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# Automobile Insurance—Cancellations and Refusals to Renew—The Legislative Response

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# CURRENT LEGISLATION

## AUTOMOBILE INSURANCE— CANCELLATIONS AND REFUSALS TO RENEW—THE LEGISLATIVE RESPONSE

Insurance operates on the principle that a small contribution from each member of a group will produce a fund large enough to protect the few members who actually suffer harm.<sup>1</sup> To determine the size of the contribution, insurance rating bureaus solicit data from all insurance companies in all states. The data are used to develop appropriate classes of insureds and, based on past experience, the probability that the claims paid out for these insureds will exceed the premiums collected. These norms provide the structure on which the rating bureaus classify risks, set premiums, and develop standard provisions for policies for member or subscriber companies.<sup>2</sup> The premium rate is not determined by the risk presented by an individual insured. Instead, the premiums are determined by the average risk presented by members of a class of insureds, each of whom has essentially the same probability that he will be involved in an accident.<sup>3</sup> In this way, the insurance company is guaranteed an adequate, yet not excessive, premium to be collected from each class of insureds.

Under this method of collecting statistics and establishing rates, members of a class of insureds, which class presents a greater risk to the company, will pay higher premiums than members of a class presenting a lower risk. Of course, each individual paying the same premium does not objectively, as an individual, necessarily present the same risk to the company. As mentioned, the rates are averages and within each classification there will be individuals who present risks both greater and less than the average. Naturally, within each classification attempts are made to maintain as much uniformity of risk as possible,<sup>4</sup> but the breadth of the sampling required to make the general classifications reliable necessarily results in some degree of variance of risk.

Insurance companies can afford to write insurance for insureds presenting greater than average risks because the companies also write insurance for less than average risks. When measured against the total volume of business the company writes, insuring some persons for a premium not exactly commensurate with the risk presented may still be financially sound business. The insurance industry has felt, however, that a particular insured is not desirable if he presents an unusually high risk not commensurate with the applicable premium rate. In fact, competition between insurance companies arises from attempts to insure only the minimum risks within each classification. To this end, each company has distinct underwriting policies, based on statistics supplied by the insurance rating bureaus. The underwriting policies

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<sup>1</sup> H.R. Rep. No. 815, 90th Cong., 1st Sess. 53 (1967).

<sup>2</sup> H. Zoffer, *The History of Automobile Liability Insurance Rating 72-73* (1959).

<sup>3</sup> Kulp, *The Rate-Making Process in Property and Casualty Insurance—Goals, Technics, and Limits*, 15 *Law & Contemp. Prob.* 493, 496 (1950).

<sup>4</sup> See *id.* at 495.

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determine how the best risks are selected by forming subclasses within each classification. To implement underwriting policies, companies circulate directives and manuals to their underwriters, brokers and agents who determine whether to accept, cancel or renew a particular risk.<sup>5</sup>

The application of underwriting policies to decisions not to accept a risk or to terminate coverage of an insured, has become a source of great public dissatisfaction. Recently, much of the dissatisfaction has centered on mid-term cancellations and refusals to renew.<sup>6</sup> Instances of termination—either cancellation or refusal to renew—have allegedly occurred due to facts which did not warrant the company's action. Examples of such instances include: (1) after the insured has made a claim against the company,<sup>7</sup> (2) after an accident with no claim,<sup>8</sup> (3) after an insured's car was struck from the rear by another automobile,<sup>9</sup> and (4) after the insured's car was hit while parked.<sup>10</sup> In these situations the attack may be made that the company is basing its action on personal judgment rather than underwriting statistics.<sup>11</sup>

Industry representatives have considered the charges of arbitrariness to be unfounded. They argue that their companies are in business to make a profit and, as a result, economic reasons alone determine whether a policy is to be terminated. It is simply not good business to terminate a policy without a statistical basis to support the decision. Thus, when policies are terminated, insurance companies insist that the reason is not that an arbitrary judgment has been made, but is that the statistics dictate that the financial risk has become so great that it can no longer be accepted.

Insurance company representatives contend that a company will not have occasion to review the acceptability of a risk, unless the insured is brought to the attention of the company's underwriting department by a record of claims or motor vehicle violations, or unless the company feels that the premium rates are inadequate so that its underwriting policies must become more restrictive.<sup>12</sup> Recently, economic demands have caused insurance companies to scrutinize both of these factors very carefully.<sup>13</sup> Costs of operation have sky-rocketed.<sup>14</sup> The number of profitable risks in each classification has become smaller, and the competition to insure them more intense. As a result, companies are less likely to insure and quicker to terminate less favorable risks.

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<sup>5</sup> H.R. Rep. No. 815, *supra* note 1, at 133.

<sup>6</sup> See Joint Interim Committee on Insurance, Report to the Washington State Legislature 12 (1966).

<sup>7</sup> H.R. Rep. No. 815, *supra* note 1, at 86.

<sup>8</sup> *Id.* at 80-81.

<sup>9</sup> *Id.* at 85.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 87.

<sup>12</sup> National Ass'n of Independent Insurers, *Let's Look at the Record* 24 (undated pamphlet) [hereinafter cited as *The Record*].

<sup>13</sup> See Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966.

<sup>14</sup> Hospital daily service charges in the United States have risen 354% in the last 20 years; traffic accident deaths and injuries are increasing 58% faster than motor vehicle registrations; jury awards for serious personal injuries are rising at an annual rate of 13.6%; physicians' fees have gone up 38.6% in ten years; automobile repair costs have increased by almost 50% in the last ten years. See *The Record*, *supra* note 12, at 4-5.

In theory, the position of the insurance companies is reasonable, but in application it loses some of its force. No doubt companies have statistics showing that insureds in seemingly arbitrary subclasses, *e.g.*, military personnel and divorcees, have actually had more accidents. Also, there is no doubt that the companies can, at least in a general way, explain these results.<sup>15</sup> Yet, underwriting policies and statistics must be applied to the circumstances of the individual case. The local company underwriter must assess all statistics in determining whether the degree of risk presented warrants cancellation or nonrenewal of a policy. In all but the most obvious cases, a decision requires balancing a number of factors, a process which necessarily involves the personal judgment of the underwriter.<sup>16</sup>

Since personal judgment is involved, however, the process may become arbitrary. A number of companies have admitted that their classifications "were not based on precise statistical background."<sup>17</sup> In addition, information relied on by the underwriter may be unreliable or inaccurate. The method used to develop classes and subclasses, though the only one available, is often unsatisfactory. Too great a refinement in subclasses of risks may tend to make the averages statistically unreliable.<sup>18</sup> Even though experience indicates a loss propensity for a given subclass, it may be merely coincidental. In this case, use of subclasses may single out certain groups for special treatment while other persons with similar characteristics are not singled out. Divorcees may have common patterns of behavior that produce a higher possibility of accidents,<sup>19</sup> but these patterns are shared with millions of others who are not susceptible of statistical classification and, as a result, are not penalized.

<sup>15</sup> One company suggests that temporary military personnel be examined closely because:

"(1) Many of these risks are "minor operations". . . .

(2) The automobiles are used almost entirely for relaxation and pleasure during off-duty hours.

(3) Passes, furloughs, or leaves of short duration are often utilized for quick trips to the homes of relatives and friends. Such trips frequently involve almost continuous operation, excessive speed, driving over unfamiliar roads, and relief driving by fellow servicemen.

(4) The loaning of automobiles to others is more common than with the nonmilitary risk. . . .

(5) Lack of proper maintenance due to limited finances results in increased physical hazards.

(6) The frequent reassignment of Armed Forces personnel may prevent an insured from cooperating in claim handling."

H.R. Rep. No. 815, *supra* note 1, at 133. For the reasons of a different company, see *id.* at 84.

Another seemingly arbitrary category is that of divorced women. One company, however, advanced the following justification for use of that criterion. "[D]ivorce can be a highly emotional and traumatic experience and the transition from married life carries new pressures and responsibilities. Many adjustments must be made in personal and social activities which have a direct bearing on the use of the automobile." *Id.* at 142.

<sup>16</sup> *Id.* at 85.

<sup>17</sup> See *id.* at 133.

<sup>18</sup> H. Zoffer, *supra* note 2, at 4.

<sup>19</sup> One insurance company instructs its underwriters that divorced women should be given special attention because of the "[p]ossibility of emotional instability and personality factors adversely affecting driving ability and accident potential." H.R. Rep. No. 815, *supra* note 1, at 145. See also *id.* at 142.

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Even assuming that the classifications are statistically reliable, possibility of error exists in the fact-finding process used to determine which classifications apply to a particular risk. Insurance companies use the services of independent investigators to verify information on insurance applications and to collect continuing information on the risks and classes.<sup>20</sup> These investigators may be hired on a piecemeal basis for as low as 75 cents for each report,<sup>21</sup> and their desire to increase output may result "in less than thorough verification of the facts reported."<sup>22</sup> Underwriters may base decisions to terminate on the investigator's erroneous information, thus, damaging innocent policyholders.

If the inconvenience of having to obtain insurance elsewhere were the only result of an arbitrary cancellation or refusal to renew, it might be tolerated. This is not the case, however. Once cancelled, the insured may have difficulty securing insurance, for there is an insurance industry practice not to insure persons who have been previously cancelled,<sup>23</sup> or to do so only at higher premiums.<sup>24</sup>

As a result, the insured may be forced to obtain insurance either through a state assigned-risk program, designed to afford minimum coverage to large numbers of undesired risks, or from a "high risk" company. Assuming a person is eligible for assigned-risk coverage, this form of protection entails a number of disadvantages.<sup>25</sup> Insurance companies are required to accept their proportionate share of assigned-risk policies as an incident to writing business within the state. Because of the high risk involved, however, the companies are allowed to charge higher premiums.<sup>26</sup> Also, assigned-risk policies may apply only to personal injury liability insurance,<sup>27</sup> and may be limited to a statutory minimum amount. Finally, since an assigned risk does not occupy a preferred position, a company may be prone to cancel an

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<sup>20</sup> See *id.* at 92.

<sup>21</sup> Joint Interim Committee on Insurance, Report to the Washington State Legislature 14 (1966).

<sup>22</sup> H.R. Rep. No. 815, *supra* note 1, at 92.

<sup>23</sup> *Id.* at 76, 155. The practice may be based on either the sole fact that another company has cancelled, see *Pruitt v. Allstate Ins. Co.*, 92 Ill. App. 2d 236, 234 N.E.2d 576, 577 (1968), or for the same reasons that led the other company to cancel. This has severe implications in Massachusetts, New York and North Carolina where liability insurance is compulsory and without it an individual may not drive. Mass. Gen. Laws Ann. ch. 90, § 34J (Supp. 1968); N.Y. Veh. & Traf. Law § 312 (McKinney Supp. 1967); N.C. Gen. Stat. § 20-309 (1965).

<sup>24</sup> Companies may charge up to 150% above standard rates for minimum coverage, *Time*, Jan. 26, 1968, at 21. An oddity in the premium structure may compound the problem of financial loss by cancellation. In Massachusetts, for example, the rate structure promulgated by the Massachusetts Commissioner of Insurance created a penalty for mid-year purchase. Thus, "a motorist buying insurance in September pays 60 per cent of the yearly premium though his policy covers only one third of a year since it expires on December 31 (as all compulsory liability policies do in Massachusetts)." R. Keeton & J. O'Connell, *Basic Protection for the Traffic Victim* 82 (1965).

<sup>25</sup> R. Keeton & J. O'Connell, *supra* note 24, at 79.

<sup>26</sup> H.R. Rep. No. 815, *supra* note 1, at 19.

<sup>27</sup> As, for example, in Massachusetts, Mass. Gen. Laws Ann. ch. 175 § 113H (1958), referring to *id.* ch. 90, § 34A (Supp. 1968).

assigned-risk policyholder for any discoverable reason, or be likely to treat his claims less favorably.<sup>28</sup>

In those states where a prior cancellation makes the insured ineligible for assigned-risk protection,<sup>29</sup> and in those situations where the insured desires coverage beyond the statutory minimum, he must go to a "high risk" company and pay larger premiums. In addition, during the past six years 73 of these companies have gone into receivership,<sup>30</sup> leaving their policyholders and persons with claims against their policyholders without effective recourse. This problem is of such proportions that legislation has been introduced in both the United States Senate and House<sup>31</sup> to establish a Federal Motor Vehicle Insurance Guaranty Corporation to give consumers more protection in this area.

The common law is not sufficient to protect insureds from these severe consequences of cancellations. At common law insurance companies have broad rights to cancel,<sup>32</sup> as long as they include in the policy a provision giving them this power.<sup>33</sup> As a result, it has become customary for companies to insert a provision allowing cancellation at will.<sup>34</sup>

The insurance industry itself has taken steps to prevent cancellation and nonrenewal abuses. As early as 1962, insurance rating bureaus limited the number of reasons for which insurance companies could cancel automobile bodily injury and property damage insurance policies.<sup>35</sup> Subsequently, the policies of most companies contained provisions limiting their cancellation rights.<sup>36</sup> In 1968, the bureaus further reduced the reasons justifying cancellation, retaining only the following: (1) nonpayment of premiums and (2) suspension or revocation of driver's license or motor vehicle registration.<sup>37</sup> In addition, they applied this cancellation protection to comprehensive, collision, medical payments and uninsured motorists policies.<sup>38</sup> The 1968 program also encompasses renewals of original policies that were written for less than a one-year period.<sup>39</sup> Finally, individual insurance companies have independently and voluntarily restricted their right to cancel or refuse to renew, for example, by guaranteeing not to cancel or refuse renewal for

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<sup>28</sup> R. Keeton & J. O'Connell, *supra* note 24, at 79.

<sup>29</sup> For example, in Massachusetts he would be ineligible for subsequent assigned-risk protection for 12 months after a cancellation, R. Keeton & J. O'Connell, *supra* note 24, at 78.

<sup>30</sup> H.R. Rep. No. 815, *supra* note 1, at 67.

<sup>31</sup> See *id.*

<sup>32</sup> *Id.* at 153.

<sup>33</sup> See *Horton v. Universal Life Ins. Co.*, 208 Ark. 772, 187 S.W.2d 544 (1945).

<sup>34</sup> See *Datz v. Union Hill Hudson Corp.*, 12 N.J. Misc. 807, 175 A. 182 (Sup. Ct. 1934.)

<sup>35</sup> National Bureau of Casualty Underwriters, Endorsement A 799 Family Amendatory Endorsement, effective Jan. 1, 1963, at Conditions 3.

<sup>36</sup> H.R. Rep. No. 815, *supra* note 1, at 153.

<sup>37</sup> Insurance Rating Board, Endorsement A895 Family Amendatory Endorsement, effective Jan. 1, 1968; Letter from F.O. Terbell, Ass't General Counsel, Lumbermans Mutual Casualty Company, Mar. 19, 1968.

<sup>38</sup> Letter from Charles A. King, Counsel, Insurance Rating Board, Apr. 15, 1968.

<sup>39</sup> Insurance Rating Board, *supra* note 37.

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five years, if the premiums are paid and the insured and members of his household retain valid drivers' licenses.<sup>40</sup>

Although the response of the insurance industry as a whole has been responsible,<sup>41</sup> the abuses have not been completely eliminated by industry self-policing. For example, the rating bureau programs do not fully correct abuses in connection with renewals. Moreover, the rating bureau programs do not reach all insurance companies. Independent insurers are not bound by the rating bureau programs,<sup>42</sup> and members and subscribers of the bureaus may dissent from the bureaus' programs and independently file programs with the state insurance commissioners.<sup>43</sup> There are indications that most of the abuses have come from a small number of insurance companies that are not part of the rating bureau programs.<sup>44</sup>

Because of the continuance of abuses, there has been a need for some form of state control. Until very recently, however, state regulation of the insurance companies' right to cancel policies or refuse renewal has been minimal.<sup>45</sup> Statutes have focused, almost exclusively, on requiring the companies to give notice of intent to cancel and, in some states, intent not to renew.<sup>46</sup>

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<sup>40</sup> See Allstate Insurance Company, *Renewal Guarantee*, effective July 1967. The rates may, however, vary if the insured's rating classification changes.

<sup>41</sup> Letter from Samuel B. Rogers, Chief Deputy Comm'r, Treasurer's Office, State of Florida, Mar. 20, 1968.

<sup>42</sup> See National Association of Independent Insurers, *Statement of Policy* 5 (1967).

<sup>43</sup> H.R. Rep. No. 815, *supra* note 1, at 24; Insurance Information Institute, *The New Insurance Rating Board* 7 (1967).

<sup>44</sup> Robert D. Haase, Wisconsin Comm'r of Ins., *Report to Wisconsin Legislative Council* 5 (1967). In Washington, six of the independent companies did not follow the Insurance Rating Board's latest program and evidently waited for the state's recently enacted cancellation statute to become effective, Letter from Richard A. Hunke, Rate Analyst, Office of Ins. Comm'r, Wash., Feb. 26, 1968.

<sup>45</sup> Although the public interest in having adequate insurance protection has long been recognized as a proper basis for regulation of the industry, see *German Alliance Ins. Co. v. Lewis*, 233 U.S. 389 (1913), state regulation has been minimal.

<sup>46</sup> E.g., Colo. Rev. Stat. Ann. § 13-7-25 (1964) (10 days notice to Director of Revenue); Ga. Code Ann. § 56-2430 (Supp. 1967) (5 days); Idaho Code Ann. § 49-1522 (1967) (cancellation or termination—10 days); Ill. Ann. Stat. ch. 95½, § 7-318 (Smith-Hurd Supp. 1968) (10 days to Secretary of State); Iowa Code Ann. § 515.81 (Supp. 1968) (5 days); Ky. Rev. Stat. Ann. § 187.500 (1963) (or termination—10 days to Department); La. Rev. Stat. Ann. § 22:636.A.(1) (1959) (5 days); Me. Rev. Stat. Ann. tit. 24, § 1051 (1965) (10 days for physical damage policy); Me. Rev. Stat. Ann. tit. 29, § 787.6. (1965) (10 days for liability policy); Mich. Stat. Ann. § 24.13020 (Supp. 1968) (10 days); Minn. Stat. Ann. § 170.41 (1960) (or termination—10 days to office of Commissioner); Mo. Ann. Stat. § 303.210 (1963) (or termination—10 days to Director of Revenue); Mont. Rev. Codes Ann. § 53-439 (1961) (or termination—10 days to Highway Patrol Supervisor); Nev. Rev. Stat. § 485.3092 (1967) (or termination—10 days); N.Y. Veh. & Traf. Law § 347 (McKinney 1960) (or termination—10 days to Commissioner); N.C. Gen. Stat. § 20-279.22 (1965) (or termination—20 days); N.D. Cent. Code § 39-16.1-12 (Supp. 1967) (or termination—10 days to Commissioner); Okla. Stat. Ann. tit. 47, § 7-325 (1962) (or termination—10 days to Department); Ore. Rev. Stat. § 486.506(2) (1963) (or termination—10 days to Department); Pa. Stat. Ann. tit. 75, § 1422 (1960) (or termination—10 days to Secretary); R.I. Gen. Laws Ann. § 31-32-25 (Supp. 1967) (or termination—10 days to Registry); S.C. Code Ann. § 46-702(7)(h) (Supp. 1967) (10 days); Tenn. Code Ann. § 59-1224 (Supp. 1967) (or termination—10 days to Commissioner); Va. Code Ann. § 38.1-381.1 (Supp. 1968) (notice by registered or certified mail); Wash. Rev. Code Ann. § 48.18.290(1)(a) (1961) (5 days); W. Va. Code

The purpose of these statutes is to provide the insured with sufficient time to secure insurance with some other company prior to the time when his policy is terminated.<sup>47</sup>

The statutes of Maryland and North Dakota are a variation on the notice statutes. In addition to a notice provision, these statutes include a requirement that the company, if requested, furnish the insured with the reasons for its decision to cancel or not renew his policy.<sup>48</sup> This requirement is based on the fact that companies are reluctant to divulge the reasons prompting underwriting decisions, and that situations may develop where the insured goes from company to company, only to be cancelled successively by each company. Without knowing the basis for the first company's action, the insured is not equipped to argue either that the company's decision was founded on erroneous information or that the basis does not justify cancellation.<sup>49</sup>

The Maryland and North Dakota statutes reduce the possibility that an applicant will make repeated futile attempts to obtain insurance and may also reduce the number of erroneous decisions by the companies. Since the insured must take the initiative to request the reasons, however, it is not likely that even these limited goals will be accomplished effectively. In any event, statutes requiring notice of cancellation and a statement of reasons for the decision solve only a small part of the problem. Seventeen state legislatures and four state insurance commissioners in other states<sup>50</sup> recognized this and have passed statutes and issued regulations to limit the reasons for which insurance companies may terminate automobile policies.<sup>51</sup>

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Ann. § 17D-4-13 (1966) (or termination—10 days to Commissioner); Wyo. Stat. Ann. § 31-307 (1967) (or termination—10 days to Superintendent). But see Mass. Gen. Laws Ann. ch. 26, § 8A (1966), establishing in 1925 a board of appeal on motor vehicle liability policies and bonds which has jurisdiction over liability policies regarding refusal to issue, nonrenewal, and cancellation problems.

<sup>47</sup> See *Moore v. Vernon Fire & Cas. Ins. Co.*, — Ind. App. —, 234 N.E.2d 661, 663 (1968).

<sup>48</sup> Md. Ann. Code art. 48A, § 240B (Supp. 1967); N.D. Cent. Code § 26-02-34 (Supp. 1967) (nonrenewal).

<sup>49</sup> See H.R. Rep. No. 815, *supra* note 1, at 92.

<sup>50</sup> Many more states are considering similar bills. During the first eight months of 1967, 103 bills dealing with cancellation were introduced in 38 state legislatures, Letter from Andrew C. Lynch, Attorney, Allstate Insurance Company, Mar. 11, 1968.

<sup>51</sup> Cal. Ins. Code §§ 651-53, 660-64, 670-71 (West Supp. 1967); Cal. Ad. Code ch. 5, tit. 10, art. 7.5., §§ 2370-73 (Cal. Dep't of Ins., Ruling No. 147, File No. RH-108, Exhibit "A" at 1-5, Dec. 30, 1965) [hereinafter cited as Cal. Ad. Code]; Conn. Ad. Regs. §§ 38-175a-1 to -8 (letter from Conn. Ins. Dep't to all companies writing insurance in Conn., Jan. 25, 1968) [hereinafter cited as Conn. Ad. Regs.]; Del. Code Ann. tit. 21, § 2908 (1953); Fla. Stat. Ann. § 627.0852 (Supp. 1968); Ga. Code Ann. § 56-2430 (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.1 (Smith-Hurd 1965), as amended, §§ 755.2-10 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, 1967 Kan. Laws (letter from W. Fletcher Bell, Ass't Comm'r of Ins., Apr. 5, 1968) [hereinafter cited as H. Bill No. 1116, 1967 Kan. Laws]; Kan. Ins. Dep't Reg. 40-3-31 (letter from W. Fletcher Bell, *supra*); La. Ins. Dep't Directive No. 8 (The Weekly Underwriter, March 6, 1967); Mass. Gen. Laws Ann. ch. 26, § 8A (1966), ch. 175, § 113D (Supp. 1966); Mich. Stat. Ann. §§ 24.13021, .13204-.13262 (Supp. 1968); Minn. Stat. Ann. §§ 72A.141-.148 (Supp. 1968); Mo. Ann. Stat. § 379.202 (Supp. 1967); N.C. Gen. Stat. §§ 20-279.22, -310 (1965), as amended, §§ 20-279.21, -279.34, -310(a), -310.2 (Supp.



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The regulatory statutes are intended to eliminate arbitrariness by requiring that terminations of private passenger automobile insurance policies be based on reliable underwriting standards. To insure compliance, the state's administrative or judicial officials are given the power to review cancellations.<sup>52</sup> In the event that the company has deviated from the statutory norms, the cancellation may be declared ineffective. For purposes of analysis the statutes will be examined in terms of the scope of their coverage, the allowable bases for termination, notice requirements, immunity provisions, and remedies in the event the insured wishes to contest cancellation.

Neither all types of automobile insurance policies nor all types of insureds are covered by the statutes. The statutes of the different states may, *inter alia*: (1) limit the reasons for a mid-term cancellation but not for a refusal to renew;<sup>53</sup> (2) not be applicable during the first 55 or 60 days that the policy is in effect;<sup>54</sup> (3) cover personal injury liability but not property damage liability or collision policies;<sup>55</sup> (4) exclude assigned-risk policies;<sup>56</sup> (5) exclude single policies covering four or more automobiles;<sup>57</sup> and (6) exclude policies covering garages, automobile sales agencies, repair shops or service stations.<sup>58</sup> The reasons for some of the exclusions, for example policies covering automobiles used in a business, may be self-explanatory, but the considerations behind others are somewhat complex and will be explored in depth.

Of all the states regulating termination of policies by insurers, only three—Massachusetts,<sup>59</sup> South Carolina<sup>60</sup> and Wisconsin<sup>61</sup>—have provisions

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5 1967); R.I., Dep't of Business Reg., Div. of Ins., Regulation, Aug. 15, 1962 [hereinafter cited as R.I. Ins. Reg.]; S.C. Code Ann. §§ 46-750.51-.54 (Supp. 1967); H. Bill No. 684, 1968 S.D. Laws; Va. Code Ann. §§ 38.1-70.9 to -70.13 (Supp. 1968); Wash. Rev. Code Ann. §§ 48.18.-[2], -[3]. (Supp. 1967); W. Va. Code Ann. §§ 33-6A-1 to -5 (Supp. 1968); ch. 337, §§ 204.341-.342, 1967 Wis. Laws (Wis. Leg. Serv. 1027-29 (1967)).

<sup>52</sup> E.g., Ill. Ann. Stat. ch. 73, § 755.10 (Smith-Hurd Supp. 1967).

<sup>53</sup> E.g., Minn. Stat. Ann. § 72A.142 (Supp. 1968).

<sup>54</sup> E.g., Fla. Stat. Ann. § 627.0852(2) (Supp. 1968).

<sup>55</sup> E.g., Mass. Gen. Laws Ann. ch. 175, § 113H (1958), referring to id. ch. 90, § 34A (Supp. 1968).

<sup>56</sup> E.g., Ga. Code Ann. § 56-2430(2) (Supp. 1967).

<sup>57</sup> Conn. Ad. Regs. § 38-175a-2(1) (1968) (5 or more automobiles); Fla. Stat. Ann. § 627.0852(1)(a)(3)(b) (Supp. 1968); Ga. Code Ann. § 56-2430(2)(B)(b)(2) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.2 (Smith-Hurd Supp. 1967); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 1(b)(2), 1967 Kan. Laws; Minn. Stat. Ann. § 72A.141 (Supp. 1967); R.I. Ins. Reg., Aug. 15, 1962 (5 or more automobiles); H. Bill. No. 684, § 1(A), 1968 S.D. Laws; Wash. Rev. Code § 48.18-[2]. (Supp. 1967); ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)).

<sup>58</sup> Conn. Ad. Regs. § 38-175a-2 (1968); Fla. Stat. Ann. § 627.0852(1)(a)(3)(c) (Supp. 1968); Ga. Code Ann. § 56-2430(2)(B)(b)(3) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.2 (Smith-Hurd Supp. 1968); H. Bill No. 1116, § 1(b)(3), 1967 Kan. Laws; Minn. Stat. Ann. § 72A.141 (Supp. 1968); H. Bill No. 684, § 1(A), 1968 S.D. Laws; ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)).

<sup>59</sup> The Massachusetts board of appeal on motor vehicle liability policies and bonds, Mass. Gen. Laws Ann. ch. 26, § 8A (1966), has jurisdiction to determine whether a refusal to renew is improper and unreasonable and, if so, to reinstate the policy, Mass. Gen. Laws Ann. ch. 175, § 113D (Supp. 1966).

<sup>60</sup> S.C. Code Ann. § 46-750.54 (Supp. 1967).

<sup>61</sup> Wisconsin prohibits refusing to renew solely because of the age, residence, race,

limiting the right of insurance companies to refuse to renew policies. The rest of the statutes are concerned with refusal to renew only to the extent of requiring sufficient notice of the company's intent to terminate. Failure to cover nonrenewal of policies is a major deficiency in the statutes. Even if arbitrary cancellation is entirely eliminated, companies need only wait for the expiration of the policy term, and refuse to renew the policy. Thus, the arbitrary personal judgments sought to be regulated can as easily be made at the end of the policy period, probably a very short time away.<sup>62</sup>

In an attempt to avoid this result, an addition was made to the 1965 South Carolina cancellation statute. Under the new statute, the South Carolina Department of Insurance will, upon written application of the insured, determine whether the reasons for declining to renew a policy have a "valid and generally accepted insurance underwriting basis."

Although the inclusion of nonrenewals increases the strength of the South Carolina statute, the nonrenewal provisions are hardly a panacea. The South Carolina Department of Insurance has indicated that the statutory coverage is inadequate because there are no clear standards to determine the meaning of the phrase "valid and generally accepted underwriting basis."<sup>63</sup> As a result, the Insurance Law Study Committee of the South Carolina General Assembly has recommended that the Act be amended to provide more definite standards.<sup>64</sup>

If the vagueness of the 1965 South Carolina cancellation statute is corrected, it will represent a significant change in the present state of the law. These provisions will, in many instances, impose a duty on the insurers to reinsure policy holders year after year. This obligation is a major curtailment of the insurer's ability to insist on favorable termination provisions. No longer is the company completely free to choose the persons with whom it will continue to deal. The fact that the obligation restricts the right of insurance companies to terminate does not, however, mean that this limitation is not justified. The cancellation statutes prevent arbitrary terminations by placing limitations on the right of the companies to terminate insurance contracts at will. Inherent in this limitation is a legislative recognition that individual insureds do not have sufficient bargaining position to protect themselves from the arbitrary practices of insurance companies. The company dictates the terms of the policy to the insured, who either accepts them or does not obtain insurance. If extending the statutory protection to renewal situations is necessary to accomplish the basic objectives of the cancellation provisions,

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color, creed, national origin, ancestry, or occupation of anyone who is an insured. Ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)).

<sup>62</sup> To mitigate this consequence, some states have said for purposes of the cancellation provisions that policies with terms of less than six months shall be deemed to run for six months. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2370 (1965); Fla. Stat. Ann. § 627.0852(1)(b) (Supp. 1968); Ga. Code Ann. § 56-2430(2)(A) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.2 (Smith-Hurd Supp. 1968); Minn. Stat. Ann. § 72A.141 (Supp. 1968); H. Bill No. 684, § 1(E), 1968 S.D. Laws; Wash. Rev. Code § 48.18.-[2. (Supp. 1967).

<sup>63</sup> Letter from Joe P. Barnett, Research Ass't, South Carolina Dep't of Ins., Feb. 26, 1968.

<sup>64</sup> *Id.*

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then a corresponding regulation of the bargaining process should not be an obstacle.

It should immediately be clear that such an extension will not be a final solution to the problems presented by termination of policies. Ultimately, cancellation is a problem only because of the unavailability of insurance from other companies at comparable rates. If insureds were able to obtain insurance elsewhere, agitation for regulation of the companies would diminish. If companies are limited in their decisions to cancel or refuse to renew, then they will become increasingly selective in determining whom to insure in the first place. When this occurs, public indignation will shift to criticism of the companies for failing to issue insurance more readily.

The scope of the cancellation statutes is also limited by the types of insurance which they cover. Except for South Dakota and Washington,<sup>65</sup> the cancellation statutes apply only to liability policies which, while including bodily injury liability, may or may not include property damage liability.<sup>66</sup> This omission may also weaken the impact of the statutes. An insurance company will cancel the insured's property damage liability and collision policies at the same time as it cancels his personal injury liability policy.<sup>67</sup> Yet, if the insured is successful in establishing that the company did not comply with the statutory requirements for cancellation, his victory is limited to the liability policy. If the cancelling company refuses to reinstate the collision or property damage policies, the insured may lose this protection since other companies may not wish to write only collision or property damage policies. As a result, the insured may be forced to use his bodily injury liability business as an incentive to convince another company to write policies for his other needs.<sup>68</sup> To prevent insurance companies from acquiring an opportunity to exert leverage and, thereby, frustrating the intent of the cancellation provisions, and to assure comprehensive protection of insureds, the statutes would be more effective if they extended to all forms of insurance coverage.<sup>69</sup>

A major exclusion from the purview of the cancellation provisions is the category of assigned-risk policies. Only seven states restrict the reasons

<sup>65</sup> H. Bill No. 684, § 1(A), 1968 S.D. Laws; Wash. Rev. Code § 48.18.-[2. (Supp. 1967).

<sup>66</sup> Whether property damage liability is included depends upon the particular state's definition of "liability policies." E.g., Ill. Ann. Stat. ch. 95½, §§ 7-317(a), (b) (Smith-Hurd 1958) (including property damage); Mass. Gen. Laws Ann. ch. 90, § 34A (1967) (not including property damage).

<sup>67</sup> Interview with Ralph A. Iannaco, Executive Secretary of the Massachusetts board of appeals on motor vehicle liability policy and bonds, in Boston, Mar. 22, 1968.

In other situations the result may be more severe. If the automobile is being financed and is under a mortgage and the insurance company cancels property damage liability and collision insurance, the finance company may insist that new insurance be secured, even though this necessitates going to a "high risk" company and paying huge premiums, Interview with Thomas F. Donahue, Chairman of Massachusetts board of appeal on motor vehicle liability policies and bonds, in Boston, Mar. 22, 1968.

<sup>68</sup> See H.R. Rep. No. 815, 90th Cong., 1st Sess. 144 (1967).

<sup>69</sup> The Insurance Rating Board in its latest program has extended applications to include comprehensive, collision, medical payments, and uninsured motorists policies. Insurance Rating Board, Endorsement A895 Family Amendatory Endorsement, effective Jan. 1, 1968.

for which these policies may be cancelled.<sup>70</sup> The justification for this exclusion is, no doubt, the comparatively high probability that an assigned-risk insured will suffer an accident, and the belief that insurance companies should not be forced to bear the enormous financial burden of irresponsible drivers. On the other hand, large numbers of responsible drivers are classified as assigned risks. Moreover, it is these insureds who most need protection since they are the ones most likely to be cancelled and to be unable to obtain other insurance.<sup>71</sup>

Finally, accommodation for a generally accepted practice in the insurance industry has resulted in another exclusion from the provisions of the statutes. Insurance companies write policies immediately on application, and then conduct the underwriting investigation on the veracity of the insured's statements and other matters the company feels relevant to assessing the risk.<sup>72</sup> Generally, this practice is advantageous to the insured since it gives him coverage immediately, eliminating the delay of an underwriting investigation. Except for Wisconsin and Massachusetts, all cancellation statutes allow for this practice by providing a 55- or 60 day "free period" during which the insurer may cancel for any reason.<sup>73</sup> The purpose of the statutory exception for the first 55 or 60 days is to retain the benefit for the insured. If the companies were limited during the initial periods to cancelling only for statutory reasons, they would cease the practice of accepting all risks before investigating, thus forcing applicants to wait for coverage until an investigation has been completed.<sup>74</sup>

<sup>70</sup> Connecticut, Delaware, Massachusetts, Michigan, Rhode Island, South Carolina and West Virginia. In the other states, assigned-risk policies are excluded by specific reference. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2370 (1965); Fla. Stat. Ann. § 627.0852 (1)(a)(3)(a) (Supp. 1968); Ga. Code Ann. § 56-2430(2)(B)(b)(1) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.2 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 1(b), 1967 Kan. Laws; Minn. Stat. Ann. § 72A.141 (Supp. 1968); Mo. Ann. Stat. § 379.202(2)(5) (Supp. 1967); N.C. Gen. Stat. § 20-310 (1965); N.D. Cent. Code § 26-02-36 (Supp. 1967); H. Bill No. 684, § 1(A), 1968 S.D. Laws; Va. Code Ann. § 38.1-70.12 (Supp. 1968); Wash. Rev. Code § 48.18.-12. (Supp. 1967); ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)).

<sup>71</sup> In Massachusetts, for example, an assigned risk who has been cancelled is ineligible for subsequent assigned-risk protection for one year. See R. Keeton & J. O'Connell, *supra* note 24, at 81.

It is significant to observe that Delaware thought the consequences of cancellation of assigned-risk policies so serious a problem that its cancellation statute applies *only* to assigned-risk policies. Del. Code Ann. tit. 21, §§ 2907, 2908 (1953).

<sup>72</sup> Cal. Dep't of Ins., Ruling No. 147, File No. RH-108, at 4, Dec. 30, 1965.

<sup>73</sup> Michigan is the only state with a 55-day period, Mich. Stat. Ann. § 24.13220 (Supp. 1968). All other states have a 60-day period. Cal. Ad. Code, ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(B) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2, 1967 Kan. Laws; Md. Ann. Code art. 48A, § 240B (Supp. 1967); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1) (Supp. 1967); N.C. Gen. Stat. § 20-310 (1965); N.D. Cent. Code § 26-02-33 (Supp. 1967); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); H. Bill No. 684, § 2(B), 1968 S.D. Laws; Va. Code Ann. § 38.1-70.9 (Supp. 1968); Wash. Rev. Code § 48.18.-12. (Supp. 1967); W. Va. Code Ann. § 33-6A-1 (Supp. 1968).

<sup>74</sup> Cal. Dep't of Ins., Ruling No. 147, File No. RH-108, at 4, Jan. 7, 1966.

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The major emphasis of the statutes is the detailing of reasons for which insurance companies may cancel.<sup>75</sup> These reasons are related to normal underwriting standards and are clearly based on reliable statistics. While grounds vary considerably from state to state, they may be placed in the following categories: (1) nonpayment of premiums,<sup>76</sup> (2) failure to possess a valid operator's license,<sup>77</sup> (3) material misrepresentation,<sup>78</sup> (4) failure to

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<sup>75</sup> Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2, 1967 Kan. Laws; Mich. Stat. Ann. §§ 24.13021, 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1) (Supp. 1967); N.C. Gen. Stat. § 20-310 (1965); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); H. Bill No. 684, § 2(A), 1968 S.D. Laws; Wash. Rev. Code § 48.18.-[2. (Supp. 1967); W. Va. Code Ann. § 33-6A-1 (Supp. 1968).

The Maryland, North Dakota and Virginia acts demand that the insured be told the reason for cancellation, but they place absolutely no restrictions on what grounds are permissible. Md. Code Ann. art. 48A, §§ 240A, 240B (Supp. 1967); N.D. Cent. Code § 26-02-32 to -36 (Supp. 1967); Va. Code Ann. §§ 38.1-70.9 to .13 (Supp. 1968). Thus, the insurance company may act as whimsically as it desires so long as it tells the insured and does not break any other substantive law.

The Massachusetts board of appeal on motor vehicle liability policies and bonds, Mass. Gen. Laws Ann. ch. 26, § 8A (1966), examines each case on its own facts, and has no absolute standards governing permissible grounds for cancellation. However, the following are the most common reasons for which the board allows cancellation: accident frequency, false answers in applications, nonpayment of premium, improper operator, improper operation, noncooperation, illegal registration, unsafe motor vehicle circumstances surrounding accident. List of reasons prepared by Massachusetts board of appeal on motor vehicle liability policies and bonds, Mar. 22, 1968.

The Wisconsin provision, while supplying the insured with notice and the right to obtain the reason for termination, does not restrict the grounds for cancellation, unless it is solely because of the age, residence, race, color, creed, national origin, ancestry or occupation of anyone who is an insured. Ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)).

<sup>76</sup> Cal. Ins. Code § 664 (West Supp. 1967); Conn. Ad. Regs. § 38-175a-8 (1968) (or any installment whether payable directly to insurer or indirectly under any premium finance plan or extension of credit); Del. Code Ann. tit. 21, § 2908 (1953); Fla. Stat. Ann. § 627.0852(2)(a) (Supp. 1968) (or installment whether payable directly or indirectly); Ga. Code Ann. § 56-2430(3)(C)(a) (Supp. 1967) (or installment whether payable directly or indirectly); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966 (or installment whether payable directly or indirectly); H. Bill No. 1116, § 2(1), 1967 Kan. Laws (or installment whether payable directly or indirectly); Mich. Stat. Ann. § 24.13212 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (or installment whether payable directly or indirectly); Mo. Ann. Stat. § 379.202(1)(1)(e) (Supp. 1967); N.C. Gen. Stat. § 20-310 (1965) (or installment); R.I. Ins. Reg., Aug. 15, 1962 (or installment); S.C. Code Ann. § 46-750.51 (Supp. 1967) (or installment); H. Bill No. 684, § 2(A), 1968 S.D. Laws (or installment whether payable directly or indirectly); Wash. Rev. Code § 48.18.-[2. (Supp. 1967) (or installment); W. Va. Code § 33-6A-1 (Supp. 1968) (or installment).

<sup>77</sup> There are two different reasons within this category.

First, where the named insured or any operator, either resident in the same household, or who customarily operates an automobile insured under the policy, has had his driver's license suspended or revoked during the policy period. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968) (or is convicted of driving without having a driver's license); Del. Code Ann. tit. 21, § 2908 (1953) (the insured is not licensed to operate a motor vehicle under the laws of the State); Fla. Stat. Ann.

§ 627.0852(2)(e)(1) (Supp. 1968) (during the 36 months prior to the notice of cancellation); Ga. Code Ann. § 56-2430(3)(C)(g)(1) (Supp. 1967) (during the 36 months prior to notice); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968) (during the 12 months prior to notice); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(4)(a), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968) (and the revocation or suspension has become final); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (during the 36 months prior to notice); Mo. Ann. Stat. § 379.202(1)(2)(a) (Supp. 1967) (or the insured has knowingly allowed another person to operate the insured vehicle who is known to him to have had his driver's license suspended or revoked during the policy period); N.C. Gen. Stat. § 20-310 (1965) (for more than 30 days); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); H. Bill No. 684, § 2(A)(b), 1968 S.D. Laws (or motor vehicle registration during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date); Wash. Rev. Code § 48.18.-[2. (Supp. 1967); W. Va. Code § 33-6A-1 (Supp. 1968).

Second, where the named insured or any operator, either resident in the same household, or who customarily operates an automobile insured under the policy, has within 36 months prior to notice of cancellation operated a motor vehicle during the period of revocation or suspension of operator's license on more than one occasion. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Mo. Ann. Stat. § 379.202(1)(2)(f) (Supp. 1967).

<sup>78</sup> There are five reasons within the category.

First, the policy was obtained through a material misrepresentation. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1967) (fraudulent misrepresentation); Fla. Stat. Ann. § 627.0852(2)(b) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(b) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966 (fraudulent); H. Bill No. 1116, § 2(2), 1967 Kan. Laws (fraudulent); Minn. Stat. Ann. § 72A.142 (Supp. 1967); Mo. Ann. Stat. § 379.202(1)(1)(a) (Supp. 1967) (fraud or material misrepresentation); R.I. Ins. Reg., Aug. 15, 1962 (fraudulent); S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18.-[2. (Supp. 1967) (fraudulent); W. Va. Code § 33-6A-1 (Supp. 1968).

Second, willful failure by the named insured to disclose fully in his application his record of accidents or traffic violations as are material to the insurer's acceptance of the risk. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Ga. Code Ann. § 56-2430(3)(C)(d) (Supp. 1967) (if called for in the application, record for preceding 36 months); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968) (if called for in the application, record for preceding 36 months); Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (if called for in application, record for preceding 36 months); Mo. Ann. Stat. § 379.202(1)(1)(c) (Supp. 1967) ("serious" motor vehicle accidents).

Third, failure by the named insured to disclose, in a written application or in response to a direct oral inquiry by the insurer or an agent or broker, information needed for the proper rating of the risk. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965) (willful failure to disclose); Ga. Code Ann. § 56-2430(3)(C)(e) (Supp. 1967) (acceptance or proper rating of the risk); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968) (acceptance or proper rating); Mich. Stat. Ann. § 24.13220 (Supp. 1968) (acceptance or proper rating); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (acceptance or proper rating).

Fourth, the insured does not reside at the address specified in the policy and fails to furnish the correct address to the insured within a reasonable period. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965) (at the insurer's request); Mich. Stat. Ann. § 24.13220 (Supp. 1968).

Fifth, making a false or fraudulent claim, or knowingly aiding or abetting another in the presentation of such a claim. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Fla. Stat. Ann. § 627.0852(2)(d) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(f) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(1)(d) (Supp. 1967).

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abide by the terms and conditions of the policy,<sup>79</sup> (5) poor health or excessive use of alcohol or drugs,<sup>80</sup> (6) criminal record,<sup>81</sup> (7) ownership of mechanic-

<sup>79</sup> There are two reasons in this category.

First, violation by an insured of any of the terms and conditions of the policy. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1967); Fla. Stat. Ann. § 627.0852(2)(c) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(c) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(3), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968) (the nature of which terms or conditions are material to the risk being covered by the policy of insurance); Mo. Ann. Stat. § 379.202(1)(1)(b) (Supp. 1967); N.C. Gen. Stat. § 20-310 (1965) (terms or conditions not in conflict with the provisions of this subsection); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18.-[2. (Supp. 1967) (not in conflict with this subsection); W. Va. Code § 33-6A-1 (Supp. 1968) (material terms and conditions).

Second, named insured knowingly failed to give any required written notice of loss or notice of lawsuit commenced against him, or, when requested, refused to cooperate in the investigation of a claim or defense of a lawsuit. Del. Code Ann. tit. 21, § 2908 (1953) (has failed or refused to cooperate as stated in the policy); Minn. Stat. Ann. § 72A-142 (Supp. 1968).

<sup>80</sup> There are five reasons in the category relating to the insured's health. Where the named insured or any operator, either resident in the same household, or who customarily operates an automobile insured under the policy:

(a) Is or becomes subject to epilepsy or heart attacks and cannot produce a doctor's certificate as to his unqualified ability to operate a motor vehicle. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2)(e)(2) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(2) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(4)(b), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968) (or has a major mental or physical disability and cannot produce a physician's certificate); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (such physician's opinion to be based on reasonable medical probability); Mo. Ann. Stat. § 379.202(1)(2)(b) (Supp. 1967); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18.-[2. (Supp. 1967) (is likely to experience); W. Va. Code § 33-6A-1 (Supp. 1968).

(b) Has an accident record, conviction record (criminal or traffic), physical, mental, or other conditions, which considered as a whole are such that this operation of an automobile would endanger the public safety. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Del. Code Ann. tit. 21, § 2908 (1953) (mental or physical infirmities or disabilities rendering it unsafe for him to operate a motor vehicle); Fla. Stat. Ann. § 627.0852(2)(e)(3) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(3) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968) (or which would be grounds for suspension of his license); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(2)(c) (Supp. 1967).

(c) Has within 36 months prior to notice of cancellation been addicted to the use of narcotic or other drugs. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965) (provided the insurer has reasonable information before cancelling); Del. Code Ann. tit. 21, § 2908 (1953); Fla. Stat. Ann. § 627.0852(2)(e)(4) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(4) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968) (which can be medically substantiated); Mo. Ann. Stat. § 379.202(1)(2)(d) (Supp. 1967) (provided the insurer has reasonable information before cancelling).

(d) Habitually uses alcoholic beverages to excess. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965) (provided the insurer has reasonable information before cancelling); Fla. Stat. Ann. § 627.0852(2)(e)(5) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(5) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat.

Ann. § 24.13220 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(2)(e) (Supp. 1967) (provided the insurer has reasonable information before cancelling).

(e) Policy shall not be cancelled solely because of age. H. Bill No. 1116, § 2, 1967 Kan. Laws; Mich. Stat. Ann. § 24.13021 (Supp. 1968) (solely because insured reaches age 65 if he still has a valid operator's license); N.C. Gen. Stat. § 20-310.2 (Supp. 5 1967) (renewal); ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)) (solely because of the age, residence, race, color, creed, national origin, ancestry or occupation of insured).

<sup>81</sup> In the category, criminal record of an insured, are nine different reasons permitting cancellation. Where the named insured or any other operator who customarily operates an automobile insured under the policy is or has been convicted of or forfeits bail during the 36 months immediately preceding the notice of cancellation for:

(a) Any felony. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2)(e)(6)(a) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(6)(a) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(4)(C)(1), 1967 Kan. Laws; Mo. Ann. Stat. § 379.202(1)(3)(a) (Supp. 1967); N.C. Gen. Stat. § 20-310 (1965) (during the policy period); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18.-[2. (Supp. 1967); W. Va. Code § 33-6A-1 (Supp. 1968) (during the policy period and statute may be construed to require felony to involve the use of a motor vehicle).

(b) Criminal negligence resulting in death, homicide or assault arising out of the operation of a motor vehicle. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2)(e)(6)(b) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(6)(b) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(4)(c)(2), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (24 months—criminal negligence or assault); Mo. Ann. Stat. § 379.202(1)(3)(b) (Supp. 1967); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18.-[2. (Supp. 1967); W. Va. Code § 33-6A-1 (Supp. 1968) (during the policy period—negligent homicide).

(c) Operating a motor vehicle while in an intoxicated condition, or while under the influence of drugs. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2)(e)(6)(c) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(6)(c) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(4)(c)(3), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (24 months); Mo. Ann. Stat. § 379.202(1)(3)(c) (Supp. 1967); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18.-[2. (Supp. 1967); W. Va. Code § 33-6A-1 (Supp. 1968) (during the policy period).

(d) Being intoxicated while in or about an automobile or while having custody of an automobile. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Fla. Stat. Ann. § 627.0852(2)(e)(6)(d) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(6)(d) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968).

(e) Leaving the scene of an accident without stopping to report. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2)(e)(6)(e) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(6)(e) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(4)(c)(4), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968) (knowingly); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(3)(d) (Supp. 1967); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18.-[2. (Supp. 1967); W. Va. Code § 33-6A-1 (Supp. 1968) (during the policy period, and the accident must be one in which the insured is involved).

(f) Theft or unlawful taking of a vehicle. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2)(e)(6)(f) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(6)(f) (Supp. 1967); Ill. Ann. Stat.



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ally defective vehicle or one used in hazardous activities.<sup>82</sup>

ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116, § 2(4)(c)(5), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); N.C. Gen. Stat. § 20-310 (1965) (during the policy period); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); Wash. Rev. Code § 48.18-.[2. (Supp. 1967); W. Va. Code § 33-6A-1 (Supp. 1968) (during the policy period).

(g) Making false statements in an application for a driver's license. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Conn. Ad. Regs. § 38-175a-8 (1968); Fla. Stat. Ann. § 627.0852(2)(e)(6)(g) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(6)(g) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1967) (or chauffeur's license); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966; H. Bill No. 1116 § 2(4)(c)(6), 1967 Kan. Laws; Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); R.I. Ins. Reg., Aug. 15, 1962; S.C. Code Ann. § 46-750.51 (Supp. 1967); W. Va. Code § 33-6A-1 (Supp. 1968) (during the policy period).

(h) Operation of any motor vehicle during the period of suspension or revocation of an operator's license. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Mo. Ann. Stat. § 379.202(1)(3)(e) (Supp. 1967).

(i) Three or more violations of any law of any state limiting the speed of motor vehicles, the violation of which constitutes a misdemeanor, or moving traffic violation, whether or not the violations were repetitious of the same offense or were different. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965) (18 months, equipment violations while operating a commercial vehicle are not to be counted); Conn. Ad. Regs. § 38-175a-8 (1968) (18 months); Fla. Stat. Ann. § 627.0852(2)(e)(7) (Supp. 1968) (36 months); Ga. Code Ann. § 56-2430(3)(C)(g)(7) (Supp. 1967) (36 months); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968) (12 months); Ind. Ins. Dep't, Bull. No. 21, Aug. 22, 1966 (18 months); H. Bill No. 1116, § 2(4)(c)(7), 1967 Kan. Laws (18 months); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (18 months, one violation which would justify revocation of a driver's license); Mo. Ann. Stat. § 379.202(1)(4) (Supp. 1967) (18 months, but equipment violations while operating a commercial vehicle are not to be counted); N.C. Gen. Stat. § 20-310 (1965) (18 months, any moving violation); R.I. Ins. Reg., Aug. 15, 1962 (18 months); S.C. Code Ann. § 46-750.51 (Supp. 1967) (18 months); Wash. Rev. Code § 48.18-.[2. (Supp. 1967) (18 months, any moving traffic offense); W. Va. Code § 33-6A-1 (Supp. 1968) (12 months, any moving traffic violation which constitutes a misdemeanor).

<sup>82</sup> The category relating to the condition and use of the insured's automobile contains seven different reasons permitting cancellation. Where an insured automobile is:

(a) So defective mechanically as to endanger public safety. Cal. Ad. Code ch. 5, tit. 10, art. 7.5. § 2371 (1965) (driving the automobile in the condition must constitute a misdemeanor); Fla. Stat. Ann. § 627.0852(2)(f)(1) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(8)(a) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(5)(a) (Supp. 1967) (driving the automobile in the condition must constitute a misdemeanor).

(b) Used for carrying passengers for hire or compensation (car pool use not to be so considered). Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Fla. Stat. Ann. § 627.0852(2)(f)(2) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(8)(b) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(5)(b) (Supp. 1967).

(c) Used in the transportation of flammables or explosives. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Fla. Stat. Ann. § 627.0852(2)(f)(3) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(8)(c) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(5)(c) (Supp. 1967) (repeatedly used).

(d) An authorized emergency vehicle. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371

The most significant protection afforded by the statutes is that the insurance company cannot cancel when the insured has an accident or makes a claim.<sup>83</sup> None of the statutes explicitly allow cancellation because of frequent accidents. Seven states sanction cancellation, however, if the insured has an accident record which is such that his operation of an automobile might endanger public safety.<sup>84</sup> These provisions are sweeping in their language and could be interpreted to allow cancellation because of accident frequency. Cancellation of an insured for an accident record which indicates that his operation of an automobile might endanger public safety presumably will not frustrate the purposes of the statutes.

There are, nevertheless, some pitfalls and weaknesses in the statutory grounds. A distinction must be made between conditions that arise during the policy period and conditions that existed prior to the inception of the policy period. Since all statutes allow the company 55 or 60 days to conduct an underwriting investigation, there is no need to permit companies to cancel during the policy period for reasons relating to matters that were or should have been disclosed by the investigation. Yet, many of the permitted grounds fall within this category.<sup>85</sup> As a result many insureds are denied protection

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(1965); Fla. Stat. Ann. § 627.0852(2)(f)(4) (Supp. 1968); Ga. Code Ann. § 56.2430-3)(C)(g)(8)(d) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202(1)(5)(d) (Supp. 1967) (repeatedly used).

(e) Substantially changed in type or condition during the policy period substantially increasing the risk. Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965) (such as, conversion to a commercial type vehicle, a dragster, sports car, or so as to give clear evidence of a use other than the original use); Fla. Stat. Ann. § 627.0852(2)(f)(5) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(8)(e) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968) (such as, conversion to a commercial type vehicle, a dragster, a sports car, or so as to give clear evidence of a use other than the original use); Mo. Ann. Stat. § 379.202(1)(5)(e) (Supp. 1967) (such as, conversion to a commercial type vehicle, a dragster, a sports car, or so as to give clear evidence of a use other than the original use).

(f) Subject to an inspection law and has not been inspected or, if inspected, has failed to qualify. Fla. Stat. Ann. § 627.0852(2)(f)(6) (Supp. 1968); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Minn. Stat. Ann. § 72A.142 (Supp. 1968).

(g) No insurer shall cancel, or refuse to renew a policy of any peace officer on his private automobile due to his accident rate compiled while driving police automobiles in pursuit of his duties. Mich. Stat. Ann. § 24.13262 (Supp. 1968).

<sup>83</sup> One survey indicates that accident frequency and motor vehicle violations constitute the principal reason for termination of policies. See Kentucky Legislative Research Commission, Insurance: Cancellation and Nonrenewal of Private Passenger Automobile Coverages 65, 67 (1967).

<sup>84</sup> Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2371 (1965); Fla. Stat. Ann. § 627.0852-2)(e)(3) (Supp. 1968); Ga. Code Ann. § 56-2430(3)(C)(g)(3) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.3 (Smith-Hurd Supp. 1968); Mich. Stat. Ann. § 24.13220 (Supp. 1968) ("or which would be grounds for the suspension of his license." This indicates a type of severity intended by the legislature, and should help avoid frivolous arguments by the insurer); Minn. Stat. Ann. § 72A.142 (Supp. 1968); Mo. Ann. Stat. § 379.202-1)(2)(c) (Supp. 1967).

<sup>85</sup> 1. The insurance was obtained through a material misrepresentation. 2. The insured failed to disclose in written application or in response to inquiry by his broker or by the insurer or its agent information necessary for the acceptance or proper rating of the risk. 3. The insured or any other operator who customarily operates the insured

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by the statutes, since at any moment the company may terminate, relying on information known prior to the acceptance of the risk. While they no doubt present unfavorable risks, if the company decides that the risk is nevertheless acceptable, then the insureds should not be subject to the peril of instantaneous cancellation. To correct this flaw, either subsequent termination statutes should not permit cancellation or refusal to renew for grounds presumably disclosed by investigation, or courts should imply a condition that cancellation be based only on information not available during the 55 or 60 day period of investigation.

If the weaknesses of the statutes are to be overcome and the practices which brought about the need for the statutes eliminated, the permitted reasons for cancellation must be construed properly. Insignificant defects, though within the letter of the law, should not be sufficient grounds for cancellation. One late payment on the installment of the premium or a failure to comply with the conditions of the policy (for example, failure to give notice of change of address within the specified number of days), probably occurs during the policy period of many insureds who do not present abnormal risks, yet these defects could be construed to warrant cancellation. It is submitted that such a literal construction of the statutes would protect no one, and would thus frustrate the objectives of the statutes. The responsibility is on state insurance commissioners to develop guidelines consistent with the purpose of the legislation,<sup>86</sup> and on state courts to interpret the provisions in light of the legislative policy. Thus far, there has been a varied response from the commissioners. On the one hand, the Florida Commissioner recognized that some of the permitted reasons were relatively broad and, therefore, declared that the policy holder will receive the benefit of any doubt in any hearing.<sup>87</sup> On the other hand, the West Virginia Commissioner has said that the companies need not change their policy forms to comply with the statute until the companies have submitted a new revision of their forms.<sup>88</sup>

As mentioned above, all cancellation statutes require that notice of cancellation be given to the insured and, in some states, to the motor vehicle department, a set period before the effective date of cancellation, though in some states the notice period is reduced or notice is not necessary if the reason for cancellation is nonpayment of premium.<sup>89</sup> The statutes vary con-

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automobile has, within a certain period of time prior to the policy period, had his driver's license suspended or revoked. 4. The insured has an accident record, conviction record (criminal or traffic), physical, mental, or other condition which is such that his operation of an automobile might endanger the public safety. 5. The insured has within the last 36 months been addicted to narcotics or other drugs. 6. The insured uses alcoholic beverages to excess. 7. All reasons relating to his criminal record.

<sup>86</sup> The commissioners should have this authority either by virtue of a specific provision in the cancellation statute, e.g., Mich. Stat. Ann. § 24.13260 (Supp. 1968), or by a general enabling statute, e.g., Ga. Code Ann. § 56-216 (1960).

<sup>87</sup> Florida Treasurer's Office, Directive Private Passenger Automobile Liability Insurance Cancellation Law, Aug. 7, 1967.

<sup>88</sup> Frank R. Montgomery, W. Va. Ins. Comm'r, Letter to all Licensed Fire and Casualty Insurance Companies, Apr. 7, 1967.

<sup>89</sup> Fla. Stat. Ann. § 627.0852(3)(a) (Supp. 1968) (10 instead of 20 days notice must be given if reason is nonpayment of premium); Ga. Code Ann. § 56-2430(4) (Supp.

siderably, however, in their requirements of what the notice must contain. Some states require that the notice include the reasons for cancellation.<sup>90</sup> A few states require that reasons be furnished only if a written request is made by the insured.<sup>91</sup> The former seems preferable since it immediately informs the insured of the basis of the company's decision, thus obviating the necessity of further correspondence, and enabling the insured to decide whether to pursue any rights he may have. A middle course, however, has been adopted by many states which require the company to inform the insured in the notice of cancellation of his right to request and receive the reasons for cancellation.<sup>92</sup>

Courts may require the company's reason to be very specific. In a recent Massachusetts case,<sup>93</sup> the defendant insurance company sent a notice of cancellation to an insured, giving as its reason "Misstatements in application to Question 8A." Subsequently, the plaintiffs were injured as a result of a collision with the vehicle driven by the insured. The company denied liability on the policy. However, the court held that "Misstatements in application to Question 8A" was not a "specific" reason within the statute, and so the cancellation was invalid and the plaintiffs recovered judgments from the company.<sup>94</sup> The company's reason did not inform the insured of the substance of question 8A, of the nature of the misstatements, or whether the question was included in the application for registration or for insurance. The court emphasized that, had adequate notice been given, the insured might

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1967) (10 instead of 20 days); Ill. Ann. Stat. ch. 73, § 755.4 (Smith-Hurd Supp. 1968) (10 instead of 20 days); Md. Ann. Code art. 48A, § 240A (Supp. 1967) (no notice required); Minn. Stat. Ann. § 72A.143 (Supp. 1968) (10 instead of 30 days); N.D. Cent. Code § 26-02-33 (Supp. 1967) (no notice required); H. Bill No. 684, § 3, 1968 S.D. Laws (10 instead of 20 days); Va. Code Ann. § 38.1-70.9 (Supp. 1968) (no notice required); ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)) (no notice required).

<sup>90</sup> Cal. Ins. Code § 653 (West Supp. 1967); Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2373 (1965); Mich. Stat. Ann. § 24.13224 (Supp. 1968); Minn. Stat. Ann. § 72A.143 (Supp. 1968); N.C. Gen. Stat. § 20-310 (1965).

<sup>91</sup> Mo. Ann. Stat. § 379.202(3)(1) (Supp. 1967) (reasons must be sent within 30 days after request); S.C. Code Ann. § 46-750.53 (Supp. 1967) (reasons must be sent within 45 days after request); W. Va. Code Ann. § 33-6A-3 (Supp. 1968) (reasons must be sent within 30 days after request).

<sup>92</sup> Fla. Stat. Ann. § 627.0852(3)(a) (Supp. 1968) (request by insured must be made not less than 15 days prior to effective date of termination, and the reasons must be sent within 5 days after insured's request); Ga. Code Ann. § 56-2430(4) (Supp. 1967) (request 15 days prior to effective date, reasons sent within 5 days); Ill. Ann. Stat. ch. 73, § 755.4 (Smith-Hurd Supp. 1968) (request 15 days prior to effective date, reasons sent within 5 days); Kan. Ins. Dep't, Reg. No. 40-3-31 (letter from W. Fletcher Bell, Ass't Comm'r of Ins., Apr. 5, 1968); Md. Ann. Code art. 48A, § 240B (Supp. 1967); N.D. Cent. Code § 26-02-33 (Supp. 1967) (request 10 days prior to effective date); H. Bill No. 684, § 3, 1968 S.D. Laws; Va. Code Ann. § 38.1-70.9 (Supp. 1968); Wash. Rev. Code § 48.18.-[2. (Supp. 1967) (request must be made within 5 days after receipt of notice); ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)) (request must be made before effective date, and reasons must be sent within 5 days after request).

<sup>93</sup> *Fields v. Parsons*, 1968 Mass. Adv. Sh. 331, 234 N.E.2d 744 (1968).

<sup>94</sup> *Id.* at 332, 234 N.E.2d at 745.

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have been able to prevent the cancellation, or have been able to obtain a new policy of insurance elsewhere.<sup>95</sup>

To insure full and complete disclosure of information, most states provide absolute immunity from suit based on any statements or information released by the company.<sup>96</sup> Insurers, for aid in evaluating risks, rely upon information collected from a variety of sources.<sup>97</sup> This information may be personal and, as a result, its disclosure would subject the insurer to a suit for defamation.<sup>98</sup> The immunity provision removes any objections the company might have about providing the reasons for cancellation with the notice of cancellation.

In the event the insured believes that the company has not complied with the statutory requirements and wishes to contest cancellation, the statutes of several states have provided him with a right to a hearing before the commissioner of insurance.<sup>99</sup> Some states, in an effort to make the insured aware of the alternatives available to him, insist that the notice of cancellation inform the insured of his right to appeal.<sup>100</sup> As an additional help to the insured, the notice of cancellation must specify the procedure he will need to follow to obtain review of the company's action.<sup>101</sup> Furthermore, many states require the company to inform the insured of his possible eligibility for insurance through the automobile assigned-risk program.<sup>102</sup>

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<sup>95</sup> *Id.*

<sup>96</sup> Cal. Ins. Code § 663 (West Supp. 1967); Fla. Stat. Ann. § 627.0852(11) (Supp. 1968); Ga. Code Ann. § 56-2430(9) (Supp. 1967); Ill. Ann. Stat. ch. 73, § 755.9 (Smith-Hurd Supp. 1968); H. Bill No. 1116, § 5, 1967 Kan. Laws; Md. Ann. Code art. 48A, § 240B (Supp. 1967) (privileged if good faith); Mich. Stat. Ann. § 24.13250 (Supp. 1968) (or commissioner); Minn. Stat. Ann. § 72A.147 (Supp. 1968) (or commissioner); Mo. Ann. Stat. § 379.202(3)(2) (Supp. 1967); N.C. Gen. Stat. § 20-310 (1965) (privileged and no cause of action shall arise); N.D. Cent. Code § 26-02-35 (Supp. 1967) (if good faith); S.C. Code Ann. § 46-750.53 (Supp. 1967) (between company and insured, disclosure of reasons is privileged communication and company shall have defense of qualified privilege); H. Bill No. 684, § 8, 1968 S.D. Laws; Va. Code Ann. § 38.1-70.11 (Supp. 1968) (if good faith); Wash. Rev. Code § 48.18-02 (Supp. 1967) (if good faith); W. Va. Code § 33-6A-3 (Supp. 1968) (if statements made with probable cause); ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)). There is no provision for immunity in Connecticut, Indiana, Massachusetts and Rhode Island.

<sup>97</sup> H.R. Rep. No. 815, *supra* note 68, at 94.

<sup>98</sup> See *id.* at 95.

<sup>99</sup> Cal. Ins. Code § 662 (West Supp. 1967); Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2372 (1965); Fla. Stat. Ann. § 627.0852(9) (Supp. 1968); Ill. Ann. Stat. ch. 73, § 755.10 (Smith-Hurd Supp. 1968); Mass. Gen. Laws Ann. ch. 175, § 113D (Supp. 1966); Mich. Stat. Ann. §§ 24.13230-44, .13254 (Supp. 1968); Minn. Stat. Ann. § 72A.148 (Supp. 1968); W. Va. Code § 33-6A-5 (Supp. 1968).

<sup>100</sup> Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2373 (1965); Fla. Stat. Ann. § 627.0852-12) (Supp. 1968); Ill. Ann. Stat. ch. 73, § 755.8 (Smith-Hurd Supp. 1968) (except if reason is nonpayment of premium); Mich. Stat. Ann. § 24.13224 (Supp. 1968); Minn. Stat. Ann. § 72A.146 (Supp. 1968).

<sup>101</sup> Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2373 (1965); Fla. Stat. Ann. § 627.0852-12) (Supp. 1968).

<sup>102</sup> Cal. Ins. Code § 652 (West Supp. 1967) (unless cancellation is for nonpayment of premium, or policy is an assigned-risk policy); Fla. Stat. Ann. § 627.0852(6) (Supp. 1968) (unless the reason for cancellation is nonpayment of premium); Ga. Code Ann. § 56-2430(7) (Supp. 1967) (unless reason is nonpayment of premium); Ill. Ann. Stat. ch. 73, § 755.7 (Smith-Hurd Supp. 1968); H. Bill No. 1116, § 3, 1967 Kan. Laws; Md. Ann.

After a hearing the commissioner may affirm or uphold the cancellation if he finds that the company complied with the statutory requirements. If the commissioner finds for the insured, however, he may order the notice of cancellation to be withdrawn, or, if the date cancellation is to be effective has elapsed, order the policy reinstated.<sup>103</sup>

For the insured to obtain a decision from the commissioner favorable to himself may, however, prove difficult. Several states presume the cancellation to be valid,<sup>104</sup> and, in any event, the policy holder is the moving party and, thus, must assume the burden of proof.<sup>105</sup> If the insured is dissatisfied with the results of the administrative hearing (or if the state does not provide an administrative hearing) he may seek judicial review in the state's appropriate court. So long as he has first exhausted his administrative remedies,<sup>106</sup> judicial review should be available.<sup>107</sup>

There are several possible judicial remedies available. Either an action for a declaratory judgment or a suit for an injunction should help determine the effectiveness of the company's cancellation, and the validity of the commissioner's decision. Both of these alternatives offer the advantage of immediately settling the rights of the parties, thus avoiding a situation where the insured does not know whether he is protected by insurance. Wrongful cancellation could also be considered a breach of contract, with the company liable for damages naturally flowing from the breach, including any increase in premiums the insured had to pay to replace the coverage with another company.<sup>108</sup> Regarding the measure of damages, if the company did not comply with the statutory requirements for cancellation, then the policy would still be in effect, and the company would be liable for any claims against the policy.<sup>109</sup> But whether the company's obligation to pay a claim be considered as arising under the policy or as compensation for breach of contract makes little difference. The company's obligation would be measured by an identical standard.

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Code art. 48A, § 240A (Supp. 1967); Minn. Stat. Ann. § 72A.146 (Supp. 1968); H. Bill No. 684, § 6, 1968 S.D. Laws; ch. 337, § 204.341, 1967 Wis. Laws (Wis. Leg. Serv. 1028 (1967)) (unless reason is nonpayment of premium).

<sup>103</sup> Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2372 (1965); Del. Code Ann. tit. 21, § 2908 (1953) (Commissioner shall make such order as may be equitable and just); Fla. Stat. Ann. § 627.0852(9)(c) (Supp. 1968); Ill. Ann. Stat. ch. 73, § 755.10 (Smith-Hurd Supp. 1968); Mass. Gen. Laws Ann. ch. 175, § 113D (Supp. 1966) (Board of Appeals shall form an appropriate order); Mich. Stat. Ann. § 24.13244 (Supp. 1968); Minn. Stat. Ann. § 72A.148 (Supp. 1968) (Commissioner shall approve or disapprove the insurer's action); W. Va. Code § 33-6A-5 (Supp. 1968).

<sup>104</sup> Cal. Ad. Code ch. 5, tit. 10, art. 7.5., § 2372 (1965); Fla. Stat. Ann. § 627.0852-(8)(b) (Supp. 1968); Ill. Ann. Stat. ch. 73, § 755.10 (Smith-Hurd Supp. 1968).

<sup>105</sup> *Bauer v. Clark*, 161 F.2d 397, 400 (7th Cir.), cert. denied, 332 U.S. 839 (1947), rehearing denied, 332 U.S. 849 (1948).

<sup>106</sup> See *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938).

<sup>107</sup> Some statutes specifically provide for judicial review of the Commissioner's decision, Mass. Gen. Laws Ann. ch. 175, § 113D (Supp. 1966); Mich. Stat. Ann. § 24.13244 (Supp. 1968); Minn. Stat. Ann. § 72A.148 (Supp. 1968); W. Va. Code § 33-6A-5 (Supp. 1968).

<sup>108</sup> See *Hawkins v. McGee*, 84 N.H. 114, 146 A.141 (1929).

<sup>109</sup> *Fields v. Parsons*, 1968 Mass. Adv. Sh. 331, 234 N.E.2d 744 (1968). The South Carolina statute provides that such a cancellation is "null and void." S.C. Code Ann. § 46-750.52 (Supp. 1967).

## AUTOMOBILE INSURANCE

Unfortunately, under the present cancellation statutes, the judicial remedies for the insured who successfully appeals are severely limited by the scope of the statutes themselves. While a court may coerce reinstatement of the policy, by declaratory judgment or injunction, the effect is only temporary. At the expiration of the policy the company can decline to renew for the exact same reasons it originally cancelled. By assuming the initiative to prove the company's capriciousness, the insured, if successful, is allowed to retain his policy in force for the duration of the term.

As mentioned above, South Carolina has attempted to strengthen the protection.<sup>110</sup> If the Department of Insurance finds that a refusal to renew was not based on a generally accepted underwriting basis, then the refusal to renew shall not affect the insurance rates of any policy *subsequently* applied for with another company, and the insured need not disclose the refusal to renew on a subsequent application.<sup>111</sup> Insurers rely on the services of commercial inspection companies, and the failure to report previous action of an insurer is of doubtful value, since the second company will be aware of the prior cancellation and is thus able to use it in classifying the insured.

Recognizing this, the Insurance Law Study Committee of the South Carolina General Assembly has recommended that the statute be amended to allow the Department of Insurance to disallow and set aside the refusal to renew.<sup>112</sup>

The problems of cancellation and nonrenewal do not appear to have reached the proportions that would justify imposition of criminal sanctions, nor does revocation or suspension of the power to write insurance seem warranted. On the other hand, under the present system there may not be incentive to appeal an unjustified cancellation, unless the accompanying financial loss is serious or obtaining other insurance impossible.

The cancellation statutes represent an attempt at correction, but the attempt will prove to be only a temporary relief. The direction of the future has already been seen, both with the South Carolina renewal provision and with those statutes which extend a three-month policy period to six or twelve months. Regulation of mid-term cancellation will increase the number of decisions by insurance companies not to renew policies; regulation of renewals will result in greater company selectivity in initial decisions to write policies. Mid-term cancellation, refusal to renew, and failure to issue are merely single representations of a larger problem. If the automobile liability system were functioning properly, the tremors of total government regulation of the area would not be felt.

ROBERT J. GLENNON, JR.

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<sup>110</sup> S.C. Code Ann. § 46-750.54 (Supp. 1967). See pp. 1006-07 *supra*.

<sup>111</sup> *Id.*

<sup>112</sup> Letter from Joe P. Barnett, Research Ass't, South Carolina Dep't of Ins., Feb. 26, 1968.