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## ELECTIONS Ethics in Government: Revise Campaign Contribution Regulations

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## ELECTIONS

### *Ethics in Government: Revise Campaign Contribution Regulations*

**CODE SECTION:** O.C.G.A. § 21-5-30.1 (new)  
**BILL NUMBER:** SB 30  
**ACT NUMBER:** 514  
**SUMMARY:** The Act prohibits insurers, industrial loan licensees, and political action committees from making contributions to or on behalf of a candidate for the office of Commissioner of Insurance.  
**EFFECTIVE DATE:** April 10, 1989

#### *History*

The office of Commissioner of Insurance was, until 1986, the office of Comptroller General.<sup>1</sup> Under this name, the office was assigned several oversight and regulatory responsibilities; among these was responsibility for the insurance industry and for independent loan companies.<sup>2</sup> The office was revised to reflect both a growing insurance industry and an increasing public interest in its regulation, and it ultimately became that of the Commissioner of Insurance.<sup>3</sup> Few of the regulatory responsibilities of the office were changed.<sup>4</sup> Indeed, the Commissioner of Insurance retained the responsibilities of the Comptroller General.<sup>5</sup> The office now regulates both insurance companies and industrial loan companies.<sup>6</sup>

The history of SB 30 was influenced by the growing public concern over insurance rates.<sup>7</sup> Part of this concern revealed itself in questions about the effectiveness of the state's regulatory efforts to control these rates.<sup>8</sup>

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1. Compare 1912 Ga. Laws 119 with 1986 Ga. Laws 855. The Commissioner of Insurance became an elected office in the Constitution. GA. CONST. art. VI, § 3, ¶ 1. The statutory modification of duties was completed with the adoption of 1986 Ga. Laws 855.

2. 1912 Ga. Laws 119.

3. O.C.G.A. § 33-2-1 (Supp. 1989).

4. Compare 1912 Ga. Laws 119 with O.C.G.A. § 33-2-1 (Supp. 1989).

5. O.C.G.A. § 33-2-1 (Supp. 1989).

6. O.C.G.A. § 45-14-3 (Supp. 1989) and O.C.G.A. § 33-2-1 (Supp. 1989). An industrial loan company is defined as one granting loans of \$3000 or less. O.C.G.A. § 7-3-7 (1989).

7. Mantius, *Voice Sought for Ga. Consumers in Insurance Rate Increases; Are We Covered? The State of Insurance in Georgia*, Atlanta Const., Nov. 22, 1988, at A6, col. 1.

8. Secrest, *Bill Bars Loan Company Donations*, Atlanta Const., Mar. 15, 1989, at A17, col. 3.

A series of articles in the Atlanta newspapers made the connection between insurance rates and industry regulation. One article pointed out what it believed to be the concern: "The 75.5 percent increase in Georgia's average [insurance] rate between 1982 and 1986 was exceeded by only one other state. And auto premiums collected in Georgia during the five-year period rose 117 percent, compared with 76 percent nationally."<sup>9</sup> To make the connection between rates and regulation, the same reporter quoted a state legislator: "[The Commissioner of Insurance] has not been inclined to be aggressive in regulating the industry. It's difficult for him to be aggressive because he accepts large contributions from insurance companies and those who work for them."<sup>10</sup>

The reporter also commented on the size of these contributions and the rules for their use. He wrote that the incumbent commissioner "raised more than \$300,000 for a 1986 race in which he had no opponents in either the primary or general election."<sup>11</sup> Under Georgia's rules governing campaign contributions, any of that money (estimated by the reporter to be about \$371,000) remaining in the campaign account could be used for the commissioner's own retirement, provided he first offered its return to the original contributors.<sup>12</sup>

The Governor reacted to this report by saying that while proposals to strengthen campaign contribution laws should include provisions regarding candidates for state insurance commissioner, the legislative session was to begin too soon for him to lead other insurance reform measures.<sup>13</sup> Speaking directly about the regulation of campaign contributions to candidates for insurance commissioner, the Governor was quoted as saying, "We might have to make some corrections in that area."<sup>14</sup>

Within the first few days of the 1989 legislative session, four bills that addressed campaign contribution regulation were introduced, two in the Senate and two in the House.<sup>15</sup> As introduced, SB 30, like HB 52, restricted only contributions made to candidates for the office of Commissioner of Insurance.<sup>16</sup> The other two, SB 48 and HB 18, took broader approaches and would have revised the campaign contribution laws generally.<sup>17</sup> The insurance commissioner's race was included among

9. Mantius, *supra* note 7, at A6, col. 1.

10. Mantius, *Weak Regulatory Setup Lets Insurers Call the Shots; Are We Covered? The State of Insurance in Georgia*, Atlanta Const., Nov. 20, 1988, at A27, col. 1.

11. *Id.* at A27, col. 2.

12. Mantius, *supra* note 7, at A6, col. 5.

13. Secrest, *Insurance Reforms Not '89 Priority; Harris Considers Tougher Election Finance Laws*, Atlanta Const., Nov. 24, 1988, at B3, col. 1.

14. *Id.*

15. SB 30, SB 48, HB 18, and HB 52, all as introduced, 1989 Ga. Gen. Assem.

16. SB 30, as introduced, and HB 52, as introduced, 1989 Ga. Gen. Assem.

17. SB 48, as introduced, and HB 18, as introduced, 1989 Ga. Gen. Assem.

other elections subject to modified regulation.<sup>18</sup> All of these bills except SB 30 died in their assigned committees.<sup>19</sup>

One of the sponsors of SB 30 favored the more inclusive bill. While arguing for this bill from the well of the Senate, however, the sponsor acknowledged that a bill specific to candidates for the office of Commissioner of Insurance was the broadest bill that could reasonably be expected to pass in the current legislature.<sup>20</sup>

On the same day that SB 30 was passed out of the Senate Insurance Committee, the Governor's floor leader in the House introduced a fifth bill, HB 286, which also focused on campaign contribution regulation of candidates for insurance commissioner.<sup>21</sup> HB 286 differed from the Senate bill in the way the regulation would be codified. More importantly, it differed from SB 30 in that restrictions on campaign contributions would not apply to the industrial loan companies that are also regulated by that office.<sup>22</sup> SB 30, as recommended by the Senate Insurance Committee, was passed by the Senate and included these loan companies within the terms of its regulation.<sup>23</sup> A floor substitute to HB 286 was introduced and was identical to HB 18.<sup>24</sup> The substitute was not accepted, and the House passed HB 286.<sup>25</sup>

SB 30 and HB 286 were each sent to the Insurance Committee of the opposite chamber for consideration. Neither house approved the version sent by the other chamber. The House approved a substitute which was, in substance and approach, the same as the original bill passed by that chamber.<sup>26</sup> When each house failed to agree on the language, a Conference Committee was appointed, and its report was accepted by both houses.<sup>27</sup> The Conference Committee report passed by the legislature contained the language of the original SB 30.<sup>28</sup> The legislation that began as a "picayune bill, which some are saying will launch a statewide campaign for its author"<sup>29</sup> thus became the 1989 response to what the

18. SB 48, as introduced, and HB 18, as introduced, 1989 Ga. Gen. Assem.

19. HB 18 and HB 52 both died in the House Rules Committee; SB 48 died in the Senate Governmental Operations Committee. Final Composite Status Sheet, Mar. 15, 1989.

20. *Law Makers '89* (WGTV television broadcast, Jan. 26, 1989) (videotape available at Georgia State University College of Law Library).

21. HB 286, as introduced, 1989 Ga. Gen. Assem.

22. *Id.*

23. SB 30 (SCS), 1989 Ga. Gen. Assem.

24. HB 286 (FS), 1989 Ga. Gen. Assem.

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

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

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

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

29. Pope, *Politicians Not Landing Any Punches in Insurance Reform*, Atlanta J. & Const., Feb. 5, 1989, at B2, col. 1.

Atlanta papers had styled as Georgia's frustration with rapidly rising insurance rates.<sup>30</sup>

*SB 30*

SB 30 adds a new subsection after the definitions included in O.C.G.A. § 21-5-30 to restrict campaign contributions made to candidates for the office of Commissioner of Insurance.<sup>31</sup> The Act bars contributions from corporations—insurance and small loan companies—which are regulated by the Insurance Commissioner.<sup>32</sup>

The Act begins with five subsections that define the following: campaign committee,<sup>33</sup> contribution,<sup>34</sup> industrial loan licensee,<sup>35</sup> insurer,<sup>36</sup> and political action committee.<sup>37</sup>

The operant two sections of the Act, those which proscribe contributions, follow.<sup>38</sup> Subsection (b) provides that neither insurers nor industrial loan licensees—the corporations regulated by the Commissioner of Insurance—nor any person or political action committee acting for such companies “shall make a contribution to or on behalf” of either an incumbent or a candidate seeking election to this office.<sup>39</sup> Similarly, subsection (c) prohibits either a candidate or an incumbent from accepting contributions made in violation of subsection (b).<sup>40</sup>

An exception is created, however, by subsection (d).<sup>41</sup> This subsection states that nothing in the Act is meant to prevent employees, including those in whose name licenses are held, from voluntarily making campaign contributions from their own funds to any candidate for election as Commissioner of Insurance.<sup>42</sup> It is unlawful, however, for “any insurer or industrial loan licensee or other person to require another by coercive action to make any such contribution.”<sup>43</sup>

From the language of these subsections, then, it is clear that what is proscribed is contributions made in the name of, and from the funds of, regulated corporations and political action committees formed by these companies. As long as contributions made by individuals are

30. Mantius, *supra* note 7, at A6, col. 1.

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

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

33. O.C.G.A. § 21-5-30.1(a)(1) (Supp. 1989).

34. O.C.G.A. § 21-5-30.1(a)(2) (Supp. 1989).

35. O.C.G.A. § 21-5-30.1(a)(3) (Supp. 1989).

36. O.C.G.A. § 21-5-30.1(a)(4) (Supp. 1989).

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

38. O.C.G.A. § 21-5-30.1(b)–(c) (Supp. 1989).

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

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

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

42. *Id.*

43. *Id.*

voluntary, the only restriction placed upon these contributions on behalf of any candidate for the office of Commissioner of Insurance is that the contributions must be from personal funds.<sup>44</sup>

An interesting comparison can be made between the limited effect of this Act and the more sweeping campaign contribution regulation of public utility companies. Subsection (f) of O.C.G.A. § 21-5-30 proscribes any political contributions by persons acting on behalf of public utilities.<sup>45</sup> Its language is specific and sweeping: "A person acting on behalf of a public utility corporation regulated by the Public Service Commission shall not make, directly or indirectly, any contribution to a political campaign."<sup>46</sup> The Act permits employees, whose campaign contributions might arguably be on behalf of their employers, to make any political campaign contribution they desire, including contributions to the election committees of candidates for the office that regulates their employer's industry in Georgia.<sup>47</sup>

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44. *Id.*

45. O.C.G.A. § 21-5-30(f) (Supp. 1989).

46. *Id.*

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