HB

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HB 227

OFFICIAL
N.A.I.C.
MODEL INSURANCE LAWS
REGULATIONS and GUIDELINES

PUBLISHED BY NIARS CORPORATION
UNDER THE AUSPICES OF

THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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VOLUME I

OFFICIAL N.A.I.C.
MODEL LAWS, REGULATIONS and GUIDELINES

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The information contained in this publication has been compiled from the official Proceedings of the National Association of Insurance Commissioners (NAIC) and other sources and is, in the opinion of the publisher, an accurate representation of the current position of the NAIC.

Tabulations of apparent individual state positions with respect to the various models have been compiled from reliable sources and each state has been contacted in an attempt to verify the state's position. Because state positions frequently change, the publisher cannot guarantee that the tabulations of apparent regulatory postures represent the "official position" of the several states.

Prepared by NIARS Corporation in cooperation with
the
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP SELF-INSURANCE MODEL ACT

Table of Contents

Section 1. Scope.

The provisions of this Act shall apply to workers' compensation self-insurance groups. This Act shall not apply to public employees or governmental entities. Groups which are issued a certificate of approval by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the insurance laws and regulations except as otherwise provided herein.

Section 2. Definitions.

A. "Administrator" means an individual, partnership or corporation engaged by a workers' compensation self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day to day management of the group.

B. "Commissioner" means the Commissioner of Insurance.

Drafting Note: See Discussion on the regulation of groups by either the insurance department or workers' compensation agency on pp. 72-75 in the NAIC Study Committee report.

C. "Insolvent" or "Insolvency" means the inability of a workers' compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

D. "Net premium" means premium derived from standard premium adjusted by any advance premium discounts.

E. "Service company" means a person or entity which provides services not provided by the administrator, including but not limited to, (a) claims adjustment, (b) safety engineering, (c) compilation of statistics and the preparation of premium, loss and tax reports, (d) preparation of other required self-insurance reports, (e) development of members' assessments and fees, and (f) administration of a claim fund.

F. "Standard premium" means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.

G. "Workers' compensation," when used as a modifier of "benefits," "liabilities," or "obligations," means both workers' compensation and employers' liability.

Drafting Note: In those states where workers' compensation does not include employers' liability, "employers' liability" should be eliminated from the definition.

H. "Workers' compensation self-insurance group" or "group" means a not-for-profit unincorporated association consisting of five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide trade or professional association which has been in existence for not less than five years, and who enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in this state.

Drafting Note: States may wish to use other terminology to describe groups, e.g. associations, funds, or pools.

Before a state chooses to delete the language "who are engaged in the same or similar type of business" it is recommended that the drafter carefully review the discussion of the issues involved. See pp. 22-25 of the NAIC Study Committee report.

Section 3. Authority to Act as a Workers' Compensation Self-Insurance Group.

No person, association or other entity shall act as a workers' compensation self-insurance group unless it has been issued a certificate of approval by the commissioner.

Section 4. Qualifications for Initial Approval and Continued Authority to Act As A Worker's Compensation Self-Insurance Group.

A. A proposed workers' compensation self-insurance group shall file with the commissioner its application for a certificate of approval accompanied by a non-refundable filing fee in the amount of $_____. The application shall include the group's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:

1. Proof of compliance with the provisions of Subsection B of this Section.

2. A copy of the articles of association, if any.

3. A copy of agreements with the administrator and with any service company.

4. A copy of the bylaws of the proposed group.

5. A copy of the agreement between the group and each member securing the payment of workers' compensation benefits, which shall include provision for payment of assessments as provided for in Section 19.

6. Designation of the initial board of trustees and administrator.

7. The address in this state where the books and records of the group will be maintained at all times.

8. A pro forma financial statement on a form acceptable to the commissioner showing the financial ability of the group to pay the workers' compensation obligations of its members.

9. Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual net premium on a date prescribed by the commissioner. Each payment shall be considered to be part of the first year premium payment of each member, if the proposed group is granted a certificate of approval.

B. To obtain and to maintain its certificate of approval a workers' compensation self-insurance group shall comply with the following requirements as well as any other requirements established by law or regulation:

1. A combined net worth of all members of a group of private employers of at least $1,000,000.

2. Security in a form and amount prescribed by the commissioner which shall be provided by either a surety bond, security deposit or financial security endorsement or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requiremont, securities shall be limited to bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposits in a federally insured savings and loan association or credit union; or any bond or security issued by a State of the United States of America and backed by the full faith and credit of the State. Any such securities shall be deposited with the (state treasurer) and assigned to and made negotiable by the (chairman of the workers' compensation agency) pursuant to a trust document acceptable to the commissioner. Interest accruing on a negotiable security so deposited shall be collected and transmitted to the depositor provided the depositor is not in default. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, or financial security endorsement shall be (a) for the benefit of the state solely to pay claims and associated expenses and (b) payable upon the failure of the group to pay workers' compensation benefits it is legally obligated to pay.

   The commissioner may establish and adjust from time to time, requirements for the amount of security based on differences among groups in their size, types of employment, years in existence, and other relevant factors.

3. Specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the commissioner. The commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, tyoes of employment, years in existence and other relevant factors, and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in Paragraph 2 of this Subsection.

4. An estimated annual standard premium of at least $250,000 during a group's first year of operation. Thereafter, the annual standard premium shall be at least $500,000.

5. An indemnity agreement jointly and severally binding the group and each member thereof to meet the workers' compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the commissioner and shall include minimum uniform substantive provisions prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions needed because of its particular circumstances.

6. A fidelity bond for the administrator in a form and amount prescribed by the commissioner.

7. A fidelity bond for the service company in a form and amount prescribed by the commissioner. The commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount prescribed by the commissioner.

C. A group shall notify the commissioner of any change in the information required to be filed under Subsection A of this Section or in the manner of its compliance with Subsection B of this Section no later than 30 days after such change.

D. The commissioner shall evaluate the information provided by the application required to be filed under Subsection A of this Section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis.

E. The commissioner shall act upon a completed application for a certificate of approval within 60 days. If, because of the number of applications, the commissioner is unable to act upon an application within this period, the commissioner shall have an additional 60 days to so act.

F. The commissioner shall issue to the group a certificate of approval upon finding that the proposed group has met all requirements or the commissioner shall issue an order refusing such certificate setting forth reasons for such refusal upon finding that the proposed group does not meet all requirements.

G. Each workers' compensation self-insurance group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this state any obligation or liability of the group for workers' compensation benefits.

Section 5. Certificate of Approval; Termination.

A. The certificate of approval issued by the commissioner to a workers' compensation self-insurance group authorizes the group to provide workers' compensation benefits. The certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner, pursuant to provisions of Section 28 of this Act.

B. The commissioner shall not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith.

Subject to the approval of the commissioner, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. The commissioner may hold a hearing on the merger and shall do so if any party, including a member of either group, so requests.

Drafting Note: Before a state chooses to delete the language "engaged in the same or similar type of business," it is recommended that the drafter carefully review the discussion of the issues involved. See pp. 22-25 of the NAIC Study Committee report.

Section 6. Examinations.

The commissioner may examine the affairs, transactions, accounts, records and assets and liabilities of each group as often as the commissioner deems advisable. The expense of such examinations shall be assessed against the group in the same manner that insurers are assessed for examinations.

Drafting Note: It is recommended that this examination requirement be consistent with the existing requirement for examining insurance companies, e.g. not less often than once every three (five) years.

Section 7. Board of Trustees: Membership, Powers, Duties, and Prohibitions.

Each group shall be operated by a board of trustees which shall consist of not less than five persons whom the members of a group elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the group. The group's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

A. The board of trustees shall:

1. Maintain responsibility for all monies collected or disbursed from the group and segregate all monies into a claims fund account and an administrative fund account. At least 70% of the net premium shall be placed into a designated depository for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions, including second injury and other loss-related funds. This shall be called the claims fund account. The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the commissioner's satisfaction that (a) more than 30% is needed for an effective safety and loss control program or (b) the group's aggregate excess insurance attaches at less than 70%.

Drafting Note: Administrative costs include guaranty fund assessments.

2. Maintain minutes of its meetings and make such minutes available to the commissioner.

3. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

4. Retain an independent certified public accountant to prepare the statement of financial condition required by Subsection A of Section 11.

B. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner.

2. Borrow any monies from the group or in the name of the group except in the ordinary course of business, without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner.

Section 8. Group membership; Termination; Liability.

A. An employer joining a workers' compensation self-insurance group after the group has been issued a certificate of approval shall (1) submit an application for membership to the board of trustees or its administrator and (2) enter into the indemnity agreement required by Subsection B.5 of Section 4. Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

B. Individual members of a group shall be subject to cancellation by the group pursuant to the bylaws of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the commissioner and the workers' compensation agency of the termination or cancellation of a member within 10 days and shall maintain coverage of each cancelled or terminated member for 30 days after such notice, at the terminating member's expense, unless the group is notified sooner by the workers' compensation agency that the cancelled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another group.

C. The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the cancelled or terminated member's period of membership.

D. A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

E. The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

Drafting Note: This language should not be interpreted as negating any other statute or case law limiting defenses.

Section 9. Service Companies.

A. No service company or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, an administrator. No administrator or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a service company.

B. The service contract shall state that unless the commissioner permits otherwise the service company shall handle, to their conclusion, all claims and other obligations incurred during the contract period.

Section 10. Licensing of Agent.

Except for a salaried employee of a group, its administrator or its service company, any person soliciting membership in a workers' compensation self-insurance group must be licensed as provided (in Section ____of the insurance code).

Section 11. Financial Statements and Other Reports.

A. Each group shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for (1) known claims and expenses associated therewith, (2) claims incurred but not reported and expenses associated therewith, (3) unearned premiums and (4) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expense associated therewith shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

B. No person shall make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, in connection with the solicitation of membership of a group.

C. The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

Section 12. Taxes.

Drafting Note: A state that imposes a premium tax or other tax on workers' compensation insurers will have to decide whether such tax should be imposed on groups. However, a state that dedicates a premium tax or other tax on workers' compensation insurance principally for workers' compensation purposes, e.g., administration or a special fund, should impose such tax on groups. See pp. 45-47 of the NAIC Study Committee report.

Section 13. Fees and Assessments.

Drafting Note: Fees and assessments for second injury funds or other special funds or for administrative funds associated with the insurance department or the workers' compensation agency should be imposed on groups in the same manner that they are imposed on insurance companies or self-insurers. See pp. 45-47 of the NAIC Study Committee report.

Section 14. Misrepresentation Prohibited.

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of membership of a group.

Section 15. Investments.

Funds not needed for current obligations may be invested by the board of trustees in accordance with (Section ____of the insurance code regarding investments of property and casualty insurers).

Section 16. Rates and Rep ng of Rates.

A. Every workers' compensation self-insurance group shall adhere to the uniform classification system, uniform experience rating plan, and manual rules filed with the commissioner by an advisory organization designated by the commissioner.

B. Premium contributions to the group shall be determined by applying the manual rates and rules to the appropriate classification of each member which shall be adjusted by each member's experience credit or debit. Subject to approval by the commissioner, premium contributions may also be reduced by an advance premium discount reflecting the group's expense levels and loss experience.

C. Notwithstanding Subsection B of this Section, a group may apply to the commissioner for permission to make its own rates. Such rates shall be based on at least five years of the group's experience.

Drafting Note: States that have adopted the Alternative Model Workers' Compensation Competitive Rating Act should use the following provision in place of Subsections B and C above:

Every group shall use the pure premium rates filed with the commissioner by the designated advisory organization plus an additional amount representing the member's portion of estimated expenses. A group may contract with an advisory organization approved by the commissioner for assistance in developing appropriate rates.

D. Each group shall be audited at least annually by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. A report of the audit shall be filed with the commissioner in a form acceptable to the commissioner. A group or any member thereof may request a hearing on any objections to the classifications. If the commissioner determines that as a result of an improper classification a member's premium contribution is insufficient, he shall order the group to assess that member an amount equal to the deficiency. If the commissioner determines that as a result of an improper classification a member's premium is excessive, he shall order the group to refund to the member the excess collected. The audit shall be at the expense of the group.

Section 17. Refunds.

A. Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than 12 months after the end of the fund year.

Drafting Note: In those states where dividends may be paid earlier than 12 months, the time limit should be changed to conform to state practice.

B. Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any fund year shall be paid only to those employers who remain participants in the group for the entire fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

Section 18. Premium Payment; Reserves.

A. Each group shall establish to the satisfaction of the commissioner a premium payment plan which shall include (1) an initial payment by each member of at least 25% of that member's annual premium before the start of the group's fund year and (2) payment of the balance of each member's annual premium in monthly or quarterly installments.

B. Each group shall establish and maintain actuarially appropriate loss reserves which shall include reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expenses associated therewith.

C. Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

Section 19. Deficits and Insolvencies.

A. If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make the deficiency.

B. In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from (a) surplus from a fund year other than the current fund year, (b) administrative funds, (c) assessment of the membership, if ordered by the group or, (d) such alternate method as the commissioner may approve or direct. The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

C. If the group fails to assess its members or to otherwise makeup such deficit within 30 days, the commissioner shall order it to do so.

D. If the group fails to make the requirement assessment of its members within 30 days after the commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the commissioner, the group shall be deemed to be insolvent.

E. The commissioner shall proceed against an insolvent group in the same manner as the commissioner would proceed against an insolvent domestic insurer in this state as prescribed in (Section _____of the insurance code regarding liquidation, conservation, etc.). The commissioner shall have the same powers and limitations in such proceedings as are provided under those laws, except as otherwise provided in this Act.

F. In the event of the liquidation of a group, the commissioner shall levy an assessment upon its members for such an amount as the commissioner determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

Section 20. Guaranty Mechanism. (OPTIONAL)

In the event of a liquidation pursuant to Section 19, after exhausting the security required pursuant to Section 4.B.2., the commissioner shall levy an assessment against all groups to assure prompt payment of such benefits. The assessment on each group shall be based on the proportion that the premium of each group bears to the total premium of all groups. The commissioner may exempt a group from assessment upon finding that the payment of the assessment would render the group insolvent. Such assessment shall not relieve any member of an insolvent group of its joint and several liability. After any member of an insolvent group of its joint and several liability. After any such assessment is made, the commissioner shall take action to enforce the joint and several liability provisions of the insolvent group's indemnity agreement, and shall recoup (1) all costs incurred by the commissioner in enforcing such joint and several liability provisions, (2) amounts that the commissioner assessed any other groups pursuant to this Section, and (3) any obligations included within Subsection F of Section 19.

Drafting Note: Each state should evaluate carefully the financial security requirements it imposes on workers' compensation groups and, in keeping with its regulatory philosophy regarding workers' compensation benefit guarantees, should make its own decision on whether a guaranty mechanism is needed for groups. If a state decides to establish a guaranty mechanism for groups, the guaranty mechanism should not (1) take the place of any financial security requirements, (2) relieve the members of an insolvent group of their joint and several liabilities, or (3) be refunded except for minimum administrative expenses.

Section 21. Monetary Penalties.

After notice and opportunity for a hearing, the commissioner may impose a monetary penalty on any person or group found to be in violation of any provision of this Act or of any rules or regulations promulgated thereunder. Such monetary penalty shall not exceed $1,000 for each act or violation and shall not exceed $10,000 in the aggregate. The amount of any such monetary penalty shall be paid to the commissioner for the use of the state.

Drafting Note: The disposition of monetary penalties will have to be set forth by each state according to its own practices.

Section 22. Cease and Desist Orders.

A. After notice and opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of this Act or of any rules or regulations promulgated thereunder.

B. Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the commissioner may do either or both of the following: (a) impose a monetary penalty of not more than $10,000 for each and every act or violation of such order not to exceed an aggregate monetary penalty of $100,000 or (b) revoke the group's certificate of approval or any insurance license held by the person.

Section 23. Revocation of Certificate of Approval.

After notice and opportunity for a hearing, the commissioner may revoke a group's certificate of approval if it (1) is found to be insolvent, (2) fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon it, or (3) fails to comply with any of the provisions of this Act, with any rules promulgated thereunder, or with any lawful order of the commissioner within the time prescribed. In addition, the commissioner may revoke a group's certificate of approval if, after notice and opportunity for hearing, the commissioner finds that (a) any certificate of approval that was issued to the group was obtained by fraud; (b) there was a material misrepresentation in the application for the certificate of approval; or (c) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator in its fiduciary capacities.

Section 24. Notice and Hearings.

Drafting Note: This section should conform to the state's administrative procedure act and insurance code for notices and hearings resulting in orders of suspension, revocation, cease and desist and monetary penalties.

Section 25. Rules and Regulations.

The commissioner shall have power to make rules and regulations in order to implement this Act.

Section 26. Severability Clause.

If any provision of this Act, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this Act.

Legislative History (all references are to the Proceedings of the NAIC).

1984 Proc. I 6, 23, 662, 705, 706-718 (adopted).
1984 Proc. II 10, 20, 715, 808, 809-811 (amended).
1985 Proc. I 19, 38-39, 767, 792, 804-805 (corrected).

PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP SELF-INSURANCE MODEL ACT

The date in parentheses is the effective date of the legislation or regulation, with latest amendments.

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Alabama	NO ACTION TO DATE	
Alaska	NO ACTION TO DATE	
Arizona	NO ACTION TO DATE	
Arkansas	NO ACTION TO DATE	
California	NO ACTION TO DATE	
Colorado	NO ACTION TO DATE	
Connecticut	NO ACTION TO DATE	
Delaware	NO ACTION TO DATE	
D.C.	NO ACTION TO DATE	
Florida	NO ACTION TO DATE	
Georgia		GA. CODE ANN. §§ 34-9-150 to 34-9-188 (1982); GA. ADMIN. COMP. ch. 120-2-34 (1982).
Guam	NO ACTION TO DATE	
Hawaii	NO ACTION TO DATE	
Idaho	NO ACTION TO DATE	
Illinois		ILL. ADMIN. REG. tit. 50 §§ 2901.10 to 2901.50 (1981/1986).
Indiana	NO ACTION TO DATE	
Iowa		IOWA ADMIN. CODE §§ 191-56.1 to 191-56.22 (1984/1986).

PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP SELF-INSURANCE MODEL ACT

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Kansas	NO ACTION TO DATE	
Kentucky	NO ACTION TO DATE	
Louisiana	NO ACTION TO DATE	
Maine		ME. REV. STAT. ANN. tit. 39 § 23 (1981/1987); ME. INS. REG. ch. 250 § 1 (1981).
Maryland		MD. ANN. CODE art. 48A §§ 598 to 599 (1986).
Massachusetts		MASS. GEN. LAWS ch 152 § 25A (1943/1972).
Michigan	NO ACTION TO DATE	
Minnesota		MINN. STAT. § 176.181 (1953/1984); MINN. INS. REG. §§ 2780.2100 to 2780.3400 (1984).
Mississippi	NO ACTION TO DATE	
Missouri		MO. ADMIN. CODE tit. 4 § 190-18.030 (1982).
Montana	NO ACTION TO DATE	
Nebraska	NO ACTION TO DATE	
Nevada		NEV. ADMIN. CODE §§ 616.100 to 616.264 (1980/1984).
New Hampshire	NO ACTION TO DATE	
New Jersey	NO ACTION TO DATE	
New Mexico	N.M. STAT. ANN. §§ 52-6-1 to 52-6-25 (1986/1987).	N.M. REGS. ch. 52 Rule 2 (1986) [SCC-86-2]; Rule 4 (1986) [DOO-86-5].

PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP SELF-INSURANCE MODEL ACT

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
New York	NO ACTION TO DATE	
North Carolina	NO ACTION TO DATE	
North Dakota	NO ACTION TO DATE	
Ohio	NO ACTION TO DATE	
Oklahoma	NO ACTION TO DATE	
Oregon	NO ACTION TO DATE	
Pennsylvania	NO ACTION TO DATE	
Puerto Rico	NO ACTION TO DATE	
Rhode Island		R.I. INS. REG. XXXIII (1983).
South Carolina	NO ACTION TO DATE	
South Dakota	NO ACTION TO DATE	
Tennessee	TENN. ADMIN. COMP. ch. 0780-1-54 (1986).	
Texas	NO ACTION TO DATE	
Utah	NO ACTION TO DATE	
Vermont	NO ACTION TO DATE	
Virgin Islands	NO ACTION TO DATE	
Virginia		VA. INS. REG. 16 (Case 20194) (1980/1985).
Washington	NO ACTION TO DATE	
West Virginia	NO ACTION TO DATE	
Wisconsin	NO ACTION TO DATE	
Wyoming	NO ACTION TO DATE	

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 15, 1988

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

TO: Representative Heinrich Springer

FROM: Michael F. Ford
Legislative Counsel

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

No. 1

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 227 CRA
PUBLISH DATE: HOUSE 3/16/88

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)

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)

No. 2

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 227 CRA
PUBLISH DATE: HOUSE 3/16/88

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
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):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

dg1/0645K/020588a

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 1.36 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

208 (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

POSITION PAPER / & Economic Development

(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 uniform _ 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. Kool for John George
John L. George, Director of Insurance

Date: 2/19/88

DK/dg10237K
021888b

Department of Commerce & Economic Development / POSITION PAPER

(8) HB 227

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

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

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

(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

P.O. BOX V, JUNEAU, AK 99811 (907) 465-3822 • P.O. BOX 210001, ANCHORAGE, AK 99521 (907) 278-3284

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 stabie 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.

(5)

HOUSE COMMITTEE REPORT

(11) CS HB 227

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
[ ] a new title

[ ] attached amendment(s)

[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:

Cato
Collins
Zawacki
Springer

Springer

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

(13) CS HB 227 (C&RA)

Original sponsor: Taylor

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 227 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to joint insurance arrangements."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.76.010(a) is repealed and reenacted to read:

(a) The following groups may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses on a group basis or purchase coverage on a group basis:

(1) municipalities;

(2) school districts;

(3) regional educational attendance areas;

(4) incorporated or unincorporated associations;

(5) regional electrical associations;

(6) entities qualified to do business under 15 U.S.C. 3901 - 3904 (Product Liability Risk Retention Act);

(7) groups that would be considered valid under this title for the type of insurance for which the joint insurance arrangement is established.

* Sec. 2. AS 21.76.010(b) is amended to read:

(b) A joint insurance arrangement may be for any kind of insurance defined by this title except for [DISABILITY INSURANCE, HEALTH INSURANCE,] life insurance [,] and title insurance.

* Sec. 3. AS 21.76.020 is repealed and reenacted to read:

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

* Sec. 4. AS 21.[illegible].140 is amended by adding a new subsection to read:

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

* Sec. 5. AS 21.76.070 is amended to read:

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state or from an authorized insurer if the insurance is placed through a licensed surplus lines broker, except that an arrangement formed by municipalities or school districts may purchase insurance under this section from a risk- sharing pool established by a national association of similar entities if the risk-sharing pool meets the qualifications for an unauthorized insurer under AS 21.34.040(b) and (d) and 21.34.220 and has capital and policyholders surplus in an amount at least as great as would be required if the association were a domestic multiple line insurer. An arrangement may purchase insurance under this section for property and liability risks from unauthorized insurers allowed for use by licensed Alaska surplus lines brokers.

* Sec. 6. AS 21.76.080(e) is amended to read:

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition

of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be

[(1) FILED IN THE GENERAL FORM AND CONTENT ACCEPTABLE TO THE DIRECTOR;

(2) IN ACCORDANCE WITH ACCOUNTING PRINCIPLES ESTABLISHED UNDER THIS TITLE; AND

(3)] available for public inspection.

* Sec. 7. AS 21.76.110 is repealed and reenacted to read:

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the participating member for the loss or injuries.

(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)

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)

(1.2)(a) 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
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):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

dg1/0645K/020588a

Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: Monday, Feb. 8, 1988

SIGN-IN

Subject of meeting:

HB 357

*HB 392

*HB 227 Joint Insurance Arrangements

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Peggy Taylor	Here for 2 more Months			—
Sen. H Burgess		6-1325	AML	Yes
DON KOCH	P.O.BOX D JNU	2577	DIV. OF INSURANCE	YES

File Contents

HB 227 - Joint Insurance Arrangements

No.	Description
1.	Bill - HB 227
1.1	Ø FN DCRA
1.2	Ø FN DCED
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
11.	Com Rpt 4DP
12.	Legal Svcs memo on CSHB 227 (CRA)
13.	CSHB 227 (CRA)

HB227.FIL
02/19/88

(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	0.0	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):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

dg1/0645K/020588a

Alaska State Legislature

(6) HB227

(1a)

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

Committee on
Community & Regional Affairs

M E M O R A N D U M

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.

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*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.

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*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.

(b)

Chapter 136

AN ACT

Relating to joint insurance arrangements; and providing for an effective date.

* Section 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

21.76.010--21.76.900

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) Municipalities, city and borough school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis.

(b) A joint insurance arrangement may be for any kind of insurance defined by this title except for disability insurance, health insurance, life insurance, and title insurance.

(c) A joint insurance arrangement shall be considered an alternative or supplement to any other policy or contract of insurance authorized or required by law, including insurance under AS 21.75.

(d) For purposes of AS 23.30.075, a joint insurance arrangement is considered to be an association duly authorized to transact workers' compensation insurance in the state.

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. (a) A joint insurance arrangement may not be considered insurance for the

Chapter 136

purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in (b) - (d) of this section and other provisions of this chapter.

(b) A joint insurance arrangement is subject to examination by the division under AS 21.06.140 - 21.06.230.

(c) A joint insurance arrangement is subject to approval by the director. As a condition of approval by the director, a joint insurance arrangement shall have and maintain, as to the coverage provided,

(1) a certificate of excess insurance or reinsurance

(A) for property insurance, to the value of the single most valuable property covered;

(B) for liability insurance, to the highest policy limit provided by the arrangement;

(C) for workers' compensation, to the extent of all benefits allowed by law above retention;

(2) a certificate of insurance limiting the arrangement's total exposure for liability and workers' compensation to the arrangement's aggregate retention;

(3) assets allowable under AS 21.21.020 - 21.21.140, 21.-21.225, or 21.21.230 in an amount no less than the arrangement's aggregate retention plus an amount considered adequate by the director to cover administrative and adjustment expenses.

(d) The value of assets and liabilities under (c) of this section shall be determined in accordance with AS 21.18.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other

requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of excess contributions;

(8) transmission of financial statements and audit reports of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with

generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state, except that an arrangement formed by municipalities or school districts may purchase insurance under this section from a risk-sharing pool established by a national association of similar entities if the risk-sharing pool meets the qualifications for an unauthorized insurer under AS 21.34.040(b) and (d) and 21.34.220 and has capital and policyholders surplus in an amount at least as great as would be

required if the association were a domestic multiple line insurer. An arrangement may purchase insurance under this section for property and liability risks from unauthorized insurers allowed for use by licensed Alaska surplus lines brokers.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve;

(2) contributed by officers and employees of members of the joint insurance arrangement under an employee benefit plan; and

(3) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source, date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be

(1) filed in the general form and context acceptable to the director;

(2) in accordance with accounting principles established under this title; and

(3) available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt rules not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a right of subrogation with respect to its participants to the same extent that an insurer has a right of subrogation with respect to one of its insureds.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.36.190 is amended by adding a new subsection to read: 21.36.190(e)

(e) This section does not apply to insurance coverage under a joint insurance arrangement authorized by AS 21.76.

* Sec. 3. AS 21.39.155(a) is amended to read: 21.39.155(a)

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 4. AS 21.80.180(5) is amended to read: 21.80.180(5)

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the

time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 5. AS 21.80.180(6) is amended to read:

21.80.180(6)

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Eff. 6/10/86

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
Consult
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§ 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)(13), 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 activities 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

Note 1

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

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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

Sec.

§ 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.

(b) A risk retenti
company for purpos
80a–1 et seq.).

(c) The ownershi
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References in Text. T
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789, which is classified
80a–1 et seq. of this tit

TITLE 1

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)

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)

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)

(4) HB 227

We The People

of the Uni
insure domestic Tranquility, provide for the common Defence, promo
and our Posterity, do ordain and establish this Constitution for the Un

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in
Representatives.

Section. 2. The House of Representatives shall be composed of Mem
in each State
No Person shall
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and within every subseq
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eight, Delaware one, Maryland
When vacancies
the House of Rep
Section. 3. The Senate of the
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Class at the Expiration of
Years of the Legislature
such Vacancies.

No Person
not, when elected, be an
The Vice President
The Senate shall chuse their other Officers, and also a President pro tem
President of the United States.

The Senate shall have the sole Power to try all Impeachments. When
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 any 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."

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.

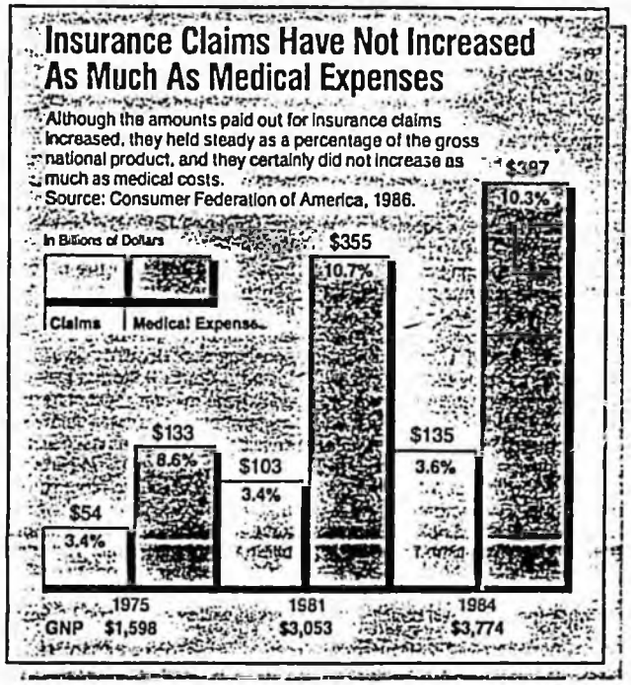
Cooper, "Trends in Liability Awards," 1986

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



Elise Kennug

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 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).

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

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** studied jury trials and verdicts in their state courts. The bar association in South Carolina found that when awards were discounted for inflation there had been no increase in dollars awarded during the 10 years from 1976 through 1986. It also reported that although there were more and larger punitive damage awards, the median amount for verdicts has remained constant.

The State Bar Association of 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.

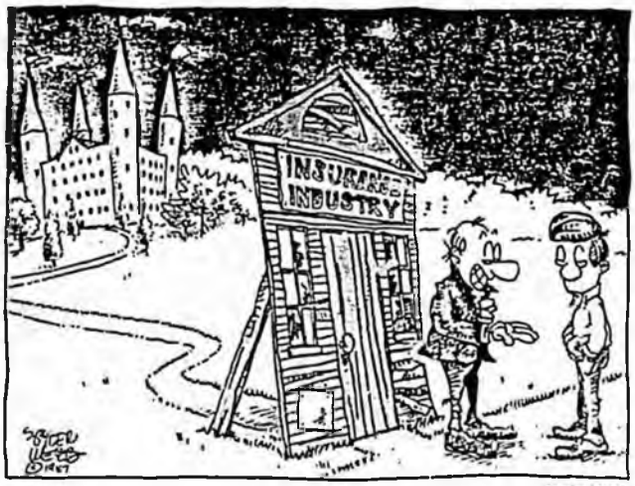
National Center for State Courts, *A Preliminary Examination of Available Civil and Criminal Trend Data in State Trial Courts*, April 1986

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



Spyder Webb

Statistics from State Courts

In **Colorado**, the population increased 37.9% between 19?.' and 1985, but personal injur. suits increased by less than 21%

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 tha 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 ince 1980, civil filings have steadi decreased, with a total de- ase of 17.4%.

In **Minnesota**, statewide data indic e that less than 20% of all civi ilings 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.

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"

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.

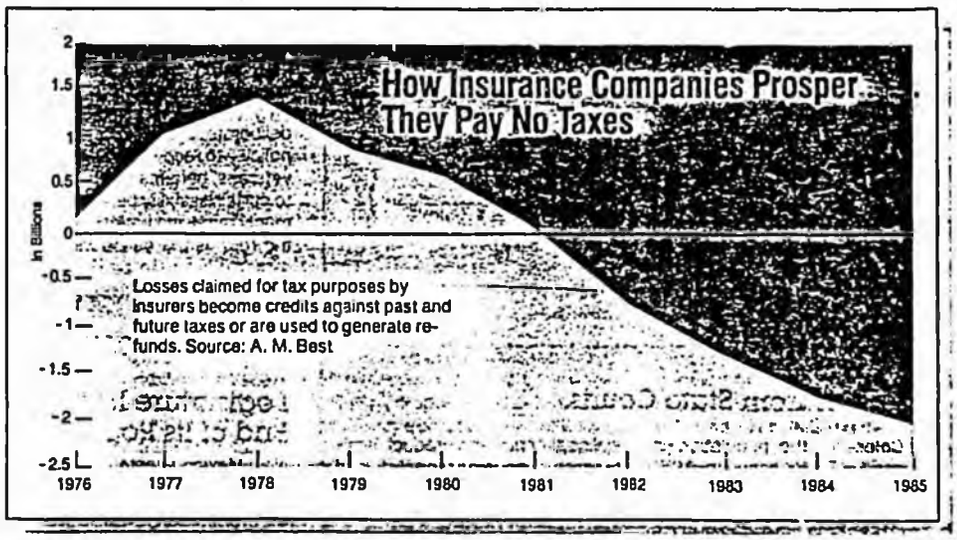
THE INSURANCE INDUSTRY HIDES IN A FOG OF STATISTICS.

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.

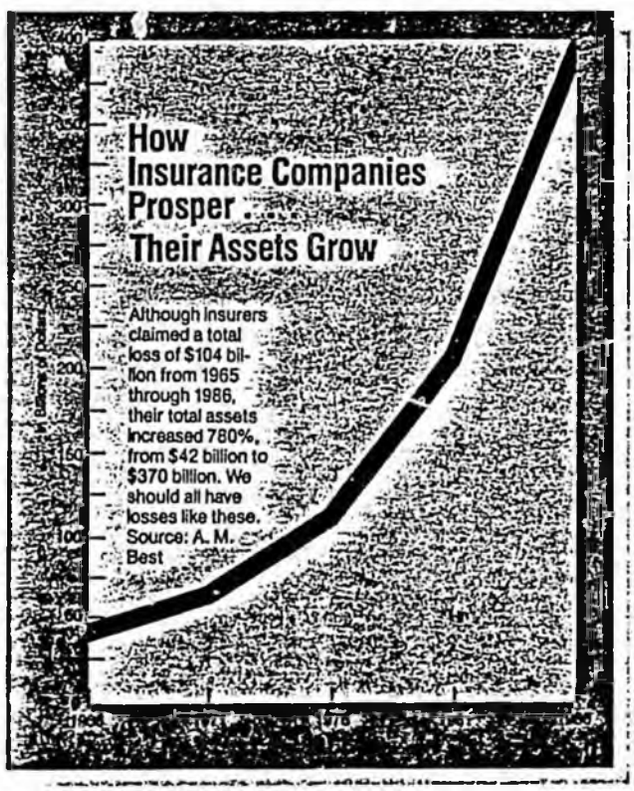
Consumer Reports, August 1986



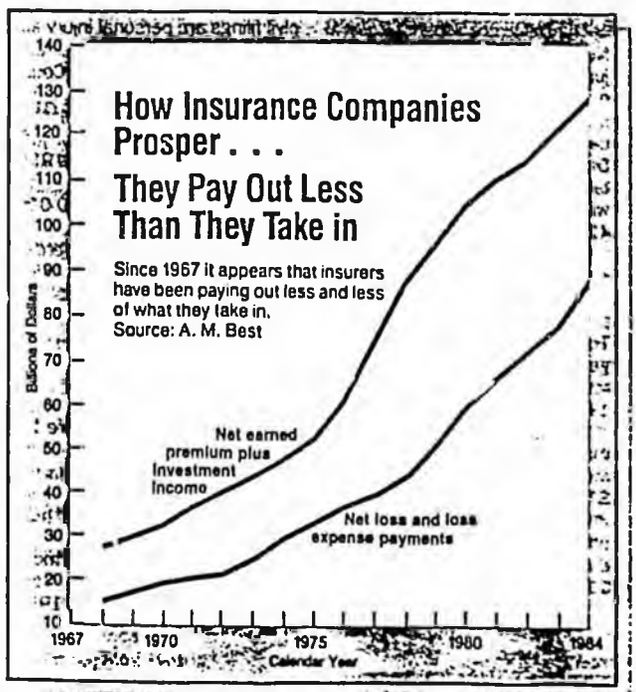
Dale Hennig

The debate has been hindered by an unwillingness on the part of the nation's insurance companies to open their books for scrutiny.

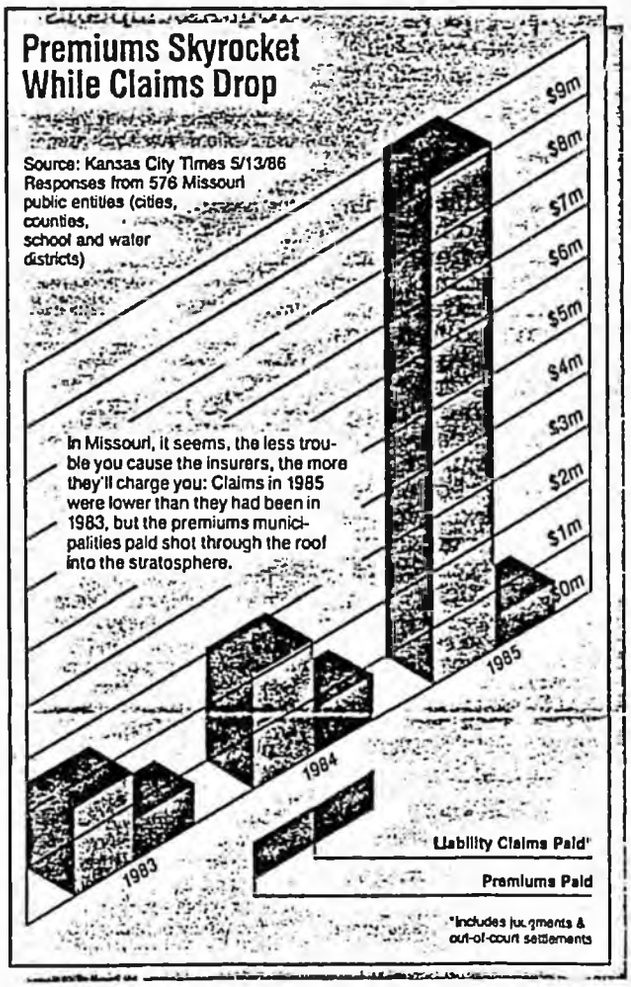
Houston Business Journal, April 27, 1987



Dale Hennig



Dale Hennig



Elsie Hennig

Elsie 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 suburb.

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 . . . 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 $176, 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

What Is Your Life Worth?

1971 Costs

Figures used by Ford to calculate the value of a human life

Miscellaneous Accident Cost—$200
Funeral—$900
Employer Losses—$1,000
Insurance Administration—$4,700
Medical Costs: Other—$425, Hospital—$700
Future Productivity Losses: Direct—$132,000, Indirect—$41,300
Property Damage—$1,500
Legal and Court—$3,000
Victim's Pain and Suffering—$10,000
Assets (Lost Consumption)—$5,000

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.

Dan Hanagig

Punitive 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.

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 concrete 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.

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.

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

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)

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 vitigilo, 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?

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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

H. C&RA Feb. 8, 1988 3:00pm

H. C&RA March 14, 1988 3:00pm