malpractice, environmental concerns and medical costs. Defendants who are less than 25% at fault for an injury would not be jointly liable for other damages.

- Collateral sources. Any judgment against a defendant would be reduced by any insurance reimbursements to the plaintiff above $25,000.

- Comparative negligence. A plaintiff who is more than 50% responsible for his injury would not be permitted to collect damages in cases of negligence or product liability.

- Municipal immunity. Grants broad immunity from liability suits to municipalities; exempts present or former public employees from punitive damages for actions arising from official duties; exempts a public entity from liability for "hazardous recreational activities" when warning of the hazard is posted.

- Requires insurers to provide loss information with notification of cancellation or at request of insured.

- Requires 90-day notice to the state of termination of any line of insurance in the state.

- Requires 60-day notice to insureds of cancellation, nonrenewal or premium increase of 30% or more.

Previous Action

- In December 1985, the Insurance Department launched a market assistance plan.

- Select Committees in both the House and Senate have examined the affordability/availability issue.

INDIANA

1986 Session Completed

Enacted

- SB 393 authorizes judges to determine what are frivolous suits and to assess fees for such suits.

- SB 394 modifies the states's collateral source rule. Juries are to be instructed not to take into account taxes to be paid on potential awards.

- SB 85, dealing with dram shop, asserts that licensed sellers are not liable for the actions of their customers unless they know customers making purchases are intoxicated.

- HB 1255 allows the state to administer insurance pools for local governments.

- HB 1284 grants volunteers immunity from liability unless the entity which they assist has insurance.

IOWA

1986 Session Completed

Enacted

- Increase the risk manager's duties in relation to providing insurance and risk management assistance to local governmental entities and increase the risk manager's authority to self-insure fidelity exposures for state officials.

- Authorize local governmental entities to enter into alternative financing agreements for insurance, self-insurance, risk sharing or risk pooling, and for the funding of such agreements.

- Create an Insurance Assistance Act, which sets out requirements for data collection and analysis, authorization for certain insurance assistance programs, provision for the financing of the programs and required insurance rate adjustment reviews.

- Modify laws relating to the recovery of damages, including:

  - limiting the liability of the state for financial regulatory activities.

  - exempting social hosts from liability for the service of alcohol to guests.

  - restricting the discovery and use of medical malpractice peer review and disciplinary proceedings.

  - expanding the use of voluntary agreements in medical malpractice cases.

  - creating a retailer's exemption in products liability actions.

  - limiting the liability of muncipalities for licensing and inspection activities.

  - limiting the liability of municipal officers and employees for punitive damages.

  - authorizing the court to stay court actions if past actions by the party have been frivolous.

  - prohibiting the stating of money damages demanded in original pleadings and filings.

  - requiring the certification of pleadings and motions, and providing sanctions for the failure to so certify or for actions in violation of the certification requirement.

- o authorizing the use of structured and other nonlump-sum payment methods by the court.
- o creating a state of the art defense in products liability actions.
- o raising the required findings for the award of punitive or exemplary damages, and creating a new system for the award and disbursement of such damages.

o Establish a Liability and Liability Insurance Study Commission to be comprised of eight legislators, four members of the public or private sector, the Attorney General and the Insurance Commissioner.

Interim

A continuing legislative/public member study will focus on tort liability and insurance issues for which there is insufficient documentation of need and effectiveness. Items likely to receive attention are the collateral source rule, damage caps, attorney fees, premium rollbacks and innovative judicial mediation techniques.

KANSAS

1986 Session Completed

Enacted

o HB 2661 - caps damage awards against health care providers at $1 million. Noneconomic damage awards in these same medical malpractice judgments are capped at $250,000 (subject to cost of living adjustments). Juries must itemize noneconomic damage awards and all settlements are to be paid periodically.

A "pinhole" provision permits claimants to petition courts to award supplemental benefits for medical-related expenses up to a maximum of $3 million.

o SB 512 - prohibits cancellation of business and professional liability insurance policies unless one of 5 causes for cancellation can be determined (as nonpayment of premiums, material misrepresentations, etc.).

This legislation also requires insurers to give policyholders 60 day notice of a decision to nonrenew.

o SB 382 - allows deductible health care provider liability insurance.

o SB 400 modifies civil procedures regarding determination of frivolous suits.

Legislation Which Failed

o SB 540 would have established a $1 million liability cap for various professionals.

Interim

An interim study on liability insurance has been commenced.

KENTUCKY

1986 Session Completed

Enacted

- SB 309 - will permit the Insurance Commissioner to establish a voluntary risk sharing association for hard-to-get lines of commercial liability coverage.

Legislation Considered - Not Passed

- Among dozens of introduced bills which did not pass was legislation capping awards, providing for structured settlements, modifying the collateral source rule and providing changes in the areas of medical malpractice.

Interim

Legislative leadership authorized the creation of a task force to review the entire issue including authority to investigate the State Insurance Department and the insurance industry.

LOUISIANA

1986 Session Completed

Enacted

Act 18 - Provides that those who sell, serve or furnish alcoholic beverages are generally not civilly liable for damages caused by purchasers and those served.

Act 111 - Relative to joint self-insurance programs by local governmental subdivisions.

Act 473 - Relative to the funding and operation of the Department of Insurance, to establish the budget units of the Department, to create a special fund to provide monies for operation of the department.

Act 499 - Requires that written notice of partial settlement of medical malpractice claims be sent to the attorney general.

Act 548 - Requires property and casualty insurers to provide additional information in their annual reports.

Act 641 - Authorizes governmental subdivisions to form, join and participate in interlocal risk management groups.

Act 662 - Authorizes sheriffs and others to form an interlocal risk management agency.

Act 754 - Prohibits midterm cancellation or rewriting of insurance.

Act 830 - Empowers the attorney general to represent consumers in all proceedings before the Insurance Rating Commission.

Act 843 - Authorizes the Louisiana Insurance Rating Commission to use subpoenas and other methods of discovery.

Act 857 - Requires increased data reporting to the commissioner of insurance.

Act 902 - Allows statewide professional, trade and occupational associations to establish one or more professional or public liability trust funds without such funds being deemed insurance.

Act 952 - Establishes a special committee to study the affordability and availability of liability insurance. Provides for limited civil liability in connection with hazardous waste and asbestos abatement and cleanup.

MAINE

1986 Session Completed

Enacted

- Public Law 671 prohibits midterm cancellations unless cause (such as nonpayment of premiums, fraud, breach of contract, potential insurer insolvency, etc.) can be confirmed. Notice of cancellation must be made 10 days prior to the cancellation. Notice of a nonrenewal must be made 30 days prior to a policy's expiration date. Policyholders can request that the Superintendent of Insurance verify that the insurer has established cause for the nonrenewal.

- LD 2080 grants immunity to servers unless minors they serve can prove they were negligently served. Servers who are negligent or reckless in serving minors or visibly intoxicated adults could be sued. Per occurrence caps of $250,000 on awards against alcohol servers are established. These caps exclude medical care and treatment expenses.

- Public Law 713 authorizes political subdivisions to participate in public self-funded pools.

- Public Law 804 shortens statute of limitations for suits related to medical and legal professional liability

Legislation Considered - Not Passed

LD 2053 would have given the Insurance Commissioner authority to establish a joint underwriting association for provision of liability coverage for day care operators, public entities, liquor retailers and municipalities.

Interim

An interim commission comprised of legislators, legal and insurance representatives will explore tort liability.

MARYLAND

1986 Session Completed

Enacted

- o Awards for noneconomic damages would be capped at $350,000 per SB 558.
- o Prior approval of premium rates would not be required for three additional years per HB 329.
- o SB 600 provides personal immunity for directors of charitable organizations provided the organization itself is insured.
- o SB 899 will require that personal lines providers make coverage available to licensed operators of in-home day care facilities.
- o SB 1015 authorizes pooling and self-insuring for certain types of casualty risks, particularly local governments and nonprofit organizations.
- o SB 379 permits a CCUA (Commercial Casualty Underwriting Association - a private association comprised of all Maryland licensed insurers) to write insurance for "subpools" (e.g., day care centers) upon the Insurance Commissioner's determination that commercial insurance is unavailable.

Interim

A Joint Task Force is exploring the feasibility of establishing a catastrophic loss fund to cover catastrophic losses for all commercial casualty lines. The task force is also examining the possibility of establishing a Maryland Reinsurance Exchange.

MASSACHUSETTS

Enacted

- o HB 6172 accomplishes the following regarding medical malpractice:
  - o establishes an independent medical review board comprised of disciplinary and risk management units and vested with subpoena powers.
  - o requires medical malpractice insurers and tribunals to report final disposition of medical malpractice cases.
  - o eliminates the collateral source rule and establishes a mechanism to have awards itemized.

- establishes a $500,000 cap on general noneconomic damages except where plaintiff is substantially impaired or disfigured.

- schedules attorneys fees (40% of first $150,000 down to 25% of excess over $500,000).

- amends the outside statute of limitations (after date of occurrence which gave rise to an original claim) to 7 years.

- requires the Insurance Commissioner to set final rates and permits imposition of a surcharge on medical malpractice premiums. The maximum amount of coverage for physicians and hospitals is doubled.

- a medical malpractice commission shall study the health insurance industry including premiums, reimbursement practices, feasibility of a patient compensation fund, etc.

- establishes a medical malpractice analysis unit in the Department of Insurance.

MICHIGAN

Enacted

- HB 4550 - prescribes liability for retail liquor licensees under certain circumstances; requires security for that liability and provides procedures, defenses and remedies.

- HB 4676 - health facilities with medical staff, including HMO's, shall report to appropriate licensing boards and to the Department of Health any disciplinary action taken against a member of the medical staff and relevant circumstances.

- HB 5163 - makes uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, when engaged in the exercise or discharge of a governmental function; defines and limits liability; authorizes the purchase of liability insurance; provides for defense of public officers, and their immunity in certain circumstances.

- HB 5154 - provides for a $225,000 limitation on non-economic damages in medical malpractice cases, unless one of the following circumstances exist: death; intentional tort; foreign object wrongfully left in body; injury involves reproductive system; discovery of claim was prevented by fraudulent conduct of health care provider; limb or organ was wrongfully removed; loss of bodily function. HB 5154 also:

  - stipulates that the trier of fact shall itemize damages into economic and non-economic.

  - provides a cost-of-living escalator in the cap which is tied to the annual increase in the consumer price index.

- permits a party named as one of multiple defendants in a medical malpractice case to file an affidavit of noninvolvement.

- requires that plaintiffs and defendants in medical malpractice cases file an affidavit containing a written opinion from a licensed physician, dentist or other appropriate health care provider stating that the claim or defense has merit.

- allows defendant to recover (contribution) from co-defendants any amount for which they may have been liable.

- provides for implementation of pre-trial mediation in all medical malpractice claims, regardless of dollar amount of claim.

- addresses prejudgment and postjudgment interest rates.

- provides that evidence that expense or loss was paid or is payable by collateral source is admissable after the verdict and before judgment is entered; court will be required to determine the amount of expense which has been paid by collateral source and then reduce that amount by an amount equal to the premiums paid for the benefit by the plaintiff, the plaintiff's family or employer.

- joint and several liability - the trier of fact shall determine the total amount of damages and the percentage of total fault of all parties regarding each claim as to each plaintiff, defendant and third party defendant. Then the amount shall be reduced by collateral source payments. If a party's share is uncollectible, then a reallocation of the uncollectible amount occurs (a party shall not be required to pay an amount which exceeds its percentage of fault).

- mandates structured payment provisions if judgment for future damages exceeds $250,000 gross present cash value; then court enters an order that defendant shall satisfy the entire judgment amount, less cost and attorneys fees, by purchase of an annuity contract; requires itemization of past economic and noneconomic damages and future damages.

MINNESOTA

1986 Session Completed

Enacted

HF 1950 contains the following civil justice system modifications:

- imposition of a $400,000 cap on "intangible losses".

- provision for the automatic reduction from judgments of payments made from collateral sources.

- prohibition of victims seeking punitive damages in original complaints.

- allows the court to award costs in frivolous suits.
- exempts future damages from prejudgment interest.

SF 2078 accomplishes the following insurance regulation and provision modifications:

- creates a state risk management fund.
- requires P/C insurers to submit annual reports on liquor and product liability and medical malpractice and any other line designated by the commerce commissioner. These reports shall contain: written and earned premiums, investment income, incurred claims, operating and underwriting gains and losses.
- creates a state-run joint underwriting association (specifically for day care providers, foster homes, group homes and sheltered workshops).
- In determining whether rates are or are not excessive, the commissioner will be authorized to utilize a definition of "less than 5 insurers writing more than 75% of the coverage" as non-competitive.
- SF 1612 - authorizes the state's temporary j.u.a. to issue medical malpractice insurance to hospitals and nursing homes unable to get coverage.

MISSISSIPPI

1986 Session Completed

Enacted

- HB 755 - authorizes the Commissioner of Insurance to establish a plan for the availability of certain general liability insurance policies. In 1985, HB 983 established immunity for government employees and officials and modified sovereign immunity. HB 983 placed a statute of limitation on suits filed against the state.
- SB 2166 - reestablishes sovereign immunity for the state effective July 1, 1987, and for political subdivisions effective October 1, 1987.
- The Mississippi Insurance Commission has imposed a moratorium on p/c rate increases effective through December 30, 1986.

MISSOURI

1986 Session Completed

Enacted

- SB 663 - caps noneconomic damages awardable in medical malpractice suits at $350,000. This legislation also requires certain doctors to carry medical malpractice insurance and adds additional reporting requirements regarding disciplinary actions taken by hospitals against doctors. SB 663 requires submission to court of an affidavit from a licensed health care provider averring that a medical malpractice action is not frivolous.

- o HB 1435 and 1461 - create a "Missouri Public Entity Risk Management Fund" for participating political subdivisions whose contributions will be used to pay insured claims and legal fees for such claims. Coverage for tort claims will cover official actions of employees. A limit of $800,000 is established for payment for any single occurrence. Contribution by political subdivisions will be determined by the Board in accordance with standard rating procedures. The minimum contribution will be $1,000.

- o SB 647 - reestablishes sovereign immunity with several exceptions.

- o SB 701 - updates statutory language of the "FAIR Plan", authorizing that plan to assist people in securing basic property insurance in non-urban areas, and to issue its own policies. Raises coverage limit on commercial property at one location to one million dollars.

MONTANA

1986 Special Sessions Completed

Enacted

- o SB 2 - authorizes bond issues for local government self-insurance funds.

- o SJR 1 - authorizes an interim study commission to review public and private sector problems regarding liability insurance.

- o HB 16 - authorizes the Insurance Commissioner to establish a market assistance plan, and, if necessary, a joint underwriting association for provision of liability insurance coverage.

- o SB 22 - revises limits on tort recovery against public entities.

- o Special session legislation caps government liability at $750,000 per claimant and $1.5 million per incident. Previously enacted statutes on this same matter were found unconstitutional by Montana's Supreme Court.

Legislation Introduced - Not Passed

- o HB 21 would have created a state reinsurance program.

NEBRASKA

1986 Session Completed

- o Established a major study commission to review the scope of the entire issue during the 1986 interim.

NEW HAMPSHIRE

1986 Session Completed

Enacted

HB 513 - will accomplish the following:

- place a $875,000 cap on pain and suffering awards;

- reduce the statute of limitations from six to three years;

- prohibit policy cancellations unless 60 days notice is given.

- permit judges to assess costs and attorneys fees from frivolous lawsuits and frivolous defenses.

- apply liability caps of $500,000 (per occurrence) and $150,000 (per person) to municipalities. When municipalities are found over 50% liable, joint and several liability will apply with only several liability applying when municipalities are 50% or less liable.

- defines "good business practice" for purposes of defense in liquor liability lawsuits. Intoxicated drivers will need to show "gross" negligence in future suits against sellers and servers.

- requires contingency fee agreements to be in writing with final costs set out at the end of litigation. Attorneys will be required statutorily to offer hourly rate and contingency fee options. Judges will be permitted to review contingency fee costs in all judgments exceeding $200,000.

- outlaw punitive damages (existing practice).

- set out the burden of proof in medical malpractice actions.

- limit the liability of directors and officers of charitable organizations and societies.

HB 479 (Chapter 59) - relates to regulation of surplus lines insurance coverage.

HB 414 (Chapter 58) - provides for licensing of insurance consultants.

HB 360 - relates to credits for reinsurance.

Interim

HB 513 - also creates a Tort Reform Commission to evaluate the workability of the new law and to study issues, as the collateral source rule, not resolved in this session. The Commission will report in December, 1986 and December, 1987.

NEW JERSEY

Enacted

SB 1678 - grants immunity to volunteer unpaid athletic coaches provided these individuals have participated in league-established safety and training programs.

Under Consideration

- AB 2400 - 2404 have passed the General Assembly proposing the following: structured settlements for awards exceeding $300,000; a $500,000 per claimant or $1 million per occurrence cap on judgments entered against a public entity; immunity for volunteers and public officials; arbitration for all liability claims of $20,000 or less; rate filings based on New Jersey loss experience; and a graduated cap on "pain and suffering" awards in the private sector. These bills are now before the Senate.

- Assembly Bills 2357-2365 would apply various tort and regulatory reforms in the area of municipal liability. Besides establishing an excess insurance fund, the bills would modify joint and several liability and provide for structured settlements.

- The Senate has put forth two packages. Majority Democrats have developed a major package, SB 2312-2323, of insurance reform bills and selected civil justice reform measures. SJR 40 also calls on the federal government to take over regulation of the insurance industry. Minority Republicans have a six-bill package of insurance and civil justice modifications and reforms. Hearings on liability insurance may occur during the summer.

- S. 1718 would create an excess insurance fund and require all public entities, except the state, to join. All public entities would be assessed premiums and the coverage would be for claims exceeding $500,000 up to $20 million. This legislation has passed the Senate and is before the House Insurance Committee.

- Other Senate legislation seeks to provide indemnification of hazardous waste contractors and modify standards of negligence.

- SB 346 - now in the Assembly, would grant immunity to boards of trustees of nonprofit corporations carrying out their official duties.

Previous Actions

- Counties, municipalities and school boards may self-insure or join together in regional insurance pools.

- The Insurance Commissioner prohibited midterm cancellations and nonrenewals unless notice is given.

- A market assistance plan aimed at making liability insurance available for municipalities, day care centers, taverns and restaurants has been established.

NEW MEXICO

1986 Session Completed

Enacted

HB 178 - provides school districts with insurance coverage at a cost savings and clarifies statutes related to the public school insurance authority.

SB 108 - creates a District Court Arbitration Fund and provides for collection of an arbitration user fee.

HB 317 - extends the coverage which the risk management division is able to provide to school districts through the public school insurance authority.

SB 110 - caps attorneys fees for workers compensation cases at 20% of the first $5,000; 15% of next $5,000 and 10% of remaining benefits.

HB 244 - provides for certain limitations on liability for alcoholic liquor sales or service. Establishes caps of $20,000 for property damage, $50,000 for injury to or death of one person; $100,000 for injury to or death of two or more persons for each transaction or occurrence.

SB 105 - expands the applicability of the self-insurance and risk pooling provisions of the Municipal Code to include other political subdivisions and local public bodies.

Committee substitute for HB 226 - requires most insurers to submit quarterly financial reports to the superintendent of insurance. Based on these reports, the superintendent is required to compile an annual report for legislators.

HB 242 - creates a public child contractor liability fund.

SB 137 - creates a Metropolitan Court Mediation Fund; provides for collection of certain costs to fund mediation programs for certain civil and criminal actions.

Study Groups

- establishing a legislative liability insurance study committee.

NEW YORK

Enacted

Insurance and civil justice reforms are both included in omnibus legislation signed by the Governor in late June. SB 9351-A and A-10663 (Chapter 220, 1986 Session Laws) accomplish the following tort reforms:

- compels courts to offset awards by amounts received from collateral sources (similar 1985 legislation regarding medical malpractice).

- allows recovery of up to $10,000 in court costs and attorneys fees for frivolous suits and defenses in personal injury, property and wrongful death actions.

- establishes "gross negligence" as the determinant of liability of directors, trustees, officers of nonprofits.

The same legislation accomplishes the following insurance reforms:

- creates a flex rating system to replace open, competitive ratemaking. Insurers must file rates to reflect enacted tort reforms within 90 days. The Insurance Department in September, 1986, informed insurers that the net effect of tort reforms would compel reductions ranging from 3% to 20% depending on line of coverage.

- authorizes the Insurance Department to conduct a selected review of rates for the period 6/85 - 6/86. Mandates that every rate filed since 6-1-86 be reviewed.

- the flex rating system includes Commissioner - imposed "bands" on rate increases/decreases by line. If a proposed rate increase/decrease falls within the band, rates are filed and used. If the proposed rates are outside the band, rates are filed and subject to approval. Bands can be changed. Commercial, professional and public entity lines are included in flex-rating (not homeowners or automobile).

- authorizes a discretionary joint underwriting association for troubled commercial, public entity and professional liability lines pursuant to Insurance Department determination of unavailability. Requires establishment of a j.u.a. for public entities by 10-1-86 unless the Department determines that coverage is available.

- prohibits unwarranted midterm cancellations.

- requires P/C policies to extend a minimum of one year.

- prohibits policy cancellations unless warranted (as when there is fraud - nonpayment - material charges, etc.). Lack of reinsurance is not in and of itself a reason to cancel unless solvency is threatened.

- requires at least 60 days notice to not renew or to affectuate a premium increase exceeding 10%.

- enables policyholders to secure claims loss history.

- permits municipalities, school districts and other public entities to form reciprocal insurers.

- permits certain nonprofits and charitable/religious organizations to collectively purchase P/C coverage.

- authorizes, through a "sunshine" provision, the Insurance Superintendent to report financial and loss data and codefendants in suits regarding recreational, childcare, dram shop, municipalities, owners, landlords and tenants. etc.

- expedites access to provision of excess and surplus lines.

- appropriates $3 million to enhance the Insurance Department's regulatory authority.

o A. 10664 and S. 9391A, "toxic tort" legislation (CH. 682, Session Laws 1986) includes the following proposals related to toxic torts and torts generally:

  - extension of statute of limitations for filing toxic tort actions from 3 years after exposure to 3 years after discovering an injury; with one year revival of claims.

  - in personal injury actions, joint and several liability is inapplicable for noneconomic losses if the defendant is less than 51% liable (with some exceptions).

  - authorization of structured settlements when awards exceed $250,000.

  - A. 11584 and S. 9470 (CH. 226, Session Laws, 1986) affect medical malpractice as follows:

    a) allow the Insurance Superintendent to establish medical malpractice rates.
    b) phase in issuance of claims - made policies.
    c) require certificates of merit and encourage arbitration in order to discourage frivolous suits.
    d) enhance examination processes regarding physician misconduct.

NORTH CAROLINA

1986 Regular and Special Session Completed

<u>Enacted</u>

- SB 873 will require insurers to provide additional data based on North Carolina and/or regional experience, to support rate increase requests.

- SB 873 restores the Insurance Commissioner's rollback authority on rates found to be excessive. Challenges to rollback decisions can be made and, when filed, rate amounts purported to be in excess will be placed in an escrow account. Refunds would be made with interest (computed at the prime rate plus 3%).

  The same legislation calls for two non-voting members to serve on the state's Rating Bureau, and places additional burdens on plaintiff's attorneys in proving they have meritorious claims. It requires 45 day notice of policy cancellations, nonrenewals and premium increases and authorizes formation of local government self-insurance pools.

- SB 873 amends rules of civil procedure so that in matters in controversy stemming from all negligent actions where the damages sought exceed $10,000, pleadings for an unspecified amount over $10,000 shall be sought.

- HB 2103 establishes a 1.75% premium tax rate for domestic and foreign insurors, said rate to sunset 1-1-88.

- Authorized the Insurance Commissioner, on a standby basis, to establish joint underwriting associations.

- Authorized the Insurance Commissioner to extend the state's FAIR plan to all areas of the state.

- Called for a referendum on a state radioactive repository site act.

OHIO

Enacted

- HB 875 permits political subdivisions to participate in joint liability insurance pooling arrangements.

- SB 366 grants immunity from civil action damages with specific conditional exceptions, for volunteers of nonprofit or charitable associations. Immunity relates to liability arising from civil actions for injury, death or loss to persons or property.

Under Consideration

- SB 330 has been assigned to a conference committee, conferees have been designated, and an informal review and discussion process will commence in the latter part of September. SB 330 propose the following insurance reforms:

  - requiring advance notice of policy nonrenewals;

  - authorizing the establishment of joint underwriting associations;

  - prohibiting mid-term policy cancellations;

  - permitting banks to invest in the reinsurance market;

  - formalizing mechanisms for existing market assistance plans; and

  - expanding the Insurance Department's powers to include subpoena of insurer records and standby authority for prior approval of rates.

- SB 330 proposes the following civil justice reforms:

  - deducting benefits and/or payments from collateral sources from awards;

  - permitting structured settlements when awards exceed $100,000;

- modifying the allocation of damages under joint and several liability when certain damages are not collectable;
- authorizing hearings to determine if suits are frivolous; and
- authorizing pre-trial settlement offers which would require non-judicial settlement when offers exceed plaintiff's demands.

OKLAHOMA

1986 Session Completed

Enacted

SB [illegible] accomplishes the following insurance regulation changes:

- requires the 10 largest P/C insurers to annually submit reports on premiums, losses, settlements, judicial dispositions, etc. among 11 coverage categories.
- requires the 50 largest P/C insurers to annually submit data on premiums, losses, judgments over $250,000, etc. on a less detailed, more restricted basis than for the 10 largest insurers.
- implements unfair claims settlement practices statutory language and permits the Insurance Commissioner to require periodic reports from violators.

SB 488 accomplishes the following civil justice system changes:

- limits punitive damages to actual damages and applies a stricter standard for justifying consideration of punitive damages.
- allows judges to direct juries to itemize verdicts (constitutional prohibition on a mandate).
- allows prevailing parties to recover up to an aggregate of $10,000 in attorneys fees and court costs in judicially-determined frivolous suits.
- amends the interest payable on actual damages sought from 15% to the T-Bill rate plus 4%.

HB 1983 authorizes the Insurance Commissioner to establish a market assistance plan.

Interim

SB 488 creates an 18-member (10 legislators - 8 public members) Select Committee on Insurance Rates and Tort Claims.

OREGON

Not In Session in 1986

Interim

A liability insurance interim committee has recently and unanimously endorsed a proposal that would make punitive damages non-insurable as a matter of public policy. Additional recommendations may surface in early fall.

PENNSYLVANIA

Enacted

- o HB 1391 provides for 30 day notice of cancellation and 60 day notice of premium increase.

- o HB 1625 provides for immunity for referees.

Under Consideration

- o Senate Bills 1392-95 have been introduced. Collectively, they propose to accomplish the following:

  1) authorize establishment of a joint underwriting association for all lines of unavailable liability coverage.
  2) require 60 days notice of insurance premium rate increases.
  3) require disclosure of insurance company loss experience within the state.
  4) establish a central risk management agency - provide advice to local governments.
  5) establish a joint self-insurance fund for municipalities and authorize cities to join.

- o SB 1513 proposes major medical malpractice modifications.

- o The House has completed a comprehensive hearing process, begun last September, which has looked at key problems, major causes and options to resolve the crisis. Major tort and product liability reform legislation, HB 2425 and 2426, are in committee. The legislature reconvenes in September.

RHODE ISLAND

1986 Session Completed

Enacted

- o S. 2891, Sub B and HB 8534, Sub A - (related to medical malpractice) establish reporting requirements for every insurer providing professional liability insurance to licensed physicians, dentist or dental hygienists as to any settlement or arbitration award of claim or any action for damages for death or personal injury. This legislation also establishes a joint underwriting association for the provision of medical malpractice coverage.

SOUTH CAROLINA

1986 Session Completed

Enacted

- o HB 2266 restores some of the state's sovereign immunity by reestablishing approximately 20 categorical, qualified immunities.

  It also places monetary liability limits on the state and its political subdivisions of $250,000 per incident and $500,000 per occurrence.

Legislation Considered - Not Passed

- o SB 895, originally calling for numerous medical malpractice tort reforms, was revised to limit punitive damages to actual damages; establish preaction discovery and set up a certification process determining whether suits are frivolous. Final passage did not occur.

Previous Action

- o South Carolina's Insurance Commissioner has been empowered to establish a joint underwriting association for any professional group unable to secure liability insurance coverage. This authority was previously restricted to j.u.a. formation for health care providers.

SOUTH DAKOTA

1986 Session Completed

Enacted

- o SB 280 which will require pre-discovery, fact-finding hearings before a judge to prove, by clear and convincing evidence, that there was willful and malicious conduct in order to file for punitive damages.

- o SB 281 authorizes structured settlements for awards exceeding $100,000.

- o SB 282 will cap medical malpractice awards at $1 million. (Includes all recoverable damages).

- o SB 216 permits establishment of self insurance pools for public entities for purposes of securing liability coverage. This can occur only if a master insurance contract is not purchased.

- o HB 1106 revises provisions relating to property insurance policy nonrenewal notice. Increases notice time from 20 days to 30 days, effective 7-1-88 and from 20 days to 45 days for the period 7-1-86 to 6-30-88.

- Waiver of sovereign immunity for public entities, other than the state, will occur only to the extent that said entities have purchased liability coverage (SB 233).

Legislation Considered - Not Passed

Bills which were introduced but were not passed included legislation abolishing the doctrine of joint and several liability (HB 1261), limiting punitive damages (SB 269), reforming the tort system as it pertains to public entities (HB 1278), mandating an offset for payment of special damages in certain circumstances (SB 279), creating a joint underwriting association for medical malpractice (HB 1269) and requiring insurers to file case reports with the Insurance Division (HB 1281).

Interim

1986 Summer Interim Judiciary Committee - A study of the entire area of liability insurance, including relative legislation considered by the Sixty-First Legislative Session; a review of what information is needed by the division of insurance to regulate insurance companies' rates; and a study of alternative ways to regulate costs of defending tort claims lawsuits. The committee has met once with a second scheduled for early July.

TENNESSEE

1986 Session Completed

Enacted

- HB 1582 (Public Chapter No. 656) will prohibit cancellation of or failure to nonrenew commercial risk insurance policies with some exceptions.

- Immunity from suit for directors of nonprofit organizations (exempt from federal taxation), of governing bodies of electrical cooperatives and electrical membership corporations is authorized in HB 1940.

- Regarding dram shop, HB 1199 prohibits any judge or jury from pronouncing any damages against an alcohol seller unless it is ascertained that the sale of intoxicating beverages was the proximate cause of subsequent injury or death.

SB 1702 (Public Chapter No. 726) - all members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity, created by public or private act, whether compensated or not, shall be immune from suit arising from activities of the entity unless conduct amounts to willful, wanton or gross negligence.

SB 1854 (Public Chapter No. 730) - provides immunity for local educaton agency employees, including board members, superintendents, teachers and nonprofessional staff members for suits arising from detection, management or removal of asbestos.

HB 1199 (Public Chapter No. 519) - prohibits any judge or jury from pronouncing damages against an alcohol seller unless it is ascertained that the sale of intoxicating beverages was the proximate cause of subsequent injury or death.

SB 1458 - (Public Chapter No. 535) raises the capital and surplus requirements of insurance companies in Tennessee.

Interim

SR 43 directs a special committee to study liability insurance issues including (but not limited to) availability, coverage cost, liability limits and litigation.

TEXAS

Not In Regular Session in 1986

Interim

- o A market assistance plan for hard-to-get lines of liability coverage has been established.
- o A joint legislative committee on Liability Insurance and Tort Law and Procedure Reform has been established and conducted several meetings. Additional meetings are currently scheduled with November 15, 1986 targeted as a final reporting date.
- o The State Board of Insurance has initiated a closed claims survey that will review about 73% of the liability coverage provided in the state for the years 1983-1985.
- o Examination of the state's ability to create a state insurance pool for governmental units is underway by the State Board of Insurance.

UTAH

1986 Session Completed

Enacted

- o Repealed joint and several liability (SB 64).
- o Established a $100,000/$300,000 cap on dram shop liability and set a 2-year statute of limitation (SB 182).
- o Authorized establishment of market assistance plans and joint underwriting associations (SB 91).
- o SB 111 limits noneconomic damages to $250,000 in medical malpractice judgments while SB 155 establishes structured settlements for medical malpractice judgments only.

- Limited directors' and officers' liability through revamped standards of care (SB 214). Governor vetoed.

Legislation Considered - Not Passed

- Modifications to statutes of limitation, mandatory arbitration and establishment of pretrial screening panels were introduced but failed to pass.

Interim

- An interim committee tackled this subject in 1985 and another has been formed for 1986.

VERMONT

1986 Session Completed

Enacted

- Pooling by municipal governments is authorized via HB 8641.
- HB 8657 empowers the Insurance Commissioner to establish a joint underwriting association for a broad array of hard-to-get lines of liability insurance coverage.

Legislation Introduced - Not Passed

Unsuccessful attempts to cap attorneys' contingency fees and limit noneconomic damages were made.

Prior Action

A market assistance plan was established in January.

VIRGINIA

1986 Session Completed

- No major action in 1986 session.
- An interim study committee has been established and is reviewing the entire liability insurance issue.
- A joint underwriting association for provision of medical malpractice coverage has been created by the State Corporation Commission.

WASHINGTON

1986 Session Completed

Enacted

SB 4630 - accomplishes the following:

- Caps, noneconomic damages per a statutory formula. The estimated cap range is \$117,000 - \$493,000. The formula is .43 x average annual wage (currently \$18,029) x plaintiff's life expectancy (no less than 15 years; use Insurance Commissioner's mortality table).

- Abolishes claims involving joint and several liability except for the following:

  a) hazardous waste and solid waste disposal sites;
  b) business torts; and
  c) manufacturers of generic products.

- Accelerates the statute of limitations for contractors.

- Authorizes structured settlements for all judgments exceeding \$100,000.

- Establishes a voluntary market assistance plan requiring participation of 25 admitted or non-admitted companies.

HR 2080 and 2083 - respectively authorize the establishment of a joint underwriting association and self-insurance mechanism for provision of liability coverage for day care providers.

SB 3636 - enables the Insurance Commissioner's office to be funded from dedicated rather than General Revenue sources.

HB 1972 - authorizes local governments to self-insure.

SB 4541 - requires prior notice to policyholders of cancellation and further requires 20 days prior notice of rate and form changes before policy renewal anniversary dates.

Legislation Considered - Not Passed

Among the bills failing to pass was legislation giving the Insurance Commissioner additional time to review rate applications and to base rates on Washington State experience; authorizing establishment of joint underwriting associations for any hard-to-get line of coverage; memorializing Congress to modify the McCarran-Ferguson Act; and compelling all insurance companies to file all financial information with the National Association of Insurance Commissioners.

WEST VIRGINIA

1986 Session and Special Session Completed

Enacted

- Regular session legislation (SB 714) caps noneconomic damages awards in medical malpractice judgments at \$1 million per incident. HB 149 (special session) permits a judge, with discretionary power, to instruct a jury regarding these caps.

- SB 714 prohibited insurers from cancelling or nonrenewing health care provider policies unless insurers could prove that the risk of loss had increased or that they could not back up their own risk with reinsurance. HB 149 removes most causal and durational restrictions on nonrenewals.

- SB 714 required expanded disclosure of claims, investments, judicial dispositions, etc. related to West Virginia. The legislation further required the Insurance Commissioner to conduct public hearings whenever rates were expected to increase 10% or more with verification of past loss experience in medical malpractice settlements and judgments required. HB 149 reduced reporting requirements to profit and loss, reserve and surplus data on an aggregate rather than company basis. Public hearings on rate increases exceeding 10% must be held within 60 days or the rate filing.

- HB 149 eliminates joint and several liability for individual defendants who are 25% or less responsible.

- Other special session legislation, SB 3, authorizes the following regarding the state's political subdivisions:

  - individual or collective self-insurance; and
  - purchase of liability insurance through the State Board of Insurance and Risk Management.

- SB 3 also limits noneconomic damages in suits involving political subdivisions to $500,000, deploys the 25% rule (see HB 149 above) regarding joint and several liability and lays out standards for liability immunity of political subdivision employees.

Interim Studies

A legislator/citizen interim committee on liability insurance will be organized in late June.

WISCONSIN

1986 Regular Session and Special Session Completed

Enacted

The legislature approved medical malpractice legislation during its special session. Major ingredients of the medical malpractice legislation include:

- $1 million cap on noneconomic damages;

- sliding scale for attorney contingency fees (from 1/3 of first $1 million if proving negligence, to 25% of damages if defendant admits negligence, to 20% of damages exceeding $1 million).

- elimination of pretrial screening panels to be replaced with a voluntary, non-binding mediation process.

Special session legislation (AB 8) also accomplishes the following:

- o authorizes the establishment of risk sharing pools for liability insurance coverage for public and private sector entities. Risk sharing pools cannot be authorized to produce coverage for risks the Insurance Commissioner determines to be "uninsurable".

- o increases minimum capital and surplus requirements.

- o increases, from 30 days to 60 days, the notice period for mid-term cancellations.

Interim

A final report from an Insurance Commissioner's Task Force on Property/Casualty Insurance was due in July, 1986. The final report will include recommendations. Three subcommittees, on Civil Justice Reform, Pools and MAPs and Industry Actions, have already reported.

The Legislative Council is considering an interim study of the civil justice system.

WYOMING

1986 Session Completed

Enacted

- o HB 12 will modify the standards of care used to determine medical malpractice.

- o HB 13 will remove individuals legally supplying alcoholic beverages from liability for resultant damages caused by individuals consuming the alcoholic beverages.

- o HB 14 will authorize courts to determine frivolous suits. Plaintiffs in frivolous suits could be made liable for payment of reasonable court expenses and attorneys fees.

- o HB 15 provides for an affidavit of non-involvement as a summary means to obtain early dismissal of suits against defendants who are clearly not involved in the occurrence giving rise to the tort claim.

- o HB 38 creates statutory definitions of unfair insurance claims practices.

- o HB 39 grants any officers, commissioners or board members of government and nonprofit entities immunity from liability for any action, omission or inaction of the respective government or corporate body.

- o HB 40 establishes pretrial screening panels for medical malpractice suits.

- o HB 44 modifies the state's sovereign immunity and liability limits.

- HB 59 makes certain entities not liable for injuries incurred at amateur rodeos unless there is willful neglect.

- SF 17 repeals the doctrine of joint liability.

- SF 21 and SF 26 respectively create state and local government self-insurance programs and establish pools for state and local government entities.

- SF 69 prohibits midterm cancellations with some exceptions, such as nonpayment of premiums. Authorized cancellations must be preceded by a 10-45 day notice to policyholders. A 45-day notice with statement of reasons is required for nonrenewals.

Legislation Considered - Not Passed

Bills restricting punitive damages, capping awards, limiting noneconomic damages, restricting attorneys fees, placing moratoria on suits against the state and authorizing joint underwriting associations were introduced but did not pass.

ATTACHMENT B

OPTIONAL INSURANCE MECHANISMS

A) OPTIONAL INSURANCE MECHANISMS

I. SELF-INSURE AND/OR GROUP PURCHASE

ARIZONA	(Nonprofits; Municipalities; Schools)
GEORGIA	(Municipalities; School Boards)
INDIANA	(State-Administered Pools)
IOWA	(Local governments; public sector entities)
MARYLAND	(Local governments; Nonprofits)
MINNESOTA	(State Risk Management Fund)
SOUTH DAKOTA	(Public Entities)
VERMONT	(Municipal governments)
WASHINGTON	(Day care providers; Local governments)
WISCONSIN	(Risk Retention Pooling - Public/Private Entities)
WYOMING	(State and local governments)

II. JOINT UNDERWRITING ASSOCIATIONS

ARIZONA	
HAWAII	(Child care providers)
MINNESOTA	
MONTANA	
NORTH CAROLINA	
VERMONT	
UTAH	
WASHINGTON	

III. MARKET ASSISTANCE PLANS

Majority of States

IV. CAPATIVE LICENSURE/OPERATION

HAWAII

Prepared by NCSL, 1986

ATTACHMENT C

INSURANCE REGULATION REFORM

B) INSURANCE REGULATION REFORM

I. EXPANSION OF DATA SUBMITTED BY INSURERS

ALABAMA
ARIZONA
COLORADO
CONNECTICUT
GEORGIA
WEST VIRGINIA

II. PERMIT POLICY CANCELLATION ONLY WITH CAUSE

ARIZONA
CONNECTICUT
KANSAS
TENNESSEE
MAINE
WEST VIRGINIA
WYOMING

III. MANDATORY NOTICE OF NONRENEWALS/CANCELLATION/RATE INCREASES

COLORADO	
CONNECTICUT	(60 days)
KANSAS	(60 days)
MAINE	(30 days)
NEW HAMPSHIRE	(60 days)
WASHINGTON	(20 days)
WISCONSIN	(60 days)
WYOMING	(10-45 days)

IV. ESTIMATE TORT REFORM SAVINGS

WASHINGTON

ATTACHMENT D

LEGISLATION SUBJECT SUMMARY

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
HYDROELECTRIC PROJEC	HB 219	POWER DEV'T LOANS/JOINT OPERATING AGENCIES	STATE LOANS		CHAPTER 80 SLA 85
	HB 351	FEDERAL ALASKA POWER ADMINISTRATION	PIGNALBERI		(H) L&C
	HB 389	DIRECT SERVICE CHARGES FOR APA POWER SALES	RULES	THE GOVERNOR	(H) C&RA
	HB 477	REAPPROPRIATING SUSITNA/BRADLEY/POWER FUNDS	RULES	GOV	CHAPTER 41 SLA 86
	HJR 36	LICENSING OF BRADLEY LAKE HYDRO PROJECT	NAVARRE		(S) RES
	SB 27	APPROP: STATEWIDE CAPITAL PROJECTS	FAIKS		CHAPTER 96 SLA 85
	SB 123	POWER DEVELOPMENT FUND & APA REPORT	RULES	THE GOVERNOR	(S) RES
	SB 338	REAPPROPRIATING SUSITNA/BRADLEY/POWER MONEY	STURCULEWSKI		(S) FIN
	SB 342	REAPPROPRIATING SUSITNA/BRADLEY/POWER FUNDS	RULES	THE GOVERNOR	(S) L&C
	SB 395	ADVISORY VOTE ON SUSITNA PROJECT FUNDING	FISCHER.V		(S) RES
	SB 454	APPROP: UTILITIES, MUNICIP'S, HYDRO PROJ'S	FERGUSON	BY REQUEST	(S) L&C
	SB 476	ENERGY PROJECTS FOR RAILBELT; APA DESIGN & POWER	FINANCE		(H) LOAN
IMPEACHMENT	HB 516	IMPEACHMENT & DISQUALIFICATION OF JUDGES	GRUENBERG		(S) RLS
IMPLIED CONSENT	HB 394	INTOX. TEST; OPERATORS OF BOATS/AIRPLANES	PIGNALBERI		(H) SA
	SB 20	INTOX. TEST; OPERATORS OF BOATS/AIRPLANES	RAY		CHAPTER 76 SLA 85
	SB 74	DRUNK DRIVING: DRUGS, SENTENCES, BREATH TEST	ABOOD		(H) JUD
	SB 76	ATTORNEY CONTACT ONLY AFTER EVIDENCE SEIZED	ABOOD		(S) JUD
INITIATIVES	HB 270	MUNIC. RECALLS/REF'DUMS/INITIATIVES/ELECTNS	LARSON		(H) C&RA
	HJR 28	CONST'L AMENDMENT & APPROP. BY INITIATIVE	MARROU		(H) JUD
INJUNCTIONS	HB 544	CORPORATE & BUSINESS NAMES; INJUNCTIONS	PHILLIPS		(S) FIN
INSURANCE	HB 56	PROOF OF INSURANCE WHEN REGISTERING VEHICLE	COLLINS		(H) L&C
	HB 68	MANDATORY INSURANCE FOR LICENSED DRIVERS	SHULTZ		CHAPTER 69 SLA 86
	HB 77	CAPITAL FUNDS REQUIRED OF INSURERS	CATO		CHAPTER 5 SLA 85
	HB 80	INCREASING FEES PAID BY INSURANCE COMPANIES	RULES	THE GOVERNOR	CHAPTER 26 SLA 85
bills	HB 182	DISPOSITION OF UNCLAIMED PROPERTY	RULES	THE GOVERNOR	CHAPTER 133 SLA 86
	HB 277	ALLOW INVESTMENTS IN AFRICAN DEV'MENT BANK	JUDICIARY	BY REQUEST	(S) L&C
	HB 313	INS. POLICIES; MENTAL HEALTH COVERAGE REQRD	DAVIS		(H) FIN
	HB 356	ASSIGNMENT OF GROUP INSURANCE POLICIES	GRUENBERG		CHAPTER 4 SLA 86
	HB 358	NONPROBATE TRANSFERS	GRUENBERG		(H) JUD
	HB 437	PREFERRED/EXCLUSIVE PROVIDER INSURANCE	JENKINS		(H) L&C
	HB 476	NOTICE OF INCREASE IN CAR INSURANCE PREMIUM	MILLER.MM	BY REQUEST	(S) RLS
NOOC	HB 481	VERDICTS/DAMAGES/LIABILITY IN CIVIL ACTIONS	RIEGER		(H) L&C
"	HB 490	PERIODIC PAYMENT OF JUDGMENTS	SZYMANSKI		(H) L&C
	HB 506	REINSURANCE FUND AND INSURANCE POOLING	TAYLOR		CHAPTER 136 SLA 86
	HB 522	UNFAIR INSURANCE CLAIMS SETTLEM'T PRACTICES	SUND		(S) RLS
	HB 535	INSURANCE REQUIRED FOR VEHICLE REGISTRATION	RIEGER		(S) RLS
	HB 540	ASSIGNED RISKS; CREDIT LIFE MORTGAGE INSUR.	SUND		(H) L&C
NOOC	HB 547	HEALTH INSURANCE POOL FOR HIGH RISK PEOPLE	SUND		(H) L&C
"	HB 585	JOINT SELF-INSURANCE FOR SCHOOL DISTRICTS	WALLIS		(H) L&C
	HB 589	GROUP LIFE & HEALTH INS. FOR RESIDENTS	SUND		(S) L&C
	HB 654	STATE MOTOR VEHICLE INSURANCE PROGRAM	KOPONEN		(H) L&C
	HB 657	CREATE STATE WORKERS' COMP FUND	KOPONEN		(H) L&C
"	HB 702	STATE REINSURANCE FUND	LABOR&COMMERCE		(H) JUD
	HB 710	PREMIUM TAX FOR DOMESTIC INSURERS	LABOR&COMMERCE		(H) L&C
"	SB 88	AK LIFE/DISABILITY INSURANCE GUAR ASSOC	RULES	THE GOVERNOR	(S) L&C
	SB 116	ALLOW INVESTMENTS IN AFRICAN DEV'MENT BANK	RODEY		(S) L&C
"	SB 156	FORM OF PAYMENT FOR INSURANCE SETTLEMENTS	RODEY		(S) L&C
	SB 222	INSURANCE BENEFITS; PSYCHOLOGICAL SERVICES	JOSEPHSON		(S) HESS
"	SB 288	LIQUOR LICENSE HOLDERS' INSURANCE CORP.	JOSEPHSON		(S) L&C

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
INSURANCE	SB 295	MENTAL HEALTH DISABILITY INSURANCE	FAIKS		(H) RLS
	SB 340	SURPLUS LINES INSURANCE BROKERS	RULES	BY REQUEST	(S) L&C
	SB 365	BROKER AS INSURER'S AGENT FOR PREMIUMS	RULES	THE GOVERNOR	(H) L&C
4	SB 366	CANCELLATION OF INSURANCE POLICIES	RULES	THE GOVERNOR	(S) L&C
	SB 379	PREMIUM TAX DOMESTIC AND FOREIGN INSURERS	RULES	THE GOVERNOR	CHAPTER 118 SLA 86
	SB 380	MINIMUM INSURANCE FOR COMMERCIAL VEHICLES	RULES	THE GOVERNOR	(S) L&C
4	SB 404	JOINT INSURANCE ARRANGEMENTS	JOSEPHSON		(S) FIN
	SB 440	USE OF BLOOD TESTS BY INSURERS	DEVRIES		(S) L&C
	SB 442	MARINE INSURANCE; RECIPROCAL INSURERS	ELIASON		CHAPTER 48 SLA 86
	SB 443	SURPLUS LINES INS. BROKERS MONTHLY REPORTS	HALFORD		(S) JUD
4	SB 445	MISCELLANEOUS CHANGES IN INSURANCE LAWS	FISCHER,V		(S) L&C
	SB 455	REDUCED AUTO INS RATES/PERSONS OVER 55	LABOR&COMMERCE		(S) L&C
4	SCR 20	AVAILABILITY OF MARINE INSURANCE	ZHAROFF		(S) FIN
	SCR 35	URGING NATIONAL REGULATION OF INSURANCE	FISCHER,V		(S) RLS
	SJR 45	FISHERMEN'S INJURIES COMPENSATION	LABOR&COMMERCE		LEGIS RESOLVE 49
INTEREST	HB 20	INTEREST ON PUBLIC UTILITY DEPOSITS	COLL		CHAPTER 50 SLA 86
	HB 51	INTEREST ON ESCROW ACCTS FOR MORTGAGE LOANS	DUNCAN		(H) FIN
	HB 109	SETTING INTEREST RATES FOR STATE LOANS	RULES	THE GOVERNOR	(H) LOAN
	HB 161	STUDENT LOANS; ELIGIBILITY/INTEREST RATES	BINKLEY		CHAPTER 65 SLA 86
	HB 217	INTEREST RATES FOR VARIOUS LOANS/CONTRACTS	DUNCAN		AWAITING CONC/RECED
	HB 378	INTEREST RATE ON STATE LOAN PROGRAMS	ADAMS		(H) LOAN
	HB 459	USE OF INTEREST EARNED ON GRANT MONEY	MARTIN		(H) FIN
	HB 501	AK POWER AUTHORITY; REPORTS, FUND INTEREST	RULES	THE GOVERNOR	(H) LOAN
	HB 557	INTEREST ON ATTORNEY TRUST ACCOUNTS	DUNCAN		(H) RLS
	HB 622	INTEREST RATE ON DELINQUENT TAXES	PIGNALBERI		(H) JUD
	SB 6	INTEREST ON ESCROW ACCTS FOR MORTGAGE LOANS	RAY		(S) L&C
	SB 216	INTEREST RATE ON AGRICULTURAL LOANS	COGHILL		(S) RES
	SB 281	INTEREST RATE ON STATE LOAN PROGRAMS	HALFORD		(H) LOAN
INTERNATIONAL RELATI	HB 465	STATE FISCAL INVOLVEMENT IN SOUTH AFRICA	CLOCKSIN		(H) FIN
	HB 633	ALASKA EXPORT DEVELOPMENT AUTHORITY	MARTIN		(H) L&C
	HCR 7	JOINT SPECIAL COMMITTEE ON FOREIGN TRADE	RULES		LEGIS RESOLVE 5
	HCR 10	SUPPORTING INTERNATIONAL YOUTH YEAR	CLOCKSIN		LEGIS RESOLVE 13
	HCR 17	END STATE INVESTMENTS RELATED TO S. AFRICA	DUNCAN		(H) SA
	HJR 13	SISTER STATE RELATION WITH HEILONGJIANG	RULES	THE GOVERNOR	LEGIS RESOLVE 2
	HJR 15	EXPORT OF ALASKA OIL	MARTIN		(H) O&G
	HJR 23	RETENTION OF WEST COAST U.S. CUSTOMS OFFICE	MARTIN		LEGIS RESOLVE 14
	HJR 37	AMERICANIZATION OF ALASKA'S FISHERIES	COLL		(H) RES
	HJR 39	EXPORT OF ALASKA OIL	OIL AND GAS		LEGIS RESOLVE 25
	HJR 43	HIGH SEAS SALMON INTERCEPTION	COLL		LEGIS RESOLVE 24
	HJR 52	URGING NUCLEAR-FREE SUBARCTIC AND ARCTIC	KOPONEN		RETURN TO (H) RLS
	HJR 53	US/USSR BOUNDARY DISPUTE IN BERING SEA	JENKINS		LEGIS RESOLVE 37
	HJR 55	PROMOTING SOUTHEAST INTERTIE WITH CANADA	GRUSSENDORF		(H) RLS
	HJR 56	U.S. SENATE CONSENT TO GENOCIDE CONVENTION	GRUENBERG		(H) HESS
	HJR 60	INTERNATIONAL YEAR OF PEACE	MILLER,MM		LEGI[illegible] RESOLVE 55
	HJR 65	FOREIGN MARKETING OF PINK SALMON PRODUCTS	HERRMANN		(S) [illegible]S
	HJR 68	HIGH SEAS INTERCEPTION OF SALMON	RULES	BY REQUEST	(H) [illegible]S
	HJR 72	AK, YUKON & N.W. TERR. LEG./JOINT MEETING	C&RA		LEGIS RESOLVE 47
	HJR 74	FRIENDSHIP WITH HEILONGJIANG PROVINCE	RULES	THE GOVERNOR	LEGIS RESOLVE 48
	HR 8	SISTER STATE RELATIONSHIP WITH TAIWAN	RINGSTAD		HOUSE RESOLVE 5
	SB 59	PACIFIC RIM FELLOWSHIP PROGRAM	RULES	THE GOVERNOR	(S) FIN
	SB 328	STATE FISCAL INVOLVEMENT IN SOUTH AFRICA	FISCHER,V		(S) HESS
	SCR 14	END STATE INVESTMENTS RELATED TO SO. AFRICA	FISCHER,V		(S) SA
	SJR 7	COOPERATION BETWEEN AK & FOREIGN NATIONS	COGHILL		(S) JUD

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
TEACHERS	HB 234	RETIREMENT CREDIT FOR MILITARY SERVICE	HESS		(H) SA
	HB 289	TENURE & REDUCTIONS-IN-FORCE BY SCHOOL BDS	FULLER		(H) HESS
	HB 674	CERTIFICATION REQUIREMENTS FOR TEACHERS	NAVARRE		(H) HESS
	HR 10	TEACHERS CONTRACT NEGOTIATION	FURNACE		(H) HESS
	SB 85	TEACHER TRAINING ABOUT ABUSE OF MINORS	DEVRIES		(S) SA
	SB 121	MISC. CHANGES IN VARIOUS RETIREMENT LAWS	RULES	THE GOVERNOR	(S) FIN
	SB 145	TRS POST-RETIREMENT PENSION ADJUSTMENTS	FISCHER.V		(S) SA
	SB 192	LIMITS WAIVED ON TEACHERS' SICK LEAVE BANKS	ELIASON		CHAPTER 21 SLA 86
	SB 217	NEGOTIATING UNITS FOR PRINCIPAL-TEACHERS	SACKETT		(H) HESS
	SB 230	TENURE & REDUCTIONS-IN-FORCE BY SCHOOL BDS	FERGUSON		(S) HESS
	SB 266	CERTAIN TEACHERS PLACED IN EXEMPT SERVICE	RULES	THE GOVERNOR	CHAPTER 50 SLA 85
	SB 385	LIMITING CERTAIN RETIREMENT CREDITS	KERTTULA		(S) HESS
	SB 420	ENDS TEACHER OUTSIDE SERVICE CREDIT	FISCHER.P		(S) HESS
	SJR 4	ALASKAN TEACHER TRAVELING ON SPACE SHUTTLE	FERGUSON		(S) HESS
TOBACCO	HB 249	CIGARETTE EXCISE TAX; HEALTH PROGRAMS	ADAMS		(H) HESS
	SB 94	CIGARETTE EXCISE TAX; HEALTH PROGRAMS	FISCHER.V		CHAPTER 24 SLA 85
TORTS	HB 97	GOVT LIABILITY; HAZARDOUS REC ACTIVITIES	DUNCAN		(H) JUD
	HB 368	UNIFORM COMPARATIVE FAULT ACT	GRUENBERG		(H) JUD
	HB 418	LIABILITY FOR EMERGENCY MEDICAL CARE	HARROD		CHAPTER 122 SLA 86
	HB 481	VERDICTS/DAMAGES/LIABILITY IN CIVIL ACTIONS	RIEGER		(H) L&C
	HB 532	LIMITATIONS ON CIVIL LIABILITY	COTTEN		(H) JUD
	~~HB 660~~	~~TRESPASS AND USE OF LAND~~	~~BINKLEY~~	~~BY REQUEST~~	~~(H) RES~~
	HCR 65	SUSPENDING UNIFORM RULES - SB 377	RULES		LEGIS RESOLVE 58
	SB 307	HAZARDOUS SEWAGE TREATMENT FACILITIES	ELIASON		(S) RES
	SB 377	CIVIL LIABILITY/TORT REFORM	KELLY		CHAPTER 139 SLA 86
	~~SB 382~~	~~LIMITING CIVIL ACTIONS~~	~~KERTTULA~~		~~(S) L&C~~
	~~SB 392~~	~~ANNUITY CONTRACTS FOR PERIODIC PAYMENTS~~	~~JOSEPHSON~~		~~(S) L&C~~
	SB 444	CAP ON AWARDS, ATTY FEES; PERIODIC PAYMENTS	FISCHER.V		(S) L&C
	SB 451	COMPARATIVE FAULT AND SEVERAL LIABILITY	HALFORD		(S) L&C
TOURISM	HJR 20	TOURISM - INTERNATIONAL AIRLINE TRAVELERS	RIEGER		LEGIS RESOLVE 15
TRADE PRACTICES	HB 125	CONSUMER PROTECTION ACT EXTENDED TO BUSINESSES	RULES	THE GOVERNOR	(S) JUD
	HB 138	REGULATING SALE OF RESIDENTIAL TIME-SHARES	RULES	THE GOVERNOR	(H) L&C
	HB 315	MANDATORY PRICE LABELING & UNIT PRICING	DAVIS		(H) L&C
	HB 517	ARTISTS AND WORKS OF ART	GRUENBERG		(S) RLS
	HB 544	CORPORATE & BUSINESS NAMES; INJUNCTIONS	PHILLIPS		(S) FIN
	HB 551	COMPETITION IN MOTION PICTURES DISTRIBUTION	SHULTZ		(H) JUD
	SB 138	ALCOHOLIC DRINK DISCOUNTS AND CONTESTS	FISCHER.V		CHAPTER 68 SLA 86
	SB 363	COMPETITION IN MOTION PICTURES DISTRIBUTION	JUDICIARY		(S) L&C
	SB 416	LIMITED WARRANTIES FOR USED MOTOR VEHICLES	JOSEPHSON		(S) TRSP
TRAILS	HB 111	LOCAL SERVICE ROADS AND TRAILS	RULES	THE GOVERNOR	CHAPTER 5 SLA 86
	HB 291	APPROP: LOCAL SERVICE ROADS AND TRAILS	TRANSPORTATION		(H) FIN
	SCR 4	STATEWIDE TRAILS DEVELOPMENT PLAN	FISCHER.V		(S) FIN
	SJR 10	ROADS/TRAILS; ANILCA CONSERVATION UNITS	COGHILL		(H) FIN
TRANSPORTATION	HB 24	REGIONAL ORGANIZATION OF DOT/PF	CATO		(H) TRSP
	HB 55	WARNING SIGNS/TAXIS FOR INTOXICATED PERSONS	COLLINS		(S) RLS
	HB 60	APPROP: FY86 OPERATING BUDGET/LOAN PROGRAMS	RULES	THE GOVERNOR	CHAPTER 98 SLA 85
	HB 133	REGULATING SAFETY OF MOTOR/AIR CARRIERS	RULES	THE GOVERNOR	CHAPTER 104 SLA 85
	HB 224	MANDATORY SEAT BELTS FOR ALL CAR OCCUPANTS	MILLER.MH		FAILED (H) ON RECON
	HB 258	REDUCING AIRLINE FARES	C&RA		(H) C&RA

court action. Allows a person to claim escheated real property for seven years after the court judgment of escheat. (SCS CSHB 182(Fin))

Effective Date: September 7, 1986

Chapter 134 STATE GUARANTY OF BONDS FOR VETERANS LOANS

Provides that the state will guarantee revenue bonds of the Alaska Housing Finance Corporation, the proceeds of which are to be used for residential mortgages for certain veterans. Requires the question of the state guaranty of the bonds to be submitted to the voters. Authorizes the corporation to issue not more than the principal amount of $600,000,000 of these bonds if the question is approved. (HB 533)

Effective Date: June 10, 1986

Chapter 135 ALASKA WATER USE ACT

Makes miscellaneous changes in the Alaska Water Use Act (AS 46.15), relating to permits, appropriations of water, administrative and judicial adjudications, options of the Commissioner of Natural Resources in litigation involving water rights, federal reserved water rights, enforcement, and the data collection authority of the commissioner. (HCS CSSB 150(Res))

Effective Date: June 10, 1986

Chapter 136 INSURANCE FOR SCHOOLS AND MUNICIPALITIES

Allows municipalities, school districts, and REAA's to join together to buy insurance coverage or to group self-insure. Does not apply to certain types of insurance. Specifies certain procedures and financial requirements for these joint insurance arrangements. (SCS CSSSHB 506(Jud))

Effective Date: June 10, 1986

Chapter 137 BARBERS, HAIRDRESSERS, AND COSMETOLOGISTS

Extends the termination date of the Board of Barbers and Hairdressers to June 30, 1989, and makes various changes in the licensing laws for barbers, hairdressers, and cosmetologists. Requires the board to establish instructors licensing requirements. Increases the number of hours an apprentice in barbering must complete. Prohibits practitioners from practicing outside of a licensed shop or school except in certain limited cases. (SCS CSHB 305(L&C) am S)

Effective Date: June 10, 1986

Chapter 138 **FINANCIAL ADMINISTRATION - PROGRAM RECEIPTS**

Establishes a uniform system of accounting and budgeting for program receipts of state agencies. Provides for setting of charges for miscellaneous state services, including publications and information, medical and institutional care, probation supervision, and intragovernmental technical assistance. Authorizes the sale of miscellaneous state property, including surplus hatchery broodstock and eggs. Prohibits a state agency from charging for a service after June 30, 1987, unless the charge is authorized by statute.
(SCS CSHB 696(Fin) am S)

Effective Date: Section 1 takes effect July 1, 1987; section 102 takes effect June 10, 1986; remainder of Act takes effect July 1, 1986

Chapter 139 **TORT REFORM**

1 Establishes limits regarding the recovery of damages in a civil action. 2 Provides for itemization of the verdict and for reduction of future damages to a present value. 3 Requires apportionment of damages for multiple defendants, and limits the joint liability of certain parties. 4 Changes the period during which an offer of judgment may be made, and 5 increases the interest rate on certain offers of judgment. 6 Establishes a period during which prejudgment interest will accrue. 7 Prohibits the court award of attorney fees in certain civil actions unless specifically allowed by statute or agreement between the parties. Applies to actions accruing after June 11, 1986. (CCS SB 377)

Effective Date: June 11, 1986

Chapter 140 **ADOPTION**

Requires the state registrar of vital statistics to release the name and address of an adopted person's biological parents if the person is at least 18 years of age and requests the information. Provides for similar disclosure of medical, social, and other information about an adoptee's biological parents. Requires disclosure of adopted person's name and address to the biological parents on request, if adopted person is 18 or older and has filed written consent. Allows courts to grant a biological parent or other relatives visitation rights with an adopted child as part of the adoption decree. Allows parties who were denied adoption visitation rights by a court since January 1, 1984, to ask courts to reconsider the denial. Requires persons consenting to adoption to be informed of certain legal rights and makes other requirements regarding consents. Allows notice of

DATE		PAGE	ACTION
04/29/86	(H)	2993	TRANSMITTED TO (S)
04/30/86	(S)	2533	READ THE FIRST TIME - REF
04/30/86	(S)	2533	HESS REFERRAL WAIVED
05/12/86	(S)	2873	FIN RPT SCS 3DP 2DNP
			RULES

HB 521

AN ACT RELATING TO THE ISSUANCE OF MUNICIPAL GENERAL OBLIGA PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: RULES COMMITTEE BY REQ OF THE GOVERNO
CO-SPONSORS:

CURRENT STATUS: (H) FIN

DATE		PAGE	ACTION
01/27/86	(H)	1901	READ THE FIRST TIME - REFERRAL
01/27/86	(H)	1901	GOVERNOR'S TRANSMITTAL LETTER
01/27/86	(H)	1901	ZERO FISCAL NOTE
01/27/86	(H)	1901	2 ZERO FISCAL NOTES/ANALYSIS H
02/26/86	(H)	2231	LOAN RPT CS(LOANS) 1DP 4NR
04/14/86	(H)	2699	C&RA RPT CS(C&RA) NEW TITLE 5
			FINANCE
			RULES

HB 522
CSHB 522 JUD
AN ACT RELATING TO AN INSURANCE BROKER'S RECEIPT OF PREMIUM PAYMENTS, THE CANCELLATION OR NONRENEWAL OF INSURANCE POLICIES, THE COMPOSITION OF THE BOARD OF THE MEDICAL INDEMNITY CORPORATION OF ALASKA, AND THE PROVISION OF MEDICAL MALPRACTICE INSURANCE FOR NURSES AND NURSE MIDWIVES.

PRIME SPONSOR: SUND
CO-SPONSORS: KOPONEN,GRUENBERG,TAYLOR

CURRENT STATUS: (S) RLS

DATE		PAGE	ACTION
01/29/86	(H)	1918	READ THE FIRST TIME - REFERRAL(S)
04/15/86	(H)	2722	L&C RPT CS(L&C) NEW TITLE 3DP 2NR
04/15/86	(H)	2723	ZERO FISCAL NOTE
04/28/86	(H)	2938	JUD RPT CS(JUD) NEW TITLE 5DP 1NR
04/29/86	(H)		RULES TO CALENDAR 4/30/86
04/30/86	(H)	3014	READ THE SECOND TIME
04/30/86	(H)	3014	JUD CS ADOPTED UNAN CONSENT
04/30/86	(H)	3014	AM NO 1 FAILED Y5 N32 A3
04/30/86	(H)	3015	ADVANCED TO THIRD READING UNAN CONSENT
04/30/86	(H)	3015	READ THE THIRD TIME CSHB 522(JUD)
04/30/86	(H)	3015	PASSED Y33 N1 A6
04/30/86	(H)	3028	TRANSMITTED TO (S)
05/01/86	(S)	2555	READ THE FIRST TIME - REFERRAL(S)
05/10/86	(S)	2740	L&C RPT SCS 2DP 1NR NEW TITLE
05/10/86	(S)	2776	JUD REFERRAL WAIVED
			RULES

now → HB 71

HB 523

AN ACT ESTABLISHING THE SMALL BUSINESS LOAN GUARANTEE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: SUND
CO-SPONSORS: TAYLOR,GRUSSENDORF,THOMPSON

ATTACHMENT E

ALASKA STATUTE 21.88.010-900

(1) AS 21.03
(2) AS 21.06
(3) AS 21.09, except AS 21.09.090
(4) AS 21.18.010
(5) AS 21.18.030
(6) AS 21.18.040
(7) AS 21.18.120
(8) AS 21.21.321
(9) AS 21.36
(10) AS 21.69.400
(11) AS 21.69.520
(12) AS 21.69.600, 21.69.620, and 21.69.630
(13) AS 21.78
(14) AS 21.90
(15) AS 21.42.345 and 21.42.355
(16) AS 21.89.040
(17) AS 21.89.060. (§ 1 ch 120 SLA 1966; am § 1 ch 92 SLA 1974; am § 2 ch 95 SLA 1975; am § 2 ch 84 SLA 1976; am § 24 ch 40 SLA 1981; am § 3 ch 45 SLA 1981)

Effect of amendments. — The first 1981 amendment added "and AS 21.42.355" in paragraph (15).

The second 1981 amendment added paragraph (17).

Sec. 21.87.350. Existing certificates of authority. A health care service contractor registered to do business in this state on July 1, 1966, is entitled to be registered under this chapter, whether or not it meets the requirements of this chapter. (§ 1 ch 120 SLA 1966)

Chapter 88. Health Care Providers Insurance.

Article

Cross references. — For severability provisions of 1976 Act, see § 48, ch. 102, SLA 1976, in the Temporary and Special Acts; for purpose of 1978 amendatory Act, see § 1, ch. 177, SLA 1978 as amended by § 7, ch. 46, SLA 1982, in the Temporary and Special Acts; for affect of 1978 Act on certain policies, see § 21, ch. 177, SLA 1978 as amended by § 8, ch. 46, SLA 1982, in the Temporary and Special Acts.

Article 1. Purpose.

Section

Sec. 21.88.010. Purpose of this chapter. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence. (§ 41 ch 102 SLA 1976)

NOTES TO DECISIONS

Chapter 102, SLA 1976, enacted in violation of Alas. Const., art. II, § 14. — Where the free conference committee recommended adoption of a version of ch. 102, SLA 1976 (which, inter alia, enacted AS 21.88), that differed in many respects from the version originally passed by the house; the free conference committee's bill was passed by the senate by a recorded vote; but in the house there was no roll call or recorded vote and the free conference committee bill was passed there by a simultaneous voice vote, this voice vote constituted "final passage" of ch. 102, SLA 1976, and thus violated the recorded vote requirement of Alas. Const., art. II, § 14. Plumley v. George E. Hale, M.D., Inc., Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017), 594 P.2d 497 (1979).

But this holding is to be applied prospectively. — Although the supreme court held that ch. 102, SLA 1976 (which, inter alia, enacted AS 21.88), was enacted in violation of the recorded vote requirement of Alas. Const., art. II, § 14, the supreme court held that its holding in this case should be applied prospectively in light of its conclusions that its decision was one of first impression, that substantial reliance had followed from the legislature's alternative interpretation of law, that undue hardship would have resulted from retroactive application of its holding, and that the rationale of the holding did not compel retroactivity. Plumley v. George E. Hale, M.D., Inc., Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017), 594 P.2d 497 (1979).

Article 2. Medical Indemnity Corporation of Alaska.

Section

Sec. 21.88.020. Corporation created. There is created the Medical Indemnity Corporation of Alaska which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state. (§ 41 ch 102 SLA 1976)

Sec. 21.88.030. Corporation board of governors. (a) The corporation shall exercise its powers through a board of governors which is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) four physicians licensed in the state and engaged in private practice in the state; no more than two of the physicians shall practice or live in a municipality having a population of more than 100,000, and two of the physicians must be indemnified against loss by reason of liability for an act or omission in the delivery of professional health care by the Medical Indemnity Corporation of Alaska;

(2) an administrator or senior executive officer employed by a hospital licensed in the state;

(3) two professionals from the insurance industry who are authorized or licensed to do business in the state;

(4) two persons who are not health care providers or financially interested in the field of health care or representatives of the insurance industry.

(b) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years. Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (a) of this section as the governor whose term has expired.

(c) Upon a governor's early resignation, death or inability to serve, the governor of the state shall appoint a successor from the same class defined in (a) of this section as the terminating governor, who shall serve for the unexpired term.

(d) The director or a designee of the director is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(e) Members of the board of governors receive compensation from the corporation and necessary travel expenses according to a policy approved by the director.

(f) A governor, officer, or employee or former governor, officer, or employee of the corporation is not liable for damages or other relief in any action by reason of the person's actions or inactions as a governor, officer, or employee of the corporation, or by reason of the actions or inactions of the corporation, its board of governors, officers or employees unless the person acts with actual knowledge that the person was acting outside the scope of the person's authority, or unless at the time the person was acting for a purpose which the person knew was not in the best interests of the corporation, or with respect to any criminal action the person had actual knowledge or should have known the person's action was unlawful. If a claim or action is brought against a person entitled to the protection of this subsection, the claim or action shall be defended by the state. If it is established that the person was acting with actual knowledge that the person was acting outside the

scope of the person's authority, or at the time was acting for a purpose which the person knew was not in the best interests of the corporation, or with respect to any criminal action the person had actual knowledge or should have known the person's action was unlawful, then the person shall reimburse the state for the cost to the state of the person's defense. (§ 41 ch 102 SLA 1976; am §§ 4, 5 ch 177 SLA 1978; am § 2 ch 103 SLA 1980; am § 1 ch 46 SLA 1982)

Effect of amendments. — The 1980 amendment deleted "of $100 per day when the board meets" following "the corporation", and added "according to a policy approved by the director", both in subsection (e).

The 1982 amendment substituted "the insurance industry who are authorized or licensed to do business" for "insurance companies authorized" in subsection (a)(3).

Sec. 21.88.040. Corporation plan of operation. (a) Within 30 days after May 29, 1976, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair and reasonable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in AS 21.88.050 shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular times and places for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in AS 21.88.050 and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the corporation. (§ 41 ch 102 SLA 1976)

Sec. 21.88.050. Powers and duties of the corporation. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians and hospitals who are found to be acceptable risks under standards

developed under (5) of this subsection, and who pay the premiums for it, a contract or contracts indemnifying physicians and hospitals and their employees who are health care providers against loss by reason of liability for covered claims for an act or omission in the delivery of professional health care in this state, and agreeing to tender on behalf of the physicians and hospitals and their employees who are health care providers a defense to a covered claim in a proceeding brought under AS 09.55.530 — 09.55.560; the limits of liability for policies issued by the corporation shall be approved by the director; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims against the physician or hospital that arise out of professional services performed by the physician or hospital for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the physician or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with AS 21.88.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 — 21.09.200, 21.09.250, 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant for insurance based on individual risk selection factors, but may not exclude an applicant based only on the classification of the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) provide coverage to insureds for other hazards customarily included in medical malpractice insurance policies when there is a

finding by the director that this coverage is not available to insureds of the Medical Indemnity Corporation of Alaska in the private insurance market at a competitive price;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to carry out the duties of the corporation;

(10) in a form approved by the director and for an additional premium determined under AS 21.88.080, issue endorsements which provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year;

(11) subject to approval by the director, extend coverage to a person, entity, or facility that renders health care services in the state under the supervision of a physician. (§ 41 ch 102 SLA 1976; am §§ 6 — 10, 40 ch 177 SLA 1978; am §§ 3, 4, 7 ch 103 SLA 1980; am §§ 2 — 4 ch 46 SLA 1982)

Revisor's notes. — In 1984, in subsection (a), former paragraphs (4), (5), (6), and (8) were renumbered as present paragraphs (2), (3), (4), and (5), respectively, and, in subsection (b), former paragraphs (11) and (12) were renumbered as present paragraphs (10) and (11), respectively.

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "the limits of liability for policies issued by the corporation shall be approved by the director" for "the minimum limit of liability issued to physicians shall be $200,000 per occurrence and $600,000 aggregate liability per year, and the minimum limit of liability provided in contracts issued to hospitals shall be $200,000 per occurrence and an annual aggregate liability of $1,000,000 minimum plus an additional $20,000 per bed for each occupied bed over 50" near the middle of paragraph (1). The amendment, in paragraph (8) (now (5)) of subsection (a), substituted "an applicant for insurance" for "a physician", "an applicant" for "a physician", and "applicant" for "physician"; and repealed former paragraph (10) of subsection (b) (since deleted).

The 1982 amendment, in paragraph (1) of subsection (a), substituted "corporation, if approved by the director" for "physician or hospital" and substituted "before the contract is issued" for "after December 31, 1974, if the coverage is issued before January 1, 1977." The amendment also rewrote paragraphs (3) and (12) (now (11)) of subsection (b).

Sec. 21.88.055. Termination. (a) If at any time the corporation posts written premiums for two consecutive years of less than 35 per cent of all premiums written in Alaska for physicians' medical malpractice insurance or posts written premiums for one calendar year of less than 20 per cent of all premiums written in Alaska for physicians' medical malpractice, the director may hold a public hearing in accordance with AS 21.06.180 — 21.06.230 to determine whether the business of the corporation should be terminated.

(b) Upon the effective date of an order of termination issued by the director under (a) and (d) of this section, the terms of the governors appointed under AS 21.88.030 expire, and the corporation, its governors, officers and employees are relieved of all further liabilities for all their obligations to the creditors and policyholders of the corporation, and the business of the corporation shall be liquidated according to AS 21.78.

(c) At any time after termination of the corporation by the director, the director may, after public hearing hold in accordance with AS 21.06.180 — 21.06.230 and (d) of this section, order reactivation of the corporation if the director finds that malpractice insurance is unavailable for physicians and hospitals on the voluntary market. The business of the corporation shall commence operation upon appointment by the governor of new governors to the board.

(d) In determining whether to terminate or reactivate the business of the corporation the director shall consider the following:

(1) the level of expected premiums and losses for continued operation;

(2) the requirement for state funds to support continued operation;

(3) the availability of alternative markets for coverage to a substantial majority of physicians and hospitals in the state;

(4) the costs of continued operation of the corporation;

(5) the impact that the continued operation of the corporation will have on rates charged for coverage by the corporation or by alternative markets; or

(6) the expected number of physicians or hospitals who would participate if the operations were continued.

(e) If after public hearing held in accordance with (a) and (c) of this section the director determines that continuing the business of the corporation would result in substantial underwriting loss unless excessive premiums are charged to participating physicians and hospitals, the director may order termination of the corporation. (§ 11 ch 177 SLA 1978)

Sec. 21.88.060. Premium tax. (a) The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

(b) The corporation is exempt from taxation under this section for a period of five years starting from July 1, 1978. (§ 41 ch 102 SLA 1976; am § 12 ch 177 SLA 1978)

Sec. 21.88.070. Statistics. The corporation shall collect, maintain and report information concerning claims against health care providers which it insures. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, a report that becomes available to the public may not include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All statistics including the supplemental reports shall be made available to the State Medical Board. (§ 41 ch 102 SLA 1976; am § 14 ch 177 SLA 1978)

Sec. 21.88.080. Rates. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(2) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which is actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(3) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(4) rates may not be unfairly discriminatory;

(5) rates shall be adjusted annually;

(6) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(7) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(8) income from the investment of reserves shall be considered;

(9) individual risk underwriting factors shall be considered;

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) amounts sufficient for repayment of loan obligations shall be considered;

(12) if the earned premiums of the corporation for any given year are less than the incurred claims, claim expense, underwriting expense, reserves for that year and provision for repayment of any loans, the corporation may, subject to the prior approval of the director, levy an assessment upon the insureds who held policies during that year; the assessment, which may be made in periodic installments, shall be made within three years and may not exceed 150 per cent of the insured's premium for that year; the termination of any policy does not relieve the insured of contingent liability for the insured's proportionate share of the obligations to the corporation which accrued while the policy was in force;

(13) if the earned premiums of the corporation for any given year exceed its incurred claim expense, underwriting expense, reserves for that year and provision for repayment of any loan, the corporation may, subject to the prior approval of the director, apportion and pay or credit its insureds who held policies during that year; a payment or credit shall be proportionate to the insured's earned premium for that year;

(14) upon application by any person, the director may issue a certificate authorizing the corporation to extinguish all or a portion of an assessment levied, or which could be levied, under (12) of this section for all insureds with policies in force when the certificate is issued, and to omit provisions levying an assessment under (12) of this section in all policies delivered or issued for delivery after the certificate is issued, if the director determines that there is a sound actuarial basis for the extinguishment; the director may at any time revoke the certificate; a policy in force at the time of revocation is not subject to the revocation of the certificate for the remainder of the period for which the premium has been paid, but after revocation a policy may not be issued or renewed without providing for an assessment of the insured. (§ 41 ch 102 SLA 1976; am §§ 13, 15, 40 ch 177 SLA 1978; am § 5 ch 103 SLA 1980; am § 5 ch 46 SLA 1982)

Revisor's notes. — In 1984, former paragraphs (1), (2), and (14), repealed in 1978, were deleted and the remaining paragraphs were renumbered accordingly.

Effect of amendments. — The 1980 amendment substituted "insured's" for "physician's" near the middle of paragraph (15) (now (12)).

The 1982 amendment rewrote paragraph (17) (now (14)).

Sec. 21.88.090. Payment of premiums; cancellation of insurance. The corporation may provide for installment payment of premiums in which case each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice of cancellation. Cancellation is not effective until 30 days after the date notice is posted by the corporation. (§ 41 ch 102 SLA 1976)

Sec. 21.88.095. Transfer of corporate assets and liabilities. (a) The corporation may, subject to the prior approval of the director, transfer its assets and liabilities to a company which meets all of the following conditions:

(1) the company possesses a valid certificate of authority to transact casualty insurance business in the state; in evaluating the capital and surplus of the company for qualification for a certificate of authority, the value of the assets and liabilities transferred by the corporation may not be considered;

(2) the company pays to the corporation the full value of any surplus in the corporation not represented by any unrepaid proceeds of loans by the loan fund to the corporation;

(3) the company executes a complete reinsurance and hold harmless agreement in a form approved by the director covering all of the obligations of the corporation to its creditors and policyholders; and

(4) the company executes modifications of loan agreements with the loan fund by which the company agrees

(A) to assume the obligations;

(B) that, if at any time the company writes less than the premium levels provided in AS 21.88.055(a), the director may determine that the loan provisions shall be modified to provide a scheduled amortization repayment of the principal over a period not to exceed 10 years and at an interest rate of four points above the federal discount rate, as that rate is adjusted from time to time; and

(C) that the provision for repayment provided in AS 21.88.210(b)(1) shall be modified to provide for annual installments of at least 25 per cent of the excess of premium and investment income collected over the total of claims, reserves and expenses on the Alaska medical malpractice book of business or 25 per cent of the excess of premiums and investment income collected over the total of claims, reserves and expenses on the corporation's total book of business, whichever is greater;

(5) the company meets such other requirements as the director may reasonably require to protect the interests of the state, the health care provider insureds, the involved company, and the public;

(6) the company provides the board of governors with a written statement from the director that the company qualifies under (1) — (5) of this subsection.

(b) If and while the company to which the assets and liabilities of the corporation are transferred in the manner provided in (a) of this section continues to write premiums in excess of the levels provided in AS 21.88.055, it shall enjoy the benefit of the following provisions:

(1) the company is entitled to carry forward and offset against its premium tax obligation to the state the amount by which the aggregate claims paid on reinsurance assumed under (a)(3) of this section exceeds aggregate reserves on the same business established at the date of the reinsurance agreement; and

(2) the obligation to repay to the loan fund loans assumed by the company at the time of transfer of the assets and liabilities of the corporation need not be shown as a liability on the books of the corporation. (§ 16 ch 177 SLA 1978)

Secs. 21.88.110 — 21.88.180. Joint Underwriting Association. [Repealed, § 40 ch 177 SLA 1978.]

Article 3. Loan Fund.

Section
210. Fund established

Sec. 21.88.210. Fund established. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans may be made from the fund to the corporation upon certification by the director that a loan is necessary and under the following circumstances:

(1) to provide surplus in respect to policyholders which may not exceed a total of $3,000,000 outstanding at any time; these obligations shall be subordinated to all other obligations of the corporation; loans made under this paragraph shall be repaid to the fund in annual installments of at least 25 per cent of the excess of premiums earned over the total of claims, reserves, expenses, and assessments made by the association, if any; interest shall be paid on the outstanding balance at a rate equal to seven per cent a year;

(2) if the director determines that the corporation is unable to procure reinsurance from a private casualty insurer or reinsurer for any liability incurred by contracts issued by it, additional loans up to an aggregate of $6,000,000 when taken together with loans made under (1) of this subsection to compensate for fluctuations in loss experience; loans made under this paragraph shall be in parity with all other obligations of the corporation except that they shall be subordinated to obligations of policyholders and claimants for indemnity of loss; these loans shall be repaid within five years at an annual interest rate of six per cent.

(c) If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund as evidence of the loan.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $6,000,000. (§ 41 ch 102 SLA 1976; am §§ 17, 18 ch 177 SLA 1978; am § 6 ch 103 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "earned" for "collected" near the middle of paragraph (1) of subsection (b).

Article 4. General Provisions.

Section
900. Definitions

Sec. 21.88.900. Definitions. In this chapter

(1) "chiropractor" means a person licensed under AS 08.20;

(2) "continuous coverage" means one or more successive policy periods which is uninterrupted by cancellation or failure to renew for any reason;

(3) "corporation" means the Medical Indemnity Corporation of Alaska;

(4) "covered claim" means

(A) a claim by an injured patient reported to the corporation during the period of continuous coverage by the corporation of the insured health care provider for an act or omission in the delivery of health care services; and

(B) additional claims as defined in the policy, with the prior approval of the director, and which are reported within specified periods after the expiration of the policy;

(5) "dental hygienist" means a person licensed under AS 08.32;

(6) "dentist" means a person licensed under AS 08.36;

(7) "dispensing optician" means a person licensed under AS 08.71;

(8) "governor" means a member of the board of governors of the Medical Indemnity Corporation of Alaska;

(9) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned

or operated hospital; a corporate entity covered under AS 21.88.050(b)(11); an employee of a health care provider acting within the course and scope of employment;

(10) "hospital" means an institution licensed under AS 18.20;

(11) "nurse" means a person licensed under AS 08.68;

(12) "optometrist" means a person licensed under AS 08.72;

(13) "pharmacist" means a person licensed under AS 08.80;

(14) "physical therapist" means a person registered under AS 08.84;

(15) "physician" means a person licensed under AS 08.64;

(16) "psychologist" and "psychological associate" means a person licensed under AS 08.86. (§ 41 ch 102 SLA 1976; am §§ 19, 20, 40 ch 177 SLA 1978; am § 6 ch 46 SLA 1982)

Revisor's notes. — Reorganized in 1984 to alphabetize the defined terms.

Effect of amendments. — The 1982 amendment deleted "during the same period of continuous coverage" following "delivery of health care services" in paragraph (17)(A) (now (4)(A)).

Chapter 89. Miscellaneous Provisions.

Sec. 21.89.010. Settlements. A settlement made under a motor vehicle liability insurance policy of a claim against an insured arising under that policy from an accident or other event insured against for damage to or destruction of property owned by another person shall not be construed as an admission of liability by the insured, or the insurer's recognition of that liability, with respect to any other claim arising from the same accident or event. The settlement shall be inadmissable in evidence in any legal action. (§ 1 ch 123 SLA 1966)

Sec. 21.89.020. Required motor vehicle coverage. (a) An automobile liability policy that insures an owner or operator of a motor vehicle against loss resulting from liability for bodily injury or death, or for property injury or destruction, or both, that is sold in the state, shall contain limits in at least the amount prescribed for a motor vehicle liability policy in AS 28.20.440 and AS 28.22.010.

(b) This section may not be construed to apply only to automobile liability policies obtained to satisfy a requirement of AS 28.20.

(c) An insurance company offering automobile liability insurance in this state for bodily injury or death shall offer coverage prescribed in AS 28.20.440 and 28.20.445, or AS 28.22.010 — 28.22.130. with limits equal to at least the limit purchased voluntarily to cover the insured person's liability for bodily injury or death, for the protection of the

persons insured under the policy who are legally entitled to recover damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles. The limit written may not be less than the limit in AS 28.20.440 or AS 28.22.010.

(d) An insurance company offering automobile liability insurance in this state for injury to or destruction of property shall offer coverage prescribed in AS 28.20.440 and 28.20.445, or AS 28.22.010 — 28.22.130, with limits not less than those prescribed in AS 28.20.440 or AS 28.22.010, to cover the insured person's liability for injury to or destruction of property, for the protection of the persons insured under the policy who are legally entitled to recover damages for injury to or destruction of the covered motor vehicle from owners or operators of uninsured or underinsured motor vehicles.

(e) The coverage required under (c) and (d) of this section may be waived in writing by the insured in whole or in part. After selection of the limits by the insured or the exercise of the option to waive the coverage in whole or in part, the insurer is not required to notify any policy holder in any renewal, supplemental or replacement policy, as to the availability of the coverage or optional limits, and the waived coverage may not be included in any renewal, supplemental or replacement policy. The insured may, at any time, make a written request for additional coverage or coverage more extensive than that provided on a prior policy. (§ 1 ch 105 SLA 1968; am §§ 2, 3 ch 70 SLA 1984)

Revisor's notes. — Subsections (a), (c) and (d) of this section are amended effective January 1, 1989 by §§ 18-20, ch. 70, SLA 1984. Until 1989, for the text of the subsections as amended by §§ 18-20, ch. 70, SLA 1984, see those provisions in the Temporary and Special Acts.

Effect of amendments. — The 1984 amendment, effective January 1, 1985, added subsections (c)—(e) and, in subsection (a), deleted "after January 1, 1969, by an insurance carrier authorized to transact business in this state" following "state," substituted "AS 28.20.440 and AS 28.22.010" for "AS 28.20.440(b)(2), and meet the requirements of AS 28.20.440(b)(3) unless waived as provided in that paragraph," and made a series of related technical changes.

Editor's notes. — Prior to January 1, 1985, subsection (a) read as follows: "An automobile liability policy that insures an owner or operator of a motor vehicle against loss resulting from the insured's liability for bodily injury or death, or for property injury or destruction, or both, which is sold in this state after January 1, 1969, by an insurance carrier authorized to transact business in this state, shall contain limits in at least the amount prescribed for a motor vehicle liability policy in AS 28.20.440(b)(2), and meet the requirements of AS 28.20.440(b)(3) unless waived as provided in that paragraph."

NOTES TO DECISIONS

This section does not require stacking in the single policy context. This conclusion follows from the fact that uninsured motorists insurance may be waived in Alaska. Curran v. Fireman's Fund Ins. Co., 393 F. Supp. 712 (D. Alas. 1975).

Insured was allowed to "stack" the uninsured motorists coverage provided him in a single multivehicle policy where the insured, under the interpretation of the contract propounded by the insurer, would receive absolutely no additional coverage for his premium dollars paid for uninsured motorists coverage on the vehicles other than the one involved in the accident and where the only possible interpretation of the contract was that the

ATTACHMENT G

WHAT STATES SHOULD DO--
DIFFERENT VIEWS ON TORT, INSURANCE REFORMS

from <u>State Government News</u>
Council of State Governments
March/April 1986

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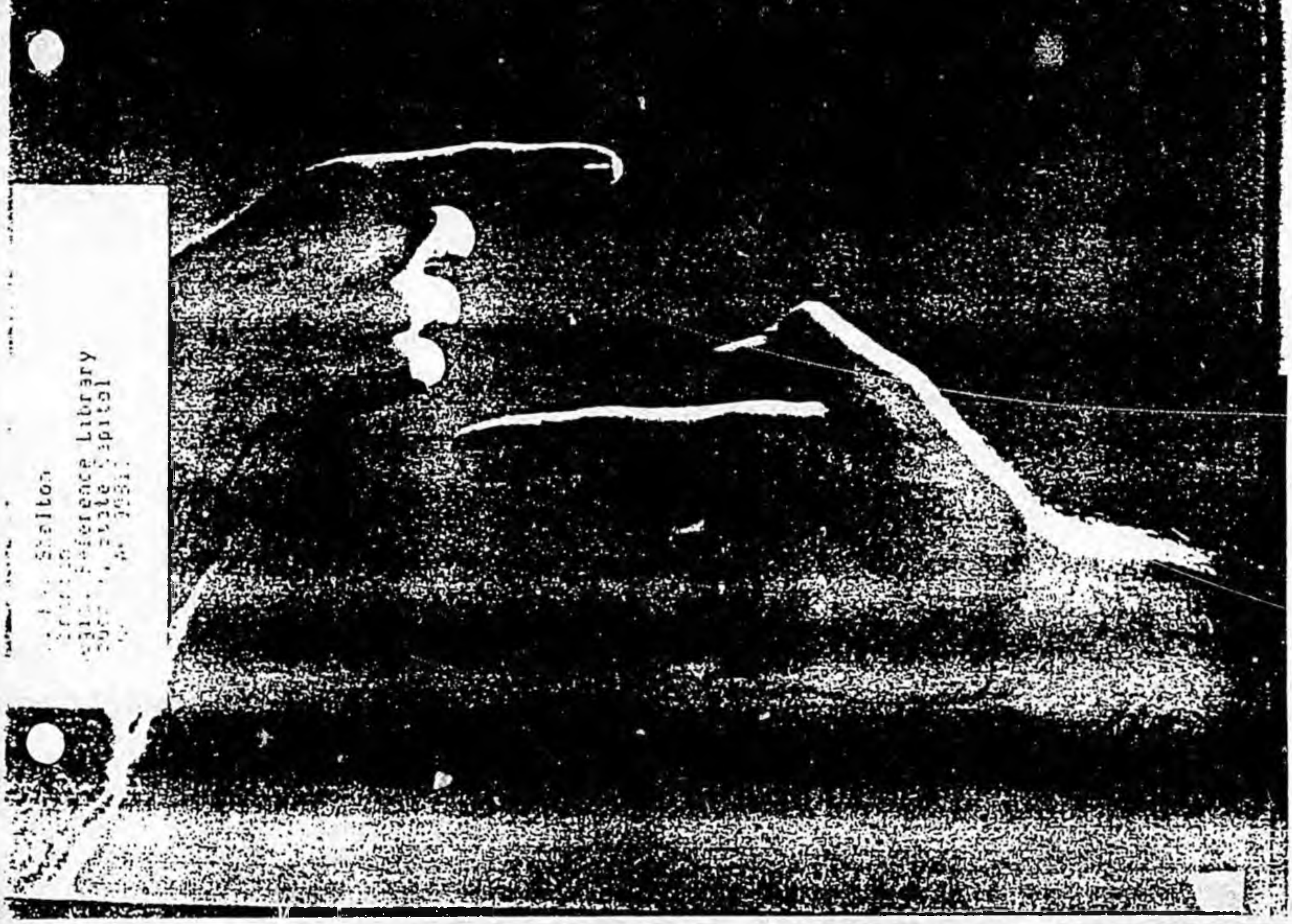
The Council of State Governments

March/April 1986

THE LIABILITY CRISIS: Who's To Blame?



'hat States Should Do— Different Views on

ι Small Business View

·t Reforms

ave alternative dispute resolution mechanisms.
ımit class action suits.
etain contributory negligence.
odify comparative negligence to require an establish-
l level of fault to trigger liability.
·duce lawyers' fees or adopt a sliding scale.
mit the discovery process.
oolish or limit prejudgment interest awards.
evelop even-handed jury instructions.
oolish or limit noneconomic and punitive damages.
niform national product liability legislation or com-
ehensive state reform.
oolish or modify joint and several liability.
emize jury awards.
mit liability in dram shop cases.
eserve the exclusive remedy doctrines in workers' com-
nsation and abolish co-employee and dual capacity
ıts
fset collateral source awards or inform juries of col-
eral sources.
quire the judge, rather than the jury, set dollar
ounts in damages.
y damages in installments
ovide pre-trial proceedings
ve plaintiffs pay defendants' attorney fees when litiga-
ı is frivolous or if court awards are less than offered
tlements

e Insurance Reforms

iew mandatory insurance coverage imposed by
ernment, excluding workers' compensation.
ıblish state reinsurance programs.
ow state governments to underwrite insurance if
erage is unavailable in the private sector.
w businesses to establish risk retention pools for cer-
ı types of insurance coverage.
mit state workers' compensation funds to offer other
es of liability coverage.
nibit mid term cancellation of policies except for good
se
uire advance notice of nonrenewal of insurance
uire prior approval of insurance rates by state
ulatory agencies
uire or encourage insurance companies to establish
ket Assistance Programs (MAPs)
ms made versus occurrence policy forms

- Require insurance companies to form assigned risk pools to force insurers to provide coverage.
- Eliminate barriers to financial institutions entering the insurance business.

Source: Wayne L. Campbell, National Federation of Independent Business. NFIB does not necessarily endorse any of these proposed solutions.

The Health Professions' View

Tort Reforms

- Require medical expert witnesses to be teachers or practioners and not experts for hire.
- Require itemizing of economic damages.
- Cap medical malpractice awards and require court review of excessive awards.
- Require pretrial screening of claims filed.
- Admit evidence of funds from other sources.
- Limit or adopt a sliding scale for attorney contingency fees.
- Apportion liablity based on degree of negligence.
- Ban requests for specific dollar amounts.
- Require plaintiffs to pay court costs in case of frivolous claims and untrue allegations.
- Require a health professional's affidavit with filing of a malpractice complaint.
- Permit nonbinding arbitration.
- Permit payment of future damages on a periodic basis, rather than a lump sum.
- Adopt a two-year statute of limitations on medical malpractice and related suits.
- Require notice of intent to sue.

Discipline, Regulation

- Require hospitals to conduct risk management programs
- Require hospitals to report disciplinary actions and potential malpractice physicians
- Establish a Patient's Compensation Fund to finance awards in excess of $100,000.
- Require health care providers to carry malpractice insurance coverage
- Require insurance companies to document that the increase in malpractice premiums is supported by claims experience.
- Require the state medical board to investigate reports of possible malpractice.
- Require continuing medical education.

Tort, Insurance Reforms

- Increase physician license fees to support disciplinary efforts

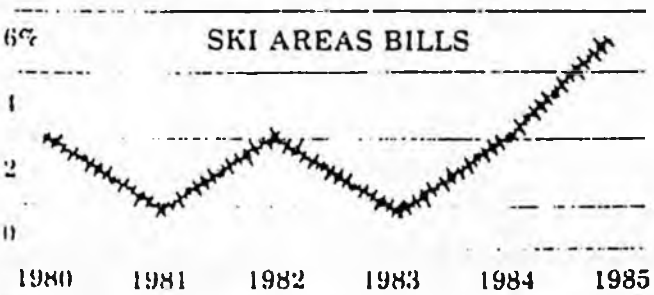
Source: The State Issues Forum of the American Hospital Association and the American Medical Association's model state laws. Note: This is a combined and abbreviated listing. The two group's individual recommendations differ in various details.

A Consumer View

- Repeal statutes that prohibit businesses and consumers from joining together to buy insurance in groups so that the price of liability insurance will fall.
- Prohibit rate increases from taking effect until such increases are approved by the insurance commission. Because insurance commissions do not have the staff to analyze many rate filings, most increases automatically take effect.
- Allow greater consumer representation before regulatory bodies. States should authorize citizens insurance boards or offices of public advocates to intervene in rate cases. In New Jersey, the insurance company seeking the rate increase pays the public advocate's cost.
- Require that insurance rates be based on experience. Because insurance companies today often lump all insureds in a category together, regardless of how often any individual insured has been sued, good risks currently subsidize bad risks. Experience rating would help bring down premiums for medical malpractice insurance.
- Enact tough conflict-of-interest statutes to close the "revolving door" of state regulators with the industry.
- Require that insurance companies disclose their loss data on a line-by-line basis. Disclosure would enable regulators to better discern whether rates are excessive, inadequate or unfairly discriminatory.
- Establish state reinsurance programs.

Source: The National Insurance Consumer Organization

Higher Premiums Mean Higher Costs
Percentage of gross income spent on premiums.



Source: National Ski Areas Association

An Insurance View

Tort Reforms

- Use arbitration and mediation as an alternative lengthy and costly litigation.
- Make modified comparative negligence, where plainti recover only if their negligence is less than the defe dants', the standard instead of pure comparati negligence, which allows recovery even if plaintiffs a. more responsible for their injuries than the defendants.
- Replace joint and several liability, which can hold a defendant who is only marginally responsible for injuries liable for the full amount of damages. Current courtroom tactics seek out "deep-pocket" defendants by their ability to pay.
- Restore state-of-the-art defenses. Judge product manufacturers and professionals by standards in effect at the time a product was made or an action was taken.
- Repeal the collateral source rule and allow the introduction of evidence of other sources of damage payments to plaintiffs.
- Abolish or reduce punitive damages which have become windfalls for plaintiffs and their attorneys. Punitive damages are a criminal-trial punishment mechanism.
- Place ceilings on noneconomic damages. These damages include "pain and suffering," "loss of consortium," "loss of companionship," among others. Plaintiffs' actual damages, such as lost wages and medical expenses, would not be affected.

Market/Regulatory Actions

- Adopt a "claims-made" general liability policy which would cover only claims made during the term of the policy.
- Balance the rights of consumers with the insurers' need to reach changes in risk or financial status in covering cancellations, nonrenewals and policy changes
- Set up Marketing Assistance Programs as a short-term means of making certain lines of coverage more available. Insurance buyers should monitor and minimize losses in hard-to-insure lines, to improve chances of obtaining coverage.
- Recognize that risks posed by toxic substances, asbestos and chemical wastes are too difficult for the private insurance industry and group self insurance to cover. It is impossible for the insurance industry to cover these exposures under the current liability rules, and these risks may have to be funded by public revenues

Source: The Alliance of American Insurers, including the views of the American Insurance Association and the National Association of Independent Insurers.

What States Are Considering To Solve the Insurance Liability Crisis

;ulatory Initiatives

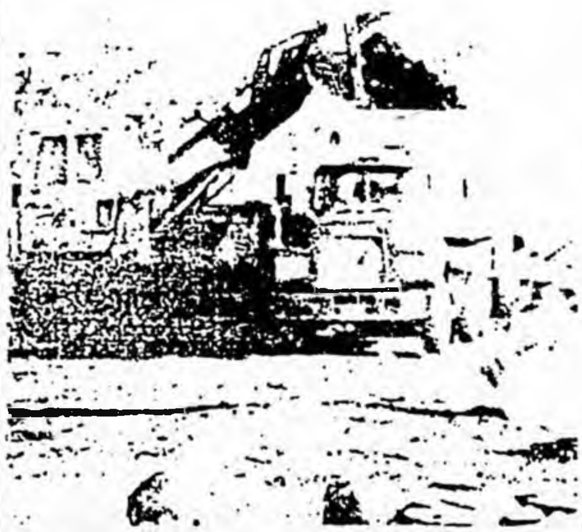
·ohibitions and restrictions on midterm cancellations ıd nonrenewals
:quiring prior approval of rates rather than file and e arrangements.
·int Underwriting Associations.
arket Assistance Plans.
odification of open competition rating acts.
ɔgrading state insurance department manpower and ·ources.
·quiring rates to reflect loss experience.
ˈlaims made" rather than "occurrence based" policies.
ıproved regulation of new entrants.
:gulation of surplus line providers.
·quiring submission of data regarding incidence and verity of claims losses.
·wering "surplus" ratios for specific lines of coverage.
ımiting the percentage amount which an insurer can ry rates from the fixed rate.

k Management

tablish risk retention pools for certain lines of verage
rengthen disciplinary procedures in all state agencies gulating professions.
ıhance hazard management and public safety.
rengthen risk assessment techniques.

·ketplace Intervention

:mit policy exclusions.
ıthorize banks and thrifts to engage in insurance :tivities
ew the need for mandatory coverage and mandated ·ls of coverage



·ers won't touch toxic cleanup.

- Restrict annual premium increases/decreases based on evidence of change in risk.
- Require notice to insureds regarding cancellations and/or nonrenewals.
- Provide excess profits standards
- Establish or expand risk pooling authority.
- Establish or expand state reinsurance, backup insurance and self-insurance programs.
- Prohibit surplus line providers unless appropriately licensed.

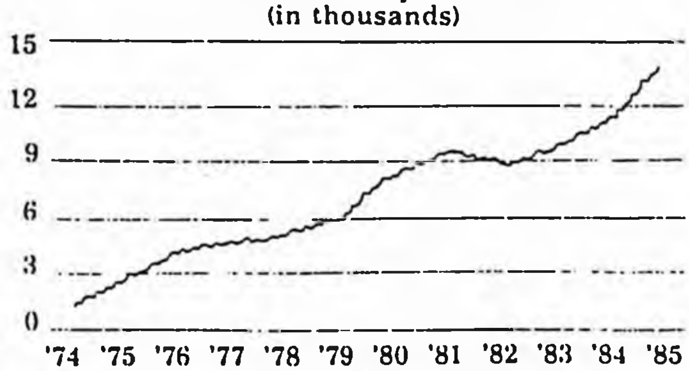
Tort Reforms

- Establish courts of claims to hear suits against government defendants.
- Establish pretrial screening panels to determine validity of suits.
- Impose penalties for filing frivolous suits.
- Abolish/limit prejudgement interest awards.
- Cap noneconomic and punitive damages.
- Cap attorneys' fees.
- Abolish or modify the collateral source rule and joint and several liability.
- Authorize structured settlements and itemized jury verdicts.
- Redefine standards of care.
- Revitalize a restricted form of sovereign immunity.
- Modify statutes of limitation.
- Authorize judges only to determine damage and award amounts.
- Adopt comparative negligence standards.
- Limit the discovery process.

Source: Statement by Vermont Rep. Edward R. Zuccaro on behalf of the National Conference of State Legislatures before the U.S. House Subcommittee on Commerce, Transportation and Tourism NCSL does not necessarily endorse any of these proposed solutions

Litigation Explosion

Product Liability Lawsuits (in thousands)



Source Administrative Office of U.S. Courts

The number of product liability lawsuits filed in U.S. district courts has risen more than eight-fold since 1974.

ATTACHMENT F

CAN ANY OF THESE LAWS SOLVE THIS PROBLEM?

CONFERENCE OF INSURANCE LEGISLATORS
TASK FORCE ON AVAILABILITY AND AFFORDABILITY
OF LIABILITY INSURANCE

NOVEMBER 11, 1986

6. ARBITRATION

PURPOSE:

To speed settlements and lower court costs, legislators have established panels which hear arguments and render decisions and awards in "uncomplicated cases."

BACKGROUND:

Arbitration has been one of the most talked of remedies in regard to easing liability insurance problems but only three responding states, Michigan in 1975,[85] Washington in 1979,[86] and Utah in 1983[86] established arbitration in medical malpractice cases. In each, Insurance Department sources believed the measure to have been ineffective.[87] Utah raised its arbitration threshold to $2,500 in 1985.[88] It is too early to judge the results.

SUB-SUMMARY:

No definite beneficial results to date.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	0	6	1	7
AFFORDABILITY	0	0	6	1	7

IV.

INSURANCE REFORMS

Insurance reforms generally fall under two headings: those that intervene in the insurer's decision making process, such as laws that prohibit cancellation and non-renewal, and those that allow greater freedom to buyers and/or insurers or others to arrange for coverage outside traditionally regulated insurance structures.

12. NON-CANCELLATION/NON-RENEWAL AND NOTICE OF POLICY TERMINATION REQUIREMENTS

PURPOSE:

To cut down the exposure and/or disruption of business caused by sudden cessation of liability coverage, many states have enacted laws to bar mid-term cancellation, non-renewal, and provide advance notice that coverage stopped well in advance of the termination date.

BACKGROUND:

Nearly all non-cancellation laws enacted before 1986 applied only to personal lines. In general, the experience has been that when underwriters are forced to retain a risk they become very selective about the risk they accept. That has the effect of assuring reasonably priced coverage to good risks while forcing high risks into assigned risk and FAIR plans.

Oregon, in 1985, adopted a noncancellation/non-renewal rule covering all commercial insurance.[135] It is too early to judge its long term effectiveness in terms of availability and affordability.

However, Maryland enacted a non-cancellation law in 1973.[136] But, according to the Maryland Insurance Department, the law has provided no availability or affordability change in the 12 years since its enactment.[137]

Nevada tried to accomplish the same thing by regulation,[138] with no definitive results.[140]

Notification that the insurer intends to get off the risk has been effective in relieving commercial auto liability insurance problems in Indiana and Hawaii.[140] But, Maryland enacted just such a law[141] and Department sources say it brought "no change."[142]

SUB-SUMMARY:

There is too little commercial insurance experience on which to draw to know how effective non-cancellation policies will be in making non-personal liability coverage available and affordable.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	4	2	5	3	14
AFFORDABILITY	0	3	7	4	14

13. AUTHORIZING GROUP INSURANCE

PURPOSE:

To end the prohibitions against sales of group insurance which affords economies of scale in marketing and in shared claims information and loss experience, legislation has been proposed authorizing corporations, governments or professionals to buy group insurance.

Washington, has authorized group professional and commercial insurance. Washington's law[143] has been perceived as effective in encouraging availability of medical malpractice and government liability, as well as for cooperative and fraternal insurance, according to legislative respondents.[144] The measure has also been judged effective in helping make government liability rates affordable.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	1	3	2	6	12
AFFORDABILITY	0	1	4	7	12

14. AUTHORIZING POOLS

PURPOSE:

To allow an opportunity to self-insure and realize economies of scale through pooling their own risks, legislation has authorized municipalities and others to pool their risks.

BACKGROUND:

Municipalities and others have flocked to join pools or form new ones to share risks because they cannot find or afford coverage and don't want to self-insure alone.[145]

WHAT WORKED:

Early reports indicate large savings from what they had been paying for liability coverage.[146] In Tennessee, legislative sources report that a pooling measure[147] proved "very effective" in regard to medical malpractice and "effective" in regard to the affordability and availability of government liability insurance.[148]

Michigan Department sources believe the state's 1982 pooling statute eased the problems in 1985-86.[149]

But in Utah, State Insurance Department sources view pooling legislation enacted in 1976 [150] as having affected "no change" in the availability or price in any major line of liability insurance.[151]

SUB-SUMMARY:

In general, pools have been effective. Buyers have obtained high amounts of coverage in a single policy. Pools have enabled smaller municipalities to insure at rates lower than those that would otherwise be available to them on a individual basis. The question: do pool managements have what it takes for the long haul? They had better because they are without guaranty fund protection. And while they essentially are self-insurance mechanisms the real challenge can be in paying third party claims -- where the beneficiary is not a pool member.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	2	5	3	4	14
AFFORDABILITY	2	3	5	4	14

15. BROADENED SELF INSURANCE AND CAPTIVES

To allow more opportunities for self-insurance, three states have authorized the setting up of captive insurance companies which can be in-house insurers (pure captives) or entities which serve the insurance needs of several companies, generally in the same business (association captives).

BACKGROUND:

Captives are providing cover now for an estimated 2200 U.S. corporations.[152] The number of U.S. owned captives has increased from some 1250 in 1980.[153] No one knows or will say how many commercial premium dollars have been diverted from the normal insurance market into captives and other forms of self-insurance but, according to one industry source, close to one-third of commercial premium dollars have gone the self-insurance route.[154]

Most captives are located overseas and have been providing coverage without the help of one single state legislative act.

WHAT WORKED BEST:

Vermont,[155] Colorado,[156] and Tennessee[157] have authorized captive formation.

Vermont premium volume had increased to $47 million by year end 1985, up from $22 Million in 1984 and from $13 million in 1983.[158] Some of the largest U.S. corporations including Boeing Aircraft Co, CitiCorp and Westin Hotel Cc. contributed to that volume.[159]

WHAT WORKED LESS:

Colorado captive activity has leveled,[160] with no new captives formed last year.[161] Still the law, like Vermont's, cannot help but be judged effective in easing availability and affordability problems. Colorado 1985 premium volume was $49.2 million.[162]

ONE REASON WHY:

Sources point to the fact that Vermont's requirements are less stringent.[163] Its capitalization requirements are low compared to the other two states with single parent captives needing capital and paid-in surplus of $250,000 and association captives, $500,000. Both Colorado and Tennessee requiring $750,000 for one company captive and $1 million for groups.[164]

CAUTION:

When it comes to captives and self-insurance the effectiveness of state law has to be qualified because the "insurance" captives provide is not the same as normal insurance. Captives are not required to meet the same state capital and surplus, or financial reporting requirements as normal insurers, although they are subject to state insurance department's oversight. As far as claim payments go, the same caveats that apply to pools apply to captives, especially on third parties' claims. Then the beneficiary may not be within the captive's corporate or association "family." Also the comfort factor is less. Guaranty Fund legislation does not cover captives.

SUB-SUMMARY:

From the experience of two states, Vermont and Colorado, it would be difficult to say that these statutes have not been effective in regard to availability and affordability.

Worth considering also, is that when large insurance buyers have the option of going the captive route, it cannot help but make traditional insurers more agreeable to make insurance available at affordable prices.

When it comes to off-shore captives there is no state insurance department regulation at all. Also, in determining the effectiveness c captive laws, insurers have cautioned that the captive management has not lived through the ups and downs of insurance cycles. At the same time, it is also fair to note the fact that the management of many captives is handled by some of the world's largest insurance brokerage with long histories in the insurance business. Captives may be only a good as their own money and someone else's ability to manage it.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	2	1	1	4
AFFORDABILITY	0	2	2	0	4

16. JOINT UNDERWRITING ASSOCIATIONS

PURPOSE:

To provide for coverage of risk that individual insurers do not want to cover, joint underwriting associations have been authorized. In regard to liability insurance in responding states, they have mainly, but not exclusively, been used in medical malpractice.[165]

BACKGROUND:

By their nature joint underwriting associations cannot help but make insurance more available than it would be without them.

WHAT WORKED:

Both Insurance Department and legislative sources in responding states which adopted them, view them as "very effective."[166] Responding states reported that of 28 JUA laws and statutory applications, 14 were perceived as being either "very effective" or "effective" in regard to availability,[167] and 12 were perceived as being either "very effective" or "effective" in regard to affordability. Most applications were in medical malpractice.[168]

Obviously, medical malpractice JUAs have not helped "lower" premiums prices, especially in medical malpractice.[169] Some sources point out, however, that JUAs have helped make the insurance more "affordable" than it would have been without them.[170]

Question: does what makes insurance more affordable for health care providers, make it not affordable for insurers, their policyholders, and the society? Answer: Yes. Insurance industry sources say JUAs were designed to be self-supporting,[171] but earlier this year most of the 12 JUA's in the nation were facing large deficits.[172] Some wanted to expand their "base" by increasing their membership.[173] In other words, they were seeking subsidization from other insurers through legislation. Relatedly, physicians mutuals which wrote "long-tail" coverages have flirted with insolvency.[174] Among the most troubled has been Medical Liability Mutual Insurance Company (MLMIC) in New York, whose "shortfall" was close to $750 million.[175]

SUB-SUMMARY:

JUAs have worked for medical malpractice availability. But the price has been very high. And when it comes to making medical malpractice liability "affordable," the first answer has been some form of subsidy.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	6	8	9	5	28
AFFORDABILITY	6	6	11	5	28

CONCLUSION ON INSURANCE REFORMS:

Non-cancellation laws are an effective quick fix but can eventually be counter productive. JUAs work very well in assessing coverage, but they involve subsidization of one commercial enterprise by another raising fundamental questions of fairness. So do pools and captives. But with each there is some kind of trade off: Drying up of the normal market in the case of non-cancellation laws and JUAs; less solvency regulation and the third party claims question in the case of pools and captives; and, in the case of offshore captives, there are alien jurisdictions over whom U.S. based insureds and state governments have little regulatory clout in the event of claims disputes and/or insolvencies.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	13	20	20	20	73
AFFORDABILITY	8	14	31	20	73

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135. O.R.S. 836-85001-85040

136. M.I.L 48A, 547A.

137. Response to Question 16, note 3 supra.

138. Nevada Insurance Department Regulations.

139. Note 137, supra

140. H.R.S. 294.9-C; responses to Question 16, note 3, supra.

141. M.I.L. 48A, 547A.

142. Response to Question 16, note 3 supra.

143. Washington Insurance Code 48.62-120W, 1979

144. Response to Question 16, note 3 supra.

Reform

VI.

REGULATORY REFORMS

When it comes to regulatory reforms the question focuses quickly on rating laws. But despite the focus, a wide universe of opinion remains as to which kind of rating law best promotes availability and/or affordability of insurance. In the crisis of 1985-86 it has not been unusual for a legislator and regulator to question the rating law in his or her state and to contemplate the alternative. As Mississippi Insurance Commissioner George Dale said in a follow-up interview:

"All the file and use states are looking at prior approval and all the prior approval states are looking at file and use."[176]

At the same time, Commissioner Dale and others who have worked with insurance regulation have for years pointed out that rating laws cannot change prices overall, that premium levels will move where they will regardless of rating laws.[177] But, study has shown that where rate changes do not need government approval or sanction, rates can change more quickly to serve the availability needs of the real world market.[178]

17. FILE AND USE/USE AND FILE/NO FILE ("Open Competition")

PURPOSE:

About half the states have laws designed to encourage competitive behavior and allow each company to set the own prices without State approval. The same laws do, however, require that rates not be excessive, inadequate, or unfairly discriminatory.

WHAT WORKS:

Among respondent states which have an open competition rating law, sources in only one, Tennessee,[179] believe its rating statute was effective in promoting availability and affordability of liability insurance.[180]

In New York where file and use had been in effect since 1970,[181] one legislative source qualified his enthusiasm for the statute this way:

"Open rating, where working, works great, however in a tight market, it has been used to create great instability in the marketplace." 182

In response to tight markets in the late 1960's, New York switched from prior approval to competitive rating.[183] In the after shock of price increases and dropped coverages of 1985-86, the State adopted, "flex rating."[184] So has Oregon.[185]

And in California where the nation's classic "no file" law, the McBride-Grunsky Insurance Regulatory Act,[186] has been in effect some 40 years, Insurance Commissioner Roxani Gillespie has changed "no file" to "flex file." The Department now requires insurers to submit data supporting rate increases of more than 25 per cent for liability insurance.[187]

In promulgating the new rule, the Commissioner said:

> "Historically, competition has been a strong regulatory force--to the benefit of the insurance buying public. However, due to significant operating deficits caused by extreme competition and rapidly increasing loss costs during the early 1980s, commercial liability insurers have imposed, in the last two years, substantial rate increases which have caused hardship in many cases for commercial insureds and their customers. Given these recent conditions, some regulatory method is therefore necessary whereby the Commissioner can be informed in a timely manner of substantial rate increases in commercial liability insurance."[188]

(SUB-SUMMARY ON FILE AND USE AND PRIOR FOLLOWS PRIOR APPROVAL SECTION.)

DOES NO LAW WORK BEST?

Ironically, son finite information regarding non-personal liability insurance co s from Illinois, which has no rating law. In Illinois, combined ratios (losses plus expenses divided by premium) for commercial insurance lines, as well as for other liability and medical malpractice lines, show that Illinois insurers of outgo to income is consistently higher than the regional and countrywide ratios.[189] Insurers' losses are as high or higher in Illinois as in other states which have rating laws.[190]

In other words, Illinois businesses and professionals are getting more for their money than their neighbors in Iowa, Indiana, Wisconsin, Missouri, and Michigan.[191]

The following charts track those ratios.[192]

18. PRIOR APPROVAL

PURPOSE:

To meet the same statutory mandate, the laws in some other states provide that the rate changes cannot go into effect without approval of the Insurance Commissioner.

BACKGROUND:

Half the states have prior approval rating laws.

WHAT WORKED:

Sources in only two respondent jurisdictions, Hawaii and Puerto Rico, saw their prior approval laws[193] as "very effective" in fostering both availability and affordability.[194]

WHAT DIDN'T

From that point the cheers subside. Nebraska sources say that the state's prior approval law, in effect since 1947, has produced "no change" in liability insurance availability and/or affordability.[195]

In South Carolina, which has had prior approval for the same 40 year period, sources also say there has been no difference from what would have happened anyway.[196]

In other jurisdictions, sources did not say if the law had any effect, positive or negative. In three states, Alaska, Washington, and West Virginia, there have been a total of more than a century of rating law years, but no responses as to whether those laws had been effective.[197]

SUB-SUMMARY:

In regard to both kinds of laws, recurring availability and affordability crises speak for themselves. Under both forms of law, rates have gone up and insurance prices have risen sharply.

Assessing the past (or future) effectiveness of insurance rating law is not easy.

The sudden skyrocketing of prices beginning in late 1984 proved that insurance buyers could be subject to fearsome increases. But low prices, whether produced from private competition or government suppression, are only one test of a laws effectiveness. Another test is whether the law permits the industry to respond to changes, such as a serious capacity shortage, produced from one or several causes e.g. falling investment yields, underwriting losses, herd driven premium prices. Under more permissive rating laws like the file and use statutes, the industry has been able to begin to restore that capacity rather quickly, albeit painfully, in many cases. Increases such as took place in early 1985, would have been much more difficult and might have not been so widespread under a system where the full exercise of prior approval laws was dominant.

But still another test is the law's ability to discourage irresponsible price cutting or "price war," especially the kind such as took place in the late seventies and the first half of the present decade. While that memory is still fresh it may be worthwhile to note that the possibility of price wars had been dismissed not so long ago. In 1969, as New York began consideration of "open" rating, then New York Superintendent of Insurance Richard E. Stewart wrote:

"Important segments of the insurance industry have urged until recently that if rates were left to the forces of open competition, the economic law of the jungle would apply and produce chaos. They assert that unbridled competition would unleash rate wars and ruinous competitive practices...

"There is no evidence in the past two decades that greater reliance on the forces of the marketplace to set rates results in price wars...."

But the price wars did come, brought on by changes that no one could have predicted when that statement was made nearly 20 years ago. Competitive rating laws did not prevent the price war. But neither did prior approval. Prior approval may be the law in half the states but well over half the states have experienced availability and affordability problems in 1985-86. In rate regulation, the search continues.

FILE & USE

	VE	E	NC	NK/DA	CP	TOTAL
AVAILABILITY	2	3	7	5	4	21
AFFORDABILITY	2	2	8	5	4	21

PRIOR APPROVAL

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	5	0	3	17	25
AFFORDABILITY	3	3	3	16	25

19. FLEX RATING

PURPOSE:

To realize the benefits of sensible competition, while maintaining a degree of control, New York and Oregon have adopted flex rating in nearly all commercial lines and most professional liability lines, except medical malpractice.[198] It is too early to judge the effect.

20. EXCESS PROFITS

PURPOSE:

To keep insurers from taking advantage of their advantage in selling what many consider to be essential to personal, professional, public, and corporate well being, curbs on profits have been proposed.

Nebraska, New York (commercial and private passenger auto), North Carolina and South Carolina have excess profit provisions.[199] Nebraska and New York report that the measures have effected "no change."[200] South Carolina sources said the effect was not known.[201]

Few question the value of excess profits provisions. But they can be relied on only where there is adequate funding to investigate, document and prosecute possible abuses.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	0	2	2	4
AFFORDABILITY	0	0	2	2	4

21. INCREASED DATA TO INSURANCE DEPARTMENTS

PURPOSE:

To better understand what is really happening in regard to insurance profits, premiums, losses etc., legislators and insurance commissioners have been asking for more data from insurers.

BACKGROUND:

Many insurance law changes in recent years have included a provision that companies furnish specific data to State Insurance Departments. The legislation seldom, if ever, provides for additional personnel and computer resources to handle the additional data.

WHAT WORKED AFTER A WHILE:

Oregon's experience provides an example. Closed claim data, filed pursuant to the state's 1975 medical malpractice reform law,[202] remained unused until the State Medical Association refined the data.[203] Now the sorted and refined data has helped the Department spot and review claim and loss trends and establish a climate where medical malpractice liability insurance is available in the private voluntary market.[204] The Oregon Department reports that "there is no availability problem" in medical malpractice insurance in Oregon.[205]

Sources in Tennessee report that its 1977 law[206] requiring the filing of closed claims data to the department was effective in regard to medical malpractice.[207]

But favorable opinions in regard to increased data are not universal. Michigan reports that information furnished to the Department

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But favorable opinions in regard to increased data are not universal. Michigan reports that information furnished to the Department in regard to medical malpractice, government and commercial liability yielded "no change."[208]

SUB-SUMMARY:

Quality data like that produced from closed claim studies can help enhance availability. The key is having the staff and equipment to refine and apply the needed information.

	VE	E	NC	NK/DA	TOTAL
AVAILABILITY	0	3	5	2	10
AFFORDABILITY	0	3	5	2	10

CONCLUSION ON REGULATION:

"Open" rating has enabled the market to recover faster and respond to its environment, with price moving up or down -- as experience has shown all too clearly. But prior approval has not kept rates down for long. It remains to be seen whether flex rating will offer the best -- or worst -- of both worlds. Both excess profits laws and measures requiring increased data can help if legislators provide regulators with the resources for implementation.

	VE	E	NC	NK/DA	CP	TOTAL
AVAILABILITY	7	6	17	26	4	60
AFFORDABILITY	5	8	18	25	4	60

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176. Telephone interview with George Dale, Commissioner of Insurance, State of Mississippi, July 1986.

VI.

ADMINISTRATIVE ACTION

In the crisis of 1985-86, several Commissioners were able to effect significant relief in some lines of insurance -- especially when the legislature had already given them the powers they need to bring about industry cooperation.

22. MARKET ASSISTANCE PROGRAMS**

To establish an additional, medium of communication between buyers and sellers of insurance in a tight market, Insurance Commissioners, acting as motivators, have established so called Market Assistance Programs (MAPs).

BACKGROUND:

During the crisis of 1985-1986, Market Assistance Programs have proved themselves an effective catalyst to availability in some lines of liability insurance.

Where MAP programs have been most effective, notably in New Hampshire and North Carolina, the legislature had already passed "stand-by JUA" legislation,[209] meaning that the commissioner could mandate the establishment of a JUA to write insurance in a troubled line.

With over 90 per cent of the applications received actually placed, New Hampshire Commissioner Bergeron sees the eventual phasing out of the MAP, with the risks it covers -- municipal, day care, and liquor liability placement going back to the normal market or self-insurance.[210]

North Carolina Commissioner James E. Long reports an equally high percentage of placement of risks handled through his Department's MAP Program.[211]

Several respondent states were divided on whether the MAPS were effective.

As with other areas of inquiry, several states declined to offer answers regarding the effectiveness of their MAP programs.

OTHER ADMINISTRATIVE ACTIONS:

In Oregon, Commissioner Josephine M. Driscoll used administrative powers, as noted earlier in this report, to ban cancellations in commercial insurance and to initiate flex rating.

SUB-SUMMARY

There is little question that a MAP can be effective in making insurance available, especially when the Commissioner has a JUA among his persuasive assets. One caution: different MAPs have addressed different lines of insurance in different states. It is also fair to say they have been successful in lines where at least part of the problem was not related to reality but only perception, as has been the case with day-care. No one is beating the drums for proposed MAPs for such real lingering availability and affordability problems such as hazardous waste, medical malpractice, asbestos removal liability.

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208. N.C.I.C. 58-4500-460.

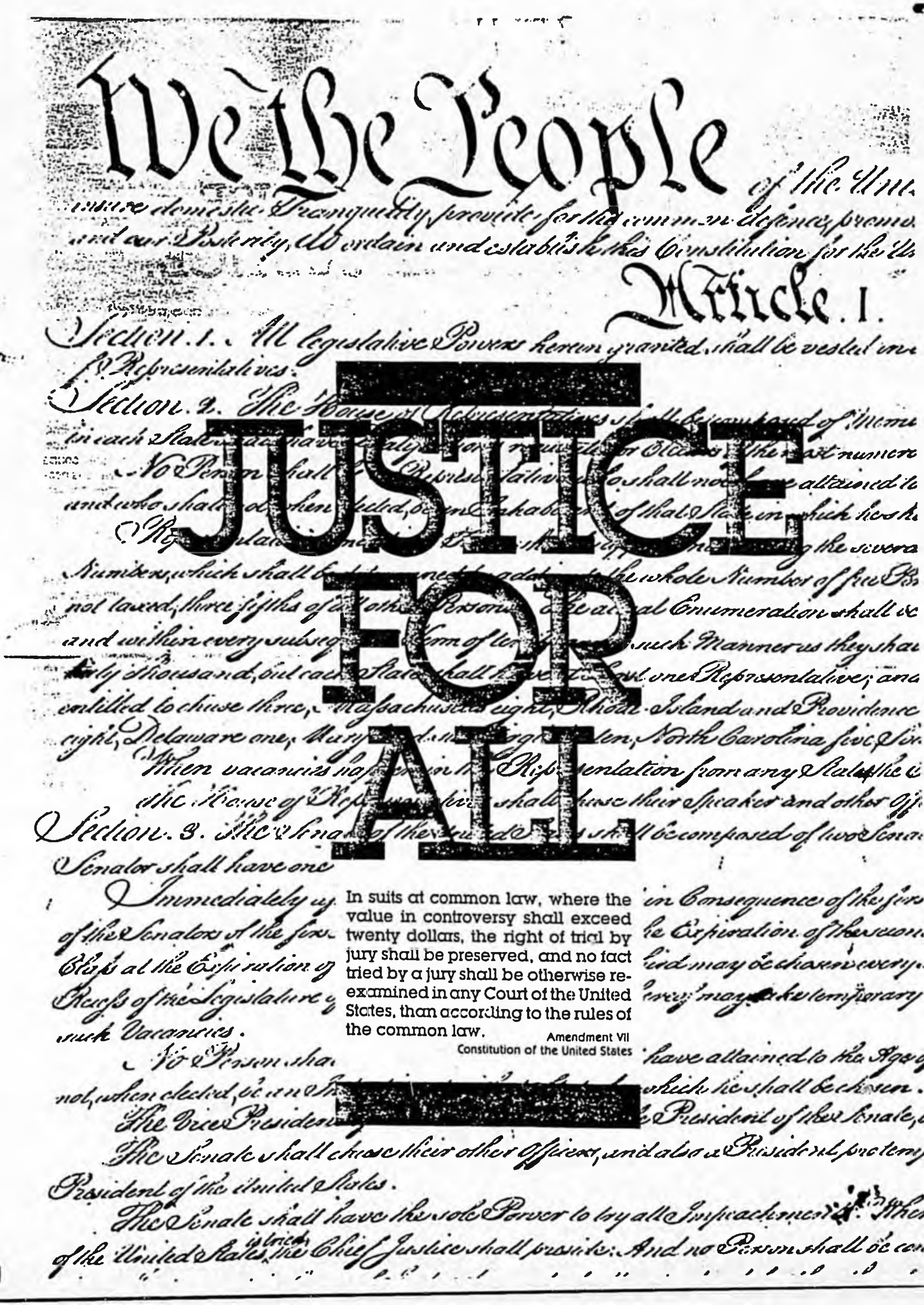
209. Remarks by Louis E. Bergeron, COIL Seminar, note 1, supra

210. Remarks by James E. Long, Insurance Commissioner, State of North Carolina, COIL Seminar note 1, supra.

** The survey responses for MAPs are not included in any above tabulations. Map experience is still very new, while some MAPs may be phased out as the need becomes less acute. However, there is little doubt that standby JUA law, not included in the Questionnaire provides Commissioner with formidable leverage in encouraging insurers to cooperate with MAP programs.

Also worth noting is the fact that from early indications, it is apparent that MAPs have been effective in lines of insurance affecting smaller businesses and institutions such as dram shop and day care liability as distinct from larger long tale and "open ended" risks like hazardous waste liability.

④ HB 227


We the People
Article. I.
JUSTICE FOR ALL
In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
Amendment VII
Constitution of the United States

The Association of Trial Lawyers of America was founded as the National Association of Claimants' Compensation Attorneys in 1945. The objectives and goals of the Association are to uphold and defend the principles of the Constitution of the United States; to advance the science of jurisprudence; to train in all fields and phases of advocacy; to promote the administration of justice for the public good; to uphold the honor and dignity of the profession of law; and especially to advance the cause of those who are damaged in person or property and who must seek redress therefor; to encourage mutual support and cooperation among members of the bar; and to uphold and improve the adversary system and trial by jury.

Voting membership in the Association is open only to those who represent plaintiffs in civil trials and defendants in criminal trials. Voting members must be "committed and devoted to the concept of a fair trial, the adversary system, and a just result for the injured, the accused, and those whose rights are jeopardized."

The Jury Speaks for the American People

Juries embrace community values, give ordinary citizens a vital role in government, and apply their collective wisdom to the fair resolution of hard cases. They do a good job, too. A study by the Institute of Civil Justice of the Rand Corporation says, "Our research shows that juries are usually sensible and that their decisions have been remarkably stable over 20 years." The jury, says Chief Justice Rehnquist, "represents the layman's common sense."

You'll find the facts on pages 4 and 5.

Equal and exact justice to all men, of whatever state or persuasion, religious or political.

Thomas Jefferson
First Inaugural Address, March 4, 1801

Court Filings Keep Pace With Population Growth

The National Center for State Courts in a recent study found "no evidence to support the existence of a national 'litigation explosion' in state courts." The National Association of Attorneys General reports, "The facts do not bear out the allegations of an 'explosion' in litigation." Researchers at the University of Wisconsin point out that Americans do not litigate any more than people in England or Denmark or New Zealand—and they sue even less often than Yugoslavians. Americans go to court when they need to, because they believe in the system.

There are more facts on pages 6 and 7.

Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit.

James Madison
The Federalist No. 51 (1788)

The Insurance Industry Hides in a Fog of Statistics

In 1985, insurers' net income, according to the United States General Accounting Office, soared to an astonishing $19 billion. This was during the period when the industry was bemoaning the "fact" that it was suffering record losses.

Insurers put money into a loss reserve not only to pay claims filed that may never be paid but also to pay claims that *might* be filed—and deduct the loss reserves, which are available for investment, as a business expense. Then, the insurers are allowed to claim—as individual investors cannot do—that the money they make on investments is not really income.

The details are on pages 8 and 9.

Juries Help Make Life Safer for All of Us

Doctors don't discipline their colleagues who do harm to patients, manufacturers sacrifice safety to profit, employers hire people who are a menace to the public—and juries tell all of them that this just won't do.

Jurors, seeking nothing for themselves, seek only to ensure that all citizens are treated fairly and that wrongdoers are held to account.

The jury has been rightly called the conscience of the community. Jurors ensure that community standards of justice are maintained.

The story begins on pages 10 and 11.

Manufacturers Listen When Juries Speak Out on Safety

Humidifiers don't scald children any more, drain-cleaner cans don't blow out people's eyes any more, tractors don't geyser burning gas onto farmers any more, and children's clothes don't catch fire the way they used to. Each time, a jury spoke—and each time a manufacturer got the message.

Oil companies have heard, too: oil spills are down dramatically, and the theory is that damage awards for the harm done to the environment have made the companies more careful. Is this bad?

Pages 12 and 13 will help you decide.

Insurance Reform Legislation Would Improve the System

Long ago, a lone person hurt by a corporation could do nothing but lick his wounds—and the corporations liked it that way. So did their insurers. They like to keep the money they take in.

Now a David who's wronged can take on a Goliath with some hope of winning—and the corporations and their insurers don't like it a bit. They're fighting back, by fair means and too often foul. And unlike other trades, insurers aren't regulated by federal antitrust laws. They can gang up on consumers without fear. Maybe there ought to be a law against it.

Some arguments are found on pages 14 and 15.

The Press Has Commented on the Insurance Crisis

Read all about it on page 16.

THE JURY SPEAKS FOR THE AMERICAN PEOPLE.

Anti-Jury Fun with Numbers

The insurance industry and the Justice Department have relied heavily in their attack on the law on reports produced by Jury Verdict Research, Inc. (JVR). Unfortunately, according to Philip J. Hermann, chairman of the board and founder of JVR, his company's work does not support that reliance. "A number of highly publicized news articles quoting our statistics have grossly misstated them," he said in testimony before the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance, and Urban Affairs.

"JVR," he went on, "has neither asserted nor published any conclusions that the average size of jury verdicts has recently skyrocketed." His conclusions are that verdicts for the plaintiff have increased at an average rate of 15.23% over the past 10 years, and that the largest increases in verdicts coincided with the highest increases in the Consumer Price Index and with studies by the U.S. Health Care Financing Administration of the average annual growth rate for health care between 1978 and 1984.

Mr. Hermann emphasized that JVR reports do not cover verdicts for the defense, which would, of course, mean zero for the plaintiff. In medical malpractice cases that go to trial, for example, plaintiffs recover in far less than half the cases.

As for million-dollar verdicts, he told the subcommittee, "The increase in the number of million-dollar verdicts may be the result of the inflation factor and not necessarily because jurors have simply decided to award larger amounts."

JVR statistics, Mr. Hermann said, are based on what the juries say the awards should be—not on what the plaintiffs receive after appeal, settlement, or remittitur.

Mr. Hermann had criticisms of insurance companies that went beyond their misuse of JVR statistics. "The number of insurance companies," he stated, "that depend on the partially educated guess in evaluating their claims is startling."

> One unusually large verdict can skew the numbers. The JVR statistics took in the first Pinto verdict—more than $127 million—in 1978, but it was later reduced to $6.7 million.
>
> *Consumer Reports,* August 1986

Of juries, on the other hand, he said, "I must confess that I have been impressed, with few exceptions, by the ability of the juries to resolve personal injury disputes in a fair and evenhanded manner. Juries reflect the community's prevailing social and cultural concerns and standards in their application of the law to the circumstances of each litigant in each individual case."

The Chief Justice and Trial by Jury

Chief Justice William Rehnquist has spoken to the importance of the jury system. In a 1979 case he said, "The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the sovereign, or, it might be added, to the judiciary."

"Trial by a jury of laymen rather than by the sovereign's judges," he said further, "was important to the founders because juries represent the laymen's common sense, the 'passional elements in our nature,' and thus keep the administration of law in accord with the wishes and feelings of the community."

Stephen Webb

Would You Pay This Price For A Ticket To The "Lottery"?

Of 1,642 million-dollar verdicts between 1962 and 1985:

Permanent paralysis	362
Permanent brain damage	338
Wrongful death	362
Amputations	161
	1,223

Cool analysis is discrediting last year's horror stories about an epidemic of multimillion-dollar jury awards for relatively little cause. In a sample of 359 cases in the 1982-1985 period, mostly involving product liability, punitive damages were "insignificant," according to a study published by the American Enterprise Institute. "The civil litigation system is stable," says Mark Peterson of the Rand Institute for Civil Justice.

"The Crisis Is Over—But Insurance Will Never Be the Same," *Business Week*, May 25, 1987

It is important to recognize that the costs of injury and illness are not created by scientific knowledge but are revealed by it. These costs always existed; they simply were hidden by ignorance.

Cooper, "Trends in Liability Awards," 1986

The most troubling aspect of the current debate is the way all respect for the system—and especially for juries—seems to have evaporated in favor of finding ways to intervene on behalf of defendants and their insurance companies, as if there's a lynch mob out to get them.

As reporters who often study jury deliberations, we find the jury process more often than not to be an awe-inspiring, downright throat-lumping testimony to the common man's devotion to the value of law in a democracy. Most juries we've studied act not infallibly but rationally.

American Lawyer, May 1986

Not surprisingly, a jury of peers tends to increase awards over time by no more than the rise in medical costs, general inflation, and the value of lost work. Recent changes in average jury awards and numbers of lawsuits filed mirror increases in average wages, medical costs, life expectancy, and population growth.

Cooper, "Trends in Liability Awards," 1986

What Juries Can Do

Juries fairly chosen from different walks of life bring into the jury box a variety of different experiences, feelings, intuitions, and habits. Such juries may reach completely different conclusions than would be reached by specialists in any single field, including specialists in the military field. On many occasions, fully known by the Founders of this country, jurors—plain people—have manfully stood up in defense of liberty against the importunities of judges and despite prevailing hysteria and prejudices. The acquittal of William Penn is an illustrious example. Unfortunately, instances could be cited where jurors have themselves betrayed the cause of justice by verdicts based on prejudice or pressure. In such circumstances independent trial judges and independent appellate judges have a most important place under our constitutional plan since they have power to set aside convictions.

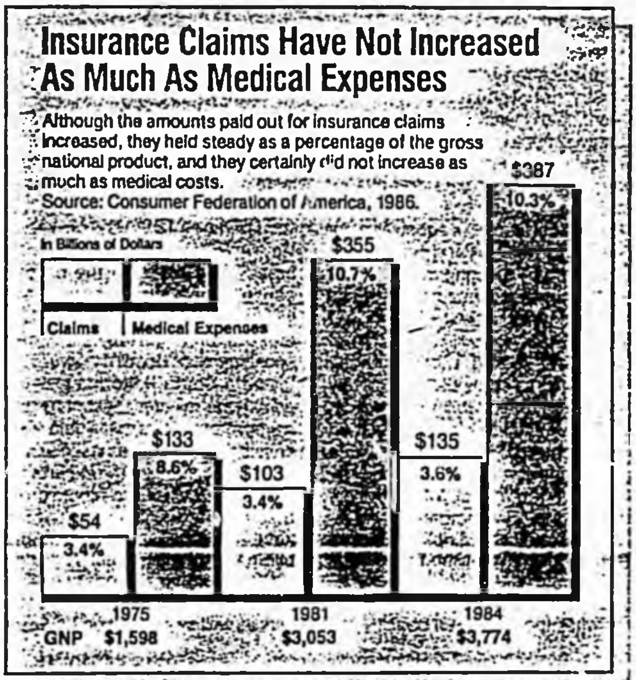
Justice Hugo L. Black
Toth v. Quarles, 350 U.S. 11, 18-19 (1955).

Why There Are More Million-Dollar Suits

The million-dollar verdict is still a freak occurrence, but it is true that there are more of them these days. Here are some of the reasons why:

- Inflation: In the past 20 years, the amount a dollar will buy has dropped by about two-thirds; it takes $3 now to buy what $1 would buy in 1965.
- Earning Power: The average American can now earn 30% more a year than he was able to earn 20 years ago.
- Life Expectancy: People now live longer than people used to 20 or even 10 years ago.
- Increased Medical Costs: In the past ten years the cost of hospital care alone has increased 56% faster than the Consumer Price Index has.
- Medical Breakthroughs: People with catastrophic injuries can now be saved, and sometimes even partially rehabilitated, but the technological costs of helping them to a viable life are high.

The Insurance Crisis: Real Solutions for Real Problems—A Consumer Perspective, p. 14



Elsa Hennig

In Tennessee, between 1980 and 1985: "The average plaintiff award per year fluctuated, peaking in 1984 at $61,765 and decreasing to $21,384 in 1985. In contrast, the median plaintiff award per year remained fairly stable between 1980 and 1985, not exceeding $9,000 in any year except 1984, when it was $20,617. Median award figures tend to give a more accurate picture than averages, because they ignore the effect of extreme values."

Tennessee Insurance Department
Performance Audit, 1987

Have Juries Run Wild?

That was the question the Consumer Federation of America (CFA) asked itself. It was answered in a CFA study of "Trends in Liability Awards" directed by Dr. Mark Cooper and released in May 1986. The answer summarized:

> Far from running wild, juries have adjusted their awards to reflect the basic social and economic changes that have taken place in the past decade. They are making awards to their peers that are consistent with the increasing economic output of society and the value placed on life.

Dr. Cooper points out further in the section "How Juries Should Behave" that "juries can be expected to decide the magnitude of awards according to their experience with inflation and their knowledge that income and productivity grow over time and that medical costs have increased sharply in recent decades. The number of cases brought can be expected to reflect the number of people in society and the . . . risks to which they are exposed."

The study shows that between 1975 and 1984 real income increased 17%, life expectancy 3%, and elderly income 10% compared to average income. As a result, there is an expected increase in lifetime income *after inflation* of 25% to 30%. At the same time, health care costs increased by 23% more than inflation, and hospital costs increased almost 56% more than inflation, and these factors must be considered in redressing wrongs that require extensive medical care.

Changes in median awards are generally smaller than changes in average awards, Cooper's report says. Average awards count money; median awards count people. Medians thus represent typical awards. They show what juries are likely to do—what they do most often. Averages indicate that juries occasionally make much larger awards than they usually do.

What do juries factor into awards? Here are some facts from the Consumer Federation survey:

- Productivity of workers has increased dramatically over the past 20 years, and incomes have increased in response.
- Therefore, the loss of income suffered by an interruption of work in 1985 is larger not only because of inflation, but because of increases in real productivity.
- People are living longer, so the lifetime loss will be higher.
- While population has increased by 23% over the last 20 years, work force participation has increased by 52%—which means that many more people are exposed to hazards in the workplace.

What Happens After the Verdict

Remittitur—The trial judge reduces the jury verdict. The first multi-million-dollar verdict, won by actor John Henry Faulk for being blacklisted, was $3.5 million dollars; it was reduced by the trial judge to $450,000.

Appeal—The appeals court may reduce the award, or overturn it totally.

Settlement—To avoid the uncertainty and added expense of an appeal, some plaintiffs and defendants agree to an immediate post-trial settlement, which can be significantly lower than what the jury awarded.

COURT FILINGS KEEP PACE WITH POPULATION GROWTH.

Some States Think Before They Act . . . Some After

While some state legislatures rushed to recreate their legal systems in response to insurance company needs, others took the time to study the problem first, and some that had passed new laws had second thoughts.

In 1986, the **Connecticut** legislature enacted one of the most sweeping "tort reform" statutes in the entire United States.

In May 1987, the Connecticut legislature repealed major portions of that 1986 bill. The repeal restored joint and several liability and did away with mandatory structuring of awards made by juries.

The legislature decided to reconsider the law because insurance affordability and availability did not improve significantly.

In April of 1987, the State of **Tennessee** issued a report of the performance audit of its own Department of Commerce and Insurance. Interestingly, given the size and sophistication of the insurance industry, the Tennessee Audit Division said: "Although audit work showed fluctuations in the number of civil suits and the size of jury awards, available data do not support contentions that the crisis is the direct result of a substantial increase in litigation and could, thus, be solved by enacting tort reforms."

Michigan did enact substantial restrictions on individual rights, but then the Michigan House of Representatives asked Casualty Actuaries, Inc. to study the profitability of commercial liability insurance. The study report was released on November 10, 1986, and made some unexpected statements: "Insurers often do not follow the advice of their own actuaries, and reserving and pricing policies are often instead established at the executive level of the company"—and executives have their own ideas of what the traffic will bear.

Among its conclusions, the Michigan study says clearly: "The effect of tort reform legislation, if there is to be any effect, has yet to emerge in the data . . . . It is doubtful that such legislation will eliminate or soften competition, and hence eliminate or soften the insurance cycle."

Other states were thinking first. In the spring of 1987, the **Wyoming** House Rules Committee killed a proposal to place on the ballot a constitutional amendment that would allow the legislature to limit non-economic damages for personal injury or death.

And a **South Dakota** legislative committee rejected most of the tort "reform" proposals it was created to consider, because, as a legislative staffer said, none of the experts the committee called upon could prove that tort "reform" measures would have a quantifiable impact in stabilizing insurance rates.

State bar associations (which include insurance and corporate lawyers as well as trial lawyers) in **South Carolina** and **North Dakota** studi jury trials and verdicts in their sta courts. The bar association in Sou Carolina found that when awar were discounted for inflation the had been no increase in dolla award d during the 10 years fro 1976 through 1986. It also repor ed that although there were mor and larger punitive damage awards the median amount for verdicts ha remained constant.

The State Bar Association o North Dakota in a similar 10-year study found that about half the verdicts were under $15,000, and only six verdicts were above a million dollars. The immediate past president of the state bar, David Peterson, said, "This tells me that North Dakota juries, contrary to common thinking, are not out of control."

"We think the report had a significant impact on the legislature," he went on.

"The insurance industry," he said, "used vague generalities, and we presented specifics."

"We're Not a Litigious Society"

"The facts do not support the rhetoric surrounding the litigation explosion," said Stephen Daniels in the *Judge's Journal* (Spring 1985).

"The message provided by the past," he said, "is that trial courts in different locales, even within a state, may show different patterns over time, but probably not the simple, upward trend line implied by the litigation explosion idea.

"We must be prepared for the possibility that research into patterns and changes in court activity over time may well show that there is little factual basis for all of those dire predictions."

Similarly, quoting a breakdown of the 1984 claims against Southern California Physicians Insurance Exchange (SCPIE), California Assistant Commissioner of Insurance Roth said that of 1,180 claims, 72 percent were closed without indemnity. The 324 claims paid averaged about $80,000, and over two-thirds were for $50,000 or less (*California Lawyer*, March 1986, p. 41).

Startling new evidence suggests that the "lawsuit crisis" may not even exist:

"The insurance industry has fostered these misperceptions with a phenomenally successful campaign that blames the 'lawsuit crisis' for shocking premium increases and a paralyzing insurance shortage. The rate hikes, however, result largely from the insurance industry's own mismanagement."

The often-cited litigation explosion thus appears to be exaggerated with respect to the total number of civil filings. The source of the perception that there is a litigation explosion may be founded in a changing mix of civil cases, increased complexity of the cases being filed, and widespread media reports of enormous awards in relatively few civil cases.

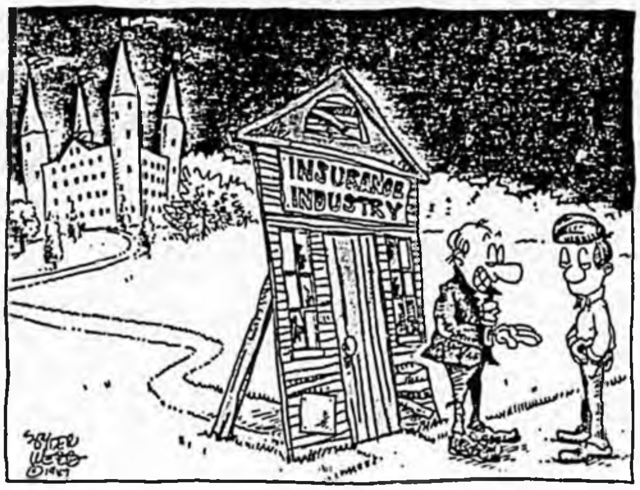
National Center for State Courts, *A Preliminary Examination of Available Civil and Criminal Trend Data in State Trial Courts*, April 1986

To the extent that there is an increase in certain types of litigation, one has to wonder why that's a bad thing. Imagine having a "crisis in confidence" in a branch of government in which the crisis was that people have *too much* confidence. How many other societies wouldn't relish that kind of problem, in which people reduce their arguments to paper and bring the papers to a courthouse precisely because they believe in the system.

American Lawyer, May 1986

The facts do not bear out the allegations of an "explosion" in litigation or in claim size . . . Instead, the available data indicate that the causes of, and therefore the solutions to, the current crisis lie with the insurance industry itself. Thus, to the extent that civil justice reform may be desirable, it would be for reasons entirely separate from the liability insurance "crisis." The rush to put such civil justice changes in place is therefore uncalled-for and potentially quite harmful, since these changes would remain in place, while providing little relief from any cyclical "crisis" period the insurance industry might pass through in the future. In particular, implementation of such damages at the federal level would create inflexibility and would eliminate states' abilities to make their own judgments. . . .

National Association of Attorneys General, Report, May 1986



Spydar Webb

Why Federal Court Filings Rise

If we break down the overall increase we notice that the increase in filings over the nine years (1975-84) is heavily concentrated in a few areas. . . .

Half the total increase is accounted for by two giant increases—recovery cases and social security cases. Each is the result of deliberate and calculated official policy—to recover overpayment of veterans' benefits by litigation and to curtail disability benefits by summarily removing beneficiaries from the rolls. Is the 412% increase in social security cases to be understood as an outbreak of litigiousness among social security claimants? Does it make sense to take the 668% increase in recovery cases as evidence of an outbreak of litigiousness among federal officials? Like social security recipients whose disability payments were terminated, federal officials were confronted with a problem and turned to the courts to solve it because nothing better was at hand.

Professor Marc Galanter,
"The Day After the Litigation Explosion"

Statistics from State Courts

In **Colorado**, the population increased 37.9% between 1972 and 1985, but personal injury suits increased by less than 31%.

In **Connecticut** in 1984-85, there were only 3 awards of $1,000,000 or more. Of the 12 product liability cases, the plaintiff won in 7; of 23 medical negligence cases, only 5 plaintiffs won.

The **Delaware** Superior Court in New Castle County found only 3 jury awards of $1,000,000 or more between 1980 and 1985, and two of these were in libel cases. The Annual Report of the Delaware Judiciary states that total damage claims from 1984-85 were down by 4%, and 1985 had 421 fewer claims than 1980.

In **Florida**, defendants won almost half of all torts verdicts, and more than 85% of the awards for plaintiffs were less than $50,000. The number of medical negligence cases dropped from 6% of total filings in 1983 to 1.8% in 1984 and 1985.

In **Georgia**, defendants won a majority of cases; the highest award to a plaintiff in 1985 was $78,500.

In **Indiana**, the Supreme Court upheld only 4 awards of punitive damages in the 35 years between 1950 and 1985.

In **Iowa**, tort filings decreased by 12% from 1981 to 1985. Medical negligence and product liability cases accounted for only 3% of total tort awards.

The **Maine** 1986 Judicial Department Report revealed that since 1980, civil filings have steadily decreased, with a total decrease of 17.4%.

In **Minnesota**, statewide data indicate that less than 20% of all civil filings are personal injury actions; jury verdicts remained relatively constant in Hennepin County (Minneapolis-St. Paul) and were lower in 1985 than in 1981.

A study in **New Jersey** of jury verdicts from January 1980 through February 1984 showed that verdicts of over $300,000 were awarded in only 43 cases.

The **South Carolina** Jury Verdict Research Project has concluded that in that state product liability cases accounted for only 2% to 5% of all verdicts.

In **Texas**, there were only 16 medical negligence jury verdicts in 1984; and in 1985 there were only 15; in 1984 there were 24 jury verdicts in product liability cases, and in 1985 only 12.

In **Washington State**, tort filings per 10,000 persons have held steady since 1976.

The Supreme Court of **Vermont** reported a 2.3% increase from June 30, 1985 to June 30, 1986 in all civil suits.

Legislature Reaches End of Its Rope

New Mexico enacted a number of laws some time ago that it supposed would solve the problem of availability and affordability of insurance. In January 1987, an interim legislative committee reported to the 38th Legislature. That report was eloquent in its frustration.

The committee was charged with examining whether changes in the laws governing the civil-justice system solve the problem of increased insurance premiums in all aspects of our society. Among the committee's findings:

- There is an insurance premium crisis in New Mexico evidenced by massive increases in premiums in all areas of tort liability insurance.

As early as 1976 New Mexico had enacted changes which the advocates of tort reform designated as the most important requirements to stem the tide of insurance premium increases.

In 1976, governmental liability was capped at $300,000 per person and $500,000 per accident—among the most restrictive in the nation. Similar caps were placed on non-medical damages in medical negligence awards, and both kinds of cases were given new, shorter statutes of limitation. In 1986 New Mexico limited dram shop liability; the New Mexico courts had earlier abolished joint and several liability and instituted a system of proportioned negligence.

- Despite all these "tort reform" changes, New Mexico was experiencing skyrocketing insurance premiums (insurance for the city of Roswell jumped from $87,000 per year to $677,000 per year).
- There has been no demonstrable evidence that enacting tort reforms results in rate relief.
- New Mexico's tort reforms have not reduced insurance rates for general liability insurance.
- The committee found no evidence of a litigation explosion in New Mexico, nor was there any evidence of excessive judgments in tort cases.
- New Mexico is the eighth most profitable state in the nation for insurance carriers as expressed in the ratio of insurance premiums earned by general liability carriers to claims paid by those carriers. New Mexico premium payers, therefore, are in the unenviable position of subsidizing claimants in other states.
- Thus, what the insurance industry appears to be doing is attempting to keep its economic portfolio current by raising rates not in response to casualty losses, but rather in response to the downtrend in investment profitability.

The New Mexico committee concluded:

1. There is no litigation crisis or "tort reform" crisis in New Mexico.
2. There is an insurance premium crisis in New Mexico that is unrelated to the amount or quality of tort litigation in this state.

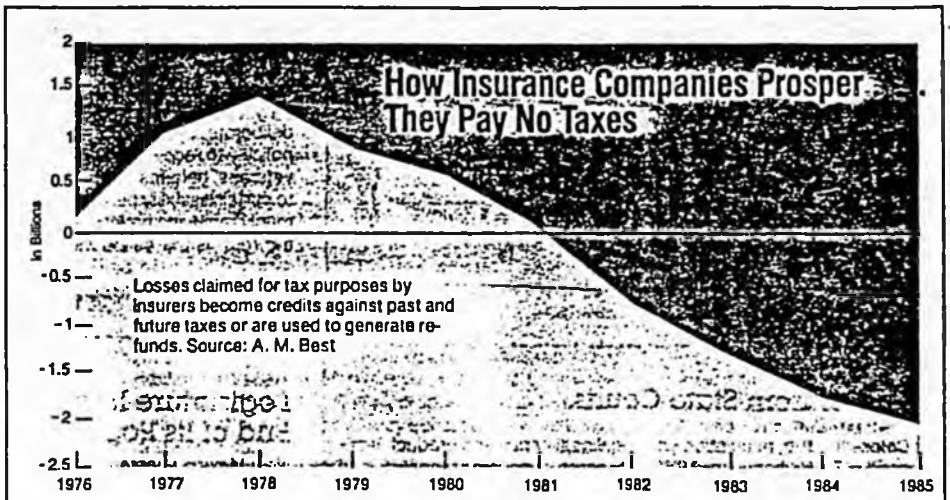
THE INSURANCE INDUSTRY HIDES IN A FOG OF STATISTICS.

Why Insurers Love the Tax Code

When a policyholder files a claim, the insurance company estimates what its ultimate payment will be and sets that money aside into a "loss reserve." The money may not actually be paid out for years, especially if damage disputes are dragged though the courts. Moreover, insurers may also reserve for claims that have not yet been made—and may never be made. But for tax purposes that money is deducted as an expense. Using this privilege, companies salt away billions of dollars.

Meanwhile, the insurance company invests the loss reserve in bonds, real estate, or the stock market, and garners a profit.

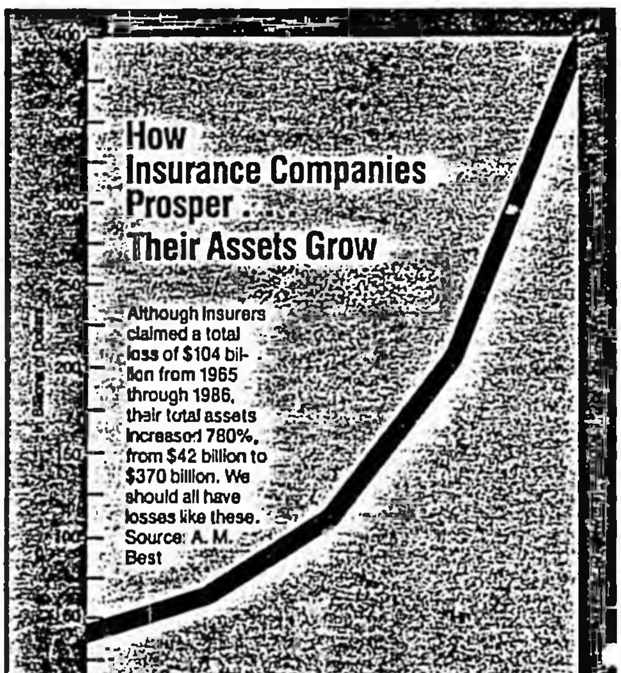
Consumer Reports, August 1986



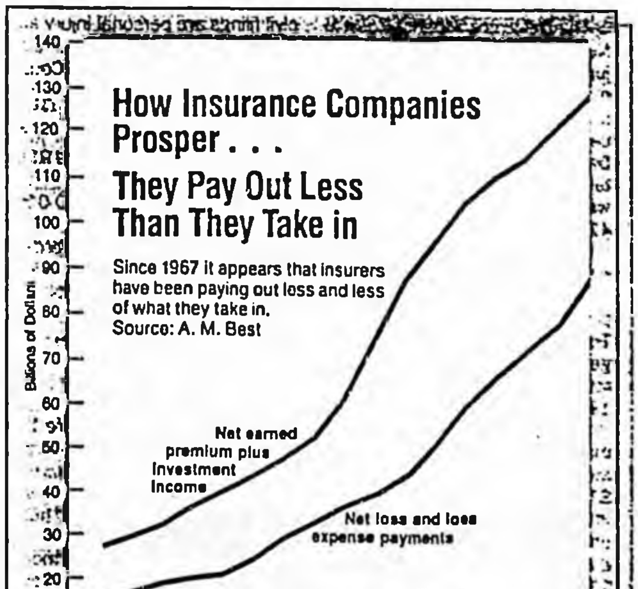
Dale Hennig

The debate has been hindered by an unwillingness on the part of the nation's insurance companies to open their books for scrutiny.

Houston Business Journal, April 27, 1987



Dale Hennig



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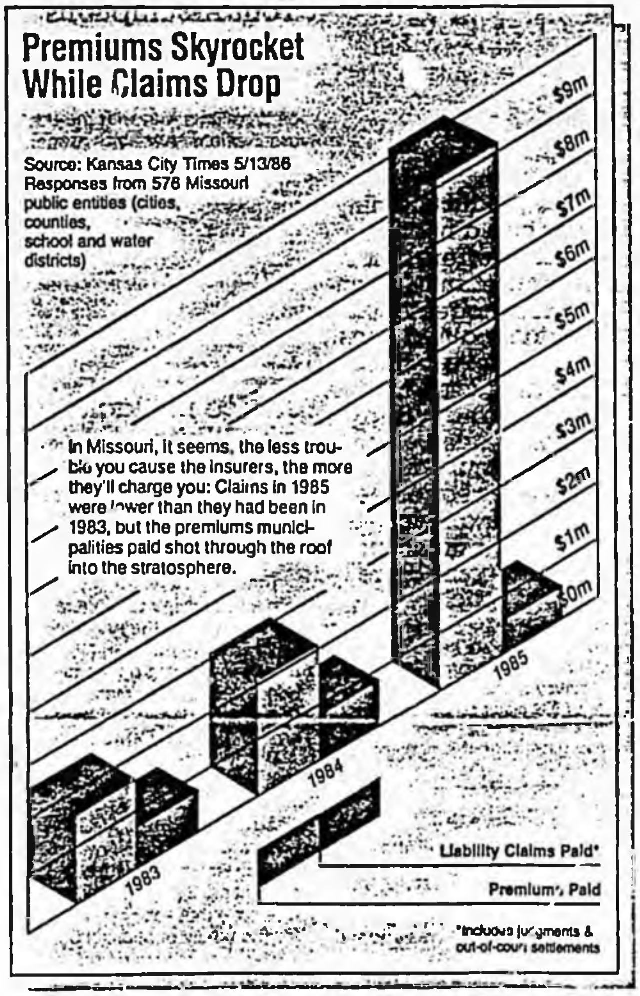


Dale Hennig

Dale Hennig

Child Care a Risky Business? Not for the Insurers

In 1985, the highest claim paid out for a child care program was $15,000. In a survey by the National Association for the Education of Young Children (NAEYC) reported early in 1986, 90 percent of those surveyed had *never* had a claim. Of the few that did, 8 out of 10 had total claims of less than $500.

And what did the child care business get as a reward for such good behavior? In 1985, insurers cancelled insurance for two-thirds of the small family day care homes and one-third of the child care centers, because they were "unprofitable."

Child care, according to the report, was included among the industry's list of unprofitable businesses on the basis of statistics that merged child care with foster care, nursing home care, and a number of other businesses.

In 1985, the NAEYC was getting 200 phone calls a week about rate hikes, coverage cutbacks, and cancellations. The NAEYC decided to document the problem. To its surprise, a random, national sample of child care providers proved there was no problem, from a risk point of view. "The cause of the crisis in liability lies primarily within the insurance industry," the report says flatly. According to Marilyn Smith, executive director of NAEYC, "We've asked the insurance industry for evidence of large child care claims and they haven't produced it. Congressional hearings, convened to examine the evidence, came up empty-handed."

The report revealed that in 1985, claims paid out amounted to only 6 percent of total premiums. As Smith says, "Child care is a sound insurance risk—the CIGNA insurance company, which is one of the few that is still writing child care policies, has made $5 million in the last 9 months on child care. It looks to me as if we have paid for their ad campaign.

"It is tragic that parents will need to pay more for child care and quality may deteriorate in some programs because dollars that could serve children are instead going toward exorbitant and unjustified insurance premiums.

"Tort reform will not help much where there are no torts."

If the insurance industry has been profitable, what is the justification for the huge increases of the last two years? If current insurance supervision is inadequate, why is American business being crushed under huge rate increases that have questionable justification?

The Hon. James J. Florio, Chairman, House Subcommittee on Commerce, Consumer Protection and Competitiveness

How Bad Is It For Insurers?

The National Association of Attorneys General, after extensive study, came to the following conclusions in its 1986 report, "An Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance":

Conclusion #1: The property/casualty industry is in adequate and indeed improving financial condition.

Conclusion #2: There have not been vast or explosive increases in claims and payments to victims.

Conclusion #3: The cyclical nature of the industry itself, and not any change in tort claims, is largely responsible for the current "crisis."

Conclusion #4: Changes in the civil justice system are not likely to solve the current or future problems in availability and affordability of liability insurance.

JURIES HELP MAKE LIFE SAFER FOR ALL OF US.

Civil justice is one of the great triumphs of the American system. . . . It forces wrongdoers to change their products and practices or risk further liability. It forces public disclosure of defective products and dangerous practices. The civil justice system must be preserved and the rights of consumers protected. The public interest demands no less.

Joan Claybrook
President, Public Citizen
May 21, 1986

The victim should be protected, not the ones who contributed to the injury.

News-Press, Ft. Myers, Florida
January 21, 1986

The amount of oil lost worldwide in accidents fell dramatically during the past two years, a research organization says. The decline may be the result of tighter industry operating procedures, stimulated by liability concerns . . . . Richard Golob, director of the Cambridge-based Center for Short-Lived Phenomena and World Information Systems, said, "The improved record may result from the threat of high liability damage awards, particularly for harm caused to beaches, wildlife, and other natural resources."

Washington Post,
November 28, 1986

A jury, however humanly fallible, is our final repository for the expression of a personal sense of what is just and right.

Murray Kempton
Los Angeles Times
July 22, 1986

DES, Pinto, and asbestos aren't code words for the system destroying society; they're examples of the system making life safer for all of us.

"The Not-So-Simple Crisis"
American Lawyer, May 1986

Where product liability has had a notable impact—where it has most significantly affected management decision-making—has been in the quality of the products themselves. Managers say products have become safer, manufacturing procedures have been improved, and labels and use instructions have become more explicit.

Nathan Weber, "Product Liability: The Corporate Response" (Conference Board, 1987), a survey of the risk managers of 232 major corporations

When Is a Loss Not a Loss?

In 1985, the property-casualty insurance industry somehow managed to announce a $5.5 billion loss while still posting a $5 billion profit.

Charging the industry with fraud, J. Robert Hunter, president of the National Insurance Consumer Organization, explained how insurers do arithmetic—not like you and I do, believe me. Hunter described what insurers consider losses:

- $2.1 billion was dispersed as optional dividends to stockholders.
- $1.9 billion was in taxes, but the industry forgot to mention that these were rebated.
- $6.5 billion was in realized and unrealized capital gains.

The U.S. Government Accounting Office in April 1987 makes this straightforward statement:

"The property/casualty industry had a $19 billion after-tax profit for 1986 and an $81 billion profit over the ten-year period 1976 through 1985."

Don't you wish you had losses like these?

Your Assumptions or Mine?

No one can predict precisely what the impact of tort reform would be on premiums. But with the proper assumptions, variables such as claims settlements and underwriting experience can be worked into the necessary formulas to make projections.

James K. Coyne,
Executive Director,
American Tort Reform Association
(a business group)

Justice in Black and White

On March 21, 1981, the beaten and slashed body of a black 19-year-old named Michael Donald was found hanging from a tree in a Mobile, Alabama surburb.

That day Donald's mother ran into Michael Figures, a state senator who lives in the neighborhood and who is a lawyer in Mobile. He has been working on the case pro bono ever since, in close cooperation with the lawyers of the Southern Poverty Law Center.

The two people who actually lynched Michael Donald were convicted on criminal charges—one was sentenced to a life term and one to death. But it was a civil lawsuit—a wrongful death action brought against the United Klans of America—that achieved true justice for the family of Michael Donald.

The lawyers who represent Mrs. Donald stressed to the jury that, although no amount of money would bring her son back to her, only a large verdict would bring strong enough message to the Klan that their philosophy of hatred and violence will no longer be tolerated. The all-white jury agreed. On February 12, 1987, Mrs. Donald was awarded $7 million in damages.

Making Good on a Prediction

"We'll see this one again," began a September 1, 1986 editorial in the *Journal of Commerce;* it went on: "Consumer advocates opposed to the insurance industry have been fond of accusing some of the industry leaders of collusion by quoting them—out of context, we think—for pronouncements they've made at insurance meetings about how the industry must move to recover." It then quoted James T. Lynn, chairman of Aetna Life & Casualty, announcing very strong results of the second quarter of 1986: "However, casualty/property earnings must continue to improve to compensate for the losses and inadequate returns of recent years."

Lynn's statement is worth remembering, so here it is again. Because, as the *Journal of Commerce* wisely pointed out, "It certainly does nothing to quiet the allegations that the insurance industry, with dramatic premium rises, is making its customers pay for its management mistakes during the cash flow underwriting years." Just what we've been saying right along.

What Some Doctors Have to Say

The greatest cause of malpractice is malpractice. You must understand that some of the malpractice out there is so grievous, offensive, and implausible as to beggar the imagination. Without real malpractice, we would not have this problem.

Barry S. Schifrin, M.D.
Director of Maternal/Fetal Medicine
Pasadena's Huntington Memorial Hospital
AMA News, June 21, 1985

I used to go out and talk to all the hospitals around here. I told them if you have premature babies, you should send them to a center that can take care of them. Then I appeared in one case. All of a sudden, all the babies started getting sent where they should be.

David Abramson, M.D.
Washington, D.C.

The utter disregard for basic principles of ethical and safe practices is appalling.

John Adriana, M.D.,
New Orleans anesthesiologist

States are doing a terrible job in disciplining doctors. There are a few notable exceptions. Things are getting better, but not fast enough to save a lot of patients from being injured or killed by doctors who are on the loose because they haven't been disciplined.

Sidney Wolfe, M.D.

The Problems of Florida Doctors

In the spring of 1986, the *Orlando Sentinel* published an authoritative six-part series on medical negligence and malpractice litigation in Florida, with national commentary.

This is one revelation:

Five obstetricians at the University of Minnesota analyzed 220 malpractice claims nationwide involving childbirth. The claims had been paid by the St. Paul Fire and Marine Insurance Co. between 1980 and 1982. The researchers found that the doctors in those cases had mishandled 68 percent of the risks associated with delivery.

The *Sentinel* also reported on the work of Bonnie Berry, a former University of Miami sociologist who had reviewed every case of discipline against Florida doctors between 1980 and mid-1984, when insurance companies paid malpractice claims on behalf of 2,239 Florida doctors. During that period, Professor Berry's research revealed, the Department of Professional Registration had filed malpractice charges against only 45 doctors and only 21 were disciplined. "My non-scientific and gut feeling," she said, "is that the patients are not seen as important parts of this entire . . .process."

Among the cases discussed in the series was the following: "By the time state officials were told about a problem doctor at Fish Memorial Hospital in New Smyrna Beach five years ago, records showed that the physician had been seen under the influence of alcohol in the hospital many times by 14 doctors, nurses and administrators. . . . Yet the hospital reported the doctor to state officials only after being sued for not doing so."

Not Every Hospital Injury Is Caused by Malpractice—Some Are Caused by Bad Products

Only once has the Supreme Court of Arkansas allowed a jury award of punitive damages to stand in a product liability case. The product was an artificial breathing machine widely used by anesthesiologists during surgery. The case was *Airco, Inc. v. Simmons First National Bank.* The breathing machine had an unnecessary valve that increased the likelihood of operator error that would cause death or serious brain injury. Only when the punitive damage award was upheld at the Supreme Court level did the company stop selling the valves and tell users to disable all valves in place.

In May 1980, Georgia Huchingson, a woman in her mid-sixties, had surgery at a hospital in Little Rock, Arkansas, for suspected brain cancer. It turned out that she did not have a malignancy and, had things not gone awry during surgery, she would have had an excellent chance for recovery.

At times during surgery, it is necessary to apply pressure so that the lungs expand and contract as they do in natural breathing. In the course of a typical operation, the pressure is provided sometimes by a flexible bag, which the anesthetist squeezes and releases by hand, and at other times by the artificial breathing machine, a ventilator that also creates alternating pressure. It is usually necessary to switch back and forth between bag and ventilator.

The Airco ventilator used on Mrs. Huchingson had two ways to make the switch: One was by manually connecting the hose—a method that takes about 10 seconds and involves no hazard to the patient. The other relied on an optional accessory called a selector valve, a device attached to the ventilator. It had three ports, all the same size, placed very close together.

Before Mrs. Huchingson's surgery, hoses had been attached to the right-hand port on the selector valve, and, incorrectly, on the middle port, where only a bag should have been connected. Because the ports looked alike, were so close together, and lacked adequate warning labels and signs, a nurse-anesthetist mistakenly attached the hose hanging from the middle port instead of a bag during the operation. The improper connection pumped air into the lungs of Mrs. Huchingson, with no way for it to escape. The build-up of pressure and lack of oxygen severely damaged her lungs and brain.

Mrs. Huchingson lived in a coma for 16 months after the surgery and required round-the-clock nursing at a cost of more than $300,000.

At trial, expert testimony, including that of the Airco engineer who had designed the ventilator and the selector valve, showed that the company designed, manufactured, sold, and persisted in selling the valve even though it should have known the device was inherently dangerous. As the appeal court said, "The manufacturer knew from the outset, by its own testing, that an unnecessary component of the product was so deadly that it should never have been made available to the public."

Before marketing the machine, Airco had field-tested the ventilator and selector at 30 sites throughout the country. Although reports were generally unfavorable, the company manufactured and sold the product anyway.

Two members of the medical partnership that was a defendant in the case testified that they did not learn until after the Huchingson injury that the ventilator could be used without the selector valve. One of the doctors said directly that the valve "is absolutely a time bomb, and anybody that sits there and connects it a few thousand times . . . [is] going to misconnect it sooner or later."

The jury awarded compensatory damages of $1,070,000 and punitive damages of $3,000,000 against Airco, whose net worth exceeded $607,000,000.

Airco had argued that it took a combination of nine separate acts of negligence (most of which were attributed to the nurse-anesthetist) to bring about Mrs. Huchingson's injuries, but as Justice Smith said for the Arkansas Supreme Court, "That possibility of injury could have been eliminated had Airco simply put the ventilator on the market without the optional but lethal selector." When the court upheld the punitive damage award in 1982, two years after Georgia Huchingson was injured, that is exactly what Airco did.

Of the 19 million operations performed annually while Airco sold the defective ventilator, about 25,000 deaths on the operating table were listed as "cause of death unknown," and it is impossible to determine how many of these were brought about by mistakes relating to the selector valve.

MANUFACTURERS LISTEN WHEN JURIES SPEAK OUT ON SAFETY.

Consumer-initiated product safety lawsuits have been effective in modifying or pulling from the market the following products:

Asbestos

In a landmark case in Texas in 1973, the court found that Johns Manville and other companies that manufactured asbestos had failed to warn their employees of the known hazards of working with asbestos. The manufacturers of asbestos had failed to test their products and left the products on the market for 50 years knowing full well that they could cause asbestosis (a cancerous bronchial disease). Twenty-one million Americans have been exposed to asbestos in the workplace. Twenty thousand Americans die each year from cancer caused by asbestos. Federal legislation now requires that asbestos be removed from public buildings, and removal projects are currently underway throughout the country.

Blenders

Tim Little was helping his mother make brownies, when the blender unexpectedly came unscrewed from its base. Tim reached for the blender and his hand struck the whirling blades. Tim needed surgery to repair several tendons and a nerve in his hand. One tendon had been so badly shredded that it could not be repaired. Tim will never regain complete motion in all his fingers.

The design of the blender caused the container to detach from the base when sufficient torque was created inside the container. This tended to happen often when thick substances, like batter, were blended. The company knew this but failed to caution customers in the handbook for the blender.

If Tim had not been able to sue the manufacturer, his family would have had to absorb the costs of all his medical bills.

Chainsaws

Chainsaws have been redesigned as a result of product liability lawsuits. A woodcutter's family was awarded $345,000 in compensatory damages after the court determined that his death was caused by a defect in the saw. Safety devices including chain brakes and hand shields are now standard on most brands of chainsaws.

DES

DES was prescribed in the 1950s for women prone to miscarriage. It was marketed without testing by several hundred pharmaceutical firms, making it difficult, if not impossible, to identify the specific manufacturer when filing suit. The daughters of these women are prone to vaginal and cervical cancer, and many suffer sterility—an estimated 3 million women. In a leading case involving DES it was found that proper testing would have revealed the cancer problem in female offspring.

Drano Containers

Drano drain cleaner's packaging was modified after a woman lost her sight from the explosion of a Drano container with an unsafe screw top. The housewife (48) was awarded $910,000 in compensatory and punitive damages in 1970.

Flammable Children's Clothing

Lawsuits involving flammable fabrics used in making childrens' clothing have led to the strengthening of federal flammability standards. The courts exposed the fact that the manufacturers had known their dangerous products could not pass the federal safety test.

Ford Pintos

Ford testing revealed design problems in the Pinto gas tank; when the Pinto was hit from the rear at 21 mph, fuel leakage exceeded federal standards. This information was forwarded to the highest level of Ford's management, who decided to go ahead with production despite the defect. The necessary design changes would have cost Ford less than $15 a car. The decision was repeated with the Mustang II, which had similar defects. Only after successful lawsuits on behalf of injured victims were the Pinto and the Mustang II recalled and modified.

Formaldehyde

Formaldehyde is still used in wood products such as paneling and the particle board used to build mobile homes. The fumes can cause cancer and other illnesses.

One woman and her two children experienced health problems a few months after moving into their new mobile home. One child was hospitalized for chemical hepatitis. The jurors found that the home was unfit for human habitation. They also found that the manufacturer had knowingly violated the Texas Deceptive Trade Practices Act and was negligent in failing to warn of the formaldehyde content in the home. The victims were awarded $178, 904 in compensatory and $21,105 in punitive damages.

International Harvestor Tractors

The gas tanks on International Harvestor tractors had a defective vent hole which caused burning gasoline to geyser onto drivers. Even after receiving notice of severe injuries to a number of farmers, the manufacturer continued to market farm tractors with the defective fuel caps and fuel tanks. Only after juries began awarding compensatory and punitive damages did the manufacturers change the defective design.

Kissing Dolls

The kissing doll contained stuffing that had been treated with a pesticide which had chlordane in it. One doll had been left outside overnight, and the morning dew activated the pesticide. An eight-year-old girl was injured when she was exposed to the pesticide when she kissed and held the doll.

The manufacturer pulled the toy from the market when it was notified by the family's lawyer that suit would be filed for compensation for the injuries to the little girl.

Pickup Trucks

Most pickup trucks used to have their gas tanks behind the seat. In rear-end and side collisions and roll-overs, the tank often ruptured, spilling gas into the passenger compartment. If anyone was smoking or a spark ignited the fuel, the occupants were often killed or badly burned. Consumers began complaining about injuries soon after the introduction of these tanks in 1956, but they were not removed from the market until 1973, after plaintiffs were successful in a series of cases.

Zenith TVs

Zenith, starting in 1972, received over 300 complaints about fires caused by a defective resistor in the back of Zenith color TVs. This type of TV caused a fire in the Lieutenant Governor's apartment at the Texas State Capitol, which killed one person and seriously damaged the building. The state sued the manufacturer, the wholesaler, and the retailer under the doctrine of joint and several liability and for treble damages under the deceptive trade practices act. The state invested $100,000 in expenses (not including attorney's fees) and settled for $1.3 million in damages, or 80% of the cost of repairing the Capitol building.

FACT SHEET
PUBLIC CITIZEN OF TEXAS

?unitive Damages—When the Corporation Doesn't Care

As the *American Lawyer* said, "A large company that deliberately decides, at the cost of several lives, to evade a safety regulation or market a product that its own people fear is unsafe needs to have millions assessed against it for the punishment to hurt."

Punitive damages are just that: punishment of a corporation that knows its product will hurt or kill people, and markets it anyway.

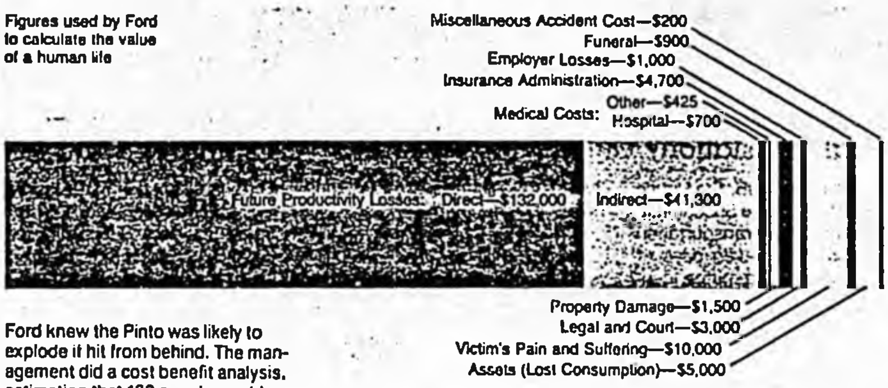
Are punitive damages actually battering corporations too much? Should they be limited by legislation? Only the U.S. Justice Department seems to think so, and in response the National Association of Attorneys General said unequivocally: "The figures presented by the Justice Department Report are meaningless."

The Rand Corporation's Institute for Civil Justice, whose board is dominated by insurance industry figures, in 1987 released a summary of its research results on "Punitive Damages . . . How Much and To Whom." Among the findings:

- The few large awards have skewed the totals.
- In 25 years the frequency of punitive awards in personal injury cases has changed little.
- Punitive damages were rarely granted in personal injury cases in any jurisdiction—they are far more frequent in business contract litigation.
- In about half the trials, punitive awards were reduced, and the reductions were greatest in personal injury trials. As a result of post-trial action, plaintiffs actually received only about half the money awarded by juries.

What Is Your Life Worth?

Figures used by Ford to calculate the value of a human life



Ford knew the Pinto was likely to explode if hit from behind. The management did a cost benefit analysis, estimating that 180 people would die and 180 be injured, and decided it would be cheaper to sacrifice those people than to fix the car.

Total per Fatality: $200,725

Table from "Pinto Madness," by Mark Dowie in Mother Jones Sept./Oct. 1977, page 18. Based on National Highway Traffic Safety Administration study used by Ford in Cost-Benefit analysis.

The Courts Clamp Down on Construction

In May 1982, Clyde McWilliams, a construction carpenter, was working on a 30-story condominium in Seattle. The core of the building—its concrete skeleton—was being constructed. During this stage, concrete is poured one floor at a time. Steel and lumber forms are used as molds and then removed when the concrete has set. Each form is about 40 feet from end to end. McWilliams's job was to unfasten the forms after the concerte hardened. As he stood on the edge of the concrete core, a tower crane, which the construction company had leased from the Mobile Crane Company, hooked on to the form and nursed it out of the core.

The tower crane had been in operation on the site daily for about two months. The deadend of the lift line that ran around the pulley at the end of the crane was secured with U-bolt clamps. With use, the lift line cable stretches like taffy. As it stretches, it defeats the clamping effect of the U-bolts.

Suddenly the lift line attaching the spreader bar to the crane gave way. The bar dropped on McWilliams, first striking his right shoulder and then his right foot. The blow severed the nerve to McWilliams' deltoid, the main shoulder muscle, and crushed the bones in his foot. He spent three weeks in the hospital and a year in rehabilitation.

His injuries are permanent. McWilliams cannot lift his arm above his shoulder and walks with a limp. He has lost his ability to balance and cannot climb. A single parent with three children, McWilliams was 36 at the time of the accident, earned $33,000 a year, and was looking forward to a bright future in Seattle's booming construction industry.

The crane company claimed the accident was due to operator error: The bolts holding the mold had not been properly released, the cement had not cured, and the crane operator had overloaded the crane.

McWilliams's lawyer studied the engineering theory involved and was able to show that the crane was not overloaded. He set out to prove that securing the cable with U-bolts was inherently unsafe because of the known stretching properties of steel cable wound around hemp. He even climbed up 180 feet onto the topmost part of the crane above the cab—the rooster tail. "I've never been so scared in my life," he says. At the boom end of the crane, he saw a simple fastening device known as a becket and thimble, which tightens the connection as the cable stretches. The cable pulls the thimble against tops inside the becket, and the more pull exerted on the cable, the tighter the connection becomes.

When the lawyer asked the crane company owner why U-bolts were not used to secure the boom, the answer was that if they were, "the whole boom would come down"—a damaging admission.

The becket and thimble was effective, economical, and well-known as a fail-safe fastening device. If the becket and thimble had been used to secure the liftline, the only way a load could be dropped would be because of cable failure.

For the two-and-a-half years the case was pending, the defendant continued to secure the deadend of the lift line on all its tower cranes with U-bolts. One week before trial, the parties agreed to settle the case for $675,000.

Within a few weeks of the settlement the Mobile Crane Company and all other lessors of cranes in the Seattle area replaced U-bolts on *all* their tower cranes with becket-and-thimble attachments. The cost per modification was less than $40.

As the lawyer for Clyde McWilliams made clear, "While the infliction of an injury on a human being often does not inspire subsequent safety measures, a successful lawsuit almost invariably does."

INSURANCE REFORM LEGISLATION WOULD IMPROVE THE SYSTEM.

Should There be Federal Legislation?

In May and June 1986, the House Energy and Commerce Subcommittee on Commerce, Transportation and Tourism held seven days of hearings. The subcommittee identified seven critical problems: widespread and substantial rate increases; insurer withdrawal from entire areas, including pollution control and child care; the sudden rash of arbitrary cancellations; restriction of coverage; inability of states to identify financially troubled Insurance companies because of unreliable data; state regulation of reinsurance; and capability of states to supervise the liability insurance market.

The subcommittee chairman, James J. Florio (D-NJ), said, "It is not appropriate at this moment for the federal government to assume primary responsibility. But the public's patience is not unlimited. The states must act." The information was to have been supplied by January 15, 1987.

Florio said that there were proposals during the hearings to change the civil justice system, but "it is apparent from our hearings that no evidence is available to demonstrate that drastic restrictions on the rights of injured parties will solve the insurance crisis. The data on claims have not been forthcoming. . . . The jury verdict statistics are riddled with holes."

At the same time the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee was also investigating the insurance crisis. The chairman of the Judiciary Committee, Peter W. Rodino, Jr. (D-NJ), had this to say:

> The companies say they are losing money on underwriting. But the facts reveal that over the past decade, they have paid out only 29 cents to 57 cents in claims and allocated loss adjustment expenses, such as defense costs, on every premium dollar they have taken in. Actually, the cash picture is much more favorable to the industry than this because investment income has not been added in. Moreover, the payout to policyholders is lower than these figures indicate because the loss figures include some loss adjustment expenses. The so-called "losses" are really paper losses, calculated by deducting reserve amounts that the companies retain and invest. Even in the troubled lines, such as day care, the companies are taking in twice as much as they are paying out in claims. At a minimum, what this shows is that the claims of losses are almost wholly speculative.

Rodino pointed out that for product liability, of the premium dollars taken in over the past ten years, less than half had been paid back out, and the line had produced a positive cash flow of $2.6 billion, not including investment income. "In view of figures like these," Rodino said, "I question how the companies can claim they are losing money.

"Insurance companies have yet to justify their actions by producing actual payments and claims information," he said.

> I consider trial by jury
> as the only anchor ever
> yet imagined
> by man, by which
> a government can be
> held to the principles
> of its constitution.
>
> Thomas Jefferson, Letters to Thomas Paine (1789)

The More Things Change . . .

Ten years ago, during the last regularly scheduled insurance crisis, the Small Business Subcommittee in the U.S. House of Representatives was receiving complaints of unbelievably high premium increases and decided to initiate hearings. In 1986, the chairman of that committee, John LaFalce (D-NY), spoke about what he had learned in 1975.

> I quickly found out that in the insurance industry appearances can often be deceiving. I quickly found out that the vocabulary of the insurance industry differs markedly from the vocabulary that you and I ordinarily use. Their definition or use of a word would often differ from our definition of that same word.
>
> For example, the word "losses." You and I might think that we know what a loss is: It means something that has been lost, rather simple. Well, not so within the insurance industry.
>
> In the insurance industry . . . if you use the word "loss" in connection with ratemaking, it means something quite different. Thus, when the insurance industry for purposes of State financial reporting uses the word "loss," it means that which it paid out . . . . But the industry also means that which it has set aside as reserves for those claims that have been reported to it. In other words, "loss" in this context includes not just what is actually paid out, but estimates of future payouts as well.
>
> . . . The insurance industry also includes within its definition of "loss," reserves that have been set aside for claims that it says probably have occurred, but of which it has absolutely no knowledge whatsoever. It calls these losses IBNR (incurred but not reported). However, when it uses the word "loss" within the context of ratemaking, it does not include IBNR because it is deemed statistically unreliable—and that's putting it mildly.

Today, the only recourse for the victim of malpractice is the legal system: suing the doctor or the hospital. . . .

It is the failure of the state to effectively discipline bad doctors and of hospitals to effectively curb malpractice through more rigorous oversight procedures that's forced more injured patients to turn to the courts for help.

Richard Threlkeld
ABC News Closeup,
December 27, 1986

The malpractice crisis is real, but its causes have been misunderstood and the solutions have failed. The medical profession must be more conscientious about admitting its mistakes. The states must be more diligent about stopping those who are persistently guilty of them. And if the insurance companies can't give a better accounting of why their malpractice rates for doctors are so alarmingly high, then the federal and state governments will have to do it for them, and find a means to guarantee that those rates are reasonable. Even then the malpractice crisis will threaten all of us until the government, the hospitals, and the doctors themselves find the will to remedy the fundamental cause of it: malpractice itself.

Richard Threlkeld
ABC News Closeup,
December 27, 1986

Why I Vetoed Tort Reform

Bruce Babbitt,
former Governor of Arizona

. . . As a nation, we have traditionally chosen two ways to deter unsafe corporate behavior: regulation and the threat of litigation. The advantage the jury system has over the bureaucratic approach is, first, its thoroughness. No number of federal or state safety inspectors can hope to provide the same level of deterrence that our American jury system provides. In fact, our notions of free enterprise probably would prohibit the levels of bureaucratic intrusion that would be necessary to provide the same level of safety that the legal system does.

Second, our judicial system has an advantage of flexibility. In this age of constant development of new products and, therefore, of new hazards to both consumer and environment, the body of law that has been carefully crafted over the last two centuries to protect Americans from those corporate hazards has consistently proven more flexible, more adaptable to the changing times. This legal system has also proven to be more deliberative and more cautious in its adaptation of the law to changing concepts of justice and social responsibility.

In light of the undeniable social value of an effective civil justice system, the burden of proof must rest with those who would radically alter this carefully balanced legal system. In the 1986 legislative session, I was presented with five bills to enact such drastic changes, changes that would have severely reduced the ability of injured people to gain full compensation for their injuries. Of broader import, these bills would have eroded the system of checks and balances that keeps corporations and bureaucracies conscious of their social obligation to protect the members of the public from needless harm. All five bills would have drastically tipped the scales of justice in favor of the wrongdoer and his insurer and away from the injured victim. In so doing, these bills would have led to more unsafe workplaces, more toxic hazards, and more bureaucratic irresponsibility.

Yet, despite the radical nature of these bills, their advocates never demonstrated that they would bring relief from rising insurance costs to the businesses and municipalities in my state. Actually, what little evidence was presented indicated that the legislative changes would bring absolutely no relief to these victims of the insurance crisis.

I vetoed all five of these anticonsumer bills. The advocates of restrictions on consumer's rights simply did not prove their case . . . .

The Key to Hotel Safety

In *King v. Trans-Sterling*, the effects of the verdict were greater than the monetary award. Not only did the defendants take significant action to prevent future harm, but the verdict sent a message that was heeded by other potential defendants—in this instance the hotel industry.

On August 21, 1982, a Chicago woman, Julia King, and her mother-in-law, Dorothy Williams, were vacationing at the Stardust hotel and Casino in Las Vegas. That night they had been in the casino, and at about 10:30 Julia King went up to her room to pick up tickets for a show. Mrs. King used her room key to open the door. As she moved to turn on the light, she was grabbed by a man who held a knife to her throat and threatened to kill her if she screamed. She begged him not to hurt her. He used the knife to cut her dress and pantyhose from her body, and tied her hands behind her back with a curtain cord. He then took a washcloth, stuffed it in her mouth, and used her pantyhose to wrap the gag in place. He proceeded to rape her vaginally and rectally, tied her feet with more cord, rummaged through her purse (taking about $60 in cash), and finally left the room.

At 11 o'clock Mrs. King's mother-in-law asked a security guard to come with her to check the room, where they found Mrs. King naked; she was still bound and gagged.

At the Las Vegas hospital where Mrs. King was treated, she required more sedation, according to the emergency room nurse, than had been administered to any of the more than 100 rape victims she had treated. When Julia King returned home to Chicago, she began treatment with a psychologist and continued in treatment for several years. An expert witness testified at the trial that Mrs. King suffered permanent and chronic post-traumatic stress disorder as a result of the rape at the Stardust. She also developed a skin disorder diagnosed as a combination of lupus erythmatosis and vitiglio, both diseases of the immune system, the onset of which was found to have been precipitated by the trauma of the rape.

During the trial, a great deal of evidence proved that the security system at the Stardust was a farce. Patrols of the building were sporadic at best, despite the fact that key-clock stations supposedly insured a regular foot patrol. The stations were unused on the day of the assault, had not been in use for months, and perhaps had never been used. Although more than 125 closed-circuit video cameras were in operation at the hotel, the wing containing Mrs. King's room was totally unprotected. Guests were given a false sense of security by the strategic placement of "dummy" video cameras.

It also appeared that the Stardust lost an average of 500 guest room keys per week, and that the rooms in Mrs. King's building had not been rekeyed since construction in 1957. Management was also aware of at least 101 master keys in circulation. No records were kept of lost master keys. To make matters worse, these master keys were of a type which can override the night latch, even if a guest is in the room. Expert witnesses testified that no operation should have more than one or two emergency master keys and that these should be locked up, logged in and out, and kept under strict management control. There was no question that the lack of a key control system and the lax security policies at the Stardust was gross criminal negligence.

The lawsuit resulted on July 17, 1985, in a plaintiff's verdict in the amount of $750,000 compensatory and $2,500,000 punitive damages. Mrs. King was finally awarded $821,000 (including interest), although the punitive damage award remained at issue for some time. The question was argued before the Nevada Supreme Court in January, 1978 (Nevada has no intermediate Court of Appeals); but the parties decided to settle.

From the time of Mrs. King's rape in 1982 to the verdict—almost three years—there was virtually no change in key-control policy at the Stardust. But as soon as the verdict was handed down, the Las Vegas hotel managers got the message. The Schlage Lock Company was deluged with requests for bids. By the spring of 1986, between 15,000 and 20,000 Las Vegas hotel rooms had been rekeyed with systems meeting national industry standards. At the Stardust, the entire 1,000-room Mercury building, where Mrs. King's room was located, had brand-new hardware of the latest design installed on the doors. Says Mrs. King's lawyer, "The immediate and salutory effect on consumer safety in Las Vegas remains a source of considerable pride to me."

■

Some months later, Mrs. King's lawyer was in Chicago, checking a friend into the Palmer House. He noticed a state-of-the-art lock set prominently displayed at the registration desk to show guests how their locks worked. He asked the desk clerk why the hotel used such a technologically advanced mechanism. "The word around here," the clerk said, "is that there was some case in Las Vegas where a huge award was made."

THE PRESS HAS COMMENTED ON THE INSURANCE CRISIS.

THE KANSAS CITY STAR
MAY 8, 1986

Insurance Fog Is Hard to Penetrate

Statistics can be twisted in many different ways, and some statistics that would be relevant to the insurance debate simply haven't been gathered. But looking at the figures available and perhaps seeking some that aren't represents a better alternative than simply assuming, as Attorney General Ed Meese did recently, that there has been an explosion in certain types of lawsuits at the state level. Legislative proposals should be based on something more than statistical assumptions and horror stories.

CONSUMER REPORTS
AUGUST 1986

The Manufactured Crisis

Liability-insurance companies have created a crisis and dumped it on you. . . .

The industry's version of tort reform means placing limits on the rights of injured people to sue for and recover damages. . . .

The lawsuit crisis may be phony, but the insurance crisis is real. Towns, doctors, day-care centers and others face urgent problems of insurance availability and affordability. What is needed to alleviate the problem is not tort reform but better regulation of the insurance industry.

ANNISTON STAR
APRIL 13, 1987

Tort Reform in 40 States Has Failed to Cut Premiums

"Not in one state has it been demonstrated that tort reform has resulted in lower insurance premiums," said Robert Hunter, president of the National Insurance Consumer Organization.

Industry spokesmen counter that the reforms were passed too recently to have produced results. And the effect of tort reform on rates is at best speculative, they say. "There is no tie-in between tort reform and insurance rates—we've claimed that from day one," said James Purcell, regional manager for the American Alliance of Insurers in Atlanta.

HOUSTON BUSINESS JOURNAL
APRIL 27, 1987

A Very Profitable Insurance Crisis

In the midst of what most business and political leaders are calling a nationwide insurance crisis, along comes a study showing that the nation's insurance companies are experiencing record profits. . . . The debate (about tort reform) has been hindered by an unwillingness on the part of the nation's insurance companies to open their books for scrutiny. . . . If insurance companies are hurting to the extent they claim, they should prove it.

JOURNAL OF COMMERCE
OCTOBER 24, 1986

Industry Bites Customer

The insurance industry is showing signs of being its own worst enemy. How can an industry that spends millions on advertising and contributes heavily to state and federal campaigns to reform tort law not recognize the public relations debacle associated with telling a state, which reformed its tort law, that the reforms are worth zero in the pricing of insurance products?

CHICAGO SUN-TIMES
AUGUST 30, 1986

What Liability Crisis?

The profits of the property and liability insurance industry in the first half of this year were six times higher than they were last year. . . . The facts underscore the major point: Don't undertake major "reforms" that entail the loss of important individual rights until it is demonstrated that the changes are absolutely necessary. They weren't.

BUSINESS WEEK
APRIL 21, 1986

The Explosion in Liability Lawsuits Is Nothing But a Myth

Startling new evidence suggests that the "lawsuit crisis" may not even exist. . . . The insurance industry has fostered those misperceptions with a phenomenally successful campaign that blames the "lawsuit crisis" for shocking premium increases and a paralyzing insurance shortage. The rate hikes, however, result largely from the insurance industry's own mismanagement.

THE RECORD
JULY 22, 1986

Stay Out of the Jury Box

The problem is complicated and multidimensional. Yes, there are more lawyers and more lawsuits: what consumers or workers want to return to the days when they could be maimed or poisoned with no recourse?

The Association of Trial Lawyers of America
1050 31st Street, N.W.
Washington, D.C. 20007-4499
202/965-3500

(5) HB 227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 227
PUBLISH DATE: 03/30/87

FISCAL NOTE

REQUEST:

Revision Date: 02/05/88
Title: An Act relating to joint insurance arrangements
Sponsor: Taylor
Requester:

Agency Affected: Commerce & Economic Dev.
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	C.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: February 5, 1988

Approved by Commissioner: J. Anthony Smith
Agency: Department of Commerce and Economic Development
Date: February , 1988

Distribution (by preparer):
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page 1 of 1

dg1/0645K/020588a

Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

(6) HB227

(a)

MEMORANDUM

To: Rep. Henry Springer, Chairman
HCRA

From: HCRA Staff - Harrison DCH

Date: February 8, 1988

Subject: Bill Review
HB 227 - "An Act relating to joint insurance arrangements."

****

*Section 1. AS 21.76.010(a) is repealed and reenacted to read...

Comment: This section allows not only municipalities, school districts and Regional Educational Attendance Areas (REAAs) to pool contributions, inter into cooperative insurance agreements, etc., but now includes associations, entities qualified to do business under 15 U.S.C. 3901-3904 (Product Liability Retention Act) (see attached); and groups that would be considered valid under this title for the type of insurance for which this joint insurance arrangement is established. The assumption is that the insurance would be more readily available and costs might be less.

---

*Sec. 2. AS 21.76.010(b) is amended to read...

Comment: This section indicates joint cooperative insurance arrangements may be made for types of insurance defined in this title except life insurance and title insurance.

---

*Sec. 3. AS 21.76.020 is repealed and reenacted to read:
....REGULATION BY DIVISION OF INSURANCE....

Comment: Repealed parts of the law concerning joint insurance approval by the director and conditions pertaining to the usual joint insurance arrangements. Please see attached 1986 SLA CH 136, page 2, Lines 4-24.

---

*Sec. 4. AS 21.76.040.... (c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Comment: It is possible that the inclusion of this (c) can take care of some particulars under Sec. 3 AS 21.76.020.

---

*Sec. 5. AS 21.76.070....
Authorizes that a board of directors can do business from an authorized insurer if the insurance is placed through a licensed surplus lines broker.

Comment: The deleted section relates to the deletion of exceptions that municipalities or school districts may purchase insurance under this section as stated. The addition of language in Line 16 probably precludes the rest of the conditions spelled out in this section; therefore deleted.

---

*Sec. 6. AS 21.76.080(e) is amended to read....

Comment: Deletions are deleted to conform to previous amended sections of this section of the law.

---

*Sec. 7. AS 21.76.110 is repealed and reenacted to read....

Comment: Attempts to address financial arrangements and cause for actions interrelated with joint insurance arrangements.

---

*Sec. 8. AS 21.76.010(d) repealed.

Comment: Refers to a joint insurance arrangement being considered to be an association duly authorized to transact workers' compensation insurance in the state. If this is repealed this may leave workmen's compensation in uncertainties as to issues under joint insurance arrangements. Renews responsibilities of parties involved with workmen's compensation--is there sufficient insurance or protection where required for workmen's compensation.

HB227.rev
2/7/88

UNITED STATES CODE ANNOTATED

Title 15

Commerce and Trade

§ 1701 to End

1987

Cumulative Annual Pocket Part

Replacing 1986 pocket part in back of volume

Includes the Laws of the
99th CONGRESS, SECOND SESSION (1986)

For close of Notes of Decisions
See page III

For Later Laws and Cases
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55 U.S.C.A.—1
1987 P.P.

§ 3713. Authorization of appropriations

[See main volume for text of section]

(Pub.L. 96-480, § 17, formerly § 14, Oct. 21, 1980, 94 Stat. 2320, renumbered § 18 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 17 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3714. Spending authority

No payments shall be made or contracts shall be entered into pursuant to the provisions of this chapter (other than sections 3710a, 3710b and 3710c of this title) except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub.L. 96-480, § 18, formerly § 15, Oct. 21, 1980, 94 Stat. 2320, renumbered § 19 and amended by Pub.L. 99-502, §§ 2, 9(b)(18), Oct. 20, 1986, 100 Stat. 1785, 1796, renumbered § 18 and amended by Pub.L. 99-502, §§ 9(e)(1), (4), Oct. 20, 1986, 100 Stat. 1797.)

Codification. Amendment by section 9(e)(4) of Pub.L. 99-502, directing that "sections 11, 12, and 13" be substituted for "sections 12, 13, and 14" was not executed in view of renumbering of sections 12, 13, and 14 of Pub.L. 96-480 as sections 11, 12 and 13, respectively, of Pub.L. 96-480 by section 9(e)(1) of Pub.L. 99-502. Since both references translate as "sections 3710a, 3710b, and 3710c of this title", amendment by section 9(e)(4) of Pub.L. 99-502 resulted in no change in text.

1986 Amendment. Pub.L. 99-502, § 9(b)(13), added exception relating to sections 3710a, 3710b and 3710c of this title.

Pub.L. 99-502, § 9(e)(4), substituted references to sections 11, 12 and 13 of Pub.L. 96-480 for references to sections 12, 13 and 14 of Pub.L. 96-480. See Codification note set out under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Library References

War and National Emergency ⇐36, 40.
C.J.S. War and National Defense §§ 44, 48.

§ 3803. Duties of Secretary of Energy

[See main volume for text of (a) and (b)]

(c) Assurance respecting scope of program activities

In assuring the effective management of this program, the Secretary shall have specific responsibility to ascertain that the program includes activities to—

[See main volume for text of (1) to (7)]

(8) ascertain any changes in fuel supply patterns, tax policies, and standards governing the manufacture of vehicles which are needed to facilitate the manufacture and use of methane-fueled vehicles.

[See main volume for text of (d)]

(As amended Pub.L. 97-375, Title I, § 106(c), Dec. 21, 1982, 96 Stat. 1820.)

1982 Amendment. Subsec. (c)(8). Pub.L. 97-375 struck out "and report to the Congress on" after "ascertain".

Legislative History. For legislative history and purpose of Pub.L. 97-375, see 1982 U.S. Code Cong. and Adm. News, p. 3435.

Code of Federal Regulations

Review and certification of agreements, see 10 CFR 478.1.

CHAPTER 65—LIABILITY RISK RETENTION

Library References

Insurance ⇐31.1.
C.J.S. Insurance § 91 et seq.

§ 3901. Definitions

(a) As used in this chapter—

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"—

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Act of 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which—

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as—

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose [illegible] do not include the provision of insurance other than—

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".

(5) "purchasing group" means any group which—

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State;

(6) "State" means any State of the United States or the District of Columbia; and

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

(As amended Pub.L. 98-193, Dec. 1, 1983, 97 Stat. 1344; Pub.L. 99-563, §§ 3, 4, 12(b), Oct. 27, 1986, 100 Stat. 3170-3172, 3177.)

1983 Amendment. Subsec. (b). Pub.L. 98-193 substituted provision that nothing in this chapter would be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and that the definitions of product liability and product liability insurance

under any State law would not be applied for the purposes of this chapter, including recognition or qualification of risk, retention groups or purchasing groups for provision that the definition of product liability in this section would not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

References in Text. The date of the enactment of the Risk Retention Act of 1986, referred to in subsec. (a)(4)(C)(ii), probably refers to the date of the enactment of the Risk Retention Amendments of 1986 [Pub.L. 99-563] which was approved Oct. 27, 1986.

Effective Date of 1986 Amendment. Section 11(a), (b) of Pub.L. 99-563 provided that:

"(a) General rule.—Subject to subsection (b), this Act [enacting sections 3905 and 3906 of this title, amending this section and sections 3902 and 3903 of this title and sections 9671-9675 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and sections 9671 of Title 42] shall take effect on the date of its enactment [Oct. 27, 1986].

"(b) Special rule regarding feasibility study.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 [section 3902(d) of this title] (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

"(1) was defined in the Product Liability Risk Retention Act of 1981 [this chapter] before the date of the enactment of this Act [Oct. 27, 1986]; and

"(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment [Oct. 27, 1986]."

Short Title of 1986 Amendment. Section 1 of Pub.L. 99-563 provided that: "This Act [enacting sections 3905 and 3906 of this title, amending this section, sections 3902 and 3903 of this title, the short title note under this section, and sections 9671 to 9675 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 9671 of Title 42] may be cited as the 'Risk Retention Amendments of 1986'."

Short Title. Section 1 of Pub.L. 97-45, as amended Pub.L. 99-563, § 12(a), Oct. 27, 1986, 100 Stat. 3177, provided that: "This Act [this chapter] may be cited as the 'Liability Risk Retention Act of 1986'."

Oversight of Implementation of Risk Retention Amendments of 1986; Reports to Congress. Section 10 of Pub.L. 99-563 provided that:

"(a) In general.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act [see Short Title of 1986 Amendment note under this section].

"(2) Such report shall be based on—

"(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

"(B) the Secretary's analysis of other information available to the Secretary.

"(b) Contents of the report.—The report shall describe the Secretary's views concerning—

"(1) the contribution of this Act [see Short Title of 1986 Amendment note under this section] toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

"(2) the extent to which the structure of regulation and preemption established by this Act [see Short Title of 1986 Amendment note under this section] is satisfactory;

"(3) the extent to which, in the implementation of this Act [see Short Title of 1986 Amendment note under this section], the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

"(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

"(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act [see Short Title of 1986 Amendment note under this section] and the Product Liability Risk Retention Act [see Short Title note under this section] (as amended by this Act); and

"(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act [see Short Title of 1986 Amendment note under this section]."

State Powers and Authorities under Pub.L. 99-563 Additional to Powers and Authorities under CERCLA. Powers and authorities of States under amendments to this chapter by Pub.L. 99-563 additional to powers and authorities under Comprehensive Environmental Response, Compensation, and Liability Act of 1980, see section 210(b) of Pub.L. 99-499, as added by section 11(c)(1) of Pub.L. 99-563, set out as a note under section 9671 of Title 42, The Public Health and Welfare.

Other Federal Environmental Laws. Section 11(c)(2) of Pub.L. 99-563 provided that: "Nothing in this Act [see Short Title of 1986 Amendment note under this section] shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. § 9601 et seq.] and the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.]."

Legislative History. For legislative history and purpose of Pub.L. 98-193, see 1983 U.S. Code Cong. and Adm. News, p. 2075. See, also, Pub.L. 99-563, 1986 U.S. Code Cong. and Adm. News, p. 5303.

Notes of Decisions

1. **Product liability coverage**

Subject matter of insurance provided to member home builders to reimburse them for losses arising out of structural defects and builder default under home warranty was product liability coverage within scope of the Product Liability Risk Retention Act of 1981, § 2 et seq., as amended, 15 U.S.C.A. § 3901 et seq., even though entity providing such insurance undertook to provide coverage applicable only to risk, damage to or loss of product, which would not generally be recognized as products liability risk. Home Warranty Corp. v. Caldwell, C.A.11 (Ga.) 1985, 777 F.2d 1455, rehearing denied 794 F.2d 687, certiorari denied 107 S.Ct. 183.

§ 3902. Risk retention groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

[See main volume for text of (A) and (B)]

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued—

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to laws governing the insurance business pertaining to—

(1) liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of—

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

[See main volume for text of (c)]

(d) Documents for submission to State insurance commissioners

Each risk retention group shall submit—

(1) to the insurance commissioner of the State in which it is chartered—

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Power of courts to enjoin conduct

Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) State powers to enforce State laws

(1) Subject to the provisions of subsection (a)(1)(G) of this section (relating to injunctions) and paragraph (2), nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e) of this section, such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(h) State authority to regulate or prohibit ownership interests in risk retention groups

Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

(As amended Pub.L. 99-563, §§ 5, 7, 8(a), 12(c), Oct. 27, 1986, 100 Stat. 3172, 3175, 3178.)

Legislative History. For legislative history and purpose of Pub.L. 99-563, see 1986 U.S. Code Cong. and Adm. News, p. 5303.

Notes of Decisions

Exemption from state control 2
Home builders insurance 1

1. Home builders insurance

In action brought against State Insurance Commissioner seeking injunctive relief and a declaratory judgment that entity providing insurance to member home builders to reimburse them for losses arising out of structural defects during first ten years after sale of house and coverage for builder default under home warranty was a risk retention group under this chapter, issue of fact was raised as to whether entity, which could rely upon coverage for major structural defects but not coverage for builder default under home warranty to demonstrate that it was a risk retention group, was a firm whose primary activity consisted of assuming and spreading product liability risk exposure of its group members, thereby precluding summary judgment. Home Warranty Corp. v. Elliott, D.C.Del.1983, 572 F.Supp. 1059.

2. Exemption from state control

When a risk retention group formulates a program for purpose of spreading the product liability risks of its members, inclusion of ancillary provisions necessary to the viability of the program does not render the program or any segment thereof subject to regulations by the state; thus, program for insuring new homes against product liability risks was exempt from state regulation even though it contained a provision allowing insurer to seek reimbursement from the builder if builder defaulted on his obligations under its warranty issued for the first two years of the program. Home Warranty Corp. v. Elliott, D.C.Del.1984, 585 F.Supp. 443.

§ 3903. Purchasing groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section and section 3905 of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

[See main volume for text of (1) to (8)]

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to—

(1) liability insurance, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) liability coverage;

(B) insurance related services; or

(C) management services;

to a purchasing group or member of the group.

[See main volume for text of (c)]

(d) Notice to State insurance commissioners of intent to do business

(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

(A) shall identify the State in which such group is domiciled;

(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

(D) shall identify the principal place of business of the group.

(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) Designation of agent for service of documents and process

A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

(1) which—

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after September 25, 1981;

in any State of the United States;

(2) which—

(A) before September 25, 1981, purchased insurance from an insurance carrier licensed in any State; and

(B) since September 25, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this chapter as in effect before October 27, 1986.

(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.

(g) State powers to enforce State laws

Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter.

(h) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(As amended Pub.L. 99-563, §§ 6, 8(b), 12(d), Oct. 27, 1986, 100 Stat. 3174, 3175, 3178.)

Legislative History. For legislative history and purpose of Pub.L. 99-563, see 1986 U.S. Code Cong. and Adm. News, p. 5303.

§ 3905. Clarification concerning permissible State authority

(a) State motor vehicle no-fault and motor vehicle financial responsibility laws

Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) Applicability of exemptions

The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) Prohibited insurance policy coverage

The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of establishing financial responsibility

Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether

CODE

ANNOTATED

UNITED STATES CODE ANNOTATED

Title 15

Commerce and Trade
Section 1701 to End

Comprising All Laws of a General and Permanent Nature
Under Arrangement of Official Code of
the Laws of the United States
with
Annotations from Federal and State Courts

ST. PAUL, MINN.
WEST PUBLISHING CO.

CHAPTER 65—PRODUCT LIABILITY RISK RETENTION

§ 3901. Definitions

(a) As used in this chapter—

(1) "completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by—

(A) any person who performs that work; or

(B) any person who hires an independent contractor to perform that work;

but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

(2) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(3) "product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

(4) "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the product liability or completed operations liability risk exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State, or which is so chartered or licensed and authorized before January 1, 1985, under the laws of Bermuda or the Cayman Islands, except that any group so chartered or licensed and authorized under the laws of Bermuda or the Cayman Islands shall be considered to be a risk retention group only after it has certified to the insurance commissioner of at least one State that it satisfies the capitalization requirements of such State;

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person; and

(E) which is composed of members each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or products;

(5) "purchasing group" means any group of persons which has as one of its purposes the purchase of product liability or completed operations liability insurance on a group basis; and

(6) "State" means any State of the United States or the District of Columbia.

(b) The definition of "product liability" in paragraph (4) of subsection (a) of this section shall not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

(Pub.L. 97-45, § 2, Sept. 25, 1981, 95 Stat. 949.)

Historical Note

Short Title. Section 1 of Pub.L. 97-45 provided that: "This Act [this chapter] may be cited as the 'Product Liability Risk Retention Act of 1981'."

Legislative History. For legislative history and purpose of Pub.L. 97-45, see 1981 U.S. Code Cong. and Adm.News, p. 1432.

§ 3902. Risk retention groups

Exemptions from State laws, rules, regulations, or orders

(a) Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of product liability or completed operations liability insurance losses and expenses incurred on policies written through such mechanism;

(D) submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to product liability or completed operations liability insurance losses and expenses;

(E) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process, and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction;

(F) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(G) comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F) of this paragraph;

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

Scope of exemptions

(b) The exemptions specified in subsection (a) of this section apply to—

(1) product liability or completed operations liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of product liability or completed operations liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such group.

Licensing of agents or brokers for risk retention groups

(c) A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub.L. 97–45, § 3, Sept. 25, 1981, 95 Stat. 950.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–45, see 1981 U.S. Code Cong. and Adm.News, p. 1432.

§ 3903. Purchasing groups

Exemptions from State laws, rules, regulations, or orders

(a) Except as provided in this section, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

Scope of exemptions

(b) The exemptions specified in subsection (a) of this section apply to—

(1) product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) product liability or completed operations insurance, and comprehensive general liability coverage;

(B) insurance related services; or

(C) management services;

to a purchasing group or member of the group.

Licensing of agents or brokers for purchasing groups

(c) A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub.L. 97–45, § 4, Sept. 25, 1981, 95 Stat. 951.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–45, see 1981 U.S. Code Cong. and Adm.News, p. 1432.

§ 3904. Securities laws

Ownership interests of members in risk retention groups

(a) The ownership interests of members in a risk retention group shall be—

(1) considered to be exempted securities for purposes of section 77e of this title and for purposes of section 78*l* of this title; and

(2) considered to be securities for purposes of the provisions of section 77q of this title and the provisions of section 78j of this title.

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TITLE 1

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of section 78j of this title.

Investment companies

(b) A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

State blue sky laws

(c) The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub.L. 97-45, § 5, Sept. 25, 1981, 95 Stat. 952.)

Historical Note

References in Text. The Investment Company Act of 1940, referred to in subsec. (b), is title I of Act Aug. 22, 1940, c. 686, 54 Stat. 789, which is classified principally to section 80a-1 et seq. of this title.

Legislative History. For legislative history and purpose of Pub.L. 97-45, see 1981 U.S. Code Cong. and Adm.News, p. 1432.

INDEX

TO

TITLE 15—COMMERCE AND TRADE

See last volume of Title 15

END OF VOLUME

⑦ HB227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 227
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An act relating to joint insurance arrangements."
Sponsor: Taylor
Requestor:

Agency Affected: Community & Regional Affairs
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Jim Plasman

Prepared by: Jim Plasman, Deputy Director
Phone: 465-4750
Division: Municipal & Regional Assistance
Date:

Approved by Commissioner:
Date:
Agency: Community & Regional Affairs

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ___ of ___

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

(8) HB 227

TO: Representative Henry Springer, Chair
Members of the House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

DATE: February 17, 1988

SUBJECT: HB 227 - Joint Insurance Arrangements

As the beneficiary and the main proponent of HB 506 (Chapter 136, SLA 1986) also sponsored by Representative Taylor, and the main statute HB 277 proposes to amend, the Alaska Municipal League supports the concept of HB 227. Granting entities the ability to "pool" their risk management needs and costs in the face of the failures of the traditional insurance industry to provide reasonable, available and affordable coverage, should be supported. However, there are certain aspects of the bill that the AML cannot support because it may not provide needed protection for the potential valid claimant or the bill would, as proposed, diminish the current statute provisions. I am sure neither of these possibilities were intended by the sponsor.

The 1986 legislation, HB 506, was a result of a lot of compromise between the sponsor, the AML, the State Director of Insurance and the insurance industry, embodied in one individual. The bill was often held hostage, unfairly and inappropriately, in the tort reform debate which was occurring at the same time in the Legislature. This bill is an attempt to expand the beneficiaries of joint insurance arrangements and to "win back" some of the concessions made by the sponsor.

The AML is currently in the second year of the process of forming a joint insurance arrangement on behalf of public entities - municipalities and school districts. Because it has not been formed and because it has not been reviewed by the Director of Insurance, the AML is not sure the current law, as a result of the compromises, is unnecessarily restrictive.

The law, in particular AS 21.76.020, is more restrictive than we wanted and more restrictive than similar legislation in other states; however, the major concern of the Director was that the program be financially secure in order to pay potential, valid claims. The AML cannot not argue with that goal, and, at this time, we are unsure if the provisions in the statute to insure financial security are unreasonable or too restrictive to make the JIA feasible. If they are, we will seek changes in the statutes ourselves.

We agree with the testimony of the Division of Insurance that public entities do have better collateral, e.g. the ability to tax, than some of the other organizations the bill would authorize to form a JIA. A case for minimum oversight or regulation by the State to insure the ability of a JIA without such "collateral" to pay claims has merit which the Committee should consider. The AML is sure that if our JIA is feasible, and if municipalities and school districts participate, and if they control their losses, it will provide stable and available risk protection for the members with long-term savings.

We would request two specific changes to the proposed legislation. In Section 5 on page 2, lines 17 through 26 should not be deleted. This is a provision AML asked for as part of the "compromise" to allow us to participate in a "super-pool" set up by municipal leagues through the National League of Cities for excess insurance coverage.

Secondly, in Section 8, page 3, line 17, AS 21.76.010 (d) should not be repealed. This subsection allows JIA's to provide worker's compensation coverage which is a critical line of coverage.

Again, the AML supports the concept of HB 227, and I look forward to working with the Committee and the sponsor on this legislation. Thank you.

cc: Representative Robin Taylor

Department of Commerce & Economic Development / POSITION PAPER

(9) HB 227

HB 227: "An Act relating to joint insurance arrangements.

FEB 19 1988

The Department of Commerce and Economic Development is not in favor of this legislation.

The Alaska Insurance Code defines "insurance," in AS 21.90.900(15), to mean "a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies." The pooling of contributions, as provided for in this bill, is classic insurance. The bill involves the same concepts as the very first insurer in the United States, called a contributorship, established by Ben Franklin in the 1700's. More than 100 years ago, the states uniformly determined that insurance was in need of state oversight.

Insurance is interstate commerce; however, it is regulated by the various states pursuant to the McCarran-Ferguson Act. The Act provides that, to the degree that the states regulate insurance, the federal government will not, with the exception of cases of boycott, coercion and intimidation, regulate the business of insurance. If the State of Alaska abrogates regulation of insurance as this legislation proposes, it invites federal regulation.

Insurance uses the concept of the "law of large numbers" and "spreading of risk." If there is a risk of loss and one can spread that risk to a large number of people, the cost of loss on an individual basis can be greatly reduced. Alaska has suffered a lack of large numbers to make this principal work properly.

In 1986, the Legislature adopted AS 21.76 which created joint insurance arrangements. Since the governmental entities referenced in the legislation could draw on an ongoing tax base to deal with any fiscal problems that might arise, it was not necessary to provide for the level of regulation set forth in the Insurance Code. Therefore, a lower level of regulation was deemed acceptable.

This proposal provides that a wide variety of groups can form a joint insurance arrangement to retain risk (act as an insurance company) or to buy insurance. It also goes on to remove totally the insurance product of those groups from insurance regulation.

It is one thing to promote small insurers for Alaska property type risks where amounts of potential loss are somewhat controllable and fixed, subject to adequate numbers of participants. If such an enterprise fails, then the only ones hurt are those who are a part of and participants of the joint insurance arrangement. This mechanism is currently in place in the Insurance Code (AS 21.75.300-340). These sections of law have not been used since they were placed on the books in 1978.

It is quite another issue, however, to extend this concept to a line of insurance, such as workers' compensation where liability is not subject to limit, or to liability insurance which is highly unpredictable, particularly in a small population state like Alaska. Currently, workers' compensation insurance can only be purchased from an admitted insurer and all policies issued are protected by the Alaska Guaranty Association Act, without limitation on the loss. This provides a considerable degree of protection to injured claimants who have no voice in how the employer provides the coverages required by law. If such an enterprise fails, not only those who are a part of and participants of the joint insurance arrangement are hurt but also those entitled to a benefit or a recovery from the participant.

The principal barrier to formation of small insurers in the past has been the financial stability of the proposals. An underfinanced insurer is hazardous to the financial health of its insureds. Insurance regulation is designed to provide public protection for purchasers and those entitled to a benefit from the insurance. It does this through financial standards established by the Legislature through trade practice regulation, through limitations on activities of the insurer, and, generally, through the structure of insurance regulation that has been established by past Legislatures. We believe this structure should continue to apply to insurers for the protection of all Alaskans.

J Williams for
J. Anthony Smith, Commissioner
Department of Commerce & Economic
Development

Date: 2-19-88

Donald P. Lod for John George
John L. George, Director of Insurance

Date: 2/19/88

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STATE OF ALASKA

OFFICE OF THE GOVERNOR

(10) HB 227

BILL ANALYSIS

FEB 19 1988

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Econ. Dev.	Insurance	HB 227	Taylor

SHORT TITLE OF BILL

An Act relating to joint insurance arrangements

DEPARTMENT POSITION

Not in favor

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
John L. George	02/ /88		2/19/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Not Known	Insurance purchasers in Alaska

ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL
Not Known	Not Known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The bill removes from state regulation insurance by groups of persons who form mutual or cooperative insurers or purchasing arrangements. Under this legislation, a wide variety of groups would be able to opt out of insurance regulation.

ANALYSIS OF BILL/PROGRAM EFFECTS

This legislation expands legislation adopted in 1986 to allow groups other than government groups to create their own insurers which are outside the regulation of the the Division of Insurance. This generally will mean underfunded insurance companies. Presently, the Federal Risk Retention Act permits the purchase of liability insurance only, with no regulation applied to the group. It is inappropriate to apply this approach to other forms of insurance for a variety of reasons, not the least of which is consideration of the level of protection afforded the injured party. A small insurer of the size that would generally be seen under these provisions would not begin to measure up to the financial standards established by the Legislature for other insurers and likely to be hazardous to its participants.

AMENDMENTS PROPOSED

In its present form, there are a few technical changes needed in the bill. These are discussed on the attached page. These changes do not address the basic concerns with or philosophy of the bill.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-008 (Rev. 12/83)

AMENDMENTS PROPOSED

On Page 1, Lines 20-21.

Delete. This inclusion is in conflict with Federal Law cited. That law provides that regulation should be limited to the state of formation, which in this case would be Alaska. This legislation provides that no regulation will occur.

On Page 2, Lines 6-8.

Following the word "arrangement" on line 6, insert the words, "formed by a group," described in AS 21.76.010(a)(1)-(3).

This revision recognizes that the type of accounting is not appropriate for groups other than municipalities, school districts and regional educational attendance areas.

On Page 2, Lines 16.

Change the word "authorized" to read "unauthorized".

A licensed surplus lines broker cannot accept business under his license from an authorized insurer.

DK/dg10236K