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Congress Overrides Veto, Reregulates Cable

In a major victory for consumers, Congress voted overwhelmingly October 5 to override the president's veto of legislation to lower cable television rates and promote competition to monopoly cable companies.

Despite intense lobbying by President Bush and his Chief of Staff James A. Baker III, both the House and Senate mustered far more than the two-thirds majority needed to override the veto.

The Senate vote was 74-25, the same tally by which they approved the final bill. In the House, the president actually lost ground, with 308 members voting to override the veto and 114 against, compared to the 280-128 vote approving the legislation.

This is the first veto by President Bush that Congress has managed to override.

"If President Bush had succeeded in blocking this bill, cable rates would have continued their upward spiral at three times the rate of inflation, service would have remained awful, and competition would have been stymied," said CFA Legislative Director Gene Kimmelman. "By overriding the president's veto, Congress rejected election-year politics and voted to protect consumers from the excesses of cable monopolies."

"The members who supported this legislation are helping their constituents by pushing cable rates down to competitive-market levels, which are more than 30 percent lower than today's rates, and by promoting competition that will save consumers more than $6 billion per year on their cable charges," he said.

Bill Regulates Rates, Promotes Competition

Under the bill, the Federal Communications Commission will establish "reasonable" rates for a basic tier of cable service that includes local broadcast signals as well as public access and government channels. These rates will be regulated, based on the federal guidelines, by local franchising authorities.

The small number of cable companies that face competition will be exempt from the regulations.

The legislation also protects against excessive rates for tiers of service that include such popular cable programming as ESPN, Cable News Network, TBS, etc., by requiring the FCC to resolve customers' complaints about excessive rates. Where the FCC finds the complaints to be legitimate, it could lower rates and order refunds.

The FCC also is required to set uniform customer service standards and maximum prices for installation and the equipment needed to receive basic service, including converter boxes and remote control devices.

Rates for premium channels, such as HBO or Showtime, will not be regulated, but cable companies will, over time, be required to offer the channels without requiring consumers to purchase an expanded tier of service.

The bill also contains provisions designed to stimulate competition. Programmers affiliated with cable operators will be prohibited from discriminating against cable's competitors, and local authorities will be barred from granting exclusive cable franchises.

Partisan Politics Entered Debate

Although the cable legislation was developed and passed in both houses of Congress with strong bipartisan cooperation, the president attempted, as the override vote approached, to turn the issue into a question of personal and party loyalty.

He concentrated his lobbying on a small group of Republican senators, arguing that losing on his first override vote one month before the election would make it appear that his power is weakening.

Although a number of the senators reportedly agreed to switch their votes, the White House and Republican leadership were unable to muster the 34 votes needed to sustain the veto, at which point the senators were apparently released from their commitments to support the president.

"This has been a bipartisan issue from the outset. We are delighted that Congress withstood the pressure at the end to turn this into a partisan, election-year gambit," Kimmelman said.

Cable Industry Threatens Litigation

Less than 24 hours after Congress passed the legislation, the cable industry had filed its first lawsuit to challenge some of the bill's provisions in court.

Not surprisingly, the first target was the bill's provision allowing broadcasters either to negotiate a fee from cable companies that carry their signal or to demand that the cable companies carry their signal.

Another possible future target is the provision requiring cable companies' programming affiliates to provide programming to cable rivals.

"We have no doubt that the cable industry will do everything in its power to prevent the effective implementation of this legislation," Kimmelman said. "But we defeated them in Congress, and we will fight just as hard in the courts and at the FCC."

Bill Transforms Electric Utility Industry

In the last days of the session, Congress approved a massive energy bill that includes among its provisions a measure to fundamentally change the electric utility industry by promoting competition.

The president is expected to sign the energy bill. It was approved on a 363-60 vote in the House. In the Senate, the bill passed by voice vote after an 84-8 vote to end a filibuster.

In its most significant consumer provision, the bill revises the Public Utility Holding Company Act to make it easier for utilities and independent power producers to compete in the wholesale electric power market.

Most importantly, it contains effective provisions to force utilities to share access to their transmission lines in return for just compensation.

"The highways of electric commerce have been opened at last," said CFA Research Director Mark Cooper.

Bill Will Allow Competitive Transmission Access

The transmission access language, which is considered essential for effective competition, was modified somewhat from the version included in the House bill. Despite the changes, the pricing provisions in the final version will allow competitive access to transmission, Cooper said.

"One of CFA's longest held policies — mandatory transmission access — has in fact come to reality," he said. "The industry will be fundamentally changed for the better."

In exchange for the strong transmission access language, the House agreed to certain weaker provisions from the Senate bill, including a provision that will allow self-dealing by utilities as long as state regulators approve the deals.

In general, the bill gives tremendous new authority to the states to determine how exemptions will work and to regulate the financial structure of utilities and exempt independent power producers.

"Our job in the next few years will be to conduct a state-by-state campaign to enact model legislation to ensure that the state Public Utility Commissions are working and have the necessary resources," Cooper said.

Bill's Ride Bumpy to the End

Born at the start of the 102nd Congress out of the heightened concern over energy issues resulting from the Persian Gulf War, the energy legislation travelled an unusually bumpy road to final approval.

As the bill moved through the Senate in 1991, the central fight was over two issues: mandating increased gas mileage standards for automobiles and allowing oil and gas drilling in the Arctic National Wildlife Refuge.

When energy and environmental advocates were unable to reach accommodation on these two issues, the original version of the legislation was killed by a filibuster, calling into question Congress's ability to pass any comprehensive energy legislation.

Now, neither of the two controversial provisions remains, and other disputed sections have also been dropped from the bill.

Crafting a compromise between energy producers and environmentalists, Congress produced a wide-ranging but far more modest bill than originally envisioned.

"When this process started, PUHCA reform was going to be just one small car pulled through by the massive train of a national energy strategy. Now, the electricity provisions are the only car of any major significance on the train," Cooper said.

Bill Also Includes Energy Efficiency Mandates

The bill contains a number of provisions to improve energy efficiency, including measures to promote state utility regulations that reward conservation, to mandate greater energy efficiency in buildings, and to set minimum standards for certain appliances, lights, plumbing equipment, and electric motors.

A provision that would have restricted the authority of states to limit natural gas production in order to drive up prices was dropped in conference. Although the pro-consumer measure passed the House, chief Senate sponsor J. Bennett Johnston (D-LA) had vowed to keep it out of the final bill.

Mark Your Calendars

Financial Services Conference

December 3–4

Groups Pursue ATV Appeals Court Case

Having had their motion to intervene in the all-terrain vehicle consent decree denied, CFA and U.S. Public Interest Research Group are pursuing their case in the U.S. Court of Appeals.

The two groups filed a brief with the appeals court in late September asking the court to review the May 1991 decision of the Consumer Product Safety Commission to terminate its ATV rulemaking. CPSC's decision not to pursue additional remedies against the industry was made despite the agency's own extensive evidence that the consent decree is not working.

The CPSC has estimated that 1,033 people died and 224,500 were injured between the signing of the consent decree December 30, 1987 and the end of 1991. Furthermore, the agency estimated that an additional 239 people would die and 48,100 would be injured in 1992. Approximately 40 percent of the victims are children under 16.

In response to CPSC's decision not to address these hazards, last year CFA, U.S. PIRG, Public Citizen, and the American Academy of Pediatrics asked the U.S. District Court which oversaw the consent decree to require a ban on the sale of ATVs to children under 16.

Earlier this year, in response to a request from the district court for additional proposals to improve the effectiveness of the agreement, the groups asked for a recall and refund for adult-sized ATVs purchased since the consent decree for use by children, better warnings to ensure that children don't operate adult-sized ATVs, and increased industry efforts to ensure that dealers do not sell adult-sized ATVs to children.

Judge Criticizes CPSC Inaction

In his decision denying the motion to intervene, Judge Gerhard Gesell was extremely critical of the CPSC. "In essence, the Commission has elected not to exercise its statutory authority to regulate or even ban the vehicles that it had concluded after extensive study were unreasonably dangerous," he stated.

In an earlier opinion, he stated, "The decision of the CPSC not to invoke its rulemaking authority to implement more stringent regulations represents an unwillingness or inability to recognize what appears to be an obvious need for exercise of its expertise."

Although Judge Gesell found that the consent decree "is not nearly as effective as anticipated," he concluded that the groups had not made a "clear showing of grievous wrong evoked by new and unforeseen conditions" as required to justify reopening the consent decree.

He further concluded that the court lacks "authority to bar the sale of ATVs or to perform the rulemaking functions" of the CPSC.

Agency Decision 'Arbitrary and Capricious'

In their brief before the appeals court, CFA and U.S. PIRG seek to prove that the CPSC's decision to terminate its rulemaking was "arbitrary and capricious."

The groups charge that the agency's cost-benefit analysis lacked "any basis in logic, law, or the administrative record."

In its analysis, the agency made no effort to evaluate the effectiveness of a ban, simply stating that it "was not clear" that such a ban would be more effective than the "age recommendations" of the consent decree, the groups charge.

"Not only does this finding lack any support in the record, it is definitively refuted by the Commission's efforts to promote ATV bans at the state level," the brief states.

In addition, the commission included in its cost-benefit analysis a cost estimate for enforcement of $1 million annually without any data to support its estimate and without any explanation for this unprecedented inclusion of enforcement costs in such an analysis.

Finally, the agency included as a cost the "lost utility" to children from imposition of a ban, despite the fact that the agency itself has concluded that children under 16 should never ride adult-sized ATVs.

"At bottom, the CPSC's cost-benefit analysis is nothing more than a feeble attempt to justify the Commission's decision to abdicate its statutory responsibilities in the vain hope that state governments will step in, at some unknown date in the future, and fill the regulatory gap," the brief states.

"Accordingly, the Court should remand to the agency and direct the Commission to issue a proposed rule banning the sale of adult-sized ATVs to children," the groups conclude.

Arguments in the case are scheduled for January.

Investment Adviser Bill Dies

Legislation to improve federal regulation of investment advisers died in the final days of the 102nd Congress when members of the Senate refused to accept the stronger consumer protections contained in the House bill.

Both the House and Senate passed legislation that would have increased registration fees for investment advisers, based on assets under management, and replaced the current one-time fee with an annual fee. The additional resources were to fund more frequent inspections of investment advisers by the Securities and Exchange Commission, which currently inspects firms on an average of only once every 30 years.

The House bill went further, providing far more direction to the agency to ensure that the expanded oversight program would be implemented in a way that would significantly improve investor protection.

"SEC Chairman Breedon has made it clear in his public statements on the bill that, without this direction from Congress, the agency would not implement the bill in a way that would significantly improve protections for average investors," said CFA Director of Investor Protection Barbara Roper.

"The SEC's resources for oversight are clearly inadequate, but more money isn't enough if the agency refuses to adopt effective procedures to detect and deter fraud," she said.

House Bill Would Have Strengthened Oversight

Among the oversight provisions in the House bill supported by CFA were:

- inspections of more investment advisers within one year of registration;
- follow-up inspections when deficiencies are found that pose a serious threat to the adviser's clients; and
- more frequent inspections of advisers that pose particular risks to clients, based on such factors as the frequency and nature of customer complaints, custody of funds and authority to exercise investment discretion, and receipt of commissions for the sale of investments recommended to clients.

"These are the common sense components of an effective program to deter and detect fraud and abuse throughout the industry," Roper said. "Although we would like to believe that the SEC would adopt such procedures on its own, the evidence does not support such a conclusion."

In addition, the House bill contained broader consumer protection measures, including requirements that investment advisers provide more detailed disclosure of sales-related compensation they receive and that they make recommendations that are suitable based on their clients' financial situation.

"The disclosure requirements were particularly important, since they would have given consumers much more information with which to assess the existence and magnitude of conflicts that might bias the adviser's recommendations," Roper said.

"The current disclosure requirements did not anticipate a situation in which many, if not most, investment advisers would receive both a fee for objective advice and compensation based on sales to implement that advice," she said. "Because such a situation creates a serious conflict of interest, consumers need more detailed information with which to assess that conflict."

Senate Refused Stronger House Provisions

Once the House bill was passed in late September, House and Senate staff members attempted to rush together a compromise. But with little willingness on the Senate side to incorporate the stronger House language, the efforts failed.

"Fortunately, House members — particularly Telecommunications and Finance Chairman Edward J. Markey (D-MA), Energy and Commerce Committee Chairman John Dingell (D-MI), and Rep. Rick Boucher (D-VA) — refused to cave in to pressure to accept a weak bill," Roper said.

Ultimately, any hopes of a compromise died when Sen. Jake Garn (R-UT) said he would object to bringing any investment adviser bill to the Senate floor if it did not also include lender liability legislation.

The investment adviser legislation is expected to be reintroduced in the next Congress. House staffers have indicated that the new version will contain added consumer protections.

Congress Passes Anti-Car-Theft Bill

As one of the last things they did before adjourning, Congress passed legislation to discourage automobile theft.

The legislation, which was sponsored by Rep. Charles E. Schumer (D-NY) and Rep. Jim Sensenbrenner, Jr. (R-WI), passed both houses on voice vote approval during the last week of the session.

The bill would make carjacking — armed robbery of a vehicle while the driver is present — a federal crime punishable by up to 15 years in prison. With the number of such crimes increasing dramatically and the president calling for action, this provision helped to speed the bill through the legislative process.

One provision that almost stalled the bill was a requirement in the original version that automakers mark the major parts of all new passenger vehicles with the vehicle identification number (VIN).

It also would have eliminated the current exemption from parts marking for vehicles that are equipped with theft-deterrent devices. And body shops and repair facilities would have been required to check each part's VIN against a national database of stolen vehicles.

Ultimately, however, Rep. Schumer was able to work out a compromise with Energy and Commerce Committee Chairman John Dingell (D-MI) to phase in the parts marking program, temporarily continue the theft-deterrent device exemption, scale back reporting requirements for repair facilities, and require studies to determine the effectiveness of the anti-theft measures in the bill.

The bill would also: increase prison sentences; improve the procedure for checking car titles to make sure they are legitimate; require the U.S. Customs Service to conduct spot checks of cars and containers leaving the country and study new ways to prevent the export of stolen vehicles; and require insurance companies selling junk or salvage vehicles to verify that the vehicle is not stolen.

Auto theft has increased 30 percent since 1986, to more than 1.6 million vehicles stolen last year. The value of stolen vehicles tops $8 billion each year.

In testimony before a House Judiciary subcommittee in March and an Energy and Commerce subcommittee in September, CFA Public Affairs Director Jack Gillis estimated that the "hidden costs" of auto theft — car rental fees, lost property in the car, time off from work, and legal fees, for example — bring the total yearly cost to consumers to more than $19 billion.

Gillis endorsed the legislation, saying it attacks "the multi-billion-dollar problem of auto theft with only a modest spending level."

CFA PAC Endorses Congressional Candidates

As the primary election season was winding to a close in early October, CFA's campaign committee had endorsed 116 of the remaining candidates in the 1992 congressional elections.

In the House, CFA endorsed 90 incumbents and 20 challengers. In the Senate, CFA endorsed two incumbents, three House members running for Senate seats, and one challenger.

With record numbers of members retiring and losing in the primaries, the House of Representatives appeared headed for its highest turnover rate since World War II. Meanwhile, seven senators had announced their retirement, and one had already been defeated in a primary election.

Among those retiring are two senators and one representative whose exceptional pro-consumer voting records have earned them recognition by CFA as Lifetime Consumer Heroes — Sen. Brock Adams (D-WA), Sen. Timothy E. Wirth (D-CO), and Rep. James H. Scheuer (D-NY). Another major loss for consumers was the death in September of Lifetime Consumer Hero Rep. Ted Weiss (D-NY).

In addition, many of the incumbents endorsed by CFA were locked in tough reelection fights. According to a September 19 *Congressional Quarterly* article, the election outcome in 132 districts is in serious doubt, and "contests in another 68 districts bear watching."

"There is a tremendous amount on the line in this election," said CFA Legislative Director Gene Kimmelman. "Under these circumstances, it is particularly vital that voters reelect incumbents who have shown themselves to be true leaders on consumer issues and elect new members who will work to ensure that consumer issues are at the top of the new Congress's agenda."

Incumbents' Voting Records Assessed

Incumbent candidates and House members running for Senate seats were evaluated on the basis of their career voting records on key consumer issues.

"Voters have been paying increased attention to the votes made by their representatives in Washington to see where they stand on issues that are important to them," said CFA Legislative Counsel Bradley Stillman.

"The CFA endorsement lets voters know who has been protective and supportive of consumers with respect to issues dealing with their pocketbooks, health and safety, and the effects of business and industry's activities on consumers," he added.

Endorsed candidates are those who have been:

- watchdogs of consumers' pocketbooks, supporting legislation that prevents antitrust violations and fighting to assure that financial services are available to all consumers and that all of our financial institutions become stronger;
- advocates of clean government, supporting legislation that reforms campaign financing; and
- protectors of the health and safety of all citizens, supporting family programs and fighting to retain existing consumer protections.

"During these especially difficult economic times, these public servants are making sure tax dollars are used to benefit consumers," Stillman said.

Challengers Judged On Key Consumer Issues

Challengers were chosen from races against incumbents who have poor consumer voting records and from races for open seats. They were judged on the basis of their positions on important pending consumer issues.

"After reviewing the backgrounds and positions of these candidates, CFA is confident that they will strongly defend consumer interests if elected," Stillman said. "These candidates have expressed strong support for a broader health care program, campaign finance reform, and strong consumer protections for product safety and our financial system."

Senate

CA: Rep. Barbara Boxer (D)
FL: Sen. Bob Graham (D)
IL: Carol Moseley-Braun (D)
MD: Sen. Barbara Mikulski (D)
ND: Rep. Byron Dorgan (D)
UT: Rep. Wayne Owens (D)

House of Representatives

AL: Earl Hilliard (D-07)

AZ: Rep. Ed Pastor (D-02)

CA: Rep. Robert T. Matsui (D-03)
Rep. Nancy Pelosi (D-05)
Rep. George Miller (D-07)
Rep. Ronald V. Dellums (D-08)
Rep. Fortney "Pete" Stark (D-09)
Rep. Don Edwards (D-10)
Rep. Tom Lantos (D-11)
Anna Eshoo (D-14)
Rep. Leon E. Panetta (D-16)
Rep. Anthony C. Beilenson (D-23)
Rep. Henry A. Waxman (D-24)
Rep. Howard L. Berman (D-26)
Rep. Maxine Waters (D-29)
Rep. Matthew G. Martinez (D-30)
Rep. Esteban Edward Torres (D-34)
Mayor Walter Tucker (D-37)
Robert Baker (D-41)
Robert Banuelos (D-46)
John Anwiler (D-47)
Robert Filner (D-50)
Bea Herbert (D-51)

CO: Rep. Patricia Schroeder (D-01)

CT: Rep. Barbara B. Kennelly (D-01)
Rep. Sam Gejdenson (D-02)

GA: Rep. John Lewis (D-05)
Cynthia McKinney (D-11)

HI: Rep. Neil Abercrombie (D-01)
Rep. Patsy T. Mink (D-02)

IL: Rep. George E. Sangmeister (D-04)
Rep. Sidney R. Yates (D-09)
Rep. John W. Cox (D-16)
Rep. Lane Evans (D-17)
Rep. Richard J. Durbin (D-20)
Rep. Jerry F. Costello (D-21)
Rep. Glenn Poshard (D-22)

IN: Rep. Peter J. Visclosky (D-01)
Rep. Jim Jontz (D-05)
Natalie M. Bruner (D-06)
Rep. Frank McCloskey (D-08)

ME: Rep. Thomas H. Andrews (D-01)

MD: Rep. Benjamin L. Cardin (D-03)
Rep. Steny H. Hoyer (D-05)
Rep. Kweisi Mfume (D-07)
Rep. Constance A. Morella (R-08)

MA: Rep. John Olver (D-01)
Rep. Richard E. Neal (D-02)
Rep. Barney Frank (D-04)
Rep. Edward J. Markey (D-07)
Rep. Joseph P. Kennedy (D-08)
Rep. Joe Moakley (D-09)
Rep. Gerry E. Studds (D-10)

MI: Bart Stupak (D-01)
Rep. Dale E. Kildee (D-07)
Rep. David E. Bonior (D-12)
Rep. Barbara-Rose Collins (D-13)
Rep. John Conyers (D-14)
Rep. William D. Ford (D-15)
Rep. Sander M. Levin (D-17)

MN: Rep. Bruce F. Vento (D-04)
Rep. Martin Olav Sabo (D-05)
Rep. Gerry Sikorski (D-06)
Rep. Collin Peterson (D-07)
Rep. James L. Oberstar (D-08)

MO: Rep. Alan Wheat (D-05)

NJ: Rep. Frank Pallone (D-03)
Rep. Robert G. Torricelli (D-09)
Rep. Donald M. Payne (D-10)
Frank Abate (D-12)

NM: Rep. Bill Richardson (D-03)

NY: Rep. George J. Hochbrueckner (D-01)
Rep. Thomas J. Downey (D-02)
Phil Schiliro (D-04)
Rep. Gary L. Ackerman (D-07)
Rep. Charles E. Schumer (D-10)
Rep. Edolphus Towns (D-11)
Rep. Major R. Owens (D-12)
Rep. Charles B. Rangel (D-16)
Rep. Jose E. Serrano (D-18)
Rep. Eliot L. Engel (D-19)
Rep. Nita M. Lowey (D-20)
Rep. Michael R. McNulty (D-23)
Rep. Louise M. Slaughter (D-30)
Rep. John J. LaFalce (D-32)

OH: Fred Sennet (D-08)
Rep. Marcy Kaptur (D-09)
Sherrod Brown (D-13)
Rep. Thomas C. Sawyer (D-14)
Rep. James A. Traficant (D-17)
Rep. Mary Rose Oakar (D-20)
Rep. Louis Stokes (D-21)

OK: Rep. Mike Synar (D-02)

OR: Rep. Ron Wyden (D-03)
Rep. Peter A. DeFazio (D-04)

PA: Rep. Thomas M. Foglietta (D-01)
Rep. Robert A. Borski (D-03)
Rep. Peter H. Kostmayer (D-08)
Rep. William J. Coyne (D-14)
Robert Peters (D-16)

TX: John E. Dietrich (D-06)
John Wayne Caton (D-26)
Gene Green (D-29)

VT: Rep. Bernard Sanders (I-AL)

VA: Leslie Byrne (D-11)

WA: Rep. Jolene Unsoeld (D-03)
Rep. Jim McDermott (D-07)

WV: Rep. Robert E. Wise (D-03)

WI: Rep. Gerald D. Kleczka (D-04)
Rep. David R. Obey (D-07)

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Credit Reporting Bill Pulled By Sponsors

Sponsors of legislation to reform credit reporting practices pulled the bill from the House floor in late September after losing a close vote to delete the bill's provision preempting stronger state laws.

Consumer groups had made removal of the preemption provision a condition of their support for the legislation and fully supported the move to kill the bill once the preemption battle was lost.

The fight to remove the provision was led by Banking Chairman Henry B. Gonzalez (D-TX) and Reps. Esteban E. Torres (D-CA), Charles E. Schumer (D-NY), Matthew J. Rinaldo (R-NJ), and John Bryant (D-TX).

Responding to heavy lobbying by the credit reporting industry, banks, credit card companies, and retailers, however, the House rejected the amendment 203-207.

The legislation is necessary because of the massive problem with inaccuracies in credit reports, as a result of which millions of consumers have been refused loans, credit cards, or jobs.

In addition to problems at the bureaus themselves, many errors result from the shoddy reporting practices of banks, retailers, small loan companies, and others that supply information to the credit bureaus.

Although the bill contained some reforms designed to make it easier for consumers to obtain a copy of their credit report and correct inaccuracies, it was ravaged by concessions to industry during Banking Committee markup.

As a result, its protections are weaker than those in about 20 states that have passed laws to protect consumers from industry abuses.

"The creditors and the credit bureaus never wanted a bill, and preemption was simply the knife they used to kill the bill," said U.S. PIRG Consumer Advocate Edmund Mierzwinski. "We'll be back with a tougher bill next year," he added.

A companion measure in the Senate that also contained preemption language was never marked up. Consumer groups had urged Senate Banking Chairman Donald W. Riegle, Jr. (D-MI) to prevent action on the legislation unless the preemption provision was removed.

State Insurance Departments Gain Resources

Across America, states are spending more to regulate the insurance industry, according to a report released in September by the Consumer Insurance Interest Group (CIIG) and the National Association of Professional Insurance Agents (PIA National).

The report shows that the percent of premium taxes allocated to insurance departments rose a significant 22 percent from an average of 5.4 percent in 1986 to 6.9 percent in 1991. Moreover, resource levels also grew more rapidly than other indicators of workload requirements, such as the number of admitted companies in the state and the number of state residents.

"It is heartening that, in a period of constrained budgets, most states have increased their funding of insurance regulation," said CFA Executive Director Stephen Brobeck, a member of CIIG. "Yet, in too many states, this funding is still insufficient to regulate one of the largest and most complex industries in the country," he added.

More States Meet Minimum Funding Standard

A 1988 report by CIIG and PIA National concluded that most state insurance departments had inadequate resources to regulate. CIIG recommended then that states allocate at least 10 percent of insurance premium taxes to their insurance department budgets.

The new report shows that, by 1991, 12 states met the CIIG recommendation, compared to only two states in 1988.

"This is significant because today many states are facing overall fiscal challenges," said CIIG Chairperson Esther Peterson.

Some states, however, allocate far more resources than others to insurance regulation. For example, the four largest states — New York, California, Florida, and Texas — control more than half of all funds and staff dedicated to insurance regulation in the United States.

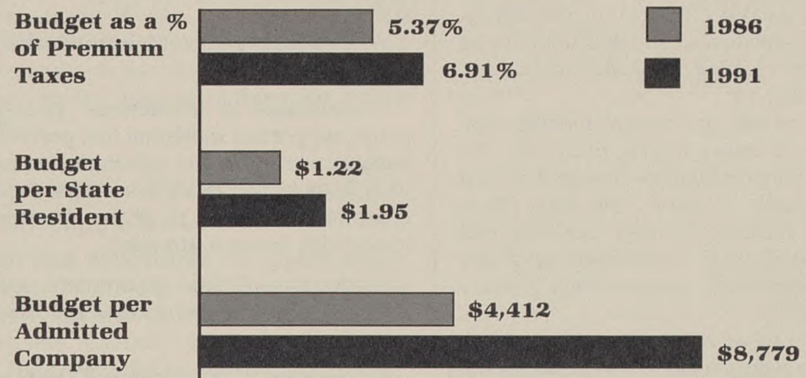
Resources Still Inadequate

Also, many states have funding levels far below the recommended 10 percent of insurance premium taxes. This is particularly true of medium size states, which spent only 4.59 percent of their premium tax on regulation, compared to 7.69 percent in small states and 8.41 percent in large states.

"I'm very pleased with the progress states have made but note that the national level of expenditures related to premium taxes is still 30 percent below what I consider to be the minimum standard," said CIIG member J. Robert Hunter, President of the National Insurance Consumer Organization. "In fact, some states are still woefully underfunded and understaffed," he added.

Adequate resource levels are a necessary condition of effective insurance regulation, but not the only condition, the report concludes.

Actuaries, for example, are particularly important insurance department employees, because they assess the condition of insurance companies. The report shows that departments employ an average of 3.5 full-time actuaries, with the number in the various states ranging from zero to 59.



Improvements Recommended

The report contains the following recommendations:

- States with relatively low budgets per capita and per admitted company should provide their insurance departments with greater funding.
- To ensure greater efficiency of departmental spending, and to reduce unnecessary regulatory burdens on insurers, insurance departments should increase coordination of their efforts with each other.
- Each state insurance department, no matter how small, should employ more than one full-time actuary.
- State insurance departments should draw on the data in the study to help assess the adequacy of their efforts.

Copies of the report are available free from Professional Insurance Agents, 400 North Washington Street, Arlington, VA 22314, (703) 836-9340.

Product Liability Bill Narrowly Defeated

A Senate bill that would have limited the ability of consumers injured by dangerous products to recover damages was narrowly defeated in September when supporters fell two votes short of the 60 votes needed to end debate and bring the bill to the floor.

The latest salvo in a decade-long battle by manufacturers to limit their responsibility for faulty products, this year's bill was also the first such measure to be voted on by the Senate as a free-standing bill.

When bill sponsors Robert W. Kasten, Jr. (R-WI), John C. Danforth (R-MO), and Jay Rockefeller (D-WV) threatened to attach the measure to any bill that came to the floor, Senate Majority Leader George J. Mitchell (D-ME) agreed to give the bill a stand-alone cloture vote.

In an effort to win additional Democratic support for the measure, supporters had removed some of the most onerous provisions from previous versions. Nonetheless, the misnamed "Product Liability Fairness Act" still contained a number of anti-consumer provisions.

Under S. 640, an injured consumer who rejected a pre-trial settlement offer from a manufacturer and then recovered the same amount or less at trial would have to pay the manufacturer's attorneys fees, with some limitations. Victims would also be subject to the "loser pays" rule if they chose to take their case to court rather than to an alternative dispute resolution system.

"Although we support the development of a fair alternative dispute resolution system, S. 640 would impose one-sided procedures that would force consumers to accept inadequate compensation or face paying the huge legal fees of the manufacturer," said CFA Legislative Director Gene Kimmelman.

In addition, S. 640 would repeal the doctrine of joint and several liability as it is applied to non-economic damages, such as "pain and suffering;" shield manufacturers of government approved drugs, medical devices or aircraft from punitive damages unless fraud was involved, no matter how egregious the manufacturer's wrongdoing; and bar injury claims for products used in the workplace that are more than 25 years old, even if the dangerous defect existed at the time of manufacture.

"S. 640 would make it more difficult, and at times impossible, for victims of defective products to recover their losses," Kimmelman said. "The result would be to seriously weaken the incentives for manufacturers to produce safe products and, in consequence, to increase the dangers in the marketplace and workplace."

Sen. Kasten has said he will try again next year to get the measure passed.

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