STATE REGULATION OF INSURANCE RATES

BY

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The stretching out of the long arm of the state to regulate and control the prices to be charged for insurance is a single incident in a legislative programme very widespread in its scope. Legislative policies as to prices, generally, during the early part of the century, were founded upon the theory that the law of supply and demand, and the competitive principle were a sufficient control, and that all the legislature had to do was to keep its hands off and the matter would presently regulate itself. This policy was based on two assumptions, first, that competition would always be present; second, that a demand would always create a commensurate supply.

This policy had the advantage of not demanding, or rather positively requiring a minimum of legislative action and therefore lasted a long time by virtue of the *vis inertiæ*, a very potent force in matters legislative; in fact it still numbers no inconsiderable force of adherents. But the assumptions were, at most, only partly true. Competition is a form of warfare, and its consequences are not infrequently only slightly less harmful to the victor than to the vanquished. Its development inevitably forces the combatants to seek allies, and endeavor to formulate a victory not by individual force but by combination. Once the combination process begins, it rapidly progresses to the point where one group possesses enough strength to dictate terms to the other groups which still survive; and when this point is reached there is of course no real competition left. Similarly, it is possible by combination to control or limit production, and, therefore, to govern with some accuracy the course of prices.

The first consciousness of these tendencies in the economic field produced in the legislative mind a vigorous reaction in opposition, whence flowed the numerous anti-monopoly and anti-trust statutes which are a familiar feature in the statute books of practically every state, and the extensive litigation which has engrossed, and in certain communities still engrosses, the attention of the courts.

The attempt to curb a widespread and very general economic movement by legislation is, however, a gesture, generally speaking, futile. Nor can the results of the anti-monopoly legislation be generally regarded as entirely successful. Once the principle of alliance and combination has been well developed, it is very difficult for the legislature or the courts to divorce the alliance, and still more difficult to set the individual members to fighting again.

This consideration is strengthened by the further fact that competition is by no means an unmixed blessing. Carried to its logical conclusion, its result is to leave the battlefield strewn with economic corpses, and with many of the victors nursing sore wounds, at once handicapped for efficient service and compelled to seek recoupment of loss in higher prices. This necessarily entails, not only a serious economic wastage, but a fluctuation in prices very unsettling to the community. Furthermore, there is, too, in the principle of combination and in the transaction of business in large units the possibility, not always realized to be sure, of increased economy and efficiency. Hence the legislative mind has developed, and in rather recent years, too, a second concept, namely; that it might be more advantageous to permit the economic development to proceed, and prevent it becoming a menace to the public by regulation and control. This has resulted in a substantial body of legislation which in effect permits combinations and the development of large monopolies or quasi monopolies, subject to certain restrictions, supervision over the management and operation, and last but by no means least, control over the prices to be charged.

The first manifestations in this line were in the case of the so-called natural monopolies, i. e., public service corporations. The right of the legislature to enact laws with regard to them was fairly clear, because of the peculiar nature of their functions. The later developments have been in case of businesses where the functions were essentially of a private nature, but where by virtue of the facts, the competitive principle had been so far superseded as to render possible artificial fixing of the prices of articles or commodities necessary to the community. Here the right of the legislature was less clear, and laws of this nature have been the subject of considerable litigation. The decisions of the courts have, however, given a very liberal interpretation to the powers of the legislature in this field.

Now coming to the subject of insurance. It is fairly clear that a good part of the existing anti-trust legislation does not touch insurance, although some statutes specifically include combinations to control the price of insurance, and others containing no specific reference have been interpreted to cover such combinations. There have been scattered decisions to the effect that such combinations are illegal at common law, although the better opinion seems to be that they are not.

> State ex rel. McCarter v. Firemen's Insurance Co. 75 N. J. Eq. 372, 73 Atl. 80, 29 L. R. A. N. S. 1194 holding that a combination to fix insurance rates is, even in the absence of statutory prohibition, illegal and void and may be enjoined as *ultra vires* the corporations entering into the agreement.
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> Queen Insurance Co. v. State 86 Texas 250, 24 S. W. 397, 22 L. R. A. 483, holding that a combination to establish uniform rates and commissions is not illegal at common law.

It is well established that the state can forbid combinations of insurance companies or their agents for the purpose of controlling rates, commissions or manner of transacting business.

> Carroll v. Greenwich Insurance Co. 199 U. S. 401. But see Niagara Fire Insurance Co. v. Carroll 110 Fed. 816.

This power is apparently very broad. Statutes have been upheld which invalidate stipulations in policies for notice and proof of loss where rates are made in combination.

> Aetna Fire Ins. Co. v. Kennedy 161 Ala. 600, 50 S. 73.
> Continental Ins. Co. v. Parks 142 Ala. 650, 39 S. 204.

and which permit in such cases the recovery of a sum in addition to the actual loss.

> German Alliance Ins. Co. v. Hale 219 U. S. 307.
> Firemen's Ins. Co. v. Hellner 159 Ala. 650, 49 S. 297.

A list of the anti-trust laws in force in the various states is included hereafter with notes as to such of them as specifically mention insurance.

Apart from anti-trust laws, the states have very generally enacted prohibitions against discriminations in rate between risks of the same class having substantially the same hazard, whether in the form of rate concession or of rebate of premium. Such statutes have been held constitutional.

People v. Hartford Life Ins. Co. 252 Ill. 398 37 L. R. A. N. S. 778.

Equitable Life Assur. Society v. Comm. 131 Ky. 126 67 S. W. 388.

Com. v. Morningstar 144 Pa. 103. 22A. 867.

Prohibitions against discrimination frequently appear in laws which contemplate positive rate regulation. There are on the other hand cases where the legislature has forbidden the making of a classification, thus compelling the carrying of risks, possibly involving a higher hazard, at the same rate as risks having a lower average hazard as in the statutes forbidding insuring colored lives at a different rate from white lives. The constitutionality of these statutes has not been tested.

In the insurance field, as in other economic fields, the prohibitions against combinations have proved ineffective or inadvisable, and in due course the form of legislation previously noted appeared, i. e., legislation which undertook to regulate rates.

The validity of this legislation was the theme of vigorous litigation. The leading case which finally determined the authority of the legislatures to regulate and determine insurance rates arose under a Kansas statute, (Session Laws 1909, c. 152), and is cited as:

German Alliance Insurance Co. v. Lewis, 233 U. S. 389, 1915 c. L. R. A. 1189.

The statute in this case in substance required fire insurance companies to file their rates with the Superintendent of Insurance, and authorized him to increase rates which were inadequate and decrease rates that were excessive, prohibiting the writing of insurance at rates other than those on file. This act was attacked as unconstitutional on these grounds:

First, under the constitutional guarantee of equal protection of the laws. The argument was that insurance was a private business, and legislation which fixed its prices, leaving the prices for other commodities unregulated, was class legislation.

Second, under the constitutional guarantee against deprivation of property without due process of law. The argument was that the law impaired a valuable right of property, namely, the right to fix rates by private contract.

Third, also under the constitutional guarantee of equal protec-

tion of the laws, based on the exception from the law of farmers' mutuals.

The court in its decision held that insurance was affected with a public interest and that its rates were subject to governmental regulation. In so holding it followed the rule laid down in:

Munn v. Illinois, 94 U. S. 113
Budd v. New York, 143 U. S. 517
Brass v. North Dakota, 153 U. S. 391

The reasons for the decision are of more theoretical than practical importance. The court laid some stress on the alleged fact that competition in fire insurance rates had practically ceased, and that there was the possibility of combined action injurious to the community. It pointed to a long series of cases upholding regulation of insurance in ways that indicated insurance was properly a business distinct from ordinary business. Practically, the decision fits in with the general trend of legislative, juridical, and public opinion as well, away from an economic system that placed much emphasis on the individual and his rights, to one that places equal emphasis on the community, and the subordination of private rights to the public interest. It establishes clearly enough at any rate the proposition that insurance rates are subject to public control.

In line with this case is Citizens Insurance Co. v. Clay, 197 Fed. 435, upholding a Kentucky statute requiring insurance companies to file with the State Insurance Board specific data regarding rates, and forbidding the use of rates other than those based on schedules furnished by the Board. In this case the court says: "The business of fire insurance is not impressed with a public use in the sense that the public can demand service, but it has at least a quasi-public as distinguished from a purely private character."

The right to regulate rates is, of course, subject to limitations. The same principles which have been laid down by the courts in cases involving governmental regulation of the rates of common carriers and lighting companies apply with equal force to the regulation of insurance rates. Within certain limits the legislature may act directly in fixing rates, or may commit to public officials powers to fix rates or to supervise rate making. Once its regulation becomes clearly unreasonable or clearly confiscatory, then the constitutional guarantee against taking property without due process of law applies, and will be enforced by the courts.

These limits to the legislature's power may be stated in more detail as follows:

In the first place, the legislature must provide a method whereby its decisions or the decisions of its officers with regard to rates may be submitted to a judicial tribunal. Otherwise there is a taking of property without due process of law. This principle was laid down recently in an opinion by the Massachusetts Supreme Judicial Court in an opinion given to the Massachusetts General Court on April 16th, 1925, as to the constitutionality of a bill for compulsory automobile insurance, which, *inter alia*, authorized the Commissioner of Insurance to make classifications of risks and establish premiums. This, the court held, would be constitutional if provision were made for a judicial review of the premiums thus established and not otherwise.

This decision quotes from the case:

> Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 289
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> "In all such cases, if the owner claims confiscation of his property will result, the State must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise, the order is void because in conflict with the due process clause, Fourteenth Amendment."

and comments thereon:

> "This principle is as applicable to insurance premiums as it is to public utilities, narrowly defined."

Other cases involving the rates of public utilities, laying down the same principle, are:

> Missouri Pacific Railroad Co. v. Tucker, 230 U. S. 340, 347,
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> Wadley Southern Railway Co. v. Georgia, 235 U. S. 650, 651. 660, 661
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> Missouri v. Chicago, Burlington & Quincy R. R. Co., 241 U. S. 533, 538
>
> Oklahoma Operating Co. v. Love, 252 U. S. 331
>
> Ex parte Young, 209 U. S. 123, at p. 147
>
> Chicago, Milwaukee & St. Paul R. R. Co. v. Minnesota, 134 U. S. 418
>
> Missouri ex rel South Western Bell Telephone Co. v. Public Service Commission of Missouri, 262 U. S. 276
>
> Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U. S. 679

The access to the courts must be reasonably free and not hampered or subject to burdensome restrictions designed to impede free access to the courts.

Ex Parte Young, *ubi supra*

In the second place, the legislature or its officers must exercise their powers reasonably and not in such manner as to produce a confiscation of property.

The opinion of the Justices, above referred to, states the rule as follows:

> "A fundamental principle of rate making by public authority is that in general the rate so established must be sufficient to yield a fair return on the reasonable value of property used or invested, for doing the business after paying costs and carrying charges. Rates not sufficient to yield such returns are unjust, unreasonable and confiscatory. That is the general rule."

As yet it is by no means certain how this rule will be applied by the courts in cases dealing with insurance rates. The public service cases involve as a rule the rates of a single corporation whose chief business is that affected by the rates. Insurance rates affect many corporations which may be actively engaged in many lines of insurance beside the one immediately affected. It may be assumed that the courts would not countenance rates so low as to produce an underwriting loss. There is a distinct question as to the basis on which they would determine the underwriting profit which they will allow as reasonable, and whether they will give any consideration to the so-called "banking" profit as the rating law of Missouri apparently considers proper.

There can hardly be a question that the courts will follow in general the lines laid down in the cases involving the rates of public utilities. This was done in the case of State v. Harty, 213 S. W. 443. This case arose under a type of statute which required rate increases to be approved by the Superintendent before becoming effective, a very common provision in insurance rate laws. Suit was brought to compel the approval of rates filed but not approved. This the court decided it could not do making the following citations with regard to its authority to control the acts of legislative officers:

> "A judicial inquiry investigates, declares and enforces, liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes exist-

ing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future and is, therefore, an act legislative, not judicial, in kind."

Prentis v. Atlantic Coast Line, 211 U. S., at p. 226, and cases cited

Interstate Commerce Com. v. Ry., 167 U. S., at p. 499

"The courts are not authorized to revise or change the body of rates imposed by a legislation or commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work, but may and should restrain the operation of confiscatory rates."

Reagan v. Farmers' Loan & Trust Company, 154 U. S. 397

"The Legislature has power to fix rates and the extent of judicial interference is protection against unreasonable rates."

Chicago & G. T. Ry. Co. v. Wellman, 143 U. S. 344.
Express Cases, 117 U. S. 28
Traverse City v. Comm., 202 Mich. 575, 168 N. W. 480.
City v. Madison G. & E. Co., 129 Wis. 249, 108 N. W. 65.

These citations and the decision indicate that the court will not issue its mandate to compel an officer to exercise his discretionary authority over rates according to the court's ideas of what is just. The court's function is to deal with accomplished facts. If the rates as they stand are unjust, unreasonable and confiscatory, the court will enjoin their continuance. It will not, and cannot, compel the making of a new rate.

10 Corpus Juris, p. 434, Section 679, and cases cited; see also So. Pac. Ry. Co. v. Bartine, 170 Fed. 725; Love v. Atchison, etc., Ry. Co., 185 Fed. 321

It may be added that the courts will not intervene without clear proof of the confiscatory and unreasonable nature of the rates, and starts with the presumption that the act of the legislature or of the commission is valid.

10 Corpus Juris, Section 679, and cases cited
Seaboard Airline R. R. Co. v. Alabama R. R. Com., 155 Fed. 796
Chicago, etc., R. R. Co. v. Tompkins, 176 U. S. 167

So, too, in cases based on gas rates the rule is laid down that:

"A rate can never be made by compulsion of public authority so low as to amount to confiscation."

28 Corpus Juris, p. 578, Section 40, and cases cited.

In gas rate cases certain statutes are not infrequently involved fixing a maximum price for gas. When fixed, this maximum was not unreasonable, but in the course of time, by reason of changed conditions, became inadequate to yield a proper return to the company. In such cases the statute becomes unconstitutional and void because confiscatory.

Municipal Gas Co. v. Public Service Com., 225 N. Y. 89
Bronx Gas Co. v. Public Service Com., 180 N. Y. S. 38, 190 Appl. Div. 13.

In the first of these cases the rule is laid down as follows:

"Into such a statute must be read the implied conditions that rates shall remain in force at such times only as will not work denial of a fair return, and when the return falls below that level, the law is suspended until the level is again obtained, when the duty of obedience revives."

This presents a situation very analogous to one which has on occasion presented itself in insurance cases, where a rate level adequate when fixed became inadequate by virtue of changed conditions.

One may conclude from the above cases:

(1) That the constitutional guarantee against deprivation of property without due process of law is as applicable to insurance cases as to other rate cases. Neither can it make a difference whether rates become confiscatory through direct legislative action, through direct action by administrative officers, or by the failure of such officers to grant needed relief.

(2) That the nature of the remedy is not a positive mandate to grant an increased rate. The courts will deal only with the existing law and the existing rates. If these result in confiscation, then the courts will enjoin the enforcement of the rates and of the law under which they are made.

As an example, take the case of:

Love v. Atchison, etc., R. R. Co., 185 Fed. 322

Here the court sustained an interlocutory decree enjoining the members of the Oklahoma Corporation Commission and the Attorney General from enforcing a provision of the all-inclusive Oklahoma constitution fixing maximum railroad rates.

Also in Municipal Gas Co. v. Public Service Commission, 225 New York, 89, the court held that the members of the Commission might be enjoined from enforcing the provisions of a statute fixing the maximum price of gas. Hence the power of the state to control

insurance rates is subject to the very positive restraint that in a proper case the courts will suspend the operation of the statute under which it professes to act.

Having given much space to the authority of the state, it may be well to give some attention to the extent to which the several states have gone.

As above indicated, the statutes affecting insurance rates fall into three classes, viz.:

(a) Anti-compact laws, forbidding the making of rates in combination.
(b) Anti-discrimination laws.
(c) Rating laws, where the state undertakes to assert a positive control over rate-making and rate administration.

By giving for each state the laws in force under each heading, some idea will be gained of the statutory background of the rating picture. How this background may have been improved upon by court decision or by administrative practices may be left for abler hands to discuss. Before starting out, it may be said that the list given does not include such provisions as those in the law relating to accident and health policies, requiring the filing of manuals, but providing no administrative function save to keep them on file. Furthermore, the search of the statutes covered enough of ground to demand haste, and one will rely on this as an exhaustive list at his peril, especially in view of the fact that many legislatures have been recently in session.

SUMMARY OF STATE LAWS AFFECTING RATES

ALABAMA

Anti-trust Law, Criminal Code, 1923, Sec. 5212-5214.
This contains no specific reference to insurance.

Anti-discriminatory and anti-rebating laws.

1. Criminal Code, 1923, Sec. 4589, 4604.
   Applying to all companies.
2. Civil Code, 1923, Sec. 8371.
   Applying to Life Companies.

Rating Laws

Civil Code, 1923, Sec. 7584, Act. August 23rd, 1919, Sec. 28.
Applying to Workmen's Compensation.

In substance this requires classifications of risks and premiums, basic rates and merit rating schedules, if any, to be filed with the

Superintendent of Insurance; and not to take effect until approved by him as "reasonable, adequate and not excessive." He may withdraw his approval of a rate or schedule if he finds it "excessive, unreasonable, discriminating, or inadequate to provide the necessary reserve."

ARIZONA

Anti-trust Law.
Not found.

Anti-discrimination Law
Rev. Statutes, 1913, Sec. 3408.

Rating Law
None.

ARKANSAS

Anti-trust Law.
Crawford & Moses Digest, 1921, Secs. 5976, 7369.

This section, appearing in two places, makes the right of an insurance company to do business in the state conditional on not being a member of, or a party to, any compact to regulate, fix or maintain insurance premiums on property in the state.

Anti-discrimination Law.
Crawford & Moses Digest, 1921, Sec. 6010.
Applying to Life Companies.

Rating Law

1. Digest 1921, Sec. 6012—applies to all companies.

Requires all companies to file their schedules of rates with the insurance commissioner. All rates must be a fixed percentage of the amount insured and must be uniform for all risks rated under same classification.

Companies may employ a common expert to inspect risks and advise upon the premium to be charged.

2. Digest 1921, Sec. 5962-5975. Act March 3rd, 1919, p. 146. Applies to Fire Companies.

Speaking generally, this authorizes the establishment of rating bureaus and vests in the commissioner power:

(a) To examine the bureaus.

(b) To require the filing of schedules, rates, forms, rules and regulations.

(c) To hold hearings on charges of discrimination and order discriminations removed.

(d) To hold hearings on rating agreements, and make orders disapproving same.

(e) To order general rate reductions, if during the preceding five years the stock companies have made on state business an underwriting profit aggregating five per cent.

Court reviews of his orders under the last three headings are provided.

3. Mention may be made of Act 493 of 1921, Sec. 5. This extends to all classes of insurance the laws relating to life, fire, marine, inland, lightning or tornado. Whether this includes the rating law, one would not undertake to say.

California

Anti-trust Law.

Not found.

Anti-discrimination Law.

(1) Political Code, Sec. 633 b. Applies to all companies.

(2) Acts, 1917, p. 957, Sec. 14, Dering's General Laws, 1923.

Act 3736.

Applies to Accident and Health Companies.

Rating Laws

Political Code, Sec. 602b.

Applies to Workmen's Compensation.

In effect this authorizes the commissioner to approve and issue as adequate for all carriers a uniform classification of risks and premium rates, and a uniform system of schedule or merit rating. Changes and additional rates are made and issued after a hearing to determine their adequacy.

The schedule must not take account of physical impairment of employees or the number of dependents.

Colorado

Anti-trust Laws.

Compiled Laws 1921, Sec. 4036-4043. No specific reference to insurance.

Anti-discrimination Law.

Id. Sec. 2528 applies to all companies in part, but chiefly to Life Companies.

Rating Laws

1. Id. Secs. 4397-4398. Laws, 1919, p. 708, Sec. 23-24.

Applies to Workmen's Compensation.

All carriers must file classification of risks and premiums, rates and rating schedules with the Industrial Commission,

which may approve same, or disapprove on the ground of inadequacy. The Commission may withdraw its approval. The rates, etc., do not take effect until approved.

Carriers must not write at rates other than those approved as adequate. Rate cutting and rebating are prohibited.

2. Comp. Laws, 1921, Secs. 2576-2593; Laws, 1919, p. 451. Applies to Fire Companies.

This requires every company to maintain or be a member of a rating bureau. Regulates such bureaus, and vests in the commissioner the following powers:

(a) To make examinations.
(b) To hold hearings on bureau rules and regulations and revise or suspend same.
(c) To hold hearings on charges of discrimination and order discriminations removed.
(d) To review and disapprove rating agreements.
(e) To revise rates. This is conditional upon a showing by stock companies of a five-year underwriting profit in excess of a reasonable amount.

Orders under (b), (c), (d) and (e) subject to court review.

This Act excepts:
(1) Domestic mutuals.
(2) Rolling stock of railroads, property in transit and property of common carriers used in transportation.

CONNECTICUT

Anti-trust Law.

General Sts., 1918, Sec. 6503. No specific reference to insurance.

Anti-discrimination Law.

Id: Sec. 4121. Applies to Life Companies.
Sec. 4122. Applies to all companies.

No Rating Law

DELAWARE

Anti-trust Law.

Not found.

Anti-discrimination Law.

Code, 1915, Sec. 601. Applies to Life Companies
Id: Sec. 640. Applies to Surety Companies.

Rating Law

Acts, 1919, c. 204, amending Revised Code, c. 90, Art. 6. Applies to Employers' Liability and Workmen's Compensation.

Carriers must file classification of risks, normal premiums, rates, rules (including rules as to premium audits and collections of premiums) and schedule a merit rating system with the Industrial Accident Board. These do not take effect till approved as adequate and reasonable. Approval may be withdrawn on ground of inadequacy, unreasonableness or discrimination.

Carriers are required to use rates, etc., approved by the Board.

Schedule rating can be used only when administered by a rating bureau, approved by the Board. Discriminations are forbidden and the Board has power to hear complaints and order discriminations removed. Its orders removing discriminations are subject to court review.

FLORIDA

Anti-trust Law.

Revised General Sts., 1921, Secs. 5719-5729. No specific reference to insurance.

Anti-discrimination Law—Id: Secs. 4268, 5736.

Applies to all Companies, in part, but primarily to Life Companies.

Rating Law

None.

GEORGIA

Anti-trust Law.

Park's Ann. Code, 1914, Sec. 2466.

This prohibits compacts of insurance companies for the purpose of preventing or lessening competition. Penalty, revocation of license until it appears the combination is annulled.

Anti-discrimination Law.

Park's Ann. Code, Sec. 2440. Applies to all companies.

Rating Law

Park's Ann. Code, Supp., 1922, Sec. 3154 U. U. U.
Acts, 1920, p. 206, Sec. 73.

Applies to Workmen's Compensation.

Rates are required to be fair, reasonable and adequate, with due allowance for merit rating. All risks of same kind and degree to be written at the same rate by the same carrier.

Basic rates and rating plans to be filed with the commissioner. Carriers must use rates and plans approved by him. They are not allowed to write at rates less than those approved, save through operation of merit rating plans.

Participating companies are restricted in declaring dividends on Georgia policies to surplus accumulated on Georgia business.

IDAHO

Anti-trust Law.

Comp. Sts., 1919, Secs. 2531, et seq.

Does not refer specifically to insurance.

Anti-discrimination Laws.

Id: Sec. 5026. Applies to all companies.

Rating Law

Acts, 1923, c. 48. Applies to Fire Insurance.

This permits resident insurance companies or persons resident in the state, not officers of a company, to form rating bureaus.

Rates must be filed with director of insurance.

1. Director may review rates to see if schedule has been properly applied.
2. May make inquiries as to organization and operation of bureaus.
3. May examine bureaus at his discretion. Must do so once in three years.
4. May order discriminations removed. Discriminations are not to be removed by increasing rates unless director finds increase justifiable. A court appeal is provided.

Apparently the director has no power to order adjustments of the rates.

ILLINOIS

Anti-trust Law.

Cahill's Revised Statutes, 1923, c. 38, par. 598, et seq.

Does not refer specifically to insurance.

Anti-discrimination Law.

Id: c. 73, pars. 353-356. Applying to Life Companies.

Par. 477. Applying to Accident and Health Companies.

Rating Law

None.

INDIANA

Anti-trust Law.

Burns' Annotated Statutes, 1914, Secs. 3866-3892f.

Does not refer specifically to insurance, but Indiana is said to be a state where the courts have enjoined an insurance rating organization as illegal at common law.

Anti-discrimination Law.

Id: Sec. 4677a. Applying to companies other than Life.

Sec. 4706a. Applying to Life Companies.

Rating Law

Acts, 1919, p. 508. Applying to Fire, Lightning, Windstorm, Sprinkler Leakage, Use and Occupancy and Automobile Fire and Theft.

1. Act requires companies to maintain or be members of rating bureaus. All bureau rates, rules, regulations, etc., are filed with the commissioner before taking effect. The Commissioner after hearing may approve or disapprove same or make such orders as he deems proper. A court review of his orders is provided.

2. The commissioner may address inquiries to bureaus as to organization and operation, and require filing of schedules, forms, rates, rules and regulations.

3. May examine rating bureaus, but not oftener than once in three years.

4. May hold hearings on charges of discrimination and order discriminations removed. A court appeal is provided.

5. May order the rates on any class or classes of business reduced if the aggregate returns of stock companies over a five-year period show an unreasonable profit. If, on the other hand, the experience fails to indicate a reasonable underwriting profit, he must order an increase. In determining a reasonable profit the conflagration hazard is to be given consideration. His orders are subject to court review.

6. He may review rating agreements between companies and has power to remake orders disapproving same. His orders or refusal to make orders are reviewable in the courts.

Iowa

Anti-trust Law. Code, 1924, Sec. 9010.

This explicitly prohibits insurance companies, their officers or agents from entering into combinations as to rates charged for insurance, the amount of commissions to be allowed agents, or the manner of transacting business within the state.

Anti-discrimination Law.

Code, 1924, Sec. 8666. Applying to Life, Cas. Health and Accident Companies.

Rating Law

None.

A rating law applicable to Fire Companies was repealed in 1917.

KANSAS

Anti-trust Law.

Revised Statutes, 1923, c. 50, Secs. 50-112. L. 1889, c. 257, Sec. 1.

This specifically declares unlawful combinations to control the cost or rate of insurance.

Anti-discrimination Law.

See Rating Law.

Rating Law

Revised Statutes, 1923, c. 40, Secs. 40-461 to 40-474, L. 1909, c. 152, am, L. 1917, c. 207, am, L. 1920, c. 45.

Applies to fire, hail and windstorm.

1. Companies must file with superintendent general basic schedules showing rates and all charges, terms, etc., which affect rates or cost of insurance.
2. Superintendent has power to order companies to reduce rates found excessive or to increase rates found inadequate to the soundness of the company. Hearings and a court review of orders provided. Appeals to U. S. Courts forbidden until remedies provided by Act are exhausted.
3. May revoke licenses for failure to comply with the Act.
4. May investigate Fire rates and visit and examine rating and actuarial bureaus used by fire companies. If these refuse to submit to examination, he may forbid companies to use their rates.

(This was a late amendment, and seems hardly in accord with the positive veto of rate making combinations in the anti-trust law.)

KENTUCKY

Anti-trust Law.

Carroll's Kentucky Statutes, 1922, c. 101, Sec. 3915, Act of May 20, 1890.

This does not cover combinations of insurance companies.

Aetna Ins. Co. v. Commonwealth, 106 Ky. 864, 51 S. W. 624.

International Harvester Co. v. Commonwealth, 124 Ky. 543, 99 S. W. 637.

Anti-discrimination Law.

Id: Sec. 656. Applies to Life Companies.
Sec. 762a-19. Applies to all companies.

Rating Law

1. Id: c. 137, Sec. 4955.

Applies to Workmen's Compensation.

(a) Rates must be fair, reasonable and adequate, with due allowance for merit rating.

(b) All risks of same kind and degree of hazard to be written at same rate by same carrier.

(c) Companies must use only basic rates and merit rating schedules which have been filed with, approved and not disapproved by Workmen's Compensation Board.

(d) Companies must make reports to Insurance Commissioner for purpose of determining the solvency of the carrier and the adequacy of its rates.

2. Carroll's Kentucky Statutes, 1922, Sec. 762, b. 25, to 762, b. 35.

Applies to Fire Insurance.

(a) All companies are required to maintain or be members of a rating bureau.

(b) The Auditor may inquire as to bureau's organization and operations and require the filing of schedules, forms, rates, rules, etc.

(c) He may examine bureau at discretion, and must do so every two years, unless an examination has been made by another department within two years.

(d) He may investigate discriminations and order them removed. (No provision for court review.)

(e) He may order rate reductions when experience of stock companies over a five-year period shows an aggregate underwriting profit in excess of a reasonable amount. He must not reduce rates so as to prevent a reasonable aggregate profit. He is required to give consideration to losses and liabilities both within and without the state. (No court review provided.)

(f) He may review rating agreement and has power to make orders of disapproval. A court review of his orders is provided, but not, as in most acts, of his failure to make an order.

LOUISIANA

Anti-compact Law

1. Wollf, Constitution and Statutes, 1920, pp. 1195, 1196, 1202 (Act 86 of 1890, p. 90; Act 90 of 1892, p. 120; (Act 11, G. S. 1915, p. 23).)

No specific reference to insurance.

2. Wollf, Constitution and Statutes, 1920, p. 986; (Act 224 of 1912, p. 509.) Applies to Fire Insurance.

(a) Prohibits combinations for purpose of influencing insurance rates on property in Louisiana.

(b) Companies may employ common agents to supervise

and advise of defective structures or suggest improvements to lessen fire hazard.

(c) Companies required to file affidavits each year that they have not within twelve months entered into any combination for purpose of preventing competition in rates, or governing, controlling or effecting rates in the state.

Anti-discrimination Laws.

1. Constitution and Statutes, 1920, p. 980, (Act 210 of 1908, p. 314.) Applies to Life Companies.

2. Constitution and Statutes, 1920, p. 1009, (Act 82 of 1886, p. 121.) Applies to all companies.

Rating Laws

None.

MAINE

Anti-trust Laws.

Revised Statutes, c. 51, Secs. 57-59; c. 128, Secs. 26-28. No specific mention to insurance.

Anti-discrimination Laws.

Revised Statutes, c. 53, Secs. 129-131. Applies to Fire and Casualty Companies.

Secs. 136-139. Applies to Life Companies.

Rating Laws

Revised Statutes, c. 50, Sec. 6.

Applies to Workmen's Compensation.

All classifications of risks and premiums must be filed with insurance department, and not used until approved as adequate.

The Commissioner may withdraw his approval and approve revised classifications and premium rates.

Acts, 1917, c. 224.

Authorizes commissioner to require filing of specific rates, including classifications of risks, experience data or other rating information.

Commissioner may make investigations to satisfy himself that rates filed are correct and proper.

MARYLAND

Anti-trust Law.

Not found.

Anti-discrimination Law.

Bagby's Ann. Code, Article 48A, Sec. 44. Applies to Life and Accident Companies.

Sec. 45. Applies to Fire and Miscellaneous Companies.

Rating Laws

1. Id: Article 48A, Sec. 92. Applies to Life Companies.

This authorizes commissioner, on report of actuary that a life company is using an insufficient, insecure or impracticable table of rates, to notify the company, make an examination and require the company to cease writing policies at a rate found to be inadequate.

2. Id: Article 101, Sec. 29.
Applies to Workmen's Compensation.

The commissioner has power to require insurance companies to establish and maintain adequate rates.

MASSACHUSETTS

Anti-trust Laws.

General Laws, c. 93, Secs. 1-14.
No specific reference to insurance.

Anti-discrimination Laws.

Id: c. 175, Secs. 120, 122. Applies to Life Companies.
Secs. 182-184. Applies to all companies.

Rating Laws

1. General Laws, c. 175, Sec. 104.
Applies to Fire Insurance.

Complaints on rates to be heard by Board of Appeal (constituted by General Laws, c. 26, Sec. 8).

Board may make findings as to whether rate is excessive, unfair or discriminatory, and may make recommendations. Findings are public records.

2. General Laws, c. 152, Sec. 52.
Applies to Workmen's Compensation.

Classifications of risks and premiums are to be filed with commissioner and do not take effect until approved as adequate. Approval may be withdrawn.

3. Sec. 53.

This permits mutual companies to group risks for dividend and assessment purposes subject to approval of commissioner.

MICHIGAN

Anti-trust Laws.

Howell's Michigan Statutes, 1912, c. 41, Secs. 2942-2968.
No specific reference to insurance.

Public Acts, 1917, No. 256, Part 2, Ch. II, Secs. 11-14.
Applies to Foreign Fire and Marine Companies.

Companies must enter into undertaking that they will not enter into contracts, etc., the effect of which is to prevent open and free competition within the state. Such contracts prohibited.

Anti-discrimination Laws.

Public Acts, 1917, No. 256, Part 2, Ch. IV, Sec. 6. Applying to all companies.

Part 3, Ch. II, Sec. 30. Applying to Life Companies.

Rating Laws

1. Public Acts, 1917, No. 256, Part 5, Ch. I, Sec. 10-13. Applies to Workmen's Compensation.

(a) Classification of risks, premiums and merit rating plans to be filed with commissioner.

(b) Policies to be written in accordance with classifications on file.

(c) Premiums to be reasonable and not discriminate unfairly between risks in application of like charges and credits or between risks having substantially same hazard and some degree of protection against accident.

(d) Deviations from rates on file to be made only after 15 days' notice to commissioner. Must be uniform in application to all risks in class affected.

(e) State Banking Commissioner, Attorney General and Commissioner of Insurance to hear charges of discrimination and may order same removed. Court appeal provided.

2. Public Acts, 1917, No. 256, Part I, Ch. IV. Applies to Fire Insurance.

Companies permitted to maintain rating bureaus subject to anti-monopoly laws. Bureaus to be licensed.

Bureaus must file all rates, rules and regulations with commissioner.

Commissioner has following powers:

(a) To investigate fire rates, including cost of operation, experience of insurers and rating methods.

(b) To determine adequacy and excessiveness of rates and to suspend any rate found excessive and establish a just and equitable rate, based on relative hazards, local conditions, etc. Court review of orders provided.

(c) Rates not to take effect till approved by commissioner. May disapprove in part or revoke approvals.

(d) May inquire into organization and operation of bureau and require filing of schedules, rates, forms, rules and regulations.

Same provision for removing discriminations as in preceding Act.

MINNESOTA

Anti-compact Laws.

General Statutes, 1923, Secs. 10463, 10464. No specific reference to insurance.

Anti-discrimination Laws.

General Statutes, 1923:

Secs. 3766-3769. Applicable to all companies.
Sec. 3425. Life, Accident and Health Companies.
Secs. 3376-3378. Life Companies.

Rating Laws

1. General Sts., 1923, Secs. 3579-3581.

Applies to Domestic Mutual Liability Companies. Permits grouping of rates for dividend and assessment purposes. Groupings to be filed with commissioner.

2. Id: Secs. 3604-3611.

Applies to Fire Insurance. Companies required to maintain or be members of rating bureaus.

Powers of Commissioner:

(a) To make inquiries as to organization and operation of bureaus and require filing schedules, rates, forms, rules and regulations.

(b) To examine bureaus.

(c) To review and disapprove rating agreements, orders subject to court review.

(d) To review bureau rates. May order discriminatory and unjust rates removed and fix rates in lieu thereof. A court review of orders provided.

(e) Id: Secs. 3612-3634.

Applies to Compensation Insurance.

Act creates:

(A) A compensation board, consisting of insurance commissioner, member of industrial commission and actuary of insurance department.

(B) A bureau of which all companies are required to be members.

Duties of Board:

(a) To approve minimum and adequate and reasonable rates for insurance. To approve a system of schedule merit and experience rating. Approvals may be withdrawn. To approve classifications and rules and regulations with reference to compensation rates.

(b) To review acts of insurers, bureaus and agents and enforce compliance with Act. Orders subject to court review.

(c) To supervise and examine bureau and review its rulings on complaint.

(d) May verify pay-roll audits.

Duties of Bureau:

(a) To classify risks, make inspections and apply schedule and experience rating plans.

(b) To establish classifications, make surveys and check pay-roll audits.

(c) To provide means for hearing complaints as to ratings.

Note.—The bureau is required to admit all companies. Participating and non-participating companies are represented equally on governing and rating committees.

Duties of Companies:

(a) Must file rates with Board. Not to change rates except on fifteen days' notice and approval of Board.

(b) Must not write insurance except at Bureau rates and rating plans approved by Board.

Mississippi

Anti-trust Laws.

Hemingway's Annotated Code, 1917, Secs. 3281-3305. Section 3282 prohibits contracts to fix "The price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy." (Amended 1920, c. 313, to allow Fire and Marine Companies to hold stock of other companies.)

Anti-discrimination Laws.

Hemingway's Annotated Code, 1917, Sec. 5064. Applies to Life Companies.

Rating Laws

Acts, 1924, c. 188, applies to Fire and Lightning Insurance.

This creates:

(a) A commission of three, appointed by the governor, the attorney general and the insurance commissioner.

(b) A bureau to be organized by stock fire companies. All stock fire companies to be members. Other insurers may become members.

Companies are required to file schedules of rates and premiums. The bureau submits rates and amendments to the commission for approval.

Duties of Commission:

(a) To approve rates if fair, just to the people of the state, and compensatory to the companies. Rates to be a percentage of amount insured and to be uniform for all stock companies.

(b) To order reduction in rates if aggregate underwriting profits of stock companies, over a five-year period exceed five per cent. The reduction is to be distributed by the bureau.

(c) To supervise and examine bureau and require filing of forms, regulations, etc. Must examine bureau annually.

(d) To order discriminations and unlawful deviations from bureau rates removed. Court appeal provided.

(e) To ascertain majority opinion of stock companies as to commissions and fix uniform scale thereby.

Companies are to use the bureau rates but may make deviations on ten days' notice. May not increase rates except with commission's approval. Act is not to prevent competition between companies.

MISSOURI

Anti-Trust Law:

Revised Statutes 1919, Secs. 9655–9671.

Prohibits agreements for fixing price or premium to be paid for insurance against fire, lightning or storm. Using ratings or rate books of a rating bureau constitutes *prima facie* evidence of membership in an illegal combination.

Anti-discrimination Law:

Revised Statutes 1919, Sec. 6139. Applying to life companies; Sec. 6187. Applying to Life Companies on stipulated premium basis.

Rating Laws:

Revised Statutes 1919, Secs. 6270–6288, am. 1923, S. B. 329, p. 234. Applies to insurance against fire, lightning, hail or windstorm.

This permits companies to use the rates of rating bureaus.

Bureaus may lower their rates at will, but may increase them only after ten days' notice to the superintendent and with his approval.

Powers of Superintendent:

(a) To examine and supervise bureaus. May inquire as to organization and operation and require filing of schedules, rates, forms, rules and regulations.

(b) All increases in rates subject to his approval.

(c) May order the removal of discriminations.

(d) May require statistics of premiums and losses, upon a uniform schedule and classification.

(e) May order reduction in rates, so as to produce a fair and reasonable profit.

Is required to give consideration to conflagration liability, acquisition and administration expenses and investment profits and

earnings. Object of act stated to be to protect public against extravagant methods and speculative administration of funds.

An appeal to the courts from his orders is provided. There is a provision for sequestration of premiums charged in excess of rates fixed by superintendent pending the appeal.

MONTANA

Anti-trust Laws:

Revised code, 1921, Sec. 10901–10915.
No specific reference to insurance.

Anti-discrimination Law:

Id., Sec. 6121. Applying to all companies.

Rating Law:

None.

NEBRASKA

Anti-trust Laws:

1. Compiled Statutes 1922, Sec. 3420.
This declares combinations to prevent competition in insurance of any kind to be a "trust."
Penalty, revocation of license (Sec. 7786).
2. Id., Secs. 3425–3428.
Applying to Fire Companies.
Combinations relating to rates, commissions or manner of transacting business are declared unlawful.
(Provisions for fines, examinations, revocation of license and appeal).

Anti-discrimination Laws:

Compiled Statutes 1922, Sec. 7884, applying to all companies.
Compiled Statutes 1922, Sec. 7886, applying to Life Companies.

Rating Laws:

Compiled Statutes 1922, Secs. 7891–7893.
Applying to Fidelity and Surety Companies.

Department of Trade and Commerce may investigate rates of premium and fix maximum schedules of rates and premiums. Companies must not charge higher rates.

NEVADA

Anti-trust Laws
Anti-discrimination Laws } not found
Rating Laws

New Hampshire

Anti-trust Laws:

Laws of New Hampshire, 1917, c. 177, p. 698.

No specific mention of insurance.

Anti-discrimination Laws:

No citation.

Rating Laws:

Acts 1921, c. 44.

Applying to Workmen's Compensation Insurance.

a. Companies to file with commissioner classifications of risks and premiums, basic rates and schedule or merit rating plans if in use. These are not to take effect until approved as just, reasonable and adequate for the risks to which they apply.

b. Commissioner may withdraw approval on ground that schedule or rate is unjust, unreasonable or inadequate.

c. Company not to write insurance except at approved rates.

d. Schedule or merit rating plans to be used only when applied by a regional bureau approved by commissioner. The merit modification to be set out in policy.

New Jersey

Anti-trust Laws:

Laws 1913, c. 13.

No specific reference to insurance.

It will be recalled, however, that in New Jersey a combination of insurance companies to fix rates has been held illegal at common law.

State ex rel., McCarter v. Firemen's Ins. Co., 74 N. J., Eq. 372.

Anti-discrimination Laws:

Sec. 116 of Insurance Laws. Comp. Sts. 1910 p. 2875. Applicable to Life Companies.

Rating Laws:

1. Sec. 29 of Insurance Laws.

Laws 1913, p. 133.

Applies in some degree to all companies, but chiefly to insurers against fire and legal liability of employers.

(a). Discrimination prohibited.

(b). Insurers against fire or legal liability of employers to make insurance only in accordance with schedules filed with commissioner, embodying basic rates, charge credits, terms, permits, conditions, standards, etc., necessary to computation of rates. May employ common experts for making and filing rates.

(c). Every such insurer to furnish insured on demand with information as to rate, or if rated on schedule with copy of schedule.

(d). To provide means approved by commissioner for hearing on application for change in rates.

(e). Commissioner may order discriminations removed, and insurance not written in compliance with schedules on file corrected. Discriminations not to be removed by increasing rates unless commissioner finds increase justifiable.

(f) Does not apply to life, marine and transportation risks other than automobile risks, to insurance on property outside state, to title insurance or mortgage guarantee.

2. C. 178, Laws of 1917, Art. I, Sec. 15, Art. II, Secs. 1–3. Am. 1919, C. 105.

Applies to Workmen's Compensation.

(a) Companies must file with commissioner classifications of risks and premiums, rules, basic rates and system of merit or schedule rating. These must be approved as adequate and reasonable before taking effect. Approval may be withdrawn.

(b) Commissioner authorized to create and supervise bureau or bureaus, to apply classifications, rule, rates, and rating systems.

(c) Companies to write only in accordance with classifications, rates, etc., approved by commissioner and applied by bureau. Merit rating modifications to be set forth in policy.

Bureau:

(a) The Compensation Rating and Inspection Bureau created by the act has following powers:

1. To maintain rules, regulations and premium rates, and adjust same to individual risks on inspection.
2. To secure uniform and accurate audits of payroll by auditors appointed by bureau.
3. To furnish employees information as to rates.
4. To offer reduced rates for improved conditions in accordance with schedule or merit rating plan.

(b) All companies must be members of bureau. Each has one vote in bureau affairs.

(c) A special deputy of commissioner is chairman of bureau and all officers are subject to commissioner's approval.

New Mexico

Anti-trust Law:

Statutes (compilation of 1915), Secs. 1685–1687.

No specific reference to insurance.

Anti-discrimination Laws:

Laws 1923, c. 93, Sec. 16.

Applies to Domestic Mutual Fire, Hail and Tornado Companies.

Comp. 1915, Sec. 2840, applies to Life Companies.
Sec. 2842, applies to all companies.

Rating Laws:

Laws 1917, c. 84, Sec. 8, applies to Domestic Mutual Employers Liability associations.

Rates to be just, reasonable, adequate and non-discriminatory. Superintendent to approve maximum of rates before effective. Companies may group risks for assessment and dividend purposes.

(Note.—A provision in Comp. 1915, Sec. 2868, forbade fire companies to charge rates higher than those in effect Jan. 1, 1879. This was apparently dropped out in redraft of Section, 1923, c. 121.)

New York

Anti-compact Law:

Consol. Laws, c. 25, Art. XXII, Sec. 340.

No specific reference to insurance.

Anti-discrimination Laws:

Consol. Laws, c. 28, Sec. 65, applies to all companies; Secs. 89–90, applies to Life companies; Sec. 108, applies to Accident and Health Companies.

Rating Laws:

1. Consol. Laws, c. 28, Sec. 67. Applies to Workmen's Compensation. All Carriers except state fund are required to file with Superintendent classifications of risks and premiums, together with basic rates and schedules, none of which take effect until approved as adequate. Approval may be withdrawn on ground that a rate or schedule is inadequate to provide necessary reserves.

2. Consol. Laws c. 28, Sec. 139, 140, 141, 141a, 141b. am. L. 1923, c. 436. Applies to all classes of insurance, except life, marine or transportation hazards other than automobile (Sec. 141a covers aircraft insurance), insurance on property outside state, title and credit guarantee, life and casualty companies on assessment plan, live stock companies and corporations, fire insurance cos. Accident and Health Insurance is excepted from 141b. Section 141 covers surety bonds.

A. Secs. 139 and 140.

These cover (1) bureaus for inspection and adjustment, testing appliances, formulating rules and fixing standards; (2) bureaus for assisting bureaus in formulating, fixing, promulgating and applying rates.

The first class must on request, the second class must, file with superintendent their articles of agreement or association and by-laws, and other information required. They are subject to visitation and examination by superintendent.

B. Sec. 141.

Covers rate making bureaus serving more than one underwriter.

1. These must file articles of association, by-laws, address and list of members and other information requested. Examination by Superintendent at least once in three years.

2. The Superintendent may require them to file all rates, manuals, schedules, rating plans and other information concerning rates.

3. Bureaus and their members must not:

(a) Make rates on condition or agreement restricting the placing of insurance or the rate at which it shall be written.

(b) Discriminate between risks of essentially some hazard, or if a fire risk, between risks in application of like charges and credits or between risks of essentially some hazard and some protection against fire.

(c) Charge licensing or other fees to licensed brokers, or refuse to do business with or present payment of commissions to brokers who will not agree to keep bureau risks or write at bureau rates.

(d) Promulgate rates not in accord with established rules, classifications or schedules.

(e) Interfere with payment of dividends or participating policies.

4. Bureaus must:

(a) Keep records of transactions.

(b) Furnish insured with information as to rate or if rated on schedule a copy of schedule.

(c) Provide means approved by Supt. to hear applications for changes in rates.

5. The Superintendent may order discriminations removed. Discriminations may be removed by increasing rates only with his approval. A court review provided.

C. Sec. 141a.

Covers fire rating bureaus.

1. These must admit or furnish service without discrimination to all authorized insurers. A company may not be a member of, or adopt rates of, more than one bureau rating the same kind of hazards.

2. Schedules, rates, and methods to be reasonable.
3. Risks to be rated.
   (a) By minimum class rates formally adopted.
   (b) By specific ratings based on schedule, formally adopted, after inspection.
   (c) By flat or non-schedule ratings in classes of risks permitted by Superintendent.

4. Insurers must comply with rates and rules of bureau in which it has membership or the rates of which it adopts. May, however, on thirty days' notice to Superintendent and bureau, and with approval of Superintendent make for the ensuing year a uniform percentage addition to or deduction from bureau rates.

5. The Superintendent may order the adjustment of rates on any risk whenever the profit derived from such rate over a five-year period is excessive, inadequate, unjust or unreasonable. He must give consideration to the conflagration hazard. His findings are subject to court review.

D. Sec. 141b.

Covers bureaus for other types of insurance.

1. Are under same requirements as C 1 and 2 *supra*.

2. To fix basis classifications, formally adopted for all risks rated. Departure from basic rates to be in accordance with schedules and rules formally adopted and filed with Superintendent.

3. Insurers are under the same restriction as to compliance with bureau rates and rules and deviation from bureau rates as in the case of fire bureaus. See C 4 *supra*.

4. The Superintendent may order adjustment of rates on any class of risks whenever it is found that rates will produce an excessive, inadequate or unreasonable profit. His orders are subject to court review.

North Carolina

Anti-compact Law:

Consol. Sts., 1919, Secs. 2559–2574.
No specific reference to insurance.

Anti-discrimination Laws:

Id. Sec. 6302 Applying to steam boiler, liability, accident, health, live stock, marine, leakage, credit, plate glass and fidelity insurance companies.
Sec. 6458 Applying to Life Companies.
Sec. 6488 Applying to Accident and Health Companies.

Rating Laws:

Id. Sec. 6388–6394.

Applies to all insurance companies including surety bonds. Does not apply to life, marine or transportation other than auto, insurance on property outside state, insurance on assessment or co-operative plan, title or credit insurance. This act provides regulations for rating bureaus somewhat similar to New York Sec. 141, rates and information concerning rates are to be filed with commissioner at his request.

The commissioner has authority:

(a) To order discriminations removed. Discriminations not to be removed by increasing rates except with approval of commissioner. No court appeal provided.

(b) To review rates on complaint. He may make a finding as to whether rate is excessive or uniform and make recommendations which are matters of public record.

North Dakota

Anti-trust Law:

Compiled Laws 1913, Secs. 9950–9963.
No specific reference to insurance.

Anti-discrimination Laws:

Id. Sec. 4855 applying to Life Companies.
Sec. 4922 am. 1919, c. 165, applying to all companies

Rating Law:

None.

Ohio

Anti-trust Law:

1. General Code, 1921, Secs. 6390–6402.
No specific reference to insurance.
2. Id., Secs. 9563–9564.
Applies to Fire Companies.

If a company doing business in the state enters into a compact to control rates for fire insurance or rates of commission to agents, the superintendent shall revoke its license, companies permitted to employ common agents to supervise defective structures suggest improvements for lessening fire hazards and advise as to relative value of risks.

Anti-discrimination Laws:

Id. Secs. 9401 and 9403, Applying to Life Companies.
9589–1, Applying to companies other than Life.

Rating Laws:

Id. Secs. 9592–1 to 9592–18, Applying to Fire Companies.

Companies are required to maintain or be members of rating bureaus. Bureaus must maintain office in state, are subject to examination and must file schedules, rates, etc., on request.

Deviations from bureau rates to be made only after 15 days' notice to superintendent and bureau and filing of amended schedules showing deviation, which must be uniform for all risks in class affected. Superintendent has following powers:

1. To make inquiries, require filing of schedules, rates, etc., and make examinations.
2. To order discriminations removed. Discriminations not to be removed by increasing rates unless superintendent approves increase.
3. To hold hearings on rating agreements and make orders of disapproval. Orders subject to court review.

No authority given to order rate reductions.

OKLAHOMA

Anti-trust Law:

Bunn's Compiled Statutes 1921, Secs. 11017–11045.

No specific reference to insurance.

Anti-discrimination Law:

Id. Sec. 6721, applying to Life Companies.

Rating Law:

Id. Secs. 6741–6758, Applies to fire, tornado, plate glass and employers' liability. The act creates a State Insurance Board consisting of insurance commissioner, fire marshal, and a third member appointed by governor. It makes no reference to rating bureaus.

Companies are required:

1. To file with board general basic schedules showing rates on all classes of risks and all charges, terms, privileges, and conditions affecting rates or value of insurance. Changes in schedules may be made only on ten days' notice, unless the board permits a shorter notice.
2. Not to do business until schedule is filed, or at different rates from those in schedule. Risks not covered by schedules may be written, but Board must be notified.
3. Not to discriminate between risks of like kind and hazard.

The Board has authority:

If a rate is excessive or inadequate to safety of company to direct the company to file a higher or lower rate commen-

surate with risk. The rate must be reasonable. The orders of the Board are subject to court review. Act does not apply to life, marine risks, growing crops of grain, cotton, or fruit, transportation risks other than auto, insurance on property outside state, title, mortgage guarantee or hail.

OREGON

Anti-trust Law:

Oregon Laws 1920, Sec. 6361, (L 1917 c. 203, Sec. 18,) Applies to all companies. Prohibits insurance companies from entering into compacts to control rates on commissions, or to discriminate against companies because of their plan of doing business or because of affiliation with any boards or associations of companies or for any purpose detrimental to free competition.

Anti-discrimination Laws:

Id. Sec. 6431, Applying to Life Companies. (L 1917, c 203 Sec. 24)

Sec. 6362, Applying to all companies. (L 1917, c 203, Sec. 19)

Rating Law:

1. Id., Sec. 6389, Applying to Fire Companies. (L. 1917, c 203 Sec. 22d, L. 1919, c 113 Sec. 1)

Permits organizations of bureaus by resident companies or by resident persons not officials of companies. Bureaus must admit all insurers, maintain office in state and operate without profit; must maintain a "supervisor" to examine applications and daily reports, notify companies of discriminations and violations of act and notify commissioner of failure to correct same. Bureaus, and companies not members of bureaus, must file schedules of rates with commissioner and not deviate therefrom until amended schedules are filed. A company which accepts rates of a bureau must give thirty days' notice of a deviation. Deviations must be uniform for all risks in territorial classification affected. But a company may not file bureau rates less a uniform percentage deviation. Short rate cancellation tables must also be filed.

The Commissioner has authority:

(a) To make inquiries and examinations.

(b) To order discriminations removed. Discriminations not to be removed by increasing rate unless commissioner approves. A court review provided. Apparently no authority to order rate reductions.

2. Id. Secs. 6396–6397 (L 1917–c. 203, Secs. 22K-22L.)

This provides for the suspension of license of companies which precipitate or conduct "rate wars" and in so doing write insurance at rates less than those on file. If a company in so doing cancels policies and rewrites them at rates less than those provided by schedules when rate war is not in operation, it may not charge back to agents any part of commission, on ground it was not earned.

PENNSYLVANIA

Anti-trust Law:

Not found.

Anti-discrimination Law:

1921, No. 284, Sec. 346, Applying to all companies. Sec. 626, Applying to Accident and Health Companies.

Rating Laws:

1. Id., Secs. 654–655, Applying to Workmen's Compensation.

(a) Classifications of risks, underwriting rules, premium rates and schedule or merit rating plans to be established by one or more rating bureaus, subject to supervision and examination by commissioner, and approved as adequately equipped, to compile rates on an equitable and impartial basis.

(b) Schedule and merit rating plans to be applied by the Bureau. An employer must not be discriminated against because of physical impairment of employees or number of their dependents.

(c) Risk classifications, underwriting rules, rates and rating plans not to take effect without consent of commissioner. His approval may be withdrawn on ground that same are inadequate or discriminatory between risks of essentially the same hazard.

(d) An insurer must not write insurance except in accordance with classifications, rates, etc., formulated by bureau and approved by commissioner for said insurer.

(e) Copies of all policies and endorsements to be filed with bureau.

(f) Sworn reports of premium and loss experience to be filed annually on or before June 30th.

2. Id. Secs. 541–552, Applying to Fire and Lightning.

Before doing business, a stock company, and a mutual company or reciprocal exchange which elects to become subject to the act, must file with the commissioner a schedule of rates or be a member of a rating bureau.

Bureaus are required to admit all companies to membership who will agree to abide by rules and are subject to supervision and

examination. A company member of a bureau must give fifteen days' notice of a deviation from bureau rates. The deviation must be uniform on all risks in class affected. Reason for making the deviation must be given the commissioner.

The Commissioner has powers:

(a) To make inquiries and examinations.

(b) To make orders disapproving rating agreements.

Apparently no provision for review of discriminations or for reduction of rates.

Rhode Island

Anti-trust Law:

Not found.

Anti-discrimination Law:

General Laws, 1923, Sec. 3800, Applying to all companies; Sec. 3809, Applying to Life Companies.

Rating Law:

None.

South Carolina

Anti-trust Law:

Civil Code 1922, Sec. 3534, Applying to all companies.

Defines as a conspiracy a combination to fix or limit "the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual or association."

Anti-discrimination Law:

Id. Sec. 4108, Applying to all companies.

Rating Law:

Id. Sec. 4117–4133, Applying to Fire Companies.

This permits companies to maintain rating bureaus.

The commissioner's powers are:

(a) To make inquiries and examinations of bureaus and to require filing of schedules, rates, bonus rules and regulations.

(b) To review rating agreements and make orders of disapproval. A court review of his orders is provided.

(c) May order discriminations removed.

(d) May order rate reductions, if aggregate profits of stock companies over a five-year period exceed a reasonable amount. A reduction ordered is distributed by the bureau or the companies, but they cannot be compelled to reduce rates on classifications which have not shown a reasonable profit over a five-year period.

His orders for removing discriminations and reducing rates are subject to review by the Insurance Commission, a Board of three,

appointed by the Governor. An appeal from the Commission to the Courts is provided.

South Dakota

Anti-trust Law:

1. Revised code 1919, Secs. 4352–4364.
No specific reference to insurance.

2. Id., Secs. 9202–9205.
Applying to insurance against fire and loss or damage by the elements. This declares unlawful agreements between companies or agents relating to rates to be charged for insurance, regulating minimum price or premium to be paid for insuring property within state, the commissions of agents or manner of transacting business. Companies are required to file an affidavit each year that they have not entered and will not enter into such an agreeement.

Anti-discrimination Law:

Revised code 1919, Sec. 9184, am. Laws 1919 c. 240, applying to all companies. Laws 1919 c. 229, Sec. 11, applying to Accident and Health Companies.

Rating Laws:

Laws 1919, c. 231.

Applying to fire, lightning, and tornado insurance. Bureaus are recognized. Companies are not to make combinations or agreements for general flat reduction of statewide basic rates, terms, estimates or conditions affecting cost or premiums, except such as are filed with and approved by the commissioner. His approval may be withdrawn.

The commissioner has the usual power to examine bureaus, make inquiries and require filing of schedules, rates, forms, rules and regulations.

As above stated, his approval is necessary to agreements for general advance or reduction of rates. His orders are subject to court review.

Tennessee

Anti-compact Laws.

1. Thompson's Shannon's Code, 1918, Secs. 3191a 1–7.
No specific reference to insurance.

2. Id., Sec. 3348a 21.
Applies to fire insurance. Forbids companies or agents to enter into compacts to maintain rates. Agents may form local associations to employ inspectors and experts to prepare rating schedules, etc., but rates suggested to be advisory only. (Sec. 1919 c. 8, c. 33.)

Anti-discrimination Law.

Code, 1896, Sec. 3312, applicable to Life Companies.

Rating Law

1. Public Acts, 1919, c. 24.

Applying to fire, lightning and windstorm insurance. This forbids companies to discriminate between risks in applications of like charges and credits or between risks of same hazard or same degree of protection against fire. The commissioner may require the filing of schedules, rates, forms, rules, etc., and require the submission by the insured of any policy for his inspection.

2. Public Acts, 1919, c. 123, Sec. 40 am. Public Acts, 1923, c. 84, Sec. 4. (p. 309)

Applying to Workmen's Compensation.

(a) Classification of risks and premiums, basic rates and schedule rating plans to be submitted to commissioner. Not to take effect until approved by Governor, Secretary of State and Commissioner of Banking and Insurance.

Approval to be withdrawn if in their opinion a premium rate is inadequate to provide the necessary reserves or so high as to be an unreasonable burden on the employer.

(b) Each company to submit statement of experience and loss ratio and other information to show cost of insurance in each classification.

TEXAS

Anti-trust Laws.

Complete Statutes, 1920, Acts 7796-7809, applying to all companies.

Sec. 7796 defines as a "Trust":

(a) Combinations to fix, maintain, increase or reduce cost of insurance.

(b) Combinations to lessen competition in the business of insurance.

(c) Combinations to fix or maintain standards or figures whereby the price of insurance shall be in any manner affected, controlled or established.

(d) Contracts not to make contracts of insurance at prices below a common standard or figure, or to keep price at a fixed or graded figure, or in any manner to affect or maintain prices, to preclude free and unrestricted competition in the business of insurance, or by which they shall agree to pool, combine or unite any interests in connection with sale of insurance.

(e) Contracts to fix or limit the amount of insurance that may be undertaken.

Anti-discrimination Law.

Id: Sec. 4896. Applying to Fire Companies.
Secs. 4954-5. Applying to Life Companies and in part to all companies.

Rating Laws

1. Id: Secs. 4876-4904. Applying to fire insurance.

It is impossible to give more than a very general outline of this long and extremely verbose enactment, which must be read to be appreciated.

The Act creates a State Insurance Commission consisting of the Commissioner of Insurance and Banking and two appointive members. It has:

(a) The exclusive right to fix, determine, and promulgate maximum rates of premiums to be used by all companies.

(b) To fix, determine and promulgate the rates of premiums to be charged and collected.

(c) The rates fixed must be reasonable. The Commission determines the form of the schedules and provides copies at cost. Rates are fixed by order and notice to companies. Changes and amendments may be made on thirty days' notice. The Commission may make rules for writing unrated risks at rates determined by the company.

(d) The Commission may make and establish uniform forms of policies and forms, clauses and indorsements.

(e) There are provisions for hearing requests of companies for changes in rates and complaints of citizens. A court review of acts of Commission is provided.

Companies must not write insurance at rates in excess of the maximum rate established. If they write at less rates, the lesser rate is applicable to all risks of the same class. An analysis of the deviation must be filed with the Commission. They are required to furnish with each policy written a written or printed analysis of the rate, showing all items of charge and credit, unless such analysis has been previously furnished. They are required to use the policy forms established by the Commission. Clauses and indorsements other than those established may be used only with consent of Commission.

(2) General Laws, 1923, c. 182, p. 408.

Applying to Compensation Insurance. This authorizes Commission created by preceding Act:

(a) To make, establish and promulgate all classifications of hazards and rates of premium.

(b) To prescribe a uniform policy to be used by all carriers. Endorsement to be approved by the Commission.

(c) Rates are to be adequate to risks and consistent with solvency of carrier and the erection of adequate reserves. They must also be reasonable and not confiscatory.

(d) To add a system of schedule rating and experience rating.

(e) To secure data from companies. Are to base rates on an exposure adequate in amount and time, to insure adequate and reasonable rates. May exchange data with other bodies and consult any national body.

(f) To hear grievances of policy holders.

(g) To approve dividends of participating carriers. Not to approve unless adequate reserves are provided. Companies must not use classifications, rates or policy forms other than those approved.

UTAH

Anti-trust Law.

Compiled Laws, 1917, Secs. 4475-4485.

No specific mention of insurance.

Anti-discrimination Laws.

Id: Sec. 1167, applying to Life Companies.

Rating Laws

Id: Sec. 3114, am. Laws 1919, c. 63.

Applying to Workmen's Compensation.

All carriers subject to rules and regulations of Commission, "including rates to be charged and methods of compensation to be used."

VERMONT

Anti-trust Law.

Not found.

Anti-discrimination Law.

General Laws, 1917:

Secs. 5575-5577, applying to Life Companies.

Sec. 5634, applying to Accident and Health Companies.

Rating Laws

(1) Public Acts, 1921, c. 164.

Applying to Workmen's Compensation:

(a) Classifications of risks, premium rates, basic rates and systems of schedule or merit rating to be filed with Commission, and not to take effect until approved as reasonable and proper for the risks to which they apply. Approval of a rate or schedule made by an insurer may be withdrawn if inadequate to provide for obligations assumed by insurer.

(b) Companies not to use premium rates other than those approved by the Commission for them.

(c) Schedule and merit rating systems to be applied only by a regional rating bureau approved by Commissioner.

(d) Merit adjustment to be clearly set forth in policy.

(2) Public Acts, 1919, c. 148.

Applying to all insurance, including surety bonds excepting life, marine or transportation other than automobile risks, and insurance on property outside state.

Bureaus under following obligations:

(a) To file articles of association and by-laws with Commissioner, together with business address, list of members and other information required.

(b) To file schedule of rates when called for by Commissioner.

(c) Not to discriminate between risks of essentially same hazard, or if a fire rate, in the application of like charges and credits or between risks of essentially same hazard and equal protection against fire.

(d) Not to charge fees to licensed brokers nor refuse to do business with broker who will not agree to use bureau rates.

(e) To keep records, inform assured as to his rates, and if risk be rated on schedule, supply him with a copy.

The Commissioner has following powers:

(a) To make inquiries, require filing of rates, schedules, etc., and to make examinations.

(b) To order discriminations removed. Not to be removed by increasing rates unless Commissioner is satisfied increase is justifiable.

Grievances are heard before a Board consisting of insurance commissioner, auditor of accounts and one person named by rating bureau. If the Board find rate excessive, they shall fix a reasonable rate to be binding on all companies doing business in the state.

Orders of Board subject to court review.

VIRGINIA

Anti-trust Law.

No general statute.

(Code, 1919, Sec. 4312., forbidding combinations or agreements to govern and control commissions or compensation paid to agents, repealed, Acts 1923 p. 53.)

Anti-discrimination Laws.

Code 1924, Sec. 4222. Applying to Life Companies and in part to other companies.

Rating Laws

(1) Id: Sec. 4199. Applies generally.

Commissioner to investigate complaints as to unreasonable rates and make reports to general assembly with such recommendations as may be necessary to cure existing evils.

(2) Act, March 21, 1918, am. Acts, 1924, c. 318, Sec. 75, Code 1924, Sec. 1887 (75)

Applies to Workmen's Compensation:

(a) Rates charged to be reasonable and adequate, and all risks of same kind and degree of hazard to be written at same rate by same carrier.

(b) Subject to rules prescribed by Commissioner; basic rates may be modified in accordance with plans of schedule rating and experience rating.

(c) No policy valid until rate has been filed, approved and not subsequently disapproved.

Companies to make reports to Commissioner to show solvency and adequacy of rates.

(3) Acts, 1920, c. 163, applying to fire insurance, Code 1924, Secs. 4314a.–4314p.

Companies must maintain or be members of a rating bureau. Bureaus to admit all carriers to membership agreeing to comply with rules. Companies may deviate from bureau rates on 15 days' notice to bureau and Commissioner, and filing schedule shows amended rates and charges and credits. Deviations to be uniform for all risks in class affected.

Commissioner has following powers:

(a) To make inquiries, require filing of schedules and rates, etc., and make examinations.

(b) To review charges of discrimination and order discriminations removed. Order subject to review by State Corporation Commission.

(c) If returns of Stock Companies over five-year period show underwriting profit in excess of a reasonable amount, may order reduction of rates in classes yielding an excessive profit. Must take into consideration conflagration hazard Orders subject to review by Corporation Commission.

(d) May make orders disapproving rating agreements. Orders or refusal to make orders subject to review.

WASHINGTON

Anti-trust Law.

Remington's Compiled Statutes, 1922, Sec. 7076. Generally applicable.

This prohibits combinations:

(A) For purpose of controlling rates to be charged for insuring any risk or classes of risks in state.

(B) For purpose of discriminating against company, manager, agent, or broker, because of method of doing business or affiliation or non-affiliation with any board or association.

Anti-discrimination Laws.

Id: Sec. 7077, applying to all companies.
Sec. 7226, applying to Life Companies.

Rating Laws

(1) Id: Secs. 7118-7119:

(A) Applicable to all companies; all companies to file rating schedules with Commissioner. Not to deviate therefrom until amended schedules are filed.

(B) Applicable to Fire Companies.

Residents and domestic companies may organize rating bureaus. Bureaus to file rating schedules with Commissioner. Not to deviate therefrom until amended schedules are filed. Companies instead of filing schedules may notify Commissioner of adoption of rates of a rating bureau with deviations, if any, he intends to make. Deviations must be uniform for all classes to which they apply.

Bureaus are under obligations:

(a) To serve ratably and proportionally all companies, agents, brokers and property owners.

(b) To keep record of work performed.

(c) Not to stamp or examine daily reports or policies. Commissioner has power to examine.

(2) Id: Secs. 7157, 7158, applicable generally:

(a) Company which precipitates or conducts "rate wars" and writes policies at rate below schedules on file with Commissioner or below rate deemed by him adequate and proper may have license suspended.

(b) If company precipitates or conducts rate war for purpose of punishing or eliminating competition or demoralizing business, and orders cancellation of policies and rewriting of rates lower than schedules when war is not in operation and pays return premiums, it may not charge back any part of agent's commission on ground it was not earned.

West Virginia

Anti-trust Law.

Not found.

Anti-discrimination Law.

Barnes West Virginia Code, 1923, p. 601, c. 34, Sec. 15, (Acts, 1913, c. 19.) Applying to Life Companies and in part to all companies.

Rating Law

Id: P. 625, c. 34, Sec. 76b, (Acts, 1913, c. 20, Secs. 1, 2, 1921, c. 149.

Applicable generally.

Rating bureaus must file with Commissioner copy of articles of association, by-laws, business address and list of members and such other information as required.

(1) They must file on request their schedule of rates.

(2) Must not make discriminations or try to restrict plans of insurance.

(3) Must keep records, furnish information to policy holders as to rates, or if property be rated on schedule, supply a copy thereof.

(4) Must not change schedules except on 15 days' notice.

The Commissioner may permit change on less notice.

The Commissioner may examine bureaus. May order discriminations removed. Discriminations not to be removed by increasing rates unless Commissioner approves increase.

Court appeal provided.

WISCONSIN

Anti-trust Laws.

Wisconsin Statutes, 1923, Secs. 133.01 to 133.24.

No specific reference to insurance.

Anti-discrimination Laws.

Id: Secs. 207.01. Applying to Life Companies.

Rating Laws

(1) Id: Secs. 205.01-205.29. Applying to Compensation Insurance.

This Act creates a Compensation Insurance Board consisting of the Commissioner of Insurance, one member of the Industrial Commission and one person appointed by the Governor. Also a Bureau to which all compensation carriers must belong. The functions of the Board are:

(a) To approve minimum adequate price premiums for each classification.

(b) To approve a system of schedule or merit rating.

(c) To approve maximum and minimum expense loadings.

(d) To approve rates for the companies.

(e) Rates or systems of schedule rating not to take account of physical impairment or experience rating.

(f) May withdraw approvals of classifications or rates on 10 days' notice.

(g) May require surveys and reports by bureau.

(h) Payroll audits to be reported to Commission, which may verify same by re-audit and shall do so on complaint.

(i) May review acts of companies and bureaus and compel compliance with Act. Orders subject to court review.

(j) May review expense apportionments of bureau and hear appeals from bureau.

Bureau has power to make by-laws subject to approval of Commission. It must admit all insurers on an equitable basis. Participating and non-participating companies to be represented equally on governing committee and rating committee. Must obtain a license from the Commissioner and is subject to examination by Board.

Its functions are:

(a) To classify risks, assigning each hazard to a classification.

(b) To apply the schedule rating system, make inspections and surveys.

(c) To keep a record of its acts, supply information to employees as to schedule charges and credits, and to provide means approved by Board for hearings with reference to rates and other matters affecting a risk.

Companies are to file their rates and schedules of expense loadings, which are not effective until approved by Board as adequate. In fixing rates they must not use pure premiums less than those approved as adequate by Board but may use higher ones. They must not write insurance at rates other than those approved, subject to schedule modification, which must be clearly set forth in policy.

They are under obligation not to discriminate and to file information with Board as to writings.

(2) Id: Secs. 203.32-203.49.

Applies to fire, lightning, windstorm, sprinkler leakage.

Requires all companies to be members of a rating bureau.

A bureau may be organized by five or more insurers. Must admit an authorized insurer, and each class of companies to have representation on managing committee. Must maintain office in state, and obtain a license from Commissioner.

Duties:

(a) Must file with Commissioner copy of articles of association, by-laws, copies of contracts and agreements entered into with members, regulations and rules.

(b) Must not prohibit members from charging other than bureau rates.

(c) Must furnish information and make re-surveys at Commissioner's request.

(d) Rates to be reasonable and non-discriminatory.

(e) To use a uniform classification and rating schedule established by Commissioner.

The Commissioner may:

(a) License bureau and pass on regulations and rules.

(b) May make inquiries and require filing of rates, schedules, etc.

(c) May examine bureau.

(d) May order discriminations removed and review rates for purpose of determining whether they are unreasonable or discriminatory. If he finds rate unreasonable, may establish a reasonable rate and order bureau to use one no higher.

His orders are subject to court review.

(e) To approve riders for extra hazards and establish uniform classification of risks.

In addition companies are required to maintain a joint stamping office. This is subject to visitation and examination. Mutuals and reciprocals may maintain own stamping offices.

All writings are reported to stamping office, and the office notifies agent and company of violations of Act, and notifies Commissioner if violations are not rectified.

(3) Id: Secs. 201.52-201.58.

Applies to liability (but not Workmen's Compensation). Companies are required:

(a) Not to discriminate, nor use schedule or other rating systems which results in discrimination.

(b) Not to evade Act by granting favorable rates on other lines of insurance.

(c) Not to charge or collect unjust or unreasonable rates.

(d) To file with Commissioner these rates and manual classifications and also systems of rates. Not to use rates other than those on file.

(e) To make reports as to writings and practices as required, but to report annual premiums renewed and losses paid on or before May 1.

The Commissioner has power:

(a) To order modifications of schedules or rating plans if they produce discriminating results.

(b) To review any rate to determine whether it is unreasonable or discriminatory.

(c) May order discriminations removed.

(d) May establish a rate which is reasonable and order company to make one no higher.

Orders subject to court review.

(4) Id: Sec. 201.60.

Applies to all rating organizations:

(a) Companies not to be members of rating organizations not complying with law.

(b) Organizations to furnish service without discrimination to all insurers.

(c) To file with commissioner charter, by-laws, etc., and such other information as required.

WYOMING

Anti-trust Law.

Not found.

Anti-discrimination Law.

Compiled Statutes, 1920, Sec. 5235. Applying to Life Companies.

Rating Laws

Session Laws, 1921, c. 142, Secs. 16-17.

Applies to Fire Insurance.

Companies required to maintain or be members of a rating bureau.

Bureaus required to admit all insurers and maintain office in state.

They must not discriminate.

Companies may vary from bureau rates on fifteen days' notice to bureau and Commissioner, filing amended schedules showing change in rates and in charges and credits.

Variations must be uniform for all risks in classes affected.

Commissioner has power:

(a) To make inquiries, require filing of schedules, rates, etc., and make examinations.

(b) To order discriminations removed.

His orders subject to court review.

(c) If returns of stock companies for five years show unreasonable underwriting profit, may order reduction in rates.

The reduction is applied by the bureaus or companies.

In determining a reasonable profit, he must take into consideration conflagration hazard.

Orders subject to court review.

(d) May disapprove rating agreements.

Orders subject to court review.

This long and detailed analysis was prepared somewhat hurriedly, and with the design of indicating the powers assumed by the state rather than giving a complete picture of the detailed

mechanism of the laws. Certain of the laws providing for bureaus are of great length, and a complete description would run into a wealth of detail. It appears advisable, therefore, to add a few comments on certain features of the Acts above enumerated, and some consideration of the legislative policies involved.

A. *Anti-compact Laws*

Anti-compact provisions applicable to insurance exist in sixteen states. The following table will indicate the salient facts with regard to each:

State	*Type of Insurance Affected*	*Forbids Compacts to Affect*
Arkansas	All	Rates
Georgia	All	Competition
Iowa	All	Rates, commissions, manner of transacting business
Kansas	All	Rates
Louisiana	Fire	Rates
Michigan	Fire (foreign companies)	Competition
Mississippi	All	Rates
Missouri	Fire, Lightning, Storm	Rates
Nebraska	1. All	Competition
	2. Fire	Rates, commissions, methods of transacting business
Ohio	Fire	Rates, commissions
Oregon	All	Rates, commissions, competition, discrimination against companies and agents
So. Carolina	All	Rates
So. Dakota	Fire, loss or damage by elements	Rates, commissions, methods of transacting business
Tennessee	Fire	Rates
Texas	All	Rates, certain methods of transacting business (see outline of Act)
Washington	All	Rates, discrimination against companies or agents

In certain of these states, rating laws have done much to modify or neutralize these provisions, and in others it is quite possible

that the laws to some extent are permitted to lie dormant. The recent litigation in Mississippi, however, indicates the possibilities that may lie in a law, supposedly dormant, suddenly called into operation.

It is a well recognized fact that rate making on a scientific basis, and above all careful and equitable rate administration, frequently become impossible without a large degree of cooperation, both in assembling and handling the necessary statistical and engineering data, and in applying the rates and rating systems to individual risks.

A vigorous enforcement of an anti-compact law affecting rates and methods of transacting business is very apt to result in a crude and unrefined rating policy, in discrimination, and in a rating service inadequate to the needs of policy holders as well as of companies; also more than probably, in an increased cost of doing business.

The inhibition of combinations to control commissions appears to have been designed for the benefit of agents rather than of the public at large. It has been pointed out more than once that competition in commissions operates distinctly to the detriment of the public, since its only possible effect is to increase underwriting expense and produce higher rates. Neither does it produce healthy conditions in the business. Bidding for business through increased commissions is a familiar device, and a very effective one, and naturally operates to the advantage of the company with the most abundant resources. At least one state with a provision of this sort on its books has by statute undertaken to restrict commissions on compensation insurance; an act thoroughly inconsistent in principle with its anti-compact law. That in recent time both fire and casualty companies have felt it imperative to deal with this question of mounting acquisition costs is a matter familiar to all. The effect of the statutory inhibition if enforced would appear to be costly to the public.

The inhibition in two states of discrimination against companies, agents or brokers appears to be based on local conditions, and to be addressed to the interests of certain insurers rather than of the public at large. The curious inhibitions against "rate warfare" appearing in both states constitute a peculiar contradiction to the idea of the anti-compact law. It is by no means easy to say at what point the state would figure legitimate competition

ended and "rate warfare" began. All competition in rates is rate warfare.

Competition has many virtues, but also many shortcomings. That these shortcomings are recognized by the states is evidenced by the enactments listed above in the line of anti-discrimination laws and rating laws. The enforcement of equality in rates between risks of the same class, just though the principle be, narrows competitive possibilities very noticeably; and once the state enters on a policy of rate regulation, competition becomes more and more a thing of the past. Once a state places on its books a statute recognizing the right of companies to form rating organizations, it in effect issues an open invitation not to compete. If it goes further and adds control of rates whether on the criterion of reasonableness or of adequacy, it places very definite limits to rate competition. If it undertakes to fix rates or to make rates, then competition in rates is definitely abandoned. This is true even when the state does not recognize rating organizations but undertakes to deal with the rates of single companies; for if it fixes a rate for one company, then all companies under the constitutional guarantee of equal protection of the laws are entitled to use that rate. Or, irrespective of that provision, unless the state treats all companies alike, it is settling the competitive issue in favor of the company which it permits to use the lowest rate.

That the principle of the anti-compact laws has left its mark on the rating laws will be hereafter seen.

B. *Anti-discrimination Laws*

The principle that all persons are entitled to equal treatment by insurance companies is the natural concomitant of the doctrine that insurance is a business public in its nature. The number of enactments on that subject sufficiently indicates its general acceptance, and we may therefore regard it as a settled rule of the game.

It will be noted that some of the laws listed as anti-discrimination laws deal exclusively with rebates. Rebating is in fact discrimination, and it is the discriminatory feature that furnishes the justification of the law. It will further be noted that some of the laws listed as rating laws are merely enlarged anti-discrimination laws, and that every bureau law and not a few of the non-bureau

laws contain definite inhibitions against discrimination and erect machinery for its prevention.

The progress from anti-discrimination laws to rating laws may be traced somewhat as follows:

1. The primary stage is a simple inhibition of which the following are samples:

(a) Forbidding discrimination between insurers or risks of the same class.
(b) Forbidding discrimination between risks of like hazards.
(c) Forbidding discrimination between risks of like hazards and having equal protection against accidents.
(d) Forbidding discrimination between risks in the application of like charges and credits or between risks of essentially the same hazards and having substantially the same degree of protection against fire.

(a) will be recognized as the usual formula used in anti-discrimination laws.

(b) (c) and (d) are taken from rating laws. Some of the fire rating laws refine on the formula still further, but the intent remains much the same.

2. A recognition of the fact that in order to secure equal treatment there must be some regulation of the power to classify. This takes the following form:

(a) Provisions requiring filing of classifications and rates.
(b) Provisions providing for approval of classifications.
(c) Provisions requiring the use of uniform classifications by all carriers.

These are familiar features of rating laws, both fire and compensation.

3. A recognition of the fact that to secure equal treatment there must be standardization of policy provisions. This may take the form of approval of policy forms or the fixing of definite, uniform standard forms.

4. From this it is but a single step to require the filing of rates and entering into questions of the proportionality of rates between classifications.

5. Some administrative machinery is necessary to enforce the foregoing provisions. This may take the form:

(a) Of provisions authorizing the Commissioner to order discriminations removed, a familiar feature of fire rating laws.

(b) Of provisions for a non-company administration of rates. Of this the recognition of bureaus, and the positive requirements in several compensation laws for administration of rating plans by bureaus are samples.

(c) Of provisions for examining applications and policies. Of this the "supervisor" provisions of the Oregon and Idaho fire Acts, the stamping office provision of the Wisconsin Act, and the provisions of the Pennsylvania Compensation Act are samples.

This brings us very naturally to the subject of:

C. *Rating Laws*

Rating Laws are a matter of recent origin. The Kansas law, one of the earliest, was enacted in 1909. The New York law (Section 141), in its original form followed a year or two later. The compensation rating laws have been enacted since 1911. The laws relating to fire companies and fire rating bureaus are mainly framed on a model adopted by the National Convention of Insurance Commissioners in the winter of 1914.

Rating laws of one kind or another exist in the following states:

Alabama	Kentucky	New Hampshire	South Dakota
Arkansas	Maine	New Jersey	Tennessee
California	Maryland	New York	Texas
Colorado	Massachusetts	North Carolina	Utah
Delaware	Michigan	Ohio	Vermont
Georgia	Minnesota	Oklahoma	Virginia
Idaho	Mississippi	Oregon	Washington
Indiana	Missouri	Pennsylvania	West Virginia
Kansas	Nebraska	South Carolina	Wisconsin
		Wyoming	

These laws may be divided by subjects as follows:

1. Laws generally applicable:

These are found in:

Arkansas	New York	Vermont	West Virginia
New Jersey	North Carolina	Virginia	Washington
	Wisconsin		

The general provisions in Arkansas, New Jersey, Virginia and Washington are of slight scope. The Wisconsin law lays down a few general regulations for rates bureaus. The other four states have definite rating laws, all framed on the New York model, providing for rating bureaus, control of discrimination, and (in New York and Vermont) control of rates.

2. Laws applying primarily to casualty insurance.

(a) Workmen's compensation (and employers' liability)—Alabama, California, Colorado, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin.

(b) Fidelity and Surety—Nebraska, New York, North Carolina, Vermont. (In the latter three states surety bonds specifically included in general Act.)

(c) Plate Glass—Oklahoma.

3. Laws applying primarily to fire insurance.

These are found in:

Arkansas	Massachusetts	New York	South Dakota
Colorado	Michigan	Ohio	Tennessee
Idaho	Minnesota	Oklahoma	Texas
Indiana	Mississippi	Oregon	Virginia
Kansas	Missouri	Pennsylvania	Washington
Kentucky	New Jersey	South Carolina	Wisconsin
		Wyoming	

All of these cover insurance against fire or fire and lightning.

Other types of coverage are specifically mentioned as follows:

a. Windstorm or tornado
Indiana, Kansas, Missouri, Oklahoma, South Dakota, Tennessee, Wisconsin.

b. Hail
Kansas, Missouri.

c. Sprinkler leakage
Indiana, Wisconsin.

d. Use and Occupancy
Indiana.

e. Automobile, fire and theft.
Indiana.

4. Maryland is the only state having a rating law applicable to life insurance.

Of these laws we may distinguish three major groups:

A. The general laws as found in New York, North Carolina, Vermont and West Virginia.

These as has been seen are framed upon a common model. The object in the first instance was apparently to give recognition to rating bureaus and provide for supervision, examination, and removal of discriminations. Control of rates was an afterthought. In West Virginia it does not appear at all, and in North Carolina the power is

merely to investigate complaints and make racommendations. In Vermont and New York power exists to revise specific rates.

In recent years the New York law has been amended by the inclusion of one long section applicable to fire bureaus and a second applicable to casualty bureaus.

B. The laws applying to fire and kindred lines.

Of these, the Kansas, Massachusetts, New Jersey, Oklahoma and Tennessee laws deal with rates without reference to the operation of a rating organization. The Massachusetts law provides for a review of rates by a board and a finding as to whether they are excessive, unfair or discriminatory, but publicity is the only remedial agency. The New Jersey law contains powers to correct discriminations and compel compliance with rates on file. The Kansas and Oklahoma laws confer power to correct rates if inadequate or unreasonable.

The other laws with the exception of Texas are bureau laws. Some authorize, others direct the erection of rating bureaus. Mississippi creates a single bureau of which all stock companies are members. The bureaus are in general rate making and rate administrative bodies. The authority of the supervising authorities is in general directed (a) to the correction of discriminations, (b) to the surpervision of rating agreements with power to order disapproval, (c) to a certain control over rates.

This latter control does not exist at all under some laws. In most cases where it exists it consists of a power to order a general rate reduction, based on the aggregate underwriting profits of stock companies over a five-year period exceeding a reasonable amount or a definite five per cent., with consideration of the conflagration hazard within or without the state. Reduction is as a rule to be such as to reduce the profit to a reasonable amount. Distribution of the reduction among the classifications is made by the bureaus or companies, sometimes requiring the approval of the supervising official.

Other laws contemplate a reduction, not en masse but by classes, and there are laws which authorize a consideration of single rates.

One state (Missouri) requires advances in rates to be approved by the superintendent.

The question of an adequate return to companies is occasionally mentioned but is on the whole by no means prominent. Mississippi requires the rate to be "compensatory to the companies." Indiana provides for revisions upward as well as downward.

There is some variety as to the provisions relating to filing of rates. Under practically all the laws the supervising official may

call for the filing of rates and schedules. In not a few filing is required.

Deviations from bureau rates are permitted, subject to certain restrictions. Notice must be given to the bureau and to the supervising official. They must be uniform for the class or classes of risks affected. Some states require the filing of schedules showing the new rate and the amended charges and credits. There is some diversity as to whether uniform per centage deviations from bureau rates are permissible. Some states definitely permit it, others as definitely forbid it.

The Texas law, as has been seen, constitutes the state as the rate-making body, and it also apparently administers rates to some extent. The state fixes maximum rates from which the carrier may deviate downward subject to certain restrictions.

C. The laws applying to workmen's compensation.

For one reason or another the bureau plays a less prominent part in the compensation laws than in the fire laws. Doubtless this was due to the fact that at the time the laws went into effect the urge towards common rate making and rate administration was not great.

The general scheme of the compensation acts is to give a supervising official authority to approve rates, as to adequacy, reasonableness or both. Adequacy is a notably prominent feature of the laws—in many states the only expressed criterion. Classifications and rating plans must likewise be approved.

Discrimination plays a less prominent part in these laws than in the fire laws. And yet the possibilities of discrimination are probably greater in this field than in almost any other. Certain laws contain provisions for the administration of the merit rating plans by bureaus. Four laws (New Jersey, Pennsylvania, Minnesota and Wisconsin) provide for bureaus of which all carriers are required to be members. These laws contain additional controls of underwriting practices such as the certification of payroll audits, checking of applications and policies, etc.

Most of the laws contemplate the rate-making function as lodged in the companies, with power of approval or disapproval in the supervising authority. In the bureau states this is performed by the bureau. In Minnesota, however, and to a greater extent in Wisconsin, the supervising board is directed to approve minimum rates and the bureau is treated with relation to this function as acting in an advisory or adjutory capacity.

Deviations from the established rates are as a rule not provided for. So long as the law professes to deal with carriers individually,

this is not necessary. But the practice and spirit of the compensation laws generally is that there shall be no deviation. This is true of the bureau states, with the exception of Wisconsin, which countenances deviations upward from the minima established by the Board, but not downward.

In conclusion, it may be mentioned again that whereas the states very generally started out with the competitive principle well to the forefront, the tendency has been steadily away. This tendency can be mapped out in its several stages with reference to the rating laws already referred to.

The simplest of these laws merely provide for the operation of rating bureaus. This acts, of course, as an invitation not to compete. Still a company does not have to be a member of a bureau. But other laws provide that a company shall maintain or be a member of a bureau. These leave two possibilities of competition (a) between bureau and bureau, (b) by virtue of the permission to make deviations. But then we have laws of the Mississippi kind where all stock companies are forced into a single bureau. Here to be sure the deviation privilege still remains. In the compensation field, however, there are several bureau laws where all carriers, stock and mutual, are forced into a single bureau with no privilege of deviation. Here the competition absolutely ceases, with the exception of the dividend privilege of participating carriers, affected to a degree by the corresponding liability to assessment.

Also on the side of rate fixing by public authorities. In all of the compensation laws and in some other laws as well, the public authorities in one way or another can determine rates that are adequate, reasonable, or both. Now adequacy for rate-making purposes is determined by taking the aggregate loss experience of the carriers concerned, and the aggregate expenses, and comparing the result with the rates. It cannot be done company by company, for the experience of a single company is from the statistical standpoint inadequate as a true criterion for the future. It might perhaps be done by classes of companies, but over a wide exposure the loss experience would in all probability not vary widely. Hence the tendency under these laws is to a single standard for adequacy.

The same, too, may be said for reasonableness. A company is entitled to a reasonable profit. There seems no possible standard

for measuring reasonable underwriting profits save as a percentage of premium income. Hence here again the tendency is to a single standard rate.

Moreover under the constitutional guarantee of equal protection of the laws it is questionable whether supervising authorities could do other than treat all companies of the same class on the same basis.

Therefore, the closer rate regulation is pursued, the more does competition in rates become an impossibility.

The same applies with greater force when the state undertakes directly the making of rates, rather than merely approving or revising them.

Undoubtedly the steps already taken in the line of legislative recognition of rating organizations are eminently wise. The proper making of rates requires a careful evaluation of the essential hazards, over equally careful classification of risks and a just and equitable apportionment of basic rates among the several classifications in accordance with the normal hazards of each class. Nor can full justice be done without according a certain recognition to the peculiar hazards of the particular risk, in so far as that is possible. The accomplishment of this requires an elaborate and costly organization, far beyond the means of the single company. In so far as an attempt has been made to accomplish this, and it is fair to say that in most of the principal lines of insurance such attempt has been made, the building up of rating organizations serving large groups of companies has been found essential. In these lines one may say that rate competition based upon real and general difference in rate levels and in rating methods has come to an end, for if the rate be definitely based upon the hazard, since the hazard remains the same for all companies, so must the indicated rate be approximately the same. Such competition as does exist is directed towards the securing of risks regarded as specially desirable, with the not unnatural result that these particular risks may be able to secure more favorable treatment than others; in other words, it produces that discrimination against which so many legislative vetoes have been pronounced. To curb this type of discrimination, the bureaus can not infrequently accomplish more than the laws, and in so far as their rules and machinery tend towards this end, they deserve not only the countenance but even the encouragment of the state.

Doubtless the state should maintain proper supervision of bureau operations, so as to assure equitable treatment to the public, and fairness to non-bureau companies. With such supervision, bureau operations make for sound underwriting, justice, and the checking of a vicious type of competition.

Hence it is not difficult to see why these steps have been taken. Certain states, indeed, have gone a long step further, and produced situations where a company has no option whatever. The state creates a bureau and requires all carriers to be members, prescribes the bureau functions and exercises a peculiarly thorough supervision. This may be considered in a way the logical result of the argument for the existence of rating bureaus; for if competition in rates is impossible and if the bureau method is effective to secure fair treatment not only for the public but for the companies, then this may be best secured by leaving no loopholes, and through a single organization applying the same rule to all companies, enforcing compliance with its rules, and adherence to its rates without possibility of deviation.

It is not such a very long step from a situation like this to the situation where the state decides to do without the bureau and discharge the rating functions itself. The extent to which such a step carries the state into the internal affairs of companies is evidenced in a manner not without a certain humor by that clause in the law of the only state which has as yet taken this step, solemnly and explicitly declaring that collection of premiums is a function of the insurance companies. It is of course by no means impossible that a state actuary might compute rates as accurately as a bureau actuary, and that state inspectors and functionaries might perform their duties as honestly and impartially as similar employees of a bureau. It seems, however, highly improbable that a state board could achieve the requisite balance between underwriting needs and the interest of policy holders as successfully and satisfactorily as an organization operated by those most vitally concerned.

This raises the question, how far may the state profitably go in undertaking the regulation of rates? The laws cited indicate a variety of legislative opinion and on this point underwriters are by no means of one mind. The answer given will, of course, depend on the object the particular respondent is desirous of achieving.

Legislation is framed from the public standpoint, and it is probable that the ultimate answer must be given, not in accordance with the desires of any particular group of underwriters (though not, one would expect without consideration of the proper interest of all underwriters) but in terms of the public interest. The public is interested in obtaining its insurance as cheaply as is consonant with reason, not denying to the companies a reasonable return, but not acceding to them an exorbitant profit. It is interested in a rating system honestly and impartially administered which accommodates itself as closely as possible to the conditions affecting the particular hazard. It is a matter of some interest to us all whether this result is more likely to be achieved by the state rate-maker, the compulsory non-partizan bureau, or the system which permits the exercise of individual initiative or permits groups to work out rating problems in their own way, evolving systems fitted to their own type of organization. Doubtless the legislatures have erred in attributing to the competitive principle greater possibilities of good than it was calculated to afford, even to the extent of setting it up as a fetich and sacrificing to it all the possibilities of good that may flow from combined effort. The old idol has fallen from its high estate. It does not follow, however, that the legislatures will do well in sacrificing it too expeditiously on the altars of the great god Regulation.