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South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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Legislative Update

Correction to Last Week's Update

In last week's issue of the *Legislative Update* (Volume 3, Number 1), there was an error concerning one of the pieces of legislation up for consideration this session.

Update reported that S.260, concerning unemployment benefits, would repeal Section 41-35-120 of the *Code*. This was a mistake, since the bill proposes a repeal not of the entire Section, but only a part of it. The bill would repeal only item seven of that section. That item states that for every week of severance pay a person receives, he or she is ineligible for unemployment insurance payments.

Legislative Update regrets the error.

More Prefiled Legislation

Additional bills which have been filed with the Clerk before the session started include the following items.

Government Operations

South African Investments (H.3248). State agencies and other public and quasi-public bodies would have to submit a list of any South African investments to the President of the Senate and the Speaker of the House if this legislation passes. They would have ninety days to send in their lists.

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Local Taxes (H.3252). As reported in last week's *Update*, this measure would give local governments the authority to levy certain taxes. These would include optional income and sales taxes; taxes on coin-operated devices and motor vehicles; and occupational taxes. For a more thorough discussion of the issue, please refer to the January 14 issue of the *Update*.

Health and Safety

Investigations by Ombudsman (H.3223, H.3224, H.3236). Under the first measure, H.3223, the Ombudsman in the Office of the Governor would have access to reports on child neglect or abuse collected by the Department of Social Services, local child protection agencies, and the Central Registry of Child Abuse. The second bill, H.3224, involves much the same area. DSS would not be the agency to investigate child neglect or abuse cases involving public or private health facilities, institutions or agencies registered with DHEC or operated by the Department of Mental Health. Once again, the Ombudsman in the Governor's Office would perform the investigation.

The third proposal, H.3236, would permit the Ombudsman to have access to medical records in general hospitals when an investigation is on-going. The Ombudsman would have to present a written request for the material to the hospital.

Reporting AIDS Cases (H.3243). This bill would require physicians examining children to report cases of AIDS (Acquired Immune Deficiency Syndrome) to the Department of Health and Environmental Control. DHEC would, in turn, notify the school or kindergarten the child attends; the school or kindergarten would keep the information confidential.

Mandatory Seat Belts (H.3230). Certain to raise considerable discussion on the topics of public welfare vs. individual freedom, this legislation would require the driver and all passengers of motor vehicles to wear safety belts. There would be exceptions--school buses, fire trucks, delivery vehicles, and so forth. For the first six months the law was in force, police could only issue warnings. After that, violators could be fined up to \$10.00. Law officers would not be permitted to stop cars to see if their occupants were buckled-up.

Loss of Driver's License (H.3242). A person convicted of causing death or bodily injuring while driving under the influence of drugs or alcohol would lose his or her drivers' license for three years.

Crime

Youthful Offender Changes (H.3247, H.3251). The first measure would require correctional facilities to separate some categories of inmates. Youthful offenders convicted of violent crimes would have to be kept apart from prisoners serving time for more than a first conviction for violent crime. Violent crime committing youthful offenders would be separated from youthful offenders convicted of nonviolent crimes.

The second measure would redefine the age group known as youthful offenders and change some powers courts have in sentencing them. Presently youthful offenders are between the ages of 17 to 25; this bill proposes changing that to 14 to 19 years. Courts now can sentence a convicted youthful offender to the custody of the Department of Corrections without his consent if he is under 21 years old; this measure would change the age limit to 19. Finally, the bill would delete the provision that the court can sentence a youthful offender between 21 and 25 years to the custody of the Department of Corrections with his consent.

Incest (H.3249). This bill proposes changes in penalties for incest. Now the crime is punishable by a \$500 fine and/or imprisonment for not less than one year. H.3249 would delete the fine and give the court the discretion to impose a sentence of up to 10 years in prison.

Children

Children's Case Resolution System (H.3245). This legislation would create a body to review the cases of children for whom state and local agencies have not provided necessary services. Services and improvements in service delivery would be recommended for both individual children and children in general.

The agency would get referrals from any source, but after individual and joint agency efforts have been exhausted. Meetings would be held with agencies to develop plans for the child; these plans would require the unanimous consent of all participating agencies. When that consent was not obtained, a panel would be appointed to resolve the conflict. The panel would include board members and heads of non-involved agencies, legislators, and members of the public. A binding decision would be made by a majority of the panel.

Insurance

Policy Cancellation and Nonrenewal (H.3234). This legislation proposes an addition to Chapter 9 of Title 38, which governs insurance operations in the state. The suggested addition would cover cancellation and nonrenewal of property and casualty insurance policies.

The bill sets forth four specific reasons permissible for cancellation of a policy:

- 1) The policy holder fails to pay a premium when it is due.
- 2) The policy holder lied to the insurance company ("made a material misrepresentation of fact," in the language of the bill), and, if the company had known the truth, it would not have issued the policy.
- 3) There is a substantial change in the risk involved. However, if the company should have been able to reasonably foresee this change, this is not a valid reason for cancellation.
- 4) The policy holder makes substantial breaches of contractual duties or conditions involved in the policy.

The bill also provides procedures for nonrenewal of policies. One-year policies can be nonrenewed by the insurer at their expiration date if the company gives or mails written notice to the insured and any agent of record. This notice must be sent no less than thirty days before the expiration date. One-year policies or policies written for an indefinite term may be nonrenewed at their anniversary date by a similar written notice, once again governed by the thirty day timeframe. Notices of nonrenewal must give the "precise reason" for the action.

The bill also makes it illegal for insurance companies to have midterm cancellation of an entire block, line or class of business insurance. Last year an insurance company attempted to cancel insurance on a large group of churches in South Carolina in the middle of their policy term. The action was blocked by the State Insurance Commission.

The question of a liability insurance "crunch" is one which has received considerable public attention recently. The "crunch" is a capacity problem, meaning that insurance companies claim they are unable to meet the demand for insurance coverage. This issue is addressed in the research report in this edition of *Legislative Update* (page 11).

Natural Resources

Mandatory Hunter Education (H.3237). The Wildlife and Marine Resources Department would be mandated to set up education programs in hunting--use of firearms and archery equipment, and so forth--for all persons born after June 30, 1972, who want a hunting license. Successful completion of the program would be required before a license could be obtained.

Public Officials

SLED Protection (H.3244). This measure would allow SLED to protect public officials who have been threatened for 48 hours. After that, written approval from the Governor would be necessary for continued SLED protection.

Nautical

Official State Flagship (H.3233). This measure would recognize the cruiser USS *South Carolina* as the official flagship of the state.

According to the latest edition of *Jane's Fighting Ships*, the *South Carolina* (CGN 37) is of the "California" class of guided missile cruisers; only two ships of this class were built, the *South Carolina* and the *California*. This class of warships was originally designated as guided missile frigates, but was redesignated as a cruiser class in 1975.

The *South Carolina* has 80 surface-to-air missiles, torpedoes, and two 5-inch guns as its main armament. The ship has a displacement of 9,743 tons, and measures 596 by 61 by 31.5 feet. The crew consists of 39 officers and 524 enlisted men. It has two nuclear-powered turbines which can give it a speed of over 30 knots and a cruising range of 700,000 miles. Total cost for construction: \$180 million.

The cruiser was built by the Newport News Ship Building and Dry Dock Company. The keel was laid down on December 1, 1970. The ship was launched on July 1, 1972 and commissioned on January 25, 1975.

The U.S. Navy has nine guided missile cruisers in its fleet, which means that it can form two all-nuclear carrier task forces. The fleet has a total of 30 ships equipped primarily with guided missiles. The function of these vessels is to conduct anti-air warfare, which means they basically protect carriers and other capital ships from air attack. As the 1980 Falkland's war between Great Britain and Argentina demonstrated, modern ships are vulnerable to attacks by missiles, whether air or sea launched. This makes defense of carriers and other vessels a major consideration in modern naval tactics.

State and Local Sales Taxes on Food

Which states impose a sales tax on food? A minority--only 16--place a tax on food stuffs. Another 20 allow taxes on sodas, candy, carryout food and restaurant meals. In 16 states local governments have the power to impose optional sales taxes on foods.

The information below gives the breakdown of the food sales tax story nationwide. Source: National Conference of State Legislatures.

States with NO sales taxes on food

Alaska, Arizona, Colorado, Delaware, Iowa, Louisiana, Montana, Nebraska, Nevada, Oregon, West Virginia, Wisconsin.

States with NO sales tax on food EXCEPT
sodas, candy, sundries, carryout and restaurants

California, Connecticut, Florida, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Washington.

States WITH sales tax on food and percentage

Alabama, 4%; Arkansas, 4%; Georgia, 3%; Hawaii, 4%; Idaho, 4%; Kansas, 3%; Mississippi, 6%; Missouri, 4.225% (!); New Mexico, 4%; North Carolina, 4%; Oklahoma, 3.25%; South Carolina, 5%; South Dakota, 5%; Tennessee 5.5%; Vermont, 4.5%; Virginia, 4%, Wyoming, 3%.

States with optional LOCAL sales tax on food

Alabama, Alaska, Arizona, Colorado, Georgia, Kansas, Louisiana, Missouri, New Mexico, New York, North Carolina, Ohio, Tennessee, Texas, Utah.

States EXEMPTING food stamp purchases from sales tax

Illinois, North Carolina, Wisconsin.

Gambling, Lottery Legislation Update

A Lottery for South Carolina?

Lottery legislation is still pending in the South Carolina General Assembly. In the Senate, S.102 would establish the State Lottery with a Commission appointed by the Governor to operate it. Revenues would go to prizes--at least 45% for the winners--and to fund indigent health care. Companion legislation, S.183, would provide for the needed constitutional amendment to implement the legislation. Similar House bills (H.2593 and H.2594) did not make it out of the Ways and Means Committee.

Lotteries and gambling are controversial subjects. Supporters claim that since people are going to gamble anyway, why not let the state get in on the action and use the revenue. Opponents counter with arguments that government should not encourage people to gamble, especially persons with low incomes who can't afford it. Additionally, say some, lottery and gambling revenues are not consistently dependable. More and more states, however, have either opted for legalized gambling or are considering the issue.

Lottery Legislation Considered

For those states considering gambling legislation during this legislative session, a brief summary follows.

Georgia is considering legislation to establish a lottery with the proceeds going to education. According to reports in *Gaming and Wagering Business* Governor Joe Harris is "bitterly opposed" to the idea. Apparently the governor need not worry--the bill is not likely to come out of the House Industry Committee this session.

Also in Georgia, the city of Atlanta recently held a non-binding referendum along with its municipal elections. The result was an overwhelming approval of lotteries and parimutuel betting by voters. Of those voting, some 41,000 approved of both forms of betting; only around 11,000 were opposed. Supporters of the effort hope the vote will send notice to the state legislature to move on the issue.

Another governor opposed to lottery legislation is Lamar Alexander of Tennessee; should it pass, the bill in that state would put the issue up to public vote this November. At present the legislation is in the Calendar and Rules Committee.

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In Hawaii there were ten lottery bills introduced during 1985, and all have disappeared into various committees--Commerce, Finance, Government Operations, Public Employment, and Judiciary. As in Georgia, the governor is opposed to lottery legalization. Another state with a number of bills introduced was Minnesota, which has seven on the docket. The governor is taking a hands-off approach this time around; he supported lottery legislation before and it failed to pass.

The Kansas Senate will consider a lottery bill with the proceeds earmarked for property tax relief. Also on the agenda, bills to establish parimutuel betting on a local option basis. Passage would require a two-thirds vote in both House and Senate; prospects are dim.

In Oklahoma two bills are lodged in House and Senate finance committees; the governor supports lottery legislation in order to ease the state's financial problems.

Wisconsin's Senate passed a lottery bill last year by a 19-4 vote. The measure is now in the Wisconsin Assembly State Affairs Committee. A measure to have parimutuel betting on horses has passed the Wisconsin House and is now pending in committee. Before going into effect the bill would have to be approved by two consecutive sessions of the legislature and also pass a public referendum.

The Texas legislation meets every other year, so there will be no session in 1986; when longhorn legislators return in 1987, however, a group called "Texans for the Lottery" will be pressing for a constitutional amendment to permit a state game. After approval by the legislature the measure would go to the voters. The governor is said to be opposed to both lotteries and racing.

Closer to home, North Carolina saw lottery legislation defeated by one vote in the state Senate, and a counterpart bill in the House kept in committee, where it is expected to stay.

Where Does the Money Go?

Education is clearly the most popular recipient of lottery and other legal gambling revenues. The favored method is to mandate a certain percentage of the income be devoted to a specific education fund. Usually this percentage is a little less than half, because prize money and administrative costs also have to be considered.

California started its lottery on October 3. Sales are expected to be between \$1 billion and \$2 billion annually. Half of the money would go to prize winners, up to 16% would go to administration, and the rest would go to public education. California schools won't get rich; the lottery money will amount to only 4 percent of schools' existing budgets.

Illinois is going to change its lottery law to spend its gaming income on public education. Currently the money goes into the general fund to be appropriated by the state General Assembly.

New York already puts its gambling revenue aside for schools. By law, 45% of all lotto sales are used to supplement state aid to education. Last fiscal year this amount to \$615 million. New York also runs a daily numbers game and 35% of its income goes directly to education. The reason for the smaller figure: more money is set aside for prizes in the numbers game, in an effort to make it competitive with the illegal numbers game which flourishes in the city.

Lottery money in Iowa ended up in the wrong place, according to a report published in *From the State Capitals*.

Last session the Iowa legislature considered a lottery bill. As usual, there was considerable debate and some determined opposition. As part of the compromise plan that allowed passage, the bill was amended so that 1/2 of 1 percent of the gross revenues would be set aside for programs to help compulsive gamblers. The programs would be operated by the state Human Services Department.

Now officials of the Department have revealed that they used their share of the proceeds mostly to balance their books, instead of helping gamblers. Some \$490,000 in lottery money was used to make up deficits in welfare programs. Only around \$10,000 was used on programs for the compulsive gamblers. There will be more on this story as it develops.

Around the House

New Staff

The House Labor, Commerce and Industry Committee has a new research assistant. Julie D. Huffstetler will fill that position during this session. Ms. Huffstetler has been working with the Committee and is now full-time with it.

Frank Fusco has joined the House Ways and Means staff as a research assistant.

The Interstate Cooperation Committee's new secretary is Donna C. Fusci.

Eleanor Hennings is the new receptionist on the third floor in the Blatt Building.

Michael W. Fields has joined the House Agriculture and Natural Resources Committee staff as a research assistant.

The Liability Insurance "Crunch"

Background

Liability insurance: homeowners need it to cover themselves against a neighbor falling and breaking his leg on their property; doctors must have it in case of malpractice suits; a business needs it because customers can have accidents with damages running into the millions; and, since the doctrine of sovereign immunity has been greatly restricted by the courts, state and local governments are in the market for liability insurance policies.

The problem: today, liability insurance is harder to get than ever, and the cost of premiums has risen dramatically. Some observers are calling it a liability insurance "crunch," and say it could cause considerable problems for both the private and public sector. In South Carolina, the Insurance Commission has taken action to limit adverse effects--and legislation is being considered to enact those actions into the S.C. Code.

There are three particular areas dramatically affected by the liability insurance crisis: state and local governments; certain "high risk" categories; and medical malpractice. This research report will examine the first two; medical malpractice will be the subject of a separate, future report.

The "Crunch"--A South Carolina Example

As an example of what the liability insurance "crunch" means, consider the appearance before the Insurance Subcommittee of the House Labor Commerce and Industry Committee. The company operated a fleet of 22 buses. Up to now, insurance premiums had been \$28,000 per year; the new rate: \$200,000 per year. In addition, coverage declined from \$6 million to \$5 million.

That's what the insurance "crunch" is all about. The first question is--why is there a crunch to contend with?

Troubled Times for the Insurance Industry

The American insurance industry is huge. Insurance premiums account for 11% of all disposable income in the United States. Insurance is the fourth largest expenditure Americans make each year--only food, housing and federal income taxes take a bigger bite out of the pay check. And sometime soon insurance will move ahead of income taxes.

Yet, insurance companies say they are losing money. In 1978 pretax income of property and casualty insurance companies was \$8.6 billion; that figure has declined steadily every year since, so that in 1984 the companies recorded a pretax loss of \$3.8 billion. That was the first time insurance companies have recorded a loss since 1906--the year of the great San Francisco earthquake.

As well as losing money, companies have lost much of their capacity to write insurance policies. Insurance-writing capacity is largely a function of the available reserves a company has--insurance regulators like to see a ratio of about 3 to 1 between the premiums a company writes and its surplus funds. More people and companies are trying to buy liability insurance than companies can cover. It is estimated that in 1986 the demand for coverage will exceed the industry capacity by around \$7 billion. By 1987 the gap could increase to \$62 billion.

A second factor affecting capacity is re-insurance. It is standard industry practice for companies to sell primary policies to other companies. Lloyd's of London is probably the biggest re-insurer around, and in 1985 they took \$165 million in losses, much of it in the United States. As a result of such losses, re-insurers are becoming very wary about taking on new policies, and are pressuring primary insurers to be very selective about their clients and strict in their policies.

Causes of the "Crunch"--Insurance Industry Version

Insurance industry analysts point to three major causes of the crunch.

First, profits have fallen. Insurance companies must take part of the blame for this, because they have seriously underpriced their product since the early 1970's. Growing investment income, fueled by high interest rates allowed insurance companies to slash the prices of their policy premiums. With the decline in interest rates, insurance companies have seen a corresponding decline in their investment earnings. Now, the industry is looking for a restructuring of pricing--a price hike, in other words.

A second reason cited by the industry is the unpredictability of payments to liability policy holders. Insurance companies are unable to project their potential losses for certain policies, such as those covering environmental damage, pollution, child-abuse cases in day care centers, and so forth. This means a company could find itself in the situation of having to make an unknown number of payments for an unknown amount. As a result, companies have become increasingly selective in writing such policies. In certain areas, such as environmental damage, the possible losses are so great that companies prefer not to write the policy at all. If they do, strict limits are put on the time frame covered, the amount of damages permitted, and any other aspect which could reduce the insurance company's share of loss.

Third, and foremost according to the industry--the judicial system in this country is to blame for the crisis in liability insurance. Tort or damage cases have seen juries deciding for plaintiffs and giving them huge awards. The insurance industry is highly upset about the "litigiousness" of our society, and states that the capacity crunch cannot be resolved without thorough-going tort reform. This tort reform is the keystone of the industry's efforts.

Tort Reform: Insurance Industry Style

Basically insurance companies are looking for two results of tort reform: greater difficulty in proving liability, and smaller awards given to winning plaintiffs. These ideas are expressed in a number of fashions.

Change Joint to Several Liability: At present, damages can be recovered from any one of a group of defendants. Plaintiffs and their lawyers prefer to go for the defendant with the "deepest pockets"--that is, the defendant who can pay the most money. This usually means a government or the defendant with the most liability coverage. For example, a city might be only 10% responsible for a person's injuries, but could end up paying 90% of the award.

Insurers would like this joint liability changed to several liability, so that each defendant is responsible only for his share of responsibility for damages. Then, the city mentioned above would only have to pay its 10% of the damage award, and would not be punished for having "deep pockets."

Punitive Damages: In addition to actual damages, juries can "punish" a defendant by assessing punitive damages. The theory is that these damages are proper because the defendant is guilty of malicious or grossly negligent behavior; they are also beneficial because they discourage others from acting in a similar fashion.

Not so, claim spokesmen of the insurance industry. Punitive damages are bargaining chips used by plaintiff's attorneys to increase the amount of a settlement. Moreover, juries award punitive damages when there is no real cause for them. The insurance industry would like to see punitive damages abolished altogether, or at least severely restricted in application. Basic to their argument: punitive damages are properly an aspect of criminal law, rather than civil liability law.

"State of the Art" Knowledge: What did the defendant know, and when should he have known it? According to the insurance industry, courts have been imposing liability based on standards that were developed after the activity in question took place. Thus a product might be considered safe at the time it was manufactured, and only years later shown to be harmful. Judge the manufacturer by the knowledge and standards prevailing at the time, the insurance industry says, not by later standards.

Change in Damage Awards: The industry would prefer to see non-economic damages, such as "pain and suffering" not considered in awards. If this is not possible, they definitely want ceilings placed on such awards. A second suggestion is to repeal the collateral source rule. This rule prohibits introduction of evidence that shows a plaintiff is getting money from someone other than the defendant. Because of this rule a plaintiff could receive multiple payments from a variety of sources for a single damage. Finally, the insurance industry would like to see periodic payment of damages, rather than lump sum payments. One reason for this: periodic payments on the average tend to be lower than lump sum payments.

Other Industry Reform Ideas

Aside from tort reform, the insurance industry has some suggestions for state legislatures.

Government liability: The industry would like to see tort claims statutes enacting to protect governments from law suits. In effect, this would restore some of the protection once afforded by the doctrine of sovereign immunity.

High-risk categories: The industry would also like to see laws limiting liability in certain high-risk categories. One example: "dram shop" laws might restrict liability to a situation where liquor is served to a person who is both visibly intoxicated and later is involved in an automobile accident.

Another View of the Situation

Some observers take a sharply differing view of the situation. One of the most out-spoken critics of the insurance industry is Robert Hunter, a consumer advocate and Federal Insurance Administrator during the Ford administration. Hunter recently appeared before the Special Insurance Committee here in South Carolina. His comments directly attack most of the positions taken by the insurance industry.

Hunter says that the so-called capacity crunch is "a manufactured crisis intended to bloat insurer profits and reduce victims' rights." His major lines of attack: the insurance companies brought any troubles they have on themselves; they are trying to frighten governments into giving them big rate increases and less customer responsibility; and they are determined to wreck the present tort system because it cuts into their profits. His suggestion: better government regulation of the insurance industry.

The Insurance Industry--Its Own Worst Enemy?

Hunter contends that the insurance industry's activities during the 1970's and early 1980's paved the way for their current troubles. He points to their excessive reductions in policy rates, and cites instances where liability insurance was sold after the insured event happened--as was the case of the MGM Grand Hotel fire, where, according to Hunter, "liability coverage was written months after the fire." He gives other examples of an insurance industry so avid for business that it practically gave away policies. Even as late as 1981, merely maintaining policy rates at a steady level would have insured profits for companies; instead, they continued to lower rates.

The result: a steady decline in return, and a drastic downturn once interest rates fell. No doubt about it, says Hunter: "The national problem of insurer profits is clearly and convincingly self-inflicted." Even the insurance industry seems to agree; Hunter quotes from a report put out by the Insurance Services Office and the National Association of Independent Insurers that states:

The property/casualty industry must accept the major responsibility for its current financial condition. But, the brutal price war of the last six years is over. The industry has finally realized that a business cannot indefinitely price its product below cost and expect to survive.

Time for a Rate Increase?

Hunter points out that the last "crisis" in insurance came about ten years ago, when there was a shortage of insurance for both medical malpractice and product liability. At that time, the insurance industry succeeded in obtaining a number of concessions from government insurance regulatory bodies and state legislatures. Hunter says that similar "scare tactics" are being used by the industry today, and that one of their main objectives is to gain price hikes for premiums. Are such hikes necessary? The insurance industry spokesmen will say yes; Hunter says no.

Attack on Victims' Rights

According to Hunter, "insurers blame this crisis on the courts and the tort law and say the only way to fix it is to take away as many victims' rights as possible." In other words, insurers are blaming large damage awards for their retreat from the area of liability insurance.

Hunter says such an excuse is without foundation. Insurance companies are pretending there are so many large damage awards in liability cases that they can't go on writing coverage. Where is the evidence? Insurance companies in New Jersey were unable to

produce proof of such losses during a legislative hearing. In Iowa, the Insurance Commissioner stated bluntly that "regulators cannot trust annual statements and quarterly financial data" from insurance companies. In Maryland, the Commissioner of Insurance says there is no data to justify the stampede of companies out of liability coverage.

In other words, Hunter says the industry is playing on the public perception of large damage awards to attack the entire tort system. This is why he calls the crisis a "manufactured" one. He sees no real connection between the tort system and the capacity crunch, and sees no need to weaken the rights of victims to use the courts to seek redress.

In this Hunter shares a similar position to that of many lawyers, especially trial lawyers. The judicial system is the time-honored and traditional forum in which injured persons can claim recompense. Damage awards, even "huge" ones, are made only if a plaintiff can prove his or her case. It is only proper that someone who causes damage, pain and suffering to another be held responsible. Limiting access of persons to the court system, or artificially restricting the decision of the juries and courts runs counter to our entire system of justice. So runs one argument.

Government Regulation of Insurance Industry

Hunter is strongly in favor of better supervision of the insurance industry. "States must concentrate their major efforts on insurance reform and not tort 'reform,'" he says. Some specific suggestions:

States should encourage more federal assistance in regulating the insurance industry.

Most states need to increase the staff available for insurance regulatory activities.

States should pass legislation requiring disclosure of loss data by insurance companies on a line-by-line basis. This would give regulators a better idea as to whether rates are excessive, inadequate or unfairly discriminatory. It would also allow for adjustments between commercial and personal lines of insurance.

In a related matter, states should require full disclosure of total rates of return earned by companies, including investment income. This would give regulators an idea of the complete earnings of a company, something that Hunter says is needed when setting rates. Texas adopted this method in setting auto insurance rates--and saw a 10% reduction in premiums; this was a savings of \$250 million to Texas consumers.

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States should also resist "claims made" insurance forms. These would limit the amount of coverage by reducing the time of coverage and including defense costs inside the policy limit. For example: if a buyer has a million dollar claim against it and a million dollars are spent by the insurer in fighting the suit, there would be nothing to pay for the loss but the assets of the insured.

Finally, Hunter supports greater consumer representation before regulatory bodies. Too often, he claims, the only parties in a rate hearing are the regulators and the insurers.

Conclusion

Depending upon the evidence and its interpretation, the capacity "crunch" can be described as a result of the present tort system with its excessive damage awards; the creation of a profit-crazed insurance industry that slashed premium rates unrealistically; or the effects of economic forces beyond the control of any single participant.

What cannot be denied, however, is that many people and businesses are finding it difficult or downright impossible to get badly needed liability insurance. If they can get the coverage, their premiums are higher than ever.

The liability insurance "crunch" is definitely here. The legislature can ease the impact in some areas more readily than in others. Laws can restore some aspects of sovereign immunity to governments, which would help them. For the private sector, however, the solutions are not so obvious. The public, the insurance companies, the business community and the legislature are all actors in this complicated drama. At present, though, it's unclear who has the leading role.