

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1746 SCOMM 69: HOUSE LIABILITY INSURANCE TASK FORCE, 1989-1990 314

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

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

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

Solutions to the Insurance Crisis, Other than Tort Reform

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

Insurance Mechanisms and Strategies

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

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

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

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

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

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

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

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

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

4. Authorizing the establishment of joint underwriting associations may aid in providing coverage of risk that individual insurers do not want to cover. Joint underwriting associations (JUAs) are established by state law and require that insurers insure certain risks. There are no JUAs in Alaska, though the automobile and worker's compensation assigned risk plans operate on a similar principle. Mr. Koch believes that establishing JUAs in Alaska will adversely affect the availability of voluntary underwriting in Alaska.
5. Allowing insurance pools affords consumers with common insurance needs a way to reduce insurance costs. In a pool, the group is often responsible for a portion of the losses experienced by individuals within the group. Savings result from both partial self-insurance and economies of scale. Tennessee and Michigan indicate that savings have been realized by allowing consumers to pool; buyers have obtained higher amounts of coverage and smaller municipalities have been able to insure at rates lower than those that would have been available to them on an individual basis. However, Utah reports that pooling legislation enacted in 1976 has not changed the availability or affordability of insurance in the state. Alaska allows the pooling of insurance for school districts and municipalities by statute (Ch 136, SLA 86). There have not been any pools set up under the statute, to Mr. Koch's knowledge.

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

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

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

7. Developing an interstate organization may increase the availability of insurance. NICO suggests that states group together and agree to license insurance companies in their state only if they agree to write insurance in all the states within the group. Western states--such as California, Oregon, Washington and Alaska--could band together to demand insurance availability in their states. Mr. Koch said that some state insurance commissioners are politically motivated and believes it would be difficult to successfully coordinate an interstate insurance organization.
8. Establishing a State office of insurance consumer advocacy will provide consumers with an advocate to represent the interests of consumers in regard to rate increases and other insurance issues. Mr. Koch said that the Division of Insurance has a consumer advocacy specialist who is responsible for representing the interests of consumers in insurance issues.
9. Employing mediation and arbitration usually reduces the costs of lawsuits, which means lower litigation expenses for insurance companies. This may ultimately lead to lower insurance rates for consumers. The use of alternative forms of dispute resolution, such as mediation and arbitration, may also create incentives to settle disputes at the earliest possible time and to refrain from filing frivolous cases. The State of Michigan recently enacted a law which requires pretrial mediation of all medical malpractice cases and of other personal injury claims for more than \$10,000.
10. Urging the federal government's involvement in insurance regulation may result in federal legislation addressing the insurance crisis. Both Congress and the Reagan administration have considered federal tort reform legislation. The administration developed tort reform legislation and sent it to Capitol Hill, but Congress has not been willing to act on national insurance legislation. This reluctance to act may be because insurance has traditionally been an area of state regulation. The last major congressional legislation

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

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

11. Authorizing the development of captive insurers creates another opportunity for self-insurance. Captive insurance companies are subsidiaries set up to provide insurance for the parent corporations. Vermont, Colorado, and Tennessee have all authorized the formation of captive insurers. The Conference of Insurance Legislators believes that use of this vehicle has been effective in regard to the availability and affordability of insurance.
12. Increasing state regulatory staff may provide greater surveillance of the insurance industry and result in more consistent insurance rates for consumers. According to the NCSL, many state regulatory agencies are understaffed. State regulatory agencies are often expected to act as a watchdog over insurance companies, act as a consumer advocate, and act as an insurance clearinghouse between both groups, as well as supply a number of other necessary regulatory functions. Mr. Koch would like to increase surveillance over insurance companies and provide additional insurance information to consumers, but said he requires additional staff to do so.

Insurance Regulation

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

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

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

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

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

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

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

3. Amending Alaska law to decrease deposit requirements for companies not licensed in Alaska will increase the availability of insurance in the state. According to Mr. Koch, AS 21.34.040 allows companies not licensed in Alaska to do business in the state only if they have a deposit of \$3.5 million in trust in the United States. Mr. Koch said that only two foreign-based companies can meet this requirement, and 88 other foreign-based companies are barred by this statute from doing business in Alaska. Mr. Koch suggested that a deposit level of \$1.5 million, which is the deposit level in most states, be established. Mr. Koch cautioned that amending this law should not include a decrease in the amount of capitalization and surplus funds required to do business in the state.
4. Requiring insurance companies to itemize state-by-state expenses may eventually lead to insurance companies basing state rates on what occurs in that state. Mr. Koch is not sure how the logistics of a state-by-state itemization by insurance companies would work. He believes that it would be difficult for some companies to attribute expenses for business conducted in Alaska if only a small percentage of their business is in the state.
5. Regulating prices may aid in keeping the insurance industry on an even keel. However, Mr. Koch believes that setting limits on what insurers may charge will also limit the availability of insurance.
6. Establishing rate regulation laws could ensure that rates are adequate, reasonable and not unfairly discriminatory. The three types of rating laws are prior approval, file and use, and open competition. Alaska utilizes the most stringent of these approaches, a prior approval law, which requires the Division of Insurance to approve insurance rate changes before they can be implemented.

* * * * *

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

Attachments

ATTACHMENT A

**1986 STATE LEGISLATIVE ACTION:
LIABILITY INSURANCE
(NCSL)**



National Conference of State Legislatures



CIVIL LAW + ACTIONS
Liability +
Tort Reform



info-key

444 North Capitol Street, N.W.
Suite 203
Washington, D.C. 20001
202/624-5400

President David E. Nething
Majority Leader
North Dakota Senate

Executive Director
Earl S. Mackey

Summary

1986 State Legislative Action:

Liability Insurance

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

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

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

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

UPDATE: September 25, 1986

ALABAMA

1986 Session Completed

Enacted

- SB 239 - Authorizes two or more counties to establish self-funded insurance funds for the purpose of providing liability protection for member counties and employees acting in the line and scope of their employment.
- HB 202 - Requires insurance companies which sell medical liability insurance to report to the appropriate state licensing agencies any judgment or settlement resulting from a claim for personal injury caused by an error, omission or negligence in the performance of professional services.
- HB 178 - Grants immunity from suit to the Board of Medical Examiners and the Medical Licensure Commission.
- SB 369 - Grants immunity to the Board of Dental Examiners, certain members, agents, employees, consultants and others in connection with hearing investigations.

Legislation Considered - Not Passed

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

ALASKA

1986 Session Completed

Enacted

- SB 377 - Places limits of \$500,000 for noneconomic damages for each claim based on a separate injury or incident. It also:

- o Bars a person who suffers personal injury or death from recovering damages if the injury or death occurs in the commission of a felony.
 - o Provides for itemization of damages between economic and noneconomic losses.
 - o Provides for periodic payment in certain circumstances.
 - o Limits liability of members of board of directors of nonprofit corporations; public or nonprofit hospitals; school districts; and citizens advisory committees of a municipality.
 - o Modifies joint and several liability by making contributory fault (chargeable to the claimant) diminish the amount of damages proportionate to his fault.
 - o Allows a defendant to introduce into evidence the amount of compensation from collateral sources.
 - o Establishes prejudgment interest accrual principle.
- HB 506 - authorizes municipalities, school districts and regional educational areas to self-insure jointly or purchase coverage on a group basis.
- SB 442 - authorizes the Department of Commerce to provide technical assistance to individuals intending to form reciprocal insurers for provision of marine liability insurance.

ARIZONA

1986 Session Completed

Enacted

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

- o HB 2377 - establishes penalties for unjustified actions and raises limits for mandatory arbitration.
- o HB 2170 - prescribes liability for liquor to a certain intoxicated person or minor; defines "obviously intoxicated" and prescribes certain liability limitations.
- o HB 2375 - modifies insurance regulation and provides for alternative insurance options as follows:
 1. self-insurance for boards of directors of non-profit organizations;
 2. pooling for political subdivisions;
 3. self-insurance for schools;

4. conditions for non cancellation of policies for commercial and industrial risks;
 5. a temporary joint underwriting association for all lines;
 6. the Department of Insurance to set rules and regulations for disclosure of loss experience.
 7. provides authority for profit and non-profit corporations to ensure directors and officers against certain liability.
 8. establishes a study commission on insurance.
- o HB 2418 - authorizes the establishment of a joint underwriting association for provision of medical malpractice coverage for licensed midwives and registered nurses.

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

Interim

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

CALIFORNIA

Under Consideration

- o No less than 40 bills have been introduced thus far, including legislation extending all provisions of the state's medical malpractice laws to general tort liability.
- o AB 4406 would expand the annual information provided by insurers to the Insurance Commissioner to include total premiums paid (by individual lines of coverage), total reinsurance ceded and premiums paid, claims made or occurrence base policy identification, trial and judgment incidence, lines of coverage provided, average settlements and judgments, etc.
- o AB 4407 would compel all admitted insurers to offer, in California, every category of direct commercial liability insurance or reinsurance for commercial liability insurance offered by the insurer anywhere in the U.S. Similar provisions are stipulated for surplus line providers.
- o AB 3554 would establish a State fund for providing excess liability coverage for local governments and liability insurance for nonprofit organizations.

- o AB 3875 would require 45 days notice of intent to renew a policy conditioned upon a premium increase.
- o SB 1538 seeks to establish an assigned liability risk pool and SB 1581 would create a rate review board.

Previous Action

- o Proposition 51, which passed by a margin of 62% - 38%, will eliminate joint and several liability in all suits seeking noneconomic damages.
- o Restricted attorneys' contingency fees, an issue upheld by the U.S. Supreme Court in 1985.

COLORADO

1986 Session Completed

Enacted

- o SB 67 will reduce awards by sums from specific collateral sources.
- o SB 67 will limit damages for non-economic loss to \$250,000 unless a court finds "clear and convincing evidence," in which case up to \$500,000 can be awarded. Eliminates awards for derivative non-economic loss except when court finds "clear and convincing evidence" and may award up to \$250,000. Provides that an action against an architect, engineer or land surveyor must be certified by similar professionals.
- o SB 69 will make uniform most statutes of limitations at three years. Time limits for bringing tort actions are either 1 or 2 years.
- o SB 70 will eliminate the doctrine of joint and several liability. Limits liability of a defendant to his proportionate share of negligence or fault.
- o SB 76 extends "good Samaritan" laws to limit the liability of individuals, businesses and corporations, directors of non-profit organizations and government entities when they volunteer their time without pay or enforce a policy or regulation to protect another person.
- o SB 86 limits the liability of vendors to \$150,000 if liquor has been served to an intoxicated patron or a minor. (Became law without Governor's signature). Actions can be brought only by individuals other than the intoxicated person.
- o SB 1167 permanently extends the division of risk management and its fund which were scheduled to expire 6/30/86. Requires purchase of property or liability insurance policies by state agencies to be approved by the division.
- o HB 1185, 1186 and 1187 limit liability for employers, shareholders, officers and board members resulting from the flow of water from a

reservoir. Establishes immunity for state engineers and employees when monitoring reservoirs.

- c HB 1192 limits liability of manufacturers of firearms when products are operated properly.
- o HB 1196 clarifies the immunity of public entities and their employees.
- o HB 1197 ties punitive damages to actual damages in a one-to-one ratio with 2/3rd paid to injured parties and 1/3rd to the state general fund.
- o HB 1201 limits liability for mental health professionals when they use an accepted standard of care but fail to anticipate a patient's violent behavior.
- o HB 1204 permits exemptions to notice of intent to cancel, nonrenew, change benefits or increase rates. Authorizes the Insurance Commissioner to inspect any rate, underwriting rule, policy form or contract and prohibit those deemed hazardous to the public/policyholders. Also requires claims-made policy forms to be filed on or after 1-1-87 except for public entity self-insurance pools.
- o HB 1206 changes the regulation of investments of assets by domestic insurers based upon model NAIC legislation.
- o HB 1205 limits a homeowner's liability when property is entered illegally.
- o 1193 lengthens notice provisions for midterm cancellations of commercial and medical malpractice policies from 45 or 60 days to 90 days. Requires 90 day notice of a unilateral premium increase or coverage reduction and an explanation for said action. Allows cancellations and coverage deductions only with cause.
- o HB 1358 authorizes the Insurance Commissioner to promulgate rules requiring insurers to file supplemental reports or closed - claim files or both for any line, class or subclass, authorizes permissive public hearings to review rates and investigations of availability affordability problems. Sunsets 7-1-89.

CONNECTICUT

1906 Session Completed

Enacted

Public Act 86-338 accomplishes the following:

- o increases from 30 days to 60 days notice of nonrenewal of commercial and personal liability insurance policies.
- o increases from 30 days to 60 days notice of rate or coverage changes for insured risks paying an annual premium of \$50,000 or less.

- o establishes 8 grounds for cancellation of policies including nonpayment of premiums, substantial loss of reinsurance, material misrepresentations, etc. Cancellations are prohibited unless one or more of these grounds are substantiated.
- o requires insurers to submit data on multi peril, general liability and auto coverage lines which includes information comparing aggregate premiums charged and premiums established through rating mechanisms.

Substitute HB 6134 would accomplish the following civil justice changes:

- o modify joint and several liability.
- o reimpose modified sovereign immunity for municipal governments.
- o allow all judgments (currently limited to medical malpractice) to be reduced by sums awarded through collateral sources.
- o impose a penalty, which could include defense costs, for filing suits in absence of probable cause.
- o impose periodic payments on future economic and noneconomic damages exceeding \$200,000.
- o schedule attorneys contingency fees (a five-tiered approach commencing at 33% of the first \$300,000 and finishing at 10% of any amount exceeding \$1.2 million).
- o Recovery is not barred if the plaintiff's negligence was not greater than the combined negligence of the person or persons against whom recovery is sought. Damages shall be diminished in proportion to the plaintiff's percentage of negligence. A defendant is liable to claimant for only his percentage of fault. Provision is made for reallocation of uncollectible amounts among defendants.
- o Liquor liability
 - (a) Sellers (to intoxicated persons) are liable to the person injured for not more than \$20,000 or not more than an aggregate of \$50,000 to all injured parties. (b) A rebuttable presumption that the seller who sold alcoholic liquor to the intoxicated person is solely liable for any damages payable to the injured person is established.
- o Directors, Officers, Trustees
 - Any person who serves as a director, officer, or trustee of a nonprofit organization qualified as tax-exempt under IRS provisions and who is not compensated for services shall be immune from civil liability for acts or omissions resulting in injury (provided that person is acting in good faith and within the course and scope of his or her official duties).

Previous Action

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

Interim Studies

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

DELAWARE

1986 Session Completed

Enacted

- o SB 533 - limits personal liability of directors of corporations in cases where directors are accused by shareholders of violating their "duty of care."
- o HB 470 requires expanded disclosure of information by property/casualty insurers on a line by line basis for the state of Delaware and as total.
- o HB 444 alters cancellation and nonrenewal notice requirements for commercial, municipal and professional liability policies. Notices must be delivered a minimum of 60 days prior to the effective date of the cancellation or nonrenewal. HB 444 prohibits cancellations or nonrenewals unless one or more of ten reasons (such as premium nonpayment or breach of contractual duties) exists. Suspension of insurer cancellation/nonrenewal authority occurs after the Commissioner has deemed unavailability to be critical.

FLORIDA

1986 Session Completed

Enacted

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

- o It freezes rates for all commercial property and liability coverages in Florida at their May 1, 1986 levels from July 1, 1986 until January 1, 1987;
- o It requires a 40 percent roll-back of insurance premiums applicable to one-fourth of the policy-term premium of all commercial liability policies in Florida, pro-rated for the period that such policies are in effect from October 1, 1986 until January 1, 1987; and
- o It requires that all commercial property and liability insurers file new rates with the department which are based upon the rates that were in effect on January 1, 1987.

During the period from July 1, 1986 until January 1, 1987, the applicable insurers would be prohibited from cancelling or nonrenewing their insureds at a rate greater than 30 percent of their cancellation and nonrenewal rates for the previous 24 months during any 30 day

period. Insurers would be permitted to escape the roll-back provisions to the extent that they could show that the resulting rates would be inadequate or would impair their solvency. Lastly, the rates to be implemented on January 1, 1987 would be based on 1984 rates but would be adjusted upward (or downward) as justified by each insurer to comply with actuarial principles.

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

Interim

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

GEORGIA

1986 Session Completed

Enacted

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

HAWAII

1986 Session and Special Session Completed

Enacted

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

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

- o Provides for payment of valid liens (arises out of claim for payment made from collateral sources for costs and expenses arising out of injury) from special damages recovered.
- o Abolishes joint and several liability with four specific exceptions.
- o Provides standard for determination of loss or impairment of earning capacity.
- o Places a \$375,000 cap on non-economic damages.
- o Establishes a court annexed arbitration program for cases having a probable jury award of \$150,000 or less.
- o Abolishes cause of action for serious emotional distress arising from damage to property or material objects.
- o Appropriates \$100,000 for subsidy payments covering liability insurance premiums of certain obstetricians and gynecologists.
- o Appropriates \$400,000 for the insurance commissioner to carry out purposes of this act and hire additional staff.
- o Appropriates \$200,000 to implement court annexed arbitration program.
- o Provides for closed case reports prior to 1988 and 1989 sessions, evaluating the effects of the act along with recommendations for change or repeal of provisions.
- o Provides for the chief justice to prepare a report on court annexed arbitration prior to 1987 regular session.

IDAHO

1986 Session Completed

Enacted

- o SB 1439 - limits dram shop and social host liability.
- o HB 1469 - places limits on attorney contingency fees.

Legislation Considered - Not Passed

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

ILLINOIS

1986 Session Completed

Enacted

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

- o Joint and several liability. It retains joint liability in cases of medical malpractice, environmental concerns and medical costs. Defendants who are less than 25% at fault for an injury would not be jointly liable for other damages.
- o Collateral sources. Any judgment against a defendant would be reduced by any insurance reimbursements to the plaintiff above \$25,000.
- o Comparative negligence. A plaintiff who is more than 50% responsible for his injury would not be permitted to collect damages in cases of negligence or product liability.
- o Municipal immunity. Grants broad immunity from liability suits to municipalities; exempts present or former public employees from punitive damages for actions arising from official duties; exempts a public entity from liability for "hazardous recreational activities" when warning of the hazard is posted.
- o Requires insurers to provide loss information with notification of cancellation or at request of insured.
- o Requires 90-day notice to the state of termination of any line of insurance in the state.
- o Requires 60-day notice to insureds of cancellation, nonrenewal or premium increase of 30% or more.

Previous Action

- o In December 1985, the Insurance Department launched a market assistance plan.
- o Select Committees in both the House and Senate have examined the affordability/availability issue.

INDIANA

1986 Session Completed

Enacted

- o SB 393 authorizes judges to determine what are frivolous suits and to assess fees for such suits.
- o SB 394 modifies the state's collateral source rule. Juries are to be instructed not to take into account taxes to be paid on potential awards.
- o SB 85, dealing with dram shop, asserts that licensed sellers are not liable for the actions of their customers unless they know customers making purchases are intoxicated.
- o HB 1255 allows the state to administer insurance pools for local governments.

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

IONA

1986 Session Completed

Enacted

- o Increase the risk manager's duties in relation to providing insurance and risk management assistance to local governmental entities and increase the risk manager's authority to self-insure fidelity exposures for state officials.
- o Authorize local governmental entities to enter into alternative financing agreements for insurance, self-insurance, risk sharing or risk pooling, and for the funding of such agreements.
- o Create an Insurance Assistance Act, which sets out requirements for data collection and analysis, authorization for certain insurance assistance programs, provision for the financing of the programs and required insurance rate adjustment reviews.
- o Modify laws relating to the recovery of damages, including:
 - o limiting the liability of the state for financial regulatory activities.
 - o exempting social hosts from liability for the service of alcohol to guests.
 - o restricting the discovery and use of medical malpractice peer review and disciplinary proceedings.
 - o expanding the use of voluntary agreements in medical malpractice cases.
 - o creating a retailer's exemption in products liability actions.
 - o limiting the liability of municipalities for licensing and inspection activities.
 - o limiting the liability of municipal officers and employees for punitive damages.
 - o authorizing the court to stay court actions if past actions by the party have been frivolous.
 - o prohibiting the stating of money damages demanded in original pleadings and filings.
 - o requiring the certification of pleadings and motions, and providing sanctions for the failure to so certify or for actions in violation of the certification requirement.

- o authorizing the use of structured and other nonlump-sum payment methods by the court.
- o creating a state of the art defense in products liability actions.
- o raising the required findings for the award of punitive or exemplary damages, and creating a new system for the award and disbursement of such damages.
- o Establish a Liability and Liability Insurance Study Commission to be comprised of eight legislators, four members of the public or private sector, the Attorney General and the Insurance Commissioner.

Interim

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

KANSAS

1986 Session Completed

Enacted

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

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

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

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

- o SB 382 - allows deductible health care provider liability insurance.
- o SB 400 modifies civil procedures regarding determination of frivolous suits.

Legislation Which Failed

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

Interim

An interim study on liability insurance has been commenced.

KENTUCKY

1986 Session Completed

Enacted

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

Legislation Considered - Not Passed

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

Interim

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

LOUISIANA

1986 Session Completed

Enacted

- Act 18 - Provides that those who sell, serve or furnish alcoholic beverages are generally not civilly liable for damages caused by purchasers and those served.
- Act 111 - Relative to joint self-insurance programs by local governmental subdivisions.
- Act 473 - Relative to the funding and operation of the Department of Insurance, to establish the budget units of the Department, to create a special fund to provide monies for operation of the department.
- Act 499 - Requires that written notice of partial settlement of medical malpractice claims be sent to the attorney general.
- Act 548 - Requires property and casualty insurers to provide additional information in their annual reports.
- Act 641 - Authorizes governmental subdivisions to form, join and participate in interlocal risk management groups.

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

Act 754 - Prohibits midterm cancellation or rewriting of insurance.

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

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

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

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

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

MAINE

1986 Session Completed

Enacted

- o Public Law 671 prohibits midterm cancellations unless cause (such as nonpayment of premiums, fraud, breach of contract, potential insurer insolvency, etc.) can be confirmed. Notice of cancellation must be made 10 days prior to the cancellation. Notice of a nonrenewal must be made 30 days prior to a policy's expiration date. Policyholders can request that the Superintendent of Insurance verify that the insurer has established cause for the nonrenewal.
- o LD 2080 grants immunity to servers unless minors they serve can prove they were negligently served. Servers who are negligent or reckless in serving minors or visibly intoxicated adults could be sued. Per occurrence caps of \$250,000 on awards against alcohol servers are established. These caps exclude medical care and treatment expenses.
- o Public Law 713 authorizes political subdivisions to participate in public self-funded pools.
- o Public Law 804 shortens statute of limitations for suits related to medical and legal professional liability

Legislation Considered - Not Passed

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

Interim

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

MARYLAND

1986 Session Completed

Enacted

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

Interim

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

MASSACHUSETTS

Enacted

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

- o establishes a \$500,000 cap on general noneconomic damages except where plaintiff is substantially impaired or disfigured.
- o schedules attorneys fees (40% of first \$150,000 down to 25% of excess over \$500,000).
- o amends the outside statute of limitations (after date of occurrence which gave rise to an original claim) to 7 years.
- o requires the Insurance Commissioner to set final rates and permits imposition of a surcharge on medical malpractice premiums. The maximum amount of coverage for physicians and hospitals is doubled.
- o a medical malpractice commission shall study the health insurance industry including premiums, reimbursement practices, feasibility of a patient compensation fund, etc.
- o establishes a medical malpractice analysis unit in the Department of Insurance.

MICHIGAN

Enacted

- o HB 4550 - prescribes liability for retail liquor licensees under certain circumstances; requires security for that liability and provides procedures, defenses and remedies.
- o HB 4676 - health facilities with medical staff, including HMO's, shall report to appropriate licensing boards and to the Department of Health any disciplinary action taken against a member of the medical staff and relevant circumstances.
- o HB 5163 - makes uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, when engaged in the exercise or discharge of a governmental function; defines and limits liability; authorizes the purchase of liability insurance; provides for defense of public officers, and their immunity in certain circumstances.
- o HB 5154 - provides for a \$225,000 limitation on non-economic damages in medical malpractice cases, unless one of the following circumstances exist: death; intentional tort; foreign object wrongfully left in body; injury involves reproductive system; discovery of claim was prevented by fraudulent conduct of health care provider; limb or organ was wrongfully removed; loss of bodily function. HB 5154 also:
 - o stipulates that the trier of fact shall itemize damages into economic and non-economic.
 - o provides a cost-of-living escalator in the cap which is tied to the annual increase in the consumer price index.

- o permits a party named as one of multiple defendants in a medical malpractice case to file an affidavit of noninvolvement.
- o requires that plaintiffs and defendants in medical malpractice cases file an affidavit containing a written opinion from a licensed physician, dentist or other appropriate health care provider stating that the claim or defense has merit.
- o allows defendant to recover (contribution) from co-defendants any amount for which they may have been liable.
- o provides for implementation of pre-trial mediation in all medical malpractice claims, regardless of dollar amount of claim.
- o addresses prejudgment and postjudgment interest rates.
- o provides that evidence that expense or loss was paid or is payable by collateral source is admissible after the verdict and before judgment is entered; court will be required to determine the amount of expense which has been paid by collateral source and then reduce that amount by an amount equal to the premiums paid for the benefit by the plaintiff, the plaintiff's family or employer.
- o joint and several liability - the trier of fact shall determine the total amount of damages and the percentage of total fault of all parties regarding each claim as to each plaintiff, defendant and third party defendant. Then the amount shall be reduced by collateral source payments. If a party's share is uncollectible, then a reallocation of the uncollectible amount occurs (a party shall not be required to pay an amount which exceeds its percentage of fault).
- o mandates structured payment provisions if judgment for future damages exceeds \$250,000 gross present cash value; then court enters an order that defendant shall satisfy the entire judgment amount, less cost and attorneys fees, by purchase of an annuity contract; requires itemization of past economic and noneconomic damages and future damages.

MINNESOTA

1986 Session Completed

Enacted

HF 1950 contains the following civil justice system modifications:

- o imposition of a \$400,000 cap on "intangible losses".
- o provision for the automatic reduction from judgments of payments made from collateral sources.
- o prohibition of victims seeking punitive damages in original complaints.

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

SF 2078 accomplishes the following insurance regulation and provision modifications:

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

MISSISSIPPI

1986 Session Completed

Enacted

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

MISSOURI

1986 Session Completed

Enacted

- o SB 663 - caps noneconomic damages awardable in medical malpractice suits at \$350,000. This legislation also requires certain doctors to carry

medical malpractice insurance and adds additional reporting requirements regarding disciplinary actions taken by hospitals against doctors. SB 663 requires submission to court of an affidavit from a licensed health care provider averring that a medical malpractice action is not frivolous.

- o HB 1435 and 1461 - create a "Missouri Public Entity Risk Management Fund" for participating political subdivisions whose contributions will be used to pay insured claims and legal fees for such claims. Coverage for tort claims will cover official actions of employees. A limit of \$800,000 is established for payment for any single occurrence. Contribution by political subdivisions will be determined by the Board in accordance with standard rating procedures. The minimum contribution will be \$1,000.
- o SB 647 - reestablishes sovereign immunity with several exceptions.
- o SB 701 - updates statutory language of the "FAIR Plan", authorizing that plan to assist people in securing basic property insurance in non-urban areas, and to issue its own policies. Raises coverage limit on commercial property at one location to one million dollars.

MONTANA

1986 Special Sessions Completed

Enacted

- o SB 2 - authorizes bond issues for local government self-insurance funds.
- o SJR 1 - authorizes an interim study commission to review public and private sector problems regarding liability insurance.
- o HB 16 - authorizes the Insurance Commissioner to establish a market assistance plan, and, if necessary, a joint underwriting association for provision of liability insurance coverage.
- o SB 22 - revises limits on tort recovery against public entities.
- o Special session legislation caps government liability at \$750,000 per claimant and \$1.5 million per incident. Previously enacted statutes on this same matter were found unconstitutional by Montana's Supreme Court.

Legislation Introduced - Not Passed

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

NEBRASKA

1986 Session Completed

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

NEW HAMPSHIRE

1986 Session Completed

Enacted

HB 513 - will accomplish the following:

- o place a \$875,000 cap on pain and suffering awards;
- o reduce the statute of limitations from six to three years;
- o prohibit policy cancellations unless 60 days notice is given.
- o permit judges to assess costs and attorneys fees from frivolous lawsuits and frivolous defenses.
- o apply liability caps of \$500,000 (per occurrence) and \$150,000 (per person) to municipalities. When municipalities are found over 50% liable, joint and several liability will apply with only several liability applying when municipalities are 50% or less liable.
- o defines "good business practice" for purposes of defense in liquor liability lawsuits. Intoxicated drivers will need to show "gross" negligence in future suits against sellers and servers.
- o requires contingency fee agreements to be in writing with final costs set out at the end of litigation. Attorneys will be required statutorily to offer hourly rate and contingency fee options. Judges will be permitted to review contingency fee costs in all judgments exceeding \$200,000.
- o outlaw punitive damages (existing practice).
- o set out the burden of proof in medical malpractice actions.
- o limit the liability of directors and officers of charitable organizations and societies.

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

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

HB 360 - relates to credits for reinsurance.

Interim

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

NEW JERSEY

Enacted

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

Under Consideration

- o AB 2400 - 2404 have passed the General Assembly proposing the following: structured settlements for awards exceeding \$300,000; a \$500,000 per claimant or \$1 million per occurrence cap on judgments entered against a public entity; immunity for volunteers and public officials; arbitration for all liability claims of \$20,000 or less; rate filings based on New Jersey loss experience; and a graduated cap on "pain and suffering" awards in the private sector. These bills are now before the Senate.
- o Assembly Bills 2357-2365 would apply various tort and regulatory reforms in the area of municipal liability. Besides establishing an excess insurance fund, the bills would modify joint and several liability and provide for structured settlements.
- o The Senate has put forth two packages. Majority Democrats have developed a major package, SB 2312-2323, of insurance reform bills and selected civil justice reform measures. SJR 40 also calls on the federal government to take over regulation of the insurance industry. Minority Republicans have a six-bill package of insurance and civil justice modifications and reforms. Hearings on liability insurance may occur during the summer.
- o S. 1718 would create an excess insurance fund and require all public entities, except the state, to join. All public entities would be assessed premiums and the coverage would be for claims exceeding \$500,000 up to \$20 million. This legislation has passed the Senate and is before the House Insurance Committee.
- o Other Senate legislation seeks to provide indemnification of hazardous waste contractors and modify standards of negligence.
- o SB 346 - now in the Assembly, would grant immunity to boards of trustees of nonprofit corporations carrying out their official duties.

Previous Actions

- o Counties, municipalities and school boards may self-insure or join together in regional insurance pools.
- o The Insurance Commissioner prohibited midterm cancellations and nonrenewals unless notice is given.
- o A market assistance plan aimed at making liability insurance available for municipalities, day care centers, taverns and restaurants has been established.

NEW MEXICO

1986 Session Completed

Enacted

- HB 178 - provides school districts with insurance coverage at a cost savings and clarifies statutes related to the public school insurance authority.
- SB 103 - creates a District Court Arbitration Fund and provides for collection of an arbitration user fee.
- HB 317 - extends the coverage which the risk management division is able to provide to school districts through the public school insurance authority.
- SB 110 - caps attorneys fees for workers compensation cases at 20% of the first \$5,000; 15% of next \$5,000 and 10% of remaining benefits.
- HB 244 - provides for certain limitations on liability for alcoholic liquor sales or service. Establishes caps of \$20,000 for property damage, \$50,000 for injury to or death of one person; \$100,000 for injury to or death of two or more persons for each transaction or occurrence.
- SB 105 - expands the applicability of the self-insurance and risk pooling provisions of the Municipal Code to include other political subdivisions and local public bodies.
- Committee substitute for HB 226 - requires most insurers to submit quarterly financial reports to the superintendent of insurance. Based on these reports, the superintendent is required to compile an annual report for legislators.
- HB 242 - creates a public child contractor liability fund.
- SB 137 - creates a Metropolitan Court Mediation Fund; provides for collection of certain costs to fund mediation programs for certain civil and criminal actions.

Study Groups

- o establishing a legislative liability insurance study committee.

NEW YORK

Enacted

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

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

- o allows recovery of up to \$10,000 in court costs and attorneys fees for frivolous suits and defenses in personal injury, property and wrongful death actions.
- o establishes "gross negligence" as the determinant of liability of directors, trustees, officers of nonprofits.

The same legislation accomplishes the following insurance reforms:

- o creates a flex rating system to replace open, competitive ratemaking. Insurers must file rates to reflect enacted tort reforms within 90 days. The Insurance Department in September, 1986, informed insurers that the net effect of tort reforms would compel reductions ranging from 3% to 20% depending on line of coverage.
- o authorizes the Insurance Department to conduct a selected review of rates for the period 6/85 - 6/86. Mandates that every rate filed since 6-1-86 be reviewed.
- o the flex rating system includes Commissioner - imposed "bands" on rate increases/decreases by line. If a proposed rate increase/decrease falls within the band, rates are filed and used. If the proposed rates are outside the band, rates are filed and subject to approval. Bands can be changed. Commercial, professional and public entity lines are included in flex-rating (not homeowners or automobile).
- o authorizes a discretionary joint underwriting association for troubled commercial, public entity and professional liability lines pursuant to Insurance Department determination of unavailability. Requires establishment of a j.u.a. for public entities by 10-1-86 unless the Department determines that coverage is available.
- o prohibits unwarranted midterm cancellations.
- o requires P/C policies to extend a minimum of one year.
- o prohibits policy cancellations unless warranted (as when there is fraud - nonpayment - material charges, etc.). Lack of reinsurance is not in and of itself a reason to cancel unless solvency is threatened.
- o requires at least 60 days notice to not renew or to affectuate a premium increase exceeding 10%.
- o enables policyholders to secure claims loss history.
- o permits municipalities, school districts and other public entities to form reciprocal insurers.
- o permits certain nonprofits and charitable/religious organizations to collectively purchase P/C coverage.

- o authorizes, through a "sunshine" provision, the Insurance Superintendent to report financial and loss data and codefendants in suits regarding recreational, childcare, dram shop, municipalities, owners, landlords and tenants, etc.
- o expedites access to provision of excess and surplus lines.
- o appropriates \$3 million to enhance the Insurance Department's regulatory authority.
- o A. 10664 and S. 9391A, "toxic tort" legislation (CH. 682, Session Laws 1986) includes the following proposals related to toxic torts and torts generally:
 - o extension of statute of limitations for filing toxic tort actions from 3 years after exposure to 3 years after discovering an injury; with one year revival of claims.
 - o in personal injury actions, joint and several liability is inapplicable for noneconomic losses if the defendant is less than 51% liable (with some exceptions).
 - o authorization of structured settlements when awards exceed \$250,000.
 - o A. 11584 and S. 9470 (CH. 226, Session Laws, 1986) affect medical malpractice as follows:
 - a) allow the Insurance Superintendent to establish medical malpractice rates.
 - b) phase in issuance of claims - made policies.
 - c) require certificates of merit and encourage arbitration in order to discourage frivolous suits.
 - d) enhance examination processes regarding physician misconduct.

NORTH CAROLINA

1986 Regular and Special Session Completed

Enacted

- o SB 873 will require insurers to provide additional data based on North Carolina and/or regional experience, to support rate increase requests.
- o SB 873 restores the Insurance Commissioner's rollback authority on rates found to be excessive. Challenges to rollback decisions can be made and, when filed, rate amounts purported to be in excess will be placed in an escrow account. Refunds would be made with interest (computed at the prime rate plus 3%).

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

- o SB 873 amends rules of civil procedure so that in matters in controversy stemming from all negligent actions where the damages sought exceed \$10,000, pleadings for an unspecified amount over \$10,000 shall be sought.
- o HB 2103 establishes a 1.75% premium tax rate for domestic and foreign insurers, said rate to sunset 1-1-88.
- o Authorized the Insurance Commissioner, on a standby basis, to establish joint underwriting associations.
- o Authorized the Insurance Commissioner to extend the state's FAIR plan to all areas of the state.
- o Called for a referendum on a state radioactive repository site act.

OHIO

Enacted

- o HB 875 permits political subdivisions to participate in joint liability insurance pooling arrangements.
- o SB 366 grants immunity from civil action damages with specific conditional exceptions, for volunteers of nonprofit or charitable associations. Immunity relates to liability arising from civil actions for injury, death or loss to persons or property.

Under Consideration

- o SB 330 has been assigned to a conference committee, conferees have been designated, and an informal review and discussion process will commence in the latter part of September. SB 330 propose the following insurance reforms:
 - o requiring advance notice of policy nonrenewals;
 - o authorizing the establishment of joint underwriting associations;
 - o prohibiting mid-term policy cancellations;
 - o permitting banks to invest in the reinsurance market;
 - o formalizing mechanisms for existing market assistance plans; and
 - o expanding the Insurance Department's powers to include subpoena of insurer records and standby authority for prior approval of rates.
- o SB 330 proposes the following civil justice reforms:
 - o deducting benefits and/or payments from collateral sources from awards;
 - o permitting structured settlements when awards exceed \$100,000;

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

OKLAHOMA

1986 Session Completed

Enacted

SB 488 accomplishes the following insurance regulation changes:

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

SB 488 accomplishes the following civil justice system changes:

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

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

Interim

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

OREGON

Not In Session in 1986

Interim

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

PENNSYLVANIA

Enacted

- o HB 1391 provides for 30 day notice of cancellation and 60 day notice of premium increase.
- o HB 1625 provides for immunity for referees.

Under Consideration

- o Senate Bills 1392-95 have been introduced. Collectively, they propose to accomplish the following:
 - 1) authorize establishment of a joint underwriting association for all lines of unavailable liability coverage.
 - 2) require 60 days notice of insurance premium rate increases.
 - 3) require disclosure of insurance company loss experience within the state.
 - 4) establish a central risk management agency - provide advice to local governments.
 - 5) establish a joint self-insurance fund for municipalities and authorize cities to join.
- o SB 1513 proposes major medical malpractice modifications.
- o The House has completed a comprehensive hearing process, begun last September, which has looked at key problems, major causes and options to resolve the crisis. Major tort and product liability reform legislation, HB 2425 and 2426, are in committee. The legislature reconvenes in September.

RHODE ISLAND

1986 Session Completed

Enacted

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

also establishes a joint underwriting association for the provision of medical malpractice coverage.

SOUTH CAROLINA

1986 Session Completed

Enacted

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

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

Legislation Considered - Not Passed

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

Previous Action

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

SOUTH DAKOTA

1986 Session Completed

Enacted

- o SB 280 which will require pre-discovery, fact-finding hearings before a judge to prove, by clear and convincing evidence, that there was willful and malicious conduct in order to file for punitive damages.
- o SB 281 authorizes structured settlements for awards exceeding \$100,000.
- o SB 282 will cap medical malpractice awards at \$1 million. (Includes all recoverable damages).
- o SB 216 permits establishment of self insurance pools for public entities for purposes of securing liability coverage. This can occur only if a master insurance contract is not purchased.
- o HB 1106 revises provisions relating to property insurance policy nonrenewal notice. Increases notice time from 20 days to 30 days, effective 7-1-88 and from 20 days to 45 days for the period 7-1-86 to 6-30-88.

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

Legislation Considered - Not Passed

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

Interim

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

TENNESSEE

1986 Session Completed

Enacted

- o HB 1582 (Public Chapter No. 656) will prohibit cancellation of or failure to nonrenew commercial risk insurance policies with some exceptions.
- o Immunity from suit for directors of nonprofit organizations (exempt from federal taxation), of governing bodies of electrical cooperatives and electrical membership corporations is authorized in HB 1940.
- o Regarding dram shop, HB 1199 prohibits any judge or jury from pronouncing any damages against an alcohol seller unless it is ascertained that the sale of intoxicating beverages was the proximate cause of subsequent injury or death.

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

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

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

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

Interim

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

TEXAS

Not In Regular Session in 1986

Interim

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

UTAH

1986 Session Completed

Enacted

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

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

Legislation Considered - Not Passed

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

Interim

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

VERMONT

1986 Session Completed

Enacted

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

Legislation Introduced - Not Passed

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

Prior Action

A market assistance plan was established in January.

VIRGINIA

1986 Session Completed

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

WASHINGTON

1986 Session Completed

Enacted

SB 4630 - accomplishes the following:

- o Caps, noneconomic damages per a statutory formula. The estimated cap range is \$117,000 - \$493,000. The formula is $.43 \times$ average annual wage (currently \$18,029) $\times$ plaintiff's life expectancy (no less than 15 years; use Insurance Commissioner's mortality table).
 - o Abolishes claims involving joint and several liability except for the following:
 - a) hazardous waste and solid waste disposal sites;
 - b) business torts; and
 - c) manufacturers of generic products.
 - o Accelerates the statute of limitations for contractors.
 - o Authorizes structured settlements for all judgments exceeding \$100,000.
 - o Establishes a voluntary market assistance plan requiring participation of 25 admitted or non-admitted companies.
- HR 2080 and 2083 - respectively authorize the establishment of a joint underwriting association and self-insurance mechanism for provision of liability coverage for day care providers.
- SB 3636 - enables the Insurance Commissioner's office to be funded from dedicated rather than General Revenue sources.
- HB 1972 - authorizes local governments to self-insure.
- SB 4541 - requires prior notice to policyholders of cancellation and further requires 20 days prior notice of rate and form changes before policy renewal anniversary dates.

Legislation Considered - Not Passed

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

WEST VIRGINIA

1986 Session and Special Session Completed

Enacted

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

- o SB 714 prohibited insurers from cancelling or nonrenewing health care provider policies unless insurers could prove that the risk of loss had increased or that they could not back up their own risk with reinsurance. HB 149 removes most causal and durational restrictions on nonrenewals.
- o SB 714 required expanded disclosure of claims, investments, judicial dispositions, etc. related to West Virginia. The legislation further required the Insurance Commissioner to conduct public hearings whenever rates were expected to increase 10% or more with verification of past loss experience in medical malpractice settlements and judgments required. HB 149 reduced reporting requirements to profit and loss, reserve and surplus data on an aggregate rather than company basis. Public hearings on rate increases exceeding 10% must be held within 60 days of the rate filing.
- o HB 149 eliminates joint and several liability for individual defendants who are 25% or less responsible.
- o Other special session legislation, SB 3, authorizes the following regarding the state's political subdivisions:
 - o individual or collective self-insurance; and
 - o purchase of liability insurance through the State Board of Insurance and Risk Management.
- o SB 3 also limits noneconomic damages in suits involving political subdivisions to \$500,000, deploys the 25% rule (see HB 149 above) regarding joint and several liability and lays out standards for liability immunity of political subdivision employees.

Interim Studies

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

WISCONSIN

1986 Regular Session and Special Session Completed

Enacted

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

- o \$1 million cap on noneconomic damages;
- o sliding scale for attorney contingency fees (from 1/3 of first \$1 million if proving negligence, to 25% of damages if defendant admits negligence, to 20% of damages exceeding \$1 million).
- o elimination of pretrial screening panels to be replaced with a voluntary, non-binding mediation process.

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

- o authorizes the establishment of risk sharing pools for liability insurance coverage for public and private sector entities. Risk sharing pools cannot be authorized to produce coverage for risks the Insurance Commissioner determines to be "uninsurable".
- o increases minimum capital and surplus requirements.
- o increases, from 30 days to 60 days, the notice period for mid-term cancellations.

Interim

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

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

WYOMING

1986 Session Completed

Enacted

- o HB 12 will modify the standards of care used to determine medical malpractice.
- o HB 13 will remove individuals legally supplying alcoholic beverages from liability for resultant damages caused by individuals consuming the alcoholic beverages.
- o HB 14 will authorize courts to determine frivolous suits. Plaintiffs in frivolous suits could be made liable for payment of reasonable court expenses and attorneys fees.
- o HB 15 provides for an affidavit of non-involvement as a summary means to obtain early dismissal of suits against defendants who are clearly not involved in the occurrence giving rise to the tort claim.
- o HB 38 creates statutory definitions of unfair insurance claims practices.
- o HB 39 grants any officers, commissioners or board members of government and nonprofit entities immunity from liability for any action, omission or inaction of the respective government or corporate body.
- o HB 40 establishes pretrial screening panels for medical malpractice suits.
- o HB 44 modifies the state's sovereign immunity and liability limits.

- o HB 59 makes certain entities not liable for injuries incurred at amateur rodeos unless there is willful neglect.
- o SF 17 repeals the doctrine of joint liability.
- o SF 21 and SF 26 respectively create state and local government self-insurance programs and establish pools for state and local government entities.
- o SF 69 prohibits midterm cancellations with some exceptions, such as nonpayment of premiums. Authorized cancellations must be preceded by a 10-45 day notice to policyholders. A 45-day notice with statement of reasons is required for nonrenewals.

Legislation Considered - Not Passed

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

ATTACHMENT B
OPTIONAL INSURANCE MECHANISMS

A) OPTIONAL INSURANCE MECHANISMS

I. SELF-INSURE AND/OR GROUP PURCHASE

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

II. JOINT UNDERWRITING ASSOCIATIONS

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

III. MARKET ASSISTANCE PLANS

Majority of States

IV. CAPATIVE LICENSURE/OPERATION

HAWAII

ATTACHMENT C
INSURANCE REGULATION REFORM

B) INSURANCE REGULATION REFORM

I. EXPANSION OF DATA SUBMITTED BY INSURERS

ALABAMA
ARIZONA
COLORADO
CONNECTICUT
GEORGIA
WEST VIRGINIA

II. PERMIT POLICY CANCELLATION ONLY WITH CAUSE

ARIZONA
CONNECTICUT
KANSAS
TENNESSEE
MAINE
WEST VIRGINIA
WYOMING

III. MANDATORY NOTICE OF NONRENEWALS/CANCELLATION/RATE INCREASES

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

IV. ESTIMATE TORT REFORM SAVINGS

WASHINGTON

D) FURTHER/SPECIAL LEGISLATIVE ACTION

1986 Interim Studies

ARKANSAS
CONNECTICUT
IDAHO
KANSAS
KENTUCKY
MAINE
MONTANA
NEBRASKA
NEW HAMPSHIRE
NEW MEXICO
OREGON
TEXAS
VIRGINIA
WISCONSIN

1986 Special Sessions

MONTANA	(concluded)
NORTH CAROLINA	(concluded)
WEST VIRGINIA	(concluded)
WISCONSIN	(May 20-?)

ATTACHMENT D
LEGISLATION SUBJECT SUMMARY

11/6/30/86
HILP200R

LEGISLATION SUBJECT SUMMARY

R01-33F-3045

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

bills

NOOC

NOTE

06/30/86
BILP200R

LEGISLATION SUBJECT SUMMARY

NOI-33F-3045

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
INSURANCE	SB 295	MENTAL HEALTH DISABILITY INSURANCE	FAIKS		(H) RLS
	SB 340	SURPLUS LINES INSURANCE BROKERS	RULES	BY REQUEST	(S) L&C
	SB 365	BROKER AS INSURER'S AGENT FOR PREMIUMS	RULES	THE GOVERNOR	(H) L&C
	SB 366	CANCELLATION OF INSURANCE POLICIES	RULES	THE GOVERNOR	(S) L&C
	SB 379	PREMIUM TAX DOMESTIC AND FOREIGN INSURELMS	RULES	THE GOVERNOR	CHAPTER 118 SIA 86
	SB 380	MINIMUM INSURANCE FOR COMMERCIAL VEHICLES	RULES	THE GOVERNOR	(S) L&C
	SB 381	JOINT INSURANCE ARRANGEMENTS	JOSEPHSON		(S) FIN
	SB 440	USE OF BLOOD TESTS BY INSURERS	DEVRIES		(S) L&C
	SA 442	MARINE INSURANCE; RECIPROCAL INSURERS	ELIASON		CHAPTER 48 SIA 86
	SB 443	SURPLUS LINES INS. BROKERS MONTHLY REPORTS	MALFORD		(S) JUD
	SB 445	MISCELLANEOUS CHANGES IN INSURANCE LAWS	FISCHER, V		(S) L&C
	SB 455	REDUCED AUTO INS. RATES/PERSONS OVER 55	LABOR&COMMERCE		(S) L&C
	SCR 20	AVAILABILITY OF MARINE INSURANCE	ZHAROFF		(S) FIN
	SCR 35	URGING NATIONAL REGULATION OF INSURANCE	FISCHER, V		(S) RLS
BJR 45	FISHERMEN'S INJURIES COMPENSATION	LABOR&COMMERCE		LEGIS RESOLVE 49	
INTEREST	HB 20	INTEREST ON PUBLIC UTILITY DEPOSITS	GOLL		CHAPTER 50 SIA 86
	HB 51	INTEREST ON ESCROW ACCTS FOR MORTGAGE LOANS	DUNCAN		(H) FIN
	HB 109	SETTING INTEREST RATES FOR STATE LOANS	RULES	THE GOVERNOR	(H) LOAN
	HB 161	STUDENT LOANS; ELIGIBILITY/INTEREST RATES	BINKLEY		CHAPTER 65 SIA 86
	HB 217	INTEREST RATES FOR VARIOUS LOANS/CONTRACTS	DUNCAN		AWAITING CONC/RECLD
	HB 370	INTEREST RATE ON STATE LOAN PROGRAMS	ADAMS		(H) LOAN
	HB 459	USE OF INTEREST EARNED ON GRANT MONEY	MARTIN		(H) FIN
	HB 501	AK POWER AUTHORITY; REPORTS, FUND INTEREST	RULES	THE GOVERNOR	(H) LOAN
	HB 557	INTEREST ON ATTORNEY TRUST ACCOUNTS	DUNCAN		(H) RIS
	HB 622	INTEREST RATE ON DELINQUENT TAXES	SIGNALBERI		(H) JUD
	SB 6	INTEREST ON ESCROW ACCTS FOR MORTGAGE LOANS	RAY		(S) L&C
	SB 216	INTEREST RATE ON AGRICULTURAL LOANS	COGHILL		(S) RES
	SB 281	INTEREST RATE ON STATE LOAN PROGRAMS	MALFORD		(H) LOAN
	INTERNATIONAL RELATI	HB 465	STATE FISCAL INVOLVEMENT IN SOUTH AFRICA	CLOCKSON	
HB 633		ALASKA EXPORT DEVELOPMENT AUTHORITY	MARTIN		(H) L&C
HCR 7		JOINT SPECIAL COMMITTEE ON FOREIGN TRADE	RULES		LEGIS RESOLVE 5
HCR 10		SUPPORTING INTERNATIONAL YOUTH YEAR	CLOCKSON		LEGIS RESOLVE 13
HCR 17		END STATE INVESTMENTS RELATED TO S. AFRICA	DUNCAN		(H) SA
HJR 13		SISTER STATE RELATION WITH NEILONGJIANG	RULES	THE GOVERNOR	LEGIS RESOLVE 2
HJR 15		EXPORT OF ALASKA OIL	MARTIN		(H) O&G
HJR 23		RETENTION OF WEST COAST U.S. CUSTOMS OFFICE	MARTIN		LEGIS RESOLVE 14
HJR 37		AMERICANIZATION OF ALASKA'S FISHERIES	GOLL		(H) RES
HJR 39		EXPORT OF ALASKA OIL	OIL AND GAS		LEGIS RESOLVE 25
HJR 43		HIGH SEAS SALMON INTERCEPTION	GOLL		LEGIS RESOLVE 24
HJR 52		URGING NUCLEAR-FREE SUBARCTIC AND ARCTIC	KOPONEN		RETURN TO (H) RIS
HJR 53		US/USSR BOUNDARY DISPUTE IN BEIKING SEA	JENKINS		LEGIS RESOLVE 37
HJR 55		PROMOTING SOUTHEAST INTERTIE WITH CANADA	GRUSSENDORF		(H) RLS
HJR 56		U.S. SENATE CONSENT TO GENOCIDE CONVENTION	GRUENBERG		(H) HESS
HJR 60		INTERNATIONAL YEAR OF PEACE	MILLER, MM		LEGIS RESOLVE 55
HJR 65		FOREIGN MARKETING OF PINK SALMON PRODUCTS	HEPRMANN		(S) RLS
HJR 68		HIGH SEAS INTERCEPTION OF SALMON	RULES	BY REQUEST	(H) RLS
HJR 72		AK, YUKON & N.W. TERR. LEG./JOINT MEETING	C&RA		LEGIS RESOLVE 47
HJR 74		FRIENDSHIP WITH NEILONGJIANG PROVINCE	RULES	THE GOVERNOR	LEGIS RESOLVE 48
HR 8		SISTER STATE RELATIONSHIP WITH TAIWAN	RINGSTAD		HOUSE RESOLVE 5
SB 59		PACIFIC RIM FELLOWSHIP PROGRAM	RUIFS	THE GOVERNOR	(S) FIN
SB 328		STATE FISCAL INVOLVEMENT IN SOUTH AFRICA	FISCHER, V		(S) HESS
SCR 14		END STATE INVESTMENTS RELATED TO SO. AFRICA	FISCHER, V		(S) SA
SJR 7		COOPERATION BETWEEN AK & FOREIGN NATIONS	COGHILL		(S) JUD

06/30/86
BILP200H

LEGISLATION SUBJECT SUMMARY

R01-331-1000

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTED BY	CURRENT STATUS
TEACHERS	HB 234	RETIREMENT CREDIT FOR MILITARY SERVICE	MFSS		(H) SA
	HB 289	TENURE & REDUCTIONS-IN-FORCE BY SCHOOL BDS	TULLER		(H) HESS
	HB 674	CERTIFICATION REQUIREMENTS FOR TEACHERS	NAVARKH		(H) HESS
	HR 10	TEACHERS CONTRACT NEGOTIATION	FURNACE		(H) HESS
	SB 85	TEACHER TRAINING ABOUT ABUSE OF MINORS	DEVRIES		(S) SA
	SB 121	CHANGES IN VARIOUS RETIREMENT LAWS	RULES	THE GOVERNOR	(S) FIN
	SB 145	POST-RETIREMENT PENSION ADJUSTMENTS	FISCHER.V		(S) SA
	SB 192	CREDITS WAIVED ON TEACHERS' SICK LEAVE BANK	ELIASON		CHAPTER 21 SLA 86
	SB 217	NEGOTIATING UNITS FOR PRINCIPAL-TEACHERS	SACKETT		(H) HESS
	SB 230	TENURE & REDUCTIONS-IN-FORCE BY SCHOOL BDS	FERGUSON		(S) HESS
	SB 266	CERTAIN TEACHERS PLACED IN EXEMPT SERVICE	RULES	THE GOVERNOR	CHAPTER 50 SLA 85
	SB 385	LIMITING CERTAIN RETIREMENT CREDITS	KERTTULA		(S) HESS
	SB 420	ENDS TEACHER OUTSIDE SERVICE CREDIT	FISCHER.P		(S) HESS
	SJR 4	ALASKAN TEACHER TRAVELING ON SPACE SHUTTLE	FERGUSON		(S) HESS
TOBACCO	HB 249	CIGARETTE EXCISE TAX; HEALTH PROGRAMS	ADAMS		(H) HESS
	SB 94	CIGARETTE EXCISE TAX; HEALTH PROGRAMS	FISCHER.V		CHAPTER 24 SLA 85
TORTS	HE 97	GOVT LIABILITY; HAZARDOUS REC ACTIVITIES	DUNCAN		(H) JUD
	HB 368	UNIFORM COMPARATIVE FAULT ACT	GRUENBERG		(H) JUD
	HB 418	LIABILITY FOR EMERGENCY MEDICAL CARE	WARRON		CHAPTER 122 SLA 86
	HB 481	VERDICTS/DAMAGES/LIABILITY IN CIVIL ACTIONS	RIEGER		(H) L&C
	HB 532	LIMITATIONS ON CIVIL LIABILITY	COTTON		(H) JUD
	HB 640	TRESPASS AND USE OF LAND	STURLEY	BY REQUEST	(H) RES
	SCR 65	SUSPENDING UNIFORM RULES - SB 377	RULES		LEGIS RESOLVE 58
	SB 307	HAZARDOUS SEWAGE TREATMENT FACILITIES	ELIASON		(S) RES
	SB 377	CIVIL LIABILITY/TORT REFORM	KELLY		CHAPTER 139 SLA 86
	SB 382	LIMITING CIVIL ACTIONS	KERTTULA		(S) L&C
	SB 392	ANNUITY CONTRACTS FOR PERIODIC PAYMENTS	JOSEPHSON		(S) L&C
TOURISM	SB 445	CAP ON AWARDS, ATTY FEES; PERIODIC PAYMENTS	FISCHER.V		(S) L&C
	SB 451	COMPARATIVE FAULT AND SEVERAL LIABILITY	HALFORD		(S) L&C
	HJR 20	TOURISM - INTERNATIONAL AIRLINE TRAVELERS	RIEGER		LEGIS RESOLVE 15
TRADE PRACTICES	HB 125	CONSUMER PROTECTION ACT EXTENDED TO BUSINESSES	RULES	THE GOVERNOR	(S) JUD
	HB 138	REGULATING SALE OF RESIDENTIAL TIME-SHARES	RULES	THE GOVERNOR	(H) L&C
	HB 315	MANDATORY PRICE LABELING & UNIT PRICING	DAVIS		(H) L&C
	HB 517	ARTISTS AND WORKS OF ART	GRUENBERG		(S) RLS
	HB 544	CORPORATE & BUSINESS NAMES; INJUNCTIONS	PHILLIPS		(S) FIN
	HB 551	COMPETITION IN MOTION PICTURES DISTRIBUTION	SHULTZ		(H) JUD
	SB 138	ALCOHOLIC DRINK DISCOUNTS AND CONTESTS	FISCHER.V		CHAPTER 68 SLA 86
	SB 363	COMPETITION IN MOTION PICTURES DISTRIBUTION	JUDICIARY		(S) L&C
	SB 416	LIMITED WARRANTIES FOR USED MOTOR VEHICLES	JOSEPHSON		(S) TRSP
	HB 111	LOCAL SERVICE ROADS AND TRAILS	RULES	THE GOVERNOR	CHAPTER 5 SLA 86
TRAILS	HB 291	APPROP: LOCAL SERVICE ROADS AND TRAILS	TRANSPORTATION		(H) FIN
	SCR 4	STATEWIDE TRAILS DEVELOPMENT PLAN	FISCHER.V		(S) FIN
	SJR 10	ROADS/TRAILS; ANILCA CONSERVATION UNITS	COCHILL		(H) FIN
TRANSPORTATION	HR 24	REGIONAL ORGANIZATION OF DOT/PT	CATO		(H) TRSP
	HB 55	WARNING SIGNS/TALES FOR INTOXICATED PERSONS	COLLINS		(S) RLS
	HB 60	APPROP: FY86 OPERATING BUDGET/LOAN PROGRAMS	RULES	THE GOVERNOR	CHAPTER 98 SLA 85
	HB 133	REGULATING SAFETY OF MOTOR/AIR CARRIERS	RULES	THE GOVERNOR	CHAPTER 104 SLA 85
	HB 224	MANDATORY SEAT BELTS FOR ALL CAR OCCUPANTS	MILLER.MM		FAILED (H) ON HILLON
	HB 258	REDUCING AIRLINE FARES	C&RA		(H) C&RA

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

Effective Date: September 7, 1986

- Chapter 134 **STATE GUARANTY OF BONDS FOR VETERANS LOANS**
Provides that the state will guarantee revenue bonds of the Alaska Housing Finance Corporation, the proceeds of which are to be used for residential mortgages for certain veterans. Requires the question of the state guaranty of the bonds to be submitted to the voters. Authorizes the corporation to issue not more than the principal amount of \$600,000,000 of these bonds if the question is approved. (HB 533)

Effective Date: June 10, 1986

- Chapter 135 **ALASKA WATER USE ACT**
Makes miscellaneous changes in the Alaska Water Use Act (AS 46.15), relating to permits, appropriations of water, administrative and judicial adjudications, options of the Commissioner of Natural Resources in litigation involving water rights, federal reserved water rights, enforcement, and the data collection authority of the commissioner. (HCS CSSB 150(Res))

Effective Date: June 10, 1986

- Chapter 136 **INSURANCE FOR SCHOOLS AND MUNICIPALITIES**
Allows municipalities, school districts, and REAA's to join together to buy insurance coverage or to group self-insure. Does not apply to certain types of insurance. Specifies certain procedures and financial requirements for these joint insurance arrangements. (SCS CSSH 506(Jud))

Effective Date: June 10, 1986

- Chapter 137 **BARBERS, HAIRDRESSERS, AND COSMETOLOGISTS**
Extends the termination date of the Board of Barbers and Hairdressers to June 30, 1989, and makes various changes in the licensing laws for barbers, hairdressers, and cosmetologists. Requires the board to establish instructors licensing requirements. Increases the number of hours an apprentice in barbering must complete. Prohibits practitioners from practicing outside of a licensed shop or school except in certain limited cases. (SCS CSHB 305(L&C) am S)

Effective Date: June 10, 1986

Chapter 138

FINANCIAL ADMINISTRATION - PROGRAM RECEIPTS

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

(SCS CSHB 696(Fin) am S)

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

Chapter 139

TORT REFORM

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

Effective Date: June 11, 1986

Chapter 140

ADOPTION

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

Y9 N29 A2
Y25 N15
UNAN CONSENT
READING UNAN CONSENT
E CSHB 518(C&RA)AM

E AS PASSAGE
F RECONSIDERATION
4 THIRD READING
JR AM 4 Y23 N16 A1
Y18 N22
RATION Y34 N6
AS PASSAGE

- REFERRAL(S)

AN EFFECTIVE DATE.

GOVERNOR

- REFERRAL(S)
AL LETTER

SDP 2NR
TITLE SDP 2NR

VIDING FOR AN

OVERNOR

REFERRAL(S)
LETTER

PL 77

P 3NR

101

P 2NR

104

7NR

124

9/86

CONSENT
ING UNAN CONSENT

PAS

04/29/86	(H)	2493	TRANSMITTED TO (S)
04/30/86	(S)	2533	READ THE FIRST TIME - REM
04/30/86	(S)	2533	HESS REFERRAL WAIVED
05/12/86	(S)	2673	FIN RPT SCS 3DP 2DNP RULES

HB 521

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

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

CURRENT STATUS: (H) FIN

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

HB 522
CSHB 522 JUD

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

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

CURRENT STATUS: (S) RLS

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

now -> HB 71

HB 523

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

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

ATTACHMENT E

ALASKA STATUTE 21.88.010-900

- (1) AS 21.03
- (2) AS 21.06
- (3) AS 21.09, except AS 21.09.090
- (4) AS 21.18.010
- (5) AS 21.18.030
- (6) AS 21.18.040
- (7) AS 21.18.120
- (8) AS 21.21.321
- (9) AS 21.36
- (10) AS 21.69.400
- (11) AS 21.69.630
- (12) AS 21.69.600, 21.69.630, and 21.69.630
- (13) AS 21.78
- (14) AS 21.90
- (15) AS 21.42.345 and 21.42.355
- (16) AS 21.89.040
- (17) AS 21.89.090. (§ 1 ch 130 SLA 1986; am § 1 ch 92 SLA 1974; am § 2 ch 95 SLA 1975; am § 2 ch 84 SLA 1976; am § 24 ch 40 SLA 1981; am § 3 ch 45 SLA 1981)

Effect of amendments. — The first 1981 amendment added "and AS paragraph (17)." The second 1981 amendment added "and AS paragraph (17)." 21.42.355" in paragraph (15).

Sec. 21.87.350. Existing certificates of authority. A health care service contractor registered to do business in this state on July 1, 1986, is entitled to be registered under this chapter, whether or not it meets the requirements of this chapter. (§ 1 ch 130 SLA 1986)

Chapter 88. Health Care Providers Insurance.

Article

1. Purpose (§ 21.88.010)
2. Medical Indemnity Corporation of Alaska (§§ 21.88.020 — 21.88.030)
3. Loan Fund (§ 21.88.030)
4. General Provisions (§ 21.88.090)

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

Article 1. Purpose.

Section

10. Purpose of this chapter

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

NOTES TO DECISIONS

Chapter 48, SLA 1976, enacted in violation of Alas. Const., art. II, § 14. — When the free conference committee recommended adoption of a version of ch. 102, SLA 1976 (which, inter alia, enacted AS 21.88), that differed in many respects from the version originally passed by the house; the free conference committee's bill was passed by the senate by a recorded vote; but in the house there was no roll call or recorded vote and the free conference committee bill was passed there by a simultaneous voice vote, this voice vote constituted "final passage" of ch. 102, SLA 1976, and thus violated the recorded vote requirement of Alas. Const., art. II, § 14. *Phumley v. George E. Hale, M.D., Inc.*, Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017, 504 P.2d 497 (1976)).

But this holding is to be applied prospectively. — Although the supreme court held that ch. 102, SLA 1976 (which, inter alia, enacted AS 21.88), was enacted in violation of the recorded vote requirement of Alas. Const., art. II, § 14, the supreme court held that its holding in this case should be applied prospectively in light of its conclusions that its decision was one of first impression, that substantial reliance had followed from the legislature's alternative interpretation of law, that undue hardship would have resulted from retroactive application of its holding, and that the rationale of the holding did not compel retroactivity. *Phumley v. George E. Hale, M.D., Inc.*, Sup. Ct. Op. No. 1847 (File Nos. 4014, 4017, 504 P.2d 497 (1976)).

Article 2. Medical Indemnity Corporation of Alaska.

Section

20. Corporation created
30. Corporation board of governors
40. Corporation plan of operation
50. Powers and duties of the corporation
55. Termination
60. Premium tax

Section

70. Statistic
80. Rates
90. Payment of premiums; cancellation of insurance
95. Transfer of corporate assets and liabilities

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

Sec. 21.88.030. Corporation board of governors. (a) The corporation shall exercise its powers through a board of governors which is

appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 21.00.040. Corporation plan of operation. (a) Within 30 days after May 29, 1976, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair and reasonable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in AS 21.00.050 shall be performed;

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

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

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

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

(6) establish the procedures for issuing contracts of insurance as provided in AS 21.00.050 and for the determination of rates;

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

Sec. 21.00.050. Powers and duties of the corporation. (a) The corporation shall

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

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

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

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 — 21.09.200, 21.09.250, 21.09.280, AS 21.12.030(b)-(e), AS 21.18, AS 21.21, AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

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

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

(b) The corporation may

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "the limits of liability for policies issued by the corporation shall be approved by the director" for "the minimum limit of liability issued to physicians shall be \$300,000 per occurrence and \$600,000 aggregate liability per year, and the minimum limit of liability provided in contracts issued to hospitals shall be \$300,000 per occurrence and an annual aggregate liability of

\$1,000,000 minimum plus an additional \$20,000 per bed for each occupied bed over 66" near the middle of paragraph (1). The amendment, in paragraph (5) (now (6)) of subsection (a), substituted "an applicant for insurance" for "a physician", "an applicant" for "a physician", and "applicant" for "physician"; and repealed former paragraph (10) of subsection (b) (since deleted).

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

Sec. 21.88.055. Termination. (a) If at any time the corporation posts written premiums for two consecutive years of less than 35 per cent of all premiums written in Alaska for physicians' medical malpractice insurance or posts written premiums for one calendar year of less than 20 per cent of all premiums written in Alaska for physicians'

medical malpractice, the director may hold a public hearing in accordance with AS 21.06.180 — 21.06.230 to determine whether the business of the corporation should be terminated.

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

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

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

- (1) the level of expected premiums and losses for continued operation;
- (2) the requirement for state funds to support continued operation;
- (3) the availability of alternative markets for coverage to a substantial majority of physicians and hospitals in the state;
- (4) the costs of continued operation of the corporation;
- (5) the impact that the continued operation of the corporation will have on rates charged for coverage by the corporation or by alternative markets; or
- (6) the expected number of physicians or hospitals who would participate if the operations were continued.

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

Sec. 21.88.080. Premium tax. (a) The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

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

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

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

- (1) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;
- (2) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which is actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;
- (3) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;
- (4) rates may not be unfairly discriminatory;
- (5) rates shall be adjusted annually;
- (6) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

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

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

(9) individual risk underwriting factors shall be considered;

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

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

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

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

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

Reviser's notes. — In 1984, former paragraphs (1), (3), and (14), repealed in 1978, were deleted and the remaining paragraphs were renumbered accordingly.

Effect of amendments. — The 1980

amendment substituted "insured" for "physician's" near the middle of paragraph (15) (now (13)).

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

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

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

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

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

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

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

(A) to assume the obligations;

(B) that, if at any time the company writes less than the premium levels provided in AS 21.88.065(a), the director may determine that the loan provisions shall be modified to provide a scheduled amortization repayment of the principal over a period not to exceed 10 years and at an interest rate of four points above the federal discount rate, as that rate is adjusted from time to time; and

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

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

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

(b) If and while the company to which the assets and liabilities of the corporation are transferred in the manner provided in (a) of this section continues to write premiums in excess of the levels provided in AS 21.08.055, it shall enjoy the benefit of the following provisions:

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

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

Secs. 21.08.110 — 21.08.180. *Joint Underwriting Association.*
(Repealed, § 40 ch 177 SLA 1978.)

Article 2. Loan Fund.

Section

210. Fund established

Sec. 21.08.210. Fund established. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

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

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

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

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

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

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

Article 4. General Provisions.

Section

900. Definitions

Sec. 21.08.900. Definitions. In this chapter

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

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

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

(4) "covered claim" means

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

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

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

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

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

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

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

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

- (10) "hospital" means an institution licensed under AS 18.20;
- (11) "nurse" means a person licensed under AS 08.68;
- (12) "optometrist" means a person licensed under AS 08.72;
- (13) "pharmacist" means a person licensed under AS 08.80;
- (14) "physical therapist" means a person registered under AS 08.84;
- (15) "physician" means a person licensed under AS 08.64;
- (16) "psychologist" and "psychological associate" means a person licensed under AS 08.88. (§ 41 ch 162 SLA 1976; am §§ 19, 20, 40 ch 177 SLA 1978; am § 6 ch 46 SLA 1982)

Revisor's notes. — Reorganized in 1984 to alphabetize the defined terms.
Effect of amendments. — The 1982 amendment deleted "during the same period of continuous coverage" following "delivery of health care services" in paragraph (17)(A) (now (4)(A)).

Chapter 89. Miscellaneous Provisions.

Section

- 18. Settlements
- 28. Required motor vehicle coverage
- 30. Payment
- 48. Eye care under health and accident insurance

Section

- 58. Arson information
- 68. Medicare supplemental insurance

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

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

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

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

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

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

(e) The coverage required under (c) and (d) of this section may be waived in writing by the insured in whole or in part. After selection of the limits by the insured or the exercise of the option to waive the coverage in whole or in part, the insurer is not required to notify any policy holder in any renewal, supplemental or replacement policy, as to the availability of the coverage or optional limits, and the waived coverage may not be included in any renewal, supplemental or replacement policy. The insured may, at any time, make a written request for additional coverage or coverage more extensive than that provided on a prior policy. (§ 1 ch 105 SLA 1966; am §§ 2, 3 ch 70 SLA 1984)

Revisor's notes. — Subsections (a), (c) and (d) of this section are amended effective January 1, 1989 by §§ 18-30, ch. 70, SLA 1984. Until 1989, for the text of the subsections as amended by §§ 18-30, ch. 70, SLA 1984, see those provisions in the Temporary and Special Acts.

Effect of amendments. — The 1984 amendment, effective January 1, 1985, added subsections (c)–(e) and, in subsection (a), deleted "after January 1, 1980, by an insurance carrier authorized to transact business in this state" following "state," substituted "AS 28.20.440 and AS 28.22.010" for "AS 28.20.440(b)(2), and meet the requirements of AS 28.20.440(b)(3) unless waived as provided

in that paragraph," and made a series of related technical changes.

Editor's notes. — Prior to January 1, 1985, subsection (a) read as follows: "An automobile liability policy that insures an owner or operator of a motor vehicle against loss resulting from the insured's liability for bodily injury or death, or for property injury or destruction, or both, which is sold in this state after January 1, 1980, by an insurance carrier authorized to transact business in this state, shall contain limits in at least the amount prescribed for a motor vehicle liability policy in AS 28.20.440(b)(2), and meet the requirements of AS 28.20.440(b)(3) unless waived as provided in that paragraph."

NOTES TO DECISIONS

This section does not require stacking in the single policy context. This conclusion follows from the fact that uninsured motorists insurance may be waived in Alaska. *Curran v. Fireman's Fund Ins. Co.*, 383 F. Supp. 712 (D. Ala. 1975).

Insured was allowed to "stack" the uninsured motorists coverage provided

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

ATTACHMENT G

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

from State Government News
Council of State Governments
March/April 1986

State Government News

The Council
of State
Governments



March / April 1986

THE LIABILITY CRISIS: Who's To Blame?

Shelton
Reference Library
State Capitol

What States Should Do— Different Views on

A Small Business View

Tort Reforms

• Develop alternative dispute resolution mechanisms.
• Limit class action suits.
• Limit contributory negligence.
• Clarify comparative negligence to require an established level of fault to trigger liability.
• Cap lawyers' fees or adopt a sliding scale.
• Reform the discovery process.
• Cap or limit prejudgment interest awards.
• Develop even-handed jury instructions.
• Cap or limit noneconomic and punitive damages.
• Uniform national product liability legislation or comprehensive state reform.
• Cap or modify joint and several liability.
• Reform jury awards.
• Limit liability in dram shop cases.
• Reserve the exclusive remedy doctrines in workers' compensation and abolish co-employee and dual capacity suits.
• Offset collateral source awards or inform juries of collateral sources.
• Require the judge, rather than the jury, set dollar amounts in damages.
• Pay damages in installments.
• Limit pre-trial proceedings.
• Require plaintiffs pay defendants' attorney fees when litigation is frivolous or if court awards are less than offered settlements.

Insurance Reforms

• Review mandatory insurance coverage imposed by government, excluding workers' compensation.
• Establish state reinsurance programs.
• Require state governments to underwrite insurance if coverage is unavailable in the private sector.
• Require businesses to establish risk retention pools for certain types of insurance coverage.
• Require state workers' compensation funds to offer other types of liability coverage.
• Limit mid-term cancellation of policies except for good cause.
• Require advance notice of nonrenewal of insurance.
• Require prior approval of insurance rates by state regulatory agencies.
• Require or encourage insurance companies to establish Self-Insurance Assistance Programs (SAPs).
• Compare made versus non-made policy forms.

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

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

The Health Professions' View

Tort Reforms

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

Discipline, Regulation

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

Tort, Insurance Reforms

- Increase physician license fees to support disciplinary efforts

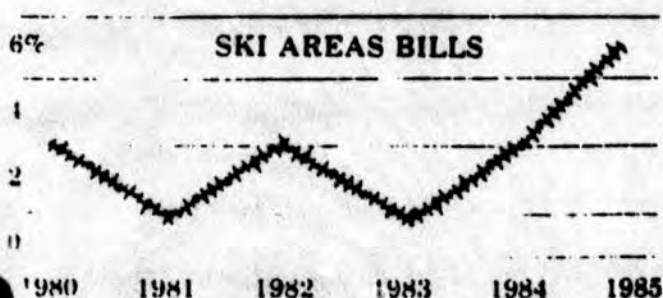
Source: The State Issues Forum of the American Hospital Association and the American Medical Association's model state laws. Note: This is a combined and abbreviated listing. The two group's individual recommendations differ in various details.

A Consumer View

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

Source: The National Insurance Consumer Organization

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



Source: National Ski Areas Association

An Insurance View

Tort Reforms

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

Market/Regulatory Actions

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

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

What States Are Considering To Solve the Insurance Liability Crisis

Regulatory Initiatives

Prohibitions and restrictions on midterm cancellations and nonrenewals.
 Requiring prior approval of rates rather than file and use arrangements.
 Joint Underwriting Associations.
 Market Assistance Plans.
 Modification of open competition rating acts.
 Upgrading state insurance department manpower and resources.
 Requiring rates to reflect loss experience.
 "Claims made" rather than "occurrence based" policies.
 Improved regulation of new entrants.
 Regulation of surplus line providers.
 Requiring submission of data regarding incidence and verity of claims losses.
 Lowering "surplus" ratios for specific lines of coverage.
 Limiting the percentage amount which an insurer can vary rates from the fixed rate.

Risk Management

Establish risk retention pools for certain lines of coverage.
 Strengthen disciplinary procedures in all state agencies governing professions.
 Enhance hazard management and public safety.
 Strengthen risk assessment techniques.

Marketplace Intervention

Limit policy exclusions.
 Authorize banks and thrifts to engage in insurance activities.
 Review the need for mandatory coverage and mandated amounts of coverage.



Refiners won't touch toxic cleanup.

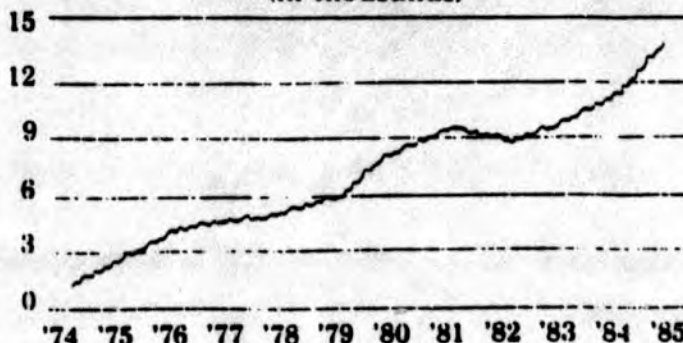
- Restrict annual premium increases/decreases based on evidence of change in risk.
- Require notice to insureds regarding cancellations and/or nonrenewals.
- Provide excess profits standards.
- Establish or expand risk pooling authority.
- Establish or expand state reinsurance, backup insurance and self-insurance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

Tort Reforms

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

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

Litigation Explosion Product Liability Lawsuits (in thousands)



Source: Administrative Office of U.S. Courts

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

ATTACHMENT F

CAN ANY OF THESE LAWS SOLVE THIS PROBLEM?

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

NOVEMBER 11, 1986

6. ARBITRATION

PURPOSE:

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

BACKGROUND:

Arbitration has been one of the most talked of remedies in regard to easing liability insurance problems but only three responding states, Michigan in 1975,⁸⁵ Washington in 1979,⁸⁶ and Utah in 1983⁸⁶ established arbitration in medical malpractice cases. In each, Insurance Department sources believed the measure to have been ineffective.⁸⁷ Utah raised its arbitration threshold to \$2,500 in 1985.⁸⁸ It is too early to judge the results.

SUB-SUMMARY:

No definite beneficial results to date.

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

IV.

INSURANCE REFORMS

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

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

PURPOSE:

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

BACKGROUND:

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

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

However, Maryland enacted a non-cancellation law in 1973.¹³⁶ But, according to the Maryland Insurance Department, the law has provided no availability or affordability change in the 12 years since its enactment.¹³⁷

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

Notification that the insurer intends to get off the risk has been effective in relieving commercial auto liability insurance problems in Indiana and Hawaii.¹⁴⁰ But, Maryland enacted just such a law¹⁴¹ and Department sources say it brought "no change."¹⁴²

SUB-SUMMARY:

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

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

13. AUTHORIZING GROUP INSURANCE

PURPOSE:

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

Washington, has authorized group professional and commercial insurance. Washington's law¹⁴³ has been perceived as effective in encouraging availability of medical malpractice and government liability, as well as for cooperative and fraternal insurance, according to legislative respondents.¹⁴⁴ The measure has also been judged effective in helping make government liability rates affordable.

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

14. AUTHORIZING POOLS

PURPOSE:

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

BACKGROUND:

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

WHAT WORKED:

Early reports indicate large savings from what they had been paying for liability coverage.¹⁴⁶ In Tennessee, legislative sources report that a pooling measure¹⁴⁷ proved "very effective" in regard to medical malpractice and "effective" in regard to the affordability and availability of government liability insurance.¹⁴⁸

Michigan Department sources believe the state's 1982 pooling statute eased the problems in 1985-86.¹⁴⁹

But in Utah, State Insurance Department sources view pooling legislation enacted in 1976¹⁵⁰ as having affected "no change" in the availability or price in any major line of liability insurance.¹⁵¹

SUB-SUMMARY:

In general, pools have been effective. Buyers have obtained high amounts of coverage in a single policy. Pools have enabled smaller municipalities to insure at rates lower than those that would otherwise

be available to them on a individual basis. The question: do pool managements have what it takes for the long haul? They had better because they are without guaranty fund protection. And while they essentially are self-insurance mechanisms the real challenge can be in paying third party claims -- where the beneficiary is not a pool member.

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

gh

wise

15. BROADENED SELF INSURANCE AND CAPTIVES

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

BACKGROUND:

Captives are providing cover now for an estimated 2200 U.S. corporations.¹⁵² The number of U.S. owned captives has increased from some 1250 in 1980.¹⁵³ No one knows or will say how many commercial premium dollars have been diverted from the normal insurance market into captives and other forms of self-insurance but, according to one industry source, close to one-third of commercial premium dollars have gone the self-insurance route.¹⁵⁴

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

WHAT WORKED BEST:

Vermont,¹⁵⁵ Colorado,¹⁵⁶ and Tennessee¹⁵⁷ have authorized captive formation.

Vermont premium volume had increased to \$47 million by year end 1985, up from \$22 Million in 1984 and from \$13 million in 1983.¹⁵⁸ Some of the largest U.S. corporations including Boeing Aircraft Co, CitiCorp and Westin Hotel Co. contributed to that volume.¹⁵⁹

WHAT WORKED LESS:

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

ONE REASON WHY:

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

CAUTION:

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

SUB-SUMMARY:

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

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

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

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

16. JOINT UNDERWRITING ASSOCIATIONS

PURPOSE:

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

BACKGROUND:

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

WHAT WORKED:

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

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

Question: does what makes insurance more affordable for health care providers, make it not affordable for insurers, their policyholders, and the society? Answer: Yes. Insurance industry sources say JUAs were