

July 1960

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Recommended Citation

Robert D. Williams, *Montana's Comprehensive New Insurance Law*, 22 Mont. L. Rev. 1 (1960).

Available at: <https://scholarworks.umt.edu/mlr/vol22/iss1/12>

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Montana's Comprehensive New Insurance Law

By ROBERT D. WILLIAMS*

In 1959 the Montana legislature considered, debated and finally passed the largest bill in its history. In bill form the new insurance code ran to 285 printed legal size pages; published as Chapter 286 of *Laws of Montana 1959*, it runs to 361 solid pages of law. This is not to infer that there is any virtue in quantity of a law, and in fact the truth may be to the contrary. It is merely to suggest the outer physical boundaries of Montana's new insurance code, effective January 1, 1961, and to reflect that if its contents are necessary, useful, well-organized and firmly packed, then here indeed a vast important new mountain of law is appearing in Montana's Statutory Range, a mountain which throughout what remains of our time Montana lawyers will explore for assistance in matters involving insurance.

In this article — if I may be permitted to carry the simile along a bit further — we'll not attempt any close exploration of this new mountain of law. Rather, we'll make a sort of reconnaissance for some clues as to the why, whence, and what of the mountain, and to find out what it may be good for, if anything, to the average Montanan and his attorney.

EXISTING INSURANCE LAWS

In building the new insurance code it was not possible nor necessary to start out with just nothing. Montana already had 150 pages of insurance statutes, and was apparently among the early states of the far West to legislate relative to insurance. Some of these existing statutes go back well into the last half of the 1800's, and there are indications that some are of even older derivation. For example, the first hundred or so sections of the old insurance code deal largely with the substantive law of insurance contracts, and in style and context reflect a possible civil law origin, reaching Montana via California in the days — now long past in this country — when insurance was a matter strictly of private contract between the parties with little or no public interest therein or public regulation of the insurance business. These particular provisions of the old code were found, upon examination, to have been engulfed by common law growth in the same area more adequate, flexible, and modern in character, and were consequently omitted, with few exceptions, from the new code.

In other respects the old insurance code had considerable scope. It provided for public supervision of the insurance business, to a degree governed the formation and operation of insurers, the licensing of insurance agents, and related matters. However, because of recent developments in and relative to the insurance business and the responsibility of the state in insurance regulation, the old code had become inadequate, in many re-

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spects obsolete, and too narrow and limited in its plan of organization to provide a suitable structure for the needed improvement through mere supplementation or amendment. As a first step toward building the new code the old code was therefore dismantled, provision by provision and idea by idea; that which was found to be obsolete or impractical in view of modern requirements was discarded, and that found to be desirable was salvaged for use, often as raw material, in the construction of the new.

WHAT HAS BEEN HAPPENING TO INSURANCE AND THE STATE

After a new law has been enacted it may appear academic to discuss the necessities of its creation. But because in the case of the insurance code these necessities are *continuing*, because laws made by legislatures can likewise be changed by them, it is advisable to allude briefly to the principal developments which have made enactment of the new code imperative.

The Insurance Revolution

"Revolution" is to some a distasteful word; and it is especially so to the insurance business, as clashing with the aura of calm predictability in which it is wont to appear in public. But the term as here intended is not to the discredit of insurance, but rather in its favor; and I know of no more appropriate word to describe the swift and deep-cutting changes that have taken place in the concepts, techniques and practices of the insurance business within the last twenty years. In every insurance field the evidences of this change are apparent. Until generally the early 1940's the insurance business for many years had existed in an atmosphere of pastoral "stability." In life insurance the American Experience Table of Mortality and relatively simple actuarial formulae were still used, and group life was relatively unspectacular. In accident and health insurance the individual policy providing accidental death, lump sum dismemberment, and disability income benefits was the principal arm of service. And fire, casualty, and surety insurance companies still occupied and defended their respective fortifications in feudal isolation and splendor—this a consequence of the vertical growth in this country of these particular branches of insurance and the vertical development and crystallization of insurance laws by which they were governed. This vertical growth and laws insulated one kind of insurance from the other and prevented any one insurance company, no matter how strong financially and otherwise able, from insuring against more than a carefully circumscribed group of perils. A "fire" insurance company could not include "casualty" or "surety" coverages in its policies, a "casualty" company was likewise restricted as to "fire" and "surety" perils, and so on.

This vertical stratification of the important fire, casualty, and surety lines of insurance had serious practical consequences. It made it difficult for the insurance business to meet the needs of commerce and industry for broad insurance coverages as embodied in single insurance contracts. Instead, the coverage had to be chopped up into its component "fire," "casualty," and perhaps "surety" parts, and distributed among the different specializing insurers. This called for a multiplicity of separate insurance policies often difficult to harmonize with each other, frequently producing gaps and excesses of coverage, and unavoidably resulted

in higher cost of the insurance because of the duplications of effort and financing involved.

But further, this vertical stratification had strongly affected the structure of many of the insurance codes of the nation. To a substantial degree these codes, including the old Montana code, were built around the different *kinds of insurance companies*. They attempted to provide with some completeness separate bodies of law for each kind of company, resulting in much duplication, much unjustifiable differentiation, and insuperable practical obstacles to tight organization of the whole law or to keeping it abreast of its times by amendments.

This vertical character of fire-casualty-surety insurance development did not reflect any inner compulsion of insurance, but rather the sort of historical accident that is apt to result illogically in any field. It just happened that the fire companies came along first and set up their own feudal jurisdiction in the law; that for a long time there was doubt that the surety business was even "insurance;" that late-coming casualty was relegated to a then unoccupied "miscellaneous" insurance area which, with the vast expansion of automobile insurance and other newly conceived insurance services, has now become a dominant insurance field. And when maturity arrived, as apparently it did in the first half of the present century, it found each of the three insurance fields deeply entrenched in its concepts, practices and separate laws, stoutly defending its own feudal rights against encroachments, while at the same time endeavoring through various devices to undermine and invade the fortifications of the others.

This was substantially the state of affairs at the onset of World War II. It would be convenient if, as with so many other deep changes in world affairs, we could tie what has happened in the insurance business in the past twenty years to World War II. But, apart from the pressures of new volumes of insurance demanded and the multiplication of new insurance services resulting from the war effort, I cannot discern any such direct relation. Rather it appears to me that the changes came from the growth of insurance itself; and to a degree as a triumph of reality and logic over tradition and habit.

In life insurance new mortality tables, and more subtle, complex and precise actuarial methods were devised to reflect the growing average life span of American policyholders, and for better apportionment of premiums, reserves, and non-forfeiture values among the various classifications of insureds and policies. With post-war interest in "security" and "fringe benefits," group life insurance literally exploded into vast new volumes and protection schemes. Accident and health insurance also felt the group insurance bulge, and as well loosed a new torrent of its own in the medical, surgical and hospital benefits field. Both life and accident and health insurance became involved in the rapidly developing coverages through which lenders and credit vendors were protected against the demise or disability of their debtors.

And finally, logic and reality engulfed the feudal domains of fire-casualty-surety. In the early 1940's agitation arose within the insurance business to allow a *university of Montana* and to permit one insur-

ance company, if sufficiently well financed, to write any and all of the three lines, and to combine as much of the three in any one policy "package" as might be of service to the policyholder. This concept was referred to as "multiple line underwriting," and after several years of debate in the parliaments of insurance across the nation it finally prevailed. Commencing generally in about 1945-1947 the barriers between fire-casualty-surety insuring powers were swept away by amendment of insurance codes in state after state, and a new era of broad and simplified insurance coverages — consequently better insurance service and more insurance value for the policyholder's dollar — came into being.

It was possible by simple amendments to insurance codes to authorize the new mortality tables, the new group insurance and credit insurance plans, the new multiple line underwriting powers, and to add lump by lump the new "model" laws governing some of these matters issuing from or blessed by the National Association of Insurance Commissioners, and so to make the new facilities available in a state. But it was not possible thus to change the basic structure of the codes and provide the broad foundations and organization required properly to accommodate both the new concepts and the inevitable future growth of law related thereto. Attempts to overlay the old structure with the new could result only in increased confusion, ambiguity and conflict in the law.

Reconstruction of insurance codes was called for by the surge of new developments within insurance itself.

The Broadened Responsibility of the State

In 1944 the United States Supreme Court added a new and independent necessity for the re-evaluation of regulation of the insurance business by states, and for the improvement of laws upon which state regulation rested. In that year the Court in the case of *United States v. South-Eastern Underwriters Association*¹ overturned a precedent of some 75 years standing, based upon the case of *Paul v. Virginia*,² and for the first time held that insurance business transacted across state lines was interstate commerce, subject to the federal laws and federal agencies applicable to such commerce. The great bulk of insurance business of a particular state may be written by companies domiciled in other states, and almost all insurance business in this country was affected by the decision. Among the federal laws thus becoming applicable to insurance, such as the Sherman Act, were some designed to meet monopoly and competition problems existing as to commerce in general, but imposing severe sanctions upon practices, such as pooling of loss and other insurance "experience" data, which to a degree cannot be avoided by certain parts of the insurance business if insurance is to be sound.

The SEUA decision — as it has come to be generally known — also raised squarely the issue of state versus federal regulation of the insurance business. Under *Paul v. Virginia* the states had enjoyed the exclusive right of regulation, and under state regulation the American insur-

ance business had developed to a point of technical soundness, variety of services, and consideration for the rights and interests of policyholders which in some respects could be the envy of the rest of the world. Further, there was a feeling that in a business in which some companies had become gigantic in size, resources and influence potential, the state systems tended to protect local interests, to foster the creation and growth of local insurance companies, and to enable or require insurance to shape itself in such manner as may be thought best to serve local needs.

Whereas in the past the insurance business had made some attempts of its own to break the state monopoly in insurance regulation, the immediate possibility of regulation by both the federal government and the states, as brought forward by the SEUA decision, stirred the states and the insurance business into a concert of action in defense of state regulation. Congress became interested, and in 1945 enacted the McCarran Act, also commonly known as Public Law 15.⁹ This law in substance declares that a continuation of state regulation and taxation of insurance is in the public interest, but that to the extent that insurance is not so regulated by the states the federal Sherman Act, Clayton Act, Robinson-Patman Act and Trade Commission Act would, after June 30, 1948, be applicable to the insurance business. Thus Congress invited the states to continue to regulate insurance to the exclusion of the federal government, but warned that if the states did not do an adequate job as to monopolistic and unfair trade practices, the federal government was ready, able and willing to take over. With enactment of the McCarran Act the states quickly recognized that however good state insurance regulation had been in the past, it had to be even more adequate and effective in the future if the federal government was to be prevented from adding this state possession to the collection of former state functions and rights now swelling the bureaucracies along the Potomac.

The New Insurance Codes

So, forced by massive changes within insurance and the threatened loss of further state prerogatives to the federal government, the states began a thorough overhaul and extensive supplementation of their insurance laws. New and revised insurance codes were early enacted in Washington and Utah; then by Louisiana, Kentucky, Puerto Rico, Arizona, West Virginia, Hawaii and Oklahoma; then, within the past two years, by Florida, Arkansas and Montana; and now in process are the new codes for Idaho, Maryland, Georgia, Alabama, and perhaps other states. New York and Illinois had already revamped their codes in the mid-1930's and to a degree had laid a sufficiently broad foundation therein for the new developments of the 1940's.

Enactment of New Montana Code

Montana's veteran State Auditor and ex officio Commissioner of Insurance, John J. Holmes, early foresaw that it would not be possible to build the needed modern and more adequate insurance law for Montana without dismantling the old. While adopting certain of the new laws to

tide the state over, in the early 1950's he laid plans for the production of the new Montana insurance code which was needed. Actual drafting and assembly of the new code was commenced in 1957, and by summer 1958 a preliminary draft had been produced, published and distributed to parties concerned throughout Montana and the nation. In August, 1958, two weeks of public hearings were held in the Senate Chamber of the State Capitol, Helena, during which each provision of the proposed new code was called forward for criticism or suggestions for improvement. Thereafter the code, with such modifications as had been found advisable following the intensive pre-legislative review, was typewritten in legislative form and presented to the 1959 legislature as one of the first bills to be introduced in that session. As House Bill 29, introduced by the Banking and Insurance Committee, it was finally enacted, but not until after it had been once "killed" because of conflicts relative to proposed amendments, and then revived in time. It is a tribute to Montana legislators, as well as to State Auditor Holmes, Montana insurance agents, and others who so capably espoused the new code, that the legislature so quickly grasped the need and essentials of the proposed new law, and that the legislature was willing to accept on faith in a job reasonably well done the many small details which in a bill so large no legislature in a session of 60 days would have time to examine minutely.

And so, we finally arrive at the base of the mountain, the new law itself. And if, kind reader, you feel at this point that we've been too long getting here, let me assure you that as the distance across the Montana valley to the looming mountains on the horizon may look deceptively short to the newcomer, the actual distance we had to travel from where we started with the new code in 1957 to where we are now in 1960, was in fact a lot farther and a lot rougher than it appears to be even from here.

GENERAL SCOPE AND ORGANIZATION OF THE NEW LAW

The new insurance code is made up of 28 chapters,⁴ each devoted to a special general or particular aspect of the law. It begins with general definitions, exclusions and penalties, moves into the general powers, facilities and duties of the Commissioner of Insurance, the financial and other general requirements of insurers desiring to transact business in Montana, then into insuring powers, insurance accounting and investments, insurance representatives and production activities, insurance rates and contracts, the formation and corporate affairs of Montana insurance companies, then chapters dealing with particular types of insurers, with rehabilitation and liquidation of insurers in financial distress, special provisions for administration of trustee assets of alien insurers using Montana as a port of entry into the United States, and ending with the chapter on fraternal benefit societies.

In one way or the other the new law touches just about every aspect

⁴Not including the first 25 chapters which repeal certain sections of the old insurance code. Title 40, Revised Codes of MONTANA, 1947. (Hereinafter REVISED CODES OF MONTANA are cited R.C.M.)

of insurance operations which may have a bearing upon the policyholder's security, rights and interests.

Plan of Organization

The plan of organization of the new code is, I believe, very good. It is one which — perhaps for lack of a more apt term — I call an “organic” plan. For just as the human body is put together in such a way that every organ, nerve and cell is in its proper place in relation to its function with respect to the whole, so must a massive body of law likewise be organized.

A glance at the chapter list below will help in understanding how this plan was followed:

<i>Chapter No.</i>	<i>Subject</i>
	(General administration and requirements)
26.	Scope of code.
27.	The Commissioner of Insurance.
28.	Authorization of insurers and general requirements.
29.	Kinds of insurance; limits of risk; reinsurance.
	(Accounting and financial)
30.	Assets and liabilities.
31.	Investments.
32.	Administration of deposits.
	(Field operations)
33.	Agents, solicitors and adjusters.
34.	Unauthorized insurers and surplus lines.
35.	Trade practices and frauds.
	(Rates and contracts)
36.	Rates and rating organizations.
37.	The insurance contract.
38.	Life insurance and annuities.
39.	Group life insurance.
40.	Disability insurance policies.
41.	Group and blanket disability insurance.
42.	Credit life and disability insurance.
43.	Property insurance contracts.
44.	Casualty insurance contracts.
45.	Surety insurance contracts.
46.	Title insurance.
	(Types of insurers)
47.	Organization and corporate procedures of stock and mutual insurers.
48.	Farm mutual insurers.
49.	Benevolent associations.
50.	Reciprocal insurers.
51.	Rehabilitation and liquidation.
52.	Trusteed assets of alien insurers.
53.	Fraternal benefit societies.

all types of insurance companies — are grouped together in the first seven chapters. The next cluster of three chapters (chapters 33 through 35) deal largely with insurance field operations, controlling qualifications and licensing of insurance agents, solicitors and adjusters, the placing of coverages in "nonadmitted" or unauthorized insurers (those who have not been licensed by the state), and trade practices as met in insurance sales and competition activities. Then comes one chapter dealing with insurance rates (chapter 36) followed by a large spread of ten chapters (chapters 37 through 46) covering insurance contracts in general and contracts for specific kinds of insurance coverage in particular. An important single chapter is chapter 47, governing the organization and corporate procedures of stock and mutual insurers, which is largely applicable only to Montana companies. Then follow three chapters dealing with unique types of insurers — farm mutual insurers, benevolent associations, and reciprocal insurers—(chapters 49 through 50), the important general chapter (chapter 51) on rehabilitation and liquidation, and the two remaining chapters (chapters 52 and 53) dealing with trusteed assets of alien insurers and with fraternal as already mentioned.

It will be observed that in the chapter plan above reviewed there is a particular general area for each function of law. As insurance develops and new chapters as yet unimagined become the necessities of the future, each can be enacted and fitted neatly into the code plan where it belongs. In drafting the code a special effort was made to place each provision exactly where it belonged within the logic of the particular section, chapter and plan of organization of the code. Once a proposition was so imbedded, it was left alone, and not repeated elsewhere. We tried to follow what I believe to be good advice in preserving sound organization in preparing any law: "Say it *once*; say it in the *right way*; say it in the *right place*; then *quit* saying it!"

This plan of organization, and these precepts which guided its preparation will, I believe, make the new code easy to work with. It will be easy to find things in, and there will be a minimum of possible conflicts between the various provisions. Once the logic of its plan of organization is understood, particular provisions can be found without reference to an index. Of benefit to those who may be concerned with the insurance laws of more than one state is the fact that a similar plan of organization is being used in other new insurance codes; and in them it will be possible to find and evaluate particular provisions without having to search the whole book.

But such taut organization will require special care if it is to be preserved. Future proposed insurance legislation will have to be carefully scanned by some interested Montana group or legislative authority to see to it that it is so organized and drafted as to fit into the code pattern. Otherwise after a few active sessions of insurance legislating the code can again become poorly organized and difficult to work with.

GENERAL CONTENT OF THE NEW LAW

Unfortunately, perhaps, a law is without characters or an intriguing plot, and hence cannot be quickly or interestingly summarized. Rather than attempt such a summary, which I am sure would make extremely dull

reading, I will attempt something of an orientation of the code in relation to its response to the problems which called it into existence. In conclusion, I will list certain items in the new code which may be of practical interest and value to Montana practicing attorneys.

It will be recalled that earlier in this presentation it is stated that enactment of the new code was compelled by two major circumstances; first, the massive changes which have taken place in the concepts, techniques and practices of insurance, and second, the necessity for strengthening state insurance laws and state insurance regulation in the face of a threatening federal take-over.

Let us see, then, what the new code has done to meet these challenges.

Response to Insurance Program

As to life insurance, the provisions governing mortality tables and actuarial formulae, factors and methods, policy contents and plans, were brought up to date; comprehensive new provisions for group life insurance were included; and a new chapter governing the use of life insurance and accident and health insurance in credit transactions was adopted. In accident and health insurance an extensive chapter dealing with the contents of such policies was added to the law, as was another chapter covering the issuance of accident and health insurance on a group or "blanket" basis. All of these chapters and most of these new provisions are "standard" in character, and will be found in substantially identical terms in state laws throughout the nation. They result from "model" laws designed under the auspices of the National Association of Insurance Commissioners, often following years of study by committees of Commissioners and sub-committees made up of able technicians.

Uniformity among the states in these aspects of insurance law, as well as in others, is highly important. Insurance would be considerably more expensive and service less responsive if standard policy forms, actuarial bases and business practices had to be changed from state to state.

Multiple Line Underwriting

The advent of "multiple line underwriting," through which one well-financed insurance company could write all fire, casualty and surety lines, is reflected in the basic design of the code. Aside from the fact that there must continue to be different "types" of insurers — such as stock, mutual, and reciprocal organizations — differing in internal structure and therefore calling for special provisions for their internal affairs, the code treats them all substantially alike when it comes to their external operations. The code generally deals in "kinds" of insurance, rather than kinds of companies, and attaches capital, reserve, investment and contract requirements to the kinds of insurance the insurer may be transacting. This provides for sound organization of the law and complete flexibility in application.

Chapter 29 of the code provides modern, broad definitions for six basic "kinds" of insurance: life, disability (accident and health), property, casualty, surety, and title insurance, respectively. Although a separate

definition of "marine" insurance is added for convenience, this is really a combination of property and casualty insurance lines. It would be difficult to imagine a future newly developed insurance coverage which would not fit easily into one or the other of these basic "kinds."

Except that for the present a life insurer (with certain exceptions recognizing "grandfather" rights on the parts of long-established major insurers) may not also transact property, casualty, surety or title insurances, any one insurer may, by meeting the requirements of the code as to capital and surplus, write any and all of these insurance lines; and one insurer, subject to a degree to some further evolution in insurance rating facilities and techniques, may combine in one insurance policy such of the different kinds of insurance as may provide a useful, efficient and economical insurance "package" for the policyholder. Already broad insurance contracts for industrial and mercantile risks are available; and the popular "homeowners" type of policy under which the home and its contents may be protected against fire, windstorm, burglary, and other risks, while at the same time providing protection to the home owner against legal liability, with medical and hospitalization benefits included in some cases, is a sample of some of the practical advantages that multiple line underwriting is bringing, and the further development of which the new code will facilitate.

At last the laws as found in Montana's new insurance code have come to recognize the unity of insurance, and to build upon its unity rather than — as in the past — upon its divergencies. The new code amply responds to the needs of insurance progress, both for today and for the indefinite future.

Response to the State's Obligations as to Insurance Regulation

In the years following the enactment of the McCarran Act by Congress in 1945 there arose a school of thought among insurance lawyers and others concerned with the matter, that all a state had to do to meet the requirements of the Act was to "occupy" the areas otherwise open to federal laws and agencies by merely passing laws reproducing at the state level essential aspects of the Sherman, Clayton, Robinson-Patman, and Trade Commission Acts, as applied to the insurance business; that once such laws were passed and the areas "occupied" by the state, federal laws and federal concern were effectively excluded; and that it made no difference whether these state laws were well administered or were in fact enforced. Although respectable constitutional authority is cited in support of this viewpoint, subsequent handling by the courts has indicated that this view is not apt to prevail and that if the states are to preserve their dominance as to insurance regulation they will both have to possess or acquire, and effectively administer, an adequate body of insurance laws.

I have never believed that the states could maintain their status in insurance regulation through any such "paper" laws. I have felt that only adequate state laws effectively administered had a chance of holding federal insurance regulation at bay. The new Montana insurance code therefore is designed as a strong, sharp, and sufficiently versatile instrument

for the protection of the Montana public interest in insurance, with special facilities for its administration.

Let us look at a few of the code's features in this light.

The Commissioner

Chapter 27 of the code provides the basic tools of administration. In addition to the designation of a chief deputy and the necessary clerical help, the Commissioner is authorized to employ a competent insurance actuary and examiners, a field investigator to look into claimed violations, and to contract on a fee basis for such other specialized actuarial, technical or professional services as he may from time to time require. Thus the Commissioner can, as far as the law goes, at all times have a sufficient, competent staff.

The Commissioner is given broad rule-making power, as necessary for or as an aid to effectuation of any provision of the code, together with complete powers of inquiry and investigation into insurance matters and transactions in the state. Not only is the customary power of periodic examination of insurers continued, but examination power is also extended as to insurance affairs or proposed insurance affairs of insurance representatives, insurance managers, controlling stockholders or proxy holders, and insurance promoters.

The chapter contains a full set of administrative procedure provisions, governing the Commissioner's hearings and the conduct thereof, powers to subpoena and to compel attendance and testimony of witnesses and production of evidence, all designed to facilitate the discovery of the facts while providing full constitutional safeguards as to the rights of parties affected thereby.

To balance off these broad and necessary powers of the Commissioner, all actions which he might take or threaten are subject to review on appeal and a hearing *de novo* thereon by the courts.

Qualifications Required of Insurers

Barred in general from Montana under chapter 28 of the new code are foreign insurers (the so-called "assessment," "stipulated premium," and "cooperative plan" insurers, among others) transacting business on other than a legal reserve basis, insurers both foreign and domestic whose principal management personnel have been found to be untrustworthy or incompetent or so lacking in insurance managerial experience as to make the proposed operation hazardous to the insuring public or its stockholders, or insurers linked even indirectly with persons whose insurance or other business operations have been marked by shady practices.

The financial requirements for admission of insurers have, in the new code, been materially strengthened. Although basic capital (for stock insurers) or surplus (for mutual or reciprocal insurers) requirements remain substantially as under the recent old code — ranging from \$100,000 for life or disability or title insurance powers, through \$200,000 for property or marine powers, \$250,000 for surety, \$300,000 for full casualty, to

\$400,000 for multiple line insuring powers — the new code requires newly admitted insurers to have in addition expendable surplus equal to up to 100% of such basic capital or surplus. And if the insurer is to transact multiple lines at least \$100,000 of such surplus must be at all times maintained, thus resulting in a maintained minimum of \$500,000 of capital-surplus for authority to transact multiple lines.

As a further addition to financial requirements for admission of the insurer it must maintain a trust deposit in Montana or with public authority in its home state in an amount equal to the maintained capital or surplus required for admission to this state. This trust deposit must be comprised of cash or high quality securities, and be held for the benefit and protection of the insurer's policyholders, or its policyholders and creditors.

Grounds for Ouster of Insurers

Part of the "strength" of laws establishing the qualifications of insurers exists in those to be met as a condition to the admission of the insurer into the state. But much of such strength is to be found in provisions for the termination of its right to do business based upon how the insurer has conducted itself after admission. Added to the traditional grounds for suspension or revocation of the insurer's certificate of authority, such as the insurer's financial impairment, refusal to be examined, "unsound condition," etc., the new code adds several interesting new bases for such an ouster. The insurer may, for example, be required to discontinue Montana operations if it is found to be using methods or practices rendering its further transactions injurious to policyholders or the public, or if the insurer has, as a general business practice, without just cause refused to pay proper claims arising under its policies, whether on behalf of the insured or a third-party liability claimant, or has been the subject of any form of receivership proceedings in another state.

These new powers of discipline are, and are designed to be, very broad. They help equip the Commissioner, well beyond any facilities provided in the old code, with the necessary tools for discouragement of irresponsible and "sharp" insurance practices.

Insurance Accounting and Investments

The heart of insurance security, and therefore of policyholder protection, is in the reserves maintained by the insurers and the accounting practices by which the amount of such reserves is to be determined. In light of this fact it is strange that the old Montana code, as with the bulk of former state insurance codes elsewhere, provides little basis in the law as to either reserves or accounting other than as to life insurance. Insurance accounting is not like commercial accounting or other kinds of accounting, but has its own principles and practices as developed through many years of experience with the special needs and hazards of the different kinds of insurance business. Things which may be properly classified as "assets" of a commercial enterprise, such as furniture and equipment, automobiles, supplies, certain accounts receivable, value of trademarks, etc., are not includable as assets of an insurer.

Without here laboring with the details, the new code in chapter 30 has a complete set of provisions for determining the assets and liabilities, and for computing the particular reserves as applicable to any and all kinds of insurance. Since insurance accounting is the same in Montana as elsewhere in the United States, these provisions are standard and will be found also in substantially identical terms in the new codes enacted by other states.

Insurance Investments

But definitions of "assets" and formulae for the calculation of reserves do not of themselves produce financial soundness unless resulting figures represent also funds in cash or wisely invested by the insurer. Although laws governing investments must—unless so restrictive as to be impractical—always leave a margin of choice to the insurer, it is possible to require a relative soundness of the insurer's investment portfolio through provisions limiting investments to designated categories of investments fulfilling specified qualifications, and requiring reasonable diversification. Chapter 31 of the new code has a complete set of such provisions, somewhat more adequate than under the old code, restricting investments in general to such securities as public obligations, "gilt-edged" corporate bonds, limited proportions of preferred, guaranteed and common stocks, real estate mortgages and limited holdings in real estate.

Expressly prohibited are investments in securities of corporations or enterprises controlled directly or indirectly by the insurer or any combination of the insurer and its directors, officers, parent corporation or controlling stockholders, or in notes, etc., of the insurer's directors, officers or controlling stockholders, other than the ordinary life insurance policy loan.

While these investment provisions are designed particularly as to Montana-domiciled insurers, they serve also as a general standard for use by the Commissioner in scrutinizing the investment portfolios of foreign insurers.

Insurance Representatives

The principal point of contact between the insurance business and the public is the insurance agent. This being so it is apparent that if the agent is not competent, if he doesn't fully understand the coverage that he is offering or for one reason or the other fails to handle his insurance affairs properly, both the public and the insurance business will suffer. There is among Montana insurance agents handling a large bulk of insurance services, a corps of men who by virtue of experience, special training, and knowledge of a broad insurance technology are true insurance professionals. On the other hand, there are many who come and go, and every year dozens of people in Montana take a quick try at being an insurance agent and then pass on to other things. While heretofore would-be agents have been required to meet formal qualifications of Montana residence, "trustworthiness," or "competence" as expressed in the law, there was in fact no way provided for finding out whether the applicant for agent's license had enough knowledge of what he was about to undertake to be satisfied by the public.

At the present stage of development it is not practical to require that applicants for agent's license be competent in the same sense that the established and experienced agent is competent; it is practical and generally required in other states that the applicant take and pass to the Commissioner's satisfaction a written examination to establish that he has at least a required minimum knowledge and understanding of the insurance he proposes to handle, of his responsibilities as an agent, and of the laws which will govern his activities.

It is so provided in the new code, in a chapter (chapter 33) which for the first time gives Montana an effective basic agents' qualification law. It also provides, among other first things, for the licensing of "solicitors" — representatives employed by licensed agents to assist them in the securing and servicing of insurance business, and for the special licensing of vending machines such as are used for sale of accident insurance in airports.

Adjusters

Of particular interest to attorneys may be the provisions in the new code, also in chapter 33, for the qualification and licensing of independent insurance adjusters. This is a new requirement, no such licensing being provided for under the old code. An applicant for an adjuster's license is not required to pass an examination, but must be 21 or more years old, be a resident of Montana or of a reciprocating state, be a full-time salaried employee of a licensed adjuster, or a law school graduate, or have had special education, experience or training in the handling of insurance claims. By definition *licensed Montana attorneys*, salaried insurer employees, or insurance agents adjusting losses arising under policies of their insurers, are not deemed to be "adjusters" and *are not required to be licensed as such*.

Through licensing of independent adjusters this important branch of insurance representation, which has direct dealings with the public as to insurance matters, is effectively brought within the range of public regulation.

Unauthorized Insurers

A problem which has concerned the states for many years is that of the unauthorized or "nonadmitted" insurer, the insurer that remains out of jurisdictional reach beyond the state's borders but solicits insurance in the state via the mails or through carefully concealed local channels. Although the state may be deprived of the premium tax on the business so secured, a principal objection to such operations is that when a loss arises under the policy it may be difficult for the policyholder to collect his benefits; and in addition, there is the fact that the state can provide its citizens with no protection as to the financial condition of the insurer.

The new code gets at this problem of the unauthorized insurer through four different channels:

1. *Representation of Unauthorized Insurers Prohibited.* The old code in scattered provisions punishes representation of unauthorized insurers with penalties ranging from misdemeanor, to \$1000 fines, up to a felony. These provisions have in the new code been consolidated, amplified,

and fitted with the necessary exceptions.⁶ In addition, the new code closes Montana courts to such insurers other than as to excepted transactions.⁹ Typical of such "excepted transactions" would be the case where an out-of-state tourist involved in an auto accident in Montana has his liability insurance with an insurer not authorized to transact insurance in Montana, which insurance was purchased by the tourist in his own home state. Under such circumstances the insurer is permitted to come into Montana and do all things necessary to handle the claim, and to litigate the matter in Montana courts if necessary.

2. *Service of Process on Unauthorized Insurers.* The new code has, in chapter 34, a body of statutes new to Montana which may be of special interest to the Montana practicing attorney. These statutes embody the so-called "Unauthorized Insurers Process Act," which has developed under the auspices of the National Association of Insurance Commissioners and first enacted by any state in 1949, and which has since been enacted by most of the states. It is especially directed at the "mail order" insurance company, that does not secure authority to transact insurance in the state but solicits business from residents of the state, contrary to the laws of the state, through the mails or other means. This new law provides in substance that any such solicitation or the delivery of a policy in the state, or the performance in the state of any service or transaction connected with such insurance by or on behalf of the insurer, thereby constitutes the Commissioner of Insurance as process agent for the insurer in the state, upon whom all lawful process issued in the state may be served in any action against the insurer arising out of the policy or transaction.

Without burdening this review with details, this new process law makes special provisions for notifying the insurer of the action, for defense of the action, and for allowance of attorney fees on default of the defendant or if defendant's refusal to pay the claim has been found to be vexatious and without reasonable cause.

It would be unrealistic to hold this new process act up as a panacea for the lawyer endeavoring to collect a loss claim from a mail order insurance company. Much of this type of business is in limited coverages in accident and health insurance, the loss may be too small to make litigation practical, and if the defendant insurer fails to appear in the suit and a default judgment is taken it is still necessary to take the judgment to the insurer's home state or elsewhere where its assets may be, and attempt to enforce it there.

Nevertheless, the new act goes as far as the states feel they can go at present, has already encouraged some insurers to cease unauthorized operations, and may provide a channel for relief to a client in some cases. The law has been held to be constitutional in cases brought before federal courts.⁷

3. "*Surplus Lines.*" Although there are strong prohibitions against

⁶R.C.M. 1947, § 40-3401.

⁷See, e.g., *Shelton v. Work*, 103 Mont. 100 (1934).

⁹E.g., *Parmalee v. Iowa State Traveling Men's Ass'n.*, 206 F.2d 518 (5th Cir. 1953).

transactions by or for unauthorized insurers in the new code, there are also necessary exceptions. A major area of exception has to do with what is called "surplus lines." These are insurance coverages for which an adequate market cannot readily be found among those insurers authorized to transact insurance in the state, and therefore may be "exported" to world insurance markets and be placed in insurers not otherwise authorized to transact business in Montana. The insurer that takes the coverage may be a United States insurer, or one domiciled in Europe, Latin America, or elsewhere.

To provide as much protection as is feasible in such circumstances, and to prevent such unauthorized insurers from using the surplus line market competitively against the insurers who have met the qualifications for admission to the state and abide by the policy form and rate restrictions of the state, all such "exports" must be handled by a Montana-licensed "surplus line agent." This "agent" is, in fact, a broker, acting usually as a go-between between the insurer and the insured. This broker must fulfill, under the law, certain responsibilities in the placing of the coverage and payment of the state tax thereon, and is under bond to the state to do so.

"Surplus line" provisions were enacted in Montana a number of years ago. In the new code the law was strengthened and supplemented with respect especially to the evidence of the insurance to be furnished the insured, and the insurer's responsibility as to premiums collected by the broker, whether or not the broker paid the insurer.⁸

4. *Tax on Independently Procured Coverages.* Three of the channels through which the new code deals with the unauthorized insurer — those of prohibition, service of process, and surplus lines — have just above been reviewed. The fourth closes a tax gap existing under present Montana laws, and provides a new inducement to the purchase of insurance through authorized or licensed facilities. Montana now collects a substantial premium tax on insurance written by the authorized or "admitted" insurers. Insurance "exported" to unauthorized insurers through licensed surplus line agents likewise pays its portion for the support of the State through the tax thereon collected by the agent from the insured and paid to the state. The agent is responsible for the payment of this tax.

But there probably always have been, and there now is a growing volume of, insurance coverages placed in unauthorized insurers direct by the insured himself, or illegally "under the counter" with the connivance of a licensed insurance agent. On a substantial amount of insurance the difference between premium including tax and premium without tax can be enough to swing the business away from authorized insurers and licensed agents and surplus line brokers.

It is generally believed that a state cannot by law constitutionally prevent its citizens from buying their insurance wherever they please, and they can buy it direct, without intervention or assistance of an agent or

broker, from an unauthorized insurer if they see fit to do so. It is also recognized that under the doctrine of *St. Louis Cotton Compress Co. v. Arkansas*⁹ a state cannot constitutionally levy a premium tax upon the insured because of an insurance transaction taking place outside the state even though the property so insured is located within the state.

Notwithstanding, it is felt that the tax burden as borne by the insurance business should be distributed as equitably as possible, and that such directly procured coverages with unauthorized insurers should likewise bear their share. For this purpose the new code has a newly designed provision in its section 40-3427, imposing a tax of 2% upon such premiums, placing the responsibility upon the insured for the report and payment of the tax, and outlining with considerable care as to constitutionality the transactions and rights which are subject to the tax. Delinquent taxes bear interest of 6% per annum, and may be collected by civil action. Life and disability insurances are exempted from the tax, in recognition of the relatively small amounts of premiums involved, the ambulatory character of such coverages, and the practical difficulties of administration.

Trade Practices

It has earlier been noted that one of the purposes of the new code was to so arm the state as to make federal regulation of insurance unnecessary. In the field of monopolistic practices, such as might otherwise fall within the purview of the Sherman Act, those relating to insurance rate-making had already been met by the rating laws — providing for a degree of public supervision of fire-casualty-surety rate-making — enacted in Montana a number of years ago and continued in the new code. Other aspects of discrimination, improper representations, and other practices in competition and in insurance-related transactions — which are the particular interest of the Clayton Act, Robinson-Patman Act, and Trade Commission Act — make up an important and purposeful group of new statutes to be found in chapter 35 of the new code.

Montana has already had some strong provisions dealing with rebating, illegal inducements and misrepresentations in sale and advertising of insurance, and these provisions were incorporated into broader similar provisions based in part upon a model "trade practices" law developed by the insurance business following the SEUA decision and now enacted by most states. In addition, the chapter includes prohibitions of defamation of insurers or proposed insurers, boycott, coercion and intimidation, unfair discrimination, "tie-in" deals under which lenders or vendors of property on contract require that insurance connected with the transaction be purchased from a particular insurer or agent, the collection of excess or unused insurance premiums, and the setting up of "fictitious" groups for the purpose of securing reduced insurance rates. The chapter also blocks interlocking directorates among insurers where such substantially lessens competition in the insurance business or tends to create a monopoly. As under the present

law, life insurers and their officers, employees, or agents are forbidden to own or otherwise control or be interested in any mortuary or undertaking establishment; nor can such an insurer agree with such an establishment for the conduct of funerals of insureds.

In event some new practice should be found in the insurance business which should be, but is not, expressly prohibited by other provisions, the chapter establishes procedures through which the Commissioner may determine that the practice is unfair or deceptive and require discontinuance.

Thus is the state fully equipped in the law to cope with practices which might otherwise require or justify the intervention of the federal government.

Approval of Policy Forms

Chapter 37 of the new code — "The Insurance Contract" — contains many interesting and useful provisions. Some of its features will be referred to hereinafter under "*Practical Items for Montana Lawyers.*" For the present, and as a further illustration of how the new code by extending thorough protection to policyholder interests is also providing the means through which state insurance regulation can continue to justify itself, I will mention only those provisions governing the filing and approval of policy forms proposed to be issued in Montana.

While the old insurance code has provisions requiring filing and approval of life and disability policy forms, it does not so provide as to insurance contract forms in general, nor does it set forth the criteria to be used by the Commissioner in determining whether to approve or disapprove a form.

Sections 40-3714 and 40-3715 of the new code require filing with the Commissioner of basic insurance contract, application, rider or endorsement forms at least thirty days in advance of use in Montana. The Commissioner is required to disapprove any such form found by him to be in violation of or in non-compliance with the code; or if it contains or incorporates any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract; or has any title, heading, or other indication of its provisions which is misleading; or is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible.

Necessarily exempted are "unique" forms, such as surety bonds and other insurance contracts which must be quickly "tailor-made" to fit a particular insuring situation.

While the new code cannot furnish a substitute for the insurance-buyer's own understanding of what the insurance contract provides, it does, through the approval provisions just mentioned, and coupled with the extensive "standard provision" requirements incorporated into the new code as to most forms of life and accident and health protection, give some better assurance that insurance policies offered in Montana will be honestly

Rehabilitation and Liquidation of Insurers

Despite the proliferation of laws and the utmost vigilance of Insurance Commissioners, an insurance company will occasionally be found in financial distress. Among the new companies the cause is usually under-financing or lack of experience and competence on the part of management; among the older companies violent economic upsets such as the great depression of the 1930's, widespread catastrophes such as the hurricane that devastated parts of New England several years ago, rapid upswings in "loss experience" such as have afflicted the automobile insurance business in years just past, and occasionally just plain bad judgment or dishonesty on the parts of management, can topple even the near giants of the business.

When an insurance company is found thus to have become crippled or to have fallen, public interest requires that if possible it be "rehabilitated," the causes of its condition removed, and it be put back on its feet. Or sometimes the remedy is a merger or "bulk reinsurance" of its business in another strong insurer. This public interest in rehabilitation exists in part because substantial values are destroyed through liquidation, and worthwhile insurability rights may be lost if the outstanding policies are cancelled.

If in the end the insurer must be liquidated, public interest requires that the liquidation be handled as expeditiously and economically as possible.

As simple as these objectives are, they have been somewhat difficult to realize under past laws.

In the early 1930's when certain insurance companies doing business nationwide had to be rehabilitated or liquidated, it was demonstrated by the experience that the usual state laws of corporate receivership and involuntary liquidation were not suited to the purpose. The insurer usually had the bulk of its assets in one state, and the bulk of its insurance in force in other states. Some states might have special or general deposits of the insurer, others may not. As against the natural tendency of each state wherein a shred of assets could be found to hang onto all it could get its hand on, for payment of the expenses of the local ancillary proceedings and perhaps — way down the line — to dribble what little may be left out to the local policyholders, the insurer's home state receiver would be hard put to gather together enough assets to realize much for policyholders in general. Under the usual corporate receivership laws, handling insurance companies in distress proved to be an extravagant, prolonged and generally unsatisfactory procedure.

Responding to this experience and demonstration, a committee of the American Bar Association collaborating with the National Association of Insurance Commissioners developed the "Uniform Insurers Liquidation Act." Essential features of this act have years ago been enacted by the bulk of the states, and are now brought into Montana law for the first time as a part of chapter 51 of the new insurance code. In this new chapter the Uniform Act is extensively supplemented, resulting in a compre-

hensive law spelling out both procedural and substantive aspects of insurance company rehabilitation and liquidation — grounds for "delinquency proceedings," rights and powers of domiciliary and ancillary receivers, the proving and priority of claims, administration of the company in receivership, and related matters.

In substance the Uniform Act part of chapter 51 requires that all proceedings for rehabilitation, conservation, liquidation, etc. of an insurer be brought in the name of the state on the relation of the Commissioner of Insurance, and that the Court shall, in all cases in which a receiver, rehabilitator, liquidator, conservator, etc. is to be appointed, appoint the Commissioner. It vests all records and assets of the insurer in the home state receiver; permits claims to be proven in either the policyholder's or creditor's home state or in the domiciliary state; and provides for an equal sharing in the assets of the insurer, wherever the assets may be located, by claimants and creditors of the same classification residing in "reciprocal" states. If a particular state has a "special" deposit of the insurer held for the exclusive benefit of the insurer's policyholders and/or creditors in that state, the Uniform Act prohibits any sharing in the insurer's general assets by such policyholders and creditors until all policyholders and creditors everywhere have received a distribution equal to that, if any, received by policyholders and creditors of the special deposit state. Since such special deposits are seldom larger than token amounts (and cannot be larger as a practical matter, for reasons which lie outside the proper scope of this article) and are inadequate to provide any real protection per se to local policyholders, the Uniform Act discourages requirement of such special deposits.

In short, the Uniform Act makes for economical administration of the insurer's assets and affairs, and for equitable treatment of policyholders and creditors, wherever they may be located in relation to its assets. It is, as has been inferred above, a "reciprocal" law; it is operative only as between those states which have enacted it. Through the new code Montana is making its advantages and benefits available to Montana people.

Mergers, Conversions and Consolidations

For business reasons financially strong insurance companies frequently merge or consolidate. Often a merger or "bulk reinsurance" of an insurer in financial distress into a stronger insurer is a suitable and readily available means of "rehabilitation," through which policyholders usually suffer no loss or inconvenience whatever. Here again the public interest in insurance requires that all such mergers, consolidations, and bulk reinsurances be subjected to closest scrutiny by public authority, and such is provided for by the new code in an unusually complete series of provisions in chapter 47.

Included also are provisions for mutualization of stock insurers, for converting mutual insurers into stock insurers, and for scrutiny of stock exchange proposals through which one insurer would acquire control of another.

a public hearing thereon to which all concerned are invited, and for approval of the proposal only if found by the Commissioner to be consistent with law, and fair and equitable to policyholder and stockholder interests. In addition, in the case of conversion or bulk reinsurance of mutual insurers, the new law protects, and requires special dispositions to be made relative to, the policyholders' equities in the insurer.

SOME SUBTRACTIONS, SUBSTITUTIONS, AND ADDITIONS

To Montana lawyers familiar with the contents of the old insurance code it may be useful to mention some of the changes in major areas in the new code which are not otherwise indicated in this article.

Farm Mutuals

Chapters 15 (mutual hail, fire and other casualty insurance of farm property, etc.) and 16 (mutual rural insurance companies) of the old code have been combined into a more comprehensive law in chapter 48 — Farm Mutual Insurers — of the new code. This new chapter increases the financial requirements of such insurers, provides for organization and operation of farm mutuals on both a county or a statewide basis, and grants some extension of insuring powers. Montana has a substantial number of such insurers economically serving the special insuring need of farmers.

Legal Reserve Mutuals

New provisions for formation and operation of legal reserve mutual insurance companies, for transaction of all kinds of insurance other than title insurance, are provided for in chapter 47 of the new code — Organization and Corporate Procedures of Stock and Mutual Insurers.

Assessment Accident Insurance Companies

Chapter 18 of the old code, providing for formation and operation of assessment accident insurance companies, was repealed and omitted from the new code. No such insurers are in operation in Montana, and since ample provisions are made in the new code for formation of legal reserve insurers of all kinds, this part of the old code was deemed to be no longer necessary.

Assessment Life Insurance Companies

Chapter 20 of the old code relative to assessment life insurance companies was repealed and omitted from the new code for substantially the same reasons as mentioned in regard to assessment accident companies just above.

Reciprocal Insurers

Although foreign reciprocal insurers have operated in Montana for many years and have become a leading "type" of insurer alongside "stock" and "mutual" organizations, Montana law has heretofore made no provision for the formation of Montana reciprocals, or for the internal affairs of such insurers. Be it known to those not familiar with this particular type of insurer that a reciprocal insurer is an unincorporated entity created and publishing by the law of a university of Montana 1960 by each policyholder or

“subscriber” to a common attorney-in-fact, to bind him reciprocally with respect to the insurance risks of all other policyholders or subscribers. In its external operations it behaves much as a stock or mutual insurer; internally it is somewhat different.

This lack with respect to reciprocals is cured in the new code by a complete chapter — chapter 50 — providing a comprehensive modern law for the formation and affairs of such insurers.

Fraternal Benefit Societies

Montana's old fraternal benefit societies law, as found in Chapter 21 of the old insurance code, was in the new code substituted in its entirety by a new model fraternal benefit societies code which was completed in 1955 after many years of work by committees of the National Association of Insurance Commissioners and of the National Fraternal Congress. The new fraternal benefit societies law¹⁰ in general removes obsolete factors from the old law, and provides for a broader life and disability insurance service by these societies for their members.

PRACTICAL ITEMS FOR MONTANA LAWYERS

Having succeeded, I hope, in demonstrating that the new insurance code is indeed an adequate response to the demands of insurance progress, to the vindication and protection of state regulation of insurance, and that it can do many desirable things in the interest of Montana policyholders in general, let us take a quick look at a few particular items in the code which may be handy for the Montana practicing lawyer to know about:

Service of Process on Authorized Insurers

In suits against foreign or alien insurers authorized to transact insurance in Montana service of process must be made on the Commissioner of Insurance as the insurer's exclusive process agent.¹¹ Montana-domiciled insurers may be served either by service upon the Commissioner, or upon the insurer in accordance with general laws providing for service of process on corporations.¹²

Service of Process on Unauthorized Insurers

In cases arising under “surplus line” policies, the unauthorized insurer is served by service only upon the Commissioner of Insurance as its process agent.¹³ If the policy was solicited by the unauthorized insurer by mail or through other unlicensed channels, service of process against the insurer may be made by service thereof upon the Commissioner of Insurance as its process agent by operation of law.¹⁴

Venue of Actions Against “Surplus Line” Insurers

A suit against an unauthorized insurer issuing a surplus line coverage

¹⁰R.C.M. 1947, §§ 40-5301 to -5359.

¹¹R.C.M. 1947, § 40-2818.

¹²R.C.M. 1947, § 40-2818.

¹³R.C.M. 1947, § 40-2424.

¹⁴R.C.M. 1947, §§ 40-3404, -3405.

shall be brought in the district court of the county wherein the plaintiff resides.¹⁵

Contractual Power of Minors

A minor 15 years old or more, as at nearest birthday, has legal power to contract for annuities and insurance on his own life, body, health, property, liability or other interests, or on the person of another in whom the minor has an insurable interest, and may exercise all rights and give valid and binding discharge as to all proceeds under such insurance. The minor cannot, however, unless otherwise emancipated, be bound by any unperformed promise to pay a premium, whether by promissory note or any other manner.¹⁶

Applications for Insurance

Applications for life insurance or for annuity contracts cannot be used as evidence in any action under the policy or contract, unless a copy of the application was attached to or made a part of the policy or contract when issued. This does not apply as to "industrial" life insurance policies.¹⁷

Statements in applications for insurance are representations and not warranties, and misrepresentations, omissions, etc. will not prevent a recovery under the policy unless fraudulent, or material to the risk accepted by the insurer.¹⁸

Validity of Noncomplying Insurance Forms

Insurance policies, etc. which do not conform to law are not thereby rendered invalid, but are to be construed as if they contained the required provisions or features.¹⁹

Copy of Insurance Policy to Automobile or Airplane Purchaser

Persons buying automobiles from dealers and others on contract often pay for insurance coverage as part of the price package, and the policy — which should always cover the vendor's interest in the automobile — is often retained by the vendor. In such circumstances the new code²⁰ requires the vendor to deliver to the vendee a duplicate of the policy or an adequate memorandum thereof. If the policy does not provide coverage of legal liability for injury to persons or damage to property of third parties, a statement of such fact shall be "printed, written, or stamped conspicuously on the face of" the duplicate policy or memorandum. This provision applies likewise as to mortgagees and pledgees of automobiles, and applies as well as to aircraft. It is designed to lessen those occasions when the automobile purchaser thinks the insurance included in the price package is full coverage for him, and finds out too late that it provides "full coverage" only for the vendor's interest. In a recent case²¹ in California

¹⁵R.C.M. 1947, § 40-3423.

¹⁶R.C.M. 1947, § 40-3710.

¹⁷R.C.M. 1947, § 40-3712.

¹⁸R.C.M. 1947, § 40-3713.

¹⁹R.C.M. 1947, § 40-3724.

²⁰R.C.M. 1947, § 40-3727.

²¹Unreported lower court decision.

a vendee was awarded judgment for over \$18,000 in a suit against an auto dealer on the ground that the dealer had led him to think that the policy provided liability insurance—which it did not include, as the motorist found out after he'd been involved in a serious auto accident. Compliance with this new provision is in the interests of both dealers and purchasers.

Minor May Receive Life Insurance Proceeds Without Appointment of Guardian

A minor 16 years or more old is competent to receive and give full acquittance and discharge for payments aggregating up to \$3,000 in any one year made by a life insurer under a life insurance policy or annuity contract. In the cases to which applicable, this provision may save the time, trouble, and expense of guardianship.²²

Proofs of Loss, Administration of Claims

An insurer is required to furnish forms for proof of loss to any person claiming to have a loss under its policy,²³ but does not, by reason of such service, or by acknowledging receipt of such proof forms or of notice of claim or information relative thereto, or by investigation of claims or negotiations looking toward a possible settlement, thereby waive any policy provision or defense thereunder.²⁴

Exemption of Life Insurance Proceeds From Creditors

Montana has an old provision²⁵ which purports to grant immunity to life insurance proceeds as against claims of creditors. For reasons which this article shouldn't be prolonged to explore, this old provision is extremely ambiguous, incomplete, and impractical. In the new code²⁶ there is a modern and complete provision which, in substance, exempts from creditors of the insured or of the beneficiaries, the proceeds of life insurance policies which are not by the terms of the policy payable to the insured or to his estate. However, under this new provision, premiums which have been paid on the policy in fraud of the insured's creditors may have prior status as to the proceeds if written notice of the creditor's claim is received by the insurer at its home office before the proceeds have been paid out to others.

Exemption of Group Life Insurance Proceeds

A new provision exempts group life insurance proceeds from creditors of the insured or beneficiaries, whether or not the proceeds are payable to the insured or beneficiaries.²⁷

Exemption of Proceeds, Disability Insurance

Disability insurance benefits, whether under accident and health

²²R.C.M. 1947, § 40-3731.

²³R.C.M. 1947, § 40-3732.

²⁴R.C.M. 1947, § 40-3733.

²⁵R.C.M. 1947, § 93-5814.

²⁶R.C.M. 1947, § 40-3734.

²⁷R.C.M. 1947, § 40-3735.

policies or under supplemental provisions in life insurance policies, are exempt from the claims of creditors of either the insured or beneficiaries.²⁹

Exemption of Annuity Contract Proceeds

The proceeds of annuity contracts are exempt from creditors to the extent of \$350 per month of annuity contract income.³⁰

Copies of the New Insurance Code

The new insurance code is published as chapter 286 of the *Laws of Montana 1959*, and as a supplement to *Revised Codes of Montana, 1947*. It is also available in separate pamphlet form in a well-printed booklet published by State Publishing Company, Helena.

CONCLUSION

Our foregoing reconnaissance of the new Montana insurance code establishes, I believe, that it is both comprehensive and bristling with new and more effective devices for realization of the public interest in insurance, for protecting Montana policyholders, for improving the standards of insurance practices and services, and for keeping the State of Montana firmly in the business of regulating the insurance business in the state on the only basis in which it can so remain — that of the honest *merit* of its performance.

The Montana legislature by enacting the new code in 1959 laid the foundation for all these good results. But as we all know, no law is self-executing or self-administering. The most ingenious tool still requires a hand to guide it; the most capable weapons system still requires the men to man the posts, and the wherewithal to load the guns, provide the stuff for inside the rockets to make them go, and whatever else it takes to get action. The age of automation has not, and never will take over the field of law enforcement and administration.

Let us be frank. In the past Montana has ranked among the lowest states in the nation in percentage of insurance premium tax collections appropriated and used to finance administration of its insurance laws. Unless the legislature is willing to provide the funds through which the Commissioner can maintain the necessary staff and carry on the required activities, the new insurance code will remain largely an ineffective "paper" law, and much of its potential in the service of the people of Montana will never be realized. This, I am sure, would be a serious loss.

²⁹R.C.M. 1947, § 40-3736.