



## Senate Bill 276: An Exercise in Compromise

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**E**dmund Burke, the great British Statesman, once said that “All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter.” If Burke were alive today, he clearly would have recognized the evolution of Senate Bill 276 as an exercise in compromise that benefits consumers and auto insurers alike.

Introduced in 2007 by Senator Cecil Staton as a pro-consumer bill that would allow consumers to get the most out of their Uninsured/Underinsured motor vehicle (UM) coverage, the legislation attained its final form on March 6, 2008 when the Senate agreed to changes made by the House that virtually deregulates automobile insurance rates in Georgia. As one would imagine, the UM coverage provisions of the bill were strongly opposed by the insurance industry; while consumer advocates opposed the deregulation provisions, fearing that insurers would raise auto insurance rates with impunity. (Please note that this legislation also

*(Continued on page 2)*



## METHCHECK: The Answer to Georgia’s Fastest-Growing Drug Problem?

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**T**he manufacture and use of the drug methamphetamine, commonly known as meth, is an alarming trend across the country. In 2005, the General Assembly made large strides towards dealing with the problem here in Georgia by passing House Bill 216, which placed significant limits on the retail purchase of products containing pseudoephedrine, one of the essential ingredients in the production of meth. In brief, the bill prohibits someone from purchasing more than three packages of any product containing

pseudoephedrine as an active ingredient, such as Sudafed, and they must be sold in blister packaging from behind the counter. A conviction for violating any the over-the-counter retail sale restrictions carries a misdemeanor charge with a possible \$500 fine upon the first conviction. A second or subsequent conviction requires up to six months in prison and a fine of up to \$1,000. While these measures have proven effective, the meth problem is far from solved.

Meth is a powerfully addictive man-made stimulant that interferes with the release of dopamine in the brain. The “high” associated with

*(Continued on page 3)*



(Continued from page 1)

addresses two recent Georgia Supreme Court decisions involving the scope of UM coverage. This article will not address those provisions.)

**A Victory for Consumers**

Uninsured/Underinsured motor (UM) vehicle coverage is an optional portion of an auto insurance policy that protects a policyholder from uninsured, underinsured, and hit-and-run drivers. Current law allows an injured party to collect on vehicle damages from the at-fault driver plus the injured party's UM policy only up to the amount of their UM coverage. For example, if an injured party's UM coverage limit is \$50,000, but has sustained \$75,000 in damages, the injured party can never claim an aggregate of more than \$50,000 from the at-fault driver and their own UM coverage; even if the two policies, combined, equal or exceed \$75,000. Senator Staton explained to the Senate Insurance Committee in 2007 that consumers are not getting what they paid for when it comes to UM coverage. He pointed out to a mostly surprised Committee that most consumers believe that UM coverage augments the at-fault driver's liability coverage

if that coverage is inadequate – hence the term “underinsured.” But this is not the case.

To correct this misconception and provide clarity to the consumer, Senate Bill 276 offers consumers, beginning on January 1, 2009, three choices when faced with the opportunity to purchase UM coverage:

1. Option one allows stacking or combining the at-fault driver's liability coverage with the injured parties UM coverage up to the total cost of damages. As such, the injured party in the above example would be able to access his \$50,000.00 in UM coverage, "stack" it to the at-fault driver's \$50,000.00 liability policy, and recover all of the \$75,000 in damages;
2. Option two allows a driver to reject the stacking option and purchase or maintain traditional UM coverage in a limit the driver feels is appropriate. This option does not diverge from current law; or
3. Option three allows the driver to reject UM coverage altogether.

Again, this option does not diverge from current law.

Laying out these options for Georgia drivers will clearly help them understand what they are paying for and what exactly to expect from their UM coverage.

**Deregulation of Rates: Increased Competition Benefits Insurers . . . and Consumers?**

As mentioned previously, Senate Bill 276 was amended at the behest of insurers to deregulate automobile rates. But will this also benefit drivers?

Rate making in its simplest definition is the process of calculating a price to cover the future cost of insurance claims and expenses, including a margin for profit. A rate is the price of a given unit of insurance, while a premium represents the total cost of many units.

Rate filing is the process in which the insurer submits its proposed insurance rates to the state's insurance commissioner. In addition to rate filings, insurance regulators are also responsible for approving form filings to determine if the insurance product is being presented logically and truthfully to the consumer, as well as an insurer's underwriting rules.

There are several different approaches a state's insurance commissioner can take to address rate filings. For example, until the rate filing provisions of Senate Bill 276 become effective in January 2009, Georgia requires prior approval from the Commissioner before any auto insurance rate increases can be implemented. That is to say, the insurer must file rates, rules, forms, etc., with the Commissioner for approval prior to the new rates becoming effective. Each year, the Property and Casualty Division receives an average of 6,000 rate and rule

(Continued on page 4)

(Continued from page 1)

meth abuse lasts six to twelve hours, as opposed to the thirty minute high with cocaine use. Meth-related arrests in Georgia increased 132% between 2001 and 2005, with a disproportionately higher number of arrests and lab busts concentrated in the rural northern counties. The use and manufacture of this drug has also had an alarming effect on the number of child deprivation cases in north Georgia: 71% of child deprivation cases in this region involved meth abuse. The statewide average is only 42%.

According to the federal Drug Enforcement Administration, meth abuse has been the fastest growing drug problem in Georgia for the past five years. In part, this may be due to Georgia's status as a transportation hub for the East Coast. An encouraging statistic is that the number of clandestine meth labs busted by law enforcement has sharply declined since House Bill 216 became effective. In 2006, there were 156 reported meth lab incidents in Georgia; in 2007, that number dropped to 55. Unfortunately, this decrease in meth produced in Georgia may encourage international and out-of-state suppliers of the illegal drug to import and distribute greater quantities within our state. If that occurs, no amount of pseudoephedrine monitoring here in Georgia will alleviate the crisis.

During the 2008 legislative session, Senator Gloria Butler introduced Senate Bill 457 in an attempt to create a statewide electronic monitoring system of pseudoephedrine product sales. The bill, which did not pass out of committee due to concerns about cost and necessity, sought state funding in order to purchase and use the MethCheck program. MethCheck was invented by Appriss, Inc., a government technology provider based in Louisville, Kentucky. It is a real-time electronic

reporting system that allows pharmacy employees to view each customer's purchasing history at the point of sale and send that information to law enforcement. Under the provisions of Senate Bill 457, all pharmacies would have been required to maintain a written or electronic log of transactions involving the sale of products containing ephedrine, pseudoephedrine, and phenylpropanolamine, and enter all such information into the MethCheck system. Pharmacies are already the only retailers authorized to sell and distribute these drugs.

A federal law became effective in 2006 that placed stringent limits on sales of products containing pseudoephedrine, which preempts more lenient state laws. Nationwide, all products containing pseudoephedrine must be kept either behind the counter or in a locked display, and retailers are prohibited from selling more than 3.6 grams per day or 9 grams per month to a single consumer. In addition, stores that sell such products are required to maintain a record of each pseudoephedrine transaction and ensure that every employee is familiar with the law.

Currently, Kentucky, Oklahoma and Arkansas have statutes requiring

pharmacies to keep an electronic log of all pseudoephedrine purchases, though none of these statutes mention MethCheck by name. In particular, Kentucky has seen an impressive rise in meth-related arrests due to the increased monitoring abilities afforded by using the MethCheck system. Police officers credit MethCheck for providing the information they needed to make a record number of meth-related arrests during a 2006 pilot program.

MethCheck may get another chance here in Georgia. Senator Butler will chair the Senate Study Committee for the Creation of a Georgia MethCheck Database in order to determine whether using a centralized, real-time electronic log would be a worthwhile expense. The first of several study committee meetings regarding MethCheck was held on Tuesday, August 19<sup>th</sup>. The committee will need to weigh the advantages, such as improved monitoring capability of a controlled substance and instant access to purchase information for law enforcement, against the probable high cost of using technology requiring high-speed internet access, owned and operated by a private company, with unknown implementation expenses for the thousands of pharmacies across the state.



*(Continued from page 2)*

filings annually from insurance companies, self-insured trust funds, or rating organizations. Rate filings are evaluated to determine if they meet Georgia's legal standards prohibiting rates that are excessive, inadequate, or unfairly discriminatory.

While the regulatory process in each state varies, Georgia Commissioner John Oxendine has commented that two principles guide the current rate filing approval process in Georgia: rates should be adequate to maintain the insurer's solvency; and rates should not be excessive so to lead to disproportionate profits for insurers and affordability problems for consumers. Although requiring an insurer to seek prior approval for a rate decrease seems counterintuitive, drastic rate decreases could create market instability, cause Georgia to become an unprofitable market and prevent insurers from conducting business in this state, or allow one insurer to attempt to buy up a large market share. Of course, excessive rate increases can drive the cost of insurance out of the reach of most consumers and thus increase the number of uninsured.

When Senate Bill 276 becomes effective, insurers will still be required to seek prior approval from the Insurance Commissioner for policy rate filings providing only the mandatory minimum limits for auto insurance. However, for all other forms of optional auto insurance, rates will be treated on a file and use basis; becoming effective upon filing and without the Commissioner's prior approval. Moreover, file and use will also apply to the entire policy with minimum limits if such policy has any additional non-mandatory coverage or coverages.

### **Insurance Regulation and Market Distortion**

Although rate deregulation is a concept that the insurance industry has

sought for years, the idea gained momentum after the 2007 legislative session when the *Senate Study Committee on Property and Casualty Rate Regulation* was created to examine the issue. Surprisingly, the Committee learned that regulation of insurance rates does not necessarily mean that rates will be higher in highly regulated states than they are in competitive markets states with little or no regulation. Likewise, deregulation does not always translate into lower rates. Indeed, Dr. Richard D. Phillips of Georgia State University's Department of Risk Management and Insurance noted that previous studies have determined that the practice of prior approval had little effect on prices from the 1970s through the late 1990s.

However, regulation causes other market distortions. Most importantly, since more regulation leads to more hurdles to overcome and longer delays for bringing the products into the market, insurers are discouraged from investing in areas or states that are highly regulated, which ultimately leads to less competition. Less competition can lead to a lack of competitive pricing and reduced choices for consumers. In general, the insurance industry always prefers to invest its resources where risk and regulatory control are relatively minimal.

Another important example of how regulation distorts the overall market is that it leads to the subsidization of high-risk drivers. As noted previously, the practice of prior approval has little effect on overall prices. Where it does have a significant impact is on how rates are distributed among drivers. Since rates are uniformly spread out among all drivers under a regulated market, safe drivers ultimately subsidize high-risk drivers. Whereas under deregulation, low-risk drivers enjoy a greater reduction in rates as the subsidization of high-risk drivers is reduced or eliminated.

### **Post-Reform South Carolina**

Proponents of deregulation point to South Carolina as a successful example of rate reforms. Georgia State's Dr. Phillips explained how reforms in South Carolina have stabilized the auto insurance market in that state. In 1999, South Carolina transformed its rate making process from a prior approval process to a flex rating process. Today, only filings that increase or decrease overall rate levels above 7 percent of a company's existing rate must seek prior approval. All other rate changes are treated under a file and use process. Since this reform, South Carolina has seen a remarkable increase in the number of companies underwriting automobile insurance from 88 companies in 1998 to 155 in 2003. Moreover, within that timeframe, although the subsidization of risky drivers was eliminated through deregulation, the size of the residual market (automobile insurance risk pool) has been drastically reduced from 600,000 policies to 340 policies. Finally, the average premium cost dropped from 24<sup>th</sup> highest average premium in the nation to 34<sup>th</sup> highest.

### **Criticism of Rate Deregulation**

Critics, as well as the Insurance Commissioner's Office have pointed out that Georgia should not be compared to South Carolina with its much smaller population, but instead, should be compared to states with similar populations and demographics – since states with a higher number of drivers experience a greater number of exposures to loss. Indeed, Georgia rates compare favorably to the top 15 largest states (In ascending order by population: Indiana, Washington, Massachusetts, Virginia, New Jersey, North Carolina, Georgia, Michigan, Ohio, Pennsylvania, Illinois, Florida, New York, Texas, and California). For example, in 2005, Georgians' on average spent less on coverage

*(Continued on page 5)*

(Continued from page 4)

than all but five (Illinois, Virginia, Ohio, Indiana, and North Carolina) of the 15 largest states.

Moreover, among the 15 largest states, Georgia often exhibits a greater risk of loss – and thus higher insurance costs. In 2004, Georgia ranked 2<sup>nd</sup> in miles driven per registered vehicle (14,057) and experienced the 3<sup>rd</sup> highest rate of accidents and the 4<sup>th</sup> highest rate of fatal accidents.

Another contributing factor impacting rates is the financial status of the insured. In 2004, Georgia's average credit score of 668 was lower than all but two (North Carolina and Texas) of the 15 largest states.

According to the Insurance Commissioner's Office, these facts illustrate that rate regulation is only one of many contributing factors impacting insurance rates and that Georgia and other large states exhibit different characteristics that affect rates regardless of the regulatory scheme. The most significant contributing factors include:

- Accident rates;
- Traffic density;
- Vehicle theft rates;
- Medical and legal costs;
- Financial status of the insured (Credit Scores); and
- Tax structure.

The Commissioner also maintains that since Georgia is already a highly competitive market, deregulation would bring in little more new business. In fact, American Family Insurance is the only major insurer not underwriting PPA in Georgia.

### **Insurance Industry's Position**

Although insurers acknowledge that Georgia is not in a crisis, the insurance industry expressed some concerns regarding the rate filing process in Georgia and how it could be improved. The industry's primary concerns can be broken down into

two related themes: streamlining the rate filing process, and a loosening of the State's regulatory authority over the insurance industry.

The insurance industry expressed support for the modernization of rate regulation laws that would permit open competition among insurers in the pricing of their products. Insurance regulation, as it exists in Georgia, is considered outdated by some insurers in an era in which so much information is readily available to consumers via the Internet, advertising, and other mass media. The industry also expressed concern over the State's regulatory authority, pointing out that the financial sector prefers to invest its resources where risk and regulatory control are relatively minimal. They maintain that more pricing decisions should be determined by market forces and that excessive regulation only serves to inhibit competition.

### **Long-Term Success Remains to be Seen**

Andrew Carnegie noted once that "The 'morality of compromise' sounds contradictory. Compromise is usually a sign of weakness, or an admission of defeat. Strong men don't compromise, it is said, and

principles should never be compromised. I shall argue that strong men, conversely, know when to compromise and that all principles can be compromised to serve a greater principle."

The legislative process is a never-ending exercise in compromise – even when one party controls. Clearly, Senate Bill 276 is no exception. What remains unclear is the legislation's long-term impact on the consumers and insurers.

Giving drivers greater flexibility in choosing and expanding their UM coverage is surely a victory for the consumer. But will insurers raise rates now that they will be forced to provide an expanded product? After all, we get what we pay for. Likewise, will deregulation free insurers from the cumbersome restrictions of government regulation and lead to a more competitive and affordable market? Will safe drivers see their rates decline as they become free from subsidizing riskier drivers? Or will deregulation allow insurers to raise rates with impunity without the watchful eye and oversight of the Insurance Commissioner's Office? These are long-term questions that, for the moment, can only be answered theoretically for Georgia.

