HOUSE . . . . . No. 23

The Commonwealth of Massachusetts.

INSURANCE DEPARTMENT,
STATE HOUSE, BOSTON, Jan. 4, 1916.

To the Honorable Senate and House of Representatives.

GENTLEMEN: — In compliance with the provisions of Acts of 1910, chapter 452, I beg to submit that part of the sixty-first annual report of this department for the year 1915 which contains recommendations for legislative action. The legislation recommended is embodied in the four bills which accompany said report.

Respectfully yours,

FRANK H. HARDISON,
Insurance Commissioner.

RECOMMENDATIONS.

1. Re-codification of Laws providing for Insurance Department Employees.

The statutes authorizing the employment of help in the insurance department should be amended in order to fit present conditions. They were enacted from time to time to permit the appointment of additional employes. They comprise five separate acts. They should be combined into one act shich should have a proper degree of flexibility and should to a reasonable extent indicate by title the duties which are assigned to each employe who has special duties. The title of "examiner" does not fit the employe whose chief duty is to take charge of the Workmen's Compensation work of the department, nor does the title "chief clerk" fit one whose duties include chiefly supervision of fraternals, and the approval of policy forms. The accompanying bill is presented for enactment for the purpose of securing a more clear, orderly and consistent statute providing for the employment and titles of those who do the work of this department. It is not contemplated thereby to change the salary of any employe or to change his duties. If an appropriation should be made therefor another deputy, examiner or inspector with the proper title could be appointed without a special act authorizing it.

2. Bonds of Companies writing workmen's Compensation Insurance.

Owing to the fact that surety companies are loth to write perpetual bonds some of the companies doing a workmen's compensation business in this Commonwealth found it impossible to obtain the corporate surety contemplated by chapter 183, Acts of 1915. It has been suggested that the statute be amended so as to permit surety companies to furnish *yearly* bonds instead of bonds which prevent a company from retiring as surety even as respects future

coverage. I have come to the conclusion that yearly term bonds, that is, bonds subject to renewal annually, will afford ample protection for the parties the act was designed to protect. Only a slight amendment is needed. It should provide that a bond may be issued for the purpose set forth in the act for a definite term which shall not be shorter than the period covered by the principal's license to transact business in this Commonwealth and that a condition of the renewal of the license to continue to transact workmen's compensation business in Massachusetts shall be the filing of a surety bond for the succeeding year. A bill is presented as a proper one for carrying out this recommendation.

3. The Approval of Workmen's Compensation Insurance Rates.

The Massachusetts workmen's compensation law has now been in force three and one-half years, and I have come to the conclusion from a close watch of its operation that the Commonwealth should undertake to exercise more authority over the rates charged for this insurance and the methods of modifying them. The statute now provides that the companies shall file their classifications of risks and the rates pertaining thereto with the Insurance Commissioner, none of which shall take effect until they have been approved by him as adequate. This statute was enacted in the interest of competition. It was to prevent any "cutting" rates by the financially strong companies which would put other well managed ones out of the business. It has served its purpose. Competition brought down the rates 25 per cent. in six months and has resulted in two other considerable reductions. The increase in benefits, which was effective October 1, 1914, had the same effect as a decrease in rates in diminishing the profits of the companies. The time has come when there should be a readjustment. Some rates are too high; some too low. While they have the machinery for making the readjustment, it is not an easy thing for twenty-five companies to see alike upon all the details since there is such a diversity of interests. When they are unable to

agree upon rates, modifying schedules of charges and credits both for physical conditions and on account of experience, some one free from selfish interest in the outcome of the problems, but with the welfare of the public solely in view, should have authority to settle the differences and prevent delays in putting in operation rates that will be fair to employers because they more nearly correspond with the hazard of the business carried on by each.

To carry out the purpose of giving the Insurance Commissioner more authority over the working adjusting of rates a simple amendment only is needed. It would require the insertion of a few words in section 3 of Part V of chapter 751, Acts of 1911. A bill is herewith submitted.

4. Amendment of the Referee and Limitation of Suit Clauses of the Standard Fire Insurance Policy.

The Massachusetts standard fire insurance policy has served a good purpose for many years, but it has become evident to many that it should now be amended in at least two respects, as follows: —

First. — While comparatively few cases go to referees for settling under the arbitration clause the amount of the loss, these few should not be overlooked, for it is becoming more and more evident that the intention of the law that there should be three *bona fide* referees to decide as to the amount of a loss is not carried out, although it is in form observed. The effect of present methods is that each party usually secures a referee who will represent his interest, a fact that it is not possible to disguise during the deliberations of the referees. This leaves the decision as to the amount of the loss to one man and often results in a disagreement. Moreover, there is a certain advantage to the insurance companies because they usually nominate referees from a group of trained men who are more skillful in enforcing their views than the new untrained man who is usually selected by the insured. It is not necessary to impute conscious wrongdoing or unfair practices to the more expert and experienced referees representing the companies in order to frame an

indictment of the system. The mere fact that the advantage exists and is inherent in the method calls upon the lawmakers to consider whether a better plan for selecting the referees cannot be adopted. The one suggested in the accompanying bill may not be the best. Indeed, the Insurance Commissioner has no desire to be given the duty of appointing referees, and it would be quite as pleasing to him to have the referees appointed by the courts. The only reason that that method of appointment was not embodied in the bill is that it would appear to be better to lodge this responsibility in one person than to divide it among many, thus causing the insured to doubt as to whom application should be made.

Second. — It may well be concluded that the standard form of fire insurance policy requires amendment in at least one other respect. It provides that no suit or action shall be begun to recover for a loss under the contract unless it is commenced within two years from the time the loss occurred. It is possible to so consume time in litigation on questions preliminary to bringing an action for recovery for a loss that there would be no opportunity to bring the suit within the specified two years. This unjust feature of the contract was alluded to in an opinion by Mr. Justice Loring in a recent case, Hanley *v.* Ætna Insurance Company, 215 Mass. 425, in the following language, which indicates clearly his belief that the contract should in this respect be reformed: "There is one other matter which we think should not be passed by, if for no other reason because by our silence we might be taken to have approved the action taken by agreement in the Superior Court. By the terms of the report if the award was invalid judgment was to be entered for the defendant. The fire here in question happened on Sept. 11 and 12, 1909. The trial took place Dec. 11, 1911. By force of the clause in the policy providing that no suit or action for any claim by virtue of the policy shall be sustained unless begun within two years from the time the loss occurred, no action other than the one now before us can ever be brought on this policy. If the course sanctioned by the Superior Court is

right, an insurance company can lie by until it is too late for a new action to be brought and then for the first time assert that an award is invalid, and if invalid, that it is entitled to judgment."

I recommend that the provision of the standard fire policy under discussion be amended as per the accompanying bill.