HOUSE . . . . . No. 58

The Commonwealth of Massachusetts

STATE HOUSE, BOSTON, December 3, 1930.

To the General Court of Massachusetts.

In accordance with the provisions of section 33 of chapter 30 of the General Laws, as amended by section 43 of chapter 362 of the Acts of 1923, copies of the recommendations for legislation to be contained in the annual report of the Commissioner of Insurance (Pub. Doc. No. 9) are submitted herewith, together with drafts of bills embodying the legislation recommended. These drafts have been submitted to the counsel for the Senate as required by law.

MERTON L. BROWN,
Commissioner of Insurance.

RECOMMENDATIONS.

I. Complaints to the Board of Appeal on Motor Vehicle Liability Policies and Bonds.

Section 113D of chapter 175 of the General Laws, as amended, provides, in part, that any person aggrieved by the cancellation by an insurance company of his compulsory motor vehicle liability policy may file a complaint with the Commissioner of Insurance and have the propriety and reasonableness or the validity of the cancellation, or both, decided by the above-named board of appeal.

The law provides that a company cancelling such a policy shall render fifteen days' written notice to the insured and the Registrar of Motor Vehicles, and that a complaint against the cancellation of such a policy or bond must be filed within ten days after the insured receives written notice of cancellation. The present law is drawn on the assumption that the insured will in all cases receive the notice of cancellation prior to the expiration of said period of fifteen days.

Cases have arisen, however, in which the insured claimed that he did not receive a notice of cancellation from the company, and the Registrar did receive such a notice, or in which the insured did not receive his notice until after the registration had been revoked, or not in time to file his complaint prior to the revocation of the registration.

There may be some doubt whether under the present law a complaint may be filed after the registration has been revoked, although it is filed within ten days after the insured has received his notice.

I accordingly recommend that the present statute be amended to permit a complaint to be filed within ten days after the insured receives a notice of cancellation, whether or not the registration of the motor vehicle has been revoked in consequence of such cancellation, or

within a like period after the effective date of the cancellation specified in said notice pursuant to section 113A of said chapter 175, or, if the insured received no such notice, within ten days after the revocation of the registration. If these amendments are adopted it will be necessary, further, to provide by an amendment to section 34H of chapter 90 that, when a complaint is filed after the registration has been revoked, the revocation shall be rescinded pending the decision on the complaint.

The present law provides that the board of appeal on affirming a cancellation shall specify in its order the date, not less than fifteen nor more than twenty days from the filing of its order, upon which the cancellation shall become effective. This time seems to be rather long, and it is recommended that it be reduced to not less than ten days nor more than fifteen.

II. Suspension of Authority of Domestic Mutual Insurance Companies Transacting Compulsory Motor Vehicle Insurance.

During the past two or three years it has been necessary for the Commissioner of Insurance to institute liquidation proceedings against several domestic mutual insurance companies transacting business under the compulsory motor vehicle liability insurance act. It is my judgment, based upon this experience, that the Commissioner should be vested with broader powers than he now possesses to terminate the authority of any domestic company transacting this business, and that provision should be made that no such company shall transact such business unless it has a net surplus of not less than $100,000.

Under the present law domestic insurance companies receive a certificate of authority, the operation of which can be suspended only upon an information proceeding in the Supreme Judicial Court and for the specific causes enumerated in the law. (Gen. Laws, c. 175, §§ 6, 32.) In such a proceeding the Commissioner must allege and

prove the existence of one of said causes. A domestic mutual company formed since the enactment of St. 1927, chapter 284, to write liability insurance, is required to collect $100,000 in premiums in cash before issuing policies, and maintain a premium income of not less than $100,000, but no provision is made for a surplus except when it transacts classes of business in addition to liability insurance. (Gen. Laws, c. 175, §§ 54, 93.)

Foreign mutual companies are required to have a license which expires annually and is subject to suspension or revocation by the Commissioner, and such companies transacting this form of insurance are required to have and maintain a net cash surplus of at least $100,000 (Gen. Laws, c. 175, §§ 5, 150, 151), and if their surplus falls below this amount they are required to cease issuing policies and to notify the Commissioner thereof. (Gen. Laws, c. 175, §§ 23A, 156A.)

It is apparent, therefore, that the law provides stronger safeguards in respect to foreign mutual liability companies than it does in respect to such domestic companies.

The companies above referred to were formed prior to St. 1927, chapter 284, and when formed were not required to have any premiums paid in in cash prior to the issue of policies.

A provision requiring domestic mutual liability insurance companies to procure a special license revocable by the Commissioner to issue compulsory motor vehicle liability policies, as set forth in the accompanying bill, will give the Commissioner a more effective control over such companies than he now possesses, and will enable him more promptly to stay their operation than he can under the present law.

The Legislature may deem it advisable and expedient, also, to extend the provisions herein recommended to domestic stock liability companies. There seems to be no objection to the application of these provisions to such companies, although at this time there does not appear to be a real necessity for such application.

III. Notice to Insurance Companies of the Revocation of the Registration of Motor Vehicles insured under the Compulsory Automobile Liability Insurance Act.

There is no provision in the law for notifying insurance companies of the revocation of the registration of motor vehicles under section 22 of chapter 90 of the General Laws, as amended.

An unregistered motor vehicle is a trespasser on the highways, and the operation thereof renders the operator liable for any damage caused thereby without further proof of negligence. The policy issued under this act covers legal liability for damages caused by any operation of the motor vehicle named therein, whether or not the operation thereof is lawful.

It happens that the registrar of motor vehicles revokes the registration of a motor vehicle without the knowledge of the company insuring it. There is no provision of law that the revocation of the registration of a motor vehicle does *per se* terminate the insurance policy which apparently continues in force after such revocation, and covers, as stated, legal liability for damages arising out of the operation of an unregistered motor vehicle.

I recommend that provision be made in said section 22 that written notice be given to the insuring company by the Registrar upon the revocation, under said section, of the registration of a motor vehicle covered by the company.

If it is deemed inadvisable to enact legislation as aforesaid, then I recommend that a provision be enacted that the policies of insurance or bonds issued or executed under said act terminate upon the revocation of the registration under said section 22.

IV. Penalty for Making, etc., False, etc., Claims under Policies issued under the Compulsory Automobile Liability Insurance Act.

There is no statute which specifically defines or punishes the making or filing of false or fraudulent claims for personal injuries against persons insured under motor vehicle liability policies issued under said act.

Statutes are now in force covering such claims in connection with other types of policies of insurance. (Gen. Laws, c. 266, §§ 10, 27A, 110, 111, 111A.) It seems advisable to enact a statute specifically covering this matter.

I accordingly recommend legislation patterned on St. 1926, c. 198, which provides substantial penalties for presenting such claims against persons insured by compulsory motor vehicle liability policies.

V. Notice of Claims for Personal Injuries or Death covered by Policies issued under the Compulsory Motor Vehicle Liability Insurance Act.

There is no provision in said act which requires that written notice of a claim for death or personal injuries against a person insured under a policy issued thereunder be given to the insurance company. A provision of this kind is a strong safeguard against the presentation of false claims or the exaggeration of otherwise valid claims.

I recommend that provision be made that written notice of such a claim be given to the insurer, if any judgment obtained by the claimant is to be enforceable against the insurer under Gen. Laws, c. 90, § 34G; c. 175, § 113; and c. 214, § 3, cl. (10).

The bill herewith filed follows the provisions of chapter 84 of the General Laws, relative to the giving of written notice to cities or towns of claims arising out of alleged defective highways.

It is to be noted that said bill does not invalidate a claim as against the tort feasor, if written notice is not given as therein provided, but simply requires said notice to the insurer if it is to be held liable for any judgment obtained by the claimant.

VI. Notice of Actions against Persons insured under the Compulsory Automobile Liability Insurance Act.

The form of motor vehicle liability policy issued under this act contains a provision that the insured notify the insurer of any action or suit brought against him, and that the company will defend any such suit or action.

The law provides that any failure of the insured to notify the insurer of the claim or suit against him, or to conform to any other terms and conditions of the policy, does not in any way affect or invalidate the right of a judgment creditor of the insured to proceed against the insurer to enforce payment of his judgment under Gen. Laws, c. 175, § 113, and c. 214, § 3, cl. (10).

Cases arise in which the claimant obtains a judgment by default owing to the insured's failure or neglect to notify the insurer of the action brought against him, in which the judgment was obtained, and the insurer knows nothing of the claim or action until it is presented with the execution and a demand for payment. The company's liability in such a case is, as a practical matter, absolute, and it must pay the judgment without having had any opportunity to defend the case.

I accordingly recommend that legislation be enacted, to require that the plaintiff notify the insurer of the bringing of his action so that it may have an opportunity to appear and defend it.

This bill herewith filed does not invalidate any claim against the tort feasor, but simply provides that a default judgment is not enforceable against the insurer under Gen. Laws, c. 90, § 34G; c. 175, § 113; and c. 214, § 3, cl. (10).

VII. Demerit Rating under the Compulsory Automobile Liability Insurance Act.

The rates for compulsory automobile liability insurance as fixed by the Commissioner of Insurance are applied to all registrants of motor vehicles without regard to the record of the individual operator.

It is argued that the owner of a motor vehicle whose operation during a given period has caused no losses for death or personal injuries should not be compelled to pay the same rate as the owner whose car has been the cause of several accidents resulting in claims paid by the insurance companies. It is contended that some plan should be devised whereby the careless owner be penalized on account of the claims caused by his car for which he is responsible.

It is believed that the principle of demerit rating, whereby the careless owner receives a debit on account of claims caused by his car, is sound and will tend to encourage careful driving of motor vehicles.

I herewith present a bill, patterned on Senate, No. 449 of 1930, providing for the application of a demerit rating plan.

VIII. Fleet Rating under the Compulsory Automobile Liability Insurance Act.

The present law does not specifically regulate or permit the making of fleet rates, so called, in respect to the policies issued under this act. Legislation embodied in Senate, No. 463 of 1930, permitting the Commissioner to fix and establish rates for policies covering fleets or groups of trucks, was not enacted.

It is believed that this measure is a proper one, and I accordingly recommend that legislation be enacted to permit the use of fleet rates under this act.