

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1745 SCOMM 69: HOUSE LIABILITY INSURANCE TASK FORCE, 1989-1990
1313

ATTACHMENT B
Basic Premium Taxes in the 50 States

BASIC PREMIUM TAXES ON
FOREIGN AND DOMESTIC INSURANCE COMPANIES

Note: Does not include other applicable taxes such as fire marshal, fire department, firemen's pension, police pension, workers compensation administration, automobile financial responsibility administration, security fund and other miscellaneous levies. Does not cover offsets for real estate taxes, local investments, property taxes, etc. For taxes and assessments based on workers compensation premiums, please refer to each state, Section III.

<u>State</u>	<u>Domestic Companies</u>	<u>Foreign Companies</u>
Alabama	1%	4%
Alaska	Tax free for 5 years after organization; 3% (86)	3%
Arizona	1.9% for fire insurance 1.7% for all other lines .4312% assessment on all auto insurance premiums (85)	same as domestics (85)
Arkansas	2.5% (81)	2.5%
California	2.33% (82)	2.33% (82)
Colorado	2.25% (except companies having home or regional office in Colo., including captives--1%)	2.25% (except companies having home or regional office in Colo., including captives--1%)
Connecticut	2% plus 2.625% on interest and dividends	2%
Delaware	2%	2%
District of Columbia	2%	2%
Florida	none	2%
Georgia	2.25%	2.25%
Hawaii	2.9647% (79)	4.2824% (79)
Idaho	3%	3%
Illinois	2% for certain domestics (see II-C-3). (Subject to 4% income tax)	2% (4% income tax is deductible)

Basic Premium Taxes - 2

<u>State</u>	<u>Domestic Companies</u>	<u>Foreign Companies</u>
Indiana	2% (may elect corporate income tax)	2%
Iowa	2%	2%
Kansas	1%	2%
Kentucky	Domestic mutuals exempt but domestic stock same as foreign	2%
Louisiana	(Domestic and Foreign) 1/4 of 1% plus: Flat annual license tax by lines, based on gross (84) premiums of \$6,000 or less: \$140 life, A&H (gross annual premiums of \$7,000 or less); \$180 fire, marine, vehicle, WC, and all other. Additional license tax for each additional \$10,000 or fraction, by lines: \$66.67 boiler inspection, plate glass; \$170 life, A&H; \$300 fire, marine extended coverage, vehicle, WC, all other. (Reduction of tax allowed if assets invested in Louisiana securities.)	
Maine	2% (86)	2%
Maryland	2%	2%
Massachusetts	2%: 14% surtax	2%: 14% surtax
Michigan	5 mills per dollar of paid-up capital & surplus. 7.8% corporate income tax.	Fire--3%: casualty--2%
Minnesota	2% (except domestic mutuals which are exempt from premium tax other than fire premiums in protected areas.)	2%
Mississippi	3% (85)	3%
Missouri	2%	2%
Montana	2.75%	2.75%
Nebraska	0.6% for 1985, 0.7% for 1986, 0.8% for 1987, 1.0% for 1988 and thereafter (86)	same as domestic (86)
Nevada	3% (35)	Same as domestic (83)
New Hampshire	2%	2%

Basic Premium Taxes - 2

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Nevada	3% (85)	Same as domestics (83)
New Hampshire	2%	2%

Basic Premium Taxes - 3

<u>State</u>	<u>Domestic Companies</u>		<u>Foreign Companies</u>	
New Jersey	2%		2%	
New Mexico	3%		3%	
New York	Combination of franchise and premium tax, not to exceed 2.65%.			
North Carolina	1.75%	(86)	1.75%	(86)
North Dakota	1%		1%	(83)
Ohio	franchise tax		2.5%	
Oklahoma	4%	(85)	4%	
Oregon	none, except foreign-controlled domestics organized after 1971; (corporate excise tax) 2.25%		2.25%	
Pennsylvania	2%		2%	
Rhode Island	2%		2%	
South Carolina	1.25%		1.25%	(86)
South Dakota	2.5%	(82)	2.5%	
Tennessee	2.5%	(84)	2.5%	(84)
Texas	3.50%	(81)	3.50%	(81)
Utah	2.25%		2.25%	
Vermont	2%		2%	
Virginia	2.75%		2.75%	
Washington	2%	(86)	2.0%	(86)
West Virginia	4% (3% on non-fire and casualty policies)	(81)	4% (3% on non-fire and casualty policies)	(81)
Wisconsin	none (corporate income tax)		Reciprocal fire tax minimum--3/8 of 1%, plus 2% fire department tax; casualty--2%	
Wyoming	2.5%	(86)	2.5%	(86)

Alaska State Legislature

Senate Advisory Council



PO Box V
State Capitol
Juneau, Alaska 99811
Phone (907) 465-3114

MEMORANDUM

TO: Senator Lloyd Jones
Alaska State Senate

FROM: Becky S. Penrose
Senate Advisory Council

DATE: June 6, 1988

SUBJECT: Status of Bills Addressing Tort Reform, Opthamologists, and Optometrists; IR# 88-003285

The information which you requested regarding Opthamologists, and Optometrists has been summarized as follows:

1. The number of bills introduced
2. The bill ID number, title, and sponsor
3. A summary of the bill
4. The status and votes

The information which you requested regarding Tort Reform; HB 85, is attached.

OPTOMETRY BILLS

In the 1987 and 1988 legislature there were four bills introduced regarding Optometry. Those were HB 291, HB 532, HB 534, and SB 226.

The prime sponsor of HB 291, an act relating to the regulation of optometry was the Health, Education and Social Services Committee (HESS). It had referrals to the HESS and Finance Committees. Since May 1, 1987 it has been in the House Finance Committee. At the end of the 1988 session it became a dead bill.

The prime sponsor of HB 532, an act relating to the regulation of Optometrists, extending the termination date of the board of examiners in optometry was the Labor and Commerce Committee (L&C). It had referrals to the L&C, HESS, and Finance Committees. On 5/8/88 it was transmitted to the Governor. It was signed into law on 5/25/88 Chapter 50 SLA 88. The effective date of law was 5/26/88.

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The prime sponsor of HB 534, an act relating to regulation of dispensing opticians and dispensing optician apprentices; extending the termination date of the board of dispensing opticians was the L&C Committee. It had referrals to the L&C, HESS, and Finance Committees. On 5/6/88 it was transmitted to the Governor. It was signed into law on 5/25/88 Chapter 51 SLA 88. The effective date of law was 5/26/88.

The prime sponsor of SB 226, an act relating to the regulation of Optometry was the HESS Committee. It had referrals to the HESS, and L&C Committees. Zero Fiscal Note. On 5/4/88 it was transmitted to the Governor. It was signed into law on 5/25/88 Chapter 49 SLA 88. The effective date of law is 8/23/88.

HB 532, (CH 50 SLA 88) will extend the Board of Examiners in Optometry until June 30, 1992 (would have expired June 30, 1988).

Under the bill, the board will be responsible for licensing of optometrists (currently the board adopts regulations for the registration of optometrists). A person could not practice, attempt to practice, or offer to practice optometry without first obtaining a license from the board. The board would also be responsible for licensing branch officers of Alaskan licensee's.

Repeals AS 08.72.120, "A person may not practice, or attempt, or offer to practice, optometry without first obtaining a certificate of registration from the board." Provides act takes effect immediately.

Introduced February 17, 1988 and referred to L&C, HESS, and Finance.

Reported back to House March 2, 1988 by L&C recommending it do pass. Concurring: Donley (Chair), Ellis, Furnace, Menard, Koponen. To HESS.

Reported back to the House March 17, 1988 by Hess recommending it do pass. Concurring: Ellis and Koponen (Co-Chairs), Hanley, Phillips and Gruenberg. To Finance.

Passed the House April 5, 1988, 36-0-3-1. Excused: Davis, Hermann, Wallis. Absent: Pettyjohn. The effective date clause was adopted.

Reported back to the Senate April 14, 1988 by L&C recommending it do pass. Concurring: Kelly (Chair), Szymanski and Fahrenkamp. To Finance.

On May 6 the Finance Committee referral was waived at the request of Senator Halford. The bill passed the Senate May 6, 1988 with a vote of 19-0-1. Absent: Szymanski. The effective date clause was adopted.

HB 532 passed both houses and was transmitted to the Governor 5/8/88.

HB 534, (CH 51 SLA 88) will extend the Board of Dispensing Opticians until June 30, 1992 (would have expired June 30, 1988).

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Under the bill, the board will require an apprentice to register with the Department of Commerce and Economic Development before beginning employment or service as an apprentice. Provides act takes effect immediately.

A person would be entitled to take an exam to be licensed as a dispensing optician"... who (1) has had education equivalent to four years attendance at high school; (2) has either (A) completed at least 6,000 hours of training as an apprentice after registering with the department as an apprentice; or been engaged for at least 6,000 hours as a practicing optician in good standing in a state, territory, district, or possession of the United States; and has paid the required fee." (underlined language added by the bill to existing law). Under section relating to a dispensing optician's apprentice, language is added requiring an apprentice to register with the Department of Commerce and Economic Development before beginning employment or service as an apprentice. Also says "no more than two apprentices may be under the direct supervision of one licensed dispensing optician at the same time. (underlined language added).

Removes the requirement in current law that a licensee must submit evidence of 30 hours of continuing competence in optical dispensing as prescribed by regulation of the board before renewing a license. The licensee would now have to submit evidence of continuing competence in optical dispensing as prescribed by regulations of the board.

Introduced February 17, 1988 and referred to L&C, HESS, and the Finance Committes.

Reported back to House March 4, 1988 by L&C recommending it be replaced with a L&C substitute and that it do pass. Concurring: Donley (Chair), Boucher Menard, Koponen. To Finance.

Reported back to the House March 17, 1988 by HESS recommending it do pass. Concurring: Ellis and Koponen (Co-Chairs), Hanley, Phillips and Gruenberg. To Finance.

Reported back to the House March 31, 1988 by Finance recommending it do pass. Concurring: Adams (Chair), Pourchot, Larson, Swackhammer, Boyer, Rieger, Frank, Wallis, Brown, Davis and Goll. To Rules.

Passed the House April 5, 1988, 36-0-2. Excused: Hermann, Wallis. The effective date clause was adopted. Rep. Furnace gave notice of reconsideration, but it was not taken up and the bill was transmitted to the Senate for its consideration on April 6.

Reported back to the Senate April 14, 1988 by L&C recommending it do pass. Concurring: Kelly (Chair), Szymanski and Fahrenkamp. To Health, Education & Social Services.

Passed the Senate May 4, 1988 with a vote of 19-0-1. Absent:

Szymanski. The effective date clause was adopted.

HB 534 passed both houses and was transmitted to the Governor 5/6/88.

SB 226. (CH 49 SLA 88) relates to the practice of optometry.

This bill will:

1. Allow the Board of Examiners in Optometry to issue a license endorsement authorizing a licensee who completes an examination and other requirements established by regulation to administer drugs, except those prohibited by law. The endorsement would expire at the same time as the license to which it attaches, and it would be renewed upon satisfactory completion of continuing education requirements established by the board by regulation.
2. Allow the board to impose disciplinary sanctions when it finds after a hearing that a licensee has failed to refer a patient to a physician after ascertaining the presence of ocular or systemic conditions requiring management by a physician (current law allow sanctions when a licensee has failed to refer a patient to "the appropriate health care practitioner after ascertaining the possible presence of ocular disease").
3. Add a new section to optometry law (AS 08.72) prohibiting licensed optometrists from using drugs in the practice of optometry unless (1) the drug is a (A) nonprescription drug; (B) a drug, used for examination purposes only, within the categories of topically applied ocular anesthetics, but not including cocaine; cycloplegics or mydriatics, but not including atropine, homatropine, scopolamine, epinephrine, and 10 percent phenylephrine; (C) or a drug, within the category of miotics used, after consultation with an ophthalmologist, for the treatment of an inadvertently induced angle closure; and (2) the person holds a license endorsement issued by the board authorizing the use of drugs.
4. Rewrite the definition section under optometry law.
5. Does not provide an effective date (bill becomes law 90 days after being signed by the governor.).

Introduced April 1 and referred to HESS, L&C.

Reported back to the Senate April 13 by HESS recommending it do pass with an amendment. Concurring: Fischer (Chair), Jones, and Halford, To L&C. The HESS amendment would insert the following new section:

AS 08.72.160 is amended to read:

Sec. 08.72.160. EXAMINATION. (a) The examination shall be written, practical, and oral in nature. The [NATIONAL BOARD OF

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EXAMINERS IN OPTOMETRY EXAMINATION, PARTS 1 AND 2 SHALL COMPRISE THE] written portion of the Alaska examination shall be comprised of all or part of a national or international examination as designated by the board in regulations. The oral portion of the examination shall be recorded and retained for two years.

[(b) AN APPLICANT WHO FAILS THE PRACTICAL OR THE ORAL PORTION OF THE EXAMINATION MAY TAKE A RE-EXAMINATION IN THAT PORTION WITHOUT PAYING AN ADDITIONAL EXAMINATION FEE.]

(b) [(c)] An applicant who fails one [THE WRITTEN] portion of the examination may take a re-examination in the portion failed [THE WRITTEN PORTION] upon payment of a re-examination [AN ADDITIONAL EXAMINATION] fee established under AS 08.01.065.

(c) [(d)] An applicant who fails more than one portion of the examination must retake the entire examination and pay the [FULL] examination fee.

Reported back to the Senate April 23 by L&C recommending it be replaced with a L&C substitute and that it do pass. Concurring: Eliason (Chair) and Uehling. Not concurring: Szymanski had no recommendation. To Rules.

The L&C substitute would require the examination for applications to consist of all or part of a national or international examination designated by regulation by the board (currently the national board of examiners in optometry examination, parts 1 and 2, have to compromise the written portion of the Alaska examination). An applicant who fails a portion of the exam could take a re-examination in the portion failed (currently an applicant who fails the written portion of the exam can take a reexam in the written portion).

L&C also repeals AS 08.72.160(b), "(b) An applicant who fails the practical or the oral portion of the examination may take a re-examination in that portion without paying an additional examination fee."

Reported back to the Senate May 4, 1987 by Rules recommended it be replaced with a Rules substitute and that it be calendared May 5. Concurring: Eliason (Chair), Faiks, Bennett, Hensley and Binkley.

The Rules substitute adds a new section stating the chapter and regulations adopted under it do not limit the practice of an optician licensed under AS 08.71 (Dispensing Opticians).

On May 5, 1987 the Rules substitute was adopted, and the bill passed the Senate, 20-0. Received in the House May 6, 1987 and referred to Finance.

Reported back to the House April 27, 1988 by Finance recommending it be replaced with a House Finance substitute, and that it do pass.

Concurring: Adams (Chair), Pourchot, Goll, Boyer, Frank, Brown, Davis, Senator Jones
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Wallis, Swackhammer, Larson. Not concurring: Rieger has no recommendation.

The House Finance substitute:

1. Adds a new "Findings and Intent" section. The section says it is the intent of the legislature that "...optometrists (1) abide by the scope of practice of optometry as provided by law; (2) not treat ocular diseases or disorders except as provided by law; and (3) refer patients with ocular diseases to appropriate health care providers."
2. Changes the language amending AS 08.72.175 (License endorsement) to read: "(a) The board may issue a license endorsement authorizing a licensee to use the pharmaceutical agents described in AS 08.72.272, if the licensee or applicant for a license passes the written and practical portions of an examination on ocular pharmacology, approved by the board, that tests the licensee's or the applicant's knowledge of the characteristics, pharmacological effects, indications, contraindications, and emergency care associated with the use of pharmaceutical agents..."

Also adds language that allows a pharmacist or pharmaceutical supplier to supply an optometrist with pharmaceutical agents as provided by law upon presentation of evidence that the licensee holds a license endorsement.

3. Adds subsections to AS 08.72.272 (Use of Pharmaceutical Agents) by adding language that says a licensee may not use pharmaceutical agents for treatment of an eye disease or disorder or for any other therapeutic purpose. The licensee is not allowed to purchase, possess, or administer a pharmaceutical agent unless he/she has obtained a license endorsement.

On April 29, 1988 the House finance substitute was adopted and the bill passed the House, 37-1-1-1. Nay: Taylor. Excused: Pettyjohn. Absent: Navarre. Rep. Taylor gave notice of reconsideration.

Reconsideration was taken up the same day, and the bill again passed the House, 38-0-2. Excused: Cato, Pettyjohn.

On April 30, 1988 the Senate concurred in House amendments (final action), 18-0-1-1. Excused: Sturgulewski. Absent: Kerttula.

SB 226 was transmitted to the Governor on 5/4/88.

Please let me know if I can be of any further help.

BP:bsp

Attachments

**SOURCE SUMMARY OF SCS CS HB 85 (RULES)
"AN ACT RELATING TO CIVIL LIABILITY"**

SCS CSHB 85 (Rules) combines civil liability measures from six different House and Senate bills, as follows:

1. CSSB 211 (Fin) am "An Act relating to civil liability; and providing for an effective date."

Passed the Senate on March 30, 1988 by a vote of 13 to 7. HCS CSSB 211 (L&C) is currently (5/7) in House Judiciary.

CSSB 211 (Fin) am is incorporated in sections 1 through 9, 11, 12, 15, 19, and 20. There are, however, two changes. First, the limit on noneconomic damages is raised from \$100,000 to \$250,000. Second, "economic damages" is defined to include the value of contributions from non-wage earning roles such as homemakers, retired persons and persons living a subsistence lifestyle.

2. HCS SB 223 (L&C) "An Act relating to civil liability of zoos and zoo operators."

SB 223 passed the Senate on April 29, 1987 by a vote of 19 to 0. HCS SB 223 (L&C) is currently (5/7) in House Judiciary.

HCS SB 223 (L&C) is incorporated in its entirety in section 10. This bill provides that zoos and zoo operators are not strictly liable for injuries suffered by visitors to a zoo. There must be actual negligence on the part of the zoo operator for the injured party to recover damages.

3. CSSB 346 (Jud) "An Act granting immunity from civil liability for providing volunteer emergency services."

Currently in Senate Rules.

CSSB 346 (Jud) is incorporated in its entirety in section 13. This bill provides that a volunteer member of an organization that exists to provide emergency services is not liable for an act or omission in providing those services, unless the person was grossly negligent.

4. CSSB 461 (Jud) "An Act relating to the liability of hospitals for the actions of certain nonemployees."

CSSB 461 (Jud) passed the Senate on March 14, 1988 by a vote of 13 to 6. It is currently (5/7) in House Labor and Commerce.

CSSB 461 (Jud) is incorporated in its entirety in section 14. The bill provides that a hospital's duty to provide certain services is not, by itself, enough to find the hospital liable for the negligence of its non-employees.

5. CSHB 459 (Res) "An Act relating to liability for releases of hazardous substances."

CSHB 459 (Res) passed the House on April 14, 1988 by a vote of 30 to 4. It is currently (5/7) in the Senate Labor and Commerce Committee.

CSHB 459 (Res) is incorporated in its entirety in sections 16 and 17. It provides that with certain exceptions, a person is strictly liable for damages cause by the person's creation, transportation, storage and disposal of hazardous substances.

6. CSHB 406 (HESS) "An Act relating to the responsibility for the treatment and care of intoxicated and incapacitated persons taken into protective custody; and providing for an effective date."

CSHB 406 (HESS) is currently (5/7) in the House Judiciary Committee.

CSHB 406 (HESS) is incorporated in section 18 with one deletion. This bill provides that a person may not take civil or criminal action against a police officer or emergency service patrol member for a non-malicious decision to take or not to take an intoxicated or incapacitated person into protective custody. Since relief from criminal liability may not be put into HB 85 because of the single subject rule, section 20 only deals with civil liability.



**ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY**

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February 11, 1988

MEMORANDUM

TO: Representative Mark Boyer
ATTN: Ed Flanagan
FROM: Karen Oakley *VO*
Legislative Analyst
RE: State Regulation of Insurance Rates
Research Request 88.122

You asked how states regulate insurance rates and whether other states employ actuaries to review insurance company requests to change rates.

In this memorandum, we discuss: 1) state regulation of the insurance industry in general; 2) the primary methods by which states regulate insurance rates and the use of actuaries by states; and 3) how insurance rates are currently regulated in Alaska.

In summary, we found:

- States regulate insurance rates as one of several means to ensure that insurance companies remain solvent and can therefore pay future claims.
- The methods by which states regulate insurance rates are of two general types. The prior approval and open competition methods differ in the degree to which competition is allowed to determine rates.
- Alaska regulate insurance rates via prior approval.

About half of the states have actuaries on staff, and the remaining states, including Alaska, contract for actuarial analysis of rate filings that are expected to have major impacts. Government actuaries are generally employed to evaluate the data and assumptions that insurance company and rating bureau actuaries used to devise rates. Only two states use actuaries to generate rates independently.

The Alaska Division of Insurance is currently recruiting for four positions that were authorized in the FY 88 budget. Although the legislature intended that one of these positions be filled by an actuary, experienced actuaries can expect to earn about twice as much working for an insurance company, and it is unlikely that an actuary will be found for any of the positions.

BACKGROUND

Rates and Rate-making

The insurance rate is the number of dollars charged per unit of exposure to a type of risk.¹ An insurance rate has two components: the portion that covers the pure loss cost per unit of exposure and the portion, called loading, that covers the sales expense, overhead and profit of the insurer. In devising insurance rates, rates should:

- 1) be adequate to meet loss burdens, but not excessive;
- 2) allocate costs among insureds equitably;
- 3) be revised reasonably often to reflect as current a degree of loss experience as is feasible; and
- 4) encourage loss-prevention efforts among insureds.

Rate-making presents one of the more difficult problems in the insurance business because the rate must be set before all costs are known. In setting rates, past loss experience is necessary to estimate future costs. Laws that would prohibit insurance companies from pooling loss data have been abandoned because of the recognition that cooperation in rate-making is an essential part of sound rating and that unrestricted competition often leads to rates that are too low. Rates that are too low are just as undesirable, if not worse, than rates that are too high, because, above all, the insureds are seeking assurance that losses will be paid.

¹The insurance premium is the product of the insurance rate and the number of units of exposure.

To provide the kind of loss experience data that insurance companies need to set sound rates, rating bureaus or organizations have been formed to pool and analyze loss information on various lines of insurance. Most states authorize rating organizations to file rate changes on behalf of member insurance companies. For example, the National Council of Compensation Insurance (NCCI), a rating organization that analyzes loss data and trends in the workers' compensation field on a nationwide basis, applied in 1986 for approval of significant increases in Alaska rates on behalf of Alaska insurers.

Why States Regulate Insurance Rates

States regulate insurance rates to ensure that rates are neither too high nor too low and that rates do not unfairly discriminate among the various classes of insureds. The insurance industry is akin to utility industries, whose rates are also regulated by government. Like a utility, an insurance company must remain solvent if the company is to perform the service that it sells. States regulate insurance rates as one of several means of ensuring the future solvency of the insurance companies doing business within their bounds.

That the several states, rather than the federal government, regulate the insurance industry is due to the McCarran-Ferguson Act, enacted in 1945. A Supreme Court ruling in 1944, in a case involving cooperation among insurance companies in rate-making, held that insurance was "commerce" and that when conducted across state lines, insurance was "interstate commerce." Under this ruling, insurance was therefore subject to federal laws governing trade practices, including the Sherman Anti-Trust Act and other acts dealing with the control of business activities in restraint of trade. The McCarran-Ferguson Act declared that state regulation of insurance should continue and that federal anti-trust acts would be applicable to insurance but only to the extent that the individual states did not regulate insurance. In other words, as long as the states attempted to regulate the insurance industry, the industry would be exempt from the normal restrictions on interstate trade. Thus, insurance has the unusual distinction of being a form of interstate commerce that is regulated by the states. Further information on the history of state regulation of insurance is provided in Attachment A.

Rate Regulation and the Insurance "Crisis"

In 1985, insurance rates for many types of insurance skyrocketed and some forms of insurance became unavailable at any price. This "crisis" was precipitated by the practice of cash flow underwriting, which is the practice of charging inadequate premiums to generate cash for investment and then relying upon investment returns to offset underwriting deficits. During the period of high interest rates that occurred in the late 1970s and early 1980s, insurance companies underpriced premiums to generate cash for investment. When interest rates began to decline in 1984, insurance companies began to increase premiums and to select the risks they would underwrite with greater caution, thereby precipitating the "crisis."

Many legislatures attempted to address the insurance crisis and the problems were assaulted on three fronts: 1) tort reform; 2) establishing new insurance mechanisms and strategies; and 3) regulatory reform. A variety of regulatory reforms have been considered, including expanding data submitted by insurers, permitting policy cancellation only with cause, and requiring mandatory notice of nonrenewals and cancellations, but rating laws have received the most attention. According to the National Conference of State Legislatures, 23 state legislatures considered bills during their 1987 sessions addressing rate-setting and review.

House Research Memorandum 87.080 provides an overview of the approaches to solving the insurance crisis excluding tort reform (Attachment B). See pages 8 - 10 of this memorandum and its Attachment F for information on regulatory reforms, including reforms affecting the regulation of rates.

STATE REGULATION OF INSURANCE RATES

Methods of Rate Regulation

State approaches to regulation of insurance rates vary along a spectrum that ranges between the extremes of no regulation of rates (Illinois) to the imposition of state-made rates (Texas). Although as many as ten different approaches have been defined, the approaches can be categorized into two groups, commonly referred to as prior approval and open competition. The approaches differ by the degree to which competition is relied upon to set adequate and fair rates. Prior approval laws are the more conservative approach because rates must be reviewed and approved (or not denied) by the state prior to their use. Open competition laws allow insurance companies much greater freedom to change rates and allow the changes to be effective immediately. Roughly half the states have adopted prior approval laws, and half have adopted open competition laws.

Prior approval laws generally have the following provisions:

- Rates and supporting data must be filed with the state insurance commissioner;
- Rate changes do not become effective until: 1) a specified waiting period expires (during which time the filing is reviewed by the department); or 2) the insurance commissioner gives an affirmative approval;
- Insurers may cooperate in making rates with other insurers through rating bureaus or they may file rates independently. Bureau members may deviate from bureau rates upon application.

Alaska regulates insurance rates under a prior approval law; the relevant statute is attached (Attachment C).

There are several types of open competition laws. The most common are: 1) file and use; 2) use and file; and 3) no file.

- Under file and use laws, rates become effective immediately upon filing with no affirmative action by the insurance commissioner required. Rates may be subsequently disapproved, however. File and use provisions may apply to all lines of insurance or to just casualty lines. In some states, adherence to bureau rates is required. In other states, bureau rates are advisory only.
- Under use and file laws, rates may take effect immediately, and a filing need not take place until some specified future time.
- Under no file laws, there is no requirement that rates be filed or affirmatively approved by the insurance commissioner. Rate changes by an insurer become effective immediately. Rating bureaus are advisory only, and they are specifically prohibited from requiring that any member adhere to their rates. Both insurers and bureaus must maintain adequate information about their rates and must make this information available to the commissioner upon request. Under a no file law, the primary means that the commissioner has to ensure that rates are adequate and not discriminatory is through rating and underwriting examinations of insurance companies.

Florida employs an open competition law that uses both the file and use and the use and file approaches. The relevant statute is attached as an example of an open competition law (Attachment D).

A new method of rate regulation, referred to as flex rating, has recently been developed. Flex rating combines the prior approval and the file and use methods by allowing insurance companies or rating bureaus to raise or cut their rates without the approval of the insurance commissioner as long as the change is within a "zone of reasonableness," generally within 15 percent of the existing rate. Prior approval is required if the rate change falls outside of the zone of reasonableness. Flex rating is meant to enhance competition, while maintaining a degree of control, and to smooth the cyclical nature of insurance rates.

Only two states--Oregon and New York--have adopted flex rating; the relevant statutes are found in Attachment E. Flex rating is too new to judge its effects.

Whether the method a state uses to regulate rates (or the degree of scrutiny applied to rate filings) has a significant impact on rates is an arguable question. The General Accounting Office (GAO) published a major study of state insurance regulation practices in 1979. This study included an analysis of the effect of the method of rate regulation on rates for automobile insurance. The GAO found that there was little difference in the price of automobile insurance between states that regulated rates through prior approval and those that relied on open competition. They concluded that the automobile insurance market was competitive enough that price regulation was not warranted. While the GAO study is almost ten years old, its general conclusions about rate regulation seem relevant today: All states, regardless of the method of rate regulation, were affected by the most recent insurance crisis. Relevant portions of the GAO report are attached (Attachment F).

Use of Actuaries in Rate Regulation

An actuary is professionally trained to make projections about future financial events based on statistically valid analysis of data. Within the insurance field, actuaries are most often employed to determine rates and reserve levels.

According to the 1986 yearbook of the American Academy of Actuaries, 24 states employ actuaries in their insurance departments. The 1979 GAO study of state insurance departments reported that of the 8,000 certified actuaries in the United States at that time, only 64 were employed directly by state insurance departments (see Attachment F).

Of the 26 states that do not have an actuary on staff, almost all contract for actuarial services when such services are needed. In prior approval states, an actuarial consultant would likely be hired only to analyze rate filings that would have major effects on rates. In open competition states, where systematic analysis of rates is not done, actuarial services would be more likely to be hired for other purposes, such as analysis of the sufficiency of insurance company reserves.

In reviewing rate filings, most departments judge the actuarial work of the companies or rating bureaus and the assumptions on which the work is based. Departments typically do not have independent data against which to judge the adequacy of the rates. According to the GAO study, only Texas and Massachusetts employ actuaries to make an independent analysis of rates. In Texas, the State sets rates for certain lines, and in Massachusetts, the commissioner may choose between rates recommended by the State Rating Bureau and rates recommended by insurance companies.

REGULATION OF INSURANCE RATES IN ALASKA

Alaska regulates insurance rates using the prior approval method. The rating law, AS 21.39, is Attachment C.

The Division of Insurance within the Department of Commerce and Economic Development is responsible for regulation of the insurance industry. Review of rate filings is one of the responsibilities of the Market Conduct Surveillance section.² Don Koch currently heads this four-person section, and I spoke with him about rate review and the need for a staff actuary.

The division estimates that they review from 10,000 to 15,000 rate and form filings each year. (A form filing is a request to change the insurance contract and is often a request to change what is covered by a specific policy.) Each filing is reviewed, but some filings receive more attention than others. Rate changes that will have a larger total effect receive the most attention.

The division does not currently have a staff actuary. The division does contract for actuarial services in some circumstances. Most recently, the division contracted for an evaluation of the filing of the National Council of Compensation Insurance for a major increase in workers' compensation insurance rates.

²The Market Conduct Surveillance Section also has responsibility for performing market conduct examinations of insurance companies and for developing a public education program and a market access program.

Representative Boyer
February 11, 1988
Page 8

In the FY 88 budget, the legislature authorized four new positions for the Division of Insurance, raising the total number of division employees from 19 to 23. In authorizing these new positions, the legislature expressed their intent that one of the positions be filled by an insurance actuary (Attachment G). Of these new positions, the most likely position to be filled by an actuary would be the Insurance Financial Examiner II, which is a Range 21 position (approximately \$46,000 annual salary). The class specification for this position is attached (Attachment H). The person in this position would work in the Market Conduct Surveillance section and assist in review of rate filings; this person would also go into the field to perform market conduct examinations.

According to both Mr. Koch and John George, the division director, the likelihood that they will be able to find an actuary to fill this position is remote. Experienced actuaries employed by insurance companies can expect a salary twice that paid to a Range 21 position. Thus, the division does not expect to find an actuary for the position.

In fact, the division is having difficulty finding anyone to fill the positions. Authorized last July, none of the positions have yet been filled. The division was not able to find anyone within Alaska that was qualified and interested in the positions, and they are now searching outside the state. The positions are highly technical, and almost any person hired would have to be trained to perform some of the required tasks. Finding applicants with the necessary minimum qualifications and an interest in a government position in Alaska has been difficult.

I hope you find this information useful. Also attached are two documents sent by the National Conference of State Legislatures on insurance regulation reform (Attachments I and J). If we can provide any further information, please let us know.

Attachments

Attachments are numerous, they may be seen in our office.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

February 11, 1988

MEMORANDUM

TO: Representative Mark Boyer
ATTN: Ed Flanagan
FROM: Karen Oakley *VO*
Legislative Analyst
RE: State Regulation of Insurance Rates
Research Request 88.122

You asked how states regulate insurance rates and whether other states employ actuaries to review insurance company requests to change rates.

In this memorandum, we discuss: 1) state regulation of the insurance industry in general; 2) the primary methods by which states regulate insurance rates and the use of actuaries by states; and 3) how insurance rates are currently regulated in Alaska.

In summary, we found:

- States regulate insurance rates as one of several means to ensure that insurance companies remain solvent and can therefore pay future claims.
- The methods by which states regulate insurance rates are of two general types. The prior approval and open competition methods differ in the degree to which competition is allowed to determine rates.
- Alaska regulates insurance rates via prior approval.

- About half of the states have actuaries on staff, and the remaining states, including Alaska, contract for actuarial analysis of rate filings that are expected to have major impacts. Government actuaries are generally employed to evaluate the data and assumptions that insurance company and rating bureau actuaries used to devise rates. Only two states use actuaries to generate rates independently.
- The Alaska Division of Insurance is currently recruiting for four positions that were authorized in the FY 88 budget. Although the legislature intended that one of these positions be filled by an actuary, experienced actuaries can expect to earn about twice as much working for an insurance company, and it is unlikely that an actuary will be found for any of the positions.

BACKGROUND

Rates and Rate-making

The insurance rate is the number of dollars charged per unit of exposure to a type of risk.¹ An insurance rate has two components: the portion that covers the pure loss cost per unit of exposure and the portion, called loading, that covers the sales expense, overhead and profit of the insurer. In devising insurance rates, rates should:

- 1) be adequate to meet loss burdens, but not excessive;
- 2) allocate costs among insureds equitably;
- 3) be revised reasonably often to reflect as current a degree of loss experience as is feasible; and
- 4) encourage loss-prevention efforts among insureds.

Rate-making presents one of the more difficult problems in the insurance business because the rate must be set before all costs are known. In setting rates, past loss experience is necessary to estimate future costs. Laws that would prohibit insurance companies from pooling loss data have been abandoned because of the recognition that cooperation in rate-making is an essential part of sound rating and that unrestricted competition often leads to rates that are too low. Rates that are too low are just as undesirable, if not worse, than rates that are too high, because, above all, the insureds are seeking assurance that losses will be paid.

¹The insurance premium is the product of the insurance rate and the number of units of exposure.

To provide the kind of loss experience data that insurance companies need to set sound rates, rating bureaus or organizations have been formed to pool and analyze loss information on various lines of insurance. Most states authorize rating organizations to file rate changes on behalf of member insurance companies. For example, the National Council of Compensation Insurance (NCCI), a rating organization that analyzes loss data and trends in the workers' compensation field on a nationwide basis, applied in 1986 for approval of significant increases in Alaska rates on behalf of Alaska insurers.

Why States Regulate Insurance Rates

States regulate insurance rates to ensure that rates are neither too high nor too low and that rates do not unfairly discriminate among the various classes of insureds. The insurance industry is akin to utility industries, whose rates are also regulated by government. Like a utility, an insurance company must remain solvent if the company is to perform the service that it sells. States regulate insurance rates as one of several means of ensuring the future solvency of the insurance companies doing business within their bounds.

That the several states, rather than the federal government, regulate the insurance industry is due to the McCarran-Ferguson Act, enacted in 1945. A Supreme Court ruling in 1944, in a case involving cooperation among insurance companies in rate-making, held that insurance was "commerce" and that when conducted across state lines, insurance was "interstate commerce." Under this ruling, insurance was therefore subject to federal laws governing trade practices, including the Sherman Anti-Trust Act and other acts dealing with the control of business activities in restraint of trade. The McCarran-Ferguson Act declared that state regulation of insurance should continue and that federal anti-trust acts would be applicable to insurance but only to the extent that the individual states did not regulate insurance. In other words, as long as the states attempted to regulate the insurance industry, the industry would be exempt from the normal restrictions on interstate trade. Thus, insurance has the unusual distinction of being a form of interstate commerce that is regulated by the states. Further information on the history of state regulation of insurance is provided in Attachment A.

Rate Regulation and the Insurance "Crisis"

In 1985, insurance rates for many types of insurance skyrocketed and some forms of insurance became unavailable at any price. This "crisis" was precipitated by the practice of cash flow underwriting, which is the practice of charging inadequate premiums to generate cash for investment and then relying upon investment returns to offset underwriting deficits. During the period of high interest rates that occurred in the late 1970s and early 1980s, insurance companies underpriced premiums to generate cash for investment. When interest rates began to decline in 1984, insurance companies began to increase premiums and to select the risks they would underwrite with greater caution, thereby precipitating the "crisis."

Many legislatures attempted to address the insurance crisis and the problems were assaulted on three fronts: 1) tort reform; 2) establishing new insurance mechanisms and strategies; and 3) regulatory reform. A variety of regulatory reforms have been considered, including expanding data submitted by insurers, permitting policy cancellation only with cause, and requiring mandatory notice of nonrenewals and cancellations, but rating laws have received the most attention. According to the National Conference of State Legislatures, 23 state legislatures considered bills during their 1987 sessions addressing rate-setting and review.

House Research Memorandum 87.080 provides an overview of the approaches to solving the insurance crisis excluding tort reform (Attachment B). See pages 8 - 10 of this memorandum and its Attachment F for information on regulatory reforms, including reforms affecting the regulation of rates.

STATE REGULATION OF INSURANCE RATES

Methods of Rate Regulation

State approaches to regulation of insurance rates vary along a spectrum that ranges between the extremes of no regulation of rates (Illinois) to the imposition of state-made rates (Texas). Although as many as ten different approaches have been defined, the approaches can be categorized into two groups, commonly referred to as prior approval and open competition. The approaches differ by the degree to which competition is relied upon to set adequate and fair rates. Prior approval laws are the more conservative approach because rates must be reviewed and approved (or not denied) by the state prior to their use. Open competition laws allow insurance companies much greater freedom to change rates and allow the changes to be effective immediately. Roughly half the states have adopted prior approval laws, and half have adopted open competition laws.

Prior approval laws generally have the following provisions:

- Rates and supporting data must be filed with the state insurance commissioner;
- Rate changes do not become effective until: 1) a specified waiting period expires (during which time the filing is reviewed by the department); or 2) the insurance commissioner gives an affirmative approval;
- Insurers may cooperate in making rates with other insurers through rating bureaus or they may file rates independently. Bureau members may deviate from bureau rates upon application.

Alaska regulates insurance rates under a prior approval law; the relevant statute is attached (Attachment C).

There are several types of open competition laws. The most common are: 1) file and use; 2) use and file; and 3) no file.

- Under file and use laws, rates become effective immediately upon filing with no affirmative action by the insurance commissioner required. Rates may be subsequently disapproved, however. File and use provisions may apply to all lines of insurance or to just casualty lines. In some states, adherence to bureau rates is required. In other states, bureau rates are advisory only.
- Under use and file laws, rates may take effect immediately, and a filing need not take place until some specified future time.
- Under no file laws, there is no requirement that rates be filed or affirmatively approved by the insurance commissioner. Rate changes by an insurer become effective immediately. Rating bureaus are advisory only, and they are specifically prohibited from requiring that any member adhere to their rates. Both insurers and bureaus must maintain adequate information about their rates and must make this information available to the commissioner upon request. Under a no file law, the primary means that the commissioner has to ensure that rates are adequate and not discriminatory is through rating and underwriting examinations of insurance companies.

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Representative Boyer
February 11, 1988
Page 8

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I hope you find this information useful. Also attached are two documents sent by the National Conference of State Legislatures on insurance regulation reform (Attachments I and J). If we can provide any further information, please let us know.

Attachments

Attachments are numerous, they may be seen in our office.



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**ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY**

December 16, 1987

MEMORANDUM

TO: Representative Mark Boyer
FROM: Karen Oakley *ko*
Legislative Analyst
RE: Civil Immunity for Referees
Research Request 88.087

You asked whether any states have laws making it a crime to assault a referee, and you asked what states have laws granting civil immunity to referees.

To the best of our knowledge, no state has a law specifically regarding assault on referees. Prosecutors could bring charges against a person assaulting a referee, as they may bring charges against any person assaulting another person. Presumably, a referee that had been assaulted could also seek civil damages against the perpetrator. Any such case, whether civil or criminal, would probably involve different standards than a case involving assault on a person simply walking down the street, particularly if the sport involved fighting, such as ice hockey or boxing. Referees in such sports undertake their duties with a knowledge of the potential for such an occurrence associated with the particular sport and thereby assume a degree of risk. Some sports, notably ice hockey, provide for sanctions against a participant that assaults an official, and assault of a referee in a sport that officially recognizes the possibility of assault would have to be egregious before it would warrant referral to the court system.

At least six states have passed laws granting civil immunity to volunteer referees involved with nonprofit organizations. New Jersey passed such a law in 1986, and Arkansas, Colorado, Minnesota, North Dakota and South Dakota passed laws in 1987. Copies of these laws are attached. In addition, 11 states considered passage of volunteer immunity laws during 1987. Table 1 lists these states and provides a brief description of each bill.

Representative Boyer
December 16, 1987
Page 2

Note that most of the laws and bills provide immunity only to volunteers. While most team managers and coaches serve without compensation, referees are generally paid for their services. In order to provide immunity to paid referees, immunity would have to be granted to the nonprofit organization sponsoring the athletic program and to its employees. The bills considered by Hawaii, Illinois, and Indiana grant immunity to volunteers and to the nonprofit organization and its employees.

I hope you find this information useful. If I can provide any additional information, please let me know.

Attachments

TABLE 1
STATES THAT CONSIDERED BILLS GRANTING IMMUNITY FROM CIVIL LIABILITY
TO REFEREES AND OTHER VOLUNTEERS WITH YOUTH SPORTS ORGANIZATIONS--1987

STATE	BILL NO.	BILL PROVISIONS
CONNECTICUT	HB 7369	Provides immunity to directors, officers and trustees of nonprofit organizations (qualifying under the Internal Revenue Code) and directors of common interest communities for actions performed within the scope of official function and duty and performed in good faith. The bill contains exceptions for willful and wanton misconduct.
HAWAII	HB 232	Provides that a volunteer manager, coach, instructor, umpire, referee, or assistant in a sports program of a nonprofit association shall not be civilly liable for damages. Provides immunity for the nonprofit association, and its officers and employees, in sponsoring the sports program. Provides exceptions to immunity and establishes standards of negligence. Defines nonprofit associations to include youth and athletic associations, volunteer fires, ambulance, religious, charitable, fraternal, veterans, civic county fair or agricultural associations and auxiliaries.
ILLINOIS	HB 210	Provides immunity from civil liability to volunteers who serve as managers, coaches, instructors, umpires or referees in sports programs of nonprofit organizations. Also extends civil immunity to the association itself and its officers and employees unless the conduct of the person or association falls substantially below the standard generally practiced in like circumstances by similar programs and and proof is made that the act or omission was a breach of a recognized duty.
INDIANA	HB 1102	Grants immunity from civil liability to volunteers, or persons under the control of the volunteers, for negligent acts or omissions, in sports or leisure activities conducted by nonprofit organizations. The immunity is extended to the organization itself and its employees. Conduct which is intentional, willful, wanton or reckless is excluded from the grant of immunity.
LOUISIANA	SB 229	Provides personal immunity to volunteer managers, coaches, instructors, umpires, referees, and their assistants involved with nonprofit sports programs. Defines "nonprofit sports program" and creates the usual exceptions.
MISSISSIPPI	HB 257	Provides that voluntary acts of assistance to protect a person's health or safety do not create a duty of care. The immunity extends to the board of directors of nonprofit corporations for actions taken, or omissions made, in performance of duty except where such acts are willful and wanton.
MISSOURI	HB 177	Provides for immunity of volunteers involved with sports programs.

TABLE 1 (Continued)

STATES THAT CONSIDERED BILLS GRANTING IMMUNITY FROM CIVIL LIABILITY
TO REFEREES AND OTHER VOLUNTEERS WITH YOUTH SPORTS ORGANIZATIONS--1987

STATE	BILL NO.	BILL PROVISIONS
NEBRASKA	LB 43	Grants immunity from civil liability to volunteers (coaches, managers, instructors, umpires or referees) absent willful or wanton misconduct or intentionally tortious conduct. Immunity extends to nonprofit corporations which conduct or sponsor the sports programs.
NEW HAMPSHIRE	HB 301	Grants civil immunity from liability to volunteer coaches and officials of nonprofit associations which conduct athletic programs formally recognized by the Amateur Athletic Union or the National Collegiate Athletic Association. Programs conducted for the benefit of, and participation of minors, (under 18 years of age) would be the only ones covered under the specific language of the bill. The immunity extends to formal competitions as well as practice and instructional sessions but excludes conduct which is willful, wanton or grossly negligent.
RHODE ISLAND	87-H-5196	Grants civil immunity to persons acting as athletic coaches, managers or officials for sports teams conducted under a nonprofit organization's charter. Would extend to organized events and practice sessions but would not excuse acts or omissions which constitute willful, wanton or gross negligence or acts by an official who has not participated in a safety orientation and training program. The bill specifically excludes any act resulting from the negligent operation of a motor vehicle and those coming within a public or private school's athletic program.
VERMONT	HB 13	Provides immunity from civil liability for damages as a result of acts or omissions arising out of service as a volunteer, athletic coach, manager or official except in cases of gross negligence.

SOURCE: National Conference of State Legislatures, State Legislative Summary:
Liability Insurance, July 1987.

Prepared by House Research Agency, December 1987 (88.087; 100287-05).

NO. 970

ARKANSAS 1987 ACTS

State of Arkansas
76th General Assembly

ACT 970 1987
A BILL

Regular Session, 1987 AS ENGROSSED 2/2/87

HOUSE BILL 1077

By: Representative Hinchaw AS ENGROSSED 1/6/87

For An Act To Be Entitled

1 "AN ACT GRANTING LIMITED TORT IMMUNITY TO DIRECTORS OF
2 NONPROFIT CORPORATIONS AND MEMBERS OF BOARDS, COMMISSIONS,
3 AGENCIES, AUTHORITIES, AND OTHER GOVERNING BODIES OF ANY
4 GOVERNMENTAL ENTITY; AND FOR OTHER PURPOSES."
5

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
7

8 SECTION 1. The General Assembly has determined that nonprofit cor-
9 porations serve important functions in providing services and assistance to
10 persons in the State and that in order for these nonprofit corporations to
11 function effectively, persons serving on the board of directors should not
12 subject to vicarious liability for the negligence of corporate employees or
13 other directors. The General Assembly has further determined that potential
14 exposure to vicarious liability has a detrimental effect on the participation
15 of persons as directors of nonprofit corporations and that providing immunity
16 to directors of such corporations for certain types of liability will be in
17 the best interest of the State and that the same immunity should be extended
18 to members of governing bodies of governmental entities.
19

20 SECTION 2. Except as otherwise provided by this Act, no member of any
21 board, commission, agency, authority, or other governing body of any govern-
22 mental entity and no member of the board of directors of a nonprofit cor-
23 poration that holds a valid federal income tax exemption issued by the
24 Internal Revenue Service shall be held personally liable for damages resulting
25 from:
26

27 (a) any negligent act or omission of an employee of the nonprofit
28 corporation or governmental entity; or

29 (b) any negligent act or omission of another director or member of the
30 governing body of the governmental entity.

BBK078

ARKANSAS 1987 ACTS

NO. 970

AS ENGROSSED 2/2/87 AS ENGROSSED 4/6/87

H.B. 1077

1 SECTION 3. The same immunity provided by this Act shall be extended to
2 any athletic official during the officiating of an interscholastic, inter-
3 collegiate, or any other amateur athletic contest being conducted under the
4 auspices of a nonprofit or governmental entity. No official shall be held
5 personally liable in any civil action for damages to a player, participant, or
6 spectator as a result of his acts of commission or omission arising out of
7 officiating duties and activities. Nothing in this Section shall be deemed to
8 grant immunity to any person causing damage by his malicious, willful, wanton,
9 or grossly negligent act.

10
11 SECTION 4. The immunity provided by this Act shall not extend to acts or
12 omissions of directors of nonprofit corporations or members of boards, com-
13 missions, agencies, authorities or other governing bodies of any governmental
14 entity which constitute ordinary or gross negligence personal to the direc-
15 tor or member or to intentional torts committed by a director or member.
16 Provided further that the immunity provided by this Act shall not extend to
17 acts or omissions of directors of nonprofit corporations which are licensed or
18 permitted by the Arkansas Alcoholic Beverage Control to dispense alcoholic
19 beverages, beer or wine.

20
21 SECTION 5. If a nonprofit corporation transfers assets to a member of
22 the board of directors of such corporation or to another nonprofit corporation
23 in order to avoid claims against corporate assets resulting from a judgment
24 rendered as a result of a suit to recover damages for the negligence of the
25 corporation, a corporate employee or a director, the director to whom the
26 asset is transferred or any director of the corporation from which assets are
27 transferred to avoid such claims may be held personally liable for any such
28 judgment rendered and the immunity provided by this Act shall be of no force
29 or effect.

30
31 SECTION 6. This Act shall only apply to suits for recovery of damages
32 based upon causes of action that accrue after August 1, 1987.

33
34 SECTION 7. Nothing herein shall be construed to limit the liability of a
35 nonprofit corporate entity itself for damages resulting from any negligent act,
36 or omission of an employee of the nonprofit corporation.

BBK078

NO. 970

ARKANSAS 1987 ACTS

AS ENCLOSED 4/6/87

H.B. 1077

1 SECTION 8. All laws and parts of laws in conflict with this Act are
2 hereby repealed.
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26 /s/ Jerry E. Hinshaw

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4/14/87
APPROVED BY Paula
GOVERNOR

BBK078

COLORADO**CHAPTER 103****COURTS AND COURT PROCEDURE****DAMAGES — GENERAL PROVISIONS**

SENATE BILL NO. 80. BY SENATORS Bishop, DeNier, Donley, Allard, Durham, Fenlon, Fowler, Hopper, Rizzuto, Sandoval, Simcikland, Traylor, Wells, Winkler, Gallagher, Groff, Martinez, Mendez, P. Powers, R. Powers, Schroeder, and Trujillo, also REPRESENTATIVES Schauer, Carpenter, Tebedo, Armstrong, Green, McInnis, Reeves, Swenson, Taylor-Little, Anderson, Berger, Bond, Dambman, Fish, Fleming, Lawson, Masson, Mutzebaugh, Norton, Pankey, Philips, Ruddick, Rupert, Tucker, L'ivang, and S. Williams.

AN ACT

CONCERNING THE IMMUNITY FROM LIABILITY OF VOLUNTEERS WHO ASSIST ORGANIZATIONS RELATING TO YOUNG PERSONS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 13-21-116, Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

13-21-116. Actions not constituting an assumption of duty - immunity for volunteers assisting organizations for young persons. (2.5) (a) No person who performs a service or an act of assistance, without compensation or expectation of compensation, as a leader, assistant, teacher, coach, or trainer for any program, organization, association, service group, educational, social, or recreational group, or nonprofit corporation serving young persons or providing sporting programs or activities for young persons shall be held liable for actions taken or omissions made in the performance of his duties except for wanton and willful acts or omissions; except that such immunity from liability shall not extend to protect such person from liability for acts or omissions which harm third persons.

(b) For the purposes of this subsection (2.5), "young persons" means persons who are eighteen years of age or younger.

Section 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1987

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

MINNESOTA

604.06 ACTIONS INVOLVING NEGLIGENCE

92

CHAPTER 604

ACTIONS INVOLVING NEGLIGENCE

604.06 Fireman's rule.

604.08 Volunteer athletic coaches and officials; immunity from liability.

604.06 FIREMAN'S RULE.

The common law doctrine known as the fireman's rule shall not operate to deny any peace officer, as defined in section 626.84, subdivision 1, clause (c), or 176B.01, subdivision 2, a recovery in any action at law or authorized by statute.

History: 1987 c 384 art 1 s 45

604.08 VOLUNTEER ATHLETIC COACHES AND OFFICIALS; IMMUNITY FROM LIABILITY.

Subdivision 1. Grant. No individual who provides services or assistance without compensation as an athletic coach, manager, or official for a sports team that is organized or performing under a nonprofit charter, and no community-based, voluntary nonprofit athletic association, or any volunteer of the nonprofit athletic association, is liable for money damages to a player or participant as a result of an individual's acts or omissions in the providing of that service or assistance.

This section applies to organized sports competitions and practice and instruction in that sport.

For purposes of this section, "compensation" does not include reimbursement for expenses.

Subd. 2. Limitation. Subdivision 1 does not apply:

- (1) to the extent that the acts or omissions are covered under an insurance policy issued to the entity for whom the coach, manager, or official serves;
- (2) if the individual acts in a willful and wanton or reckless manner in providing the services or assistance;
- (3) if the acts or omissions arise out of the operation, maintenance, or use of a motor vehicle;
- (4) to an athletic coach, manager, or official who provides services or assistance as part of a public or private educational institution's athletic program; and
- (5) if the individual acts in violation of federal, state, or local law.

The limitation in clause (1) constitutes a waiver of the defense of immunity to the extent of the liability stated in the policy, but has no effect on the liability of the individual beyond the coverage provided.

History: 1987 c 337 s 126

North Dakota

32-03-43

JUDICIAL REMEDIES

Source: S.L. 1985, ch. 371, § 1.

32-03-43. Wrongful life action prohibited — Definition. No person may maintain a claim for relief or receive an award for damages on that person's own behalf based on the claim that, but for the act or omission of another, that person would have been aborted. As used in this section "abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.

Source: S.L. 1985, ch. 372, §§ 1, 2.

32-03-44. Immunity of officers, directors, and trustees of nonprofit organizations. Any person who serves as a director, officer, or trustee of a nonprofit organization that is, or would qualify as a nonprofit organization that is, described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section 501(c) of the Internal Revenue Code of 1954 as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee of the nonprofit organization.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.
3. The officer, director or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee of the nonprofit organization and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee of the nonprofit organization.

Source: S.L. 1987, ch. 401, § 1.

32-03-45. Immunity of volunteers providing services, for nonprofit organizations. Except as provided in section 32-03-46, any person who, on a volunteer basis, provides services or performs duties on behalf of a nonprofit organization is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The person who caused the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties as a volunteer for the nonprofit organization.
2. The act or omission did not constitute willful misconduct or gross negligence.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

GOOD SAM

Source: S.L. 1987, ch. 402, § 1.

32-03-46. Immunity of volunteers

1. Any person who provides service for reimbursement of expenses, such as a coach, manager, or official for a sports team which is a nonprofit or similar charter is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:
 - a. The person who caused the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties.
 - b. The act or omission did not constitute willful misconduct or gross negligence.
 - c. The coach, manager, or official was acting in the scope of the training program with which the person is associated.
2. This section does not grant immunity to any person causing damage or injury in the following circumstances:
 - a. Any person causing damage or injury in the operation of a motor vehicle.
 - b. Any person for any damage or injury in sports competition or practice.
 - c. Any athletic coach, manager, or official of a public or private educational institution.

Source: S.L. 1987, ch. 402, § 2.

CHAPTER

GOOD SAM

Section

- 32-03.1-01. Definitions.
- 32-03.1-02. Actions barred.
- 32-03.1-03. Criminal immunity.
- 32-03.1-04. Physicians or surgeons.

32-03.1-01. Definitions. For the purposes of this chapter the following terms shall have the designated meanings:

1. "Aid or assistance necessary or reasonable" means any actions which the aider reasonably believed would benefit the person in need of aid or assistance upon the aider's perception of the person's illness and the total emergency situation as reasonably believed he could succeed.

Source: S.L. 1987, ch. 402, § 1.

Effective Date.

This section became effective April 2, 1987.

32-03-46. Immunity of volunteer athletic coaches and officials.

1. Any person who provides services or assistance free of charge, except for reimbursement of expenses, as an athletic coach, manager, or official for a sports team which is organized or performing pursuant to a nonprofit or similar charter is immune from civil liability for any act or omission resulting in damage or injury to a player or participant if at the time of the act or omission all the following are met:
 - a. The person who caused the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties for the sports team.
 - b. The act or omission did not constitute willful misconduct or gross negligence.
 - c. The coach, manager, or official had participated in a safety orientation and training program established by the league or team with which the person is affiliated.
2. This section does not grant immunity to:
 - a. Any person causing damage as the result of the negligent operation of a motor vehicle.
 - b. Any person for any damage caused by that person permitting a sports competition or practice to be conducted without supervision.
 - c. Any athletic coach, manager, or official providing service as a part of a public or private educational institution's athletic program.

Source: S.L. 1987, ch. 402, § 2.

Effective Date.

This section became effective April 2, 1987.

CHAPTER 32-03.1

GOOD SAMARITAN ACT

Section

- 32-03.1-01. Definitions.
 32-03.1-02. Actions barred.
 32-03.1-03. Criminal immunity.
 32-03.1-04. Physicians or surgeons.

Section

- 32-03.1-05. Exceptions.
 32-03.1-06. Limited repealer.
 32-03.1-07. Costs and fees.
 32-03.1-08. Actions not barred.

32-03.1-01. Definitions. For the purposes of this chapter, the following terms shall have the designated meanings:

1. "Aid or assistance necessary or helpful in the circumstances" means any actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap, or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed he could successfully undertake.

South Dakota

NONPROFIT CORPORATIONS — MEMBERS

47-23-28

Source: SL 1986, ch 388, § 9.

CHAPTER 47-23

NONPROFIT CORPORATIONS — MEMBERS, DIRECTORS, OFFICERS AND AGENTS

Section

47-23-2.1. Liability of director, trustee or officer serving without compensation.

47-23-28. Definition of terms.

47-23-29. Immunity of volunteers of nonprofit organizations, certain hospitals and governmental entities.

47-23-30. Person not immune where negligent operation of vehicle caused injury.

47-23-31. Effect on other statutes concerning immunity.

47-23-32. Waiver of immunity to extent of risk sharing pool or liability insurance coverage — Volunteer serving as director, officer or trustee exempt.

47-23-2.1. Liability of director, trustee or officer serving without compensation. No director, trustee or officer serving without compensation, other than reimbursement for actual expenses, of any corporation organized under this chapter, and which is exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a) and is listed as an exempt organization in Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c), as amended, or any hospital organized pursuant to chapters 34-8, 34-9, or 34-10 is liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, trustee, or officer while acting in his official capacity as such director, trustee or officer, unless the act or omission involved willful or wanton misconduct.

Source: SL 1987, ch 343, § 1.

47-23-12. Bylaw provisions governing vote or quorum, etc.

Religious Societies.

There is a presumption of majority representation in the governance of churches; such presumption can be overcome by express provi-

sions in the articles of incorporation or bylaws, or the constitution of the general church. *Foss v. Dykstra* (1983) 342 NW 2d 220.

47-23-28. Definition of terms. Terms used in §§ 47-23-28 to 47-23-32 mean:

- (1) "Volunteer," an individual performing services for a nonprofit organization, a nonprofit corporation, a hospital organized pursuant to chapters 34-8, 34-9 or 34-10, or a governmental entity without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee or direct service volunteer;
- (2) "Nonprofit organization," any organization which is exempt from taxation pursuant to Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c) as amended;
- (3) "Nonprofit corporation," any corporation organized under chapters 47-22 to 47-28, inclusive, and which is exempt from taxation pursu-

47-23-29

CORPORATIONS

(4) "Governmental entity," any county, municipality, township, school district, chartered governmental units, other special districts, or any association, authority, board, commission, division, office, officer, task force or other agency of the state of South Dakota.

Source: SL 1987, ch 344, § 1.

- (1) The individual was acting in good faith and within the scope of such individual's official functions and duties for the nonprofit organization, the nonprofit corporation, a hospital organized pursuant to chapters 34-8, 34-9 or 34-10, or a governmental entity; and
- (2) The damage or injury was not caused by willful and wanton misconduct by such individual.

Source: SL 1987, ch 344, § 2.

47-23-30. Person not immune where negligent operation of vehicle caused injury. No immunity provided in §§ 47-23-28 to 47-23-32 extends to any person causing personal injury or wrongful death resulting from the negligent operation of a motor vehicle.

Source: SL 1987, ch 344, § 3.

47-23-31. Effect on other statutes concerning immunity. Sections 47-23-28 to 47-23-32 shall not be construed to constitute a modification or repeal of §§ 33-15-18.1, 33-15-18.2, 20-9-3, 20-9-4 and 20-9-4.1.

Source: SL 1987, ch 344, § 4.

47-23-32. Waiver of immunity to extent of risk sharing pool or liability insurance coverage — Volunteer serving as director, officer or trustee exempt. To the extent that any volunteer, nonprofit corporation, nonprofit organization, governmental entity or hospital organized pursuant to chapters 34-8, 34-9 or 34-10 participates in a risk sharing pool or purchases liability insurance and to the extent that coverage is afforded thereunder, the immunity provided by § 47-23-29 is deemed to have been waived and may not be raised by way of affirmative defense. This section does not apply to a volunteer serving as a director, officer or trustee.

NONPROFIT.

Source: SL 1987, ch 344, § 5.

NONPROFIT CORPORATION:

Section
47-24 Time of filing annual re
47-24-d. Report on other fiscal ye
47-24-14. Petition for reinstatemen
filing.

47-24-7. Time of filing a report of a corporation shall first day of the second month of each year. The first at the first day of the second corporation of the year next : date of incorporation was issuance of the secretary of state deposited in the United States with postage prepaid, shall

Source: SL 1978, ch 339, § 2; 19
§ 8.

Commission Note.

Section 11 of Chapter 383, SL 1986-1, provided: "For the purpose of implementing the Act for corporations existing prior to 1986, the annual report required by sections 2, 4, 6, 8 and 10 [§§ 47-9-3, 47-9A-1, 47-24-7 and 47-27-19] of this Act shall be filed for the period of time beginning January 1 through the close of business the day after the anniversary date of the corporation's incorporation in 1987. This section does not apply to corporations incorporated after 1986."

47-24-8. Report on oth:
state may grant to a corpora
any other fiscal year and to
month following the anniv

Source: SL 1978, ch 339, § 2; 1
§ 9.

Amendments.

The 1986 amendment, at the end

Lab

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 2398

STATE OF NEW JERSEY

INTRODUCED MAY 5, 1966

By Assemblymen ARANGO, DARIO, Gargiulo, Penn, DiGaetano,
Castrillo, Assemblywoman Donovan, Assemblyman Kosco, Assem-
blywoman Crecco and Assemblyman Kavanaugh

**[An Act providing civil immunity from liability to certain volun-
teers and supplementing Title 2A of the New Jersey Statutes.]**

**AN ACT providing civil immunity from liability to certain volun-
teer athletic coaches and officials and supplementing Title 2A of
the New Jersey Statutes.**

1 *Be it enacted by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 **[I. a. As used in this act:*

2 "*Community or service organization*" means any nonprofit cor-
3 poration, society or association as provided in P. L. 1959, c. 90
4 (C. 2A:53A-7 to 2A:53A-11) or nonprofit federation council or
5 affiliated group composed of the organizations which serves per-
6 sons in a community for recreational, educational, social, sports-
7 related, or other beneficial purposes. These organizations include,
8 but are not limited to scouting organizations, 4-H clubs, youth
9 organizations, and auxiliary groups.

10 b. Notwithstanding any provisions of law to the contrary, no
11 person who provides service or assistance free of charge, except
12 for reimbursement of expenses to a community or service organi-
13 zation shall be liable in any civil action for damages as a result
14 of his acts of commission or omission arising out of and in the
15 course of his rendering that service or assistance.

16 c. Nothing in this section shall be deemed to grant immunity
17 to any person causing damage by his willful, wanton, or grossly
18 negligent act of commission or omission.]*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted May 8, 1966.

- 1 *1. a. Notwithstanding any provisions of law to the contrary, no
2 person who provides services or assistance free of charge, except
3 for reimbursement of expenses, as an athletic coach, manager, or
4 official for a sports team which is organized or performing pursuant
5 to a nonprofit or similar charter shall be liable in any civil action
6 for damages to a player or participant as a result of his acts of
7 commission or omission arising out of and in the course of his
8 rendering that service or assistance.
- 9 b. The provisions of subsection a. of this section shall apply not
10 only to organized sports competitions, but shall also apply to prac-
11 tice and instruction in that sport.
- 12 c. Nothing in this section shall be deemed to grant immunity to
13 any person causing damage by his willful, wanton, or grossly negli-
14 gent act of commission or omission, nor to any coach, manager, or
15 official who has not participated in a safety orientation and train-
16 ing program established by the league or team with which he is
17 affiliated.
- 18 d. Nothing in this section shall be deemed to grant immunity to
19 any person causing damage as the result of his negligent operation
20 of a motor vehicle.
- 21 e. Nothing in this section shall be deemed to grant immunity to
22 any person for any damage caused by that person permitting a
23 sport competition or practice to be conducted without supervision.
- 24 f. Nothing in this act shall apply to an athletic coach, manager, or
25 official who provides services or assistance as part of a public or
26 private educational institution's athletic program.*
- 1 2. This act will take effect immediately.

TORT LIABILITY AND MALPRACTICE

Exempts volunteers to nonprofit community and service organiza-
tions from civil liability for damages.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

May 28, 1987

MEMORANDUM

TO: Representative C. E. Swackhammer
ATTN: Tom Wright
FROM: Gretchen Keiser *G. Keiser*
Legislative Analyst
RE: Insurance Reform
Research Request 87.300

You requested this agency to obtain a report about liability insurance and tort reform prepared by a New Mexico legislative committee. We were asked to review the report to determine if any recommendations might be applicable to Alaska.

The report in question is titled: Report of the Interim Legislative Workmen's Compensation Committee on Liability Insurance and Tort Law Reform (December 1986) and was submitted to the New Mexico Legislature (Attachment A). The report findings and recommendations include:

- 1) Despite the passage of several tort reform measures--some dating from 1976--New Mexico has experienced sharp increases in liability insurance premiums. The report concludes that there has been no demonstrable evidence that enacting tort reforms results in insurance rate relief.
- 2) The insurance premium crisis in New Mexico is unrelated to the amount or quality of tort litigation in the state. Jury awards have remained constant (after adjustments for inflation) and the number of lawsuits filed per capita has remained constant since 1959. Based on the ratio of insurance premiums earned to claims paid, New Mexico is one of the most profitable states in the nation for insurers. In effect, New Mexico premium payers are subsidizing claimants in other states.
- 3) Data suggest that the insurance industry appears to be raising rates in response to the downturn in investment profitability--as a result of interest rate declines during the 1985-87 period--not in response to casualty losses.

- 4) The report recommended that legislation be adopted to:
- a) establish a separate department of insurance;
 - b) require the department of insurance to undertake a substantive review of carrier rate increases;
 - c) give the department the power to approve/reject the rates prior to their implementation;
 - d) increase the budget and staff of the department of insurance;
 - e) require that the method of determining rates include claims experience within the state of New Mexico;
 - f) require insurance companies to provide detailed reports concerning New Mexico policies to the department of insurance; and
 - g) grant the department of insurance the authority to work with other states to address the problem of threatened withdrawal of insurance companies from any individual state.

You asked us to consider the applicability of these recommendations to Alaska. We talked with Mr. Don Koch, Chief of the Market Analysis Section in Alaska's Division of Insurance. Additional information on Alaska's insurance situation is taken from a recent memorandum on insurance reform issues prepared by the House Research Agency (Research Request 87.080; Attachment B).

Insurance regulation in Alaska is presently handled by the Division of Insurance in the Department of Commerce and Economic Development. To our knowledge, there is no strong push or need to establish a separate department of insurance in Alaska. Mr. Koch indicated that commissioners of Commerce and Economic Development have allowed the director of the division to fully exercise the powers embodied in Alaska's insurance statutes (Title 21). Furthermore, the division is currently quite small (19 persons).

Alaska conducts substantive reviews of all insurance rate filings and possesses the "prior approval" authority before a company can implement its new rates. The State has a 15-day period during which to review, accept or reject a proposed rate change. Typically, the division does not formally respond to the insurer if the filing is acceptable--thus allowing the rate change to automatically go into effect at the end of the 15-day period.¹

¹According to Mr. Koch, the division does not believe that House Bill 313--which would require the division to formally respond to filings of greater than five percent rate increase--is necessary.

The FY 88 authorized budget for the Division of Insurance stands at \$1.3 million--up from \$960,000 in FY 87. This will allow the division to add four new staff: 1 clerical; 1 financial examiner (to verify solvency of insurers, brokers and agents); and 2 market analysts (to review rates and reports as well as to conduct field audits to review underwriting and complaint files maintained by insurers). Funding for these positions comes from increased fees charged to insurance companies operating in the state. According to Mr. Koch, additional staffing may be warranted in the future to more adequately handle the consumer complaint function within the division.

Insurance rates in Alaska are established in accordance with AS 21.39.030 which allows for the consideration of past and prospective loss experience both inside and outside the state. Requiring insurers to base their rates solely on in-state experience could work to Alaskans' detriment because of the relatively low volume of insurance business in many industries. Poor in-state claims experience in a particular industry or one large claim in a heretofore claim-free industry could wreak havoc on rates. Typically, the division and insurers look at claims experience in Alaska, regionally and nationwide. In effect, the statutes allow insurers to "borrow" experience from national statistics; a rate, for example, may be weighted 75 percent Alaska claims experience and 25 percent national claims experience.

According to Mr. Koch, Alaska already requires fairly detailed reports from the insurance companies operating in the state. Furthermore, the division has access to an electronic data base maintained nationally by the National Association of Insurance Commissioners (NAIC). The division, in the past, has received more information than it could readily process and analyze. New staff to be added in FY 88 will enable the division to examine in greater detail the information currently received in insurer reports as well as to take fuller advantage of data compiled on a national basis.

The final recommendation in the New Mexico report suggested that their department of insurance be given the authority to work with other states to address threatened withdrawals of insurance companies from an individual state. Mr. Koch indicated that Alaska routinely works with other western state members of the NAIC to collectively apply pressure on insurance companies which attempt to pull out of a particular state. He did note that certain states with elected insurance commissioners (e.g., Washington, Louisiana and Florida) have on occasion raised issues for political purposes, and that other states have had to work around these individuals.

In summary, it appears that Alaska currently has in place several of the recommendations made in the New Mexico report: substantive review, prior approval, increased staff, detailed reporting requirements, and interstate cooperation. The remaining recommendations--department status and in-state rate determination--do not appear to be warranted in Alaska. For your

Representative Swackhammer
May 28, 1987
Page 4

information, the attached House Research Agency memorandum provides a broader discussion of insurance reform and summarizes additional proposals to change insurance marketing and regulation nationwide.

Please contact me if you have any questions regarding this information.

Attachments

ATTACHMENT A
New Mexico Legislative Council Report

STATE OF NEW MEXICO

NEW MEXICO LEGISLATIVE COUNCIL

334 STATE CAPITOL, SANTA FE, NEW MEXICO 87503

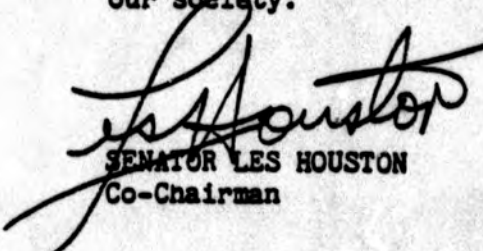
Telephone 505 827-3700

December 18, 1986

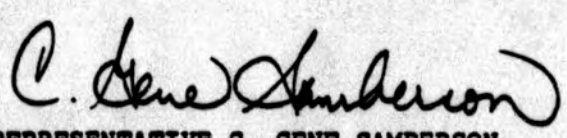
Enclosed is the final report of the interim legislative workmen's compensation committee to the first session of the thirty-eighth legislature.

The workmen's compensation committee was created by Laws 1986, Chapter 22, Section 104. The committee was instructed to, among other things, "study the entire personal injury . . . area of the law and recommend any changes in law to the first session of the thirty-eighth legislature."

Pursuant to that charge, the committee met regularly throughout the interim and heard testimony from the business community, insurance companies, lawyer groups and consumer interest groups. The focus of our concern was to examine the so-called "Insurance Crisis" and to examine whether changes in the laws governing the civil justice system would fix the problem of increased insurance premiums in all aspects of our society.



SENATOR LES HOUSTON
Co-Chairman



REPRESENTATIVE C. GENE SAMBERSON
Co-Chairman

REPORT
OF THE
INTERIM LEGISLATIVE
WORKMEN'S COMPENSATION COMMITTEE
ON LIABILITY INSURANCE AND TORT LAW REFORM

TO THE
THIRTY-EIGHTH LEGISLATURE, FIRST SESSION

December 18, 1986
File No. 205.111

BACKGROUND OF THE COMMITTEE

The interim workmen's compensation committee was created by Laws 1986, Chapter 22, Section 104. The committee was instructed to, among other things, "study the entire personal injury . . . area of the law and recommend any changes in law to the first session of the thirty-eighth legislature."

Pursuant to that charge, the committee met regularly throughout the interim and heard testimony from the business community, insurance companies, lawyer groups and consumer interest groups. The focus of our concern was to examine the so-called "Insurance Crisis" and to examine whether changes in the laws governing the civil justice system would fix the problem of increased insurance premiums in all aspects of our society.

FINDINGS

The testimony and evidence presented before the committee led us to make the following findings:

1. There is an insurance premium crisis in this state evidenced by massive increases in premiums in all areas of tort liability insurance.

2. New Mexico has already enacted the following changes which the advocates of tort reform have designated as the most important requirements to stem the tide of insurance premium increases:

A) Governmental Liability

With respect to governmental liability, New Mexico's Tort Claims Act, enacted in 1976, contains caps on liability (\$300,000 per person and \$500,000 per accident) which are among the most restrictive in the

nation. The statute of limitations under the act requires that a claim be brought within two years, rather than the usual period of three years, and, in addition, bars claims if the claimant has not notified the appropriate governmental agency within 90 days of the accident.

B) Medical Malpractice

In the medical malpractice area, New Mexico's Medical Malpractice Act, also enacted in 1976, limits liability to \$500,000 per accident for non-medical damages, and the three-year statute of limitations runs from the date of the accident rather than the date of discovery of the injury.

C) Dram Shop Liability

In 1986, New Mexico limited the judicially created cause of action against liquor dispensing establishments and precluded damages in excess of \$50,000 per person and \$100,000 per accident.

D) General Liability

General liability has been limited by the New Mexico supreme court's abolition of joint and several liability and subsequent institution of a system of comparative negligence requiring that responsibility for liability be shared in proportion to the fault of each party.

3. Despite the presence of all of these "tort reform" changes in law, New Mexico is experiencing the same skyrocketing insurance premiums that are currently being experienced throughout the nation.

A) For example, with respect to governmental liability during the last two years: the city of Roswell's insurance has jumped from \$87,000 per year to \$677,000 per year; the city of Socorro's insurance has jumped from \$70,000 per year to \$312,000 per year; and the city of Tatum's insurance has increased from \$17,000 per year to \$51,000 per year.

B) Similar examples abound for counties, school districts and other governmental entities.

C) New Mexico businesses are either unable to acquire liability insurance or have experienced dramatic premium increases in the category of general liability insurance.

4. New Mexico's experience parallels that of other jurisdictions which have enacted so-called "tort reforms" in an effort to stem the tide of rising insurance premiums. There has been no demonstrable evidence that enacting tort reforms will result in rate relief. In fact, the Province of Ontario, which for years has had more numerous and more stringent tort reforms than any other jurisdiction in North America has, like New Mexico, found that those so-called reforms have had no effect on the problem of ever-increasing insurance premiums.

5. New Mexico's tort reforms have not reduced insurance rates for general liability insurance. Florida has enacted very comprehensive tort reform.

Aetna, one of the nation's largest commercial liability insurers, has been lobbying throughout the nation for the following reforms enacted by Florida:

- A) reducing compensation to injury victims by the amount of compensation from collateral sources;
- B) restricting the doctrine of joint and several liability;
- C) limiting compensation for paralysis, disfigurement and other types of non-economic damages to \$450,000;
- D) limiting punitive damages; and
- E) requiring periodic payments of future economic damages of more than \$250,000.

Aetna, in a rate filing proposed to take effect January 1, 1987, explained why each of these provisions would have little or no effect on insurance rates. Eliminating the collateral source rule, for example, would have a negligible effect on insurance rates because "current Aetna claim settlement practices recognize, in part, the

existence of collateral sources as part of the negotiating process used in arriving at a mutually satisfactory damage value with the plaintiff." Restricting joint and several liability would not reduce insurance rates "due to the interaction of economic damages sustained by the plaintiff, the percentage of liability assigned to Aetna's insured, and the policy limits purchased." And limiting compensation for "non-economic" damages would not lower insurance costs, according to Aetna, "due to the impact of degree of disability on future losses, the impact of policy limits, and the actual settlement reached with the plaintiff."

Finally, Aetna concluded that limiting punitive damages would have "no impact" on Aetna's claim values, and requiring periodic payments of future economic damages over \$250,000 would yield "no net savings" because of the "interaction of policy limits, past economic losses, and future economic losses," the "settlement value of the case," and the "apparent implicit recognition of the periodic nature of future damages."

The St. Paul Insurance Company, the nation's largest medical malpractice insurer, conducted an analysis similar to Aetna's and reached similar conclusions. The St. Paul found that four of the 313 closed claims it analyzed would have been affected by the "tort reforms" enacted in Florida, "for a total effect of about 1% savings." The St. Paul further explained that the 1% savings estimate probably overstated the savings resulting from tort reform. The Aetna and St. Paul analyses appear to raise a presumption that "tort reform" will not bring about the desired results.

6. The committee found no evidence of a litigation explosion in New Mexico, nor was there any evidence of excessive judgments in tort cases. Indeed, the national studies presented to the committee suggest that the median jury award has remained constant after adjustments for

inflation and that the number of lawsuits filed per capita has remained constant since 1959.

7. 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.

8. Data presented to the committee indicates that during the early 1980's when interest rates were high, the insurance industry lowered premiums to sell more policies thereby increasing investment income. The data also shows that with the falling interest rates later in the decade, the industry found itself not realizing as great a return on its outside investments. (Other industries have found themselves in the same situation.)

9. The current data correlates with the historical data presented to the committee, demonstrating that the insurance industry as a whole has experienced historical cycles of increased premium rates which correlate to general decreases in interest rates.

10. 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.

CONCLUSIONS

1. There is no litigation crisis or "tort reform" crisis in New Mexico.

2. There is an insurance premium crisis in New Mexico which is unrelated to the amount or quality of tort litigation in this State.

RECOMMENDATIONS

Based on the testimony heard during the course of our study, the committee recommends that:

Tort Reform

New Mexico is and has been a national leader in tort reform. New Mexico has already enacted or judicially created the following reforms:

- A) the Tort Claims Act;
- B) dram shop legislation;
- C) joint and several liability; and
- D) laws relating to medical malpractice.

No relief has been realized except in medical malpractice. No further changes should be made in the current New Mexico laws governing personal injury unless evidence can be produced that will establish that a reduction in rates will occur if the proposed change is enacted.

Liability Insurance Reform

1. Legislation should be adopted establishing the department of insurance as an independent department of state government under the direction of a secretary of insurance appointed by the governor.
2. Legislation should be adopted requiring the department of insurance to undertake a substantive review of carrier rate increases, coupled with the power to approve or reject those rates, prior to their implementation.
3. Legislation should be adopted to increase the budget and staff of the department of insurance to a level commensurate with its important responsibilities to the people of this state.

4. Legislation should be adopted requiring that the method of determining rates include claims experience within the state of New Mexico.

5. Legislation should be adopted requiring insurance companies to provide detailed reports to the department of insurance concerning their New Mexico policies.

6. Legislation should be adopted granting to the department of insurance the authority to work with its counterparts in other states to address the problem of threatened withdrawal of insurance companies from any individual state.

skepticism of the workings of the legal system. You did not, for example, say that whatever the 2d U.S. Circuit Court of Appeals rules, only Dennis Levine will know if he was guilty of inside trading. Evidence is a tricky matter, but certainly our system — which occasionally goes so far as to impose the

those who deny the Holocaust to support their cause. The disheartening thing about the conclusion of this article is that it will help them to do the same thing if Mr. Demjanjuk is convicted.

Adam S. Cohen
Cambridge, Mass.

New Mexico Tort Reform Efforts Overlooked

THE ROUNDUP OF selected states and their tort reform efforts ("The States of Tort Reform") in the Feb. 16 issue failed to include information about activities in New Mexico. While many states have rushed to restrict the rights of victims, an interim committee of the New Mexico Legislature studied the problem during 1988 and basically concluded that legislative action must focus on insurance reform. Interestingly, the two chairmen of the interim committee — and several of its members — are categorized politically as staunch conservatives.

The committee concluded that an insurance-premium crisis existed in New Mexico and that New Mexico had suffered the same exorbitant insurance premiums and unavailability of insurance as "non-reformed" states, despite significant tort law changes occurring over the years. These changes include: caps on recoveries against the government, doctors and liquor businesses; pure comparative negligence; and abolition of joint and several liability.

Furthermore, studies from the Aetna Life & Casualty Co. and St. Paul Cos. Inc. indicated that rates were negligibly affected by the elimination of punitive damages, the collateral source rule and joint and several liability, or by limiting non-economic damages or requiring structured settlements. The report concluded that the insurance-premium crisis was caused by the in-

dustry's response to the downtrend in investment profitability not in response to underwriting losses.

Following the call of its interim committee, the 1987 Legislature changed the regulation of the insurance industry to require the superintendent of insurance to approve rates *before* their use in the state, instead of the discarded system of allowing insurers to use and then file their rate schedules. Also, all workers' compensation insurers were required to file separate rate schedules rather than the single schedule previously permitted.

A bill to prohibit anti-competitive activities (basically the federal antitrust laws), to regulate cancellation and non-renewal of coverage, to prohibit secrecy agreements concerning dangerous products and to require litigation-related disclosure of information, passed in the House 58-5 but died in the Senate, where the insurance industry had more influence.

Many of us speculate that states which have raced to alter tort laws will change direction over the next several years toward insurance reform to protect consumers, but not before thousands of victims are robbed of a full recovery for their injuries due to regressive tort laws.

Ron Morgan
Editor in Chief
Journal of New Mexico
Trial Lawyers' Association
Albuquerque, N.M.

ATTACHMENT B
House Research Memorandum 87.080



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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April 21, 1987

MEMORANDUM

TO: Representative Fran Ulmer
ATTN: Judy Knight
FROM: Penelope Weyhrauch
Legislative Analyst
RE: State Tax on Insurance Carriers
Research Request 87.269

You requested a discussion of the State tax on insurance carriers, specifically those discussed in AS 21.09.210(d). This statute dictates that a tax of three-quarters of one percent be applied to the gross underwriting profits of insurance carriers for wet marine and transportation insurance that they carry. Wet marine and transportation insurance is defined in Alaska Statute 21.12.090(b). According to Don Koch, with the Division of Insurance, Department of Commerce and Economic Development, this definition includes marine vessels and their cargoes, although the definition could arguably include aircraft and aircraft cargoes.

Under AS 21.09.210(b), insurance carriers, other than wet marine and transportation insurance carriers, must pay a tax on net premiums received. The tax is 2.7 percent for domestic insurers, and six percent of gross premiums less claims paid for hospital and medical insurance corporations.

According to Mr. Koch, the current tax structure is beneficial for wet marine and transportation insurance carriers. He said that insurers can collect (from those insured) in excess of what will amount to three-quarters of one percent of their underwriting profit. This excess is retained by insurers as profits.

Mr. Koch does not know why the tax for wet marine and transportation insurance differs from the tax for other types of insurance, and believes insurance should all be taxed at the same rate. He said that there are sixteen states which give preferential tax treatment to wet marine and

transportation insurance carriers. Alaska is one of four states which taxes wet marine and transportation insurance at three-quarters of one percent of an insurer's gross profits; the lowest tax rate of all the states.¹ According to Mr. Koch, insurance carriers in Alaska paid \$29,000 in taxes on wet marine and transportation insurance in 1986; if taxed at the standard rate at that time--three percent of gross premiums--these insurers would have paid \$229,000 in taxes.²

The tax schedule appears to have been established in 1966, when the Alaska Insurance Code was adopted.³ There is very little information available from committee hearings and minutes on the tax differentiation between wet marine and transportation insurance and other types of insurance. A supplement to the House Journal on March 3, 1966 stated that Mr. Lingle (the Director of the Division of Insurance at that time) "...pointed out that the wet marine insurance tax is changed in the bill. In the bill, the amount is the usual one put on insurance of this type."⁴

I hope this information is useful to you. If you have any questions or would like additional information, please contact our agency.

Attachments: AS 21.09.210 (Insurance Tax)
AS 21.12.090 (Marine, Wet Marine and Transportation Defined)

¹Of the sixteen states which give preferential tax treatment for wet marine and transportation insurance, Alaska has one of the highest tax rates for other types of insurance--2.7 percent. Fourteen of these states apply a tax for insurance, other than wet marine and transportation insurance, of between two and 2.5 percent, while Hawaii's standard tax is 4.2 percent.

²The tax rate for domestic and foreign insurers was amended by Ch. 118 SLA 1986. This amendment changed tax rates for domestic insurers and for companies other than hospital and medical service corporations from 1.5 percent and three percent respectively, to 2.7 percent.

³Chapter 120, SLA 66.

⁴House Journal Supplement, March 3, 1966, No. 12, p. 25, paragraph 8.

Sec. 21.12.090. Marine, wet marine and transportation insurance defined. (a) "Marine insurance" includes

(1) insurance against any and all kinds of loss or damage to

(A) vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, dis-

bursements, profits, money, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting shipment or during delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks;

(B) a person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of the insurance (but not including life insurance or surety bonds or insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(C) precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether in the course of transportation or otherwise;

(D) bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks;

(2) "marine protection and indemnity insurance", meaning insurance against, or against legal liability of the insured for loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of a vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(b) For the purposes of this title "wet marine and transportation" insurance is that part of marine insurance which includes only

(1) insurance upon vessels, crafts, hulls and of interests in or with relation to vessels, crafts, and hulls;

(2) insurance of marine builder's risks, marine war risks and contracts or marine protection and indemnity insurance;

(3) insurance of freights and disbursements pertaining to a subject of insurance coming within this section; and

(4) insurance of personal property and interests in personal property, in the course of exportation from or importation into any country, and in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during delays, storage, transshipment or reshipment incident thereto. (§ 1 ch 120 SLA 1966)

Sec. 21.09.210. Tax. (a) Each authorized insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall file with the director, before March 2 in each year, a report of all insurance business written or contracted in the state (with proper proportionate allocation of premium for the property, subjects, or risks in the state insured under policies or contracts covering property, subjects, or risks located or resident in more than one state) during the preceding year ending December 31. The report shall show

(1) the amounts paid policyholders on losses;

(2) the total direct premium income including policy membership and other fees, premiums paid by application of dividends, refunds, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated a premium or otherwise;

(3) the amounts paid policyholders as returned premiums;

(4) the amounts paid policyholders as dividends.

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are not included in the direct premium income and are not subject to tax. The tax shall be paid to the director annually before April 1, and, except as provided in AS 21.69.390(c), is computed at the rate of

(1) for domestic and foreign insurers, except hospital and medical service corporations, 2.7 percent;

(2) for hospital and medical service corporations, six percent of their gross premiums less claims paid.

(c) A domestic company is exempt from taxation under this section for a period of five years from the date of its organization.

(d) An authorized insurer shall, with respect to all wet marine and transportation contracts written in this state during the preceding calendar year, before April 1 of each year, pay to the director a tax of three-quarters of one percent on its gross underwriting profit. The gross underwriting profit is computed by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on wet marine and transportation insurance contracts, the net losses paid (i.e., gross losses paid, less salvage and recoveries on reinsurance ceded) during the calendar year under the contracts. In the case of an insurer issuing participating contracts, the gross underwriting profit shall not include, for computation of the tax prescribed by this section, the amounts refunded or paid as participation dividends by the insurers to the holders of the contracts.

(e) Payment to the director by an insurer of the tax upon its premiums required by this section shall be in lieu of all other taxes imposed by the state upon premiums, franchise, privilege or other taxes measured by income of the insurer commencing with the taxable year beginning January 1, 1967.

(f) The state hereby pre-empts the field of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes, licenses, and fees upon insurers and their general agents, agents and representatives as such; and on the intangible property of insurers or agents; and all political subdivisions of agencies in the state, including home rule boroughs or cities, are prohibited from imposing or levying upon insurers, or upon their general agents, agents and representatives as such, any tax, license, or fee. Provided that this subsection shall not be construed as prohibiting the imposition by political subdivisions of taxes upon real and tangible personal property of insurers and their general agents, agents and representatives.

(g) The director may suspend or revoke the certificate of authority of an insurer which fails to pay its taxes as required under this section.

(h) The provisions of this section do not apply to title insurance companies. A premium tax on title insurance companies shall be levied in accordance with the provisions of AS 21.66.110.

(i) Premiums paid by the state for insurance policies and contracts purchased under the provisions of AS 39.30 are exempt from taxation under this section. Claims for exemption shall be made on forms provided by the division of insurance. (§ 1 ch 120 SLA 1966; am § 29 ch 137 SLA 1982; am § 1 ch 118 SLA 1986)



ALASKA STATE LEGISLATURE
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February 5, 1987

MEMORANDUM

TO: Representative Mike Navarre

ATTN: Pat Malone

FROM: Penelope Weyhrauch
Legislative Analyst

RE: Insurance Agents and Brokers: Commingling of Funds
Research Request 87.087

You requested a discussion of the commingling of funds held by insurance agents and brokers in Alaska, and legislation in other states which address this issue.

The commingling of funds by insurance agents and brokers refers to a situation where premiums collected by the agent/broker are not kept in an account separate from personal or business funds. Premiums deposited in an account do not belong to an agent/broker. An agent/broker is acting as a fiduciary of the insurance company or the insured and by the nature of a fiduciary relationship is required to keep premiums in trust. In Alaska, premiums can be held in interest-bearing accounts, from which the agent/broker can periodically withdraw the interest.

Don Koch, of the Department of Commerce and Economic Development, Division of Insurance, said that most agents and brokers in Alaska have trust accounts set up for premiums but do not use them properly. He believes that there are agents and brokers who occasionally commingle premium and nonpremium funds, but that this commingling is often unintentional.

Mr. Koch said that within the last ten years, twelve cases of commingled funds have come to the division's attention. Four of the twelve cases were situations where commingling occurred and the agent/broker went bankrupt. In these four cases, commingling was proved and the agents'/brokers' licenses were revoked. The other eight cases are being investigated by the Alaska State Troopers. Mr. Koch said that he believes the Troopers have gathered enough evidence on three of these cases to suggest that commingling has occurred, and now the Division of Insurance can begin its investigation into these cases. The remaining five cases are still under investigation by the Troopers.

Mr. Koch believes that there are additional cases of commingling, but the division does not have the staff to pursue them. He said that he is able to perform some of the financial accounting required to keep insurance agents and brokers in compliance with Alaska's prohibition on the commingling of funds, but that a CPA is required to do a more complete audit.

Commingling of Funds by Insurance Agents and Brokers in Other States

I surveyed five states--California, Colorado, Idaho, Washington, and Wyoming--on state legislation and policy regarding the commingling of funds by insurance agents and brokers. Only one state, Idaho, allows insurance agents and brokers to commingle funds. The state of Idaho does however require agents and brokers to keep records and account for all premiums which they hold. The other four states listed above all require that insurance agents and brokers set up trust accounts for premiums, separate from personal and business funds. Copies of the statutes are attached. The discussion that follows addresses only the variations in the statutes.

California law allows agents and brokers to commingle enough funds to take care of contingencies, such as bounced premium checks. Paul Geary, Staff Counsel for the Insurance Compliance Bureau of the California Department of Insurance, said that most commingling that occurs in California occurs when an agent or broker is having financial difficulty. At that time, the agent or broker may take funds out of the premium trust account and use them for other purposes. An agent or broker who violates the law will be disciplined according to the magnitude of the offense. Discipline could include the revocation of an agent's or broker's license.

Colorado law relating to the commingling of funds is used by the Division of Insurance to suspend or revoke an agent's or broker's license. Bob Lord, Supervisor of Licensing and Investigations, Division of Insurance, said that commingling of funds is not much of a problem in Colorado. He said that the smaller companies which are just getting started might commingle, but this occurs mostly out of ignorance of the law.

Washington does not have much of a problem with the commingling of funds, according to Melody Bankers, Deputy Commissioner of the Consumer Protection Division, Washington Insurance Commissioner's Office. Ms. Bankers believes that the Washington statute relating to the commingling of funds requires excessive accounting measures of insurance agents and brokers. The Washington law requires that all premiums be kept in accounts separate from nonpremium funds. Ms. Bankers believes that this requirement is unnecessary for retail establishments which supply credit life insurance with purchases.

Representative Navarre
February 5, 1987
Page 3

Wyoming prosecutes violators of its law regarding the commingling of funds by agents and brokers. Violators may be found guilty of embezzlement, and convicted of a felony. Charles Hartman, Assistant Commissioner with the Department of Insurance, said that the department prosecuted three or four commingling cases last year.

* * *

I hope this information is helpful to you. If you have any questions or would like additional information, please contact our agency.

PW

Attachments

(1954) 43 C2d 476, 274 P2d 857.

In prosecution of insurance agent for grand theft by appropriation of money collected by him for payment of premiums under group insurance policies, there is no material variance between indictment alleging that defendant unlawfully took money belonging to insurer and proof that money belonged to trustees for whom defendant acted as agent in collecting such premiums, since such variance, if one exists, would be only in designation of person injured. *People v Hedderly* (1954) 43 C2d 476, 274 P2d 857.

Premiums received by general agent on insurance written by one insurer and paid over to second insurer are trust funds in hands of second insurer for benefit of insured, and second insurer and general agent are required to account for them in so far as they can be traced. *Mid-State Ins. Co. v American Fid. & Cas. Co.* (1956) 234 P2d 721.

An insurance broker may contract with an insurance company as to the payment of premiums negotiated by him for the benefit of the insured. He acts as a fiduciary both as to the insured and the insurer, and under Code Civ Proc, § 369 can recover the premiums from the insured in an

action in his own name without joining the insurer with him. *Warren (Walter J.) Ins. Agency v Surpur Timber Co.* (1967) 250 CA2d 99, 58 Cal Rptr 143.

Defendant who accepted money for an insurance premium from the purchaser of a truck and had failed to secure the insurance was properly convicted of grand theft under Ins. Code, § 1733, which provides that funds received "by any person acting as an insurance agent" as an insurance premium are received "in his fiduciary capacity," and that "any such person who diverts or appropriates such fiduciary funds to his own use is guilty of theft", where, though defendant was not a licensed insurance agent, the facts amply demonstrated that he was acting as an insurance agent. Though a predecessor statute used the words agent "whether licensed or unlicensed," the deletion of that language without the insertion of terminology limiting operation of the statute to either licensed or unlicensed persons alone resulted in coverage of persons in either status and subsequent legislative history demonstrated no definitive attempt to change the scope of the crime. *People v Hewitt* (1975) 53 CA3d 759, 126 Cal Rptr 20.

§ 1733.5. [Added by Stats 1957 ch 973 § 1 and repealed by Stats 1959 ch 4 § 1, effective February 27, 1959.]

See § 1744.

§ 1734. Fiduciary funds: Maintenance

This section applies to any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733. If fiduciary funds, as defined in Section 1733, are received by such person, he shall either:

- (a) Remit premiums, less commissions, and return premiums received or held by him to the insurer or the person entitled thereto, or
- (b) Maintain such fiduciary funds on California business at all times in a trustee bank account or depository in California separate from any other account or depository, in an amount at least equal to the premiums and return premiums, net of commissions, received by him and unpaid to the persons entitled thereto or, at their direction or pursuant to written contract, for the account of such persons. However, such person may commingle with such fiduciary funds in such account or depository such additional funds as he may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return commissions or for such contingencies as may arise

§ 1734

PRODUCTION AGENCIES

in his business of receiving and transmitting premium or return premium funds.

Added Stats 1959 ch 4 § 2, effective February 27, 1959; Amended Stats 1972 ch 553 § 1; Stats 1974 ch 594 § 1; Stats 1976 ch 845 § 1.

Prior Law: Former § 1730.5, as added by Stats 1951 ch 607 § 2 p 1769.

Amendments:

1972 Amendment: Amended subd (b) by (1) adding "trustee" after "times in a"; and (2) deleting the former third and fourth sentences which read: "Further, such person may commingle the funds of any principal with his own funds to an unlimited extent, if such principal in writing specifically waives the segregation requirements of this section. Commingling of funds as herein permitted shall not alter the fiduciary nature of such premium or return premium funds."

1974 Amendment: (1) Substituted "subdivision" for "subsection" wherever it appears in the introductory paragraph; and (2) added "on California business" and "in California" in subd (b).

1976 Amendment: (1) Substituted ", are received by such person, he shall either:" for "and held for one or more principals, are maintained in accordance with subdivision (b) hereof, such funds for other principals may be held and remitted in accordance with subdivision (a) hereof. Otherwise each such person who does not make immediate remittance of all funds received as premium to the insurer entitled thereto must elect and follow with respect to such funds, one of the following methods:" at the end of the introductory clause; and (2) substituted a comma for "within fifteen (15) days after the receipt thereof;" after "thereto" in subd (a).

Former Sections: Former § 1734, similar to present § 1743, was added by Stats 1953 ch 58 § 1 and repealed by Stats 1959 ch 4 § 1, effective February 27, 1959.

Original § 1734, relating to review of act of commissioner denying license, was added by Stats 1937 ch 652 § 22 and repealed by Stats 1945 ch 901 § 26.

Cross References:

Section applicable to bail license: § 1821.

Collateral References:

Law Review Articles:

Review of Selected 1972 Code Legislation. 4 Pacific LJ 528.

§ 1735. Fiduciary funds: Managing general agents

As used in this section a managing general agent is a licensed insurance agent who, (1) has a written management contract with one or more admitted insurers covering business transacted by the insurer in a substantial portion of the State of California; (2) under such contract manages the transaction of either all or one or more of the classes of insurance written by such insurers in that territory or the transactions therein by such insurers under a specified fictitious underwriter's name; (3) has the power to appoint, supervise and terminate this appointment of local agents in such territory; (4) has the power to accept or decline risks; and (5) collects premium moneys from producing agents and brokers and remits such moneys to such insurers pursuant to the account current system.

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(j) Suspension or revocation of a license in any other state, province, district, or territory:

(k) Forgery of another's name to an application for insurance;

(l) Cheating on an examination for an insurance license.

(2) In the event that the action by the commissioner is to not renew or to deny an application for a license, he shall notify the applicant or licensee of the reasons for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand on the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. Such hearing shall be held within thirty days after the date of receipt of the written demand and shall be held pursuant to article 4 of title 24, C.R.S.

Source: R & RE, L. 77, p. 496, § 1.

10-2-213. Fiduciary responsibilities. (1) (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by a licensee under this part 2 shall be treated by such licensee in a fiduciary capacity. The commissioner may promulgate such rules as are necessary in this regard.

(b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or within forty-five days after receipt thereof if there is no contractual due date.

(c) All returned premiums received from insurers or credited by insurers to the account of the licensee shall be remitted to or credited to the account of the person entitled thereto within thirty days after such receipt or credit.

(2) If any licensee has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for forty-five days after the contractual due date or ninety days after the receipt thereof if there is no contractual due date, the insurer or its agent shall promptly report such failure to the commissioner in writing.

(3) Every insurer shall remit unearned premiums to the insured or the proper agent or shall otherwise credit the account of the proper licensee as soon as is practicable after entitlement thereto has been established, but in no event more than forty-five days after the effective date of any cancellation or termination effected by the insurer or after the date of entitlement thereto as established by notification of cancellation, or termination, or otherwise. It shall be the responsibility of any licensee having knowledge of a failure on the part of any insurer to comply with this provision for remitting unearned premiums to promptly report such failure to the commissioner in writing.

(4) No licensee under this part 2 shall commingle premiums belonging to insurers and returned premiums belonging to insureds with his personal funds or any other funds except those directly connected with his insurance business.

Source: R & RE, L. 77, p. 497, § 1.

10-2-214. Investigation by commissioner. (1) The commissioner may examine and investigate the business affairs and conduct of every person

applying for or holding a license in such person has been or is subject to or regulations of this state or practices in any state.

(2) On receipt of any information indicating that an insurance company is operating in unfair or deceptive practices in violation of the license under this part 2, the commissioner may appear and show cause why he or she should not suspend or refuse to issue the person's license or suspend or revoke the license to show cause, revoke, suspend

(3) The license of a partner, partner-in-interest, officer, director, or shareholder, if the license is revoked or the renewal thereof is denied, that an individual licensee known by one or more of the partners, partner-in-interests, officers, directors, or shareholders of the partnership or corporation to the division of insurance nor

(4) In addition to or in lieu of suspension or revocation of a license, any person may, after hearing, be subject to a fine of not more than \$500 and \$100 for each such violation.

Source: R & RE. L. 77, p. 4

10-2-215. Surrender of license. A licensee shall promptly notify the commissioner regarding any suspension, revocation or annulment of a license by another jurisdiction.

(2) Upon suspension, resident of this state, the commissioner of each state who has 10-2-207 (11).

(3) Upon suspension, rev see shall forthwith deliver i by mail.

(4) Any licensee who ceases to reside in the state defined in section 10-2-207 shall be considered a nonresident by personal delivery of the license to said residency.

(5) The commissioner may issue a new or destroyed license issued to a licensee in a form prescribed by the commissioner in the event of such loss, theft, or destruction.

Source: R & RE. L. 77, p. 4

10-2-216. Termination re-
insurer shall promptly give a
live date thereof to the com-

(3) An agent, solicitor or broker may commingle with premium funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(4) Each willful violation of this section shall constitute a misdemeanor.

Enacted by Laws 1986, ch. 69, § 1, eff. Jan. 1, 1987.

Effective date—Laws 1986, ch. 69:

"This act shall take effect on January 1, 1987." [Laws 1986, ch. 69, § 2.]

CHAPTER 48.18—THE INSURANCE CONTRACT

Sec.

48.18.2901. Renewal required—Exceptions.

48.18.100. Forms of policies—Filing, certification, and approval

Notes of Decisions

Motor vehicle policies 4.5

be modified simply by agreement of the carrier and the named insured. *Mission Ins. Co. v. Guarantee Ins. Co.* (1984) 37 Wash.App. 695, 683 P.2d 215.

4.5. Motor vehicle policies

Motor vehicle liability policy's omnibus clause, required by § 46.29.490, cannot

48.18.110. Grounds for disapproval

(1) The commissioner shall disapprove any such form of policy, application, rider, or endorsement, or withdraw any previous approval thereof, only:

(a) If it is in any respect in violation of or does not comply with this code or any applicable order or regulation of the commissioner issued pursuant to the code; or

(b) If it does not comply with any controlling filing theretofore made and approved; or

(c) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(d) If it has any title, heading, or other indication of its provisions which is misleading; or

(e) If purchase of insurance thereunder is being solicited by deceptive advertising.

(2) In addition to the grounds for disapproval of any such form as provided in subsection (1) of this section, the commissioner may disapprove any form of disability insurance policy if the benefits provided therein are unreasonable in relation to the premium charged.

Amended by Laws 1985, ch. 264, § 9.

1985 Amendment. Near the end of subsec. (1)(a), preceding "pursuant to the code" inserted "issued"

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48.17.520

INSURANCE

which such agent was not licensed at the time of death or commencement of disability.

Amended by Laws 1985, ch. 264, § 8.

1985 Amendment. Deleted subsec. (3).

48.17.590. Procedures for cancelling written agreements between companies and agents

(1) If an insurer intends to cancel a written agreement with an agent, or intends to refuse any class of renewal business from the agent, the insurer shall give the agent not less than one hundred twenty days' advance written notice of such intent. Every insurer canceling a written agreement subject to this section shall permit, for not less than one year after having given notice of its intent to terminate the agency agreement, insureds to process their renewals through the agent, as long as he or she retains an agent's license for the kind of insurance involved, as to any of the policies which have not been replaced with other insurers as expirations occur. An agent with a canceled agreement subject to this section shall remain an agent of the canceling insurer as to actions associated with any such policies just as if he or she were appointed by such insurer as its agent. This subsection shall not apply to: (a) Agents or policies of a company or group of companies if the business is owned by the company or group of companies and the cancellation of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; (b) life, disability, surety, ocean marine and foreign trade, and title insurance policies; or (c) agents whose licenses are then or become subject to an outstanding order of the commissioner issued pursuant to RCW 48.17.540.

(2) No insurer shall cancel or refuse to renew the policy of the insured because of the termination of the agent's contract.

(3) No insurer may cancel or amend a written agreement with an agent, or refuse to accept business from such agent, if the cancellation, amendment, or refusal is arbitrary, capricious, discriminatory under RCW 48.30.300, or based in whole or part upon the sex, race, creed, color, religion, national origin, or place of residency of the agent, his or her applicants, or policyholders.

(4) Any insurer or agent accepting brokerage business who rejects the business of a broker shall provide upon request of the broker the reasons in writing for the rejection.

(5) No insurer may cancel its agreement with an appointed agent with respect to insurance or refuse to accept insurance business from such agent unless it complies with the provisions of this section.

Enacted by Laws 1986, ch. 286, § 1.

48.17.600. Separation of premium funds

Text of section effective Jan. 1, 1987.

(1) All funds representing premiums or return premiums received by an agent, solicitor or broker in his or her fiduciary capacity shall be accounted for and maintained in a separate account from all other business and personal funds.

(2) An agent, solicitor or broker shall not commingle or otherwise combine premiums with any other moneys, except as provided in subsection (3) of this section.

INSURANCE

(3) An agent, solicitor or broker advancing premiums, establishing funds, or for any contingencies in receiving and transmitting premiums.

(4) Each willful violation of this section is a misdemeanor.
Enacted by Laws 1986, ch. 69, § 1, et seq.

Effective date—Laws 1986, ch. 69, § 1, et seq.
"This act shall take effect on January 1, 1987." [Laws 1986, ch. 69, § 2.]

CHAPTER 48.18—TH

Sec. 48.18.2901. Renewal required—Excess

48.18.100. Forms of policies—1

Notes of Decisions

Motor vehicle policies 4.5

4.5. Motor vehicle policies
Motor vehicle liability policy's omission of the "no fault" clause, required by § 46.29.490, is

48.18.110. Grounds for disapproval

(1) The commissioner shall disapprove a policy, rider, or endorsement, or only:

(a) If it is in any respect in violation of any applicable order or regulation of the code; or

(b) If it does not comply with the approved; or

(c) If it contains or incorporates any misleading clauses, or which may or deceptively affect the coverage of the contract; or

(d) If it has any title, heading, or subheading which is misleading; or

(e) If purchase of insurance is advertised.

(2) In addition to the grounds provided in subsection (1) of this section, any form of disability insurance which is unreasonable in relation to the cost of the policy.

Amended by Laws 1985, ch. 264, § 8.

1985 Amendment. Near the end of subsec. (1)(a), preceding "the code" inserted "issued".

WYOMING

(c) The agent or broker shall keep at his place of business a complete record of transactions under his license and those of his solicitors. The record shall show, as to each insurance policy or contract placed or countersigned by or through the licensee, the names of the insurer and insured, the number, expiration date of, premium payable as to the policy or contract and any other information the commissioner reasonably requires. The commissioner shall keep the record available for inspection for a period of at least three (3) years after completion of the transactions. (Laws 1967, ch. 136, § 189; 1977, ch. 49, § 2; W.S. 1977, § 26-9-137; Laws 1983, ch. 190, § 1.)

Effective dates. — Section 3, ch. 49, Laws 1977, makes the act effective May 27, 1977.

§ 26-9-130. Reporting and accounting for premiums.

(a) Any premiums or return premiums received by an agent, broker or solicitor are trust funds received in a fiduciary capacity, and the agent, broker or solicitor, in the regular course of business, shall account for and pay the funds to the insured, insurer or agent entitled thereto.

(b) The licensee shall establish a separate trust account for premiums specified in subsection (a) of this section and shall not use the account for or commingle it with his own funds. He shall maintain an accurate record and itemization of the funds deposited in the account.

(c) Any agent, broker or solicitor who diverts or appropriates any funds, to which he is not lawfully entitled, to his own use is guilty of embezzlement and upon conviction shall be punished as provided by law. (Laws 1967, ch. 136, § 190; 1977, ch. 49, § 1; W.S. 1977, § 26-9-138; Laws 1983, ch. 190, § 1.)

Effective dates. — Section 3, ch. 49, Laws 1977, makes the act effective May 27, 1977.

Personal liability of agent. — Where defendant insurance agent sold plaintiff insurance coverage for plaintiff's aircraft, defendant had a duty to see that the funds solicited from plaintiff were applied to the use for which they were secured. Having so failed, he must personally account for his actions, and failing to show reasonable exercise of such duty, his personal liability is established. He authored and executed the plan which led to his own misfortune, and he cannot be heard to complain that someone else, i.e., the corporations over which he had

control, should be made to respond. *Preston v. Natrona Serv., Inc.*, 489 P.2d 622 (Wyo. 1971).

Measure of damages. — Where there is no evidence of greater loss sustained by the insured, the measure of damages has been held to be the premiums or assessments paid by the insured with interest thereon. *Preston v. Natrona Serv., Inc.*, 489 P.2d 622 (Wyo. 1971).

Am. Jur. 2d, ALR and C.J.S. references. — Revocation or suspension of insurance agent's license for withholding or misappropriation of premiums, 17 ALR4th 1106.

§ 26-9-131. Exchange of business.

(a) A general lines agent may occasionally place an insurance coverage with an insurer as to which he is not then appointed as an agent, and the insurer shall accept that business only when placed through a licensed agent, resident of this state, of the insurer. Both agents involved in such an exchange of business shall be then licensed as to each kind of insurance represented by the coverage.

ords maintained by the
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including the identity
s, shall be confidential,
proceedings instituted

- ~~(a) Remittance to an insurer entitled to such remittance.~~
- (b) Deposit in an account maintained in the name of such insurer.
- (c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided by section 41-907 [this section], Idaho Code.
- (d) Payment to a group policyholder for remittance to the insurer entitled to such remittance.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
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February 17, 1987

MEMORANDUM

TO: Representative Mike Navarre

ATTN: Pat Malone

FROM: Penelope Weyhrauch 
Legislative Analyst

RE: Insurance Agents and Brokers: Commingling of Funds
Research Request 87.087 (Supplemental Information)

I have attached some information that I recently received on the commingling of funds by insurance agents and brokers. Attachment A was prepared by the National Association of Professional Insurance Agents and discusses language employed by state regulations and statutes regarding the receipt of premium payments by agents. Attachment B includes a copy of Colorado Regulation 78-12 concerning agent fiduciary responsibilities and a copy of Colorado Insurance Code 10-2-213 regarding fiduciary responsibilities by an insurance agent or broker. I hope this information is useful to you.

Attachments

ATTACHMENT A

There are two basic types of language employed by state regs and statutes concerning receipt of premium payments by agents. First, there are those that state such payments are held in trust or in a fiduciary capacity by the agent. These are:

Alabama	§ 27-7-36	held in trust
Arkansas	§ 66-2831	held in trust
Delaware	Reg. 21, § 12	held in trust
D.C.	§ 35-429	held in trust
Florida	§ 626.561	held in trust
Illinois	§ 505	fiduciary capacity
Kentucky	§ 304.9-400	fiduciary capacity
Maine	§ 1613	fiduciary capacity
Michigan	§ 500.1207	fiduciary capacity
Missouri	§ 375.051	fiduciary capacity
Minnesota	Reg. § 2795.1300	fiduciary capacity
Montana	§ 33-17-1102	fiduciary capacity
Rhode Island	§ 27-3-36	fiduciary capacity
South Dakota	§ 58-30-88	fiduciary capacity
Washington	§ 48.17.180	fiduciary capacity

Second, there are those states that specifically require a separate account or prohibit commingling of funds. These are:

Alaska	§ 21.27.360	separate account
California	§§ 1734 to 1735	separate account
Colorado	Code § 10-2-213 and Reg. § 78-12	separate account
Georgia	§ 33-23-79	no commingling
Hawaii	§ 431-397	no commingling
Idaho	§ 41-1064	separate account
New York	§ 125	no commingling
Nevada	Code § 683A.400 and Reg. § 683A.410	separate account
Pennsylvania	§ 40-25-404	no commingling
Utah	§ 31-17-22	separate account
Wyoming	§ 26-9-130	separate account

Kansas, at K.S.A. § 40-3712 prohibits commingling, but does not require a separate account.

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ATTACHMENT B
COLORADO RULES & REGULATIONS

Regulation 78-12

CONCERNING AGENT FIDUCIARY RESPONSIBILITIES

June 11, 1979

Amended effective March 1, 1980

I. AUTHORITY

This regulation is promulgated under the authority of 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, C.R.S. 1973.

II. PURPOSE

The purpose of this regulation is to clarify the responsibility of insurance agents and brokers to treat each insurance policy and premiums handled thereon as a separate account of their insureds unless specific authorization has been obtained from insureds to comingle multiple obligations and funds.

III. RULE

1. No insurance premium or refund received by an insurance agent, broker or agency by reason of the application for, issuance or termination of any particular policy may be credited to any other obligation owed by the insured to such agent, broker, agency or other insurer unless specific written authorization has been obtained from the insured to so credit, or a blanket authorization has been obtained from the insured to handle all policies and obligations from one account.

2. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

a. Upon receipt the insurance producer must treat all premiums and return premiums as trust funds and segregate them from his own funds, and

b. the insurance producer must keep an accurate record of all fiduciary funds, and

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COLORADO RULES AND REGULATIONS

c. the insurance producer must not treat insurance premiums or returned premiums as a personal or business asset, and

d. the insurance producer's financial statement should not reflect fiduciary funds as an asset or as income to the insurance producer, and

e. an insurance producer may not use fiduciary funds as collateral for a personal or business loan, but the insurance producer may receive interest on such funds and use as a compensation balance with the financial institution, and

f. any deposit of such premium and returned premium funds into a bank or savings account must be into a separate insurance trust account until actually remitted to the insurer or person entitled thereto. Such deposits will be subject to the uniform fiduciary's law as delineated in C.R.S. 1973, 15-1-101 *et seq.*

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(j) Suspension or revocation of a license in any other state, province, district, or territory;

(k) Forgery of another's name to an application for insurance;

(l) Cheating on an examination for an insurance license.

(2) In the event that the action by the commissioner is to not renew or to deny an application for a license, he shall notify the applicant or licensee of the reasons for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand on the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. Such hearing shall be held within thirty days after the date of receipt of the written demand and shall be held pursuant to article 4 of title 24, C.R.S. 1973.

History.—L. 77, S.B. 472, § 1.

§ 10-2-213. Fiduciary responsibilities

(1) (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by a licensee under this part 2 shall be treated by such licensee in a fiduciary capacity. The commissioner may promulgate such rules as are necessary in this regard.

(b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or within forty-five days after receipt thereof if there is no contractual due date.

(c) All returned premiums received from insurers or credited by insurers to the account of the licensee shall be remitted to or credited to the account of the person entitled thereto within thirty days after such receipt or credit.

(2) If any licensee has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for forty-five days after the contractual due date or ninety days after the receipt thereof if there is no contractual due date, the insurer or its agent shall promptly report such failure to the commissioner in writing.

(3) Every insurer shall remit unearned premiums to the insured or the proper agent or shall otherwise credit the account of the proper licensee as soon as is practicable after entitlement thereto has been

established, but in no event more than forty-five days after the effective date of any cancellation or termination effected by the insurer or after the date of entitlement thereto as established by notification of cancellation, or termination, or otherwise. It shall be the responsibility of any licensee having knowledge of a failure on the part of any insurer to comply with this provision for remitting unearned premiums to promptly report such failure to the commissioner in writing.

(4) No licensee under this part 2 shall commingle premiums belonging to insurers and returned premiums belonging to insureds with his personal funds or any other funds except those directly connected with his insurance business.

History.—L. 77, S.B. 472, § 1.

§ 10-2-214. Investigation by commissioner

(1) The commissioner may examine and investigate the business affairs and conduct of every person applying for or holding a license under this part 2 to determine whether such person has been or is engaged in any violation of the insurance laws or regulations of this state or has engaged in unfair or deceptive acts or practices in any state.

(2) On receipt of any information regarding the possible violation of the insurance laws or regulations of this or any other state or the possible engaging in unfair or deceptive practices by a person applying for or holding a license under this part 2, the commissioner may require such person to appear and show cause why the commissioner should not revoke, suspend, or refuse to issue the person's license and may, on failure of such person to show cause, revoke, suspend, or refuse to issue or renew the license.

(3) The license of a partnership or corporation may be suspended or revoked or the renewal thereof refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and such violation was not reported to the division of insurance nor corrective action taken in relation thereto.

(4) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person who violates any provision of this



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February 2, 1987

MEMORANDUM

TO:

ATTN:

FROM: Penelope Weyhrauch
Legislative Analyst

RE: Solutions to the Insurance Crisis
Research Request 87.080

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

What Caused the Insurance Crisis

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

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

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

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

SOURCE: Council of State Governments, December 1985.

* * * * *

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

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

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

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

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

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

Addressing the Insurance Crisis

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

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

Alaska Legislation

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