HOUSE . . . . No. 75

The Commonwealth of Massachusetts

Department of Banking and Insurance,
Division of Insurance,
100 Nashua Street, Boston, November 29, 1940.

The General Court of the Commonwealth of Massachusetts.

In compliance with the provisions of Massachusetts General Laws, chapter 30, section 33, as amended by Acts of 1939, chapter 499, section 5, I have the honor to submit herewith such parts of the annual report (Pub. Doc. No. 9) of the Commissioner of Insurance as contain recommendations for legislative action, with the accompanying bills.

The drafts of legislation have been submitted to the Counsel for the House of Representatives as is required by law.

CHARLES F. J. HARRINGTON,
Commissioner of Insurance.

RECOMMENDATIONS.

Retirement Systems.

1. Under the present law the Insurance Department is required to examine annually the several retirement systems over which it has supervision. The larger number of these systems have been inaugurated within the last three years.

Insurance companies under the law are examined once in every three years, and it would seem that this requirement would be sufficient in so far as retirement systems are concerned.

The proposed legislation would require that each retirement system be examined annually for the first three years of its existence, and once every three years thereafter.

2. "Regular interest" should be more clearly defined, and the investments now permitted to retirement systems should be restricted in the manner set forth in the accompanying bill.

Retirement systems should be required to repay any appropriations which they have received before surplus earnings may be distributed to members.

The law relating to county systems should be amended to provide for the repayment of all deficiency appropriations.

Fraternal Benefit Societies.

3. Under the authority of General Laws, chapter 176, section 16, certain fraternal benefit societies are empowered to make loans on certificates issued to members as their by-laws may provide. A question has arisen as to whether or not such societies have the right to deduct the amount of any such loans from the face amount of the member's certificate in the event the certificate becomes payable while the loan is outstanding.

It seems desirable that this situation be clarified, and accordingly we are presenting an amendment to section 30 of chapter 176.

The investments permitted to fraternal benefit societies are set forth in Massachusetts General Laws, chapter 176, section 18.

It seems advisable that in addition to those investments specified in section 18 fraternal benefit societies should be authorized to invest their funds in the shares of Federal savings and loan associations and also in Massachusetts co-operative banks.

Under the present law, section 22 of General Laws, chapter 176, fraternal benefit societies may provide by their by-laws for the payment of the funeral expenses of a member in an amount not exceeding $100 in accordance with the society's by-laws.

The limit of $100 does not appear to be sufficient to meet present-day conditions, and accordingly it is recommended that the amount which a society may provide for in its by-laws to be paid for funeral expenses of the insured be increased to $300, the same to be deducted from the amount payable as a death benefit.

Societies on the lodge system should be required to file a complete stenographic report of the proceedings of supreme lodge conventions, and the latest report of examination made by the Insurance Department should be read at the conventions and thereafter filed at the home office of the society.

Charges and Fees for the Valuation of Annuities issued by Domestic Insurance Companies.

4. Under the present law the Insurance Department charges domestic companies a fee in connection with the valuation of life insurance policies. There is no provision in the law, however, for the charging of a fee for the valuation of annuity contracts. General Laws, chapter 175, section 14, should be amended to allow for such a charge.

Unclaimed Funds in the Hands of Insurance Companies.

5. Unclaimed funds in the hands of insurance companies should be turned over to the Commonwealth of Massachusetts under provisions of law similar to which unclaimed bank deposits are now dealt with.

Legislation providing for the same is presented herewith.

Elimination of Employees' Contributions to Group Accident and Health Insurance Policies.

6. Massachusetts General Laws, chapter 175, section 110, has always been interpreted to require that an employer should contribute some part of the premium of a group accident and health insurance policy under which his employees are insured.

Many employers find themselves financially unable or are unwilling to continue to make such contributions to the premiums paid on these policies, with the result that the policies are terminated and the employees remain uninsured. Practical experience has taught us that many employees wish to have their insurance coverage continued, and are willing to pay the full premium for the same.

Accordingly, an amendment to section 110 is proposed which, if adopted, will allow group accident and health insurance policies to be issued, the premiums to be paid in full by the insured employees; no contribution from the employer toward the premium being required.

Group Life Insurance Policies.

7. Legislation is herewith presented which, if enacted, will require that policies of group life insurance issued in this Commonwealth contain a provision in addition to those already required by law, that the insurance company, in case of discontinuance of the policy after an employee has been insured thereunder for more than five years, will issue to him an individual policy of life in-

surance upon the payment by the employee of the premium applicable to the class of risk to which he belongs, and to the form and amount of the policy at his then attained age.

Participating Insurance Policies.

8. In order to meet present-day competition, stock insurance companies wish to issue participating policies by the terms of which their policyholders participate in the profits of the company.

There does not appear to be any authority in the insurance law by which a stock company, already formed, may change or amend its charter so that it could issue participating policies. Legislation is presented authorizing such companies to make such a change if they so desire, and also providing that foreign stock companies transacting business in this Commonwealth may not issue participating policies unless specifically authorized to do so by their charters.

Rehabilitation and Liquidation of Insurance Companies.

9. The present law relating to rehabilitation and liquidation of insurance companies should be amended and brought into conformity with the latest recommendations of the American Bar Association.

Liquidation Proceedings.

10. General Laws, chapter 175, section 180C, at present requires that an insurance company which is the subject of a rehabilitation proceeding cannot be liquidated until after it has been declared insolvent.

As the general purpose of this law was to set up a method by which a company in financial difficulties could be taken over by a solvent company, it would seem that the requirement of proof of insolvency was too stringent, and accordingly it is recommended that the same be eliminated from the statute.

EXPENSES OF RECEIVERSHIPS OF INSOLVENT INSURANCE COMPANIES.

11. General Laws, chapter 175, section 179, should be amended in order to provide that all of the expenses of the receivership of an insolvent insurance company, of which the Commissioner of Insurance has been appointed receiver, may be deducted from the estate of the insurance company in receivership.

Legislation to that end is presented herewith.

AUTHORITY TO DESTROY BOOKS, PAPERS AND RECORDS DEPOSITED WITH THE COMMISSIONER.

12. General Laws, chapter 175, section 178, provides that receivers shall deposit with the Commissioner all books and papers of insolvent insurance companies.

The Department now has on hand many such documents which have been filed over a long period of years. Legislation is presented authorizing the Commissioner to effect the destruction of such books, papers, records and other data filed with the Department by receivers of insolvent insurance companies after the expiration of at least six years from the date of the receivers' discharge.

CLAIMS FOR LOSSES AGAINST INSOLVENT INSURANCE COMPANIES.

13. General Laws, chapter 175, section 46, gives priority to claims for unpaid losses against certain insolvent insurers over claims for return premiums on cancelled or unexpired policies. As this preference does not appear to be equitable, legislation which proposes to repeal section 46 is appended herewith.

REINSURANCE CONTRACTS.

14. General Laws, chapter 175, section 20, which relates to contracts of reinsurance, should be amended to provide that no credit shall be allowed to any ceding insurer for reinsurance unless the reinsurance is payable

in the event of insolvency of the ceding insurer to its liquidator or receiver.

Under the present law the ceding insurer remains primarily liable on its policy, and if it became insolvent the amount the reinsurance company would be required to pay under the reinsurance contract would be the amount allowed against the estate of the insolvent ceding insurer.

Title Insurance Companies.

15. In 1939, by the enactment of chapter 225, the receivership sections of the insurance law were made to apply to title insurance companies. Subsequent legislation, however, changed the numbers of the sections which were enumerated in said chapter 225.

Legislation to correct the same is proposed in the accompanying bill.

Directors of Mutual Companies.

16. Under the present law, guaranty capital stockholders, who are also policyholders in mutual companies, have the right to vote in each capacity at the corporation meetings. Directors are elected who are both stockholders and policyholders, and when half the Board elected to represent the policyholders includes directors who are also guaranty capital stockholders, the policyholders do not have the exclusive representation to the extent of one half in the management of the company. An amendment to section 77 should be made to make certain that one half of the representation on the Board of Directors of a mutual company shall consist of policyholders exclusively.

Corporation Licenses.

17. The authority now conferred by the insurance law on the Commissioner to issue licenses to corporations to act as insurance agents, insurance brokers, special insurance brokers, adjusters of fire losses, and insurance advisers should be revoked.

It does not appear that a corporation can perform and render the personal service which it is necessary for an insurance agent, broker, adjuster or adviser to give to clients who consult him.

JURISDICTION OF THE SUPREME JUDICIAL COURT.

18. During the year 1939, by the enactment of chapter 257, the Superior Court was given concurrent jurisdiction with the Supreme Judicial Court in cases involving the Insurance Department. Formerly the Supreme Judicial Court had exclusive original jurisdiction of these matters. It appears that it would be better to have litigation involving the Insurance Department remain with the Supreme Judicial Court, and accordingly legislation is presented herewith which will exclude the Insurance Department from the operation of chapter 257.

MERGERS OF INSURANCE COMPANIES.

19. The present law covering mergers of insurance companies (General Laws, chapter 175, sections 19A and 19B) should be amended to provide that the company resulting from such a merger may be a continuing corporation.

PENALTY FOR NON-PAYMENT OF CONTINGENT LIABILITY ASSESSED ON COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

20. General Laws, chapter 175, section 81, requires mutual companies which issue compulsory motor vehicle liability insurance policies to set forth in their by-laws and policies the contingent mutual liability of policyholders. This feature has always been considered a valuable asset of the insurance company, and as it provides a method by which the company may collect additional funds in the event of financial difficulties, a penalty for refusing to pay the same by empowering the Registrar of Motor Vehicles the right to suspend the certificate of registration of the motor vehicle, as well as the operator's license, should be provided.

ASSIGNED RISKS PLAN FOR COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE RISKS.

21. The Insurance Department should have the authority to equitably distribute and assign all risks for which applications for motor vehicle liability policies or bonds have been executed and refused.

The accompanying bill provides the authority for the inauguration of such a plan.

REGULATION OF THE BUSINESS OF THE FINANCING OF AUTOMOBILE INSURANCE PREMIUMS.

22. By the enactment of chapter 314, Acts of 1937, the Legislature extended the powers of the Commissioner of Insurance to approve rates and charges to be made by insurance companies who accept the payment of motor vehicle insurance premiums under an installment plan.

There are many organizations engaged in the business of financing automobile insurance premium payments, and such companies are not under the supervision of any state department.

It would seem logical, therefore, if the Commissioner of Insurance has the responsibility of approving the rates charged by insurance companies who finance these premiums, that this duty should be extended to the supervision of all individuals or organizations engaged in a similar enterprise.

COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE — NOTICE OF ACCIDENT.

23. In order to investigate a motor vehicle accident properly a quick notice to the investigating party is necessary to determine its causes as well as the extent of the injuries occasioned thereby.

At the present time no burden is placed upon the claimant to give notice of accident, and regardless of notice an insurer under a compulsory motor vehicle liability policy may be obliged to make payment.

Many cases are recorded where failure of notice has made it impossible for the defendants or the insurance companies to adequately prepare to meet a claim. This situation leaves the control of the case almost entirely in the hands of the claimant to present his evidence without fear of contradiction. While the cases of collusion and deliberate falsification of testimony may be responsible for a small percentage of losses paid by insurers, it is undoubtedly true that exaggeration of injuries is accountable for a large percentage of such payments.

For the purpose of curbing the exaggeration or falsification of claims, legislation should be enacted requiring the claimant to give notice of time and place of injury and a description of the injury sustained within a limited time following the accident. This provision should be so worded as to make it possible for the court hearing the case to modify the effect of failure to give such notice if the facts seem to warrant it.

Period of Time allowed for Levying and Collecting Contingent Liability Assessments by Mutual Insurance Companies.

24. By the terms of General Laws, chapter 175, section 85, the directors of a mutual insurance company which has become insolvent incur personal liability for all debts and claims outstanding against the company if they neglect for a period of six months to lay and collect any assessment of contingent liability.

The period of time set forth in the statute is more than sufficient for action to be taken, and accordingly it is recommended that the six months' period be reduced to thirty days.

Deposits of Guaranty Capital by Mutual Companies Writing Compulsory Motor Vehicle Liability Insurance Policies.

25. In order that the guaranty capital of mutual insurance companies which write compulsory motor vehicle

liability insurance policies may be safeguarded, it is proposed to amend the law relating to the same by requiring that the guaranty capital be deposited with the State Treasurer before the company commences to issue policies of insurance.

Powers of the Commissioner in Respect to the Approval of the Incorporation of Insurance Companies.

26. Massachusetts General Laws, chapter 175, section 49, places the responsibility upon the Commissioner of Insurance in respect to the approval of the articles of organization of an insurance company, and it appears that this section of the law relative to the approval of the articles of organization and the issuance of a preliminary certificate should be amended to define more specifically the powers of the Commissioner in this respect.

By the terms of section 32 the Commissioner is required to approve the accounting system, the accountant and the underwriter of a liability insurance company. Practical experience has proven to us that the Commissioner should have the right to approve the claims manager in such a company, and legislation is proposed to empower him to do so.

It is also proposed to amend section 32 in order to empower the Commissioner to exercise his discretion in granting a final certificate to companies other than life insurance companies.

Foreign Insurance Companies.

27. Under the Massachusetts law a domestic company must be formed on either the stock or mutual plan, the law relating to the admission of assessment companies having been repealed in 1929.

It is recommended that the definition of the words "foreign company" which appears in Massachusetts General Laws, chapter 175, section 1, be clarified so that no foreign company may be admitted to Massachusetts unless it is formed on the stock or mutual plan.

Transaction of Business by Unlicensed Foreign Insurance Companies.

28. There are now many insurance companies in the United States which transact business through the mails and thereby insure lives, property or interests in States in which they are not duly licensed to transact business. There is no way by which a State can directly prohibit an insurance corporation domiciled in another State from soliciting and writing insurance on lives, property or interests within its borders through the medium of the mails. The use of the mails for such a purpose could be denied only by an act of the Federal Congress.

Each individual State, however, can regulate or restrict the corporate powers of insurance companies chartered under its laws. The only effective way, apart from such an act of Congress, to prevent insurance companies from insuring lives, property or interests in a State in which they are not licensed is for each State to enact a law curtailing the corporate powers of its own companies so that they will not be permitted to insure lives, property or interests in other States unless they have been duly licensed to transact business therein in accordance with the laws of such States.

Section 45 of chapter 175 of the General Laws now forbids a domestic company to appoint an agent to act for it in procuring business in any State in which it is not duly authorized to transact business. This section does not, however, abridge the corporate powers of a domestic company to write policies on lives, property or interests in such a State.

While it may be that our domestic companies have not made themselves obnoxious to the authorities of other States by writing insurance on lives, property or interests in States in which they are not licensed, nevertheless, the recommendation is entirely sound in principle, and Massachusetts should lead the way by enacting such legislation.

The bill herewith presented is, it is to be noted, restricted in its application. (1) It permits a domestic company to write insurance on lives, property or interests in a State in which it is not licensed if the policy is procured under a law in that State similar to section 168 of chapter 175 of the General Laws, which permits a special insurance broker under certain limitations to procure insurance on property in this Commonwealth in an unlicensed foreign company when insurance in authorized companies cannot be obtained. (2) It applies only to the writing of insurance on lives, property or interests in a State which by law prohibits its own companies from insuring lives, property or interests in this Commonwealth without being duly licensed therein. This reciprocal provision is intended to induce other States to prohibit their companies from doing, in so far as this Commonwealth is concerned, what this bill forbids to our domestic companies. (3) The bill further permits companies to continue, renew, revive or reinstate policies made in a State during the time it was duly authorized to transact business therein, although it is not so authorized at the time the policy is continued, renewed, revived or reinstated.

Recodification of Insurance Laws.

29. The appointment of a special commission to revise, recodify and recommend any necessary changes, additions or amendments in the present insurance laws of this Commonwealth is recommended, and a resolve providing for the same is included herewith.

Investments of Insurance Companies.

30. The appointment of a special commission to study and report any necessary changes in the insurance laws relating to the investments of capital and reserve of insurance companies is recommended, and a resolve providing for the same is included with this report.