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CREATION OF OFFICE OF COMMISSIONER OF INSURANCE

The 1954 Legislature for the first time created the office of Commissioner of Insurance, exercising a legislative right to separate the Department of Insurance from the Office of Secretary of State. Act 200 creates this office, provides for the selection of the Commissioner, a Deputy and an Executive Secretary to the Commissioner, and transfers the powers and duties formerly vested in the Secretary of State as Ex-Officio Insurance Commissioner to the newly created official. This change was accomplished through amendments to Title 22 of the Louisiana Revised Statutes of 1950, which constitutes what is known as the Louisiana Insurance Code. The particular sections amended by Act 200 are sections 2 and 5 of Title 22. The Commissioner is vested with the authority and charged with the duty of administering the provisions of the Insurance Code. The act provides that the first Commissioner shall be appointed by the Governor with the consent of the Senate and that he shall serve until the general state elections for state officials to be held in 1960. Beginning with these elections the office of Commissioner of Insurance becomes an elective office, and the term is fixed at four years consistent with the terms of all other offices elected state-wide.

In the interest of legislative simplicity the act defines the term "Secretary of State" as used in the Insurance Code to mean "Commissioner of Insurance" as that office is created and defined by the act. A complete transfer of the powers, duties, functions, property, personnel, revenues, and appropriations from the Secretary of State's office to the Commissioner of Insurance is specified. The only exceptions and exemptions from this transfer are those duties prescribed in sections 34, 38, 439, 493, 982(8), and 1253 of the Insurance Code which involve the recordation of documents and the appointment of the Secretary of State as attorney to accept the service of process in legal proceedings. These functions remain with the Secretary of State.

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This enumeration of duties reserved to the Secretary of State may need some further modification, if he is to remain recorder of all insurance charters. For example, section 982(2) was omitted from the enumeration, and it requires the recordation of such documents. Likewise, the reservation of the power to act as agent for service of process is not complete as section 1253, which provides for the service of process upon an authorized insurer violating the laws of this state, was not included in the enumeration. From the standpoint of constitutionality and practical application of the substantive law, it would seem that the question of whether or not the duty is to be performed by the Commissioner of Insurance or the Secretary of State is of no significance.

It should be noted that section 1 of Act 200 states that section 1419 of Title 22 is also being amended and re-enacted. This section is not mentioned in the title of the act, nor is there any amendatory language to section 1419 in the body of the act. The inclusion of this reference in the first paragraph of section 1 is therefore apparently merely to be regarded as surplusage and without legal effect.

The legislative creation of the offices of Deputy Commissioner of Insurance and Executive Secretary to the Commissioner of Insurance gives two new legislative offices. With respect to the Deputy Commissioner of Insurance, it may be said that this is simply legislative recognition of an office which has been created by the Secretary of State and in existence at least since 1898. The title, remuneration, and duties of the office, however, were formerly exclusively under the control of the Secretary of State as Ex-Officio Insurance Commissioner and had no legislative recognition. The office of Executive Secretary to the Commissioner of Insurance is a completely new office, no such title having been accorded any office held by any member of the Insurance Department. The Legislature has left to the Commissioner of Insurance the power and the duty to fill both offices and to fix the salaries and duties of those persons appointed by him who shall serve at his pleasure.

DIRECT ACTION STATUTE

It is believed that section 655 of the Insurance Code has received more frequent consideration by the state and federal

courts than has any other section of the insurance law of Louisiana. It is also believed that it has been the subject of more comment and law review articles than has any other subject in the Insurance Code. The Louisiana Legislature, through Act 475, has again amended and re-enacted this section. Several changes have been made by this act. First, the act now grants a right of action to the injured person *or his or her survivors mentioned in Revised Civil Code, article 2315,* or heirs against the insurer. Heretofore, the language extended the right of direct action to "the injured person or his or her heirs." However, the federal courts in *Benroth v. Continental Casualty Co.*[1] had recognized the right of a widow to bring such an action, being within the meaning of the term "heir" as used in the section. This appears to be a legislative recognition of such judicial interpretation. The second change permits the bringing of action against the insurer alone or against both the insurer and insured *at either of their domiciles or principal places of business in Louisiana.* Previously, the statute had fixed the right of action in the parish where the action or injury occurred, or in the parish where the insured has his domicile. Third, the act also enlarges the statement of intent previously incorporated in this section by stating that it is the intent that all liability policies are executed *for the benefit of all injured persons, his or her survivors or heirs, to whom the insured is liable.* Thus we have a legislative statement of intent which had previously been announced by the courts in construing this section.[2]

Fourth, an additional statement of intention has been introduced as new material in the act and is in the following language: "and that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insureds or additional insureds under the omnibus clause, for any legal liability said insured may have as or for a tort feasor within the terms and limits of said policy." Here again there seems to be a statement of legislative intent which follows interpretations previously placed upon the statute by the courts.[3] The inclusion of these statements of intent should make judicial interpretation of the statute easier in the future when such issues

1. 132 F. Supp. 270 (W.D. La. 1955).
2. See Lewis v. Manufacturers Casualty Ins. Co., 107 F. Supp. 465 (W.D. La. 1952).
3. See McDowell v. National Sur. Corp., 68 So.2d 189 (La. App. 1953), *appeal dismissed,* 347 U.S. 995 (1954).

are involved, and may be helpful in preventing conflicting interpretations.

INVESTMENTS — DOMESTIC INSURERS

The Legislature enacted two statutes dealing with the investments of insurance companies incorporated under the laws of the State of Louisiana. The first of these is Act 157 which reenacted section 844 of the Insurance Code, adding a section designated as (12) (A). This permits domestic insurance companies to invest in shares or securities of any open end, or closed end, management type investment company, or investment trust, registered under the Federal Investment Company Act of 1940, which men of prudence, discretion, and intelligence acquire or retain for their own account. The investment is limited to 5% of the company's admitted assets. The enactment of this new section eliminates the doubt which has existed as to whether or not a domestic insurance company had authority to invest in so-called investment trust shares, securities, or certificates. Previously it was felt that the ownership of such shares, securities, or certificates might in effect constitute a violation of paragraph (9) of the same section which prohibited a company from investing in common stocks of corporations except as provided in subsections (C) and (D). The ownership of such investment company securities is in reality evidence of ownership of common stocks in which they have invested and there was a possibility of the law being construed so that a company would be in violation of the above prohibition if it owned such securities.

Act 258 added an entirely new section to the Insurance Code which became section 853. Its purpose is specifically to authorize and regulate the acquisition of improved real property in foreign countries by domestic insurance companies which are doing business there. Such authority was formerly granted under the provisions of section 845 of the Insurance Code when the property was requisite for the convenient accommodation of the transaction of the company's business. Under this language the question of whether or not a company might own a building containing additional space for rental purposes depended upon an interpretation of what was a reasonable expectation of the company's need for additional space within the foreseeable future. This required not only a determination of

the question by the insurance authorities in Louisiana, where the company was domiciled, but also a similar determination in many instances by the insurance authorities of the foreign countries in which the property was located. The enactment of section 853 makes the Louisiana requirement definite and prevents the possibility of inconsistent interpretations by the two authorities, which would place a company in an impossible position. In addition to eliminating this difficulty, section 853 fixes a greater limitation upon the company's right to invest in such property by limiting the amount to 10% of the company's assets in such country, and further requiring that the funds which are used to build or acquire the property arise from the transaction of business in the country where the property is located. As an additional safeguard the act specifies that the property shall also be considered in determining the total investment allowed under the provisions of section 846, which limits the amount which can be invested by a Louisiana insurance company in a foreign country, and shall also be considered in determining the amount permitted as an investment under the terms of section 845, fixing an overall limit upon the amount which a company can invest in real property for the accommodation of the transaction of its own business.

UNFAIR TRADE PRACTICES

Act 310 amended and re-enacted section 1214 of the Insurance Code and added an additional paragraph thereto which has been designated as paragraph (10) and renumbered the paragraph which formerly appeared as paragraph (10) as number (11). This additional material prohibits any policy of insurance upon the life or property of any person from being issued at a premium rate less than the approved or customary rate when such policy is to be furnished or delivered to the purchaser or pledgee or mortagee of any property as an inducement to purchase or hypothecate such property. The purpose of this act is to prevent the issuance and delivery in Louisiana of any free insurance such as was being offered in connection with the sale of certain automobiles as an inducement to purchase such an item or to enter into a contract of pledge or mortgage with respect thereto. There is a specific exemption in the act stating that it shall not prohibit the issuance of creditor group life insurance or creditor group health and accident insurance which in many

instances is paid for by the seller or the lendor to protect himself against the death or disability of the insured.

INSURANCE RATES ON STATE PROPERTY

For many years the rates of premiums charged for fire, windstorm, and hail insurance covering state, parochial and municipal public buildings, and other public property have been exempt from the mandatory provisions of the rate regulatory laws of this state. Act 127 changes that by amending and reenacting section 1421 of the Insurance Code which so provided. The section as now amended provides that such rates "shall be subject to supervisory and experience credits as promulgated by the Louisiana Rating and Fire Prevention Bureau." This in effect makes the rates established by the Louisiana Rating and Fire Prevention Bureau effective on such property subject to supervisory and experience credits promulgated by that organization. Additionally, the act specifies that the provisions of section 1410 of the Insurance Code shall not be applicable to such properties. This section establishes a means of securing a deviation from the manual rates fixed by the Louisiana Rating and Fire Prevention Bureau and the effect therefore is to eliminate the right which any insurer might have to make an application for and be granted a deviation from such rates for such properties.

TAX ON FOREIGN OR ALIEN FIRE INSURANCE COMPANIES FOR THE SUPPORT OF ORGANIZED FIRE DEPARTMENTS

For many years a tax based on premiums collected within the area served by an organized fire department has been levied upon foreign and alien fire insurance companies. Heretofore, under the provisions of section 1581 of Title 22 of the Revised Statutes such a tax was collectible only when the fire department was established by an incorporated municipality or by a fire or water works district in an unincorporated municipality. Act 400 now extends the tax to an additional class of property described as "any property of an area actually served by a volunteer fire department." Where the fire chief of a voluntary fire department certifies to the State Treasurer that he has the required equipment in a serviceable condition and available for fire duty, the companies are compelled to report the amount of premiums which they collect in the area described above and pay

the tax thereon. The report which must be filed with the State Treasurer by such a volunteer fire department must contain a map or survey showing the area actually served; and, in the event the volunteer fire department is located within an incorporated municipality or fire and water works district, the latter shall be entitled to the benefits of the act rather than the volunteer fire department. Act 460 amends section 1585 of Title 22 which provides for the distribution of the tax money collected for the purposes stated in section 1581 referred to above. The amendment requires the payment by the State Treasurer to the voluntary fire department of tax monies collected from the insurance companies by virtue of premiums derived from properties located in an area served by it, in the same manner as such payments are made to the treasurer of the municipality or district covered by the law.

TITLE INSURANCE RATE REGULATION

For the first time title insurance is made subject to the rate regulatory statutes of this state as the result of the passage of Act 581. Title insurance had been excluded from the rate regulatory provisions of Part XXX of Title 22. Act 581 amends section 1403 to include title insurance which is defined in paragraph (9) of section 6 of Title 22. In so doing, it enumerates title insurance as an additional type of insurance, along with the other three classes enumerated in sub-paragraph (b) of the section. Those formerly included were fire insurance, marine and transportation insurance, and casualty insurance. The act also amends paragraph (5) of section 1404 specifically to permit the charging of an interim title insurance binder fee in addition to the premium charged. The manner in which the rates are to be fixed is stated in an additional paragraph, designated as paragraph *C*, added to section 1406 of the Insurance Code. This paragraph provides that every title insurer shall adhere to the rates promulgated by any Title Insurance Rating Bureau licensed under this Part and which rates have been approved by the Casualty and Surety Insurance Division. Such a rating bureau would be required to qualify under section 1409. The right to apply for a deviation from such rates under the provisions of section 1410 is not expressly granted by the terms of Act 581, but it appears clear that such a right does exist.

NON-PROFIT FUNERAL SERVICE ASSOCIATIONS

Act 164 has made extensive changes with respect to the organization and regulation of non-profit funeral service associations. The act amends sections 332, 345, and 346 of the Insurance Code. The amendment to section 332 in effect prohibits the organization of any domestic non-profit funeral service association under the terms of the law after 12:00 noon on August 1, 1956, and prohibits the qualification of any foreign non-profit funeral service association. It permits the continuation in business of those associations who are authorized and operating under the terms of Part IX of the Insurance Code as of August 1, 1956, but imposes new conditions upon the policies which they issue from and after December 31, 1956. After December 31, 1956, all policies issued by such non-profit funeral service associations must be issued in accordance with the laws and regulations applicable to industrial life insurance in the State of Louisiana. The investment of the income received on policies issued after December 31, 1956, is subject to the laws relative to domestic industrial insurers. However, the act does not give the non-profit funeral service associations authority to issue all types of contracts which an industrial life insurer may issue, but limits them to funeral benefit policies, the amounts of which cannot exceed an aggregate of $500.00 on any single life, including the amount of any existing assessment policy which might have previously been written, and prohibits the issuance of multiple indemnity benefits. Section 345 is amended to make it conform to the provisions of section 332 by stating that assessment policies can be issued in accordance with the schedule of benefits and assessments stipulated therein only until December 31, 1956, and to impose an additional limitation which prohibits an association from levying more than four assessments annually. Where the associations have been free to levy assessments when needed, they are now restricted in their right to levy assessments in future years under the existing assessment contracts (and those which will be issued prior to December 31, 1956) to four assessments annually. Section 346, controlling the payment of the expenses of these non-profit funeral service associations, has been amended to provide that expenses of necessary printing, stationery, postage, office supplies and expenses, clerical hire, statutory fees, and examination fees may be paid by the association. While this was permitted under the prior

law, additional expenses could then be paid with the consent of the Secretary of State, to be granted if he considered it to be beneficial to the association and its policyholders. This right to pay additional expenses has been eliminated. Act 164 places an additional restriction upon the associations by limiting the total of all expenses to 25% of each assessment. There was no previous percentage limitation upon expenses as they related to assessments. The amendment to section 346 eliminated a paragraph which prohibited the charging of organizational or promotional expense, but granted the right to charge a membership fee which could be collected and retained by the agent selling the policy and not included in the expenses mentioned above, nor reflected by the books or records of the association. Since the act has prohibited the organization of any new association, it seems logical that a prohibition against the payment of organizational and promotional expenses be dropped from the act. The same reasoning does not apply to the right to charge the membership fee, particularly in view of the fact that they are authorized to continue the issuance of assessment policies until December 31, 1956.

Assigned Risk Plans

While it does not involve direct amendment to the Insurance Code, the Legislature during the Extraordinary Session of 1956, through the adoption of Act 12, re-enacted section 1043 of Title 32 to place the authority formerly vested in the Secretary of State with respect to the establishment of assigned risk plans in the new Commissioner of Insurance. Other than changing the designation made in the section to the Commissioner of Insurance from the Secretary of State, no change was made in the law.

State, Its Departments, Subdivisions, and Agencies — Authority to Contract for Group Insurance

Two acts were passed which amended provisions of Title 42 of the Revised Statutes and affect the transaction of insurance business in the State of Louisiana as it applies to the state, its departments, subdivisons, and agencies. These two are Acts 294 and 295, amending sections 851 and 821 of Title 42. Act 294 authorizes the State of Louisiana and each of its political, governmental, and administrative subdivisions, departments, agencies, association of public employees, officials and

department heads, governing boards and authorites of each state university, college, common and independent school districts, or any other agency or subdivision of the public school system of the State of Louisiana to procure a contract insuring their respective employees, officials and department heads, or any class or classes thereof under a policy or policies of group health, accident, accidental death and dismemberment and hospital, surgical or medical expense insurance. Most, if not all, of such bodies have heretofore been authorized to procure group insurance. An attempt is made in this act to make it all inclusive insofar as the state and its subdivisions and agencies and departments are concerned. Likewise, the act attempts to be all inclusive in authorizing procurement for educational institutions and school districts of the state. Several new features are introduced into our law by the act. The first of these is the limitation upon the amount of the premium which the state may pay. This is fixed at 50%, but is intended to apply only when the premium is paid out of funds appropriated by the state. This would mean that the limitation does not apply where subdivisions of the state are on a revenue producing and self-supporting basis. There is a specific exemption from this requirement covering contracts already in effect where the state contribution is more than 50% and the contract is continued in force. A second departure from prior law is the specific authorization granted to the Governor, allowing him to procure a contract of insurance for any department, agency, or association of employees which are directly responsible to him. The third innovation is a requirement that the amount paid toward the premium by the state, its subdivisions, agencies, departments, including the educational institutions, shall be subject to the approval of the Commissioner of Administration of the State of Louisiana. The right of the public officials to deduct the employees' contribution towards the payment of the group premium is reserved in the act.

Act 295 contains similar provisions authorizing the making of contracts of group life and group accidental death and dismemberment insurance. There is one difference to be noted between the two acts and that is that Act 294 permits specifically the inclusion of dependents of employees, officials, and department heads as insureds under group policies which provide hospital, surgical, or medical expense insurance. There is no such provision in Act 295 with respect to the inclusion of dependents

where group life, accidental death, and dismemberment insurance is procured.

Attention is directed to the fact that while both the above acts contain a repealing clause, there is no specific repeal of Title 33, section 5151, authorizing any municipality or political subdivision of the state to make contracts of insurance insuring their employees and officials under policies of group insurance covering hospitalization and retirement, in which they agree to match the payments of the employees and officials for the premiums or charges for any such contracts, by payments out of the funds of such municipalities or political subdivisions. Since no mention is made in either Act 294 or 295 of contracts providing retirement benefits, there seems to be no implied repeal insofar as section 5151 applies to contracts for retirement benefits. Some basis exists for contending that section 5151 has been repealed insofar as it applies to the procurement of hospitalization coverage by political subdivisions of the state, but this would not seem to be true with respect to the authority granted municipalities under the provisions of the section.