# Life Insurance Regulation in Kansas

by

Howard A. Jester, B. S. in Commerce
Kansas State Teachers College, Emporia, 1924.

Submitted to the School of Business and the Faculty of the Gradute School of the University of Kansas in partial fulfillment of the requirements for the degree of Master of Business Administration.

Approved by:

Henry F. Haeggelow
Instructor in charge.

F. T. Stockton
Head of Department.

March 25, 1931
Date.

Table of Contents

Amendments and modifications of the Laws

Are the policyholders protected?

One Governor not in sympathy with the department

Additional amendments and cases

Weakness of insurance regulation

Kansas Companies

1881 - 1890

Alliance Mutual reinsures. Result

Kansas flooded with cooperative companies

Rules governing mutual companies

Mutual Companies in Kansas

1891 - 1900

Fraternal companies cause trouble

Present condition of insurance business

Premium tax law passed

Arguments pro and con

Fraternal companies regulated

Kansas insurance business

1900 - 1910

Superintendent given more power in examination of companies

Law and cases concerning beneficiaries

Acknowledgment

I wish to express my sincere appreciation to those who have been instrumental in making this study possible. Advice and material have been secured from many sources, but Watson's Library and the Law Library of the University of Kansas, and the State Library and Memorial Library of Topeka have made the most valuable contributions. Especial mention must be made of the criticisms and inspiration of the members of the faculty of the School of Business, University of Kansas.

H. A. J.

# LIFE INSURANCE REGULATION IN KANSAS

## CHAPTER 1

## Introduction

Although this sketch is on "Life Insurance Regulation in Kansas," a short history of the origin and development of the life insurance business in the United States will give a background for a better understanding of regulation.

There was some life insurance business done in the first century and a half of our colonial existence. It was an outgrowth of marine insurance. The policies, if they could be called such, were written in connection with what were then considered extraordinary risks. A man, planning a trip to Europe, secured a contract of insurance covering capture by pirates or death during the voyage. If he were going to the frontier regions in the West, he secured a contract covering death or capture by the Indians. At first, the contracts were written by a group of friends in the community covering the risks for a short period or for a year. Later,

Underwriters established offices in the larger cities. The customary rate was five per cent per annum.

In 1759[1] the Presbyterian Synod of Philadelphia secured a charter for a corporation, the purpose of which was to come to the relief of the poor and distressed Presbyterian ministers, and their widows and children. This corporation, the first organized to furnish benefits payable on the occurrence of death, was the beginning of the life insurance business in the United States and is still in existence today.

The progress in the life insurance business was slow because there was no public knowledge of the theory, the rates were high, and the general condition of the policies was severe. Furthermore, there was considerable prejudice against it on religous grounds, many holding it to be speculation in human life. Massachusetts, at one time, discussed in the courts whether the life insurance contract was legal or not, but no action was taken

---

[1] W. F. Gephart, Principles of Insurance, Vol. 1 Page 20

against it. At that time the rates were not based on age, as the life expectancy tables had not been accurately formulated. Five insurance companies were organized prior to 1800[1], but only one, The Insurance Company of North America chartered in 1794, actually issued policies. Only six policies had been issued up to the beginning of the nineteenth century. The company went out of business in 1804.

Many insurance companies were organized before 1840, of which only a few were successful. The main trouble being that disputes arose as to the liability of the insurer, and if the liability could be proved, the insurer was unable to pay. The stock companies solved this by being organized with a large amount of capital. The three most successful companies of this period were (1) The Pennsylvania Company for Insurance on Lives and Granting Annuties, chartered in 1809[2], with a capital of five

---

[1] J. B. Maclean, Life Insurance Page 344
[2] J. B. Maclean, Life Insurance Page 244

hundred thousand dollars, (2) The Massachusetts Hospital Insurance Company, chartered in 1818, with the same capital as the Pennsylvania company, and (3) The New York Life Insurance and Trust Company chartered in 1830 with a capital of one million dollars. These companies required applications and medical examinations. The premiums charged were according to age. The New York company established an agency system and issued about two hundred policies a year during the first few years. These three companies were also trust companies and all eventually gave up the life insurance business and are in existence today as trust companies.

Mutual companies originated in 1836[1] with the chartering of the Girard Life and Trust Company of Philadelphia. This company granted the policy-holders a share of the profits. Another minor development was the granting of fifteen days of grace by this company. The Mutual Life Insurance Company of New York organized in 1843, and The New York Life and

---

[1] L. W. Zartman, Yale Readings in Insurance Page 84

Connecticut Life organized before 1850 are in the life insurance business today.

The period of development and expansion from 1850 to 1870 was retarded somewhat by the Civil War. During these years many companies, which charged high rates of interest on investments so that they could pay high dividends, were organized. Agents' commissions increased from five per cent to as high as fifty per cent of the first year's premium with renewal commissions.

Elizur Wright of Massachusetts is given credit for three great developments in life insurance.[1] The companies at that time were not legally held responsible for the accumulated reserves. Wright pointed out that amounts deducted from each premium for reserve purposes were matters of precise mathematical calculation. He could readily figure the total amount which must be laid aside each year. Massachusetts made a law requiring all companies to maintain this reserve. (1858)

---

[1]B. J. Hendricks, Story of Life Insurance. Page 61-91

Wright then made a great fight for the lapsing policyholder. Companies were cheating their members by keeping the reserve when policyholders lapsed. In 1861 the Legislature of Massachusetts passed a law, called the nonforfeiture law, compelling the companies, in case of lapse, to continue the policy in force for the exact period the cash reserve would buy. Wright became dissatisfied with this law because it granted only extended insurance, and fought for a law which finally passed requiring the companies to pay or loan the cash value of a policy to the holders. These three principles, originally adopted in Massachusetts, have spread to the four corners of the earth.

From 1870 to 1880, there was a period of depression, with many failures and disclosures of scandalous management. The companies had paid dividends that were not earned, had paid larger commissions than they could afford, had not been as careful as they should have been in the selection of risks, and many companies were dishonest. All of these things

were reasons for failure. Many of the weaker and smaller companies had to go out of business because of the reserve requirements enforced by the states. Assessment insurance originated during this period, and many associations were formed to carry it on, but most of them failed or passed out of existence in a few years.

From 1880 until the legislative investigation (Armstrong) in New York in 1905 the insurance business had a steady growth. The new companies profited by the mistakes made in the past and endeavored to put the business on a sound footing. Many new and attractive policy forms were developed. Some companies were financial institutions of enormous size, but a few of them abused the power and influence which this gave them. It was soon felt that the management of some of the companies was not what it should be. This feeling finally ended in the legislative investigations in New York.

The Armstrong Investigating Committee revealed many things that called for reform.

It was found that policyholders in mutual companies and directors or trustees in stock companies had little control of the business. The companies were run by the officers who in many cases managed the company for their own personal gain. Investments had not been made and controlled according to law. Speculative stocks had been purchased and shaky bond issues financed. The cost of insurance was too high because of big commissions, large salaries to officers, and enormous general expenses. As a result, laws were passed in many of the states regulating the amount of commissions to be paid the agents, the amount to be spent in securing new business, the disposition of surplus, the amount of dividends, the amount of new business to be written, and requiring greater responsibility on the part of directors, trustees and policyholders. Many of the laws were too drastic, but the business was given greater publicity and was better regulated than ever before.

Since 1905 there has been a period of prosperity and progress in the insurance busi-

ness. The Influenza Epidemic and the World's War had their effects, but most companies came through safely although these influences cut down their profits and dividends for a few years. The people of today have confidence in state regulation and do not question the safety of the companies authorized to sell life insurance. The business today is growing and is so firmly established financially that it will continue to grow.

The history of insurance has been divided by various authors into many different periods, but the following six stages of development is probably one of the best.

1. "Period of Origin ending about 1820.
2. Period of Commercial development.
   1820 - 1835.
3. Development of mutual insurance and mutual form of organization.
   1835 - 1870.
4. Many failures and disclosures of scandalous management. 1870 - 1880.
5. Period of expansion and growth marked by scientific and technical devel-

opment and extention of business organization. 1880 - 1905.

6. Period of minute state regulation and supervision. 1905 - on."[1]

[1] C. F. Nesbit, History and improvement of State Supervision in Report of National Convention of Insurance Commissioners. 1915 Page 89.

## CHAPTER 2

### Origin of Regulation in the United States

It has long been recognized that life insurance is a proper subject to be regulated by the government, because it affects more people directly and indirectly than any other business, it is affected with a public interest and should be controlled to such an extent as to protect the public against injustice. The trust funds which it holds run into the billions, and millions of people rely upon it as a means of protecting the home against poverty occasioned by the death of some member of the family. Life Insurance tends to remove uncertainty from our daily exestence.

When one buys a car or a radio, he may carefully examine and note the defects, but the quality of indemnity cannot be discovered by examination. "The underwriter is selling indemnity against something that may never occur, so, however low his price, there is always some possibility that he will escape without a loss; at any rate he can gamble on the chance.

what corresponds to the point below which a grocer dare not go without a loss is the average loss experience on the class to which the risk belongs. But this is not easily ascertained; at any rate it does not stare the under writer in the face in the same way that the buying price of sugar confronts the grocer."[1]

Insurance companies are controlled in practically all cases by a limited number of persons. Very few stockholders or policyholders take enough interest or are sufficiently posted to ascertain intelligently the true state of affairs. Insurance is so technical and complicated a subject that the condition of a company can be determined only by expert examination. The state must protect the people against mismanagement and unjust practices.

The contract itself, a highly technical form which the average purchaser is unable to understand, is an agreement between two or more parties for mutual considerations, each

---

[1] Report of Merrit Investigating Committee, Albany, New York 1911. Assembly Document No. 30 Page 42.

performing, according to the terms, for the benefit (in most cases) of a third party. The insurance company receives the premiums; the insured receives protection and a future estate; and the third party may at any time receive this estate as his present estate. The insurance policy is a long document prepared by the insurance company, and the insured, being unfamiliar with the technical phraseology and the principles of law, cannot protect himself against imposition and does not know definitely what his protection really is. The contract runs for many years before maturing and involvès an obligation on the part of the company, sometimes extending over sixty or seventy years. The benefits which the contract provides cannot be enforced in most cases by the original party to the contract, so if the company does not act in good faith, it must be compelled to perform by someone, preferably the state. The government in regulating insurance does for the people what they cannot individually do for themselves.

Another reason for regulation of life insurance is the failure of so many companies, which has caused many people to lose money which they could not afford and has left them without insurance at an age when it was physically impossible to obtain protection.

Although regulation has existed nearly as long as there has been life insurance, many people have doubted the right of the state to regulate it. The business--excepting a few cases of individual underwriting--has always been carried on by corporations. Corporations are chartered by the state and are in a small way regulated by the state. The charters, which define their purpose, their methods, and their financial standing must be approved before the corporation can do business. Reports must be made to some state authority. The state also has the right to alter or cancel the charter.

The constitution of the United States gave Congress the right to regulate commerce. Is the insurance business commerce? The Supreme Court of the United States in the famous

case of Paul vs Virginia decided "that although life insurance is interstate business it is not interstate commerce and does not come directly under the control of Congress."[1] Again the fourteenth amendment to the Constitution says, "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States." The Supreme Court decided "that insurance companies are not citizens of the United States within the meaning of this amendment."[2] As a result of these decisions, the states have regulated insurance instead of the Federal Government.

Regulation of insurance, if of any value, sees these things: "That a company is legally organized; that a certain fund has been deposited with an officer of the state where organized, as an evidence of good faith; that it has on hand the funds required to make good its contracts already in force, according to a

---

[1] 8 Wallace (U. S.) 168

[2] N. Y. Life Insurance Company vs Deer Lodge County 231 (U. S.) 495

rate of interest that is likely to be realized; and that its funds are invested in safe interest-bearing securities."

## First Laws on Regulation

The first laws in the United States to particularily affect and regulate life insurance were passed by the Legislature of Massachusetts in 1807. These early laws were more or less unsystematic and irregular, requiring companies to make out statements of account to the General Court, to make statements of affairs, and to submit to examination under oath concerning such statements to the Treasurer of the Commonwealth. Foreign companies were required to deposit copies of their charters and of the powers of attorneys furnished their agents with the Treasurer of the Commonwealth. In 1837, this was changed by a law requiring the companies to make their annual returns to the Secretary of the Commonwealth rather than to the Treasurer.

---

[1] J. A. McCall, Yale Insurance Lectures. Page 202

[2] Ibid Page 201

The Secretary was required to summarize the facts from the returns and report in the form of an abstract to the Legislature. In 1844, authority was given to issue insurance upon the life of a husband for the sole benefit of the wife and children. In 1852, the Secretary, Treasurer, and Auditor of the Commonwealth were appointed as a Board of Insurance Commissioners with authority to supervise insurance companies.

In New York, at first, only a special questionaire was used in connection with the reports of life insurance companies. By the Revised Statutes[1] of 1828 all money corporations, thereafter created had to make annual reports to the State Comptroller. Many companies, by the terms of their charters, were exempt from these requirements until 1864. By the General insurance Act of 1849 all foreign companies had to make a statement of condition before admission to the state was granted. In 1851, by an act of the Legislature a deposit with the state for the protection of the policyholders were required.

---

[1] J. A. McCall, Yale Insurance Lecture Page 201

The deposit required was the same for all companies and was criticized as a discrimination in favor of the large companies. The principle of the New York deposit law has been widely adopted and retained today by other states. Authority was given to the Comptroller to make official examinations of companies by this same act. In 1853, companies were required to make classified statements of all policies in force, together with the data necessary for an official valuation of policy liabilities.

The first insurance department was created in 1855 in Massachusetts. The Legislature enacted a law which delegated power to supervise insurance to a Board consisting of two Insurance Commissioners. They established a standard of solvency and a compulsory nonfeiture law, both of which are features of state regulation today. This board examined companies and made reports to the General Court. In 1866 a single insurance Commissioner had been appointed to be the supervising au-

---

[1] E. W. Patterson, The Insurance Commission in United States Page 534

thority.

In 1859 New York established an insurance department with authority quite similar to that of the Massachusetts department.

From 1859 to 1869 thirty-five states established insurance departments or delegated the power of supervision to some specified officials appointed for that purpose. Today every state or territory has some department of government that supervises insurance carriers.

## Change in Attitude

A tremendous change has taken place in the attitude of the public mind toward government since the beginning of the state's regulation of insurance. Formerly governments were regarded as necessary evils of which there whould be just as little as possible; today people are eager to have the government go as far as it will in regulating and controlling enterprises which once were considered matters of individual and private concern. Governments today have made efforts

to protect the wage earners against unfavorable conditions of work and against inadaquate wages. In order to protect the consumers it prevents the establishment of industrial monopolies by maintaining free competition among business enterprises. It maintains standards in the quality of the goods which are produced and sold. For the protection of its citizens, states regulate public utilities, banking, education, medicine, etc. Insurance is one of many fields, opened by individuals, which, gradually through a change in attitude, has become supervised and regulated by the state.

# CHAPTER 3

## Early Fragmentary Regulation in Kansas

Kansas, early in its existence as a territory, realized the importance of the life insurance business. Kansas, later as a state, became noted as a pioneer in taking on governmental functions a step in advance of the other states. So we are not surprised that in the territorial period the state considered it a duty to treat insurance companies as a special class of private corporations. The legislators passed special laws to adjust and control their dealings with the public.

### 1859

The first laws in Kansas that affected insurance companies were passed in 1859. The legislature passed on act to establish a code of civil procedure. Insurance companies, in all instances at that time, were foreign corporations, and their main offices were outside the state of Kansas. The question arose as to where the action was to be brought in case an

insurance company was a defendent because the company had only agents in Dansas. For all companies except insurance companies, there was a choice as to where the action could be brought. It could be brought in the county in which the corporation was situated or had its principal office, or in the county where one of the principal officers resided. But if the corporation was an insurance company, action could be brought in the county where the reason or cause of the action arose.[1]

Under the title, "Commencement of a Civil Action," the law decided upon whom the action should be served. Where the defendent is a corporation carrying on the business of insurance, the action could be served on the agent or chief officer of the agency, in the county where the case was brought. If there was no agent or agency in the county, then the action would have to be served on the general agent for the state.[2]

---

[1] Summarized from General Laws of Kansas 1859 Chapter 25 Section 55

[2] General Laws of Kansas 1859 Chapter 25 Section 75

1863

The next laws concerning insurance were passed in 1863. The condition in the state at that time can be indicated by quoting from the Governor in his message to the legislature.

"The insurance for the people of this state is now wholly effected and controlled by companies outside the State. This business is large and rapidly increasing. These companies pay no tax whatever for this privilege, the profits of which are sent away, without any compensation to the State. They should pay for the protection of the business they enjoy. They should bear their portion of the common burdens of the State. Nor can you mistake your duty here. It is by distributing taxation upon all business equally that you can lessen or relieve the burdens of the people."[1]

The Legislature passed two acts during the session. (1) To provide for the incorporation of Fire, Marine, and Life Insurance companies and (2) to regulate agencies of insurance not incorporated by the state of Kansas. The first

---

[1] Governor's Messages 1863 Thos. Carney Page 18

was an effort to cause home companies to be organized to compete with the foreign companies, and the second to protect the people of Kansas against fraudulent and weak companies so that the money spent would not be lost.

## Incorporation of Kansas Companies

Section one of the act of 1863 provided that nine or more persons could associate and form a corporation for the purpose of making insurance on dwelling homes, stores, and upon the lives of individuals.[1]

From section two to section twenty-one of this act were given the steps, provisions, fees, penalities, etc. to form and conduct an insurance corporation. A summary of the above sections is made here.

The first step was to file with the Secretary of State, a declaration signed by the incorporators expressing their intention to form a company for the purpose of transacting the business of insurance. They were asked to

---

[1]General Laws of Kansas 1863 Chapter 31

include a copy of their charter which they proposed to adopt, and were required to publish a notice of their intention once a week for two weeks in a public newspaper in the county in which they intended to locate and carry on their business.

The charter contained the following facts:

1. The name of the company.
2. Location of principal office.
3. Mode and manner of electing directors. (A majority of the directors must be citizens of Kansas.)
4. Mode and manner of filling vacancies.
5. Each director must own five hundred dollars worth of stock at par.
6. The time of beginning and ending the fiscal year.
7. Amount of capital to be employed in the transaction of its business. (Could not be less than one hundred thousand dollars.)

Life insurance companies were forbidden to trade directly or indirectly in buying or sell-

ing any goods or merchandise or other commodities.

After the company had proved that it had complied with the above requirements, it could open books for the subscription to the capital stock of the company. The books had to be kept open until the full amount specified in the charter was subscribed. A notice including the time and place had to be given a week before the books were to be opened.

The companies were given the privilege of investing the capital and accumulated funds in bonds or mortgages on unincumbered real estate in Kansas. The real estate had to be worth one hundred percent more than the sum loaned on it, and the value of the farm buildings could not be counted in this estimate. They could buy bonds of the United States and Kansas. They could also buy commercial paper and other evidences of indebtedness if these were well secured.

The companies were forbidden to purchase, hold, or convey real estate except

1. Such as was required for its convenient

accomodation in the transaction of its business.

2. Such as had been mortgaged to it by was of security of a loan previously contracted or money due.

3. Such as had been conveyed to it in satisfaction of debts previously contracted or for money due.

4. Such as had been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts.

The company could not begin business untill ten per cent of the capital of such company had been paid in and notes given for the balance. The notes had to be secured by one surety or by mortgages on unincumbered real estate worth twice the amount of the notes. These facts had to be verfied under oath and filed with the Secretary of State.

The stockholders had to pay in five per cent of their subscription to the capital stock every six months until fifty per cent had been paid. If this amount was not paid within ten days after it became due or additional security

given, the stock was forfeited to the company.

The directors had power to make by-laws for the government of officers and the conduct of the affairs of the company. These laws, which must be consistent with the laws of Kansas, and their seal could be changed and altered at pleasure.

Dividends could be declared from surplus profit. In estimating the profit a sum equal to the amount of the premiums unearned had to be reserved. A company was not allowed to count sums due on bonds, mortgages, notes and stocks on which no part of the principal or interest had been paid for one year. A company could not count evidence of indebtedness on which foreclosure or suit had been started or judgments that remained two years unsatisfied. If a dividend should be made contrary to the above provisions, the stockholders were liable to the creditors for that amount.

The company could maintain suits at law against the stockholders, and the stockholders against the company for any cause relating to

the business. The stockholders were jointly and severally liable for all debts and responsibilities of the company to the amount of the stock which they held.

In order to increase the capital stock of a company organized under this act a copy of the charter, and written consent of the majority of the stockholders had to be filed with the Secretary of State. Also, a notice had to be published once a week for three weeks in the public newspaper in the county where the company was located. The unpaid portion of the new capital was subject to the same rules of payment as the original capital.

The companies were required to make to the Secretary of State an annual statement which had to be prepared under oath by the President or Vice-President and the Secretary and published in two newspapers for at least one month. The statement was due the first day of January and had to be in by the first of February or a penalty of two hundred dollars was assessed and an additional two hundred dollars for each

month thereafter that the report was not made, if the company remained in business. The district attorney in the county where the violation took place sued for and recovered the penalty in the name of the state. Half was paid into the treasury of the county, and the other half went to the informer. If the parties did not pay, they were liable for imprisonment in the county jail for a period not exceeding six months. The statement required contained the following facts:

1. Amount of capital stock of the company.
2. Assets of the company.
3. Liabilities of the company.
4. Income during preceeding year.
5. Expenditures during preceeding year.

The companies had to pay to the Secretary of State five dollars for filing the papers required for roganization, five dollars for filing annual statements and two dollars for each certificate of agency. The companies were required to pay to the county clerk fifty cents for every paper filed in his office.

This act went into effect March 3, 1863.

One successful company, The Missouri Valley Insurance Company of Leavenworth, Kansas, was organized under this act in 1867 and began business January 1, 1868. More will be said about this company in chapter five.

## Regulation of Foreign Companies

The second act passed during this session regulated foreign companies. It contained eight sections which are summarized below.[1]

All foreign companies were required to obtain a certificate of authority from the Auditor of the State, before they could take any risks or transact any business of insurance. In order to obtain the certificate of authority, the President or Secretary of the company had to prepare a statement under oath for the Auditor.

The statement had to contain the following:

1. The name and location of the company.
2. The amount of capital stock.
3. The amount of capital stock paid up.
4. Assets of the company.
   a. Cash

[1]General Laws of Kansas. 1863 Chapter 32 Sections 1-8

b. Unincumbered real estate.

c. Bonds owned, security and rate of interest.

d. Debts of company secured by mortgages.

e. Debts otherwise secured.

f. Debts for premiums.

g. All other securities.

5. Liabilities due or not due to banks and creditors.

6. Losses adjusted and due.

7. Losses adjusted.

8. Losses unadjusted.

9. Losses in suspense waiting for proof.

10. All other claims against the company.

11. The act of incorporation of the company.

Along with this statement, a company had to include a written instrument under seal, signed by the President and Secretary, consenting that service of process served on the company. All claims of error by reason of such service were waived.

Before the Suditor could issue a certificate, the company had to prove that it possessed at least one hundred thousand dollars of actual capital invested in stocks of par value or in bonds and mortgages on real estate worth double the amount of the mortgage.

After the certificate of suthority had been obtained from the Auditor, the certificate and copies of the statements given the Auditor had to be filed with the Clerk of the District Court of the county in which the company planned to transact business before the agents were allowed to solict business. The certificate was good for one year, and all statements and evidences of investments had to be renewed in July. If the Auditor believed the capital, investments and securities were as safe as at first he could renew the certificate. The Clerk of the District Court also had to be furnished new copies, which were required to be published in the county newspaper for at least three weeks.

The penalty provided for a person convicted of carrying on the business of insurance without first complying with this act was a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days. This act went into effect February 20, 1863.

1864 - 1871

In 1864, a part of the act of 1863 was repealed (Sec. 4 Chap. 32). Instead of having the statements and evidences of investments renewed in July, they were renewed in February. The statements gave a summary of the affairs of such companies at the close of business upon the thirty-first day of the preceeding December.

No additional laws were passed until the establishment of the insurance department in 1871. Under the laws of 1863 the foreign companies carried on an immense business estimated at one half million dollars a year in premiums. This took from Kansas a large amount of her available cash capital. Many irresponsible and

bogus companies complied with the laws and transacted business. Companies were not compelled to furnish incontestible proof of adequate paid up capital or to make investments sufficient to secure the rights of policy-holders. The companies, also, were not required to buy Kansas Securities, which would have given Kansas a market for her stocks and bonds which were sold in the East at a discount.

It was recognized at this time that some tax should be imposed on the foreign companies so the home companies would have an even change; also, they should pay for the provileges they enjoyed under the Kansas laws. Governor Crawford aaid in 1867, "We have the men and the means to organize and safely conduct home companies, and they ought to and should be encouraged. Such conditions ought therefore to be imposed upon foreign companies by way of taxes, or the payment of a bonus to the state, as shall give our home companies an opportunity to compete with them."[1]

---

[1] S. J. Crawford, Governor's Message 1867 Page 21

Comparisons

The laws of Kansas compared quite favorably with the laws of other states and territories which had not established separate departments in charge of a superintendent or commissioner.

In Virgina[1] the auditor of state issued the certificates of authority and received the semi-annual statements. An attorney had to be appointed and empowered to accept service of process. Foreign corporations had to deposit with the treasurer of state, securities pruchase in Virginia to the amount of thirty thousand dollars for a capital of less than five hundred thousand dollars, and thirty-five thousand dollars for a capital of a million or less. Foreign Corporations paid a premium tax of two percent and domestic companies paid a dividend tax of five percent.

In Nebraska[2], also, the auditor issued the

[1]George Wolford, Statute Laws on Insurance. 1870 Page 670
[2]George Wolford, Statute Laws on Insurance. Page 390

certificates and received the statements. Agents were empowered to accept service of process. No deposit of securities were required but companies had to have one hundred thousand dollars invested in the stocks of the states of the Union. Premiums were taxed the same as other property and at the same rate.

The auditor of state in Ohio supervised insurance at this time (1870).[1] Ohio required the companies to appoint an attorney on whom process could be served. Home companies and foreign companies had to deposit one hundred thousand dollars in securities (not required to be Ohio) with the auditor of state. The gross receipts of the companies had to be entered on the tax list and were subject to the same rate of taxation as personal property.

In Wisconsin,[2] the governor examined the charters of foreign companies and home companies, and authorixed the secretary of state to issue the certificates. Foreign corporations,

---

[1]George Wolford, Statute Laws on Insurance. Page 577

[2]George Wolford, Statute Laws on Insurance. Page 683

before being allowed to operate in the state, had to prove that they had one hundred and fifty thousand dollars invested in safe securities and held in trust. The premium tax was three percent.

Kansas missed a source of revenue by not having a premium tax at this time on foreign companies. Since a company's rates were the same for all states then the policy holders in Kansas helped pay the tax in other states or provided an extra profit for the company.

## CHAPTER 4

### Establishment of the Insurance Department

By this time the Insurance Departments of Massachusetts and New York had been functioning with good results for many years. The deposit requirement, and the incontestible proof of paid up capital requirement had cut down the failures in these states. The insurance business in Kansas was steadily growing more important even though the laws were inadequate to protect the interests of the policyholders. The Governor, James M. Harvey, recommended in 1870 that additional laws be passed, and he repeated his recommendation in 1871.

"I renew the recommendations made by me to the last Legislature relative to the enactment of a law for the regulation of the business of insurance in this State. The object of such law should be to provide for the security of policy-holders. It should provide, at the expense of the companies, for a supervision of the business by an authorized agent of the state, charged

with the duty of examining into the affairs of all the companies doing or offering to do business in this State, with a view to the detection and exclusion of the false and fraudulent ones, and the protection and regulation of the good and reliable. There is in my mind no question as to the power and duty of the State thus to provide for the security of its citizens from fraud and extortion, and at the same time leave opportunity for full and free competition between all companies worthy of public confidence."[1]

The Legislature of 1871 passed an act establishing an insurance department and rules for the regulation of insurance companies doing business in Kansas. Section one to twenty-four of this act had to do with the provisions for the new department and the superintendent.[2]

Department and Superintendent

The new department had charge of the execution of all laws then in force and all new

[1]Governor's Messages 1871 J. M. Harvey Page 18

[2]General Laws of Kansas 1871 Chapter 93 Section 1 - 24

laws pertaining to insurance and insurance companies doing business in Kansas.

The Superintendent was appointed by the governor for four years at a salary of three thousand dollars a year. The appointment had to be confirmed by the senate. He could not have any official connection with any insurance company and must be an elector of this state. The Governor had power to fill the vacancy in this office is one should occur on account of death, resignation or removal of the superintendent. If the governor was satisfied that the superintendent was incompetent or inefficient, he could remove him with the consent of the senate.

The superintendent had to take an oath and give bond before entering upon his duties. His oath was to swear that he was not an officer, agent, employee or stockholder in any insurance company; that he would support the constitution of the United States and the constitution of the state of Kansas; that he would faithfully and honestly discharge the duties of his office. His bond was for twenty thousand dollars, signed

by two sureties, approved by the governor, and filed with the secretary of state. The duties that the auditor had with respect to insurance under the old laws were now given to the superintendent.

The superintendent could appoint his own chief clerk or deputy. His qualifications and oath were the same as for the superintendent, but his bond was only for ten thousand dollars. He received a salary of eighteen hundred dollars a year. The superintendent could employ other clerks as needed. There was no room in the state house for his office, so the superintendent was given the authority to rent an office in Topeka and furnish it with everything needed to carry on the business. The department was supposed to be self supporting and the superintendent could not spend more than he collected from the companies. The money collected as later provided for in this act was paid to the state treasurer, who paid all expenses upon the certificates of the superintendent.

The department was required to have an official seal. Every paper or record executed by the superintendent must be sealed with this seal and they must be accepted as evidence by others in the state. All papers anc copies of papers certified and authenticated by the seal could be recorded in recording offices with the same effect as a deed.

All books, papers and documents relating to insurance in the offices of the secretary of state and the auditor were now turned over to the superintendent of the new department, who was required to give receipts, which released them from responsibility and made him responsible.

The superintendent was given power to examine all companies doing business in the state. If he had any reason to suspect that an annual statement was incorrect, or that a company was unsould, it was the duty of the officers of the companies to open their books for his inspection. The officers could be required to help in every way with the examination and compelled

to take an oath on any statements the department might require. The superintendent was given the privilege of publishing the results of investigations in the newspapers if he deemed them of interest to the public.

If an examination he found that the assets of a company were insufficient to reinsure its outstanding risks, he could require the officers to direct the stockholders to pay in the deficit. If they did not pay it in the time he designated, he could then notify the attorney general whose duty it was to proceed to dissolve the company or revoke its right to transact business in Kansas. If a stockholder transfered his tock to some one else while the case was pending, he was still liable for any loss that had accrued previous to the transfer. After the superintendent had notified the attorney general, the company had no right to carry on business until the courts had made a decision. All expenses of examination had to be paid by the company, if it could be proved that a reasonable cause existed for the examination.

The superintendent of insurance was required to make an annual report to the governor on or before the first day of July. A thousand copies of the report had to be printed for the use of the legislature and superintendent. The reports contained the following:

1. General condition of insurance companies doing business in Kansas.
2. Statements of the insurance companies.
3. Results of the official valuations of life policies.
4. Names and compensations of clerks.
5. Income, including source, for year ending December 31.
6. Expenses for the year in detail.
7. Suggestions for the improvement of companies and the department.

Net valuations of all life insurance policies, unpaid dividends and all other obligations of every life insurance company doing busines in the state, had to be made once in every three years. The superintendent had to

make the examination or have it made using the rate of mortality established by the American Experience Table and figuring interest at four and one-half percent. If the laws of some other state had required an examination to be made and the other state had used a standard which was not less than the Kansas standard, the superintendent could accept this valuation if it was certified by the officer of the state making the valuation. The superintendent had the privilege of changing the rate of interest and mortality in case of companies from foreign countries, invalid lives, or extra hazards.

The forms required by the state from the insurance companies, were prepared by the superintendent, printed and sent to the companies during September each year. The superintendent could make any changes he deemed necessary from year to year to best elicit a true exhibit of the condition of the companies.

The securities required to be deposited by this act were deposited with the state treasurer. He, with his sureties, was responsible for their safe keeping. He gave the superintendent a re-

ceipt, describing the kind and amount of securities and could not deliver the securities to anyone without a written order from the superintendent.

As mentioned before, the department was self supporting. The companies paid the following fees:

1. Filing and examination of charter of an insurance company and issuing the certificate of authority. $50.00
2. Filing the annual statements. $50.00
3. Each licence granted to agents. $2.00
4. Every copy of paper filed. $.20 per folio.
5. Affixing the seal of office and certifying any paper. $1.00
6. Valuation of life policies. $.01 per thousand dollars of insurance.

In addition to the above fees, every company doing business in the states had to pay fifty dollars annually to the state treasurer for the benefit of the school fund. The penalty required of companies that solicited ap-

plications of insurance without first being authorized by this state was five hundred dollars. All companies from foreign countries were required to pay, in addition to the above, two per cent of all premiums collected in this state, to the state treasurer for the benefit of the insurance fund. If they refused to do this, their certificate of authority was revoked.

Most states have reciprocal and retaliatory statutes for the protection of home companies authorized to sell insurance in other states. Kansas provided the same thing in this act. All companies from any state which required the companies from our state doing business in that state to pay taces, fines, penalties or any fees greater than the amount required by our state to their companies, were required to make the same deposit and pay the same fees to the insurance department of Kansas that their state charged Kansas companies.

All agents of companies not organized under the laws of Kansas, whether appointed by the President, Vice-President, chief manager or Secretary of the company, or by their general

agents in this state, shall be held liable just as fully as though they were appointed in a formal mode by the directors of the companies. All agency contracts had to be filed with the superintendent and the fee paid, before they could forward applications of insurance to the company.

It occasionally happened that a company desired to discontinue business in Kansas. The company applied to the superintendent for a return of their securities. The superintendent would first publish once a week for six weeks a notice of such intention in the country where the company had been transacting business. He would then examine or have examined the books and papers of the company to see if all debts, judgments and liabilities of every kind due or liable to come due to citizens or residents of the United States had been paid. If so, he could return their securities; if not he must retain an amount worth at least twice the amount of the remaining liabilities until all were paid.

The penalty which had to be paid for violation of the provisions of this act was sued for and recovered in the name of the state of Kansas by the county attorney of the country in which the violation took place. The penalty on conviction was not less than one hundred dollars or more than five hundred dollars. One half of the penalty was paid into the treasury of the country and the other half to the person or persons who gave the information which lead to the conviction. In case of nonpayment the party guilty of the violation was imprisoned for a period not exceeding six months.

This beginning of the department has many good points and a few bad ones. The appointment of the superintendent by the governor is still regarded by the majority of the states as a better method than by popular election. In 1927, only fifteen states elected the superintendent by popular election.[1] (Kansas included) The salary of three thousand dollars

---

1 E. W. Patterson, The Insurance Commissioner. Page 34

per year is the present salary of the commissioner. The salaries range in the United States from $2250 in New Hampshire[1] to $10,000 in New York.[2]

No special qualifications were required of the superintendent. It seems that a man in such a responsible position whould be an expert in the insurance business with a required number of years of experience. His term of office, a four year period, is better than a short term, as it gives him a chance to learn his duties. His power to examine companies was unlimited, and if carried out honestly, would be a great protection to the policyholders of Kansas.

The fees charged were more than sufficient, as was latter proved, to support the department. Probably a tax on premiums should have been imposed on foreign companies as well as on the companies from foreign countries, as the insurance rates were made high enough to have paid the tax.

-Kansas Companies-

Sections twenty-five to forty-three of this

act were rules for the companies other than life. Sections forty-four to fifty-seven were rules for Kansas life insurance companies.[1]

Certain very definite rules and regulations were laid down for the organization of new companies incorporated before this act was passed. This act did not affect the existence or rights of corporations organized in this state under a general or special law, but regulated their continued existence.

A company first had to file a copy of its charter, certified by the secretary of state, with the superintendent of insurance. At the same time, it must file a copy of its by-laws containing the following: number of its directors or trustees (not less than five nor more than twenty-five); how they were elected and their term of office; and their manner of filling vacancies. A majority of the directors had to be citizens of Kansas. The second step was to publish in the county paper for four weeks a notice of their incorporation and the

---

[1] General Laws of Kansas 1871 Chap. 93 Sections 44 - 57

names and residences of their directors. The third step was to open books for subscription to the capital stock. The books were kept open until the full amount specified in the charter had been subscribed and one hundred thousand dollars paid in. The insurance department was then notified and an examination made. The officers of the company were required to certify under oath that the money, notes, stocks, bonds, mortgages and deeds of trust and obligations exhibited were the property of the company.

After the company had deposited one hundred thousand dollars in stock, or in notes or bonds secured by mortgages, or deeds of trust with the insurance department, the superintendent furnished the company a certificate of authority. Under this certificate, the company had the right to make insurance on lives of individuals, and to grant, purchase, or dispose of annuities and endowments. The stock deposited had to produce six per cent, and the value could not be estimated at more than par

nor more than the market value. The mortgages had to be on unincumbered real estate worth twice the face of the mortgage. As long as the company remained solvent, it had the privilege of collecting the interest and substituting deposits of like value if it wanted to withdraw some of its securities. If a company could prove that it had an excess on deposit, it could withdraw that amount without a substitution.

The superintendent of insurance issued registered policies of insurance and annuity bonds for such amounts as the companies required. Before they were issued, the company had to deposit with the treasurer the amount of the net present value of the policy or bond figured at four and one-half per cent interest and valued by the American Table of Mortality. The policy or annuity bonds had on its face the words, "This policy among a limited number is secured by pledge of public stock or bonds and mortgages," and the seal of the department countersigned by the superintendent or his deputy.

The liability of the company on the policy or annuity bonds was figured according to the amount and number of premiums paid. As additional premiums were paid, additional deposits had to be made with the department. On the first of January or within sixty days afterwards, the companies had to make a return showing the exact condition of all registered policies. When a policy lapsed or a bond was liquidated or cancelled, the department returned the securities which had been deposited to protect the obligation.

The insurance companies had the right, with the consent of two thirds of the directors, or finance committee, to invest their surplus funds in bonds, notes, or mortgages or unincumbered real estate worth fifty percent more than the sum loaned, or in stocks and bonds of the United States, of Kansas and other states, and in bonds issued by any county, city, town, or school district of this state.

The directors selected their own seal and made by-laws regulating their investments, dis-

tribution of surplus, and the election of officers. Each company had to have a president and secretary, and all papers had to carry both signatures. Each company had to have one or more vice-presidents and an assistant secretary, who, in the absence of the president or secretary, had the power to perform all duties.

On the first of January the president and secretary, under oath, prepared a statement of the condition of the company and filed it in the office of the superintendent of insurance. The statement showed the following:

"First: The number of policies issued during the year.

Second: The amount of assurance effected thereby.

Third: The amount of premiums received during the year.

Fourth: The amount received for interest and all other receipts during the year classifying the items.

Fifth: The amount of losses paid during the year.

Sixth: The amount of losses unpaid, giving the reason for non-payment.

Seventh: The amount of expenses, classifying the items.

Eight: The whole number of policies in force specifying the description and amount of each policy.

Ninth: The amount of liabilities or risks thereon, and all other liabilities.

Tenth: The amount of capital stock and how invested.

Eleventh: The amount of assests other than capital, and the manner in which they are invested; what amount is invested in real estate, in stocks, promisory notes and other securities, and what amount is loaned on bonds and mortgages or deeds of rust, stocks, policies of the company, and other securities, specifying the kinds and amount.

Twelfth: The amount of dividends declared to stockholders and policyholders respectively, and how much remains unpaid.

Thirteenth: A tabular statement of the policies in force, for the whole term of life, showing what number for each age of life, and for what amount of risks were issued or continued in force the first year of the exestence of the company, during the second year, and so on up to the time of making the statement.

Fourteenth: A tabular statement of the policies in force for a shorter period that the whole term of life, showing what number of each term of life, showing what number of each age of life, and for what amount risk were issued or continued in force during the first year of the company's existence, during the second year, and so on up to the time of making such statement"[1]

The superintendent had to arrange the information from the reports in tabular form or in an abstract and publish it in his annual report.

All life companies organized in Kansas had to hold an annual meeting for the election of

[1]Section 57 Kansas Laws 1871 Chapter 93

directors. One fifth of the directors had to be elected each year for a term of five years. The directors had to be elected by ballot, each share of stock entitled the holder to one vote. Voting could be by proxy if signed by the person holding the share. The following officers had to be elected: president, vice-president, secretary, and actuary.

If the beneficiary named in a policy died during the life time of the insured, the superintendent took up the policy and issued another policy naming a new beneficiary, which had been nominated by the insured in an affidavit. If a policy was paid to a woman, minor children, or to invalid, aged or infirm persons, it was free from the claims of the husband, from the claims of the person effecting the insurance, from taxes and from the creditors of the insured. But the amount thus exempted was not to exceed a sum that could be purchased at the age of thirty on the continuous payment life plan, under the American Experience Table of Mortality,

four and one half per cent interest, for a net premium of five hundred dollars.

The provisions for the organization of home companies were quite sufficient. The policy-holders were really protected. The company had to have on deposit in the state treasurer's office one hundred thousand dollars in approved securities, and every policy had its cash reserve value covered by a deposit of securities. If a company became insolvent, the reserve would be sufficient to reinsure the policies in a solvent company. The hundred thousand dollars would, if the company was properly watched, pay the remaining claims and liabilities.

The Kansas department takes over two functions in regard to home companies. The company is incorporated under the insurance department and is given the certificate of authority. This gives the department more power to see that a company fully complies with the laws than if the company were incorporated under the general laws and then turned over to the insurance department. The Kansas method is the method used

by the majority of the states.[1]

The deposit equal to the reserve, which seems to me a good provision, is not very widely adopted. I found from letters received from seventeen commissioners that only four states required home companies to make this deposit.

## Foreign Companies

Rules and regulations for companies not organized under the laws of Kansas were given in Sections fifty-eight to eighty of this act.[2]

Before a life insurance company orgainzed by a foreign country, or by any other state could transact business in Kansas, such company had

1. To prove that it possessed the amount of capital and actual paid up capital required of life insurance companies organized in Kansas.

2. To file a power of attorney authorizing the agents to acknowledge service of process for

---

[1] E. W. Patterson, The Insurance Commissioner Page 58

[2] General Laws of Kansas. 1871 Chapter 93 Sections 58-80

and in behalf of the company. If the company ceased to transact business in Kansas, it had to appoint some person annually to be agent; and if they failed to appoint a person, the superintendent had power to apoint one and a fee of twenty-five dollars could be collected from the company. This provision was made so that if any case came up, it could be filed against the agent in the name of the company.

3. To file in the office of the superintendent of insurance a certified copy of its charter, or act of incorporation, a statement showing the condition of the company, a copy of its last annual statement and a copy of its last annual report in compliance with the laws of some other state.

4. To file proof that the company had one hundred thousand dollars invested in treasury notes, or stock of the United States, or bonds of some state, or loaned on notes or bonds secured by mortgages on unincumbered real estate worth double the amount loaned, and had deposited

the same with some state insurance department or finance officer of the United States. If the securities had not been deposited, they could be deposited with the treasurer of the state of Kansas.

All companies organized under other states and companies from foreign countries had to file an annual statement of their affairs in the same manner and form required of Kansas companies. In addition to this statement, a company from a foreign country had to give a detailed description of all policies issued and those which had ceased to be in force during the year in the United States, the amount of premiums received and claims and taxes paid in this state and in the United States for the year and a description of all investments in this state and in the United States.

A company authorized to make assurance on life and to grant, purchase, and dispose of annuties and endowments was forbidden to make insurance on marine, fire inland, or any other

risks in Kansas or in any state in the United States. The company was also forbidden to trade directly or indirectly in any goods or merchandise. Also, it could not purchase, hold, or convey real estate except such as was needed for offices, and such as was conveyed to it in satisfaction of mortgages. The company could not hold the real estate obtained from mortgages for more than five years without the written permission of the state superintendent of insurance.

The certificate of authority was revoked if a company neglected or refused to pay a claim for three months after proof of loss had been established. It was also required to pay the loss and all costs of collecting it.

This act was approved on March 1, and went into effect March 24, 1871.

A foreign company admitted under this act might be a strong company, but it might not. The statements were very often not true statements. Since the securities were not required to be deposited in Kansas, they were not under

the control of the Kansas department. In the majority of states no reserve deposits were required. This made it possible for weak companies to get a certificate of authority in Kansas with little or no protection to policyholders.

# CHAPTER 5

## Development and Administration 1871 to 1926

### 1871-1880

In pursuance of the new law of 1871 provoding for an insurance department and a superintendent, Governor James M. Harvey appointed Hon. W. C. Webb of Fort Scott, Superintendent of Insurance. He entered his duties March 20, 1871 and served two years. The office was first opened down town in Topeka but, by the General Laws of 1873, was moved into the Capitol Building.

The Superintendent of Insurance upon entering his duties found that the auditor of state had issued certificates of authority to eighteen life companies on March 1, for one year. He first investigated to find out if the licenses were valid. Not one of the companies had fully complied with the condition and investments that would pass, and very few had filed certified copies of their charters. He held that

all certificates were void because the auditor had no power to examine a company so had to take its statement. The companies had notes, bonds, and certificates of no value listed on their books at par. Many companies had good assets, but there was no way to separate the good from the bad.

The companies claimed that they had the vested right to transact the business of insurance in Kansas until March 1, 1872. They claimed that the certificate was a contract between the company and the state and claimed protection under the Constitution of the United States that "No state shall pass any law impairing the obligation of contracts."

That a foreign corporation is not a citizen of Kansas is proved in the case of Paul vs Virginia (8 Wallace 168, 1870 ). The court expressly decided that a corporation was not a citizen at all, and also, that a foreign corporation had none of the privileges and immunities of a citizen outside of the state wherein it is created. In the case of Slaughter

vs The Commonwealth (Virginia Court of Appeals 13 Grattan 767, 773) Justice Samuels says, "I have no doubt of the power of the General Assembly of Virginia to forbid foreign corporations from engaging in any pursuit within the state; and of consequence, to grant permission to engage therein only upon terms."

The Supreme Court of Kansas decided in the Land Grant Railway and Trust Company vs The Commissioners of Coffey County (July term 1870) "that a foreign corporation cannot migrate to this state, and can exercise no right here except under state comity, and as this comity exists only in the absence of any legislative or statutory rule, the Legislature, exercising the sovereign power of the state may prescribe any trems it pleases concerning such foreign corporations; and that such terms, even when complied with, operate only as a permission to transact business here during the will and pleasure of the state. No "vested right" is acquired; and the legislature may revoke the permit, or license, or prescribe new terms, or

amend or repeal the rule or statute at pleasure."

Webb notified the companies to comply with the new laws or retire from the state. Sixteen (Fifteen foreign, one Kansas) life companies complied fully and were given certificates. Two companies, the Travelers of Hartford, Connecticut and the Railway Passenger of the same place, withdrew after long correspondence with the superintendent. The Travelers agreed to a test case and the action was entered in the District Court of Shawnee County and tried in October. The court decided that the company had not complied with the law and that said certificate was void. Another company, Mutual Benefit Life Insurance Company of Newark, New York, openly violated and defied the law for months, but finally gave up. The reason the agents were not arrested, convicted, and fined was that the proceedings were cumbrous, tedious, and uncertain. Webb recommended that the laws be amended to enable the department to

commence action upon the statute itself and to prosecute the company in the name of the state.[1]

The incomes and expenses of the state insurance department for the first five years were as follows:

| | Receipts | Expenditures |
|---|---|---|
| 1871 | $5794.00 | $6625.15 |
| 1872 | 7939.01 | 7439.74 |
| 1873 | 12,796.26 | 5987.45 |
| 1874 | 12,679.96 | 3900.00 |
| 1875 | 13,909.83 | 4402.90[2] |

The expenses were large at first because furniture, shelving and office forms had to be purchased. After the first two years the department had a surplus. The Legislature of 1876[3] provided that the surplus accumulated up to that time be transferred to the school fund by the state treasurer, giving a duplicate receipt to the superintendent and one to the

---

[1]Summarized from Insurance Report for 1871.

[2]18th Kansas Report 1887 Page 7.

[3]General Laws of Kansas 1876 Chapter 84 Section 1

auditor. The following year another law was passed authorizing the transfer of the insurance fund then on hand and that which thereafter was in the hands of the treasurer and unappropriated on the 30th day of June each year, to the general revenue fund of the state.[1]

Modifications of existing laws recommended. Ed Russell, Superintendent of Insurance in 1873 recommended the following modifications of existing laws:

1. Payments of companies to the department should be based more on the business done. One company paid $106 for the privilege of collecting $1200 another paid $176 and collected $27,000.

2. Fifty dollars paid to the school fund should be repealed; there is no reason why insurance companies alone of all corporations should pay special tribute to the school fund.

---

[1] General Laws of Kansas. 1877 Chapter 101 Section 1.

3. The state treasurer should receive some compensation for the additional work he has to do on account of the insurance law.[1]

Amendments and changes. No action was taken on the recommendations, but the laws were amended and modified in 1873 and in 1875. Under these laws the superintendent was required, when requested by a life insurance company organized under the laws of Kansas, to make annual valuations of all outstanding policies. He had to deliver to the company a certificate of such valuation, giving the amount of the company's reserve on the policies. The valuation had to be made on the mortality table and interest rate that the company requested, so long as it did not place the company's reserve below the legal standard of Kansas.[2]

The qualifications of a superintendent were that he should be a person experienced and well versed in the matters of insurance,

---

[1]Insurance Report for 1873. Page 12.

[2]General Laws of Kansas. 1873 Chapter 101 Section 1.

he had to give his personal presence and attention to the duties of the department. (The above is the Kansas requirements for a superintendent today.) The requirement that the deputy give bond was cancelled. The superintendent was given the privilege of calling upon the attorney general of the state for legal counsel and such assistance as was necessary to enforce the provisions of the insurance laws.

The examination of charter fee was raised from fifty to fifty-five dollars. The state could not in any manner be held responsible for any expense growing out of the business of the department. In case the expense of the department should exceed the amount collected in any year the superintendent could assess the companies doing business in the state a sum equal to the deficit. Each company had to pay the same amount.[1]

Are the policyholders protected?

Have the laws of Kansas provided the means

---

[1] General Laws of Kansas. 1875 Chapter 112 Sections 1, 2, 3.

to really protect the interest of the policyholders? Orin T. Welch, Superintendent of Insurance in Kansas for eight years beginning in 1875 says: "The real interest of the policyholders is the necessary amount to pay losses which have already occured and the actual present cash value of the outstanding policies as fixed by the laws of the state. It is estimated that the policyholders' interest in the United States is four hundred million dollars ($400,000,000.). This amount, except not to exceed fifteen million dollars ($15,000,000.) deposited in the insurance departments of the states, is in possession of the officers of the insurance companies. The interest of the policyholders is really secured only by the honesty of the officers of the insurance companies. This interest represents the savings of the people deposited until their death for the protection of their families. The officers can invest it frauduently and dishonestly. They can buy speculative securities for private gain. As an example to show how it

is with the policyholders' interest when companies fail: Three companies failed in New York with combined available assets of $4,968,084.72 and combined liabilities of $10,399,478.79, a loss to the policyholders of $5,431,394.07. A deposit in governments vaults of the assets of the companies is the remedy. This deposit does not necessarily require a change of assets or in the least diminish income; securities can be withdrawn and replaced by others of equal value; coupons can be clipped from the securities in a public vault, and delivered to solvent companies, as cheaply as they can be clipped from securities in the vaults of the respective companies."[1]

One governor not in sympathy with the department

Most of the Governors realized the importance of the regulation of insurance. They knew that there were probably defects in the laws,

---

[1]Kansas Insurance Reports. 1876 Pages 13 and 202.

but they also knew that the system had been of great benefit to the people. They did all in their powers to perfect the system. George T. Anthony, Governor in 1877, seemed to think the fees charged were too high, and that the department was receiving more favors than it deserved. In his message to the Legislature he said, "- - ---------- This department was organized in the interest and at the instance of the insurers, and is, therefore, rightfully sustained at the cost of the insurance companies. Inasmuch, however, the expense of the office must ultimately come from the coffers of the insured, in the form of premiums, it is but just that it be governed by the strict rules of economy, and a tax be laid on the companies interested sufficient only for its necessary current expenses.

I am unable to see any demand in the duties of this office for a higher order of talent, or a more thorough business training, to qualify its superintendent, than is required in the important office of Auditor and Secretary of State;

nor do I recognize the propriety of his compensation being made larger by you because it is paid by companies instead of taxpayers, and I recommend a reduction of the salary of that officer accordingly.

The great value of this department to the State under existing laws, is not apparent to me. The certificate of these officers in the several States are accepted as complete, in establishing the credit abroad of companies located in such States respectively. It follows, that unless the examination at the base of these certificates is thorough and exhaustive, and followed up by a vigilent surveillance on the part of the Superintendent, such certificate must mislead and betray public confidence."[1]

Amendments and Cases

The Legislature of 1879 further amended and supplemented the laws of 1871. The total deposits of life insurance companies organized under the laws of Kansas could not be less

---

[1]Governor's message 1877 Page 22

than fifty thousand dollars, unless their total liabilities were less than twenty-five thousand dollars. If the liabilities of a company to its policyholders was less than twenty-five thousand dollars, the deposits retained must be two dollars for each dollar of liability. When the liability on any policy ceased the deposit covering the reserve had to be returned. If a company complying with the law could prove a surplus deposit, it had to be returned.[1]

The superintendent's salary was reduced in 1875 to $2500 but was back at $3000 by the laws of 1879.[2] His salary was changed a number of times getting as low as $2000 for a few years. The present salary is the same as provided in the laws of 1871. His term of office was changed to begin July 1,[2] so that the outgoing superintendent would have time to make his report for the preceeding year.

---

[1]General Laws of Kansas 1879 Chap. 115 Sec. 2, 3.

[2]General Laws of Kansas 1879 Chap. 166 Sec. 107.

Some questions of importance were decided by the courts during this decade. In the Washington Life Insurance Company vs Henry Haney, a question was decided which lead up to the adoption of the incontestible clause in life insurance policies. "Where a policy states that it shall be void if any of the statements in the application shall be found in any respect untrue, where the application contains an instruction to the applicant to answer each question "to the best of his knowledge and belief, briefly, and explicitly" and also a statement that answers made to the questions "shall form the basis of the contract for insurance, and also that any willfully untrue and fraudulent answers" shall void the policy was that indicated in the application, and that a mere mistatement, unless willful and fraudulent, would not avoid the policy on account of this stipulation."[1]

---

[1]Kansas Reports Vol. 10 Page 525

If the policy has a clause in it which says that the policy is void if all premiums are not paid in cash, if written evidence is given that other arrangements had been agreed to the policy is not void. In one case an agent had made arrangements to have the premiums taken out of his commissions and even though he owed the company a large sum in addition to two quarterly premiums, his beneficiary was allowed to recover.[1] In another case the agent accepted a note, the note was accepted by the company and a policy issued. At the death of the insured before the note was paid, the company was held liable.[2]

The weakness of insurance regulation at this time (1880) may be seen from a summary of an article written by Welch in his report for the year 1880.

---

[1]Kansas Reports Vol. 16 Page 158 Missouri Valley Life vs. Isabel W. Dunklee

[2]Kansas reports Vol. 18 N. Y. Life vs M. McGowen

The frailty of mankind has led the powers that exist to enact laws, adopt rules, and make orders requiring nearly all individuals, associations, and corporations, holding or contracting to perform trusts of a private or public nature to give bonds of recognizances indemnifying parties at interest against loss or damage arising from the dishonesty or unfaithfulness of the entrusted.

The United States requires bonds of its thousands of agents and officers. Before any government money can be deposited in banks, bonds must be given. Villages, cities and school districts require bonds of financial agents and officers. National banks are required to deposit bonds with the Government to cover their circulation. Life Insurance companies, running a business in which the contracts extend over a long period of years, managed by men strangers to the interested parties, using rules of their own making, do not give bonds. The securities

deposited with state departments are less than one per cent of their liability to policyholders. The balance is in the hands of the officers of the companies.

A bill was introduced into Congress requiring insurance companies to deposit the reserve of all policies issued, or an amount in excess of such reserve or present interest of the policyholders of the company, with the Treasurer of the United States. The passage of such a bill would have given the life-insured sound and positive indemnity. The companies were against such a bill. Why? A manager of an Easter Life Insurance Company said, "The deposit system is the correct one for securing the interests of policyholders. The interest will accrue on a company's assets deposited in a public vault the same as elsewhere, but the system will never be adopted; there is too much money to be made in handling the companies assets, and there is too much money ready to be spent to defeat any such

measures from becoming a law."

The failure of the Globe Mutual Life Insurance Company of New York, furnishes an illustration of worthy note. While that company's policyholders residing in this country, where their interest was secured only by the honesty of the company officials having them in charge, were heart-sick over the thought that little or nothing of the more than three millions of dollars to which they were entitled would be left for them, the policy holders in this same company residing in the Dominion of Canada, where the company was by law required to make a deposit for their security, were consoled by the official information that that government held sufficient of that company's assets to reinsure them in some solvent company or refund to them an equivalent in cash, and have a handsome surplus left.

It has been demonstrated, under our loose system of guarding policyholders' interests, that men unknown to success in other lines of business or undertakings can, by a few years'

management of a life insurance company, amass great wealth even though the company itself fails. Two of every three life insurance companies which have attempted existence have, not from excessive or unexpected mortality, but by mismanagement, extravagant expenditures, and the dishonesty of their officers, failed, entailing heavy losses upon their confiding policyholders. During the same period in which the life-insured have, for reasons stated above, sustained lossed aggregating many million dollars, ten thousand or more national banks have existed, having the same financial troubles to contend with that the life insurance companies have had, and yet not a dollar of their circulation has been lost by failure.[1]

Kansas Companies

The Missouri Valley Life Insurance Company was organized and incorporated in 1867 and began business January 1, 1868. The company complied

---

[1]Summarized from Pages 192-199 Insurance Report for 1880. Orin T. Welch.

promptly with the Insurance Act of 1871. It deposited securities with the state treasurer of over $100,000 and $50,000 on account of registered policies. It had extended its business to fifteen other states.

| | |
|---|---|
| Total admitted assets | $468,393.30 |
| Total unadmitted assets | $338,236.84 |
| | $806,630.14 |

Total Liabilites as to policyholders $333,980.90[1]

The superintendent confidently believed that this company was sound, that it offered reliable indemnity, and fully deserved the confidence of the people.

The company continued to grow, as far as reports were concerned, until the report of the insurance department for 1877. "Company was examined by the Insurance department of Missouri and the attorney general of Kansas. The examination closed Aug. 23. All abstracts and securities were carefully examined, new appraisements

---

[1]Kansas Insurance Report for 1871 Pages 35 to 39

of property procured, and the company given credit for its actual cash value of its assets. The result of examination showed that the company's assets were $61,670.13 less than their liabilities. The stockholders were required by law to pay in the deficiency. The license was revoked. On August 31 a further examination showed that the company's liabilities, by lapsed and surrendered policies, had been reduced over twenty thousand and the stockholders had paid in over forty-one thousand making a credit of a little more than the deficiency. The company was relicensed. The company attended to such business as it had on its books but did not make any effort to secure new business. This is the first and only instance in the history of life insurance known to the manager of this department where stockholders were ever assesed and made up an impairment in this manner."[1]

In the report for 1878 made in 1879 the company had a liability on outstanding register-

---

[1] Kansas Insurance Reports 1878

ed policies of $41,409. It had deposited with the treasurer of state, to secure the interests of these policyholders, securities worth $49,405.63. It continued to pay losses and endowments as they come due until 1889 when a receiver was appointed who withdrew the remaining securities and paid the policyholders their then cash value.

The Alliance Mutual Life Assurance Company of Leavenworth was organized in 1873 and reinsured with the Pacific Mutual of California in 1876.[1]

1881 - 1890

The difficulties that were encountered when the Alliance Mutual, mentioned above, reinsured with the Pacific Mutual and withdrew its deposits shows how our laws left the policyholders unprotected. When the company decided to wind up its business, it demanded a return of its securities

---

[1] Report of Kansas Historical Society 1926 Page 44

in excess of which the society claimed was the liability of a company winding up its business. Under the laws passed in 1871, before a company could withdraw its securities, all debts, judgments, and liabilities of every kind that were due or might become due upon any contract or agreement made with any citizen or resident of the United States had to be paid. The superintendent was to keep securities which were not less than twice the amount of remaining liabilities. This company had policies covering risks to the amount of $89,582. The reserve was $16,256. They had on deposit assets to the amount of $35,938. The company was not permitted to withdraw any of its securities.[1]

In 1881 the Legislature amended this section of the law to read, "That if the outstanding policies of such company or association have or shall be reinsured in any other solvent insurance company, an amount of securities shall be retained on such policy liabilities equal to

---

[1] Kansas Insurance Report for 1881.

what is known as reserve liability and no more; and upon such reinsurance and the payment of all debts of the company other than reinsured outstanding policies, no further report or other proceedings shall be required of the company so ceasing to do business."[1] Under this amendment the company brought an action of mandamus in the Supreme Court. The law required the Alliance, when organized, to deposit one hundred thousand dollars in securities. The new amendment permitted them to withdraw all their securities except an amount sufficient to pay the present interest of the policyholders. This was estimated at one-fifth of the face. This left the four-fifths unsecured, and the policyholders had to give up their insurance or take a chance on the California company, which did not have to make a statement to the Kansas department. The Supreme Court ruled that this

---

1 General Laws of Kansas 1881 Chapter 113 Sec. 1.

was true and the securities were returned except the reserve deposit. The superintendent was of the opinion that this ended the security of the policyholders. The increased reserve values of their policies were not protected by a deposit by the Alliance or the Pacific Mutual.[1]

Kansas flooded with cooperative insurance companies.

The big trouble in Kansas during this period was that companies organized on the cooperative plan or assessment insurance plan were exempt by law from the supervision of the insurance department. In the report for 1882 the superintendent said the field was clear for them to do as they pleased. The state was flooded with institutions from other states calling themselves cooperative life insurance companies, when, in fact, these importations were in the most cases barefaced swindles seeking this, a new field for plunder.[2]

---

1 Kansas Insurance Report for 1881.

2 12th Insurance Report. Page 251

It seemed advisable and urgent that cooperative companies, if allowed to transact business in Kansas, should be required to make reports to the insurance department. There were many examples of marriage aid, educational, endowment, guaranty, mutual life, church and hospital, and graveyard cooperative insurance companies. The department was powerless to act. "The people of Kansas have been victimized and fleeced, and the confidence is good wholesome insurance has been destroyed. The absence of all law makes Kansas a rich field for rogues and unprincipled shysters from other states."[1]

The Legislature of 1885 passed an act providing for the organization and control of mutual life insurance companies in Kansas. The superintendent prophesied that the enforcement of this law would drive from the state a horde of unscrupulous rogues who had hitherto worked Kansas in the interest of fradulent associations and concerns

---

[1] Insurance Report for 1883. Page 224

operating under various titles as cooperative life insurance companies.

The rules and regulations in this act were quite similar to the provisions for stock companies. The act contained thirty sections.[1]

Any number of persons, not less than five, could associate themselves together for the protection and relief of each other, and for payment of stipulated sums of money to the widows, orphans, heirs, etc. of deceased members. They had to file their articles of incorporation, copy of by-laws, copy of blank application for membership, and certificate of policy contract with the superintendent and auditor before they could get a certificate authorizing them to transact business. The policyholders had to elect the directors and trustees. The officers had to give bonds of fifty thousand dollars to the insurance department to protect the members. The fee charged the company

---

1 General Laws of Kansas 1885 Chapter 131.

for filing papers and issuing certificate of authority was one hundred dollars. The agents' licenses cost fifty cents each.

The companies received money to pay benefits by voluntary donations, or contributions, or collected annual dues and assessments from their members. They could not insure the health of a member for more than three thousand dollars unless they had members sufficient to pay the face value with a single assessment. Members were required to take a medical examination except for accident benefits or on the life of a person above sixty.

The department had to collect a guarantee reserve of not less than one per cent of the face of each policy. All policies lapsed, forfeited their interest in this fund. All certificates carried to maturity received the face, the amount paid into the guarantee fund, and a pro rata proportion of the lapsed guarantee fund.

The reserve fund could be invested only in United States bonds, Kansas bonds, Kansas township, county, school or municipal bonds, or bonds on

unincumbered real estate in Kansas worth fifty percent more than the sum loaned exclusive of buildings.

Foreign companies had to pay an annual license fee of one hundred dollars, ten dollars for filing charter, papers and statements, five dollars annually for each agent.

Annual statements had to be made to the insurance department on forms supplied by the department. If the correctness of the statement was doubted, the company had to be examined under oath, and the report published. The company stood the expense.

The loop-hole in this act was section 30. "This act does not apply to religous or secret societies or mechanics, express, or railroad employees organized for mutual benefits."

The next year the assessment for the payment to the reserve fund was raised to not less than ten per cent. If the death rate was in excess of the American Experience Table then this fund could be

drawn on.[1]

Mutual companies in Kansas. Cooperative insurance was not a great success in Kansas. There were six companies in 1885, one Connecticut and five Kansas companies.[2] Many companies were organized under the secret or fraternal exemption and did a fraudulent business. In a space of a few years eighteen companies were born and died in Kansas with an average life or four years.[3] "Members of secret societies insure one another as a fraternal metter, but persons who want real insurance go to real life insurance companies. The promoters of after death assessment insurance are cunning men, their dupes are ignorent men."[4] Superintendent Wilder gave some facts concerning wildcat insurance in Kansas in the 19th insurance report. Many wildcat companies had tried to get certificates to transact business in Kansas but

---

1 General Laws of Kansas. 1886 Chapter 114 Section 1

2 Kansas Insurance Report for 1885.

3 Judge Little in 18th Insurance Report. Page 23

4 D. W. Wilder in 18th Insurance Report. Page 23

were refused. Some did business in Kansas without authority, taking a chance on being caught. The Topeka Insurance Company and the Kansas Home Company were wildcat companies doing an underground business. They acted together using a policy printed in Chicago, also in violation of the laws. He examined and exposed these companies. The men interested in wildcating in Kansas, and another gang, lead by Harper of the Mutual Reserve Life of New York, (this company had long been trying to get into Kansas) did their best as insurance lobbyists to get rid of the superintendent and the department and to pass insurance laws favorable to themselves. They failed, but the speeches and some votes were paid for by bogus insurance companies, not in the interest of the people but of insurance boodlers.[1]

Four Kansas companies were organized during this decade. The Kansas Protective Union, Topeka, organized in 1881 and withdrew in 1889. The Kansas Mutual Life Association, Topeka,

---

1 20th Insurance Report. Page 48

organized in 1882 and reinsured in 1902 and '03 with the Kansas Union and the Illinois Life. The Bankers Life and Trust, Wichita, 1886 withdrew 1888 and the Guarantee Fund, Wichita, 1887 withdrew 1888.[1]

"The reason Kansas has no stock insurance companies--companies based on the solid rock of money integrity, and experience in the insurance business, is that Kansas is a new state, there is no surplus capital here, not a single man resting on his money bags and wondering how he shalll invest it in order to get six per cent return. Our state bonds--school, township, county, railroad--held in the East sold for half their face value. Money is cheap there and dear here. New states are built by using the accumulations of older communities. Kansas will have companies when money gets cheap here."[2]

---

[1]Report of Kansas Historical Society 1926 Page 44

[2]Wilder, 18th Insurance Report Page 31

1891 - - 1900

The work of ridding the state of fraudulent insurance companies had been vigorously prosecuted and the superintendent expressed the belief, at the beginning of this decade, that there were no companies in the state attempting to violate the laws. In the insurance report for 1891 the superintendent recommended that the legislature pass a law requiring a standard form of policies to be used in Kansas. New York, Massachusetts, and several other states had adopted a standard form of policy; it had worked no hardships upon the compaines and was a great benefit to the insured. Assessment life insurance societies were refused licenses to transact business in Kansas; it was the superintendent's opinion that the legislature intended to make the law prohibitive. Under Section 30, Chapter 131 of the laws of 1885, the state had been flooded under the guise of fraternity with a lot of worthless

concerns from this and other states. The Superintendent of Insurance recommended that a law be passed which should subject all insurance societies to supervision or should exclude all fraternal societies from the state that did not have a grand lodge in this state. "Respectable fraternal societies do not fear supervision and those which cannot undergo investigation had better be excluded from the state."[1]

Present condition of the life insurance business.

S. H. Snyder in the Report for 1893 expressed his opinion of the present condition of the life insurance business. "Abuses creep in in all things--first timidly, then slowly, then quickly, and still more rapidly, until they become a "fungus growth" which eats up everything, and finally kills that upon which it feeds, provided in the meantime, a revolution does not take place, overthrowing the old order of things, and bringing back all things to first principles.

---

[1] Kansas Insurance Report for 1891. Page 27

The present pace in life insurance i so tremendous, competition so keen, each so afraid of the other, that no single comapny can put on the brakes. A revolution must take place unless legislation will bring order out of chaos, safety out of peril.

Twenty years ago, companies wrote millions of new business where they now write hundreds of millions. Their assets were measured by millions now hundreds of millions. Surplus was measured in the hundreds of thousands where it is now millions. The business used to be conducted for the policyholders, now for the managers. The agent's commission was twenty-five per cent and the average life of policies was fifteen years, now the agent's commission is fifty to ninety-five per cent and the average life of policies is four years. The loading expense is 30%; and new business costs one hundred to one hundred and eighty per cent, which must be taken from dividend producing power of the old policies.

Companies show big figures on paper by fictitious bookkeeping accounts. All cash received for premiums is called an asset. All expenses are not included and some expenses are called assets. Worthless assets are carried year after year. Real estate and other investments are recorded way above market value.

No agency contract should agree to pay any rate of comission in excess of two times one year's loading in a policy. No assests except bonds should be held at a value where the interest actually received is less than four or four and one-half percent. Real estate should not be carried higher than cost. Real estate which has not produced a revenue for two years should be reduced as an asset to fifty percent of the loan made, or price paid. If no income is received on real estate for five years, it should not be accepted as an asset. Agents that are found guilty of misrepresentation should have

their licenses cancelled."[1]

It seems that some of the insurance superintendents were rather lenient. Snyder found in 1894 that six of the mutual insurance companies had been admitted to do business in Kansas without having provided bond required as a condition precedent to admission, nor had they made a deposit of the ten per cent of their assessments with the treasurer of the state. Their admittance was a hidden mystery. The companies were notified and their authority revoked.

Loans to policyholders permitted. Life companies were given permission in 1897 to invest funds by loans to policyholders to an amount not exceeding the reserve value, secured by a promisory note and assignment of the policy to the company.[2]

Premium tax law passed. Life insurance companies were not paying taxes in proportion to the amount of business they did. In 1895 their

---

[1] 24th Insurance Report Pages 7 to 10.

[2] General Laws of Kansas. 1897 Chapter 140 Sec. 1

taxes amounted to only seven tenths of one per cent of the premiums collected.[1] A tax had been recommended for years, but nothing was done until the special session of the Legislature in 1898. Then every insurance company not organized under the laws of Kansas was required to pay a tax on all premiums, cash, or notes received in the state at the rate of two per cent. Companies from foreigh countries had to pay a tax of four per cent. The tax was assessed by the superintendent and paid into the state treasury.[2]

There are many arguments pro and con on premiums taxes. A survey covering every state in the union shows that only one dollar out of every twenty-seven goes to maintain the insurance department. The rest of special insurance taxes goes for other state functions.[3] Special insurance taxes are hidden in the premiums and the

---

[1] 26th Insurance Report. Page 7

[2] General Laws of Kansas. 1898 Chapter 25

[3] AM. Acad. of Pol. & Soc'l Science. Vol. 130 Page 191

insurance companies are made tax collectors by the states. One of the arguments in favor of these taxes is that they are "painless" because they are unknown to the policyholders. They are just as real as though they were direct taxes.

"In some states we find that the state legislators use the gross premium method of life insurance taxation as an inducement for the companies to invest their assets within the state. In Colorado, for example, no tax is payable if fifty percent of the total assets of a company are invested there; otherwise, the tax is two per cent on gross premiums. In North Carolina a gross premium tax of two and one-half per cent is imposed, which may be reduced to one and one-fourth percent if the companies invest seventy-five percent of these assets, the rate is reduced to one-quarter of one percent and the companies' license fee is also lessened. Georgia, Idaho, and South Carolina also reduce the rate according

to the amount of reserve invested in their respective states."[1]

Fraternal companies regulated. Life insurance companies were still transacting a fradulent business in Kansas under the guise of fraternal and secret societies. In order to avoid the law, a few individuals would get together in a foreign state, have a charter issued to them, adopt a constitution and by-laws, provide for a supreme lodge to be held three or four years in the future, then present their credentials to Kansas for admittance. In 1898 the legislature passed an act providing for the organization and regulation of fraternal beneficiary societies and provided penalties for violations. The associations had to be formed for the sole benefit of members and beneficiaries, not for profit. Each association had to have lodge system, retualistic form of work, and a representative form of government. The regulation

---

[1] Am. Acad. of Pol. & Soc'l Science. Vol. 130 Page 194

was quite similar to mutual companies in regard to statements, fees, and penalties. The law did not apply to grand or subordinate ladges of any fraternal societies where benefits were sick or funeral not exceeding $200 or where a lodge limits its membership to the employees of a particular person firm or corporation.[1]

Kansas insurance business. The people still lamented the fact that most of the insurance business was done with foreign companies. Two companies were formed during this period, The American Mutual of Topeka, and the Western Central Life of Kansas City. The first organized in 1897 lasted two years and the second organized in 1899 did not write a policy.[2]

Governor Lewelling shows what it means to do all our business with foreign companies. "The people of Kansas paid during 1893 premiums to foreign insurance companies doing business in state in excess over losses incurred

---

[1] General Laws of Kansas. 1898 Chapter 23 Sections 1 to 16

[2] Report Kansas Historical Society 1926 Page 44

$1,711,295.31. Some comparisons may aid us to understand what these figures really mean. The excess of premiums over losses incurred, not paid merely, would entirely pay for the construction of the state house as it now stands, in a little less than one year and two months. It exceeds by more than 25% the total state tax levy for 1894. It exceeds by nearly $200,000 the aggregate of the appropriations for the fiscal year 1894. It exceeds by more than $100,000 double the amount of the entire bonded debt of the state at this time. Suppose this large surplus were retained in the state by the encouragement of home companies, would it mean nothing to the people? And the report of the commission shows that the excess has been substantially the same, annually over a period of eight years; so that during the period since 1886, we have sent out of the state for insurance more than thirteen million dollars more than has come back for losses. Why should not the state, through its insurance

department, provide safe and punctual insurance for the People? The insurance department might be used for the purpose of mutual insurance."[1]

One fault of regulation was that the companies were not required to invest their money in Kansas. " - - - - The laws of New York provide that all companies incorporated under the laws of the state of New York be required to invest their surplus earnings in securities within a radius of fifty miles of the city of New York. The laws of Kansas should require that an adequate and equitable percentage of the premiums paid to the insurance companies by policyholders in the tate of Kansas, should be invested in the state of Kansas, The investment if in securities to be approved by the commissioner of insurance and deposited in the state treasury as a guarantee fund to the policyholders for the payment of losses and in cases of failure of companies for reinsurance, and that all com-

---

[1]Governor's Message. 1895 Page 11

panies doing business in the state be required to designate some person upon whom service of summons can be made."[2]

1901 - - 1910

The laws regulating insurance at the beginning of the twentieth century seemed to afford ample protection to the people if they were honestly enforced. Many of the laws were so worded that the common layman could not tell their intent, so the period from 1900 to the present is concerned with the interpretation of present laws, amending and adding to them when necessary. Some of the laws required a Supreme Court decision before the intent of the law could be determined.

The law gave the superintendent the right to make an examination of the books, assets and business of all companies doing business in Kansas, for the purpose of determining the solvency

---

[1]Governor's Message 1897 Page 17

of such companies and the wisdom of permitting them to continue in business. The law did not provide that the report had to be filed or published, and no fixed charge was stated for the examination. Governor Stanley said in 1901, "The law relating to the examination of insurance companies is uncertain, and the power given to the superintendent in making examination arbitrary. - - - - The law should be amended, fixing the charge to be made by the examiners to be paid by the insurance companies; - - - - - and a report of such examination should be filed with the superintendent of insurance, which, at all times, should be open to inspection."[1]

An act was passed that year (1901) following the governor's instructions. The superintendent was required to examine into the affairs of insurance companies, associations, corporations, or beneficiary societies doing business in Kansas, and to suspend the company if unsound,

---

[1] Governor's Message. W.E. Stanley. 1901 Page 13

and publish a notice in Topeka and in the county where the principal office of the company is located. The examiners were to receive ten dollars a day and actual traveling and boarding expenses.[1]

Law and cases concerning beneficiaries.

It frequently happens that the beneficiary dies before the death of the insured. Men are negligent as a rule concerning the naming of a new beneficiary; they fully intend to but pospone it until too late. The insurance companies are at a loss to know to whom the insurance can be paid legally. An act was passed in 1905 concerning death of beneficiary before the death of the insured. If the insured died without naming a beneficiary and without disposing of the insurance by will, the insurance should go to the estate of the insured.[2]

The insurance is paid to the beneficiary named in the policy, even though the beneficiary has no insurable interest at the death of the

---

1 General Laws of Kansas. 1901 Chapter 357 Section 1 - 4

2 General Laws of Kansas. 1905 Chapter 271 Section 1

insured, if the insured had neglected to change beneficiaries. The Supreme Court decided that a policy payable to the wife of the insured, naming her, is payable to such beneficiary although she secures a divorce and the insured remarries and is living with his second wife at the time of death.[1]

Kansas had, from the beginning of regulation, tried to exempt the proceeds of a life insurance policy from claims of creditors of assured of beneficiaries. The Supreme Court first decided that proceeds paid to the beneficiary were subject to garnishment,[2] but later decided that the proceeds of a policy deposited in a bank were not subject to a garnishment.[3] The exemption does not extend to property purchased by the beneficiary with money paid upon a life insurance policy.[4]

---

[1] Filley vs Insurance Co. 91 K 220

[2] Reighart vs Harris, 6 K.A. 339

[3] Emmert vs Schmidt 65K 31

[4] Pefly vs Reynolds, Sherrif, 115 K 105

Law and cases affecting misrepresentations.

In order to avoid future trouble concerning policies obtained through misrepresentation, the legislature passed an act in 1907 governing the effect of such misrepresentations upon the policy. No misrepresentation made in obtaining or securing a policy of insurance should be deemed material or render the policy void unless the matter misrepresented shall have actually contributed to the contingency or event on which the policy was to become due and payable.[1] Before this act was passed the Supreme Court held a policy void where the applicant gave false answer respecting consultation with physician concerning a temporary ailment not seriously effecting his health.[2] Following the passage of the act, the Court held that, to avoid payment of the policy, misrepresentation must pertain in some degree to the malady which

---

[1] General Laws of Kansas. 1907 Chapter 226 Sec. 1 - 2

[2] Insurance Co. vs Brubaker. 78 K 146

occasions the death of the assured.[1] A misstatement as to health, innocently made, was held not to avoid the policy.[2] The suits brought, based upon misrepresentation, the insurance company had to deposit in court for the benefit of the insured the premiums received on the policy.[3]

A holder in due course of a note given for the first premium could collect it even though the policy was not issued. The applicant might not pass the medical examination, he might be rated up, or he might change his mind about wanting insurance. The legislature passed a law making it unlawful to sell or assign premium notes to innocent purchasers prior to delivery of policies to the insured.[4] If a policy was properly filled out and mailed to the insured, it was held delivered.[5] A bank, taking a note

---

[1] Newton vs Insurance Co. 95 K 427
[2] Sharrar vs Insurance Co. 102 K 650
[3] General Laws of Kansas. 1907 Chapter 226 Sec. 1 - 2
[4] General Laws of Kansas. 1907 Chapter 158 Sec. 1
[5] Sutton vs Wright 94 K 499

with notice before the policy is issued, could not recover when the applicant refused to take the medical examination.[1]

1911 - - 1926

Days of Grace. For the protection of the policyholders the legislature of 1913 passed a law making it unlawful for any life insurance company to forfeit or cancel any policy on account of non-payment of premiums, without first giving notice in writing to the holder of its intention to forfeit of cancel the policy. The company must notify the holder that the premium is due and unpaid; then the policyholder has the right, at any time within thirty days, to pay the premium. Any attempt to cancel or forfeit the policy on the part of the company is null and void. A notice, given before the time has expired within which payment may rightfully be made, that forfeiture will be enforced if pay-

[1]State Bank vs Seiser, 117 K 389

ment be not made, does not satisfy the requirements of the statute.[1]

Supreme Court decisions. Some points of argument under the laws were decided by the Supreme Court during this perido. The question arose as to whether the annual tax on all premiums received by foreign companies was two percent of the gross premium or could any part retruned to the policyholder as surplus or dividends be subtracted. It was decided that the tax should be computed on the total amount of premium collected, retained, and devoted to the business of the insurance companies, but any surplus of premiums not so used but returned to the policyholder or credited to him as abatements or dividends should be excluded from the computation.[2]

Insurance companies, when they write a big risk, the payment of which would cripple the company for a time, often reinsure with other

[1]Priest vs Bankers Life 99 K 295

[2]The State, ex rel., vs Wilson 102 K 752

companies, turning over a proportionate part of the premium. The question arises, should the company pay a tax on all the premium collected or just on the part it retains? The court decided that the tax cannot be made upon divisions of those premiums among other insurance companies under reinsurance contracts whereby the latter undertake to indemnify the original insurance company or aid it in carrying the risks for which the premiums were originally paid.[1]

We see large insurance buildings in many cities of the United States used as office rooms for the insurance company, but most of the space is rented to doctors, lawyers, mortgage companies, etc. The Kansas law says that a company may have such a building as shall be requisite and convenient for its accommodation in the transaction of its business. Life insurance companies may erect buildings larger than their immediate needs require. A company cannot use its reserve fund to build the building, nor can it take title to real estate in the name of the superintendent of

---

[1]The State, ex rel., vs Travis 108 K 257

insurance and deposit that title as part of its reserve fund.[1]

New law permitting special policy provisions. During a special session of the legislature in 1920, life companies were given the right to incorporate in their policies provisions for waivor of premiums, special surrender values for the totally and permanently disabled, and provisions for the payment of a larger sum if death be by accident.[2]

Insurance commission provided for to codify the laws. As has been mentioned before, the laws of Kansas concerning insurance have been amended and added to from time to time. Every few years a new condition would come up and a law would be passed. Sometimes a law would be rewritten and word or two changed; only a lawyer could tell what difference was made. Governor Baily said in 1903, "The insurance laws of the state should be revised and corrected. While the laws have

---

[1] National Reserve Life Insurance Co., vs George Godfrey Moore. 114 K 456

[2] General Laws of Kansas. 1920 Chapter 44 Section 1.

been added to from time to time, there has been an absence of positive correction and repealing acts, and we are left in doubt as to the implied repealing force. As a result, the insurance department is in possession of a compilation of laws in which there are contradictions and inconsistencies. This is unfortunate, both to the insurance companies and the people, and it is certainly annoying to the superintendent, who under the law, is charged with the execution of the laws.[1]

It was not until 1925 that it was decided to clarify, revise, and codify the laws regulating and controlling the business of insurance. The law created the insurance commission of five members. The superintendent of the insurance was chairman of the commission. The other four members were appointed by the governor; they were to be men chosen because of their particular ability and knowledge of the insurance business, and were to represent the different classes of insurance carried on in Kansas. The commission

---

[1]Governor's message. Bailey 1903 Page 14

was to investigate the laws of the United States and of the individual states and to prepare a report in detail.[1]

The report was completed by November 1, 1926 as required by the law and was submitted to the 1927 legislature for approval.

---

[1] General Laws of Kansas 1925 Chapter 188 Sec. 1-5.

# CHAPTER 6

## The Insurance Code

The report of the Insurance Commission, introduced as a bill in the 1927 session of the Legislature, was passed by both houses and approved by the governor. Thus Kansas, in 1927, had an entirely new insurance code. The men who compiled the code were William R. Baker, Superintendent of Insurance and Chairman of the Committee; John R. Thorne, H. K. Lindsley, E. R. Sloan, and Douglas Hudson, members of the Legislature appointed by Governor Paulen.

In the committee's letter of transmittal to the governor they said, "In compiling this code it has been the thought of the members of the commission that the existing law of this state, amplified as it is by over sixty years of judicial interpretation, should be disturbed as little as possible and then only in those instances where the methods and practices of present-day insurance business have outgrown the law as it now exists. The commission has,

however, felt that the interests of the public should be protected in three important phases; first, that the financial structure of all insurance organizations should be such that they can at all times carry out terms of the contracts into which they enter with the public; second, that the contents of the policies should represent a fair contract to the policyholder and which does not deprive him of the purported benefits through technical restrictions or concealed reservations, and, finally, that the public generally should be protected in the sale, not only of the contract or policy of insurance, but of the stock and evidences of indebtedness of the company which may be offered to it for purchase. - - - The commission has reduced the insurance laws of this state by nearly one hundred sections and has tried to present a code which will be workable and useful for years to come."[1]

---

[1] Report of Kansas Insurance Commission 1926 Page 3

The code is chapter forty of the laws of 1927. It is divided into seventeen articles and begins with section 101 and ends with section 1717. The purpose of this chapter is to gove the changes in the law, and as nearly as possible the reasons for these changes.

The superintendent of insurance was given a new name, commissioner of insurance. This was done because the majority of the states have given this title to the head of the insurance department. Thirty two states called the chief officer, commissioner of insurance.[1] This probably, also, describes more correctly the duties which he performs.

At the time the department was created in 1871, the bond of the superintendent had to be signed by two sureties; but, since that time, surety companies which furnish bonds for officials, charging them a premium have been admitted to the state. In section 107 of the code, the com-

---

[1] List by the Weekly Underwriter Feb. 1, 1925

missioner, if he so elected, could have his bond of twenty thousand dollars executed by a surety company and charge the premium to the department.

An insurance actuary has a special technical knowledge and training of the insurance business. In order to get a person well qualified; and, because of competition of companies, it was necessary to raise the salary of the insurance actuary in the department from three thousand dollars a year to four thousand dollars a year. He is appointed by the commissioner who receives three thousand dollars a year.[1]

The department has supervised the sale of life insurance but not the stock of life insurance companies. It would be possible for a company during its period of organization to swindle the people in the sale of stock and never complete its organization. The code contains three new sections 204, 5, 6, which gives the commissioner power to supervise companies during

---

[1] Insurance Code 40-110

the period of organization. The company must obtain a certificate from the commissioner authorizing the sale of stock. The commissioner does not have to issue the certificate unless he is satisfied with the general plan of organization and the character of the advertising. He also prescribes the method of keeping the books and accounts. The maximim promotion expense was set by law as 20 per cent of the par value of the stock.

Foreign life companies have since 1871 been required to deposit one hundred thousand dollars in securities in their own state or in Kansas before being authorized to transact business in this state. By section 211, a section that formerly applied only to fire insurance companies, a company must have deposits which are at least one hundred thousand dollars more than all its liabilities in the United States.

Section 224 was enacted to make it easier to examine companies. It provides a definite

check on the expenditures of insurance companies. All disbursements of one hundred dollars or more shall be evidenced by a voucher, properly signed, describing the consideration in detail. If a voucher can not be obtained, the expenditure must be evidenced by an affidavit.

Some Kansas companies, in order to compete with foreign companies, offered a share of stock with the policy of insurance. The stock had very little value in the beginning; but, if the company prospered, the stock would be quite an asset. There are eight Kansas companies operating on this plan.[1] So that insurance policies would stand on their own feet, section 232 of the code prohibited companies from selling or giving stock or offering any special inducements of any character in connection with the selling or writing of a policy of insurance. This did not apply to the companies authorized prior to April 1, 1927.

In order that there might be fair competition,

---

[1]Commission's Report Page 29

and to protect companies from any untrue statements, a new section, number 236, was included in the code. "It is unlawful for any person to utter or transmit to another any derogatory statement, untrue in fact, about any insurance company doing business in Kansas."

Many cases have come up in the past in regard to agents and their relations with company and the policyholders. Since the department licensed only agents, many cases had to be taken to court for a decision. Sometimes an agent would take a note, and the company would try to avoid payment of policy if note is not paid before the death of the insured. The court held that the company is liable.[1] Where an agent omits answers that might cause company to decline the risk, the company is liable in case of loss, if applicant has not acted fraudulently.[2] In the same case, the failure of

---

[1] Taylor vs Insurance Co. 102 K 863

[2] Pfiester vs Insurance Co. 85 K 97

agent to properly fill out and transmit application is the failure of the company, and the applicant is not required, at his peril, to examine the policy to see that it expresses accurately the real agreement. An agent who fails to cancel a policy as directed by the company is held to be personally liable to the company for the amount of the loss.[1] In the code, sections 239 to 245, the commissioner of insurance was given supervisory power over agents.

On page 87 of this thesis, it was shown that, when the Alliance Company of Leavenworth reinsured with the Pacific Mutual, the reserve up to the time of reinsurance was protected but the reserve from then on was not protected. Section 248 requires that, upon reinsurance, the increased reserves of the reinsured policies shall be protected by deposits of securities with the commissioner of insurance of this state.

---

[1] Insurance Co. vs Bigger 102 K 553

There was considerable delay in obtaining registered policies with the proper certifications. In order to avoid the delay and to facilitate the registration of policies, the register of deeds in the county where the main office of the company is located may be designated as a deputy commissioner of insurance. He has the authority to register policies and report the same to the department daily.[1]

The commission provided for a standard form of life insurance policy by naming what a policy shall contain, (Section 420) and naming what a policy shall not contain. (Section 421).

Foreign companies may invest their funds in such securities as are authorized by the laws of the state in which such company is organized.[2] Kansas companies may invest their funds in bonds or notes secured by mortgages on incumbered real estate worth one hundred percent more than the

---

[1] Insurance Code 40-408

[2] Ibid. 40-209

sum loaned thereon; or in the bonds of the United States, or in federal farm loan bonds, or in the bonds of this state, or of any other state, or in bonds issued by any township, school district, city, county, or any other political subdivision or district of this state or of any other state, or in bonds issued by any other nation, or political subdivision.[1] Fire companies are allowed to invest in stocks or other securities of dividend paying corporation of this or other states.[2]

The Insurance Code is the present law regulating insurance in Kansas. The legislature of 1929 made a few minor changes in wording, but no radical changes were made.

Under the present law, foreign companies pay a tax of two per cent on gross premiums, but domestic companies do not. Many seem to think that this tax should be imposed on the

---

[1] Insurance Code 40-403

[2] Ibid. 40-227

home companies as well. If a law is passed in the next legislature requiring the tax, Kansas companies would pay about two hundred thousand dollars instead of around thirty-five hundred dollars.[1] The insurance companies in Kansas can arrange their assets so that those of a taxable nature are included in the legal reserve, permitting their deduction and exemption. The balance of the assets are in the most part invested in tax exempt securities. They have to pay taxes on their physical property the same as any other corporation. Because of reciprocal laws, Kansas companies who go to other states have to pay the two percent tax to that state; and, also, have to make a deposit equal to the cash reserve value of their policies in Kansas. All assets of any insurance company in Kansas in excess of its legal reserves, unpaid policy claims, and exempt securities are subject to

---

[1] Cliff Stratton in Topeka Daily Capital (Clipping) Date unknown.

taxation. All intangible assets came under the intangible law until its repeal this year. (1930) "The taxes, as they are now, are very fair; but, if the two per cent tax is imposed, they will be excessive."[1]

---

[1]Personal Interview with Vice-President of National Reserve Life Insurance Company of Topeka, Kansas.

# CHAPTER 7

## Conclusions

In general, we believe the Kansas laws regulating insurance are in line, as nearly as it is possible, with the laws of the other states. In a personal interview with the writer a member of the staff of the state insurance office expressed the opinion that the laws regulating life insurance were very satisfactory as far as protection to the policyholder and conduct of the companies is concerned. The only suggestion he would make for improvement was a law separating the duties of the insurance department and the Blue Sky department in regard to authorizing the sale of insurance stock. In a letter from an out-of-state company, which has transacted the business of insurance here for over thirty years the officials stated: "During the many years our company has operated in the state of Kansas, we have found the Kansas Insurance Department at all times very equitable

in the disposition of any disputes which may have come up. They have been very strict in the enforcement of their laws as they relate to the insurance company and to the policy-holder."

The trouble with regulation is not in Kansas or any particular state, but in the fact that the life insurance business is controlled independently by the states instead of some central control under the Federal Government. The Federal Department could dictate uniform laws on regulation, put out the main report, and systematically examine the companies.

There are fifty-two departments regulating insurance--the forty-eight states, Alaska, District of Columbia, Porto Rico, and Hawaii. Under the present system of state supervision, each insurance company must comply with the laws of all the states in which it transacts business, and the net result is the difficult task of complying with so many codes of insurance laws and

the satisfying of the rules and regulations of as many different state departments as there are States in the Union and Territories under its control. If the whole body of laws and legislation now governing the business of insurance in the different states were compiled in one volume, it would cover five or six thousand pages; but such a compilation would be out of date before it could be printed and distributed for general use because of the constant changes and additions to the statutes. In addition to the statutes, companies are subject to the unwritten laws and the decisions of the courts in thousands of cases. It is impossible for fifty-two legislatures, no matter how intelligent and broad-minded they may be, to come to the same decisions and solutions at the same time. Much has been accomplished, of course, but states are still a long way apart. For many years the National Convention of Insurance Commissioners has made efforts to unify the laws of the states.

In conferences of governors, of attorney-generals, and of special investigating committees, uniform laws have been recommended. The results have been disappointing. The states have missed the opportunity of having a uniform code by refusing to adopt the same regulatory statutes in the same phraseology.

The following quotation from the president of a large insurance company shows the problems companies are up against. "This conflict and dissimilarity of state law includes practically every important statutory requirement, from the annual fees charged for the companies' license to the method of valuation, standard policy forms, surplus distribution, state and local taxation, etc. What is permitted to be done in one state is forbidden in another, and what is the law of one year may not be the law of the next. The whole subject is enormously complicated by the retaliatory laws, which have resulted in a condition properly described as interstate warfare, unworthy of the civilization of the

present day."[1]

As was mentioned in chapter one of this thesis, Federal control is now impossible because the United States Supreme Court had decided that insurance corporations are not citizens, and the interstate insurance business is not commerce. Such control could be accomplished by an amendment to the Constitution; or the Court, owing to present conditions, might decide acts of Congress requiring Federal control of life insurance constitutional. Darwin P. Kingsley, President of the New York Life, said, "Congress under the Constitution and under the wise rulings of the Supreme Court, has always had power sufficient to meet any emergency, and that such emergencies have always been met in the interest of the whole people. Because of the inevitable chaos and confusion which have followed the attempt entirely to supervise the business of insurance by forty-six different authorities, and the hopelessness of any attempt to secure

[1]Uniform Law and Legislation on Life Insurance
John F. Dryden Page 5

efficient administration through harmony of action amongst the states, it is a fair deduction to say that a business involving such large interest, capable of such great usefulness, a business so necessarily interstate in its nature, is entitled somehow, some way, to just supervision and wise control. And as that cannot be had under the present system, relief from the general government must in time come by force of circumstances and through the logic which has so nobly served the people from the time of John Marshall to the present day."[1]

Since it is not impossible, should the majority of the people demand it, for the Federal Government to regulate insurance or assist the states in regulation, we shall show some of the evils and advantages of the present system and the advantages and disadvantages of Federal Regulation.

More can be said of the conflicting laws of the states. Some of the greatest variations

---

[1]L. W. Zartmen, Yale Reading in Insurance. Page 355

are in regard to taxes and fees. In the first place, insurance companies feel that they should not pay taxes other than the property and personal taxes. Taxes are for the support of governments and life insurance is working in the ways of governments. It is doing a government's work by forestalling dependency, saving the state from the care of dependents. The money the insurance companies hold belongs to the policyholders. From these funds large sums are loaned for the development of the towns, cities, and railroads. The companies carry a surplus over their reserves to take care of unusual losses and fluctuations in the values of their securities, which is their margin of solvency. The point the insurance companies make is that their assets and liabilities are so nearly equal that they really have very little to pay taxes on.

Many states require a publication tax (Kansas does not) to pay for having the annual statements published a given number of times

in certain designated classes of papers. About half of the states levy this tax.[1] Kansas, as far as I have been able to find out, is the only state that collects a school fund fee. This fee was imposed by the laws of 1871, and has been collected to date. There is no reason for this tax except that it is a source of revenue for the schools and easily collected. Most of the states require a company license tax in addition to the agents's license fee. Kansas does only as a retaliatory tax.

An address delivered by Thomas W. Blackburn, Secretary and counsel, American Life Convention, to the Association of Life Insurance Presidents at New York, December 10, 1920, gives us some variations in the fees and taxes at that time.

"What excuse is there for a 1 per cent tax on premiums of mutual companies in Rhode Island and a 2 per cent tax on stock companies?

---

[1]The Annals of the American Academy Vol. 130 P. 201

Why should the premium tax be 1 per cent in New York less reinsurance and dividends and 3 per cent less losses actually paid within the state in Indiana and 3 per cent gross in Texas? What sort of an excuse can be offered in North Carolina for a $250 company license fee; annual license fee of $27; agent's license, $3; district agent's license, $5; examination per die,;abstract for publication and a gross tax of 2½ per cent of gross receipts?

Arkansas makes no provision for a license fee but charges $100 as an annual filing fee; agents, $2; a franchise tax of $100; a capital stock tax of $100 to $200; a premium tax of 2 per cent gross and requires the company to put up a bond for $20,000. In South Carolina the imposition is not so bad as far as the state fees and taxes are concerned, but every municipality takes toll from agent and company, and a $20,000 bond is required. California and Louisiana demand bonds in a like manner,

and Rhode Island bonds agents to make sure of taxes.

The gross premium tax of 2 per cent with variations is levied upon foreign life companies in Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont, and West Virginia--24 states and Hawaii.

The gross premium tax is 2½ per cent in Iowa, Montana, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Tennessee and Wyoming--9 states. Virginia and Washington collect 2¼per cent; Indiana and Texas 3 per cent; Utah, Maryland, Georgia, Maine and District of Columbia 1½ per cent, and New York and Alaska 1 per cent. Connecticut, New Jersey and Wisconsin collect reciprocal taxes, but Wisconsin plays partly even by a $300 license fee.

Massachusetts taxes the net value or reserves ½ of one per cent. The only other state in the Union which does not provide a statutory or reciprocal or retailatory tax on premiums is Nevada. Thirty-three states have retaliatory laws. Five states, Colorado, Georgia, North Carolina, South Carolina, and Texas allow reductions when certain percentages of assets or reserves are invested in the state. Louisiana and Montana have a special method of privilege taxation which produces results to their revenues. Income taxes are levied against life companies in Massachusetts, Montana, North Dakota, and West Virginia."[1]

Different rates are paid by different companies in the same state because of the retaliatory laws. In Wisconsin, a New York company pays a premium tax of 1 per cent, an Indiana company pays 3 per cent, and a Nevada company pays nothing.[2]

---

[1]State Taxation of Life Insurance, Blackburn P. 4,5.

[2]J. B. Maclean, Life Insurance, P. 317

Under state control there is a lot of unnecessary expense and a large amount of duplication of work in putting out the reports and in the examinations of companies. This extra expense falls on the policy holder.

By the laws of Kansas in 1898, the superintendent of insurance is elected by the people instead of being appointed by the governor. This makes the office a political office. A man will be elected, not because of his merits, but because of his standing politically. In the long list of state offices, few people know who is running for insurance commissioner, much less his qualifications. If appointed by the governor, responsibility can be focused, and popular control exercised. It is possible to make a "political examination" of a company. I heard indirectly of an actuary in one of the states, who made an honest examination of a company in which the governor's son had a con-

troling interest. He put the company out of business, but the state soon had a new actuary. The tenure of office of a superintendent of insurance is short, hardly long enough to learn the details. He must be careful in every move that he makes for it may hurt him politically. "To illustrate the political degeneracy of the office, a description of the organization of a department of insurance in one of the states may not be out of place. This department, at the time, employed fifteen men, besides a number of stenographers. The head of the department was a noted politician in the state, who, after a year's tenure of office, had not yet taken the trouble to read the insurance laws or to post himself with regard to the requirements of the reports which his department was expected to secure from the companies. The attorney for the department, although on a regular salary, found little time to give to his work, since a political compaign was on that year and his chief, the governor, needed help.

The chief clerk, on a salary of $3000 per annum, came down to the department each morning to open the mail, a task the two negro janitors might have performed very creditably, and did perform when it was stormy. Similarly, throughout the department, there were men with official titles who knew nothing about the insurance business, rendering no service, but drawing good salaries."[1]

Independent state regulation has the advantage of adjusting regulation to local conditions. Also, in case of dispute between the policyholder and the company, the department can investigate and possibly settle the disagreement without a court decision or further trouble. Policyholders and companies are used to state regulation, and the change to Federal regulation would cause more misunderstandings and adjustments than would be worth while.

Under Federal control there would be a great saving in expense over state control. Instead of fifty-two voluminous reports each year, containing practically the same infor-

---

[1]Yal Review. Volume 17 Page 34

mation affecting that particular state.

Under Federal control, we could have a more equitable system of taxation. All fees would be uniform and the cost of supporting one department, although very large, with an officer in each state taking care of local affairs, would not compare with the cost of the fifty-two departments as they now are. Companies could reduce their rates on account of the saving in fees and premium taxes. This would result in a gain to the policyholders. Under Federal control the chief officer and staff could be selected under the civil service law, and hold their positions during good behavior and efficient service.

Federal supervision would not be perfect, but it would be a long step in advance from the confliction laws of today. One big department without minor departments in the state would be too big a task. But a controlling department in the Federal Government with power to enforce uniform legislation, doing the work once that

is now done fifty-two times, with sub-departments in the states taking care of only the local affairs, would give the insurance companies one master instead of fifty-two and would result in a fairer treatment of policyholders and a reduced cost of their insurance.

# Bibliography


Annals of the American Academy of Political and Social Sciences. Volume 130

Baker and Hamilton, The Kansas Insurance Code. 1927

Dunham, Howard P. The Business of Insurance. Volume 3. Ronald Press Company. 1912

Dryden, John F. Life Insurance and Other Subjects. Chapters 8, 9, 10. Prudential Press 1909

Gephart, W. F. Principles of Insurance. Life. The McMillan Company. 1913

Governors' Messages to the Legislature.

Heubner, S. S. Life Insurance. D. Appleton and Company. 1921

Kansas Supreme Court Reports on Insurance Cases.

Kansas Annual Insurance Reports. 1871 to 1928

Hendricks, B. J. The Story of Life Insurance. Chapters 1, 2. McClure, Phillips and Co. 1907

Letters from Thirty Insurance Commissioners.

Letters from about Twelve Insurance Companies.

Michelbacker & Nial, State Regulation. Chapter 12

Patterson, Edwin Wilhite - The Insurance Commissioner in the United States. Harvard University Press. 1927

Proceedings of the Annual National Convention of Insurance Commissioners. 1909 to 1928

Bibliography (continued)

Maclean, Joseph B. Life Insurance. McGraw - Hill Book Company. 1924.

Reports of Annual Meetings of Life Insurance Presidents. 1907 to 1929

Report of Kansas Insurance Commissioners. 1926

Scudder, W. R. The Fallacies of Life Insurance. Chapters 16 & 17. Scudder & Co. 1913

Session Laws of Kansas on Insurance. 1859 to 1929

Wolford, George - General and Public Statutes Laws of the Several States of the United States relating to Insurance. 1870.

Yale Insurance Lectures. Volume 1 Pages 200 to 217 1903-04

Yale Review. Volume

Zartman Lester W. Yate Readings in Insurance. Life Yale University Press 1909

Zartman, Lester W. Investments of Life Insurance Companies. Chapter 6. Henry Holt & Co. 1906