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INSURANCE

Insurance Regulation: Tentative Steps Toward Reform

CODE SECTIONS:	O.C.G.A. §§ 21-5-30.1 (new), 33-2-8.1 (new), 33-2-33 (new), 33-3-21.2 (new), 33-6-4 (amended), 36-6-5(13) (new)
BILL NUMBERS:	SB 30 (passed), SB 35 (did not pass), SB 31 (passed), SB 36 (did not pass), HB 178 (passed), HB 182 (passed), HB 183 (passed), HB 201 (passed)
ACT NUMBERS:	514, 489, 548, 501, 549, 637
SUMMARY:	SB 30 prohibits insurers, small loan companies, and their respective political action committees from contributing to the campaign for the Office of Insurance Commissioner. SB 31 requires the Insurance Commissioner to release to the public each year a list of written requests for assistance by citizens against insurers. HB 178 requires the Insurance Commissioner to publish a supplemental annual report listing insurance companies deemed to be in financial difficulty. HB 182 requires insurers to engage a loss reserve specialist when reserves fall below the standard. HB 183 prohibits certain direct response advertising by insurers. HB 201 creates certain requirements for insurance adjusters and auto repairers when using aftermarket crash parts in figuring the cost of repairs.
EFFECTIVE DATES:	SB 30 became effective on April 10, 1989. SB 31 becomes effective when funds are appropriated. HB 178 became effective on April 10, 1989. All other Acts became effective July 1, 1989.

History

Pointing out a "crisis in confidence" on the part of the public concerning the State's insurance department,¹ the Georgia Senate

1. *Secret, Sales Tax Still Up In Air; Insurance Reform Is Guttled*, Atlanta

Insurance Committee introduced a series of bills designed to better regulate the Insurance Commissioner's office and promote consumers' interests. This reform package included bills which addressed two main subjects of public concern. First, no Georgia law prohibited insurance companies from contributing to the political campaigns of the Insurance Commissioner. In addition, the law allowed contributions made by small loan companies and by their political action committees.² This practice appeared highly improper and invited a relaxed regulation of the industry.³

A second major concern was the recent sharp increase in insurance premiums.⁴ In Georgia, auto insurance rates are fifty percent above the national average.⁵ Between 1982 and 1987, Georgia sustained the second highest increase in auto insurance rates in the nation.⁶ Under O.C.G.A. § 33-9-21, a rate increase submitted to the Insurance Commissioner automatically goes into effect after forty-five days unless the Commissioner disapproves the increase.⁷ SB 30 and SB 35 were introduced to rectify these two problems.⁸

Const., Feb. 23, 1989, at C1, col. 6 [hereinafter *Secret, Reform Gutted*]; telephone interview with Senator Lawrence Stumbaugh, Senate District No. 55 (Apr. 27, 1989) [hereinafter *Stumbaugh Interview*].

2. *Insurance Reform: Reason No. 738*, Atlanta Const., Jan. 17, 1989, at A12, col. 1 [hereinafter *Insurance Reform*]. The newspaper's editors explain that finance companies often pressure customers into purchasing insurance as part of the loan deal. The insurance cost is added to the amount of the loan, and a high interest rate is charged to the whole amount. As an example of abuse, the editors cite the case of a woman who borrowed \$100 and was sold five insurance policies, three of which she had to borrow money to buy. She ended up paying \$168 over a four-month period, because interest was charged at a 121.39% annual rate. *Id.* The editors strongly imply a connection between the finance companies' contributions to the Insurance Commissioner's political campaigns and the lack of investigation by the Insurance Commissioner's office. *Id.*

3. *Id.* Senator Stumbaugh stated that insurance industry sources contributed over \$350,000 to Insurance Commissioner Evans' unopposed campaign. Stumbaugh Interview, *supra* note 1.

4. *Secret, Key Insurance Reform Bill Sails Through Senate*, Atlanta J. & Const., Feb. 4, 1989, at C2, col. 2 [hereinafter *Secret, Key Reform Bill*].

5. *Id.* Senator Stumbaugh reported this figure in a speech to the Senate on Feb. 3, 1989. *Id.*

6. *Id.*

7. O.C.G.A. § 33-9-21(b) (Supp. 1989). This section provides:

Any domestic, foreign, or alien insurer that is authorized to write insurance in this state must file with the Commissioner any rate, rating plan, rating system, or underwriting rule at least 45 days prior to any indicated effective date. No rate, rating plan, rating system, or underwriting rule will become effective, nor may any premium be collected by any insurer thereunder, unless the filing has been received by the Commissioner in his office not less than 45 days prior to its effective date.

Id.

8. Stumbaugh Interview, *supra* note 1; *Secret, Reform Gutted*, *supra* note 1. For further discussion of SB 30, see 6 GA. ST. U.L. REV. 240 (Fall 1989).

The Senate's reform package also included a consumer protection bill which would have created an insurance consumer advocate⁹ and a bill which would have required the Commissioner to publish a report listing valid citizen complaints against insurance companies.¹⁰ The House shelved or attempted to alter most of the insurance reform legislation introduced by the Senate.¹¹ These changes in the proposed legislation will be discussed in this article. Also discussed are a number of bills introduced by the House which were not vigorously debated, which provided more regulation of the industry and more protection for the consumer.

SB 30

The Act amends O.C.G.A. § 21-5-30, which governs campaign contributions,¹² by adding a new section, 21-5-30.1. The new section prohibits insurers, small loan companies, and their respective political action committees from making contributions to the Insurance Commissioner or to a candidate for the Office of Insurance Commissioner.¹³ The Act also prohibits the Commissioner or a candidate for that office from accepting such a contribution.¹⁴ The Act does not, however, prohibit an individual employed by an insurer or small loan company from contributing her own money to the Commissioner's office or to a candidate for the office.¹⁵ Finally, the Act provides definitions for "Campaign committee," "Contribution," "Industrial loan licensee," "Insurer," and "Political action committee."¹⁶

Following the introduction of the bill in the Senate, the House Insurance Committee submitted a substitute which prohibited only insurance companies from making campaign contributions to the Commissioner.¹⁷ This version provided that a "person acting on behalf of an insurer regulated by the Commissioner of Insurance shall not make, directly or indirectly, any contribution to a political campaign of a candidate for Commissioner of Insurance."¹⁸ Although the Insurance Commissioner opposed the Senate version, he supported

9. SB 36, as introduced, 1989 Ga. Gen. Assem.

10. SB 31, as introduced, 1989 Ga. Gen. Assem.

11. See Secrest, *Reform Guttled*, *supra* note 1; *Georgia Insurance Reform Guttled*, Atlanta Const., Feb. 24, 1989, at A18, col. 1.

12. O.C.G.A. § 21-5-30 (1982).

13. O.C.G.A. § 21-5-30.1(b) (Supp. 1989).

14. O.C.G.A. § 21-5-30.1(c) (Supp. 1989).

15. O.C.G.A. § 21-5-30.1(d) (Supp. 1989). The Act does prohibit, however, an insurer or small loan company from coercing an employee into making such a contribution. *Id.*

16. O.C.G.A. § 21-5-30.1(a) (Supp. 1989).

17. SB 30 (HCS), 1989 Ga. Gen. Assem.

18. *Id.*

the more limited House version.¹⁹ The Senate disagreed with the House substitute and insisted on the bill's original version.²⁰ After the House insisted on the substitute, both the House and the Senate appointed a Conference Committee.²¹ The Conference Committee adopted the Senate version,²² adding to it the paragraph which allows individual contributions of personal funds.²³ Thus, the new Code section prohibits campaign contributions made by insurers, small loan companies, and their political action committees.²⁴

SB 35

This bill, described as the "key piece" of the Senate's insurance reform package, failed to make it out of the House Insurance Committee after it was passed unanimously by the Senate.²⁵ In its original form, SB 35 sought to amend O.C.G.A. § 33-9-21²⁶ by striking parts of subsections (b) and (c) and inserting new language.²⁷ O.C.G.A. § 33-9-21(b) provides that an insurance company "must file with the Commissioner any rate, rating plan, rating system, or underwriting rule at least 45 days prior to any indicated effective date."²⁸ Under

19. Telephone interview with Deputy Insurance Commissioner Marty Wilson (Apr. 27, 1989) [hereinafter Wilson Interview]. Contributions from the insurance industry accounted for a larger than normal percentage of campaign funds received by Commissioner Evans. The reason for this, however, is that these contributions were made at the beginning of Evans' campaign, before Evans qualified to run. When Evans emerged as the only candidate to qualify, further contributions from other sources were unnecessary, and no further funds were solicited. Furthermore, the Commissioner felt it was unfair to single out his office in prohibiting campaign funds since other state officials can receive funds from the persons and entities they are supposed to regulate. Finally, the Commissioner did not favor prohibiting contributions from small loan companies because regulation of these companies is unrelated to insurance rate increases. *Id.*

20. Stumbaugh Interview, *supra* note 1. Senator Stumbaugh explained that the Insurance Commissioner was not being "singled out" since Georgia law also prohibits Public Service Commissioners from accepting contributions from utility companies and other companies regulated by that office. Senator Stumbaugh further stated that no other state regulator has generated a similar "crisis in confidence" on the part of the public. *Id.*

21. *Id.*

22. SB 30, as introduced, 1989 Ga. Gen. Assem.

23. O.C.G.A. § 21-5-30.1(d) (Supp. 1989).

24. O.C.G.A. § 21-5-30.1 (Supp. 1989).

25. Secrest, *Key Reform Bill*, *supra* note 4; Final Composite Status Sheet, Mar. 15, 1989.

26. O.C.G.A. § 33-9-21 (Supp. 1989).

27. SB 35, as introduced, 1989 Ga. Gen. Assem.

28. O.C.G.A. § 33-9-21(b) (Supp. 1989). *See supra* note 7 for the text of this subsection. This law, allowing the "file and use" method of rate changes, has been in effect since 1968. Prior to 1968, Georgia law required prior approval from the Commissioner before rate changes could go into effect. SB 35 sought to reestablish the "prior approval" method of rate changes. Stumbaugh Interview, *supra* note 1.

this section, a rate increase could automatically go into effect in forty-five days, absent disapproval of the increase by the Commissioner.²⁹ Subsection (c) requires the Commissioner to examine an insurer when the insurer's rate is increased ten percent or more in a one-year period.³⁰ The subsection also allows the Commissioner to waive the examination, however, if the rate increase is less than twenty-five percent and the Commissioner has sufficient information to evaluate the increase.³¹

The original version of SB 35 would have deleted the language in subsection (b) concerning the forty-five day waiting period and would have provided instead that no rating change would be effective until "approved by the Commissioner or a period of 60 days has elapsed ... during which time such filing has not been disapproved by the Commissioner."³² The bill further provided that the Commissioner would have discretion to extend the sixty-day period to ninety days, and provided for procedures in the event the filing is disapproved.³³ The original bill also would have deleted almost the entire language of subsection (c); under this subsection the bill would have required the insurer to furnish any information needed by the Commissioner to evaluate the rate filing.³⁴

In an attempt to narrow the reach of SB 35, the Senate Insurance Committee offered a substitute which confined the bill's prior approval requirement to rate filings for personal lines insurance and commercial auto insurance.³⁵ This version would have added a definition of "personal lines insurance" to O.C.G.A. § 39-9-2.³⁶ Under this subsection, personal lines insurance would include homeowner insurance, fire insurance for units housing one to four families, private auto insurance, and other personal lines including inland marine, theft, and personal liability.³⁷ The Senate committee substitute would have added the language found in O.C.G.A. § 33-9-21, including the forty-five day

29. O.C.G.A. § 33-9-21(b) (Supp. 1989).

30. O.C.G.A. § 33-9-21(c) (Supp. 1989).

31. *Id.*

32. SB 35, as introduced, 1989 Ga. Gen. Assem. Although the bill's language seems to indicate that a rate change would automatically go into effect after 60 days absent disapproval by the Commissioner, the Senate intended, and the House understood, that no rate change would go into effect until affirmatively approved by the Commissioner. Stumbaugh Interview, *supra* note 1; telephone interview with Representative J. Crawford Ware, House District No. 77 (Apr. 24, 1989) [hereinafter Ware Interview].

33. SB 35, as introduced, 1989 Ga. Gen. Assem.

34. *Id.*

35. SB 35 (SCS), 1989 Ga. Gen. Assem.

36. *Id.*

37. *Id.*

waiting period, but would have applied this portion to insurance *other* than personal lines and commercial auto.³⁸

The Insurance Commissioner disputed the intended effects of the bill.³⁹ He stated that rate increase requests are scrutinized before they become effective and that the bill would require more state employees and cost approximately 300,000 dollars each year.⁴⁰ In spite of requests from the Senate Insurance Committee that the House Insurance Committee consider the bill, the House Committee shelved the bill for "more study after the legislative session."⁴¹ This bill is likely to appear again in the 1990 session.⁴²

SB 31

The Act adds a new section to Chapter 2, Title 33 of the Code, which relates to the Department and Commissioner of Insurance.⁴³ The new section requires the Commissioner to release to the public each year a "list of all written requests for assistance by citizens against insurers"⁴⁴ and authorizes the release of any other information

38. *Id.*

39. Wilson Interview, *supra* note 19; see also Secrest, *Key Reform Bill*, *supra* note 4.

40. Wilson Interview, *supra* note 19. Mr. Wilson explained that each rate filing already goes through a multistage process, including review by rate analysts, actuarial staff, and the Deputy Commissioner's office; the whole package is then presented to the Commissioner for his review. Under the current "file and use" system, the Commissioner can and does informally disapprove rate filings, with approximately 40% disapproved. SB 35 would require the Commissioner to disapprove through a formal administrative process which would inevitably draw an adversarial response from the insurer. Thus, the Commissioner estimated that it would cost the State approximately \$300,000 per year to implement the bill's requirements. In particular, the bill would require adding another member to the actuarial staff, two enforcement/administrative law specialists, and an administrative law judge. Mr. Wilson further stated that the "file and use" system is superior because it allows insurers to respond to the market and because it attracts insurers to the State, especially insurers covering specialized areas of risk. *Id.*

The Senate Insurance Committee Chairman argued that 28 states use some method of prior approval, and these states show lower insurance premiums and less growth in premiums than does Georgia. The bill would force the Commissioner to *answer* the rate filing after taking a more in-depth look at the request. By estimating that the prior approval system would cost \$300,000 more per year, the Commissioner is admitting that he currently does not take an in-depth look at all of the rate filings. Stumbaugh Interview, *supra* note 1.

41. Secrest, *Reform Gutted*, *supra* note 1. Senate Resolution 60 created a joint committee to consider methods for containing auto insurance rates. This joint committee will study SB 35. Ware Interview, *supra* note 32.

42. Secrest, *Reform Gutted*, *supra* note 1.

43. O.C.G.A. § 33-2-33 (Supp. 1989).

44. O.C.G.A. § 33-2-33(a) (Supp. 1989).

“the Commissioner determines to be in the public interest.”⁴⁵ The required list will be itemized, showing the “type, category, or line of insurance involved” for each insurer which had requests for assistance made against it.⁴⁶ The required list must also show the “ratio of the number of requests received against an insurer to the number of policies written or in force by such insurer or such insurer’s market share or premium volume.”⁴⁷

The original bill required the issuance of a list of “valid complaints” received by the Commissioner against insurance companies.⁴⁸ The Commissioner would have discretion to determine which complaints were valid.⁴⁹ In addition to requiring newspaper publication of the list, which the Act also requires, the original bill required that the list be made available to radio and television.⁵⁰ Also, the original version provided that the ratio of valid complaints would be measured only against the number of policies written by the insurer.⁵¹

At the request of the State Insurance Department, however, the House Insurance Committee offered a substitute to SB 31.⁵² The Commissioner’s office was unsure what a “valid complaint” would consist of; the Commissioner felt his office should only report data, not judge the validity of complaints.⁵³ The House substituted “written requests for assistance” for “valid complaints.”⁵⁴ While recognizing that the House substitute somewhat weakened the bill, the Senate agreed that the report would still provide the public with valuable information to use in choosing an insurance company.⁵⁵ Thus, the Senate agreed to the compromise, and the House substitute version of SB 31 passed.⁵⁶

SB 36

This bill was read only once in the Senate and did not emerge again from the Senate Insurance Committee.⁵⁷ The bill would have

45. O.C.G.A. § 33-2-33(c) (Supp. 1989).

46. O.C.G.A. § 33-2-33(b) (Supp. 1989).

47. *Id.*

48. SB 31, as introduced, 1989 Ga. Gen. Assem.

49. *Id.*

50. *Id.*

51. *Id.*

52. SB 31 (HCS), 1989 Ga. Gen. Assem.

53. Wilson Interview, *supra* note 19.

54. SB 31 (HCS), 1989 Ga. Gen. Assem.

55. Stumbaugh Interview, *supra* note 1. Senator Stumbaugh stated that the public is smart enough to know the significance of a report showing frequent inquiries into one company. *Id.*

56. *Id.*; Final Composite Status Sheet, Mar. 15, 1989.

57. Stumbaugh Interview, *supra* note 1; Final Composite Status Sheet, Mar. 15, 1989.

added a new Article 2 to Chapter 1, Title 33 of the Code.⁵⁸ If enacted, the bill would have provided for an "insurance consumer advocate" whose duties would include providing the Commissioner with information about rate cases so that "the citizens of Georgia should receive adequate insurance at the lowest reasonable cost."⁵⁹

Appointed by the Governor, the insurance advocate would have been attached to the Office of Planning and Budget.⁶⁰ The position would have been the advocate's sole job.⁶¹ In addition, the advocate would have been required to remain totally independent from the insurance industry while employed as advocate and for three years following this employment.⁶² The bill would have made it a criminal offense, punishable by imprisonment for not less than one nor more than five years or by a 5,000 dollar fine or both, for the advocate to be employed by, advise, or represent in any way an insurance company.⁶³

The advocate would have appeared on behalf of insureds and citizens in hearings and judicial proceedings concerning rate increases of ten percent or more.⁶⁴ The bill required the Commissioner to give the advocate at least fifteen days notice of any proceeding in which the advocate is entitled to appear⁶⁵ and allowed the advocate to conduct any necessary discovery which a superior court would allow.⁶⁶ The bill also provided for the advocate's staff.⁶⁷ Furthermore, the bill allowed the advocate to utilize the Commissioner's "consultants, actuaries, experts, accountants, and other technical assistants."⁶⁸

The Commissioner and the advocate would have been allowed access to each other's records and files.⁶⁹ The bill did not preclude other persons from participating in any proceedings before the Commissioner.⁷⁰ Finally, the bill provided an automatic repeal provision which would require affirmative renewal by the General Assembly to keep the statute in force after a five-year period.⁷¹

The Senate Insurance Committee purposefully held this bill in the Committee as possible leverage for SB 35, the "prior approval" bill.⁷²

58. SB 36, as introduced, 1989 Ga. Gen. Assem.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. Stumbaugh Interview, *supra* note 1. See *supra* notes 25-42 and accompanying text for discussion of SB 35.

Should SB 35 be enacted, an insurance consumer advocate would probably be unnecessary to protect consumers' interests.⁷³ Under the present "file and use" system of rate filings, however, consumers' interests cannot be adequately protected because the Insurance Commissioner does not act as an advocate for the consumer.⁷⁴ If SB 35 is finally rejected, SB 36 will probably become active again in the 1990 Session.⁷⁵

HB 178

The Act amends O.C.G.A. § 33-2-8, which requires an annual report from the Insurance Commissioner,⁷⁶ by adding a new section which requires an annual supplemental report.⁷⁷ Recognizing a need on the part of the General Assembly and the public for "relevant and verifiable information on the property and casualty insurance industry," the Act establishes the mechanism to determine the solvency of property and casualty insurers, market availability and profitability, and "trouble liability insurance lines."⁷⁸

The Commissioner must compile the supplemental report by July 1 of each year beginning in 1990.⁷⁹ The Act requires the Commissioner to investigate every insurance company which the National Association of Insurance Commissioners has designated as warranting "immediate or targeted regulatory attention."⁸⁰ The Act requires the report to contain a list of the companies which the Commissioner confirms need

73. Stumbaugh Interview, *supra* note 1.

74. *Id.* Senator Stumbaugh listed two factors which indicate that the Commissioner currently operates as a nonadvocate: first, history shows that auto, property and casualty, and workers' compensation insurance rates in Georgia have risen faster in the last five years than in all but one other state; second, the law requires the Commissioner to be an impartial, fair-minded "judge," who balances consumer arguments against those put forth by insurance companies. The Commissioner currently hears only one side of the argument. *Id.*

The Insurance Commissioner adamantly declares, however, that the Commissioner is the consumers' advocate. An outside consumer advocate at best could only duplicate what the Commissioner's office already does. A consumer advocate would actually hinder the Commissioner's performance. Wilson Interview, *supra* note 19.

75. See *supra* note 72 and accompanying text.

76. O.C.G.A. § 33-2-8 (1982).

77. O.C.G.A. § 33-2-8.1 (Supp. 1989).

78. O.C.G.A. § 33-2-8.1(a) (Supp. 1989). This bill was a "model piece of legislation" drafted by the National Association of Insurance Commissioners and the National Conference of Insurance Legislators. Ware Interview, *supra* note 32. The Insurance Commissioner of Georgia also sponsored the bill. Representative Ware, who introduced the bill, defined a "trouble liability insurance line" as a company in financial distress, having reserve problems, or about to go "belly up" and in need of monitoring or takeover. *Id.*

79. O.C.G.A. § 33-2-8.1(b) (Supp. 1989).

80. O.C.G.A. § 33-2-8.1(c) (Supp. 1989).

regulatory attention, as well as a list of companies "which are in formal rehabilitation, liquidation, or conservatorship."⁸¹

The report will also include the Commissioner's evaluation of the availability and affordability of certain lines and types of insurance.⁸² The Act also provides that, if possible, the Commissioner's report shall include certain information about each insurance company, on a statewide basis for a five-year period, to be used when considering insurance that is unavailable or unaffordable.⁸³ This information includes the number of policies written, cancelled, or nonrenewed; whether the policies were cancelled by the insurer or the insured; and limits and deductibles offered, earned premiums, and loss ratios.⁸⁴

The Act also requires the Commissioner to list in the report consumer information on market assistance programs and joint underwriting associations.⁸⁵ Finally, the Act authorizes the Commissioner to secure any information necessary to produce the report.⁸⁶

The original bill was the version eventually enacted into the Code.⁸⁷ After the bill passed the House and the Senate, however, the Senate added a floor amendment.⁸⁸ This amendment required that the National Association of Insurance Commissioners' private report to the Commissioner be made available to the House and Senate Insurance Committees.⁸⁹ After the House appointed a Conference Committee, the Senate Insurance Committee learned that if the amendment stayed in, the report would not be given to anyone, not even the Insurance Commissioner.⁹⁰ Seeing an obvious need for the Commissioner to receive the report, the Senate receded from its position.⁹¹

HB 182

The Act amends Chapter 3, Title 33 of the Code by adding section 33-3-21.2.⁹² Under the Act, a property and casualty insurer must

81. *Id.*

82. O.C.G.A. § 33-2-8.1(d) (Supp. 1989). The types of insurance include: "Owners, landlords, and tenants; manufacturers and contractors; products and completed operations; governmental subdivisions; public schools; day-care centers; liquor retailers; recreational; professional liability; medical malpractice; commercial and private passenger automobile and all other general liability; and workers' compensation." O.C.G.A. § 33-2-8.1(d)(1)-(12) (Supp. 1989).

83. O.C.G.A. § 33-2-8.1(e) (Supp. 1989).

84. *Id.*

85. O.C.G.A. § 33-2-8.1(f) (Supp. 1989).

86. O.C.G.A. § 33-2-8.1(g) (Supp. 1989).

87. *See* HB 178, as introduced, 1989 Ga. Gen. Assem.; O.C.G.A. § 33-2-8.1 (Supp. 1989).

88. Final Composite Status Sheet, Mar. 15, 1989.

89. Stumbaugh Interview, *supra* note 1.

90. *Id.* The National Association of Insurance Commissioners intended for their report to remain private, and they were concerned about possible leaks to the public should the House and Senate receive copies of the report. *Id.*

91. *Id.*

92. O.C.G.A. § 33-3-21.2 (Supp. 1989).

engage a “qualified independent loss reserve specialist” when the insurer’s “loss and loss adjustment expense reserves are outside the standard or average range as designated by the Commissioner.”⁹³ The specialist’s function is to “analyze the adequacy of such reserves and file a report with the Commissioner.”⁹⁴ The Act also defines the term “qualified independent loss reserve specialist.”⁹⁵

The original version of HB 182 contained essentially the same language as the final, enacted version.⁹⁶ After introduction of the original bill, the House Insurance Committee submitted a substitute which did not require the specialist to be “independent,” that is, not employed by or financially associated with the insurer.⁹⁷ The Senate offered a substitute which retained the requirement that the specialist be “independent.”⁹⁸ The Senate version passed.⁹⁹

HB 183

The Act amends O.C.G.A. § 33-6-4 by adding paragraph (13) to subsection (b).¹⁰⁰ Subsection (b) lists the practices which are considered unfair trade practices or deceptive acts.¹⁰¹ The Act prohibits the insurer from using “direct response advertising”¹⁰² of life insurance policies which are too technical and complex to be “properly presented in the advertisement and understood” by the public.¹⁰³ This includes “any life insurance policy which cannot be truthfully, completely,

93. O.C.G.A. § 33-3-21.2(b) (Supp. 1989).

94. *Id.*

95. O.C.G.A. § 33-3-21.2(a) (Supp. 1989). Under this section, the term means: [A] person who is not an employee, principal, director, or indirect owner of the insurer and either is a member of the casualty actuarial society or possesses such other experience acceptable to the Commissioner to assure a professional opinion on the adequacy of the loss and loss adjustment expense reserves of the insurer.

Id.

96. HB 182, as introduced, 1989 Ga. Gen. Assem.

97. HB 182 (HCS), 1989 Ga. Gen. Assem. The House Insurance Committee would have allowed an in-house loss reserve specialist to analyze reserves because qualified actuaries are rare and sometimes hard to find. Ware Interview, *supra* note 32.

98. HB 182 (SCS), 1989 Ga. Gen. Assem. Citing a recent report by the State auditor, the Senate Insurance Committee pointed out the inherent conflict of interest that occurs when an examiner is being paid by the company. Stumbaugh Interview, *supra* note 1.

99. *See* HB 182 (SCS), 1989 Ga. Gen. Assem.; O.C.G.A. § 33-3-21.2 (Supp. 1989).

100. O.C.G.A. § 33-6-4(b)(13) (Supp. 1989).

101. O.C.G.A. § 33-6-4(b) (Supp. 1989).

102. “Direct response advertising” means advertising that invites the public to respond directly to the insurance company. Ware Interview, *supra* note 32.

103. O.C.G.A. § 33-6-4(b)(13)(A) (Supp. 1989).

clearly, and accurately disclosed in an advertisement."¹⁰⁴ This also includes advertising on radio and television.¹⁰⁵

The Act bans direct response advertising of accident and sickness insurance and life insurance when the ad states or implies that "coverage is 'guaranteed issue'" and the coverage in fact requires the individual applicant to meet certain conditions.¹⁰⁶ Finally, the Act bans direct response advertising of accident and sickness insurance and life insurance policies which have not been approved by the Commissioner.¹⁰⁷

HB 201

The Act amends O.C.G.A. § 33-6-5,¹⁰⁸ which relates to unfair trade practices in the insurance field, by adding paragraph (13).¹⁰⁹ The Act requires manufacturers of "aftermarket crash parts"¹¹⁰ to identify themselves on the part by a logo, identification number, or name.¹¹¹ The Act also requires the insurance adjuster writing the repair estimate to identify clearly any "nonoriginal equipment manufacturer aftermarket crash parts"¹¹² used in the estimate.¹¹³ Furthermore, the Act requires a disclosure document be attached to the estimate indicating aftermarket crash parts were used to compute the estimate and that these parts are warranted by their respective manufacturers or distributors.¹¹⁴

The bill's original version would have placed additional duties on insurers and repair shops when using aftermarket crash parts to estimate repairs.¹¹⁵ This version would have required written notice from the insurer or repair shop to the consumer advising the consumer that rebuilt or nonoriginal equipment manufacturer aftermarket crash parts were intended to be used.¹¹⁶ The original version also required

104. *Id.*

105. *Id.*

106. O.C.G.A. § 33-6-4(b)(13)(B) (Supp. 1989).

107. O.C.G.A. § 33-6-4(b)(13)(C) (Supp. 1989).

108. O.C.G.A. § 33-6-5 (Supp. 1989).

109. O.C.G.A. § 33-6-5(13) (Supp. 1989).

110. An "aftermarket crash part" is defined as "a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels." O.C.G.A. § 33-6-5(13)(A)(i) (Supp. 1989).

111. O.C.G.A. § 33-6-5(13)(B) (Supp. 1989).

112. A "nonoriginal equipment manufacturer aftermarket crash part" is defined as "an aftermarket crash part made by any manufacturer other than the original vehicle manufacturer or his supplier." O.C.G.A. § 33-6-5(13)(A)(iii) (Supp. 1989).

113. O.C.G.A. § 33-6-5(13)(C) (Supp. 1989).

114. *Id.*

115. HB 201, as introduced, 1989 Ga. Gen. Assem.

116. *Id.*

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that the estimate show costs solely attributable to the use of the nonoriginal parts.¹¹⁷ The House Insurance Committee modified the original bill's requirements in a substitute to HB 201.¹¹⁸ This version, with one minor change, was eventually enacted.¹¹⁹

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117. *Id.*

118. HB 201 (HCS), 1989 Ga. Gen. Assem.

119. *Id.*; O.C.G.A. § 33-6-5 (Supp. 1989). The Act changed the amount of time during which an insurer must acquire a salvage title, following purchase of a salvage vehicle, from 15 to 30 days. O.C.G.A. § 33-6-5(11) (Supp. 1989).