

HOUSE....No. 235.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 28, 1861.

Ordered, That the Message of the Governor, returning to the House, the Bill to incorporate the Benjamin Franklin Protective Life Insurance Company, be printed in connection with the Bill of the same title, introduced on leave.

WILLIAM STOWE, *Clerk*.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 30, 1861.

The Committee on Mercantile Affairs and Insurance, to whom was referred the Bill to incorporate the "Benjamin Franklin Protective Life Insurance Company," report that the same ought to pass.

Per order,

J. A. BRODHEAD.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty-One.

AN ACT

To incorporate the Benjamin Franklin Protective Life Insurance Company.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:—

1 SECT. 1. Albert L. Murdock, John Clark, and
2 Nathaniel Harris, and their associates and successors,
3 are hereby constituted a corporation, by the name of
4 the Benjamin Franklin Protective Life Insurance
5 Company, to be established in Boston, in the county of
6 Suffolk, for the purpose of making insurance upon
7 lives, and granting endowment and annuity policies,
8 with all the powers and privileges, and subject to all
9 the duties contained in the General Statutes of the
10 Commonwealth of Massachusetts, so far as the same
11 may be applicable to this corporation; and shall by

12 the same name and style be capable of suing and being
13 sued, and maintaining and defending any action to
14 final judgment and execution; and shall be, in law,
15 capable of purchasing, holding, improving, and con-
16 veying any estate, real or personal, for the use of said
17 corporation: *provided*, they shall not hold any real
18 estate beyond the value of two hundred thousand dol-
19 lars, except such as may be taken on execution for
20 debt; and the whole capital shall not exceed five hun-
21 dred thousand dollars, and shall not be less than one
22 hundred and fifty thousand dollars.

1 SECT. 2. The amount of capital stock shall be fixed
2 and limited by the corporation, and shall at its first
3 meeting, be divided into shares of one hundred dollars
4 each, of which a record shall be made by the secretary,
5 which shares shall be numbered, and every stockholder
6 shall have a certificate, under the seal of the corpora-
7 tion and signed by the secretary certifying his property
8 in such shares as are expressed in the certificate, two-
9 thirds of which shall be paid in cash before said cor-
10 poration shall go into operation for the purpose of
11 making insurance; the other third of said stock may
12 be called for by the directors, from time to time, as
13 they may deem expedient, if and as the capital paid
14 in shall have been absorbed in payment of losses, and
15 shall be paid by the holders of the stock if called for,
16 which stock shall always stand pledged to the corpo-
17 ration for all such assessments so called for; and the
18 corporation may at any meeting called for the purpose,
19 increase its capital stock and the number of shares
20 therein: *provided*, that the stock when so increased
21 shall not exceed the amount authorized by this act.

1 SECT. 3. At the first meeting of the corporation,
2 thirteen directors shall be chosen by the subscribers
3 to the stock and of policies, eight of whom shall be
4 stockholders and five policy-holders, three of whom
5 shall hold office for one year, three of them for two
6 years, three of them for three years, two of them for
7 four years, and two of them for five years, all of whom
8 shall be eligible for re-election from time to time for
9 full term of five years. The directors, seven of whom
10 shall make a quorum, may choose a president from
11 their own number or from the stockholders, in which
12 case he shall be a director ex-officio. They shall also
13 choose a secretary, who shall be under oath, and they
14 shall appoint all such other officers, agents and ser-
15 vants, to transact the business of the corporation as
16 they shall deem fit; fix the compensation and define
17 the duties of all the officers, agents and servants. Each
18 share of the capital stock shall entitle the holder to
19 one vote in the election of directors, except that no
20 one stockholder shall be entitled to more than thirty
21 votes, and every policy-holder is entitled to one vote,
22 and absent members may in all cases vote by written
23 proxies. Seven stockholders and three policy-holders
24 shall constitute a quorum for doing business. On
25 each and every annual return of the day of the first
26 meeting of the organization of the corporation, unless
27 it happens on Sunday, in which case it shall be held
28 on the Monday next thereafter, there shall be meet-
29 ings of the corporation, when all vacancies in the
30 board of directors shall be filled, and if at any time
31 before said annual meetings there shall be vacancies
32 in the board of directors so as to reduce the number
33 to less than seven, meetings of the corporation shall

34 be held, by order of the remaining directors, and the
35 vacancies shall be filled. In all cases where a va-
36 cancy exists, the time for which he was elected not
37 having expired, the person elected to fill such vacancy
38 shall be elected to serve out such unexpired term.
39 In all other cases except as provided for above, the
40 directors shall be elected for the full term of five
41 years. And except the election of directors, the whole
42 business and affairs of the corporation shall be under
43 the control and management of the directors.

1 SECT. 4. Whenever the net surplus receipts of the
2 corporation over their losses and expenses, after pro-
3 viding for risks, shall be sufficient for the purpose,
4 the stockholders shall be entitled to a semi-annual
5 dividend of three dollars per share on every share
6 they may respectively hold of the stock of said corpo-
7 ration; and in case of such dividends not being made
8 in any half-year it shall be made good at a subsequent
9 period, when the net resources of the corporation
10 shall be sufficient for paying the same.

1 SECT. 5. At the expiration of every period of five
2 years from the time of the organization of the corpo-
3 ration, the net surplus receipts of the corporation
4 after providing for risks and safety, losses, incidental
5 expenses, and dividends as aforesaid, shall then be
6 divided ninety per centum in cash to all the holders
7 of policies for entire lives, *pro rata*, on the amount of
8 premiums paid and the time when they were paid
9 respectively, and the remaining ten per centum shall
10 be paid, *pro rata*, to all the holders of policies for
11 entire lives on the amount of premiums paid, and the

12 time when they were paid respectively, with the policy
13 without interest, on the death of the respective lives
14 insured. Whenever said dividend of ten per cent.
15 amounts to a sum sufficient to redeem the capital, it
16 shall then be redeemed. In case any such dividend
17 or dividends shall not be demanded within thirty days
18 from the time it was declared, the corporation shall
19 allow four per centum per annum interest thereon
20 until paid, except on such of the said dividends or any
21 part of the same as shall have been appropriated by
22 the corporation, as the next clause of this section
23 provides, to the payment of premiums upon the re-
24 spective policies to which said dividends may have
25 been declared. And the said corporation shall appro-
26 priate all such dividends from time to time, or as
27 much thereof as shall be necessary to pay the premi-
28 ums that may from time to time become due and shall
29 not otherwise have been paid, on the respective pol-
30 icies to which said dividends may have been declared.

1 SECT. 6. That the supreme judicial court shall
2 hear and determine in equity all questions arising
3 between the said corporation and any stockholder or
4 assured.

Commonwealth of Massachusetts.

M E S S A G E .

EXECUTIVE DEPARTMENT, COUNCIL CHAMBER, }
 BOSTON, March 25, 1861. }

To the Honorable the House of Representatives :—

I return to the House of Representatives the Bill entitled “An Act to incorporate the Benjamin Franklin Protective Life Insurance Company,” and respectfully present the substance of the reasons which have compelled me to invite the legislature to re-examine it.

A serious objection to the bill is found in the difficulty (which seems to me to amount to an impossibility,) in arriving at a definite conclusion as to the proper and legal meaning, judicially interpreted, of certain clauses in the 5th and 6th sections, so obscure that I have been unable to satisfy myself of their meaning. I doubt not that the legislature will agree in the opinion that the disputes, litigation and consequent losses likely to follow, in case the bill should become a law, ought to be anticipated and prevented, if possible.

Certain specific features of the measure, so far as I comprehend it, also deserve specific observation. No elaboration of the views of the supporters of the bill has reached me,—since none is contained in the report which introduced the bill to the House,—and I must, therefore, make these observations, unaware of the arguments or explanations by which the bill may be susceptible of defence and support.

1st. This company, though professing to be protective, and promising as large returns of surplus premium to the insured as any mutual company would have a right to promise, is in no sense a *mutual* company. It is a corporation of *stockholders*, to be controlled entirely by themselves,—the *policy-holders*, as such, having no voice whatever in its management.

2d. Though the stockholders are apparently restricted as to the profits on their stock, they are not restricted as to the *expenses*, and there is nothing in the charter to prevent their absorbing, under the name of expenses, every dollar of the premium not required to pay losses and keep the capital whole. There is therefore nothing in the charter to secure the policy-holders who pay full mutual premiums any thing more than they can now have in mutual companies by paying the lower stock rates or some participating premiums.

3d. Purely mutual life insurance companies have been proved by experience to be the safest and best for the insured. And, though guarantee capital is necessary to start one, yet, as soon as the members have increased to a sufficient number of mutual insurers of each other, and the premium—reserve increased to a sum equal to the capital necessary at first, that capital can be safely returned, and the insured be relieved from the expense of it, inasmuch as the reserve cannot fail to be kept good by the accession of new business. This is of course beneficial; because, while the guarantee capital remains, the policy-holders must pay for its risk and the profits it demands, by larger premiums than otherwise would be necessary.

4th. The division into chronological classes contemplated in the sixth section, in so far as it secures the independence of those classes of each other, is in violation of the mathematical principle which gives stability to life insurance; and it can only increase the expense of management, perpetuate the necessity of guarantee capital, and besides, by reason of the apparent intricacy of the system, tend to disputes and litigation. That section, in effect, confers on the same corporation of stockholders power to inaugurate, and compels it to inaugurate a new life insurance company every five years,—each company to gain its maximum development, as to numbers, within a period which cannot exceed five years,—from which period it

must dwindle until it becomes extinct. And all these companies are to depend for guarantee, from first to last, on the same capital stock. The extra hazardous character and expensiveness of this plan are sufficiently obvious, while its advantages are not easy to be discovered.

Under the conviction that the whole subject might be advantageously re-investigated by the general court, and that the bill may not have received a scrutiny sufficiently critical on its original passage, and in the hope that it may be put into a new draft before it shall be permitted to become a law, I have felt it to be my duty in its present condition to withhold the executive approval.

In considering this subject I have regarded in my own mind only the relation of the system of life insurance and of the proposed law to the good of the public; dismissing all thought as to the wishes or supposed wishes of those intending to become incorporators under the Act. For the creation of such institutions by the law I regard as a delicate and almost sacred responsibility. The insurance of human lives touches society at a point of the tenderest interest. The idea springs from the industrious care and the frugality and self-denial of men and women holding domestic relations towards the sick, aged, infant, or otherwise dependant ones, for whom love and duty combine to command their watchfulness and providence. It is the resort sometimes of those who are helped in trying exigencies by friendly loans from those who dare not, with narrow means, risk alone the hazard of accidents affecting the *life* of the borrower; and who cannot feel that justice to other claims upon them would permit it.

These institutions are an earnest manifestation of the tendency of civilized, humanized men to unite in bearing each others burdens; though not forgetting, however, that at last there is a point up to which each one by an irreversible law must bear his burden alone.

The usefulness and the moral benefits of life insurance, limited to the purposes of filial, parental and friendly providence, and to the security of honest creditors, having a just stake in the life of another, are universally recognized. And, in proportion to the advantages derivable from good, safe and

wisely constructed institutions, are also the evil, suffering and calamity, the disappointment of the confiding, the dismay of the dependant, the social and individual distress,—to say nothing of the discredit to the government itself,—which are involved in the final catastrophe of any such institution, illy secured or founded on principles inconsistent with success.

JOHN A. ANDREW.

