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# INSURANCE—ILLINOIS LIFE-HEALTH

ALEXANDER K. CIESIELSKI\*

## INTRODUCTION

**I**N ILLINOIS, as in other states, statutory law was the most important and certainly the most active source of insurance law in 1971. As did its predecessors, the 1971 Illinois General Assembly enacted a number of measures, some affecting specifically and exclusively the life-health insurance area, others broadly applicable to insurance generally. The 1971 enactments covered subjects of limited scope, such as the qualification of actuaries, the grounds for revocation of an insurer's certificate of authority, and the inapplicability, to exchange policies, of the prohibition against back-dating of life policies for more than six months. Measures of wider scope, such as basic revisions of the variable contract law, and the addition of quite extensive provisions relating to the insurance holding company regulation, were also enacted.<sup>1</sup> Some of the 1971 enactments include in substance the model and uniform bills recommended by the National Association of Insurance Commissioners.<sup>2</sup> Most of the 1971 enactments were incorporated into the Illinois Insurance Code,<sup>3</sup> which when adopted in 1937 was connected with the name of Dean Havighurst, one of its authors.<sup>4</sup>

Consistent with the picture existing in previous years and in most other states, regulations issued by the insurance supervisory author-

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1. Warchall, *Review of State Legislation 1970-71*, 1971 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 245.

2. 1971 NAIC PROCEEDINGS vol. 1, at 9-15.

3. ILL. INS. CODE §§ 1-613, codified as ILL. REV. STAT. ch. 73, §§ 613-1065.163 (1971).

4. Havighurst, *Some Aspects of the Illinois Insurance Code*, 32 ILL. L. REV. 391 (1938).

ity (i.e., the Illinois Insurance Director as the head of the Illinois State Insurance Department) continued to be both important and relatively frequent sources of the Illinois insurance law, and reflected the quickening pace of administrative activity in recent years.<sup>5</sup> The 1971 regulations cover a wide range of subjects, such as the amendment of Rule 9.15, relating to standards for the formation and management of insurers; the addition of Rule 3.01, requiring guaranty fund and guaranty capital certificates of domestic mutual insurance to be approved by the Insurance Director; and the adoption of Rule 8-1/2.01, prescribing forms to be used in compliance with the statutory requirements applicable to holding companies.

Following the past pattern of insurance litigation across the United States, the state and federal courts in 1971 contributed only a few widely scattered decisions affecting life-health insurance law in Illinois.<sup>6</sup> No decisions were rendered by the United States or Illinois Supreme Court, and as a matter of fact it is necessary to go back many years to find any Illinois life-health insurance decision of landmark character.<sup>7</sup> Not unexpectedly, a few state appellate and federal circuit and district court decisions involve the application of statutes to policy provisions and the doctrine of misrepresentation (by the insured), one of the main sources of life-health insurance litigation.

## I. LEGISLATION

### A. HOLDING COMPANY LEGISLATION

The most important and comprehensive piece of legislation enacted by the 1971 Illinois General Assembly, which affects the life-health insurance companies as well as other insurers, is a set of statutes relating to "insurance holding company systems."<sup>8</sup> These

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5. Ciesielski, *Review of State Administrative Rulings and Opinions 1970-71*, 1971 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 294-352.

6. Bryan, *Review of Life Insurance Litigation 1970-71*, 1971 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 226.

7. Taylor v. John Hancock Ins. Co., 11 Ill. 2d 227, 142 N.E.2d 5 (1957). Under the Illinois construction of the phrase, the death of an insured is "death by accidental means," and recoverable under the terms of a group accident policy even though the claim arose as a result of a felony, absent a "violation of law" clause in the policy.

8. ILL. INS. CODE Art. VIII-1/2, §§ 131.1-131.28, ILL. REV. STAT. ch. 73, §§ 743.1-743.28 (1971).

statutes are patterned after the Model Insurance Holding Company System Regulatory Act, which was recommended by the National Association of Insurance Commissioners for adoption in all states in June, 1969,<sup>9</sup> and which is substantially in effect today in almost forty states.<sup>10</sup>

The supervision of insurers in their relations with holding companies was brought about by the trend toward the formation and acquisition of insurance subsidiaries by non-insurance enterprises and the organization of parent holding companies by insurers, in order to provide more diversified services, reach larger markets and secure more stable earning opportunities.<sup>11</sup> The interest of insurers in seeking holding company affiliations derived from severe restrictions imposed by the unique statutory framework regulating insurance as a business affected with the "public interest,"<sup>12</sup> and requiring as a primary objective the solvency of the insurer.<sup>13</sup> Specifically, two reasons given by a number of life insurers for entering into holding company arrangements were: to provide "one-step" financial services, and to provide variable benefits from separate accounts reflecting the performance of equity-based investments as a hoped-for hedge against inflation, thus responding to the anticipated patterns of economic growth and social needs.<sup>14</sup>

The 1971 Illinois holding company legislation provides that any domestic insurer, whether stock or mutual, may acquire or form subsidiaries by investing various limited amounts of its surplus, if prescribed conditions are met, and with the provision that the investment in the subsidiary be liquidated when control of it is lost.<sup>15</sup>

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9. 1969 NAIC PROCEEDINGS vol. II, at 738-51.

10. Warchall, *Review of State Legislation 1970-71*, 1971 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 245, 290.

11. *Report of the Special Committee on Insurance Holding Companies*, Insurance Department, State of New York, Feb. 15, 1968; *Report of the Industry Advisory Committee to the Subcommittee on the NAIC on Holding Company Legislation*, 1969 NAIC PROCEEDINGS vol. I, at 176-208.

12. *United States v. South-Eastern Underwriters Assoc.*, 322 U.S. 533 (1944); *German Alliance Ins. Co. v. Kansas*, 233 U.S. 389 (1914); 15 U.S.C. §§ 1011-15 (1945) (McCarran-Ferguson Act).

13. Kimball, *The Purpose of Insurance Regulation*, 45 MINN. L. REV. 471 (1961).

14. *Supra* note 11.

15. ILL. INS. CODE § 131.2, ILL. REV. STAT. ch. 73, § 743.2 (1971).

It also provides that no one may acquire control of a domestic insurance company without disclosing all relevant facts (as specified in the statute) to the Director of Insurance and to the company's shareholders, and then securing the approval of the Director.<sup>16</sup>

The legislation further provides for registration with the Director of every insurer authorized to do business in Illinois which is a member of a holding company system, except those whose home state has a similar regulation of holding companies. It requires transactions between the insurer and its affiliates to be fair and reasonable, and specifically forbids payments, without the approval of the Director, of dividends over any 12-month period above a stated amount. It also requires that an adequate surplus be left after each transaction. Either the insurer or any of its affiliates can be examined by the Insurance Department at any time, at the insurer's expense.<sup>17</sup>

#### B. UNAUTHORIZED INSURERS LEGISLATION

The states had been laboring under a cloud of constitutional uncertainty as to the extent of their authority over unauthorized insurers<sup>18</sup> until, in 1966, the Supreme Court of the United States upheld the validity of state statutes requiring licenses for mail insurers domiciled in another state.<sup>19</sup> Following a study of the subject, in December, 1968, the National Association of Insurance Commissioners adopted the Uniform Unauthorized Insurers Act<sup>20</sup> which is now substantially in effect in a number of states,<sup>21</sup> including Illinois since 1971.<sup>22</sup>

The Illinois act relating to unauthorized companies substantially follows the NAIC model and provides that it is unlawful for any in-

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16. ILL. INS. CODE § 131.4, ILL. REV. STAT. ch. 73, § 743.4 (1971).

17. ILL. INS. CODE § 131.13, ILL. REV. STAT. ch. 73, § 743.13 (1971).

18. Hanson and Obenberger, *Mail Order Insurer: A Case Study in the Ability of the States to Regulate the Insurance Business*, 50 MARQ. L. REV. 175 (1966).

19. *Ministers Life & Casualty Union v. Haase*, 30 Wis. 2d 339, 141 N.W.2d 287 (1966), *appeal dismissed*, 385 U.S. 205 (1966); *People v. United Nations Life Ins. Co.*, 58 Cal. Rptr. 599, 427 P.2d 199 (1967), *appeal dismissed*, 389 U.S. 330 (1967).

20. 1968 NAIC PROCEEDINGS vol. II, at 516.

21. Warchall, *supra* note 10.

22. ILL. INS. CODE Art. VII, §§ 121-1—121-19, ILL. REV. STAT. ch. 73, §§ 733-1—733-19 (1971).

surer to transact insurance business in Illinois without a certificate of authority from the Director of Insurance.<sup>23</sup> "Transaction of insurance" is defined broadly to include "the making of or proposing to make, as an insurer, an insurance contract,"<sup>24</sup> thus clearly encompassing the mail order business.

One of the express exceptions from the licensing requirements relates to transactions in Illinois involving group life insurance, group and blanket health insurance, and group annuities. The master policy must be issued to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.<sup>25</sup> This exemption has long been recognized in most of the states on the theory that a group insurance contract is governed by the law of the state where the master policy is delivered to the policyholder, and that the certificate of insurance furnished to the insured is only evidence of the insured's rights under the policy.<sup>26</sup>

### C. VARIABLE CONTRACT LEGISLATION

Another major legislative development of 1971 in Illinois was the revision of the law relating to separate accounts<sup>27</sup> aligning it more closely with the NAIC Model Variable Contract Law,<sup>28</sup> as amended in December, 1970, and now in effect in a number of states. The most significant change in the Illinois law, consistent with the trend in other states, is the newly-granted authority of life insurers to issue not only variable annuity contracts, but also variable life insurance policies. It is understood, however, that such policies have neither been approved nor issued in Illinois, pending the result of the current hearings conducted by the Securities Exchange Commission<sup>29</sup> at the

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23. ILL. INS. CODE § 121-2, ILL. REV. STAT. ch. 73, § 733-2 (1971).

24. ILL. INS. CODE § 121-3, ILL. REV. STAT. ch. 73, § 733-3 (1971).

25. ILL. INS. CODE § 121-2.06, ILL. REV. STAT. ch. 73, § 733-2.05 (1971).

26. *Boseman v. Connecticut General Ins. Co.*, 301 U.S. 196 (1937).

27. ILL. INS. CODE Art. XIV-1/2, §§ 245.21-245.62, ILL. REV. STAT. ch. 73, §§ 857.21-857.62 (1971).

28. 1970 NAIC PROCEEDINGS vol. I, at 367-70; 1971 NAIC PROCEEDINGS vol. I, at 501; *see note 10 supra*.

29. *See Notice of an Order for Proceedings with Request to Petition for Issuance and Amendment of Rules Requesting Exemption of Certain Variable Life Insurance Contracts and Their Issuers from the Federal Securities Laws*, 37 Fed. Reg. 5510 (1972).

request of life insurers' associations, to determine whether variable life insurance is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.<sup>30</sup>

#### D. LEGISLATION RELATING TO INSURERS' CAPITAL AND SOLVENCY

Among the acts passed in 1971 are four relating to an insurer's financial stability and solvency. One act<sup>31</sup> increased the minimum capital required of stock insurers authorized to write life and/or accident and health insurance to \$750,000. The minimum surplus requirement for stock companies organized after the effective date of the amendment was raised to \$500,000 at the time of the issuance of the insurer's certificate of authority, and to \$300,000 at all other times. For companies organized prior to the date of the amendment, there is a prescribed schedule by which the company's minimum surplus is to be increased to \$300,000 by 1976.

The same measure raised the minimum surplus required of a mutual company<sup>32</sup> writing life and/or accident and health insurance to \$1,250,000 at the time of the issuance of its certificate of authority. At least two-thirds of the original surplus required must be maintained at all times by companies organized after June 28, 1965. Companies organized prior to that date must maintain a minimum surplus equal to the amount required when its certificate of authority was issued. If the minimum requirements are not met, the Director *must* take action as prescribed in the case of stock companies,<sup>33</sup> as well as mutual companies.<sup>34</sup>

In another measure designed to protect the insurance-buying public, a new provision<sup>35</sup> was added to the Insurance Code to provide

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30. In *S.E.C. v. Variable Annuity Life Ins. Co. of America*, 359 U.S. 65 (1959) and *Prudential Ins. Co. of America v. S.E.C.*, 326 F.2d 383 (3d Cir. 1964) a variable annuity was found to be a "security" and a separate account to house the proceeds of variable annuity contracts was found to be an "investment company" for the purposes of federal regulation (and thus subject to double regulation by the federal government and the states).

31. ILL. INS. CODE § 13, ILL. REV. STAT. ch. 73, § 625 (1971).

32. ILL. INS. CODE § 43, ILL. REV. STAT. ch. 73, § 655 (1971).

33. ILL. INS. CODE § 34, ILL. REV. STAT. ch. 73, § 646 (1971).

34. ILL. INS. CODE § 60, ILL. REV. STAT. ch. 73, § 672 (1971).

35. ILL. INS. CODE § 244.1, ILL. REV. STAT. ch. 73, § 856.1 (1971).

that, whenever the financial condition of any life insurer, when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the company, and the ratio of annual premium volume to the incurred acquisition expenses, indicates a condition such that the continued operation of the company might be hazardous, the Director may, after notice and hearing, order the company to take such action as may be necessary to rectify the existing condition. The Director has the power to order the insurer to: (a) reduce the loss exposure by reinsurance; (b) reduce the volume of new business being accepted; (c) reduce general or acquisition expenses by specified methods; (d) suspend the writing of new business for not more than three months; or (e) increase the company's surplus by a contribution thereto.

Other legislation amended the Insurance Code<sup>36</sup> to prohibit any insurance officer, director, agent or broker, etc., from renewing, issuing or causing to be renewed, issued or delivered, any policy, contract or certificate when the company is impaired. A company is said to be impaired when its assets are less than its capital, minimum required surplus and all liabilities. Before the amendment, the provision dealt only with insurance sales by insolvent companies. A similar amendment<sup>37</sup> provided that mutual companies must cease issuing renewal policies while an impairment exists. In the case of mutual companies, an impairment exists when a company's assets are less than the minimum required surplus and all liabilities. Both amendments relating to impairments allow for policy renewals, despite impairments, when an insured is exercising an option under an existing policy. Both amendments provide fines for persons who renew, issue or deliver policies while an impairment exists.

#### E. INSURERS' CLAIM PRACTICE LEGISLATION

Effective November 22, 1971, three provisions were added to the Illinois Insurance Code<sup>38</sup> relating to improper claim practices. The Director is authorized to issue an order to show cause why a company's certificate of authority should not be suspended, when

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36. ILL. INS. CODE § 144.1, ILL. REV. STAT. ch. 73, § 756.1 (1971).

37. ILL. INS. CODE § 60, ILL. REV. STAT. ch. 73, § 672 (1971).

38. ILL. INS. CODE §§ 154.2-154.4, ILL. REV. STAT. ch. 73, §§ 766.2-766.4 (Supp. 1972).



he determines that it is engaging in an improper claim practice. If, after a hearing, the Director determines that a company has engaged in such a practice, he shall order such company to cease and desist and may suspend the company's certificate for a period not to exceed 30 days.

The following are improper claims practices if performed unjustifiably and as a general business practice: (a) knowingly misrepresenting to claimants and insureds pertinent facts or policy provisions; (b) failing to promptly acknowledge communications with respect to claims; (c) failing to adopt and implement standards for investigation and settlement of claims; (d) failing to fairly and promptly settle a claim where liability is clear; (e) compelling policyholders to sue by offering less than amounts recovered in suits; and (f) any other unreasonable delay or refusal to pay or settle claims.<sup>39</sup>

## II. ADMINISTRATIVE RULINGS AND OPINIONS OF THE ATTORNEY GENERAL

Insurance department regulations and opinions of the Illinois Attorney General are other important sources of Illinois insurance law.

On April 22, 1971, Illinois Insurance Department Rule 9.15,<sup>40</sup> relating to standards for insurers' formation and management, was amended<sup>41</sup> to require that a general description of the type of business contemplated, any agency contracts, a detailed 5-year actuarial projection and biographical data (Exhibit C of Rule 9.13) be reported by promoters, new controlling interests or new management of domestic insurers, and by those in control or management of foreign or alien insurers applying for admission to Illinois.

Illinois Insurance Department Rule 2.01, relating to subordinated indebtedness<sup>42</sup> of domestic insurers, was revised as of October 1,

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39. This Illinois legislation is similar to recent statutory enactments in other states, N.H. REV. STAT. ANN. § 417.4 (XV) (1971); N.Y. INS. LAW § 40-d, (1970); Pennsylvania H.B. 505 pending in the 1972 legislature. WIS. ADM. CODE § 6.11. See also 1971 NAIC PROCEEDINGS, vol. II, at 373-74 (1971).

40. Ciesielski, *Review of State Administrative Rulings and Opinions 1965-66*, 1966 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 358, 382.

41. Implementing ILL. INS. CODE § 155.04, ILL. REV. STAT. ch. 73, § 767.4 (1971).

42. Compare Ciesielski, *Review of State Administrative Rulings and Opinions 1969-70*, 1970 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 311, 327.

1971,<sup>43</sup> to provide that a company may only repay principal and make payment of interest on any indebtedness from its earned surplus as reported in its last financial statement filed with the Department. Payment is not to be authorized by the Director unless the company's surplus, with respect to policyholders, is reasonable in relation to the company's outstanding liabilities, is adequate to its financial needs, and does not reduce the company's surplus to less than the amount prescribed by statute.<sup>44</sup>

Illinois Insurance Department Rule 3.01 effective October 1, 1971, is applicable to all debts of mutual insurers other than those shown as legal liabilities. It requires guaranty fund and guaranty capital certificates<sup>45</sup> to be approved by, and subsequent agreements to be reported to, the Insurance Director. A company may only retire guaranty funds and guaranty capital, and make payment of interest on any such indebtedness from earned surplus as reported in the last financial statement filed with the Department. No payment may be made by a company unless its surplus, with respect to policyholders, is reasonable in relation to its outstanding liabilities, is adequate to its financial needs, and unless such payment does not reduce the company's surplus to less than the amount prescribed by statute.<sup>46</sup> (A parallel provision was adopted in Illinois with regard to the repayment of any subordinated indebtedness of domestic stock insurers.<sup>47</sup>)

On April 22, 1971, Rule 9.13 of the Insurance Department, originally adopted in 1964, and dealing with the sales of securities,<sup>48</sup> was revised effective May 1, 1971, to provide that a statement of education, prior occupation, experience and stock ownership (Exhibit C) must be submitted by each new officer, director or organizer of any existing domestic insurer, rather than just those domestic companies engaged in business for less than 10 years. Thus, all ex-

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43. Implementing ILL. INS. CODE § 34.1, ILL. REV. STAT. ch. 73, § 646.1 (1971).

44. ILL. INS. CODE § 13, ILL. REV. STAT. ch. 73, § 625 (1971).

45. Implementing ILL. INS. CODE § 56, ILL. REV. STAT. ch. 73, § 668 (1971).

46. ILL. INS. CODE § 43, ILL. REV. STAT. ch. 73, § 655 (1971).

47. Ciesielski, *Review of Administrative Rulings and Opinions 1970-71*, 1971 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 294, 306.

48. Ciesielski, *Review of Administrative Rulings and Opinions 1963-64*, 1964 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 504, 510.

isting domestic insurers (exempt from the state "blue sky" laws<sup>49</sup>) are subject to Rule 9.13 in its entirety.

Insurance Department Rule 9.17, effective January 1, 1971, as amended, effective May 1, 1971, is substantially similar to the NAIC Model Life Insurance Replacement Regulation,<sup>50</sup> which applies to transactions where new life insurance is to be purchased and existing life insurance terminated or converted. Agents are required to present "comparison statements" to applicants comparing the life insurance to be sold with that to be replaced. The Illinois regulation applies to annuities, although the comparison statement does not apply to annuities. The regulation does not apply to group insurance, to employer- or association-paid insurance, to policies distributed on a mass-merchandising basis, to life policies issued in connection with federally-qualified employee-benefit plans, to non-convertible, non-renewable term policies with 5 years or less to expire, and where the total cash value of all existing policies is less than \$250 and the sum of their face amounts is less than \$2,500.

The Illinois State Salary and Annuity Withholding Act of 1961, as amended,<sup>51</sup> provides that a state employee or annuitant may authorize the "withholding" of his salary, wages or annuity, for payment of premiums on life or accident and health insurance, as defined in the Insurance Code, if a specified minimum number of requests per insurer is made.<sup>52</sup> In his opinion of September 24, 1971,<sup>53</sup> the Attorney General of Illinois ruled that such deductions, in order to be authorized, must be only for an insurance premium. He concluded that if the payment is partly for insurance and partly for some other purpose, such as the purchase of mutual stock funds, under a combination life insurance-mutual fund contract, it would not qualify as an authorized deduction under the State Salary and Annuity Withholding Act.

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49. ILL. REV. STAT. ch. 212-1/2, § 137.3(M) (1971).

50. 1970 NAIC PROCEEDINGS vol. I, at 345-50 (1970); see Ciesielski, *Review of State Administrative Rulings and Opinions 1969-70*, 1970 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 311, 345; Ciesielski, *Review of State Administrative Rulings and Opinions 1970-71*, 1971 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 294, 318-21; ALC NEWS LETTER, Jan. 8, 1971 at 4.

51. ILL. REV. STAT. ch. 127, §§ 351-369 (1971).

52. Ciesielski, *Review of State Administrative Rulings and Opinions 1969-70*, 1970 AM. LIFE CONV. LEGAL SECTION PROCEEDINGS 311, 359.

53. 338 Ill. Op. Att'y Gen. 1971.

With regard to credit insurance, Insurance Department Rule 9-1/2.01 (1959) was amended effective March 1, 1971, to eliminate an express provision granting insureds under individual policies an election to maintain their policies in force until the scheduled expiration regardless of whether the indebtedness is extinguished by pre-payment or otherwise.

On February 18, 1972, the Illinois Director of Insurance promulgated Rule 14-1/2.01 which took effect March 1, 1972. This rule substantially conforms to the NAIC Model Variable Contract Regulation,<sup>54</sup> and sets forth standards to be followed by companies and agents issuing variable contracts. Separate accounts must be maintained with reserves sufficient to cover the benefits guaranteed. For the protection of purchasers of variable contracts, there must be a 30 day grace period, a reinstatement period of one year, and provisions for options on default. Illustrations of benefits payable may not include projection of past investment experience into the future.

### III. CASE LAW: *Gibbs v. North American Company for Life, Accident and Health Insurance*

During the past year Illinois courts have handed down few decisions relating to life or accident and health insurance.<sup>55</sup> Only one

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54. See 1970 NAIC PROCEEDINGS vol. IIB, at 1185-98; 1971 NAIC PROCEEDINGS vol. I, at 501-502.

55. Illinois state appellate courts handed down at least three cases dealing with life or accident and health policies which either restated established law or turned on procedural or evidentiary matters. In *Umberger v. Hospital Service Corp.*, 4 Ill. App.3d 123, 280 N.E.2d 264 (1972), the medical and hospital insurer argued that medical and hospital expenses incurred by the insured were within the policy exclusion relating to workmen's compensation. There were disputes over whether or not the insured's injury occurred in his employer's shop and whether or not the injury was covered by workmen's compensation. The court held that the insurer had the burden of proving the claim was within the exclusion.

The insured in *Horwick v. Equitable Life Assur. Soc. of United States*, 282 N.E.2d 222 (Ill. App. 1972) died while covered by a life policy providing a double indemnity benefit for accidental death if the insured's mental infirmity did not directly or indirectly cause or contribute to death or death was not caused by committing or attempting to commit assault or a felony. The insured, who had a history of mental illness, was killed while allegedly assaulting his stepmother. The court rejected the beneficiary's contention that the mental infirmity had to be the direct and proximate cause of death in order to circumvent the double indemnity provision and held that the burden was on the beneficiary to show that the exceptions of mental infirmity and assault did not apply. The question as to whether or not death was accidental was for the jury.

In *Maddox v. MFA Life Ins. Co.*, 267 N.E.2d 723 (Ill. App. 1971) the insured

case, *Gibbs v. North American Company For Life, Accident and Health Insurance*,<sup>56</sup> concerning the expanding area of consumer credit insurance,<sup>57</sup> was significant.

The plaintiff, Walter Gibbs, purchased a car, financing it through C.I.T. Credit Corporation, and concurrently purchased credit life insurance. Shortly thereafter he received a form letter from the President of C.I.T. thanking him for allowing C.I.T. to finance the purchase and advising him of the importance of procuring credit accident and health insurance as further debt protection beyond that afforded by the previously purchased credit life insurance. Additional advertising was enclosed which urged him to, "Just sign and mail the enclosed authorization card."<sup>58</sup> The business reply card that plaintiff signed and mailed read:

Yes, Mr. Watkins I accept the opportunity to be included in your insured Payment Plan and desire the protection as indicated below:

14 Day Elimination Accident and Health Protection . . . \$3.08 per month. I authorize Universal C.I.T. Credit Corporation to add the above charge, as indicated, which includes interest at permissible rate, to my contract and to my monthly payments, and promise to pay said charge as added. I am the person to be insured and certify that I am now in good health; also that I have no sickness nor injury for which I have consulted or been treated by a physician except (give full particulars): I acknowledge receipt of a copy of this form with Notice of Proposed Insurance describing coverage.<sup>59</sup>

Plaintiff later received a credit insurance certificate upon which was stamped, "[d]isability caused by pre-existing conditions is not covered."

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died while covered by a life policy which did not allow recovery for suicide within two years of the policy date. The evidence introduced during the trial could have established that death was caused by a wound which could have been either accidental or intentional. The insurer offered a coroner's certified copy of death certificate stating that death was caused by a gunshot wound in the chest which was self-inflicted. The appellate court upheld the trial court's ruling that the death certificate was admissible only for the limited purpose of showing that death was the result of a gunshot wound in the chest. The statement of cause of death in such certificate is not a fact entitled to the status of prima facie evidence under the Vital Statistics Act, ILL. REV. STAT. ch. 111-1/2, § 73 (1971).

56. 2 Ill. App. 3d 496, 276 N.E.2d 49 (1971).

57. The total amount of credit life insurance in force has risen from \$3.9 billion in 1950 to \$31.2 billion in 1960 to \$87.9 billion in 1970. About 85% of credit life insurance in force during 1970 was group insurance represented by 70.3 million certificates issued under 74,120 master policies. INSTITUTE OF LIFE INSURANCE, 1971 LIFE INSURANCE FACT BOOK at 33-4; see *Credit Insurance Continues Growth in 1970*, SPECTATOR, vol. 179, No. 10, October, 1971, p. 37.

58. 2 Ill. App. 3d at 498, 276 N.E.2d at 51 (1971).

59. *Id.* at 498-99, 276 N.E.2d at 51.

After suffering a severe and disabling heart attack plaintiff sued to enforce his claim, and was awarded a default judgment. After successfully moving to have the judgment vacated, the defendant insurer set out in an affirmative defense of misrepresentation, the plaintiff's declaration in the application for insurance. Defendant alleged that, contrary to the declaration, plaintiff had consulted and been treated for hypertension and high blood pressure on eleven occasions. The insurer further alleged that no certificate would have been issued if the consultations had been known.<sup>60</sup> The trial court awarded defendant a summary judgment.

Although on appeal both parties briefed arguments concerning the effect of misrepresentations in avoiding the policy, the applicable period of incontestability, and the proper manner of contesting a claim, the appellate court did not find these considerations to be relevant.<sup>61</sup> The court held,<sup>62</sup> that Article IX 1/2, "Credit Life and Credit Accident and Health Insurance,"<sup>63</sup> could not be construed to include either §766,<sup>64</sup> the misrepresentation and false warranty section of Article IX, "Provisions Applicable to All Companies,"<sup>65</sup> or Article XX, "Accident and Health Insurance."<sup>66</sup> Additionally, the court found no provision within Article IX 1/2 requiring an application to be attached to the policy or certificate, or requiring the presence of an incontestability clause, or allowing an insurer to avoid the policy for misrepresentation. However, the court would allow the insurer to avoid the policy in the case of fraud, or when-

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60. *Id.* at 499, 276 N.E.2d at 52.

61. *Id.* at 500, 276 N.E.2d at 53.

62. *Id.*

63. ILL. INS. CODE §§ 155.51-155.65, ILL. REV. STAT. ch. 73, §§ 767.51-767.65 (1971).

64. No misrepresentation or false warranty made by the insured or in his behalf in the negotiation for a policy of insurance, or breach of a condition of such policy shall defeat or avoid the policy or prevent its attaching unless such misrepresentation, false warranty or condition shall have been stated in the policy or endorsement or rider attached thereto, or in the written application therefor, of which a copy is attached to or endorsed on the policy, and made a part thereof. No such misrepresentation or false warranty shall defeat or avoid the policy unless it shall have been made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company. This section shall not apply to policies of marine or transportation insurance. ILL. REV. STAT. ch. 83, § 766 (1967).

65. ILL. INS. CODE §§ 132-155.05, ILL. REV. STAT. ch. 73, §§ 744-767.5 (1971).

66. ILL. INS. CODE §§ 352-370, ILL. REV. STAT. ch. 73, §§ 964-982 (1971).

ever a pre-existing condition caused the liability, and a policy provision disclaimed liability resulting from a pre-existing condition. Since no fraud was shown, but since such a provision was contained in the policy, the case was reversed and remanded solely to determine whether plaintiff was entitled to recover under the policy provision without reference to the return postal reply card.<sup>67</sup>

The concurring opinion<sup>68</sup> agreed that the case was controlled by Article IX 1/2, and that an incontestability clause was not required by Article IX 1/2. However, since the insurer had included such a clause in the policy, he was bound by the terms of his own policy. The policy's incontestability clause allowed the insurer to use the insured's statement to contest the validity of the policy only if contested within two years of the date of issue. Since the policy was not contested within the required two years, the affirmative defense of misrepresentation not being introduced until the defendant filed an amended answer three years and five months after issuing the policy, the insurer could no longer contest the policy.<sup>69</sup>

#### A. CREDIT INSURANCE—POLICY PROVISIONS

The court, in effect, has determined that Article IX 1/2 and the other articles of the Illinois Insurance Code are mutually exclusive, by holding that Article IX 1/2 cannot be construed to include Article XX and §766, and by basing its final decision solely on the sections within Article IX 1/2.<sup>70</sup> This is an impossible result because nothing in Article IX 1/2 even suggests that the article can stand alone. Article IX 1/2 is based on the NAIC Model Bill to Provide for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance and was added to the Illinois Insurance Code in 1959.<sup>71</sup> It was designed primarily to prevent

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67. 2 Ill. App. 3d at 500-02, 276 N.E.2d at 53-54.

68. *Id.* at 501-02, 276 N.E.2d at 54-55.

69. Although the concurring opinion finds Article IX-1/2 to be controlling, the rationale of that opinion suggests that the defense of misrepresentation is available to an insurer in the case of credit insurance. An incontestability clause serves no function unless there is a basis for contesting the policy. In the *Gibbs* case the only basis which would be cut off by an incontestability clause is the insurer's defense of misrepresentation. Therefore, in order for the concept of incontestability to be dispositive, the defense of misrepresentation must be available to the insurer.

70. 2 Ill. App.3d at 500, 49 N.E.2d at 52.

71. Ill. Ins. Laws, 1971 NATIONAL INS. LAW SERV. p. 163; ILL. REV. STAT. ch. 73, §§ 767.51-767.65 (1971).

abusive practices in the sale of life and health insurance provided in connection with credit transactions, and includes, among other things, minimum standards of disclosure and a provision for premium control based on the reasonableness of the premium in relation to the benefits provided under the policy.<sup>72</sup> Article IX 1/2 is not all inclusive and is not capable of regulating all aspects of credit insurance without reference to the rest of the Insurance Code. For example, although in addition to individual policies, Article IX 1/2 covers group credit insurance, it fails to define what constitutes a "group" and what underwriting standards a company writing group credit insurance must meet. Such voids in the statutory scheme can only be filled by referring to Article XX.

Section 979(1) of Article XX<sup>73</sup> fills that void by stating that a "group accident and health policy may be written to insure any group which may be insured under a group life insurance policy." Therefore, group standards may only be ascertained by referring to §842 of Article XIV, Legal Reserve Life Insurance, which specifies that a creditor group must number not less than 100 new entrants yearly, who become borrowers or purchasers of property in installments over a period of ten years, for amounts no greater than \$25,000.<sup>74</sup>

The court mistakenly rejects any reference to Article XX in dis-

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72. *Consumer Credit Insurance*, NW. U.L. REV. 355, 368-371 (1960); see Hanna, *NAIC Model Credit Insurance Bill Governing the Sale of Credit Life and Health Insurance*, 13 PERSONAL FINANCE L.Q. REPORT 127 (1959); see generally, Vernon, *Regulated Credit Life and Disability Insurance and the Small Loan*, 29 N.Y.U.L. REV. 1098 (1954).

73. ILL. INS. CODE § 367(1), ILL. REV. STAT. § 979(1) (1971).

74. ILL. INS. CODE § 230(2)(d), ILL. REV. STAT. § 842(2)(d) (1971). The \$25,000 maximum amount of indebtedness as stated in § 842 is in direct conflict with the specific provisions of § 767.54(a) and (b) which limits the amount of credit life insurance to the initial indebtedness and the total amount of indemnity payable by credit accident and health insurance to the "aggregate of the periodic scheduled unpaid installments of the indebtedness." Indiana Ins. Dept. Bulletin No. 8 of August 15, 1963 construed similar Indiana credit insurance provisions (both Illinois and Indiana laws being based on the NAIC model acts for the regulation of credit insurance) and correctly concluded that all group life insurance provisions applied to credit life insurance except where there is a conflict. However, the maximum dollar limitation on group life insurance on debtors is not in conflict with the provision that a group policy of credit life insurance shall at no time exceed the amount of unpaid indebtedness. Thus, the \$25,000 maximum amount of group life insurance on debtors under § 842(d) is a further limitation on group credit life insurance which under § 767.54(a) cannot exceed the amount of unpaid indebtedness.



tinguishing the types of health insurance regulated by Article IX 1/2 from those regulated by Article XX, by pointing out that the "proceeds of Article IX 1/2, Credit Health Insurance, are payable to the creditor, whereas the proceeds of Article XX, Blanket Accident and Health Insurance,<sup>75</sup> are payable to the insured . . . ."<sup>76</sup> While that may be true, Article XX also includes §979, "Group Accident and Health Insurance, "which, with its reference to §842, precisely fits Article IX 1/2's requirements for group credit accident and health insurance. Both Article IX 1/2 and §979 (§842) speak of proceeds under group policies being paid only to creditors,<sup>77</sup> and both limit the installments to ten years duration.<sup>78</sup> Instead of looking only to Article XX's blanket accident and health section, describing one type of group accident and health insurance<sup>79</sup> which did not fit Article IX 1/2's definition, the court should have referred to §979, "Group Accident and Health Insurance," where the articles overlap. Although many provisions of Article XX may not be appropriate for Article IX 1/2, Article XX and other portions of the code not in direct conflict with the provisions of Article IX 1/2 should still apply to credit insurance.

Although Article IX 1/2 was enacted to protect the public, it does not specifically require incontestability clauses, grace periods, or other clauses designed to limit the insurer. However, the legislature's specific requirement that incontestability clauses be included in forms of life,<sup>80</sup> industrial life,<sup>81</sup> and accident and health insurance,<sup>82</sup> points towards a strong public policy in favor of such clauses.

The *Gibbs* court's construction of Article IX 1/2, on the other

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75. ILL. INS. CODE § 367a, ILL. REV. STAT. ch. 73, § 979a (1971).

76. 2 Ill. App. 3d at 499, 276 N.E.2d at 52.

77. ILL. INS. CODE § 155.53, ILL. REV. STAT. ch. 73, § 767.53(d) (1971); ILL. INS. CODE § 230, ILL. REV. STAT. ch. 73, § 842 (1971).

78. ILL. INS. CODE § 155.51(b), ILL. REV. STAT. ch. 73, § 767.51(b) (1971); ILL. INS. CODE § 230(2)(d), ILL. REV. STAT. ch. 73, § 842(2)(d) (1971).

79. ILL. INS. CODE § 867a(1)(e) and (4), ILL. REV. STAT. ch. 73, § 979a(1)(e) and (4) (1971).

80. ILL. INS. CODE § 224(1)(c), ILL. REV. STAT. ch. 73, § 836(1)(c) (1971). See also ILL. INS. CODE § 226(b), ILL. REV. STAT. ch. 73, § 838(b) (1971) (standard provisions for annuities and pure endowment contracts); ILL. INS. CODE § 231(b), ILL. REV. STAT. ch. 73, § 843(a) (1971) (standard provisions for group life policies).

81. ILL. INS. CODE § 229(1)(c), ILL. REV. STAT. ch. 73, § 841(1)(c) (1971).

82. ILL. INS. CODE § 357.3, ILL. REV. STAT. ch. 73, § 969.3 (1971).

hand, would deny this protection to the consumer.<sup>83</sup> Such a result is in conflict with an express provision of Article IX 1/2. Section 767.56(b), "Provisions of Policies and Certificates of Insurance; Disclosure to Debtors," specifically requires that:

Each individual policy or group certificate of credit insurance, and/or credit accident and health insurance shall, *in addition to other requirements of law*, set forth the name and home office address of the insurer . . . . [Emphasis added].

The reference to "other requirements of law" implies that the legislature did not intend §767.56 alone to list the required policy provisions. Further reference must be made to other provisions of the Illinois Insurance Code in order to determine which policy provisions are mandatory for credit insurance.

Article XX reflects probable legislative intent and again supplies a reasonable answer. Section 979, the same section providing the standards for the formation of groups, provides additional guidance in sub-section (2) for determining standard provisions not enumerated in Article IX 1/2. It requires that a policy must contain in substance "those provisions contained in [§§969.1 to 969.30] as may be applicable to group accident and health insurance . . ." and other provisions listed in §979.<sup>84</sup> Sections 969.1 to 969.30, in turn, require clauses with familiar headings such as "Entire Contract; Changes," "Time Limit on Certain Defenses," "Grace Period," "Reinstatement," etc., to be inserted into all accident and health policies.<sup>85</sup>

Although it may be difficult to determine what provisions of §§961.1 to 969.30 should be included in a group policy,<sup>86</sup> the choice is really limited by the requirement that all forms be approved by the Illinois Director of Insurance.<sup>87</sup> If Article XX or other provisions of the Illinois Insurance Code do not apply to credit insurance, as the *Gibbs* decision implies, the consumer exchanges already established protection devices for those protections outlined in Article IX 1/2.<sup>88</sup>

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83. 2 Ill. App. 3d at 499, 276 N.E.2d at 52.

84. Section 979(2)(a) through (c) lists three provisions required for group insurance in addition to applicable provisions found in §§ 969.1 to 969.30. Section 979(2)(a) concerns statements and misrepresentations discussed at note 103, *infra*.

85. Applicable provisions of § 969.1 to 969.30 should also be inserted in policies of individual credit accident and health insurance.

86. Neither § 979(2) nor § 969.1 to 969.30 specifically identify which individual provisions listed in § 969.1 to 969.30 are "applicable."

87. ILL. REV. STAT. ch. 73, § 767.57 (1971); ILL. REV. STAT. ch. 73, § 979(2) (1971); ILL. REV. STAT. ch. 73, § 967 (1971).

88. Section 767.56 requires refunds to be given if policies are terminated prior to

## B. CREDIT INSURANCE—DEFENSE OF MISREPRESENTATION

The *Gibbs* court's holdings prevent an insurer writing Article IX 1/2 credit insurance from avoiding a policy for misrepresentation made by the insured. The court held that Article IX 1/2 could not be construed to include §766, misrepresentations and false warranties, and Article XX, which requires "entire contract" and "misrepresentations" provisions<sup>89</sup> in line with §766 to be included in accident and health policies. The court also looks to Article IX 1/2 where it finds no provision for avoiding a policy due to misrepresentation.<sup>90</sup> Finally, it concludes that the policy could be avoided for fraud or pre-existing conditions if the policy disclaimed liability for disability caused by pre-existing conditions.<sup>91</sup> Even though this is a case of first impression, the court unfortunately has provided little insight into why these holdings are necessary.

What is the state of the law of misrepresentations with regard to Article IX 1/2 credit insurance? Taken literally, the court's holding implies that the defense of misrepresentation is not available to an insurer. This is an unacceptable result because the law of misrepresentation and warranties has been developing as an integral part of insurance law since the days of Lord Mansfield.<sup>92</sup> If there is no statutory provision applicable to credit insurance, then the Illinois common law, as developed prior to the passage of §766 in 1937, should prevail.<sup>93</sup> The Illinois common law was technical in

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maturity. Section 767.56(a) requires a policy or group certificate of insurance to be delivered to debtor. Section 767.56(b) requires the insurer to make certain disclosures in individual policies or group certificates, such as the name and address of insurer, identity of insured, and rate or amount of payment, description of the amount, terms and coverage including exceptions, limitations or restrictions. Additionally, the policy or group certificate "shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate." Section 767.61 allows the debtor to use existing life or accident and health policies, or procure insurance from someone other than the creditor to secure the debt.

89. ILL. INS. CODE § 367(2)(a), ILL. REV. STAT. ch. 73, § 979(2)(a) (1971); ILL. INS. CODE § 357a(1)(b), ILL. REV. STAT. ch. 73, § 969a(1)(b) (1971).

90. 2 Ill. App. 3d at 501, 276 N.E.2d at 53.

91. *Id.*

92. See generally Cooper, *Misrepresentations and False Warranties in Insurance Applications*, 58 ILL. B.J. 962, 963 (1970).

93. See generally ILL. REV. STAT. ch. 28, § 1 (1971). In Prudential Ins. Co.

nature and allowed an insurer to avoid a policy even when a false warranty was immaterial.<sup>94</sup> Later, §766 eliminated the fine distinction in determining the effect of false warranties and representations.<sup>95</sup> Without the benefit of §766 or specific sections of Article XX<sup>96</sup> either the insurer has no defenses for misrepresentation as the *Gibbs* court implies, or the common law applies, thereby rearming the insurer with the sudden death effect of the old warranty and misrepresentation doctrine.<sup>97</sup>

Confusion over the status of misrepresentations stems from the court's original failure to look to sections of the Illinois Insurance Code outside Article IX 1/2.<sup>98</sup> If the court had referred to §979 to determine the allowable "group" for group credit accident and health insurance, it also would have seen §979(2)(a),<sup>99</sup> which requires policies of group accident and health insurance to contain a provision similar to §766. Both §979(2)(a) and §766 make the applications and policies the entire contract, and statements must be deemed representations (in absence of fraud) and not warranties, which may be used in defense to a claim, only if contained in a written application. Although §766 requires attachment of the application as a prerequisite for a defense of misrepresentation,<sup>100</sup> §979(2)

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of *America v. Beaty*, 456 S.W.2d 164 (Tex. Ct. Civ. App. 1970), the court allowed an insurer to assert the defense of misrepresentation in order to avoid paying a claim on a credit life policy where a TB patient had signed an application stating that he was in good health and subsequently died. The court held that the defense of misrepresentation had been established as a matter of law. Although Texas insurance law included a credit insurance section substantially the same as Article IX-1/2 and a separate section on misrepresentation similar to § 766, the court relied solely on case law without making any reference to the statutes.

94. Note, *Misrepresentations and False Warranty Under the Illinois Insurance Code; Recent Developments*, 54 Nw. U.L. REV. 275, 277 (1959).

95. Cooper, *supra* note 4, at 964.

96. ILL. INS. CODE § 367(2)(a), ILL. REV. STAT. ch. 73, § 979(2)(a) (1971).

97. See generally ILL. REV. STAT. ch. 28, § 1 (1971).

98. See note 79 *supra*.

99. A provision that the policy, the application of the employer or executive officer or trustee of any association, and the individual applications, if any, of the employees, members or employees of members insured shall constitute the entire contract between the parties, and that all statements made by the employer, or the executive officer or trustee, or by the individual employees, members or employees of members shall (in the absence of fraud) be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in a written application. ILL. REV. STAT. ch. 73, § 979(2)(a) (1971).

100. See note 67 *supra*.

(a) has no such requirement. The absence of an attachment requirement for group insurance is in line with a previous decision<sup>101</sup> in which the Insurance Code was construed not to require an insurer to attach an application to a certificate of group life insurance in order for him to raise the defense of misrepresentation. There is a sound rationale behind eliminating the attachment requirement for group insurance, and replacing it with a requirement that all statements used must be in writing.<sup>102</sup> It is difficult if not impossible to attach all applications to the master policy, since one master policy may cover thousands of certificate holders located throughout many states.<sup>103</sup>

The above result is reasonable since §979 embodies the spirit of §766 by eliminating the distinctions between warranties and representations to the benefit of the insured, while allowing the insurer the defense of misrepresentation. The generally applicable provisions of §766 should be modified only when in conflict with the more specific provisions of §979 or Article IX 1/2.

A similar result is arrived at by analyzing group credit life insurance. Standard provisions for group life policies found in §843 (b)<sup>104</sup> also make statements representations, not warranties, and require all statements to be in a written application in order to be used in a claim defense.

Article IX 1/2 also includes credit life and credit accident and health insurance issued on an individual basis with the debtors as

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101. *Coleman v. Aetna Life Ins. Co.*, 261 F.2d 296, 299 (1958); *accord*, *Continental Assur. Co. v. Henson*, 297 Ky. 764, 181 S.W.2d 431 (1944) (interpreting Illinois law). *Contra*, *Hofeld v. Nationwide Life Ins. Co.*, 287 N.E.2d 215 (Ill. App. 1972) which was decided after the period covered by this article. In *Hofeld* the court held that under § 766 an application for group "disability and medical" insurance must be attached to, or endorsed on, the policy in order for an insurer to assert the defense of misrepresentation. Other sections of the Illinois Insurance Code were not referred to by the court, and neither *Coleman v. Aetna Life Ins. Co.*, *supra*, nor *Continental Assur. Co. v. Henson*, *supra*, were cited or discussed.

102. Insured gets a copy of the application in insurer's answer to the complaint.

103. *Coleman v. Aetna Life Ins. Co.*, 261 F.2d 296, 299 (1958).

104. A provision that the policy, the application of the employer or trustee of any association of employees and the individual applications, if any, of the employees insured constitute the entire contract between the parties, and that all statements made by the employer or trustee or by the individual employees shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in a written application. ILL. REV. STAT. ch. 73, § 843(b) (1971).

the policyholders.<sup>105</sup> Although the court does not discuss individual policies of credit insurance, its broad holdings cover all insurance written under Article IX 1/2. Again, if the court would look beyond Article IX 1/2, it would find a statutory scheme in Article XIV and §766, which recognizes the defense of misrepresentations for individual policies of credit insurance. A long line of cases has developed which applies §766 to life insurance and accident and health insurance.<sup>106</sup> Although there is no section within either Article XIV, "Legal Reserve Life Insurance," or Article XX, "Accident and Health Insurance," which specifically refers to §766, courts have not hesitated to apply §766. Individual credit insurance is basically term life or term accident and health insurance written under special conditions.<sup>107</sup> The court has not articulated any public policy requiring misrepresentations to be handled differently in the area of individual term credit insurance than in the more familiar area of conventional term life or accident and health insurance.

Unless *Gibbs* is overturned or narrowed in subsequent cases dealing with credit insurance, the state of the law in this area will remain confused.<sup>108</sup> A literal reading of *Gibbs* can only leave one to conclude that Article IX 1/2 alone determines applicable law and policy provisions for credit insurance.

#### CONCLUSION

In considering the merits and effectiveness of the 1971 developments in the Illinois life and health insurance law, it must be borne in mind that life and health insurance in Illinois (as all insurance in any state) is (1) a business regulated in the public interest,<sup>109</sup> and (2) interstate commerce within the original federal jurisdiction<sup>110</sup> regulated by the states under specific authority from the Congress.<sup>111</sup>

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105. ILL. INS. CODE § 155.53(a) and (b), ILL. REV. STAT. ch. 73, § 767.53(a) and (b) (1971).

106. See generally note 95 *supra*.

107. Article IX-1/2 limits the amount of insurance and requires certain disclosures to be made by the creditors.

108. The *Gibbs* case was settled before appeal or remand.

109. See note 12 *supra*.

110. United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944).

111. McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (originally adopted in 1945), provides that (1) continued regulation (and taxation) of the insurance

The brief review of such developments indicates that the state legislature, the Department of Insurance and the state courts of Illinois made in 1971 some valid contributions towards maintaining in good order an adequate system of state regulation of insurance.

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business by the states is in the public interest, (2) no congressional act shall "invalidate, impair or supersede" any state insurance law unless such act "specifically relates to the business of insurance," and (3) certain anti-trust laws shall be applicable to insurance "to the extent that such business is not regulated by state law." The federal courts, which for the last quarter century assumed the responsibility of modifying and interpreting the existing division between state insurance regulation and ever-expanding federal legislation, rejected any basic revision in such division. Specifically, after having indicated in *Federal Trade Comm'n v. Nat'l Cas. Co.*, 357 U.S. 560 (1958), that the grant of exclusive insurance regulatory power to the state will be ineffective if the state statutory provisions which purport to regulate insurance were a "mere pretense" of regulation, most recently in *Ohio A.F.L.-C.I.O. v. Ins. Rating Bd.*, 451 F.2d 1178 (6th Cir. 1971), *cert. denied*, 92 S. Ct. 215 (1972), the Supreme Court refused to adopt a strict interpretation of the "to the extent of . . ." language of Section 1012(b), without considering the substance of the state regulatory provisions and the effectiveness of their enforcement by state authorities. See generally *Armstrong, McCarran Act Revisited*, 1972 *American Life Convention Legal Section Proceedings* (to be published early in 1973).