

Tort Reforms Topped 1987 Legislature

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SACRAMENTO — Significant legislative agreement on tort reform emerged as the major accomplishment of the 1987 legislative session, which ended early Saturday, and now goes to Gov. George Deukmejian.

The state's trial lawyers and their traditional antagonists on tort issues — business, medical and insurance interests — congratulated each other for their historic cooperation.

But consumer groups, which were virtually locked out of the months-long talks that led to reforms introduced and passed

on the final day of the session, vowed to push for a 1988 ballot initiative to do what the Legislature could not: Reform insurance laws and rein in escalating liability premiums.

"It can be discouraging," legislative consultant Gene Erbin said Monday. Erbin is counsel to the assembly judiciary subcommittee on the administration of justice and a principal drafter of unsuccessful insurance reform bills.

"It's sad that everyone's interests were taken care of except the consumers," he said. "The common citizens were not part of this deal."

The private-sector tort reform legislation included an agreement by the

California Trial Lawyers Association and the Association for California Tort Reform not to sponsor or fund initiatives against each other. Thus, any effort to mount an insurance-reform initiative presumably will be without CTLA help.

"We were not counting on money from CTLA," said Carmen Gonzales of the Access to Justice Foundation, a Santa Monica-based coalition of consumer groups expected to push for an insurance reform initiative on the November 1988 ballot. "It would have helped, but I'm not sure all of the groups would have felt comfortable with it. At this point, we are mostly regrouping and expanding our effort."

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forts. We are planning to go forward."

The controversial closed-door negotiations that led to sweeping changes in tort reform laws — including limits on punitive damages and product liability and a 5-percent increase in attorney contingency fees in large medical malpractice awards — were conducted by the trial lawyers and tort reform coalition largely to avert a multimillion-dollar initiative battle on the 1988 ballot. The package now goes to the governor.

The tort reform coalition already had begun efforts to qualify a second initiative drive, this time including broad reforms of great concern to trial lawyers. The Proposition 51 battles fought last year and lost by trial lawyers cost at least \$11 million, about equally split between the trial lawyers and the business coalition. A second initiative battle would cost perhaps three times as much.

"The whole process just leaves a very bad taste," Gonzales said, "that something of such import to consumers should be conducted behind closed doors."

The CTLA disagreed.

"This proposal is the result of literally months of talks aimed at improving the efficiency and fairness of the civil justice system while at the same time maintaining the integrity of the system and the full legal protection of the rights of consumers," said CTLA President Browne Greene. "As trial lawyers, we are above all committed to preserving and strengthening this system. We will not ever bargain away the rights of consumers for the sake of political expediency."

California Chamber of Commerce President Kirk West insisted "the public will benefit and liability exposure will be reduced for many businesses and individual citizens."

"Voters will be spared a bruising and

expensive initiative battle," West said.

Assembly Speaker Willie Brown, D-San Francisco, who was instrumental in working out the compromise legislation, called it "balanced and fair."

"It will not allow guilty or negligent wrongdoers to escape responsibility for their actions, nor will it allow private industry to ride roughshod over the rights of consumers," Brown said. "It also will discourage frivolous lawsuits and address other problems in the civil liability system."

CTLA President-Elect Gary Gwilliam pledged to continue the compromise negotiations among the parties to address insurance costs.

"The insurance interests involved in these negotiations have already agreed to meet with us to discuss tackling such difficult issues as reducing automobile liability insurance rates," Gwilliam said.

Representatives of participants in the negotiations said in a joint press release that "one of their first priorities" will be to examine "insurance and liability factors" affecting the cost of automobile insurance and to reduce rates by up to 30 percent.

The CTLA also was instrumental in negotiations that led to a bill to reduce public entities' liability in high-speed police pursuits and natural geographic conditions. Those negotiations included the major organizations representing local government, the League of California Cities and the County Supervisors Association of California and the attorney general's office.

The private-sector tort reform measures were made part of Senate Bill 241, by Sen. Bill Lockyer, D-San Leandro, who predicted swift approval by Gov. Deukmejian. The package includes provisions that would:

- Change the definition of malice and oppression to include proof that the defendant's conduct was "despicable."

Increases the plaintiff's burden of proof from "preponderance of evidence" to "clear and convincing evidence."

- Immunizes sellers of products that are known to consumers to be "inherently unsafe," such as alcohol, cigarettes and foods high in cholesterol.

- Alters the sliding-scale contingency fee limitation of the Medical Injury Compensation and Reform Act (MICRA) from 10 to 15 percent of awards totaling more than \$600,000 in medical malpractice cases. All other provisions of MICRA remain unchanged.

- Clarifies the circumstances in which an insurance company must provide separate independent legal counsel to an insured and defines criteria for selection and payment of independent counsel.

In the closing days of the 1987 session, the Legislature also sent to the governor a nine-bill package limiting the liability of local governments and a measure incorporating the provisions of the original nine bills, which were worked out in lengthy negotiations involving legislative leaders, the CTLA and local government.

The measure would:

- Limit city and county liability for accidents caused by natural conditions, such as sandbars.

- Allow 10-year structured settlements in large cases.

- Prevent double recovery of damages.

- Limit liability for accidents caused by police chases when guidelines exist for high-speed pursuits.

- Provide immunity for public of-

ficials for the negligent acts of public entities.

- Limit or eliminate the personal liability of corporate directors and officers (the only non-public-entity portion of the package).

- Protect the personal assets of officers and directors of nonprofit corporations.

In other action in the final days of the legislative session, legislators failed to act on two major insurance-reform measures that would remove the insurance industry's exemption from state antitrust laws require state Insurance Department review of large rate increases or decreases.

Both bills essentially died in the Assembly Ways and Means Committee last month amidst the legislative maneuvering.

The Legislature has approved a measure, SB 709, by Sen. Lockyer, to provide state funding of trial courts, increase the number of judges and begin a pilot program to study proposed changes in *voir dire* of jurors.

At an estimated cost of \$332 million beginning in the 1988-89 fiscal year, the bill would put into effect a 1985 law requiring the state — if a county chooses — to pay 90 per cent of the salaries of municipal court judges and to provide grants for support of Municipal Courts and Superior Courts. It would also add 109 judges to the trial and appellate courts beginning in 1988 — 64 Superior Court judges, 34 Municipal Court judges and 11 appellate justices.