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INSURANCE Insurance Reform

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INTRODUCTION

The 1987 session of the Georgia General Assembly enacted significant alterations of long standing statutory and judicial tort damage recovery rules.[1] The changes were made as the result of a perceived need for tort reform and were aimed primarily at curtailing spiraling liability insurance premiums.[2] Advocates of tort reform were led by insurance company lobbyists. Those opposed were led by plaintiffs' trial lawyers. Ultimately, each side accomplished a measure of victory and defeat.[3]

The focus of this article is the complement to tort reform, insurance reform. The cause was championed by those who believe that insurance companies tend to maximize profits at their insureds' expense. Adherents of insurance reform claim that the Georgia tort "liability crisis" has been manufactured by insurers and point to increased company profits as belying the existence of a "crisis." They blame previous losses on insurer *mismanagement*.[4]

Regardless of its merit, the belief that insurance companies sacrifice policyholders' interests to maximize profits has public support.[5] Therefore, proponents of regulation in the General Assembly have often been successful in enacting regulatory measures.[6] The 1987 session was no exception. However, compared to the mandatory changes made in tort damage recovery rules, Georgia's 1987 insurance reform involved incremental, rather than substantial, modification of insurance industry regulation. The potential for sweeping insurance reform, however, was created. Whether such reform will ultimately result depends upon how the discretionary regulatory power granted the insurance commissioner is used.

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1. *Selected 1987 Georgia Legislation, Tort Reform*, 3 GA. ST. U.L. REV. 519 (1987).

2. Crowe, *Liability Costs for Firms' Leaders Soar*, Atlanta J., Feb. 2, 1987, at 2C, col. 6 [hereinafter *Liability Costs*] (premiums of directors, officers, and public officials); Dickerson, *Insurance Reform: Tort Reform's Ideal Companion*, Atlanta J., Feb. 4, 1987, at 20A, col. 2 [hereinafter *Insurance Reform*] (day care center and physician premiums).

3. *Selected 1987 Georgia Legislation, Tort Reform*, 3 GA. ST. U.L. REV. 519 (1987).

4. REPORT OF THE GOVERNOR'S ADVISORY COMMITTEE ON TORT REFORM 10, 11 (Dec. 1, 1986) [hereinafter COMMITTEE REPORT]; *Tort Reform and Insurance Regulation*, 2 GA. ST. U.L. REV. 240 (1986).

5. COMMITTEE REPORT, *supra* note 4, at 13-14; Shipp, *Tort Reform? What's Needed Is Insurance Reform*, Atlanta Const., Feb. 20, 1987, at 21A, col. 1.

6. *See* O.C.G.A. §§ 33-1-1 to -86 (1982 & Supp. 1987) (two volumes of statutes applicable to insurance and insurers).

I. UNENACTED INSURANCE REFORM PROPOSALS

Several proposals for significant change in regulating the way insurance companies do business in Georgia were introduced in the 1987 legislative session but did not pass. The first of these, HB 111, would have created the office of Insurance Consumer Advocate. The advocate was to be the general public's legal representative in any matter pending before the insurance commissioner. The bill required strict autonomy of the office by prohibiting the advocate from representing any insurance company in any capacity during the term of office and for a five-year period thereafter.[7] The advocate would have been appointed by the governor and empowered to initiate proceedings before the commissioner which were in the best interests of insurance consumers in Georgia.[8] Additionally, the office would have received copies of all reports that insurers were required to file with the commissioner and would have been authorized to conduct discovery related to any examination by the commissioner.[9]

HB 111 received no further action after being read twice in the House.[10] The present Insurance Commissioner, Warren Evans, opposed the bill.[11] Evans believed the proposal was unnecessary and costly because present law empowers him to regulate onerous rates and to adequately represent insureds' interests.[12] Evans believes that the threat of a hearing is often adequate to deter oppressive rate hikes and that informal procedures foster insurance company compliance with his office.[13]

To some legislators, however, the possibility that the commissioner might favor the more organized lobbying interests of the insurers over those of the general public was sufficient to prompt introduction of a bill providing an alternative. HB 140 would have prohibited insurance com-

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7. HB 111 § 1, 1987 Ga. Gen. Assem. (the advocate also would have been prohibited from holding any state, county, or local elected office for one year after leaving the position; a felony penalty was provided for violation of this section).

8. *Id.*

9. *Id.*

10. Final Composite Status Sheet, March 12, 1987.

11. Telephone interview with Warren Evans, Commissioner of Insurance (Aug. 11, 1987) [hereinafter Evans Interview]; Straus, *Panel OKs Office to Protest New Insurance Rate Increases*, Atlanta Const., Feb. 20, 1987, at 26A, col. 4.

12. Evans Interview, *supra* note 11 (the Commissioner believes that because he is elected, he is a better consumer representative than an appointed official).

13. Evans Interview, *supra* note 11 (Evans acknowledges that there were only two contested rate hearings conducted at his request from April 1986 to March 1987 but points to action by his staff in contacting the insurers about proposed onerous rate hikes which resulted in withdrawal of 142 filed rate increase requests during the same period. Also, Evans wrote to all Georgia insurers in April 1986 asking for a one-year moratorium on increases. Whether resulting solely from this request or not, there was a fifty-five percent decrease in rate increase filings the following year, while rate increase filings in neighboring states stayed at approximately the same level.); Straus, *Insurance Regulators Under Fire*, Atlanta J. & Const., Feb. 15, 1987, at 9B, col. 1 [hereinafter *Insurance Regulators*].

panies from contributing to the election campaign of any candidate for the office of insurance commissioner.[14] HB 140 was read twice in the House and reported unfavorably out of the House Insurance Committee.[15] Commissioner Evans had reservations about the bill.[16] Evans believed that since the bill was meant to prohibit contributions to the insurance commissioner, it should also prohibit similar contributions to other elected state officials.[17] Further, Evans believed any improprieties in contributions would be revealed through the mandatory campaign disclosure requirements of current Georgia law.[18]

A third measure aimed at substantial regulation of insurers also failed. HB 168 specifically addressed regulation of insurance rates rather than procedures for rate approval or oversight of rate increases. The bill would have frozen all rates in effect in Georgia as of January 1, 1987 until January 1, 1990.[19] This proposal received little legislative attention and was regarded by most lawmakers as overly harsh.[20]

A more conservative attempt at insurance company regulation, also unenacted, was embodied in HB 394/SB 134. The bills were identical, but only the Senate version made it to the floor for debate.[21] The legislation would have amended O.C.G.A. § 33-3-21.1. Presently, O.C.G.A. § 33-3-21 requires insurers to submit annual reports to the commissioner on matters which the commissioner determines are in the public interest. The commissioner's duty under the Code section is general and discretionary as to the content of the reports. In the 1986 session, the General Assembly enacted a new Code section, O.C.G.A. § 33-3-21.1, which sets out some of the information that must be included in the report. O.C.G.A. § 33-3-21.1 was added in "response to the claim that insurance companies are overstating their losses" and was an effort "to require insurance compa-

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14. *Insurance Regulators*, *supra* note 13 (noting Evans received $77,000 from insurers in his 1986 election campaign).

15. Final Composite Status Sheet, March 12, 1987.

16. Evans Interview, *supra* note 11 (the Commissioner stressed that there was nothing illegal in accepting campaign contributions from insurers and noted the considerable expense necessary to campaign for state-wide office); *see also*, *Insurance Regulators*, *supra* note 13; *Insurance Reform Blocked in House*, Atlanta Const., Feb. 10, 1987, at 14A, col. 1 (noting that House Insurance Committee Chairman, Crawford Ware, opposed the bill).

17. Evans Interview, *supra* note 11.

18. *Id.*; O.C.G.A. § 21-5-34 (1987) (elected officials' campaign contributions of $101.00 or more must be disclosed by report filed with the election superintendent of the county in which the candidate resides).

19. HB 168 § 1, 1987 Ga. Gen. Assem.

20. The proposal for a three year moratorium on rate hikes was later proposed as a floor amendment to HB 508 but was defeated. James Purcell, lobbyist for the Alliance of American Insurers, predicted that passage would have resulted in widespread insurer withdrawal from doing business in Georgia. Straus, *House Rejects Moratorium on Insurance Rate Increases*, Atlanta J., Feb. 10, 1987, at 1D, col. 3.

21. Final Composite Status Sheet, March 12, 1987.

nies to justify their rate increases."[22]

HB 394/SB 134 would have increased both the amount of information and the types of insurers required to submit the O.C.G.A. § 33-3-21 report. As enacted in 1986, O.C.G.A. § 33-3-21.1 lists the types of insurance to which the reporting requirements apply. These types include products liability, medical malpractice, property and casualty, motor vehicle, attorney malpractice, and architect and engineer liability insurance.[23] The legislation would have added four new types of tort liability insurance to which the reporting requirement applies: political subdivision, public official, daycare center, and officers and directors. These four types of liability insurance have experienced rapid increases in premium costs over the past few years.[24]

Another section of O.C.G.A. § 33-3-21.1, as enacted in 1986, outlines the type of information that must be included in the report, including reserves, expenses, and net underwriting and operation costs.[25] HB 394/SB 134 would have established additional reporting requirements, including payments of claim settlements and judgments, attorney fees, punitive damages, and payments made in cases involving multiple defendants.[26]

The intent of the legislation apparently was to gather enough data to allow the commissioner to evaluate any insurer rate increase requests. Commissioner Evans did not support or oppose the proposed law.[27] The stiff reporting requirements of HB 394/SB 134 were relaxed by a Senate floor amendment, which significantly decreased the types of information required to be reported.[28] Debate on the amended bill was postponed, and no further action was taken on the amendment or the original proposal.[29]

Some of the same information required by HB 394/SB 134 will be available to the legislators and the commissioner as a result of the crea-

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22. *Selected 1986 Georgia Legislation, Liability Insurers: Reporting of Certain Information*, 2 GA. ST. U.L. REV. 202 (1986).

23. O.C.G.A. § 33-3-21.1(b) (Supp. 1987) (also included are medical payment, personal injury protection, uninsured, underinsured, and property motor vehicle insurance).

24. *Liability Costs*, *supra* note 2 (directors and officers' and public officials' insurance); *Insurance Reform*, *supra* note 2 (day care center and medical malpractice insurance).

25. O.C.G.A. § 33-3-21.1(c) (Supp. 1987) (also included are premiums written and earned, net investment income, and incurred claims).

26. HB 394/SB 134 § 1, 1987 Ga. Gen. Assem. (also included as proposed reporting requirements were time from receipt of claim to payment, investment income earned between time of claim notice and payment, and all other loss adjustment expenses paid by insurers).

27. Evans Interview, *supra* note 11 (the Commissioner believes the proposal will be reintroduced in the 1988 legislative session).

28. SB 134 (SFA), 1987 Ga. Gen. Assem.

29. Final Composite Status Sheet, March 12, 1987.

tion of a new Code section, O.C.G.A. § 33-9-41, enacted by HB 508.[30] The new Code section requires that the commissioner conduct a survey of the changes in insurance company profits that occur as a result of 1987 tort reform. The type of information to be included in the survey is left to the commissioner's discretion.[31]

Similarly, HB 552, which would have increased insurance regulation, was bypassed in favor of HB 508. HB 552 would have amended O.C.G.A. § 33-9-21, which requires insurers to file with the commissioner copies of "rates, rating plans, rating systems, underwriting rules and policy or bond forms."[32] The bill would have added a requirement that insurers also file a profit and loss statement for each line of coverage offered in Georgia, whenever the insurer sought to raise or lower rates in that line of coverage. HB 552 also would have given the commissioner discretionary power to conduct hearings into the accuracy of the required information. O.C.G.A. § 33-9-21 was amended instead by HB 508, making HB 552 moot.[33]

II. Enacted 1987 Insurance Reform

Two bills were passed in the 1987 Georgia General Assembly which increase insurance company regulation. Both of the Acts center on the powers and duties of the insurance commissioner. HB 508 and SB 218 together may be characterized as the insurance reform of the session.[34] HB 508 is the more comprehensive of the two laws. The bill was introduced at the suggestion of Commissioner Evans.[35] It amends O.C.G.A. §§ 33-9-8 and 33-9-21 and adds two new Code sections, O.C.G.A. §§ 33-9-28.1 and 33-9-41.

Section 1 of HB 508 amends O.C.G.A. § 33-9-8. Prior to amendment, the section required that property and casualty insurers agree among themselves to equitably apportion coverage for persons or corporations seeking insurance but who were unable to find a willing underwriter.[36] The commissioner had the power to approve the plan and to review the rates proposed under the plan. The review of rates, however, was to be conducted under prior law only if the commissioner determined that such oversight was "necessary to protect the health, property and welfare of

30. *See infra* text accompanying notes 65-69.

31. *Id.*

32. O.C.G.A. § 33-9-21(a) (Supp. 1987).

33. *See infra* text accompanying notes 54-56.

34. HB 422, 1987 Ga. Gen. Assem., also was enacted amending O.C.G.A. § 33-3-25 (Supp. 1987). The Act requires simplified policy language for all homeowner and personal automobile insurance policies and is therefore a type of insurance reform.

35. Evans Interview, *supra* note 11 (The Commissioner agrees with all the amendments to the bill, which he interprets as giving him more power than he had originally requested.).

36. 1975 Ga. Laws 1192 (formerly found at O.C.G.A. § 33-9-8(a)).

the citizens of this state."[37]

The 1987 Act gives the commissioner power to declare that "a lack of competition or a lack of availability exists"[38] among Georgia property and casualty insurers. When the commissioner makes such a determination, he is required to approve all rates in the equitable apportionment plan and also is required to approve the policies and contracts used in implementation of the plan. Finally, the amendment gives the commissioner discretionary power to implement his own plan if dissatisfied with the insurers' efforts at equitable apportionment.[39]

The Act is noteworthy because it requires action by the commissioner in some circumstances, unlike other statutes which grant the commissioner discretionary power.[40] However, the actions required by the amendment are not necessary until the commissioner finds that a lack of competition or availability exists, a determination that is discretionary. The amendment's impact is also limited because it affects only those persons or corporations unable to find tort liability insurance. Nevertheless, Commissioner Evans believes the power granted by the Act is significant. As far as he knows, the Act grants the Georgia Insurance Commissioner more power in this area than that granted to any other state insurance commissioner.[41]

The amendment to O.C.G.A. § 33-9-8 remained unchanged throughout the legislative process. This was not true of the second portion of HB 508, which amends O.C.G.A. § 33-9-21. The major battle for insurance reform of the 1987 session was fought over the wording of this section.

O.C.G.A. § 33-9-21 requires each insurer covered by the Code section to file with the commissioner the "rates, rating plans, rating systems, underwriting rules and policy or bond forms used by it."[42] With few exceptions, all tort liability insurers are required to report.[43] Alternatively, insurers who are members of a licensed rating organization may file that organization's rates and rating plans if the insurer uses them. The commissioner has discretionary power to require production of the insurer's own rates and rating plans if he believes it necessary.[44]

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37. 1975 Ga. Laws 1192 (formerly found at O.C.G.A. § 33-9-8(c)).

38. O.C.G.A. § 33-9-8(e) (Supp. 1987).

39. O.C.G.A. § 33-9-8(e)(3) (Supp. 1987).

40. O.C.G.A. § 33-2-9(a)(2) (1982) (commissioner has power "to promulgate any rules and regulations as are reasonably necessary" to perform the functions of his office); O.C.G.A. § 33-2-11 (1982) (commissioner must examine each insurer at least once every five years but otherwise only when he "shall deem it expedient").

41. Evans Interview, *supra* note 11.

42. O.C.G.A. § 33-9-21(a) (Supp. 1987).

43. O.C.G.A. § 33-9-3(a) (Supp. 1987) (chapter is applicable to "all insurance on risks or on operations" in Georgia except annuities, reinsurance, life, accident and sickness, vessel equipment or liability, airplane equipment or liability, and title insurance coverages).

44. O.C.G.A. § 33-9-21(a)(1) (Supp. 1987) (subsection (2) of the Act makes special provision for the rates and rating plans of workers' compensation insurers requiring

Section 2 of HB 508 redesignates the former Code section 39-9-21 as subsection (a) and adds two new subsections, (b) and (c). O.C.G.A. § 33-9-21(b) requires all insurers to file with the commissioner any "rate, rating plan, rating system, or underwriting rule" forty-five days prior to proposed implementation. The proposed effective dates of the changes and the collection of any premium based on them are prohibited unless the forty-five day advance filing is met. No changes were made in O.C.G.A. § 33-9-21(b) throughout the legislative process.[45] The amendment to the Code section was at the suggestion of the present Commissioner, Warren Evans, who believes the advance time would enable him to monitor the industry more effectively.[46]

The language Commissioner Evans suggested in the addition of O.C.G.A. § 33-9-21(c), however, was not enacted.[47] This subsection applies when a rate increase is implemented.[48] If the increase is twenty-five percent or more within a twelve month period the commissioner must conduct an examination[49] of the insurer.[50] If the increase is between ten and twenty-five percent, the commissioner must conduct an examination or affirmatively find either that there is enough information to evaluate the validity of the proposed increase or that the cost of examination is not justified.[51] If the increase is less than ten percent, the commissioner may in his discretion, require an examination.[52] If an examination is conducted it must be completed within ninety days of the original filing, although the commissioner may extend that period an additional sixty days. During the examination, the proposed increase may not go into effect.[53]

Unenacted HB 552 would have required insurers to file a profit-loss statement for any rate change and would have given the commissioner the discretionary power to conduct an examination of the validity of the data used to justify the change.[54] HB 508, in contrast, applies only to rate increases and requires examinations only in some circumstances. As origi-

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their filings to be based on actual Georgia loss experience).

45. Final Composite Status Sheet, March 12, 1987.

46. Evans Interview, *supra* note 11.

47. *Id.* (the Commissioner's proposal would have given him the discretionary authority to investigate an insurer's rate change by examining any section of the rate filing; the Commissioner did not oppose this amendment).

48. O.C.G.A. § 33-9-21(a) requires a filing with the insurance commissioner of "copies of the rates, rating plans, rating systems, underwriting rules, and policy or bond forms used by [every insurer]."

49. O.C.G.A. § 33-2-11 (1982) (defining procedure for, and scope of, examination including oversight of "affairs, transactions, accounts, records, documents, and assets" of insurer).

50. O.C.G.A. § 33-9-21(c) (Supp. 1987).

51. *Id.*

52. *Id.*

53. *Id.*

54. *See supra* text accompanying notes 32-33.

nally proposed by Commissioner Evans, however, HB 508 section 2 would have applied to any rate change and all examinations by the commissioner would have been discretionary,[55] thus paralleling HB 552. The House Insurance Committee added an amendment requiring the ninety day examination time limit and allowing sixty additional days if the commissioner requests this extension.[56] The bill was amended again on the House floor. In this version, the commissioner's examination was made mandatory for "any overall rate change."[57]

In the Senate, a substitute amendment was offered and subsequently enacted.[58] The Senate apparently believed that the House bill, as amended on the floor, requiring examination for any change in rates was over inclusive and difficult to administer.[59] The House version would have imposed a legislative mandate to examine all rate increases or decreases, and thus, would have involved the commissioner in direct insurance industry oversight much more than he had previously been involved.[60]

The Act requires only those rate increases of twenty-five percent or more be examined. Insurers generally will come under more scrutiny, even under the discretionary portion of the new Act. The extent of insurer scrutiny will largely depend on the willingness of the commissioner to conduct examinations when rates are increased less than twenty-five percent.[61]

Section 3 of HB 508 adds a new Code section, O.C.G.A. § 33-9-28.1. The Act allows costs incurred by the commissioner in conducting any examination to be charged to the insurer. The costs, including experts and contractors, may be assessed in whole or in part. The Act lists factors for the commissioner to use in determining who should pay, including who instigated the hearing and who was successful on the merits.[62] All of the commissioner's powers authorized in section 3 of HB 508 are discretion-

55. HB 508, as introduced, 1987 Ga. Gen. Assem.; Evans Interview, *supra* note 11.

56. HB 508 (HCS), 1987 Ga. Gen. Assem.

57. HB 508 (HCAFA), 1987 Ga. Gen. Assem.

58. HB 508 (SFSFA), 1987 Ga. Gen. Assem.

59. Commissioner Evans agreed with the Senate, noting that examination of every rate change would be difficult to administer because of a shortage of outside independent examiners. Evans Interview, *supra* note 11.

60. *Insurance Regulators*, *supra* note 13 (noting that an insurance department official testified at a Senate Insurance Committee meeting that since 1980, the department conducted just one study of an insurer's method of estimating reserves and during 1986, the department conducted only one hearing to determine if a rate hike was justified out of over two thousand rate increase requests received); *see also supra* note 13.

61. Commissioner Evans believes the Act is a "good one" and that it has "already brought good results" by showing insurers he has greater oversight powers to act if rates become excessive. Evans Interview, *supra* note 11.

62. O.C.G.A. § 33-9-28.1 (Supp. 1987) ("all relevant circumstances" may be considered by the commissioner).

ary. This section was introduced at Commissioner Evans' suggestion[63] and remained unchanged from introduction to enactment.[64]

The fourth section of HB 508 creates a new Code section, O.C.G.A. § 33-9-41, which also was unchanged during the legislative process.[65] The Act requires that the commissioner conduct a study into the effect on the loss experience of insurers resulting from 1987 tort reform.[66] The loss ratios of the insurance companies for the past two years will be the basis of comparison of the study.[67] The data to be used in the study are similar to that which were more specifically outlined in HB 394/SB 134.[68] The commissioner is required to obtain from all insurers whatever information is necessary to conduct the study and must report the findings to the General Assembly.[69] No guidance is given to the commissioner, however, as to the type of information pertaining to loss experience that must be included. Presumably, the findings will be used to determine if the tort reform measures of the 1987 session affect insurers' profits. The implication is that, if profits rise, the legislature will take action to control premiums.

SB 218, which was also passed in the 1987 session, affects both insurers and the power of the commissioner. It amends O.C.G.A. § 33-9-4, which lists ten standards[70] applicable to all classes of insurers covered by this

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63. Evans Interview, *supra* note 11 (assessed costs may not be used to calculate rates thus prohibiting passing these costs on to insurance consumers).

64. Final Composite Status Sheet, March 12, 1987.

65. *Id.*

66. O.C.G.A. § 33-9-41 (Supp. 1987).

67. O.C.G.A. § 33-9-41(a) (Supp. 1987).

68. *See supra* text accompanying note 26.

69. Commissioner Evans notes that the General Assembly did not allocate funds for the study but he intends to seek them in a supplemental appropriations bill. Evans Interview, *supra* note 11.

70. These standards are:

> (1) Rates shall not be excessive or inadequate, as defined in this Code section, nor shall they be unfairly discriminatory;
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> (2) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable;
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> (3) No rate shall be held inadequate unless it is unreasonably low for the insurance provided and continued use of it would endanger solvency of the insurer, or unless the use of such rate by the insurer using same has, or will, if continued, tend to destroy competition or create a monopoly;
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> (4) Consideration shall be given to the extent applicable to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both country-wide and those specially applicable to this state, to the insurer's average yield from investment income, and to all other factors, including judgment factors, deemed relevant within and outside this state; and, in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period;

chapter of the Code. Almost all types of liability insurance carriers are included within the chapter's coverage.[71] The Act amends the seventh standard, which allows insurers to increase or decrease rating plans based on hazard and expense variations existing among similar risk types. The rate plan based on the ten standards in O.C.G.A. § 33-9-4 is then filed with the commissioner as part of the report required under O.C.G.A. § 33-9-21.[72]

As initially proposed, the bill would have created a new Code section, O.C.G.A. § 33-9-21.1, requiring insurers to seek the commissioner's approval for any rate increase in excess of ten percent.[73] The original version would not have applied to rates already in effect.[74] The enactment of section 2 of HB 508 provided a measure of control over future rate in-

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(5) Consideration may also be given, in the making and use of rates, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(6) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof;

(7) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions; *provided, however, the Commissioner shall establish the maximum amount of any such modification*;

(8) Nothing contained in this Code section or elsewhere in this chapter shall be construed to repeal or modify Chapter 6 of this title, relating to unfair trade practices, and any rate, rating classification, rating plan or schedule, or variation thereof established in violation of Chapter 6 of this title shall, in addition to the consequences stated in Chapter 6 of this title or elsewhere, be deemed violative of this Code section;

(9) No insurer shall base any standard or rating plan on vehicle insurance, in whole or in part, directly or indirectly, upon race, creed, or ethnic extraction; and

(10) No insurer shall base any standard or rating plan on vehicle insurance, in whole or in part, directly or indirectly, upon any physical handicap of an insured unless the handicap directly impairs the ability of the insured to drive a motor vehicle.

O.C.G.A. § 33-9-4 (Supp. 1987) (emphasis added to indicate new language).

71. *See supra* note 43.

72. O.C.G.A. § 33-9-21(a) (Supp. 1987); *see supra* text accompanying note 42-44.

73. SB 218, 1987 Ga. Gen. Assem.

74. *Id.*

creases by amending O.C.G.A. § 33-9-21,[75] thereby making the bill unnecessary.

By amending the seventh standard of O.C.G.A. § 33-9-4, as was done by a Senate floor amendment,[76] the Act gives the commissioner the power to set the maximum amount of any rate modification and, therefore, the Act applies to all rates and rate plans on file prior to enactment.[77] The commissioner's power is derived from the language added to the seventh standard, which states: "[P]rovided, however, the Commissioner shall establish the maximum amount of any such modification."[78] The commissioner's office intends to notify all insurers to refile their O.C.G.A. § 33-9-21 rates and rating plans subject to the amendment of O.C.G.A. § 33-9-4(7).[79]

The Act results in a significant increase in the duties of the commissioner. Under the Act, the commissioner is granted considerable discretion in determining the maximum allowable modification. Previously, it was possible for insurers to include high risks with lower risks and thereby increase the lower risks' premiums.[80] Wide premium swings were possible absent review of such practices.[81] Also, smaller insurers often were unable to compete with larger insurers because of a reduced number of insureds to include in their risk pools.[82] This made the smaller insurers' rating plans less competitive. Presumably, commissioner approval of rating plans will make equitable allowance for smaller risk pools and thereby eliminate any abuse of the standard.

CONCLUSION

HB 508 and SB 218 became effective July 1, 1987. The amendments and new Code sections require a substantial increase in the insurance commissioner's oversight of Georgia's tort liability insurers. The Legislature demonstrated an intent to regulate further the insurance industry by increasing the commissioner's discretionary powers and making some commissioner action mandatory. Most of the commissioner's power remains discretionary; therefore the extent to which 1987 insurance reform is effective depends on the commissioner's use of this power. Other factors, such as the general economic climate, may also affect future insurance rates.

J. Farrell

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75. *See supra* text accompanying note 46.
76. SB 218 (SFA), 1987 Ga. Gen. Assem.
77. *See supra* note 70.
78. O.C.G.A. § 33-9-4(7) (Supp. 1987).
79. Telephone interview with Dan Champlin, Georgia Insurance Commissioner's Office, Rating Section (March 17, 1987) [hereinafter Champlin Interview].
80. *Id.*
81. Evans Interview, *supra* note 11.
82. Champlin Interview, *supra* note 79.