STATE REGULATION OF INSURANCE RATES

PART II

REGULATION OF RATES AND RATING ORGANIZATIONS

BY

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I. Preliminary Considerations

There is a close inter-relation between various parts of the insurance code, so that it is somewhat difficult to pick out for consideration a particular class of statutory enactments, and leave untouched closely related statutes. Rate regulatory laws definitely include:

(a) *Laws regulating organizations for making and administering rates.*

(b) *Laws requiring rates, rules and rating plans to be filed, made available for public inspection, available for inspection and study by public officials, and requiring companies or rating organizations to give information to persons insured and afford them opportunities to be heard on requests for changes in their rates.*

(c) *Laws designed to secure the adequacy of rates.*

(d) *Laws designed to secure the reasonableness of rates.*

(e) *Laws designed to prevent rate discrimination.*

Closely related statutory enactments are:

(f) *Anti-rebating laws.* This term covers a variety of provisions, generally designed to make the contract of insurance and the premium written therein the entire transaction between the company and its agent on the one hand, and the policyholder on the other. Charging of fees by agents, giving special allowances or favors in matters of premium, or a participating dividend outside the policy's terms, and connecting the policy with collateral transactions which might serve as an inducement to insurance may all be classed as anti-rebating laws. There is a close relation to anti-discrimination laws, and indeed anti-discrimination provisions are often found in the same enactment with anti-rebating provisions.

(g) *Laws relating to policy forms.* Obviously, a rate is a thing having no independent existence; it relates to a particular type of policy. Standardization of policy forms and endorsements or the insertion of standard

provisions in policies is essential to any standardization of rates. So, too, the prohibition of particular types of policies or specific policy provisions has a collateral effect on rates.

(h) *Laws regulating the dividends of participating insurers.* Obviously, a participating dividend is a part of the price paid for insurance; the difference between the premium charged and the dividend returned constituting the net cost. The one part cannot be regulated without due consideration of the effect of the other; and it is in consequence a matter of some little difficulty to make regulation of rates for both participating and non-participating carriers upon a strictly uniform basis without doing injury to the one side or the other.

(i) *Laws relating to agents, acquisition cost and commissions.* Acquisition cost is always an important element of the cost reflected in the premium rate. If there is a statutory limit to acquisition cost or commissions, that limit has its effect on rates. It is, moreover, difficult to maintain a uniform standard of rates if there are substantial differences in point of commissions and acquisition cost between carriers affected thereby.

(j) *Laws relating to reserves.* Where, as in case of life insurance, reserves are set up on policies in force with reference to tables designed to measure the hazard undertaken, then the reserve provision has a genuine effect on the premium to be charged, especially if coupled with provisions for setting up deficiency reserves in case of policies written at rates less than the minimum rate indicated by the table. Where reserves, such as the unearned premium reserve or the statutory loss reserves in liability of workmen's compensation are based, either in whole or in part, upon the premium charged, earned or unearned, there is a very close connection between the adequacy of the premium rate and the adequacy of the reserve; and what is done in the way of regulating the rate produces a corresponding effect on the reserve.

The laws here considered include only those listed above as (a), (b), (c), (d) and (e), with some reference to (f). It suffices to indicate that these laws are not separate and distinct from the rest of the laws relating to insurance companies, but linked more or less definitely with many parts of those laws.

This part of the paper properly follows the first part, since the anti-compact provisions were mainly enacted in the last quarter of the nineteenth century, the great bulk of those now to be considered during the twentieth century. Anti-discrimination laws and anti-rebating laws probably antedate the present century; but laws regulating rating bureaus and regulating rates as to adequacy and reasonableness are all relatively modern.

As in the case of much of the insurance law, statutory enactments tend

to be directed to specific lines of insurance rather than to be general in type. Anti-rebating laws general in type are common enough; general anti-discrimination provisions somewhat less so; and there are only a very few laws making general regulation of rating bureaus, or undertaking general rate regulation along lines of either adequacy or reasonableness. There is, in the field of fire insurance, a very considerable number of laws relating specifically to the rates for fire insurance, and the bureaus making and administering such rates; those laws occasionally extending to other lines written by fire companies. In the field of casualty insurance, rate-regulatory laws and laws relating to rating bureaus are very common in case of workmen's compensation. Rate-regulatory provisions are increasing in case of automobile liability insurance, and there are specific provisions covering other casualty lines. Life insurance and accident and health insurance very commonly have provisions requiring the filing of manuals and rates, but little or nothing else in the way of rate regulation beyond special anti-discrimination provisions, very common in the case of life insurance, less common in the case of accident and health insurance. The other great insurance field, marine insurance, is very sparingly regulated, the chief instances being the automobile lines of inland marine companies.

In view of this character of the rate regulatory laws, its seems desirable to start with the more common types of law and end with the general laws.

II. Rate-Regulatory Laws Applicable to Fire Insurance and Allied Lines

Rate Compacts.—Whether sinned against or sinning, fire insurance has been, up-to-date, the storm-center of controversy as to insurance rates. The bulk of the anti-trust litigation and a substantial proportion of the anti-compact laws were directed at fire insurance and fire insurance rating operations. Fire insurance was the target of the first genuine rate-regulatory laws and has also been involved in the greater part of insurance rate litigation.

It is not intended to trace the cause of this. The establishment of methods for making rates for fire insurance has given the companies themselves a good deal of trouble, and is not at present completely satisfactory even to all underwriters. In its early history, when methods of communication were a deal less facile than at present, the companies were compelled to give large authority to their local representatives, and the business was underwritten and rated locally. Associations of company representatives began to form at a very early period, for the underwriting of risks and for the discussion of common problems. These were purely voluntary in character, and not all of them were permanent; but certain local associations

have had a long and uninterrupted existence; one, in Buffalo, not long ago celebrated its 100th anniversary. Associations of companies were likewise formed from time to time, and among other problems, found the problem of securing adequate rates, and introducing system into rating procedure, one of perennial recurrence. One attempt to standardize ratemaking on a national scale was made in connection with the organization of the National Board of Fire Underwriters, in 1866. The National Board for a time endeavored to introduce uniformity in rating procedure, operating through a national committee with local committees to assist in the work of rate-making, and a large number of local boards, numbering in 1869, 475. Plans were formed for a regular rating bureau divided into six departments. But in 1877, the dissension from this attempt at centralization proved too great. The National Bureau in that year relinquished its authority over rates, devolving it upon local boards, where such existed, and elsewhere upon the individual judgment and determination of the members.[1]

The "compact system" inveighed against by the anti-compact laws, probably was not this attempt of the National Board, but a development growing out of the chaos resulting from its abandonment. An eminent authority states:

> "It is not generally known that the birth of what is known as the compact system now interdicted by anti-compact laws, occurred at Kansas City 30 years ago, the usage at that time being for local agents in every town of any considerable size to make their rates as best they could through self-appointed committees. The result was that demoralization reigned supreme. Every large town was the center from which rate-cutting, rebating and every other conceivable form of underwriting evil radiated in every direction to smaller towns within 50 to 100 miles. Finally the situation became so intolerable that the agents did not trust each other to make their rates, and there was a petition for relief. A large committee of company officials visited Kansas City and the one thing on which the agents were able to unite was the unanimous request that they be relieved of the responsibility of making their own rates. A compact manager was selected who soon brought order out of chaos. The result of this action was so satisfactory that petitions came from every direction for a similar solution of existing trouble, and in a short time the compact system spread to all parts of the country. It is undisputed history that the compact system originated from the wide-spread and imperative demand from local agents to be relieved from the responsibility of making their own rates."[2]

The time from which Mr. Dean reckoned his 30 years cannot be identified from the text, but it was unquestionably prior to 1925, the date of the edition from which quotation was made. It is implied, however, that the date

1 Hardy, Edwin R., "The Making of the Fire Insurance Rate," Chapters XVII, XVIII
2 Dean, A. F., "The Philosophy of Fire Insurance," Vol. III, P. 24

of the "compact system" so-called, ante-dated the anti-compact laws. The "compact manager" had a real utility, furnished a relief from evils which were felt by companies and agents alike and possibly by insured risks as well. Anti-compact laws were enacted for a portion of the states only, and even of these, some expressly countenanced the use of "common experts," more or less tacitly admitted the use of ratings promulgated by various sources on the understanding that these were advisory only. Thus, in one way or another, rate compacts existed and "common experts" and bureaus, actuarial and otherwise, continued to function.

Rate Regulation.—In 1909, Kansas enacted a law, vesting the Superintendent of Insurance with authority to regulate fire insurance rates.[3]

Briefly, this Act required all fire insurance companies to file with the Superintendent of Insurance general basis schedules showing the rates on all risks insurable by the company in the state, together with all conditions affecting the rates or the value of the insurance to the assured. Changes in schedules on file could be made only upon ten days notice to the Superintendent, unless he permitted filing on shorter notice. The Act contained a strong anti-discrimination provision, and vested the Superintendent with authority to determine whether a rate was excessive or unreasonably high, or not adequate to the safety of the company; and to order the company to publish and file a higher or lower rate, commensurate with the character of the risk.

The influence of this Act is noted in a number of rate-regulatory laws, especially that of Oklahoma. It gave rise to litigation which went to the Supreme Court of the United States on an issue of constitutionality. The Court declared the Act constitutional, indicating that insurance was a business "affected with a public use."[4]

This statute was precursor of a large number of acts enacted during subsequent years. The National Convention of Insurance Commissioners adopted a model law in 1914.[5] A second model act appeared some time between then and 1925.

Apparently this was drawn up by the National Board of Fire Underwriters and there is on record a request made by the fire insurance committee of the National Convention of Insurance Commissioners desiring the presentation of such an act for consideration. The act does not seem to have been presented to the committee or acted on by it or by the National Convention.[6]

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[3] Originally Chapter 152, Sessions Laws of 1909. See Appendix I

[4] *German Alliance Insurance Co.* v. *Kansas,* 233 U. S. 389

[5] *Proceedings,* N.C.I.C., Dec. 1914, P. 16

[6] *Proceedings,* N.C.I.C., 1925, P. 35. This contains an elaborate summary of legal provisions, compiled by Mr. R. D. Hobbs
Hardy, Edwin R., *op. cit.,* Chapter LII

Summary of Bureau Laws.—Bureau laws enacted follow the two models more or less, departures from the models tending to increase year by year. The chief variations may be briefly and generally stated as follows:

(1) *Rating Bureaus.*—The original type of law may be termed a permissive law; that is, it provides a means whereby rating bureaus may operate, provided they conform to the law. The succeeding type requires a company to maintain or be a member of a rating bureau, thereby requiring all companies in their ratemaking operations to follow the bureau requirements established in the law. The final type goes a deal further, establishing a single rating bureau of which all companies are required to be members.

(2) *Membership.*—In laws of the first two types it is generally provided that a bureau which serves two or more insurers must admit to membership or extend its services to any insurer authorized to do business in the state. In laws of the third type, this is, of course, unnecessary. Members generally are entitled to a single vote in bureau affairs. The laws make various provisions as to fees and as to apportionment of the cost of running the bureau, the intention being that there be an equitable apportionment. The general method is to apportion costs on the basis of premiums received in the state, with or without certain deductions, such as premiums on risks other than those coming within the scope of the bureau's activity, premiums on policies not taken or cancelled, and, occasionally, dividends of participating carriers.

A very common stipulation inserted in the laws is, that an insurer may not be a member of more than one bureau for the purpose of rating the same risk. This, of course, is unnecessary in a law of the third type.

(3) *Location of Office.*—A number of laws provide for the maintenance by a bureau of a local office; a few emphasize the localization idea by requiring local men on the governing committee or in managerial positions. This, however, is not always done, nor for all companies. Some laws stipulate that the rating bureau shall be located in the United States; a precaution probably superfluous.

(4) *Registration Provisions.*—In laws of the first type and in some of the second type, there is no formal requirement for registration. It is common to provide that insurers shall give notice to the supervisory authority of all bureaus of which they are members, engaged in rating risks in the state, either at the time of applying for license, or when membership is taken out. This is coupled with a power on the part of the supervisory authority to address inquiries as to the organization, maintenance and operation of the bureau. But some laws of the second type require a filing

of all documents pertaining to the organization of the bureau, and require the issuance of a license. A few require licensing of inspectors or raters as well. Laws of the third type have, of course, provisions for setting up the bureau, and most of them have an annual licensing provision also.

(5) *Keeping of Records.*—The most common provision is the requirement for keeping a permanent record of surveys in case of risks written on schedule. Some laws, however, have specific requirements for keeping records of all the bureau's doings, including their financial transactions. This, one would imagine, a bureau would do in any case. The recording may be for the information of the public or for purposes of supervision.

(6) *Public Relations.*—Some laws have elaborate publicity provisions, requiring the maintenance of offices open to the public at all ordinary business hours and the keeping there of an exhibit of all schedules, rates, etc.

(7) *Examination, Visiting and Supervisory Powers.*—All laws have examination provisions. Generally, examination is at the discretion of the supervisory authority, with, very frequently, provisions for required periodic examinations, most commonly once every three years. Occasionally, a law contains provisions as to the authority of examiners to require the production of records and examine officials and employees under oath.

In addition, some laws have specific provisions that the supervisory authority may make inspection of records; and that the offices shall be open at all ordinary hours for the purpose. Occasionally, specific requirement is made that the supervisory authority may be present at all meetings of bureaus and committees. In laws of the third type, special governmental machinery for the constant supervision of the single bureau is set up.

(8) *Rate Filings.*—In laws of the first and second type, the common provision is that supervisory authority may require the filing of schedules, rates, regulations, forms, etc., sometimes limited by the stipulation that surveys and completed schedules shall be required only in case of a complaint. There are, however, in some laws of these types and regularly in laws of the third type, provisions calling for a filing prior to rates, regulations, etc., being put into effect, sometimes coupled with provisions requiring an approval. Generally, the laws require filings in case of deviations from bureau rates.

(9) *Schedule Rating.*—It is generally provided that inspections shall be made on all risks rated on schedule, and a written survey made, which shall be filed as a permanent record, and a copy thereof furnished on request to the assured or owner or his representative. Some laws stipulate that the furnishing of the copies shall be without cost; there are one or two laws which specifically permit a reasonable fee. Some laws recognize the fact

that there are cases where a policy must be issued before an inspection can be made, providing in that case for rating the policy on a tentative survey, to be corrected later.

(10) *Stamping Provisions.*—There are three laws,[7] which require the establishment of regular machinery for inspecting applications and daily reports and determining whether they comply with established rates on file; with provisions for reporting to the supervisory authority all instances where correction of rate irregularities is not promptly made.

(11) *Rate Compacts and Agreements.*—Most of the laws have provisions as to rate compacts, the most common being:

(a) A provision forbidding agreements that all or any part of the insurance on a risk shall be placed with a particular company, insurer or agent, or a particular group of companies, insurers or agents. Sometimes this is qualified by inserting the provision, "except as contained in the policy or in the usual agreement for other insurance."

(b) A provision forbidding agreements with regard to the making, fixing or collecting of any rate for fire insurance on property in the state except in compliance with the Act. This is followed by a provision that such agreements may be made if reduced to writing and filed with the supervisory authority; coupled with a power of disapproval. Sometimes appeals to the courts are provided either from an order disapproving agreements, or from the failure to make such order.

(12) *Deviations.*—All laws have deviation provisions authorizing under restriction departures from bureau rates or rates on file. The common procedure is, the giving of notice to the supervisory authority, and to the bureau concerned, accompanied by a schedule sending forth the deviation, which may be in the basic or key rate, or in the rating schedule itself. The more common restriction is that the deviation shall be uniform throughout the state in its application to all risks of the classification affected. There are, however, laws which limit the deviation to uniform percentage deviations, generally applicable, and it is usually stipulated that such general deviations shall remain in force for an entire year.

It is perhaps more common to permit deviations without requirement of more than this given notice. The supervisory authority, could, doubtless, rule whether the deviation is in compliance with law. The later statutes, however, require deviations to be approved before becoming effective. There are instances where deviations downward are permitted without requiring approval, approval being required, however, in case of deviations upward.

(13) *Discrimination.*—All laws contain an anti-discrimination provision,

[7] Idaho, Oregon and Wisconsin. See Appendix I

generally in the form, "no fire insurance company shall fix or charge any rate for fire insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazard, (some laws insert the term 'territorial classification') and having substantially the same protection against fire." Laws which require the filing of rates are very likely to define the departure from rates on file as an unlawful discrimination.

(14) *Removal of Discrimination.*—Practically all laws contain a process for the removal of discriminations by the supervisory authority. The provisions vary not a little in wording, but the substance does not differ greatly. On complaint, and some case on his own motion, the supervisory authority is empowered to give notice of a hearing to all parties concerned, and, on hearing, if he finds that unlawful discrimination exists, may order the discrimination removed, and a rate substituted which is not discriminatory. A court appeal from an order of the supervisory authority is provided, which generally operates as a stay of the order, with a provision for the refunding of overcharges in case the appeal goes against the company or bureau. The chief variations are, (a) a provision found in a number of laws that discrimination shall not be removed by increasing rates unless the supervisory authority finds the increase justified. Some acts stipulate for a specific finding on the point; (b) a provision added in some laws, though more commonly in connection with the provisions for rate regulation, requiring the company appealing from a decision to give a bond or make a deposit to cover the margin between the rate charged and the rate appealed from, in order that the assured may be reimbursed.

(15) *Control of Rates.*—The laws differ greatly in point of the control given the supervisory authority over rates:

(a) A few laws stop at the point of control over discriminations.

(b) The most common type of rate control is an authority to order general rate changes. Provision is made for annual returns of underwriting experience within the state, and a compilation of such experience, generally for a term of five years. If for a five year period, the companies show an aggregate underwriting profit in excess of what is reasonable (a few laws mentioning the figure of 5%), the supervisory authority may order rates reduced to a point which shall yield the company no more than a reasonable profit. Some laws require the supervisory authority to take cognizance of the conflagration hazard, within or without the state.

There is some variation in the laws as to procedure after order. Some laws permit the companies or bureaus to distribute the reduction; others

require the distribution to be submitted for approval. There are instances where the supervisory authority is empowered to make the distribution.

Generally the laws provide for appeals as in the case of orders for removal of discrimination, with the same variation as there noted as to whether there shall be merely a general provision requiring the reimbursement of the assured for overcharges, or whether this shall be complemented by provisions for a bond or deposit. Rate changes are ordinarily applied to policies written subsequent to the order, not to policies in force.

Some laws provide for a revision upward as well as downward, but these are the exceptions.

(c) Some laws provide a method of control addressed to specific rates, complained of as unfair or excessive, similar to the methods for correction of discriminations, and occasionally inserted in the same section.

(d) Some laws, especially the third type, have the provision common in compensation rating laws, requiring rates to be filed and approved before going into effect.

The last three methods all are effective methods of rate control; type (b) is the most common, but types (c) and (d) sometimes appear in the same law with type (b).

(16) *Additional Provisions.*—Occasionally the laws contain specific provisions as to rates, rating methods and the like. Anti-rebating provisions occasionally find their way into a law. Provisions as to policy forms are sometimes included.

(17) *Exceptions.*—A law of the first type is elastic enough not to require exceptions. Laws of the second and third types, being compulsory in nature, very commonly are coupled with exceptions, either as to companies, whose way of doing business accords ill with the statutory model, or as to types of risks which for one reason or another should be excluded. The stiffer and more rigid the law, the greater the need for exceptions.

The types of companies most frequently excepted are mutual companies, more commonly local companies, or companies doing business on the cooperative plan. Reciprocals are excepted from some laws. Essentially, the bureau laws are written with reference to stock companies, and assort somewhat oddly with the rating methods of participating carriers.

The types of risk most commonly excepted are:

(a) Property protected by automatic sprinklers and insured in connection with an inspection service.

(b) Rolling stock of railroad companies.

(c) Property in transit, while in possession of railroad companies or common carriers.

(d) Property of common carriers, used or employed in business of carrying freight, merchandise or passengers.

(e) Insurance upon or in connection with marine or transportation risks or hazards.

The reason for the last four of these exceptions is obvious; they are properly interstate in character and touch on a field closely related to or a part of marine insurance. The first exception touches on a field where there is real competition. One law, that of South Carolina, permits variation of the standard rates to the point needed to meet competition with a non-admitted carrier; a general provision quite in line with the practice as to differentials of common carriers by railroad.[8]

(18) *Application to Lines of Insurance other than Fire.*—The greater part of the laws apply to insurance against the hazard of fire, or fire and lightning; some laws, however, extend to other lines written by fire companies, and in view of some statutory definitions of fire insurance, it is not always safe to rely too confidently on the wording of the law. There are, indeed, acts which extend outside the fire field. Windstorm, tornado, hail and motor vehicle insurance are the lines most often mentioned.

In addition to the bureau laws, there are, in some states, laws regulating the rates of fire companies, which have no reference to bureaus. Most notable of these is the law of Texas, where the process of ratemaking has been assumed by this State. The other laws are of briefer type, and less radical; though there are those who consider all rate regulation radical.

Attempt is made in appendix I to give a brief description of the rate regulatory provisions, other than the more general anti-rebating and simple anti-discrimination provisions, applying specifically to fire insurance.

It seems unnecessary to dwell in detail on more than the rate-regulatory provisions of these laws: the rest may be dealt with somewhat generally and summarily. When a state is omitted, it is generally the case that there is in this state an anti-discrimination, anti-rebating or other law more or less generally applicable: these are listed in appendix V. It is intended to cover in appendix I merely laws providing for administrative regulation dealing with fire insurance either generally or specifically.

COMMENTARY

In General.—Commentary on this great mass of legislation can hardly be made in great detail. The notable feature is the predominance of bureau laws, and the evidence therein of a close connection with the anti-compact movement. The earlier laws were permissive in character, and were regarded

[8] *10 Corpus Juris* Sec. 760, P. 479 and cases cited

as conferring a valuable right, the legality of which, but for the law, was at least questionable. The qualified anti-compact provisions, and the insertion of specific provisions for deviation from bureau rates seem all to relate back to the idea that compacts are inherently dangerous and fair competition should be preserved. The change of the voluntary bureau law into a law requiring all carriers to maintain or be members of rating bureaus, and the further change to laws forming a single rating bureau of which all carriers are required to be members is undoubtedly a long way from the anti-compact idea, and is paralleled by a tendency to overlook some of the anti-compact provisions, and to make deviations more difficult.

No doubt the change parallels a change in the character of rating bureaus. In times gone by, a rating bureau was an association of local underwriters, and such bureaus existed by the hundreds. The rating schedule, the anti-discrimination principle and the tendency towards regulation called for expert handling of rating matters, and produced bureaus more highly organized, fewer in number and more inclusive in membership. Rate regulation can to a limited degree proceed against individual companies; but when rate regulation requires companies to conform to standard procedure at many points, the existence of bureaus becomes a practical necessity; not only that, but universal company membership in bureaus as well. A bureau can and does see that its members adhere to standard policy forms and endorsements; that risks are properly classified and rated; that rating schedules are properly applied; and thus polices the business to a degree and with a technical skill which a state supervisory official cannot achieve without setting up a large and costly department for the purpose. Compilations of experience for ratemaking purposes also require both labor and intelligence, and may with advantage be done outside the department and submitted to the supervisory authority as a whole.

The bureau performs a valuable and important function. It carries with it, perhaps, a natural tendency to emphasize system, routine and rules of practice, and therefore to become stiff, inelastic and unprogressive. Woodrow Wilson said of governmental boards and bureaus, "A board is usually long, narrow and wooden."

A great many of the bureau provisions probably communicate no very novel principles; setting forth in the main methods of organization commonly in vogue, and duties such as most well-organized bureaus perform. One presumes that bureaus ordinarily assess expenses, levy charges and render services without discrimination; that they keep careful records of their proceedings and of their financial transactions; that they make inspections of risks rated on schedule and furnish persons at interest information as to their rates; that they give hearings to any person aggrieved by their doings. It of course does no harm to prescribe these things.

The following points may be noted as applying to the fire rate-regulatory laws:

Publicity Provisions.—Certain laws, notable that of Missouri, lay some emphasis on the bureau and the company as vehicles for giving public information as to rates. Presumably these provisions relate to some difficulty experienced in the past: though the mere maintenance of a public rating record, especially when it contains some long and complicated schedules, is not particularly informative to the inexpert without considerable explanation. The writer recently asked an agent to let him see his fire manual. There was laid before him a pamphlet printed fifteen years ago, copiously ornamented with stickers, and supplemented with a bundle of loose printed notices of changes and modifications issued throughout that long interval and running to a bulk two or three times as big as the pamphlet. The agent was a man of long experience, and it served his turn: but a novice never could bring order out of that chaos. Maybe that is not a fair sample: still, the writer has heard a supervisory official, and one from no mean state, express the opinion that the fire companies had no genuine manual.

Filing Provisions.—Filing of schedules, rates, forms, rules and regulations is under a majority of the laws optional with the supervisory authority. In some laws, however, it is required as a matter of course, and transformed into a means of rate control by provisions requiring compliance with rates, etc., on file, and other provisions calling for administrative approval prior to use. Such provisions are common enough in the compensation acts, and make very little trouble there: the application of such provisions in the fire rating laws have in one or two instances figured in litigation. Departments which require filings need a well-organized departmental unit to handle them.

Competition.—Several features of the acts have pertinence to the great question of competition. The acts are in some cases definitely addressed to stock companies; others apply to participating carriers, not quite in the same degree as in the case of stock carriers. The non-partisan rating bureau with balanced committees is characteristic of workmen's compensation though it has appeared also in automobile rate-regulatory laws. The Wisconsin law provides that where bureaus have participating members, they shall be represented on the managing committee of the bureau; but this is exceptional. Generally the fire laws go no further than to open up the stock company bureaus to non-stock carriers, and to restrain them from interfering with participating plans. But the existence of competition is a matter that has submitted certain features of the acts, notably the anti-discrimination feature, to considerable strain and stress. There is competition among bureau members; a competition which it is the object of the

bureau to prevent from straying into the rating field any further than the statutory provisions as to deviations permit. There is competition from non-bureau members, and from non-admitted companies; and a competition very naturally aimed at the choicest and most profitable business. Competition may be met only in one way; by making a rate that will enable the bureau company to hold the business. This may be achieved by an operation on the rate directly or on the policy form; and either may produce a conflict with the anti-discrimination law. A few instances may be cited:

(a) There has appeared in several states a controversy over a type of policy, issued for a term of five years, and for a rate comparable with a five year term policy with premium paid in advance, but providing for annual payment of premium and terminable at the end of any year. This was, of course, patently discriminatory in case of any company making the same rate for a five-year policy with premium payable in advance, or issuing one year policies at a higher rate. One state, I believe, has made exception, so as to allow this type of policy.

(b) A much more common exception that appears in a good proportion of the laws, is of sprinklered risks. Here a keen competition exists, and had to be met by setting up special rating machinery, coupled with an exception of the line from the application of the ordinary rating law.

(c) The South Carolina law contains a curious exception permitting the making of a special rate to meet the competition of a non-admitted company.

(d) The New York law contains an anti-discrimination provision which instances expense as well as hazard as a point on which equality of treatment is required. This probably refers to a situation in workmen's compensation insurance where differential methods of rating based on a difference in experience and containing also a gradation in expense by size of risk have been set up; and it is by no means certain that expense is not a proper element of hazard. Some risks entail a higher expense cost than others; and differential expense is always entailed by differences in commission.

(e) On this last point there are a number of laws which call for equality in point of commission to local agents on risks of the same kind. It is by no means certain whether these were intended to bar commission differentials, or whether they are an attempt to do away with the pernicious practice of allowing excess commissions to certain agents or to agents in certain localities. Excess commissions, it will be recalled, figured in the Missouri rate cases.

All these mark points of stress, created by competition. It may be necessary at some time or other to amend anti-discrimination provisions so as to allow rate differentials made to meet competition or to interpret unfair discrimination as not excluding such differentials. This is no new or

unheard-of idea. The anti-discrimination provisions in laws applying to the rates of common carriers by railroads do not exclude differentials made to meet competition.[9]

The laws cannot blink the fact of competition, nor the fact that they cannot tie the hands of one class of carriers from doing certain things, leaving other carriers free to effect the same results by other means without ultimately prejudicing the position of the group whose hands are tied. It is no more unholy to effect a particular rate directly than to do it by a participating plan; and some participating plans are not altogether above criticism as to reasonableness and equity. Participating insurance is a meritorious method of insurance, but it does not follow that every participating plan comes within the law. Anti-discrimination provisions general in character tend to forbid discriminations in dividend as well as discriminations in rate; it is barely possible that the anti-discrimination provisions of the rating laws, providing as they do a statutory method for removing discriminations, are a bit more effective than a mere statutory prohibition, and therefore a greater burden in cases where a carrier has to make a differential in rates or lose a choice block of business. Hence, the specific modifications already made, and the possibility of more in the future, unless a general provision or general interpretation recognizing competition as an element justifying a rate differential is established. As it is, participation plans have been under investigation by a number of state departments within recent years, and the matter has also been considered lately by the National Association of Insurance Commissioners.[10]

Rate Control.—The laws looking toward rate control are of three distinct kinds:

(a) A supplement to filing provisions, requiring rates, schedules, rules, etc., to be approved prior to their being made effective.

(b) A provision similar to that for removing discriminations, authorizing the supervisory authority to take cognizance of particular rates or classes of rates, schedules, rules, etc., determine whether the same are fair, equitable, reasonable, adequate or non-discriminatory, and either make findings or issue orders in accordance with the determination.

(c) A provision calling for a regular return of experience of premiums and losses by classifications and in the aggregate, and a determination whether there has been an underwriting profit less or greater than what is reasonable. Authority is given to order rate reductions; somewhat less frequently to order rate increases also; and provision is made for the dis-

[9] See Note 8 Supra, P. 354

[10] *General Ins. Co.* v. *Ham,* 57 Pac. 2nd 671
Opinions of Attorney-General, Minnesota, Dec. 10, 1938, June 1, 1939, Dec. 2, 1940, Oklahoma, Jan. 15, 1940, Feb. 20, 1940, Florida, Oct. 3, 1939

tribution of the rate reductions among classifications, generally by the companies or bureaus involved; sometimes requiring supervisory approval. Sometimes authority is given for a distribution by the supervisory authority.

This does not include the Texas law which provides for rate determination by the supervisory authority, though the distinction between authority to make rates and the authority to approve or disapprove is practically not so very great.

The standards set up by the laws are somewhat broad and general. Equity, justice, reasonableness and adequacy may well admit of a variety of interpretations. Presumably by adequacy, reference is made to the sufficiency of the rating system to yield enough money to cover losses and expenses; by reasonableness, reference to the profit and safety margin to be allowed in the rates. But from these very broad interpretations flow some odd questions which have figured in arguments before supervisory officials and in litigation. Some of these may be briefly noted.

Adequacy and Reasonableness.—The laws, at least those of type (c) listed above, generally contemplate a review of adequacy and reasonableness with respect to the combined experience of all carriers. But when the matter came before the Supreme Court in the Missouri rate case[11] the court said in effect that insurance carriers are competitors; that the constitution protects them individually, not in the aggregate; and that each company must make out a case that the rates attacked as unconstitutional are confiscatory as to itself; and that adducing the experience of all carriers is not sufficient.

This does not necessarily mean that the experience of all carriers has no application. The courts have on occasion given respectful consideration to the actuarial tables of life companies, which are essentially evaluations of the underlying hazard based on experience and the experience of more than a single carrier. But the underlying hazard is the hazard of loss; which is presumably the same for all carriers. Expense is a very different matter, and may vary widely among individual carriers. Presumably, if the underlying loss hazard could be evaluated by means of a scientific use of experience data derived from all carriers, so much would be generally accepted by supervisory officials, and so much might be accepted by the courts as a limit below which insurance departments constitutionally could not go in making their rate determinations without some clear evidence that the evaluations made were not authoritative as to the future in the particular case.

Whether such an evaluation could be made in case of fire insurance, the writer does not pretend to say. It would require an analysis of premiums and of losses, and converting both to what they would have been, had the

[11] See discussion of litigation, Missouri law, P. 363 *et seq.*

insurance been in accordance with whatever policy form and policy term is taken as standard. Some move in that direction may be noted in the provision of the Wisconsin law, requiring policies written at deviation rates to be reduced to terms of standard rate; some move towards a new method of compiling statistics, and a method which might figure in making such an evaluation, may be seen in the provision of the West Virginia law requiring statistics to be assembled from copies of daily reports. But moves in this direction seem as yet not to have gone very far. The report forms the writer has seen do not undertake to separate the differences of premium due to rate changes or deviations, due to the use of particular endorsements and conditions, due to prepayment discounts, and due to the use of schedules. As it stands, the return is without homogeneity, and useful only for general purposes, namely the determination of the results over all and by classification.

The matter of expenses is a different matter. Taxes, presumably, are levied on the same basis for all carriers, and a uniform loading for this purpose covering premium taxes and fees could doubtless be sustained. Acquisition cost consists mainly in commissions, paid ordinarily as a percentage of premium; the justification of a uniform loading for this purpose depends on uniformity in commission scales as between company and company. Bureau expenses are generally distributed in proportion to premiums, save as to fees and charges for particular services. A uniform loading for this purpose might be sustained. Loss adjustment, underwriting and general expense other than underwriting might conceivably vary; *a priori,* expenses of a small company ought to average higher than those of a big company; those of a newly-formed company higher than those of an old, established company. Differences are possible between the expenses of independent companies and those that are members of groups and fleets. But if uniformity could be introduced into the commission scale, a considerable part of the expense would become uniform as between company and company; the rest might be found to present conditions which could be equated by the use of a satisfactory average. A study and settlement of this problem in conjunction with the other might produce a standard rate level, satisfactory for use in rate-regulatory operations, and satisfactory also as a standard by which the justice of deviations sought might be measured.

Acquisition Cost.—Commissions paid to agents figured in the Missouri rate case, the Superintendent making exclusion of excess commissions; a procedure upheld in the state courts but criticized in the Federal Courts. The writer is accustomed to a rating system wherein a definite standard of commissions and acquisition cost enters into the procedure. This can be done, however, only with the assent of the supervisory authorities. But a

number of the rate-regulatory laws relating to fire companies contain provisions looking toward the control of commissions and the enforcement of equality therein; one state has lately indicated an intention to reduce rates if commissions were not brought within reason; a curious action in view of the anti-compact provisions relating to commission on that state's statute book. Of course, there is a difference between standards imposed by the state and standards imposed by agreement, even if the results are the same; but the difference seems somewhat technical. It seems possible that in a particular state, the matter of standard rates of commission could be agreed upon, provided companies are so minded, or at least a standard allowance for commissions to be carried into the rates.

Prospective Elements.—The action in the Missouri rate cases in giving consideration to the future effect of rate changes already made, and to the fact that a Federal law imposing a war profit tax had been repealed seem proper enough if rates are to be considered as an estimate of what will happen in the future. If the rating procedure is to be looked upon as an account current, to be balanced annually, one would naturally look solely to the past and not to the future; but this seems inconsistent with the terms of most of the rating laws. And in the matter of the surcharge imposed, or sought to be imposed during the first World War, which has left its trace or at least one of the rate-regulatory laws, that of Michigan, the carriers were very evidently making a rate operation entirely prospective in character, and predicated entirely on judgment, which may or may not have been justified by the result.

Underwriting Profit.—The matter of what is a fair underwriting profit, whether it is properly assessed as a standard margin on insurance transactions or is to be assessed on the capital and surplus of the company or to an allocated portion thereof, has entered into one of the rate cases, that of Kansas, which took the latter view. The writer's own opinion is that this procedure would be monstrously inconvenient in practice, and highly artificial as well. It has not figured in compensation ratemaking procedure, because of the absence of a profit loading. There is not, in insurance, as in case of public utilities, a substantial physical property dedicated to a public use. The business itself is affected with a public use, and capital and surplus do not enter into the underwriting operation, standing as a margin to take up losses and expenses in excess of estimates, just as are the capital and surplus of public utilities.

Determination of Underwriting Results.—The question whether underwriting results should be set up on the basis of premiums received, losses and expenses paid, or on the basis of premiums earned, losses and expenses incurred, seems to involve, less a question of law than of fact. Either

method presents a picture of underwriting results; making up pictures on both bases over a series of years long enough to include cycles of advancing and of declining premium income should indicate which basis will produce the most satisfactory results, year in and year out. Off hand, one would think the basis of premiums earned and losses incurred would fluctuate less widely than the other. In compensation insurance, premiums earned and losses incurred by policy years is used; and this, by comparing premiums with losses on the same policies, has some advantages from the actuarial standpoint, but could hardly be used save in a line of insurance where one-year policies are characteristic. Coming into Kansas and Missouri on the heels of litigation there, the compensation carriers had to justify their procedure in the way indicated above, namely by a comparison of results over a series of years of the several methods. The justification was sufficient to eliminate the question.

Investment Earnings.—The question of including investment earnings as an element of underwriting profit has been answered by the courts in three different ways (1) that they should not be used (2) that earnings on unearned premium reserves should be used (3) that earnings on unearned premium reserves and all other assets of the company should be used. The problem is less important than it was; investment earnings are not what they were; investment losses ought in justice to be an element of underwriting loss if investment earnings are an element of underwriting profit; and several of the last ten years show investment losses aplenty. This is a matter which varies so greatly by company that its introduction would serve as an element that could not in justice be averaged, provided consideration is given to the views of the Supreme Court. The particular issue of using investment earnings on the unearned premium reserve should be considered in view of the fact that a goodly part of the reserve represents expenses paid in advance out of surplus on which the companies lose interest; part is set up on premiums discounted because of prepayment, which discount must be made up somewhere, insofar as losses and expenses do not vary with the reduction in premium. The compensation carriers have not been faced with this problem, and it is with them quantitatively less important; unearned premium reserves on one-year policies on which a substantial part of premium is collected after the expiration of the policy are relatively small; and the loss reserves are discounted in advance and that on a basis probably greater than the average investment earnings.

Litigation.—References made above as to litigated points call for some discussion as to litigation in general. There has been no little litigation over rate regulation, a deal of it turning on the interpretation of the laws rather than on principles of ratemaking. The principal litigation involving such principles is as follows:

The Arkansas Rate Case.[12]—This case involved an action taken under the rate-regulatory section of the law. The commissioner, in making tabulation of underwriting profit, made it on the basis of premiums received and losses paid instead of premiums earned and losses incurred. The court stated that the words "underwriting profit" in the law should be interpreted, in accordance with a trade usage of long standing, to mean the balance between premiums earned and losses incurred.

The court indicated that the commissioner was not, under the law, obligated to give consideration to the conflagration hazard.

The Kansas Rate Cases.[13]—The first two cases cited in the note involved an order made by the superintendent of insurance making cuts of 12% on rates for mercantile risks, 14% on rates for dwellings, private barns, etc. The case in the state court was argued on a demurrer to the petition of the companies which was overruled. The case in the Supreme Court of the United States resulted in a very important decision sustaining the constitutionality of the act, and declaring insurance a business affected with a public use.

The third case involved an order of the superintendent reducing certain rates and increasing others. The case was considered twice by the Supreme Court of Kansas, the second case a rehearing of the first. The matter came at about the time of the Missouri rate litigation, hereafter discussed, and involved some of the same issues. Summarily stated, the court ruled:

(1) That underwriting profit should be computed as the difference between premiums received and losses paid, not, as contended, the difference between premiums earned and losses incurred.

(2) That the profit to which insurance companies were entitled was not a particular margin on the insurance transaction affected by the rate, but an aggregate return on so much of their aggregate capital and surplus as could properly be allocated to Kansas and to the particular line of insurance.

(3) That in estimating profit, the investment earnings of the companies ought to be taken into account, not as in the Missouri rate cases, on funds representing the unearned premium reserve, but on all funds, including capital and surplus.

The Missouri Cases.—The Missouri fire rating law has been very heavily litigated, the greater part of the cases falling into a connected series that started in 1922 and went to an incredible climax in 1940.

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[12] *Bullion* v. *Aetna Insurance Co.*, 237 S. W. 716 (1922)

[13] *Aetna Insurance Co.* v. *Lewis*, 142 Pac. 954 (1914)
German Alliance Insurance Co. v. *Kansas*, 238 U. S. 389
Aetna Insurance Co. v. *Travis*, 257 Pac. 337, 259 Pac. 1068 (1926, 1927)

Litigation Under the Law of 1915.—The present rating law was preceded by an earlier law enacted in 1915. This act was involved in two cases,[14] both brought by the managers of the Missouri Inspection Bureau. The first was an attempt to use the rating law to overthrow a statute forbidding the use of the "reduced rate contribution clause." This statute had been amended to permit its use in cities over 100,000 population, and the contention was raised that there was a discrimination, unconstitutional as denying equal protection of the laws, and so inconsistent with the provisions of the anti-discrimination provision of the rating law as to fall within the terms of the general repeal of acts and parts of acts inconsistent therewith. The attempt was unsuccessful. The second case was litigation designed to compel the superintendent to approve the ten per cent surcharge which the fire companies sought to apply to all policies during the first World War. The attempt also failed, the court indicating that the fixing of rates was a matter legislative in kind, and not controllable by the courts. A contention that the act as thus interpreted was unconstitutional was dismissed on the ground that the companies could not come into court under the terms of the law and deny its constitutionality.

Litigation Under the Order of 1922.—The rating law of 1919 was followed in 1922 by an order of the superintendent of insurance, Ben C. Hyde, reducing certain rates ten per cent. His first order was made in January; was followed by litigation, and an agreement was formulated for the withdrawal of the order and the submission of evidence. A second order followed in October, 1922, and this resulted in cases both in the State and in the Federal Courts.[15]

The first case cited in the note resulted in an elaborate opinion sustaining the superintendent's order. The ten per cent reduction was arrived at:

(a) by determining underwriting profit by deducting losses and expenses paid from premiums received instead of deducting losses and expenses incurred from premiums earned, as is the common practice.

(b) by including as profit investment earnings on the unearned premium reserve.

(c) by carrying into the computation the prospective effect of a rate increase granted in January, 1920.

(d) by excluding excess commissions paid agents in St. Louis.

(e) by eliminating as expense the apportioned amount of the Federal Income Tax.

[14] *State* ex rel *Waterworth* v. *Clark,* 204 S.W. 1090 (1918)
State ex rel *Waterworth* v. *Harty,* 213 S.W. 443 (1919)

[15] *Aetna Ins. Co.* v. *Hyde,* 285 S.W. 65 (1926)
State ex rel *Hyde* v. *Westhues,* 290 S.W. 443 (1927)
Aetna Ins. Co. v. *Hyde,* 273 U. S. 681, 275 U. S. 440 (1928)
Aetna Ins. Co. v. *Hyde,* 34 Fed. 2nd 185 (1929)

(f) by eliminating as expense the war profit tax in force during the first World War, but then repealed.

On all these points the court sustained the superintendent.

The third case cited in the note was a proceeding in the Supreme Court on writ of certiorari to litigate the constitutional issues. It resulted in a decision against the companies. Briefly, the court held that the "due process" clause is intended to protect individual rights; that companies complaining of a rate order as confiscatory must make showing that the rate order is confiscatory as to them individually, and that companies could not bring a joint proceeding supported by evidence that it was confiscatory as to them collectively.

The companies then started individual proceedings in the federal courts, resulting in the fourth case listed. This ended in failure for the greater part of them, the court holding that they were estopped from further proceedings by reason of a stipulation entered into by their counsel. As to the others, not parties to the stipulation, the court indicated that they might continue, and rendered an opinion which in brief approved the estimation of underwriting profit on the basis of premiums received and losses paid; but indicated that it was not proper to include interest earnings. He indicated also it was not proper to exclude excess commissions, but sustained the giving consideration to the effect of the rate increase of 1920 and to the exclusion of the war tax.

The case also involved an attack upon an order made in 1923 by Commissioner Hyde, pending the litigation, calling for a fifteen per cent reduction. This order, however, was withdrawn before the case came to decision and was held by the court immaterial.

The stipulation mentioned in this case figured also in the second case cited above which dealt with procedure in the Circuit Court, subsequent to the decision in the third case cited.

Litigation Under the Order of 1930.—The companies now laid a foundation for another test by making a rate filing calling for an increase of 16⅔%. This was made late in 1929 and disapproved in June 1930. Proceedings were then begun in both the federal and state courts; the greater part of the companies electing the federal courts, about 70 preceding in the state courts. The federal proceedings were commonplace enough. The carriers were empowered to collect the rates contended for pending the outcome of the litigation, the excess above the rates in force, prior to the order, being impounded in the care of a custodian appointed by the court; and a referee was appointed to take evidence and make findings.

The state proceedings were marked by an extraordinary amount of litigation over what would appear to be a very plain issue of law. The statute provided for the impounding of excess charges with the superintendent

pending appeal, and provided for deposit of the funds in banks. The judge of the circuit court before whom proceedings were pending, however, undertook to impound the funds in court, and to make orders as to their custody and investment; and after the Supreme Court had indicated that the superintendent was the proper depository, sought to make orders as if the superintendent were a court custodian. The Court ultimately through medium of several writs of prohibition, got the funds back into the hands of the superintendent and quelled the hopes of some of the attorneys for a large allowance of fees payable out of the fund by indicating that the expenses should be paid out of the funds of the insurance department. As to the companies, the court indicated that their proceeding was tainted with the same errors as had been indicated in the proceeding in the Supreme Court of the United States, namely attempting to set up a joint case justified by aggregate evidence.[16]

The Order of 1935.—While all this litigation was going on, a new element had entered into the matter. In May, 1935, Superintendent O'Malley entered into an agreement for the disposition of the case. Briefly, this involved his making an order approving four-fifths of the 16⅔% increase asked for in 1930. He attempted to make his approval retroactive to 1930, a procedure held by the State Supreme Court to be illegal. He did agree, however, that four-fifths of the impounded premiums should be returned to the companies, subject to certain expense charges, and one-fifth of the impounded premiums should be returned to the policyholders. The Federal Court accepted the agreement as one he had a right to make, and the companies actually received from the custodian their agreed portion of the award, and a very substantial matter, too, the funds impounded aggregating ten million dollars. This action was taken in 1936. The agreement never went into effect as to the funds impounded in the state courts, which were involved in copious litigation and ultimately came into the possession of Superintendent O'Malley's successor. More or less suspicion attached to the affair, which came to a climax in May, 1939, when Superintendent Lucas filed in the

[16] This litigation is embodied in the following cases:
State ex rel *North British and Mercantile Ins. Co.* v. *Thompson,* 52 S.W. 2nd 472 (1932)
National Fire Ins. Co. v. *Thompson,* 281 U. S. 331
State ex rel *Abeille Fire Ins. Co.* v. *Sevier,* 73 S.W. 2nd 361 (1934)
State ex rel *McKittrick* v. *American Colony Ins. Co.,* 80 S.W. 2nd 876 (1934)
State ex rel *Thompson* v. *Sevier,* 80 S.W. 2nd 893 (1934)
State ex rel *Pennsylvania Fire Ins. Co.* v. *Sevier,* 102 S.W. 2nd 882 (1937)
American Constitution Fire Ins. Co. v. *O'Malley,* 113 S.W. 2nd 795 (1938)
State ex rel *Robertson* v. *Sevier,* 115 S.W. 2nd 810 (1938)
Aetna Ins. Co. v. *O'Malley,* 118 S.W. 2nd 3 (1938)
State ex rel *Carwood Realty Co.* v. *Dinwiddie,* 122 S.W. 2nd 913 (1938)
Aetna Ins. Co. v. *O'Malley,* 124 S.W. 2nd 1164 (1939)
State ex rel *Robertson* v. *Sevier,* 132 S.W. 2nd 961 (1939)

Federal Court a motion for a citation to show cause why the agreement should not be set aside and the money disbursed to the companies be paid back into court for distribution to policyholders. Evidence was adduced setting forth the raising by the companies of a fund of some $440,000; the passing of this fund into the hands of a prominent politician of Kansas City, and the passing of some $60,000 thereof into the hands of Superintendent O'Malley. The funds were returned to the court and the court ordered a distribution to the policyholders at the companies' expense.[17]

In the state court there followed a proceeding on an information by the attorney-general, looking towards ouster or fine of the companies involved. The preliminary stage of this proceeding is contained in the case of:

State ex inf. McKittrick v. *American Ins. Co.*, 140 S.W. 2nd 36 (1940).

Conclusion.—The moral to be drawn from the litigation is generally that litigation is a slow and highly expensive method of dealing with rate-regulation, and that on the whole one gets quicker action and takes fewer chances in dealing with supervisory officials and endeavoring to work in harmony with them. The Missouri rate case extended over a period of twenty years, and that without a real decision on the main issues pertaining to the true meaning of the rate-regulatory law, and the constitutionality of the action taken. It is easy to get into rate litigation, expensive to continue therein, and difficult to exit gracefully therefrom. Fortunately the foci of real difficulty appear as yet but few; though of course new ones might develop. An early understanding with supervisory officials as to principles and methods, and an endeavor to introduce a reasonable portion of the art of the actuary into the ratemaking system, is indicated as desirable.

III. Rate-Regulatory Laws Applicable to Workmen's Compensation Insurance

Introductory.—In the year 1911 appeared the first laws applying the principle of Workmen's Compensation in a thoroughgoing way and drafted in a manner that survived court tests of constitutionality. Some of these laws required the employer to provide security by way of insurance or otherwise: some set up special insurance machinery in the form of state funds or a special type of insurance carrier. With insurance provisions came rate regulation, either for the protection of the employer or for the protection of the state-fostered insurance agency. The practice of rate regulation has developed to the point where only a few states lack rate-regulatory laws.

The regulations applicable to private carriers are (a) general regulatory provisions (b) special provisions for the rating of risks assigned under

[17] *American Ins. Co.* v. *Lucas*, 38 F. Supp. 896, 926 (1940)

statutory plans. In addition, laws setting up state funds or providing for the incorporation of employers' mutual liability insurance companies commonly have provisions for classification, rating and declaration of dividends. Appendix II contains references to these provisions and detailed description of the provisions applicable to private carriers.

A majority of the provisions are of a type reminiscent of the Kansas law applicable to fire companies: namely a filing requirement addressed to companies individually coupled with provisions requiring filing to be approved before being made effective. Provisions are often added for review of approved filings or specific rates, by way of proceedings for a withdrawal of approval or otherwise. Many laws either make no mention of rating bureaus or mention them more or less incidentally. Some laws require rating plans to be applied by approved bureaus and there are a few genuine bureau laws. Due to the form of the laws, deviation provisions are rare, save in case of bureau laws. Rate standards emphasize adequacy more prominently than reasonableness: anti-discrimination provisions are generally of a simple type, and in only a few cases are fortified with the elaborate administrative machinery usual in the fire rate-regulatory laws. Provisions for periodical reviews of rates are practically non-existent. In all these respects the laws differ markedly from the fire rate-regulatory laws.

The rate situation is likewise different and in some respect unique. The bureau, whether by requirement of law, or in practice, is a non-partisan bureau, with committee membership equally divided between stock and non-stock companies, this necessitating a provision for the breaking of tie votes. For a goodly number of states, rate administration only is a local function; rate-making, with statistical and actuarial functions being vested in a central organization. Where law or long-continued practice vests rate-making functions in a local bureau, the central organization can, of course, act only in an advisory capacity. Ratemaking and statistical methods are reasonably uniform, and have in general been adjusted to the satisfaction of supervisory officials: controversy has been relatively rare, litigation much rarer. It does not follow, of course, that this condition will always obtain.

Detailed commentary on the laws is as follows:

(1) *Coverage.*—The laws are generally either embodied in the compensation act or closely related thereto. Generally they specifically cover insurance of the liabilities created by the act: some acts also specifically cover insurance of the liability of employers rejecting the act: a few specifically cover all employers' liability insurance.

(a) *Employers' Liability.*—It is sometimes not at all certain under the terms of the act whether it includes authority to regulate employers' liability insurance. Usually the question is not material. Compensation acts often contain employers' liability provisions: some acts contain provisions

requiring all employers' liability policies to include liability under the compensation act. Apart from such requirements, the policy commonly written covers both workmen's compensation and employers' liability, because of the relative smallness of the employers liability hazard and the very common difficulty of determining whether a particular case is really a compensation case or an employers' liability case. There are, to be sure, cases where the employer is wholly outside the terms of the act, and in such cases a straight employers' liability policy may be written if the law permits. Farm risks, other excepted employments, employers rejecting the act and vessel risks are instances.

Rating policy has been for some time (1) to cover both hazards at a single rate (2) to quote the same rates for employers' liability as for the combined workmen's compensation-employers' liability coverage. The first policy was dictated by the practical difficulty of segregating experience and getting enough genuine employers' liability experience to establish a separate employers' liability rate. One or two states originally required a separate premium for the employers' liability hazard, but this has long since been abandoned. The second policy was dictated by the necessity of avoiding charges of encouraging employers to reject the act by quoting a lower rate for employers' liability. Separate rates are, of course, quoted on vessel risks, to which no compensation act applies.

There have been cases where supervisory officials have questioned their authority to act on or to regulate rates covering the employers' liability hazard solely: other cases where that authority has been challenged. It is unfortunate that question should be raised: as the logical result of a successful challenge would be the divorcement of the two lines, and the upsetting of a long-continued practice.

The question whether state funds have authority to insure employers' liability has more than once been raised, but has generally resulted in the extension of the power by statutory enactment.

(b) *Federal Jurisdiction.*—The federal jurisdiction embraces two important fields, interstate commerce and the closely allied jurisdiction over navigable waters of the United States. In case of railroads, subject to the Federal Employers' Liability Act, the employers' liability hazard is material: but railroads do not often insure their liability. In the maritime field, there are vessel risks, subject to the general maritime laws and the Jones Act, and many maritime operations coming within the U. S. Longshoremen's and Harbor Workers' Act. There are numerous cases where a risk may be partly within state jurisdiction, partly within federal jurisdiction; employees passing from one to the other so readily that no separation of payroll is possible. Some classifications, therefore, have rates covering both liability under the state compensation act and under the Longshoremen's and Harbor

Workers' Act: others where, in case maritime coverage is desired, the rate is increased by a certain percentage.

Ordinarily a question of jurisdiction exists here also, though it is seldom if ever raised. Some states have specifically empowered supervisory officials to approve or disapprove rates contemplating coverage under the Longshoremen's and Harbor Workers' Act. In some states supervisory officials have disclaimed authority to act.

(c) *Partial Insurances.*—The question has risen at times, whether reinsurance, and insurance of the excess liability of self-insured employers come within the rate-regulatory provisions. In the latter case, essentially a competitive situation exists: and in some instances supervisory officials have ruled that the law applies. This has its difficulties, for the provisions of the acts rather obviously contemplate insurances of the entire hazard; as obviously, insurances of the excess hazard are entirely different from insurance of the entire hazard, and not merely the rate, but the expense loading are governed by very different principles. Compensation statistics can furnish a certain statistical basis for excess rates: but writers of excess insurance commonly pick their risks with some care, and a pure premium based on the experience of risks at large might not be applicable. As to the expense loading, such experience as the writer has had indicates that it is hardly likely that a rating organization comprehending mainly carriers of full-coverage policies will be particularly moved by the needs of their competitors or exert themselves particularly to make competition possible. It has been stated that attempts to regulate excess rates have merely resulted in the passage of such risks to Lloyd's of London.

The question whether a law covers excess insurance rates can usually not be settled on the express language of the law, but has to be decided by inference. There are one or two cases in which the law is explicit.

(2) *Supervisory Authority.*—In a majority of the acts, the supervisory authority over rates is the insurance commissioner, sometimes with requirements that he consult the industrial commission, or providing for cooperation with that body. But in Arizona, Colorado, Delaware, Kentucky and Utah, rate regulatory laws are administered by the industrial commission, and in Arkansas and Illinois, the industrial commission has authority over the rating of assigned risks. In Louisiana, supervision apparently is lodged in a board of insurance in the department of the secretary of state. In Michigan while most supervisory functions are in the commissioner, hearings for the removal of discriminations is before a board of three members, the commissioner, the state banking commissioner and the attorney general. In Minnesota, supervisory authority is in a commission consisting of the insurance commissioner, a member of the industrial commission, and a third appointed member. In Oklahoma, supervisory authority is in a board,

consisting of the commissioner, the state fire marshal, and a third appointed member. In Tennessee, supervisory authority over rates is in a board consisting of the commissioner, the secretary of state and the governor. In Virginia, the supervisory authority is the corporation commission.

This peculiar variation in authority bespeaks the importance of workmen's compensation rates, and the necessity for a tie-in with the machinery for administering the compensation act. The industrial commission (using the title to include all officers and boards administering the compensation act) is primarily concerned with loss adjustments. But in this, it deals constantly with the employer's insurer: is interested in the proper protection of the employee, and may very naturally be entrusted with the administration of the insurance provisions of the act. Approval of policy forms is very closely allied therewith. Approval of rates is a step further removed. But the statistics it compiles for its own use are closely related to the statistics used by the carriers.

The approval of policy forms and the approval of rates involve problems, legal, statistical and actuarial, more akin to the ordinary duties of the insurance department than to those of the industrial accident board: hence the more common policy of entrusting the latter, and sometimes the former as well, to the insurance commissioner. It is due the industrial commissions to say that they have functioned very well and fairly. Differences in practice due to the diversity of supervisory bodies are on the whole surprisingly few.

(3) *Bureaus.*—Commentary has already been made upon the type of bureau administering compensation insurance. The bureaus naturally existing at the time workmen's compensation began were company organizations and a deal more centralized than in case of fire bureaus. Non-partisan bureaus appeared, partly, at least, as the result of pressure from supervisory authorities. The authorities wanted uniformity in classifications, underwriting forms, manual rules and statistical methods: without these, rate supervision would become enormously difficult. Rate competition was generally not desired. Thus, in state after state, bureaus were set up: when this became expensive, and productive of diverse practices, a central organization, or rather a succession of them was set up, culminating in the National Council on Compensation Insurance. Centralization however is by no means complete, and was not intended to be: but the central performance of statistical functions has saved much money, and a central unifying influence has saved much more.

The merit of the non-partisan system is that it secures unity of action in all matters wherein unity is requisite. The vice of the system lies in that unity cannot be carried beyond a certain point without producing a result more favorable to one set of carriers than another, and it is hardly to be

expected that competing groups will be tenderly considerate of one another's needs, or fail to take advantage of the balanced committees to produce a series of deadlocks and delays. The experiment has, however, lasted long enough, and the two groups have dwelt together long enough to develop a degree of comity, making clashes less frequent, cooperation more in evidence.

The system entails a single rating organization for filing and for administering the rates in any single state: generally, therefore, the bureau companies present or have presented for them, a single set of manual classifications, rules and rating plans, and generally a single set of rates. Where under the law the bureau is compulsory, or where as matter of fact there are no non-bureau companies, the bureau filings are the only ones made. Where bureau membership is not compulsory, independent filings could be made: but the task of preparing the enormous mass of detail that goes with a rate filing, and the problem of getting it approved when made, are so considerable that while independent filings have sometimes been threatened, those actually made have been somewhat simple variations from bureau rates. The National Council's constitution permits the two groups of carriers to establish variant expense loadings, and when this is done, makes separate filings for the two groups in states where the law permits. Some laws specifically permit variations, but variations filed and approved are in most jurisdictions rare.

(4) *Rate Filings.*—The laws commonly require companies to make filing of rates and rating matters, almost always coupled with provisions for approval. The matters most often specified are classifications, premium rates applicable thereto, and schedule or merit rating plans. Minimum premiums and the experience rating plan are specifically mentioned only now and then, and the filing of manual rules is not required by all laws. General procedure is to interpret the laws as requiring the filing of all matters in any way pertaining to the rating of risks, and similarly in case of the approval provisions. The one case in which the wording of the filing and approval provisions has been raised to affect rating procedure was in case of the doing away with schedule rating, two states raising the point that, as their law was worded, a schedule rating plan had to be filed and approved.

Classifications, rules and rating plans are more or less permanent in character. They have to be filed and approved before, or simultaneously with the first rate-filing. Amendments may be filed from time to time, not necessarily in connection with a rate-filing: though if the amendment carries with it a change in rates, such change is generally filed with the amendment. Under existing practice, general rate revisions are made annually, with interim rate revisions or revisions of specific rates as required. The common reason for an interim rate change is a law amendment changing the scale of compensation benefits or extending the scope of the compensation act.

In states having a statutory plan for the insuring of rejected risks, there commonly is a special provision for the rating of such risks. Ordinarily the filing of rates made on specific policies under the terms of approved rates, rules and rating plans is not required. Though it is relatively common for the law to require that rate modifications due to the application of rating plans be clearly set forth in the policy or in an endorsement attached thereto. Provisions for giving the insured information as to the rate, with copies of completed schedules or experience ratings occasionally appear in the laws but are by no means so common as in the fire rating laws.

(5) *Rate Hearings.*—The laws do not always provide for hearings on rate filings. Constitutional guarantee of due process of law requires a hearing at some point, and opportunity to appeal to the courts: but if a hearing is actually given, there is no impairment of constitutional right. Some laws have explicit requirements for notice and hearing; and for protection of the rights of insurer and assured alike there should be protection against sudden ex-parte decisions. The issues involved in a rate revision relate to the factual basis, which is generally statistical, and to the methods, which are actuarial. To determine such issues by presentation of evidence in a formal hearing is very difficult: canvass of the data by experts prior to the hearing is necessary. Fortunately, the statistical methods are by now well established: the actuarial process whereby statistics are converted into rates has been approved by the National Association of Insurance Commissioners, and has been in use long enough so that supervisory officials are reasonably familiar with it. It is very common practice to have a preliminary inspection and conference, after rate computations have been made, but prior to formal adoption and filing. In that way many questions can be settled in advance, and the hearing correspondingly abbreviated. Hearings seem most requisite on rate changes. Hearings on changes in manual classifications, rules and rating plans might well be optional, called by the supervisory official on his own motion or on request. Whether formal hearing requirements should be inserted in the law depends on the supervisory official; by and large supervisory officials appreciate the inherent justice of not taking action affecting rights without giving interested parties opportunity to be heard. The most annoying invasions of the principle are snap decisions as to the rating of a single risk, which are occasionally made ex-parte at the instance of an interested company or agency. Fortunately these cases are rare.

(6) *Rate Decisions.*—The decision made after a filing depends on the regulatory plan embodied in the law. The most common plan is a simple requirement that classifications, rules, rates and rating plans shall not be made effective until approved. In such case, the decision is simply an order of approval or disapproval. No deviation can be made from rates, etc. so

approved until a new filing is made and approved. Most laws are addressed to companies individually: use of bureau rates by companies is, so far as the law goes, discretionary.

This procedure obtains in Alabama, Colorado, Delaware, District of Columbia, Georgia, Kentucky, Maine, Maryland, Massachusetts, Michigan (by ruling), New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Vermont, and Virginia.

Elsewhere, the provisions for filing and approval are overlaid or supplanted *in toto* (a) by supervisory authority to establish rates and rating plans for use by all carriers (Arkansas, Florida, Louisiana, South Carolina, Texas) (b) by supervisory authority to establish minimum rates and uniform rating plans (California, Kansas, Minnesota, Missouri) (c) by supervisory authority to establish uniform *maximum* rates, *maximum* expense loadings and uniform rating plans (Indiana) (d) by supervisory authority to establish *minimum* pure premiums, *minimum* and *maximum* expense limitations, and uniform rating plans (Wisconsin) (e) by general undefined regulatory authority (Arizona, Utah). Under a law of type (a) the only use of a rate filing is as the basis for a general order establishing universal standards and as information as to whether the carrier making the filing is in compliance with the order. The law does not apparently contemplate deviations, or the use of more than a single set of rates or rating plans. It is a curious type of law to appear in states which have anti-compact provisions on their statute books: a complete transition from free competition to no competition at all.

Under a law of type (b) a general order is likewise made, but the law would seem to contemplate that deviations *above* the established rates may be made. The one law of type (c) very definitely contemplates that deviations below the established rates may be made. Type (d) the Wisconsin law, apparently permits companies to make rate filings using pure premiums higher than those established, and expense loading not in excess of the maximum limit nor below the minimum limit: but filings and approvals are definitely required. What happens in states of type (e) depends on the supervisory authorities. There is a curious difference of policy in the state of Missouri, its fire rating law contemplating pretty definitely maximum rate standards, whereas the compensation rating law sets up a minimum standard. The Indiana law is probably a reflection of the fact that Indiana was traditionally, and by virtue of an obscure court decision, an anti-compact state. The Wisconsin law is interesting, embodying more consistently than most laws a definite theory of a standard of adequacy as to loss cost, and standards of adequacy and reasonableness as to expense.

(7) *Adequacy and Reasonableness.*—The laws differ somewhat in point of rate standards. Some mention adequacy only: some refer only to rea-

sonableness, justice, fairness or equity. Some mention both. The anti-discrimination principle requires separate treatment. Little attempt is made to elucidate these somewhat indefinite terms, with the result that their meaning depends on administrative discretion. A number of laws define adequacy to the extent of using a phrase, "adequate to set up the necessary reserves." Presumably this means the loss reserves, and would seem to indicate the use of rates based on pure premiums which measure the loss hazard as accurately as possible. The term doubtless has reference to expected expense as well.

Reasonableness has a somewhat vaguer meaning, and it is not always certain whether the law has reference to reasonableness from the standpoint of the insurer, or from the standpoint of the insured, or from a combination of the two. Reasonableness doubtless implies fairness in the price; contemplates a charge sufficient to cover probable losses, and a charge sufficient to cover probable expenses, insofar as these expenses are reasonable. Reasonableness may also include a proper catastrophe margin, a contingency margin and a profit loading.

There is no great controversy over the methods used for computing the loss estimates carried in the rates. They are not the only possible methods. There is nothing sacred about using five-year averages for pure premiums, two-year averages for indemnity rate levels, one-year for medical. Other experience periods have been used. But these are generally felt to hit normal conditions pretty well. Controversy has chiefly turned on discrepancies between loss estimates of carriers and losses as determined by industrial commissions: but these can be ironed out. Controversy can easily arise over the accuracy with which payroll is audited and assigned to classifications. But by and large the loss estimates carried in the rates are regarded as satisfactory and a fair measure of the hazard undertaken by companies on the average.

As to expense, the expense loading ordinarily used is a fair measure of the probable reasonable expense of stock insurance carriers. It runs a trifle lower than the average expense ratios of stock companies, and is of course a mean between ratios running below and above. It is considerably higher than the average expense of non-stock carriers, which as a group exhibit some little diversity in the matter. The difference is due primarily to a much lower percentage of acquisition cost, and in lesser degree to the larger average size of risk insured.

The reasonableness of the other items is generally not controversial. There is no profit loading. The catastrophe loading is very small. The contingency margin is carried on a basis approved by the National Association of Insurance Commissioners and is at the moment of writing zero for all but a very few states.

Under a majority of the laws, approval of rates is nominally for companies

individually: actually it is the approval of a single set of rates submitted by all of them. In a minority of laws, as indicated in the preceding section, what is approved or established is a standard rate for all companies, which standard is either absolute, a minimum or a maximum according to the law. Questions of adequacy and reasonableness probably cannot altogether be confined to the standpoint of companies as a whole or to the standpoint of groups of companies. The interest of a single company has standing in the courts certainly, its constitutional right being that the rate, as to it, shall not be confiscatory. Similarly these questions may require consideration from the standpoint of policyholders, at large or singly.

(a) While the estimates in the rates to cover losses may be accurate for companies as a whole, they may be too large or too small for a company which selects its business somewhat narrowly.

(b) While the estimates in the rates for losses may be sufficient on the average, they represent the average experience of classes of risks not necessarily homogeneous, and may be, for some risks, notoriously insufficient, for others as notoriously excessive.

(c) While it is possible under many circumstances for stock and non-stock carriers to do business under rates based on a set of pure premiums loaded for expense according to the average expense of stock carriers, it does not follow that this can be done under all circumstances without grave injury to the one group or the other.

(d) The use of a uniform expense loading may yield on some risks an amount insufficient to cover actual expenses: on others, an amount much in excess thereof.

It therefore makes a good deal of difference what standpoints are used in judging adequacy and reasonableness and the character of the law, and the allowances possible under it to meet problems such as the above have an important bearing on both its workableness and its inherent justice. The failure of the law to provide sufficient flexibility may put a company or a whole group of companies in a position of great disadvantage, may make small risks or bad risks hard to insure and may drive the biggest and best risks into self-insurance. The same is, of course true as to procedure of supervisory officials under the laws.

(8) *Discrimination.*—The greater part of the laws have provisions relating to discrimination: though provisions after the fire model, with an elaborate prohibition of discrimination of several kinds and an administrative process for removing discriminations are exceptional. Some laws do not even mention the subject: others require rates to be non-discriminatory without expanding on the term. There are in some states general anti-

discrimination laws which are applicable: though some so labeled are really anti-rebating laws.

Discrimination properly refers to the failure to observe equality of treatment between risk and risk, where the risks are in every way similar. It ordinarily does not refer to the practice of classifying risks and making rate differentials between risk and risk in the same class. Doubtless classifications, rating plans and differentials must be reasonable in character and fairly and impartially applied. That much at least is not unfair discrimination.

A good part of the points of strain and stress in the rating system, where it presses harder on one side than on the other, and where relief is sought, and a good part of the cases where new methods are attempted, bring the anti-discrimination provisions into the picture, each side urging an application of the law calculated to block what the other does or attempts to do, not always mindful of the fact that such application may be fatal to certain things they themselves have done, are doing, or may desire to do hereafter.

(a) *Minimum Premiums.*—One of the early cases where the anti-discrimination law was involved was in case of minimum premiums. The application of manual rate to payroll, where the payroll is only a few hundred dollars, may produce a very minute premium. The cost of underwriting and issuing a policy is perhaps $5.00: an audit or inspection would cost something more, thus some minimum premium had to be charged if small risks were to be insurable: the legal authorities, to a question if this would be discrimination answered, yes, if the charges are arbitrary and capricious; no, if made in accordance with a reasonable plan. The general rule established and approved is to assume in all cases a payroll of $1000 or $1500, supposed to represent the wage of a single employee, continuously employed for a year, extend thus payroll at manual rates, and add thereto a constant representing the minimum cost of issuing and servicing a policy.

Most minimum premiums are made by rule. There remain, however, a number of special minimum premiums and a few minimum charges, imposed in classifications where the character of the smaller risks renders them unattractive to underwriters.

This matter involves:

(1) A classification by size of risk.

(2) A rate differential based on an assumed element, i.e., the assumed payroll, not present in fact.

(3) A rate differential in the form of a flat charge.

(4) A rate differential based, not on loss hazard but on expense.

(5) The special minimum premiums involve a further point, a differential dictated by underwriting considerations.

(b) *Schedule Rating.*—Schedule rating also involved a size limitation: that is, it applied to risks with a certain minimum payroll developing a certain minimum premium. The old limitation was $5000 payroll, $50 premium. This rose to $10,000 payroll, $50 premium, and ultimately to $15,000 payroll, $150 premium. The validity of the limitation seems to have been well-established.

(c) *Experience Rating.*—Experience rating employs size differentials much more liberally. The qualification limit varies in size, but may be as much as $500 annual premium. The risk credibility is graduated in accordance with size, and there are two other size limitations; the "Q" point, and the self-rating point. The propriety of the qualification limitations seems well established, discussions turning mainly on the point of its amount, as to which there is, of course, an issue of reasonableness. The propriety of giving a big risk a greater credibility for its own experience than a smaller one is so well justified actuarially that the point of discrimination has not been raised.

(d) *Loss and Expense Constants.*—Along about 1926 the stock compensation carriers started in on a problem designed to meet the fact that they were losing heavily on compensation insurance, being saddled with the least profitable end of the business and heavily handicapped in competition for the larger risks against participating carriers doing business at an expense cost only half as great as theirs. The first stage of the contest involved (1) a move for modification of the experience rating plan (2) a move for meeting the fact that experience demonstrated a loss ratio on the smaller risks higher than on the larger risks. (3) a move for meeting the fact that the expense loading yielded less than enough to cover actual expenses on the smaller risks, far more than enough to cover actual expenses on the larger risks. The non-stock carriers denied the facts, and strenuously, and for a time, successfully, blocked investigation by the National Council, so that the first stage of the contest came to issue in the Compensation Insurance Rating Board in New York. There, after investigation, the non-stock carriers ultimately agreed to a modification of the experience rating plan, and to the introduction of a system of loss constants, varied by broad industry groups, to be added to the premium of risks below the size necessary to qualify for experience rating. This latter step affected an increase on the rate of the smaller risks, which in terms of percentage decreased as the risk increased in size. The excess premium gained thereby was designed to be offset by a decrease in manual rate: in New York, it was utilized to take up the rate deficiency produced by the experience rating plan, which, being applied to a rate level higher than the rate level indicated by the experience of the rated risks, normally produced an excess of credits over charges.

Ultimately, loss constants found their way into other jurisdictions, and in 1934 were approved for general use by the National Association of Insurance Commissioners.

The anti-discrimination principle apparently does not prohibit their use. The fact that there is a differential by size of risk is met by the fact that such differentials are also involved in the minimum premium rule and in both the schedule rating and experience rating plans. Similarly the use of a flat constant is met by the fact that a flat constant also appears in the minimum premium rule. The anti-discrimination principle does not require that rates be made in any particular way: what it does require is an equitable distribution of the rate burden. Such opposition as supervisory officials have occasionally evinced seems to be based, not on a point of law, but on the practical consequence of laying a burden on the smaller risks. The plan in common use calls for a determination of loss constants on experience, with a counterbalancing reduction in manual rates. But local conditions affecting small risks and the great casual variations commonly met in dealing with relatively small blocks of experience make it practically impossible to stick very close to the actual experience, especially in the smaller states. Several courses are possible—to incorporate some feature of weighting in the plan: to make use of national trends: or simply to modify results by judgment. The latter course has been the one generally followed, and is on all occasions the theme of lively partisan sniping, which is not to be taken very seriously. On a recent occasion, the non-stock carriers moved for a set of constants in accord with their contentions—and when the stock carriers refrained from voting, and permitted the motion to prevail, evinced a ludicrous consternation. Very evidently they wanted the constants as proposed by the other side, but felt obliged to make an objection merely for the record. It is not intended to claim that on all occasions the criticisms have been baseless: it is undoubtedly better to proceed by a definite plan than on judgment: but when a plan produces indefensible results, and a better plan is not presently available, the obvious and sensible thing to do is to use a rule of reason. Regrettably, no plan is perfect: indeed it is only under certain conditions where risks are very numerous, and are either very uniform or fall naturally into homogeneous classes, or vary regularly in accordance with elements measurable by a rating plan, that mechanical methods of producing rates are at all possible. Too great a reliance on rule and method leads to as absurd and indefensible results as too great a reliance on judgment. Common sense is required to tell when to use the one and when the other. The anti-discrimination, principle doubtless points to use of rule and method where practicable; but it probably does not eliminate the element of judgment altogether. If it did, it would necessitate the elimination of special minimum premiums, and a number of other rating

devices; and how much would be left of the fire schedules if all judgment elements were eliminated is a thing pertaining to the calculus of infinitesimals.

Loss constants are not used in some states because of administrative objection, in others because difficulty in computation: but these states are few.

The expense constant touched on a vital point. The proposal was, to carry the constant contained in the minimum premium rule up to the point where experience rating begins, and make a reduction in the percentage expense loading sufficient to offset the premium gained thereby. The deduction was 2.5 points of loading for a $10 constant: equivalent to about 4% reduction in manual rate. This cut the margin of advantage of the non-stock carriers, and produced a contest that was fought out in every regulated jurisdiction. The legal side of the controversy was based on the anti-discrimination principle; and here two points were involved not present in the other controversy.

(1) Stopping the loss constant at the point where experience rating begins has behind it the fact that experience rating encourages loss prevention, this making a difference in the loss experience of risks above and below the point *a priori* probable. There was not the same indication of a change in expense at that point, and this, it was urged, made the plan arbitrary. This point was taken seriously enough in some states to produce a requirement that the constant be applied to all risks. More commonly it was felt that practical convenience justified stopping at a point where the constant, percentage-wise, constituted but a minute fraction of the rate, and that the place where loss constants stopped was the natural point.

(2) Certain of the anti-discrimination provisions make specific reference to risks of like hazard, or risks having equal degree of protection against accident. It was urged, here and elsewhere, that this forbade differentials predicated on expense. To be sure, there was, and had been for years, an expense constant in the minimum premium rule. To be sure also, hazard means neither more nor less than the chance the underwriter takes, and expense is a natural and important element of that chance; though, to be sure, certain elements of expense are not contingencies but certainties. Differentials based on expense are the very foundation of the rating operating of public service companies, and are common enough in insurance. The position was, therefore, an unfortunate one, and had it generally been maintained would have proven disastrous enough. As it was, expense constants were ruled out in one or two jurisdictions, and disapproved in others because of the burden on small risks. For the greater proportion of the business, expense constants were used, though there was variation in size, and in method of application.

The National Association of Insurance Commissioners in 1934 left the

question of expense constants *in statu quo*. New York approved an expense constant, but after the point of expense differentials cropped up again in connection with the retrospective rating plan, put the question to rest by amending its anti-discrimination law so as to permit expense differentials.

(e) *Graded Expense Loadings.*—The second stage of the stock carrier program was a direct attack on the expense problem in the larger risks, the proposal being to graduate commissions and to make expense loadings for the larger risks reflecting the saving in expense caused by this graduation, and carrying also a certain graduation in expense elements other than commissions, designed to reflect the smaller proportional expense cost of the larger risks.

This attempt ran over the years 1930-1933, and involved a contest not only with the non-stock carriers, but with their own agents, and an entirely needless controversy with the Insurance Commissioners. The first stage was an amendment of the constitution of the National Council, which in effect permitted the establishment of separate expense loadings for stock and non-stock carriers. The second stage was an actual rate-filing, in connection with a large requested increase in rate levels. The stock filing carried a 40% loading for the first $1000 of premium, 27.5% for all premium in excess of $1000. The non-stock filing carried a uniform expense loading of 37.5%. The dual filings entailed contests in state, after state and the results were so unsuccessful that both sides called a truce, and for the time being the graded expense loading was dropped.

The merit of the proposal is better recognized today than it was then: and the feeling of agents is not the same. Here and there, graded commissions have actually been adopted: and the principle of graded expense loading as embodied in the retrospective rating plan has been very generally adopted. The principle laid down by the Superintendent of Insurance of New York, "If there is an actual difference in expense, it is discriminatory not to make a differential" is eminently sound. That the grading of commissions by size of risk involves a discrimination is patently absurd.

(f) *The Retrospective Rating Plan.*—The retrospective rating plan was the next essay of the stock carriers to deal with the big risk proposition. Through the graduation of the minimum retrospective premium and the basic premium, a graduation of commissions and of other expense was practically, and very cleverly effected. It met the usual attack under the anti-discrimination law: but its adoption in all but five states ought to be sufficient answer.

(g) *Regulated and Non-regulated Insurance.*—There are a great many risks which involve not merely compensation coverage, but coverage of non-regulated casualty lines: others which involve coverage in several states,

one or more of which may not be regulated. A carrier can, and on occasion does, write the compensation part of the risk subject to rate regulation in strict compliance with approved rates, rules and rating plans, but effects a competitive rate by an operation on the non-regulated rates: in some cases making in a separate policy a retrospective adjustment based not merely on what the policy covers but on the compensation policy as well. Ordinarily this falls outside the anti-discrimination provisions in the compensation act, though in Minnesota and Wisconsin there are provisions defining the practice, so far as non-regulated lines are concerned, as discrimination. General anti-discrimination laws may be applicable; and there is constructively a violation of the spirit and intent of the rate-regulatory law, compliance being only technical and ostensible.

All that can be said in favor of the practice is, that the rate regulatory law, insofar as it holds all companies to a single level of compensation rates, establishes a condition whereby there is a great deal of profit in the large risks: and if company A can get that profit back to the risk by means of a participating dividend, company B, which is not in position to declare a participating dividend, must effect a like result somehow or lose the business. However, the practice is not peculiar to non-participating companies. Where there is something worth competing for, and direct competition is barred by the law, it takes place around the corner. Some part of the question would lose its significance with the coming of a graded expense loading.

(h) *War Contracts.*—The war produced a huge number of contracts let by the Federal Government for construction and operation of war activities, some on a lump-sum basis, more on a cost-plus-a-fixed-fee basis. These required a lot of insurance in the casualty lines, with workmen's compensation well to the fore. Payrolls were bound to be high, and wage scales, overtime and double time bade fair to make the compensation part of the risks inordinately profitable.

The War Department asked for competitive bids, and lively bidding ensued, wherein quotations on lines other than compensation ran absurdly low, and wherein guaranteed participating dividends figured. The War Department indicated an intention to take participating dividends into consideration, under certain restrictions, in determining the lowest bidder: and this brought about the making of special rate filings for such contracts, commonly styled, deviation rates. Briefly, the regular pure premiums were used: but generous cuts were made in expense. The stock filings were generally 20% below manual, the non-stock filings 10%.

This was justified in the filings on patriotic grounds, and far be it from the writer to doubt the patriotism of the carriers. But the motivating cause of the stock filing was in part at least to meet competition: and the non-stock filing was in part conditioned on the stock filing.

It is probably not discriminatory to give differential treatment to governmental risks: the peculiar position of the government, especially in time of war should justify it. And, as indicated in Section II of this paper, differentials made to meet competition are not *per se* discriminatory, if not forbidden by the terms of the law.

The so-called deviation rates were pretty generally approved, though a few states declined approval: others insisted on the same deviation for stock and non-stock carriers: still others took variant action.

The war contracts, specifically the cost-plus-a-fixed-fee contract produced a unique underwriting device, the so-called comprehensive plan, wherein most of the common casualty lines were brought within a single instrument. The plan took the agent right out of the picture, substituting a functionary who might be an agent or broker, paid by the assured, for services in rating and scrutinizing audits and loss estimates, on a scale, graded by size of risk, but moderate enough to pass as a proper service charge. The expense allowance was graded also: and the rates on the collateral lines were otherwise reduced below manual: this reflecting the way such rates had been cut in the competitive bidding. The comprehensive plan was generally approved, though some supervisory officials obviously disliked it, and a similar distaste was registered by state funds who were not in a position to write the collateral lines.

All told, the war contracts would seem to furnish some precedents for a fairly liberal interpretation of the anti-discrimination laws.

(i) *Rejected Risks.*—There are always risks which find difficulty in obtaining compensation insurance. A good part of them are unattractive because of bad record for payment of premium and unwillingness to cooperate with the insurer in matters of accident prevention, payroll audit and the like. There are some risks uninsurable by reason of location, bad loss record, or other elements indicating the normal rate not a fair measure of the hazard. The only feasible way of insuring such risks is by a deviation from normal rating procedure. No discrimination is involved in such procedure, the risk being distinct from others in point of hazard. But, as indicated, all laws do not permit of deviations upward. There are one or two states where the law definitely provides for departures by common consent, approved by the supervisory authority. Most states having compulsory provisions for covering rejected risks have provision for special rating treatment; elsewhere, inability to give special rating treatment may complicate the coverage of such risks under voluntary plans.

(j) *Equity Rating.*—Equity rating is commonly not used in regulated states. In non-regulated states it is used by company bureaus either to adjust rates in cases where the regular rating methods produce injustice—and there always are such cases—or to meet competition. The first practice does not

seem discriminatory, and as indicated in Section II hereof, differentials to meet competition are practically necessary, and do not necessarily involve a discrimination. That is not to say that all equity ratings are defensible.

(9) *Participating Dividends.*—Compensation insurance contains a very large element of insurers operating participation plans: mutual companies, special employers' mutuals, reciprocal exchanges, participating stock companies and state funds. It is very common for a compensation rating law to recite, as do the fire rating laws, that the law is not intended to prevent the operation of participating plans. Such references of regulatory character as are contained in the laws are:

(a) The laws providing for the setting up of state funds and of employers' mutuals very often contain regulation of rates and make provisions for grouping of risks for rating and dividend purposes.

(b) The states of California and Texas have provisions more generally applicable. Dividends declared on California policies must be from surplus derived from California business. In Texas, dividends are required to be approved by the supervisory authority.

It would seem that there are certain general principles that ought to apply to dividends of participating carriers. Of late years there has been a perfect plague of participating plans, seeking to declare dividends by underwriting groups and even by single risks. Some of these are genuine divisions of surplus, and are therefore undoubtedly participation plans. Some seem to be guaranteed returns on contingency, referring in no way to surplus, but payable in any event. These are rating plans, and must be judged in accordance with the rating law. The distinction is not clear-cut: in some plans it is hard to say to which category they belong.

As to true participating plans, it is entirely possible that a company may elect to treat all its policy-holders on a uniform basis. It may instead separate policy holders by line of insurance, by state, by groups of risks or by single risks, provided the law so permits. So long as the dividends are from surplus and are equitably apportioned, the process is just enough. Equitable apportionment would seem to require recognition of the earnings in the dividend group: though in case of small groups or single risks, some recognition should be given to the fact that the smaller the group or the risk, the more highly casual its underwriting experience. In a general way, the principles of rating apply to dividends: experience and its credibility are properly the basic elements of both. A wide departure therefrom, or the deliberate use of dividends for competitive purposes, at the expense of other classes of policyholders, is as objectionable as would be the making of a special rate for a favored class of risks, and is essentially discriminatory. Regulation of participating dividends is far less advanced than regulation of rates, but as indicated above, some states have found the problems closely allied.

(10) *Other Regulations.*—Incidental to his authority over rates, the supervisory official has undoubted right to inquire into all practices bearing on the justice of the rate filings. How rates are applied to individual policies, how classification and rules are observed, how payroll audits are made, how loss estimates are set up, are all matters strictly pertinent to the inquiry. Occasionally explicit powers of supervision over these matters are conferred. Right to verify audits, and duty to do so on complaint appear in a number of laws.

The matter of expense goes into the detail of company management. In all these cases the issue is, how far are the rate filings justified? How much is it reasonable to charge to cover expenses? It is not so often that sweeping inquisition into these matters is made: if it were, rate hearings never would end. The inquiry is more like to touch on particular details. Thus, very early, it was settled that 17.5 points and no more should be inserted in the loading to cover acquisition. This was only indirectly a regulation of commissions: direct authority must probably be specifically conferred.

(11) *Conclusion.*—The compensation rating laws represent the most striking experiment in rate regulation and on the whole the most successful. Supervisory officials, rating organizations and companies have between them achieved a very considerable standardization of underwriting forms, manual classifications, manual rules, rating plans, and statistical methods: and have developed well-defined methods of producing and applying rates. Points of difficulty that have arisen seem to flow in part from the mutable character of industry and the employer-employee relationship: from the existence of a highly competitive situation; with a certain delay in adjusting laws and the views of supervisory officials to meet difficulties as they arise. But the attitude of supervisory officials has been by no means unsympathetic, the attitude of companies, on the whole, by no means uncooperative: and after cataloguing the wars of the past it is only fair to repeat that the two groups of companies brought together in non-partisan rating organizations, have developed quite as much cooperation, mutual consideration and sympathy as could reasonably be expected of active competitors. All this would argue well for the future if the future were not generally so obscure.

IV. Rate-Regulatory Laws Applying to Casualty Insurance Lines, Other than Workmen's Compensation

The rate-regulatory laws applicable to the casualty lines consist of the following:

(a) *Anti-Rebating and Anti-Discrimination Provisions.*—The greater part of these are listed in Appendix V. Some few, applicable to fire and casualty

insurance or to specific casualty lines are cited in Appendix III or referred to therein. The laws listed in Appendix V are described in part VI of this paper. Those mentioned in Appendix III are:

Iowa

An anti-discrimination and anti-rebating law, described in Appendix IV applying to casualty insurance generally.

Maine

Two provisions, one an anti-discrimination and anti-rebating law applicable to liability insurance, the other a brief provision applicable to motor liability bonds or policies, prohibiting rebates, or charging premiums at a rate less than specified in the policy.

Maryland

An anti-discrimination and anti-rebating law, described in Appendix I, having administrative provisions for removing discriminations.

Minnesota

A law applying to motor vehicle liability insurance, prohibiting discriminations, rebates, and refusals to issue the standard form of policy.

New Jersey

Two laws: The first a generally applicable anti-discrimination and anti-rebating law, described in Appendix I with provisions as to filing, schedule rating, administrative removal of discriminations and as to agents' commissions: the other applying to automobile insurance, prohibiting discrimination in rates and dividends between policies covering financed automobiles and policies covering other automobiles.

Pennsylvania

Prohibits discrimination for all casualty lines except fidelity and surety.

Tennessee

Anti-discrimination law with filing provisions applying generally to casualty insurance.

Texas

Anti-rebating law applying generally to local recording agents and solicitors.

Vermont

Anti-discrimination and anti-rebating law.

(b) *Minor Regulatory Provisions.*—

Under this head may be listed:

Iowa

A provision calling for preparation of short rate tables by the commissioner, and forbidding companies to charge more than the sums indicated by those tables.

New Mexico

Filing provision.

Oregon

A generally applicable provision requiring filing of rates, etc., prohibiting deviations and discriminations.

Texas

A lately enacted law authorizing the Board of Insurance Commissioners to make and promulgate special rates and rating plans for national defense projects.

Washington

A generally applicable provision like that of Oregon.

(c) *Rate Regulatory Laws Generally Applicable.*—

The laws here mentioned apply to all casualty lines, and are in substance as follows:

Kansas

An act described in Appendix III making regulation of rating bureaus, requiring filing of organization data and other details and providing for their examination. A common expert provision is written into the law. Companies and Bureaus are required to make rate filings at the request of the commissioner, and there are anti-discrimination and anti-rebating provisions and an administrative process for removing discriminations.

Louisiana

An act described in Appendix II. Generally it charges the Louisiana casualty and surety rating commission to determine and fix adequate and reasonable rates on all casualty, surety, fidelity and bonding risks in the State, not discriminatory as to any class. These rates are mandatory as to all insurers, subject however, to a process for hearing on requests for rate changes, and to applications for the approval of deviations. Discrimina-

tions and rebates are forbidden, and administrative process is provided for removing discriminations and correcting rates found to be excessive.

New York

An act described in Appendix I, making general and elaborate regulation of rating bureaus. (Exceptions noted in reference.) Rate filings are generally made on request of the superintendent, and may be made by the carrier individually or by a rating bureau. Filings must indicate clearly the coverage to which the rates apply. Rates must be adequate, reasonable and non-discriminatory, and must give consideration to experience, catastrophe hazards, reasonable profit, and to participating dividends. Carriers may not make deviations from bureau rates, or, if they file individually, from the rates last on file, except that deviations from bureau rates may be made on application, approved by the superintendent. The deviation must be a uniform percentage deviation, and may be disapproved if found to be inadequate, unreasonable or unfairly discriminatory. There are an anti-discrimination provision, and a number of provisions as to rebates. There is an administrative process for removing discriminations. The rate control provisions are: (1) A power to order filings withdrawn if found to be inadequate, excessive, unfairly discriminatory or unreasonable. (2) A power to order adjustment of rates found to be excessive, discriminatory or inadequate.

North Carolina

An act described in Appendix I applying to insurance generally including surety bonds (exceptions noted in reference). The act makes brief regulation of bureaus. Filing of rates, etc., is at the discretion of the commissioner. Discrimination is prohibited and an administrative method for removing discriminations is provided.

Vermont

An act, described in appendix I, applying generally, including surety bonds (exceptions noted in reference). The filing and anti-discrimination provisions are like those in North Carolina, but there is added a statutory process before a board of three for the correction of rates found to be excessive.

(d) *Rate-Regulatory laws applicable to motor vehicle insurance.*—In addition to laws noted under the three preceding divisions there are a number of laws specifically applicable to motor vehicle insurance. All these are noted in Appendix III.

Illinois

A law applying to motor vehicle insurance rates. Rate filings are required and may be made by a bureau designated by the carrier in a sworn state-

ment, giving name of bureau, address, and an undertaking to be bound by the bureau's rates. Amendments and changes are likewise to be filed. Rates must not be unjust, discriminatory or preferential. Provision is made for special "fleet" rates.

Indiana

The fire rating law covers automobile fire and theft. A concluding paragraph regulates rates for theft, collision, personal injuries and property damage. The law contains (1) a filing provision, (2) a provision as to filing changes in rates on file, (3) a general prohibition of discrimination, rebates and deviations, (4) provision for deviations and percentage discounts on "fleets" based on the underwriting experience of the "fleet." Fleets are defined, much as in Illinois.

Massachusetts

In connection with the compulsory automobile law, the commissioner is required to establish fair and reasonable classifications of risks and adequate, just, reasonable and non-discriminatory premium charges. Rates are made annually in September for the next calendar year. These rates are required to be used. There is a provision for making alterations and amendments, and for court appeal. A later provision is for establishing rates for insurance of liability for guest occupants; those rates, however, are minimum rates: parties may contract for higher rates.

New Hampshire

An act requiring carriers writing automobile bodily injury and property damage insurance to file for approval with the commissioner their classifications, rates and rating plans.

New York

The general rating law, noted above, contains a special provision that rates for motor vehicle insurance policies or surety bonds required by law be filed and approved before becoming effective.

North Carolina

An act requiring the carriers writing automobile liability and property damage insurance to file classifications, rules, rates and rating plans. Carriers may file rates, etc., of a bureau of which they are members. Filings must be approved or disapproved within 15 days. Bureaus organized in the state for making and administering rates provide for equal representation of stock and non-stock carriers on committees. Carriers are required to write insurance in accordance with rates on file with the commissioner. An

administrative process is provided for ordering adjustment of rates found to be excessive, unreasonable or unfairly discriminatory. Orders are subject to court appeal.

Pennsylvania

A peculiar statute prohibiting (in connection with the financial responsibility law) refusal to issue a policy or bond because of the race or color of the applicant and discriminations in rate as to such persons.

Texas

An act applying to motor vehicle insurance, authorizing the board of insurance commissioners to determine and promulgate just and adequate rates of premium for any form of insurance on motor vehicles, including fleet or other rating plans and an experience plan: but only one plan for each form of insurance. The commission has power to prescribe policy forms; and participating dividends are required to be approved. The act prohibits special favors, etc., not specified in contract, discriminatory dividends, premiums, or benefits, rebates, etc. There is provision for hearing on grievances and for court appeal.

Virginia

An act applying to motor vehicle liability and collision insurance. Carriers are required to file with the corporation commission manuals, rates, rating plans, etc., and all deviations, increases or decreases, 30 days before their effective date. Hearings are provided in case filings are not approved within 30 days or are disapproved. A temporary 90 days approval may be made and extended. Rates must be fair, reasonable and non-discriminatory. A local, non-partisan bureau is provided, of which all carriers must be members; except that, where property damage and collision is written in connection with automobile fire and theft. The Virginia Insurance Rating Bureau (see appendix I) may be designated.

(e) *Liability Insurance.*—Wisconsin has a rate regulatory law applicable to liability insurance generally (Appendix III). This act prohibits:

(1) Discrimination or use of discriminatory rating systems.

(2) Insurance against other hazards at rates lower than regular rates for the purpose of evading the law.

(3) Unjust or unreasonable rates.

(4) Use of rate or classification not properly applicable to the risk.

Rates and manuals must be filed before becoming effective. The commissioner may require a company to modify a rating plan found to be unfair

or discriminatory. An administrative process is provided for correcting rates that are discriminatory or unreasonable. Orders are subject to court review.

(f) *Other Casualty Lines.*—Plate glass insurance is subject to regulation under the Oklahoma Law (Appendix I). Boiler and machinery insurance is, in Pennsylvania, subject to a restriction that the rates must not be less than 1½ times the charges prescribed by city ordinance for the inspection of steam boilers.

(g) *Fidelity and Surety.*—Laws general in scope probably do not include fidelity and surety business unless specifically applicable thereto. All of the acts mentioned in (c) above, are specifically applicable. There are besides two special statutory provisions, cited in Appendix III.

Nebraska

A provision empowering the Department of Trade and Commerce to investigate premium rates and fix a maximum schedule of rates of premium for each and all the different kinds of bonds, contracts, etc. Carriers may charge lower rates, but not higher.

Wisconsin

Rate-making organizations are required to file their articles of agreement, etc. Companies are authorized to employ experts. Discrimination in rates, etc., and rebates are prohibited. There is the common administrative process for removing discriminations.

Conclusion.—From the above it will be seen that there is little of an unusual character in the laws imposing regulation on casualty insurance. The most notable body of laws are those applying to motor vehicle insurance. It is natural that as motor vehicle insurance is made compulsory, there should be rate regulation. The field has been notably competitive, and there are some indications in the laws and in decisions and rulings of the attorney generals of trouble over group policies, rating plans, notably the safe drivers' reward plan, and the insurance of financed automobiles.

Next largest is the body of references to fidelity and surety. It may be doubted, however, if more than a very general sort of regulation is expedient. The variety of contracts written is very large, and the lack of relation between the several kinds of contract, and the non-homogeneity of the risks in some of the classes of contract make experience tests hard to apply, and the matter of rate making as well as of rate regulation, a somewhat difficult operation. Losses too are of a peculiar kind: often for very large sums, with considerable salvage operations often necessary; losses too are some-

times concealed for a considerable time: and, due to the close linkage of the line with the economic cycle, there is a very important catastrophe hazard. It is questionable, therefore, if there can be much rate regulation save in connection with exceptionally large classes of risks.

As to the lesser casualty lines, ability to regulate as to adequacy and reasonableness depends on the existence of sufficient standardization in policy forms to make experience truly comparable and the existence of sufficient volume of experience to give satisfactory tests. Lacking these, regulation must confine itself to discrimination: and unless risks fall naturally into classifications, discrimination becomes very difficult to detect. As in other lines, too, the existence of competition may make it desirable not to have too rigid an anti-discrimination law. On the other hand, there has been some little use of the more sparingly regulated casualty lines for the purpose of making competitive rates on big risks where it was necessary to write the compensation policy at approved rates. This seems the chief reason for extending rate regulation to the smaller casualty lines.

V. Rate-Regulatory Laws Applicable to Life, Accident and Health Insurance

Life Insurance.—No branch of insurance is more copiously regulated than life insurance. But legislation undertaking to make direct regulation of insurance rates as to adequacy and reasonableness is practically unknown, the only legislation of the kind being a very brief provision in the Maryland Law, referred to in Appendix IV, which provides that the commissioner may order a company writing life insurance at inadequate rates, to cease to do so. There is indeed little need for such regulation. The regulation of life insurance contracts, requiring certain standard provisions and forbidding others, coupled with company practices, have produced types of contract capable of being valued as to the hazard assumed on an actuarial basis and in accordance with tables prescribed by law. The valuation indicates the reserve to be set up against policies in force. Practically every company must charge rates adequate to set up the reserves, and a number of states have additional provisions requiring the setting up of deficiency reserves in case of premium rates less than the net rates indicated by the tables. Thus no company save one unusually well equipped with surplus can make rates much below the tabular limit without courting the hazard of impairment. Adequacy of rates is thus secured as completely as is desirable, though companies can, and on occasion do, make rates below the tabular level. The American Experience Table provided for some age groups a fairly generous margin, and for a long time interest earnings generally ran well above the tabular assumptions. The latter element, however, furnishes today a very

serious problem; and with the reduction of the margin goes reduction of any tendency to take chances on the rates. Reasonableness in rates is effectually secured by laws such as exist in some leading states setting up expense limitations. These facts, and the predominance of the mutual type of insurance, have kept the rate question from coming into the regulatory field, as to adequacy and reasonableness. Nor is there in life insurance a rate compact problem, sufficient to arouse the attention and criticism of supervisory officials or legislators. Between the minimum practically established by the reserve laws and the maximum practically established by the expense limitations there is a field where competition can exist; and the limitations on policy forms are not so severe as to make a certain competition in producing policy forms with an eye to salability impossible.

Life insurance moveover is upon natural units, which fall naturally into classifications by age. Other methods of classification are possible, such as occupation, physical condition and the like. But none of these require for rating purposes more than a relatively clear-cut classification system and classification differentials, and the latter can be nicely adjusted to the hazard. Rating plans are not necessary in insurances on single lives: in group insurances they have their place: and here some use has been made of the experience-rating principle as developed in workmen's compensation insurance. Thus, life insurance rating methods are relatively simple, and not such as tempt legislative inquisition.

The point most closely connected with rates on which critical investigation has chiefly turned is the point of expense. Thus, the main regulation of the rating practices of life companies has been directed at discrimination between risk and risk, and the kindred subject of rebating. Occasionally a requirement for filing rate manuals, etc., makes its way into the laws; but this is exceptional, and hardly necessary. The rates the company regularly charges can always be ascertained, when that is material: the rate written in the policy speaks for itself.

Life Insurance Anti-Discrimination Laws.—The ordinary anti-discriminatory provision is a simple prohibition of unfair discrimination between insurants of the same class, having equal expectation of life in the amount or payment of premium or rates thereof, in dividends or benefits, or in the terms and conditions of the policy. The forms of the provision show minor variations, some of which look like inexpert attempts to follow a model. The most common variation is to substitute "of" for "or" in the phrase "the amount or payment of premium"; thus transforming what was intended to be a prohibition of discriminations in the amount of premium, and discriminations in the method of premium payment, into a single somewhat obscure prohibition. Few states lack an anti-discrimination provision applicable to life companies.

A second provision, found in a number of states, all north of the Mason and Dixon Line, is a prohibition of discrimination against persons of African descent. This provision is long and somewhat detailed, varying somewhat between states, but generally prohibits distinctions or discriminations (a) in premiums or rates, (b) between persons of the same age, sex, general condition of health and prospect of longevity, (c) in requiring rebate or discount on death benefits or in stipulating in advance for acceptance by parties in interest of a sum less than the full amount. To this the New York law adds a provision that companies shall not reject an application, refuse to issue a policy, or make reduction of fees and commissions to agents solely because the applicant is wholly or partly of African descent. The main variations in the provisions seem to be on this last point. The various provisions supply plenty of internal evidence that for one reason or another some companies have done what they could to avoid insuring colored risks. The justice of the provision depends on whether there exists a material difference in point of hazard, as between white and colored risks.

Life Insurance Anti-Rebating Laws.—To the general anti-discrimination provision are usually attached two or three common provisions aimed at discriminations or inducements to insurance effected by things done by companies or their agents outside the terms of the policy. These are:

(1) A provision forbidding the making of contracts and agreements except as the same are expressed in the policy. This is in line with very common statutory provisions that the policy shall contain the entire contract between the parties.

(2) A provision, differing not a little as between law and law, but generally prohibiting the making or the offer of rebates of premium or of agents' commissions, the giving of special favor or advantage in dividends or benefits: the giving of other inducement or valuable consideration not specified in the policy. This is often so surrounded by language and so garbled that its intent and meaning is thoroughly obscure.

(3) A provision forbidding the offer to sell, give or purchase, or the actual selling, giving or purchasing, inducement or insurance, of stocks, bonds or other securities, dividends and profits derived therefrom or anything of value not specified in the policy. This too is often developed in language probably intended to nail down all possibilities of escape, but actually thoroughly obscuring the meaning.

To the above are often added prohibitions of misstating the date of issue of a policy or misstatements of the age of an insurant; also prohibitions of paid employment or contracts for service, inserted in the second and third provisions as the statutory draughtsman sees fit.

(4) Often there is a list of exceptions. The meaning of the provisions is

often magnificently vague: and, in fact, there has been a great deal of litigation under these laws, and an even greater number of attorney general's opinions. Undoubtedly it aims at real evils, and at practices of questionable merit: but a strict and rigorous interpretation would also bar many practices eminently proper. Exceptions sometimes added, that companies may pay agents commissions on their own policies: that agents may share commissions with other agents or brokers: that ordinary credit may be allowed: that notes may be taken for premium: that companies may insure their own employees, deducting the commission from the premium: that companies may give medical examination or nursing service: bespeak a nervousness here and there as to just what the law means. The writer has on occasion been seriously asked if the provision prevented the compromise of a debt for premium where the debtor was in financial straits or actually bankrupt. The writer usually replied that he did not know the precise meaning of the statute, but did not intend to apply it as barring what might pass as normal methods of transacting business. California, in trying to clarify its law, expanded it into a regular code.

Exceptions of a more substantial character, rather frequently made, are:

(1) Exception of the practice of industrial life companies in making a reduced premium charge in case of policies where premium is paid direct to the office.

(2) Exception of the practice of non-participating life companies in making adjustments of premium proportioned to earnings or savings: described as "bonuses" or "abatements."

(3) Exception of group life contracts.

It will be noted that these last two touch upon fields distinctly competitive. There is another form of law occasionally met, prohibiting the sale or issue of company stock, agency stock, or the making of special advisory board or other contracts as inducements to insurance.

Another provision, sometimes incorporated in the regular anti-discrimination and anti-rebating provision, sometimes put in a separate section, is a prohibition of the receipt of rebates, etc.

To this are commonly added some formidable looking provisions, to the effect that no one shall be excused from testifying on the ground that it would tend to incriminate himself, coupled with an immunity provision.

A very few laws contain the ancient and generally discredited provision entitling the complainant to half the penalty.

A number of the laws of this description are, as they stand, thoroughly obscure and should be redrafted. It may be said as to all that it is ordinarily impossible to police the business closely enough to make a thorough enforcement; but that can be said of other laws as well.

Accident and Health Insurance.—Accident and health insurance, like life insurance, is not at all closely regulated as to rates; indeed, the variety of accident and health contract forms makes rate regulation almost impossible. The reserve laws, as in life insurance, make for the observance of some measure of adequacy in premium charges, and competition suffices to keep premium charges from becoming unreasonable—that and the fact that accident and health protection is not in the least a necessity and so has to be sold at an attractive price.

The standard provision law, adopted in a number of states very frequently has two rate provisions inserted:

(a) A provision annexed to the provision for filing policy forms for approval, requiring the filing also of classifications, rates, etc. Apparently this is inserted as an element bearing on the question whether the policy form should be approved.

(b) A very simple anti-discrimination provision, prohibiting discrimination between risks of the same class in point of premiums and rates, benefits, terms and conditions.

Accident and health insurance is excepted from the New York rating law, but not from the laws of North Carolina or Vermont (Appendix I). More generally, rating laws, other than general anti-discrimination and anti-rebating laws either expressly or by limitation of terms do not apply to life, accident and health. Appendix IV gives a brief statement of the laws applying to these two lines.

VI. Marine and Inland Marine Insurance

Ocean marine insurance, including protection and indemnity coverage, is very generally excepted from the fire rating laws and from more or less general laws like those of New York, North Carolina and Vermont. In Texas, the fire rating law specifically applies to the shore end of marine risks, insured against fire. This is an unusual provision. Anti-discrimination and anti-rebating laws general in character do not as a rule except marine insurance. The California anti-rebating law, however, makes exception of the customary allowance to brokers on marine risks.

Ocean marine insurance is a thing by itself. Its risks are big, and the hazards involved are subject to rapid variation. The risks are in nature transitory, moving between port and port, and have a certain international character. A very considerable section of the underwriting of ocean marine risks is done outside of the United States. All these constitute excellent reasons why rate regulation is not practicable. Inland marine is a somewhat different story. It is frequently excepted from rate-regulatory laws,

usually with the stipulation that the exception does not cover inland automobile lines. Some of its risks are properly interstate, and therefore should be omitted from rate-regulatory laws. The fire rating laws very commonly make specific exception of property in the course of transportation, in the hands of common carriers; of rolling stock of railroads; and of property of common carriers used in the transportation of merchandise, freight and passengers.

There are, however, certain inland marine contracts wherein the transportation element is very minute or the barest of possibilities. It is by no means so certain that these are, or ought to be, exempt from rate-regulatory laws covering hazards of the same type. On the other hand, it needs to be borne in mind that coverages of more than a single hazard may have a real utility and a reason for being, and that no feature of the insurance laws is less in accord with the spirit of the times than attempts to keep single lines of insurance separate and distinct from other lines. Thus the problem is by no means a simple one.

VII. Miscellaneous

Under this heading are grouped such laws as fall outside the scope of the other sections. The greater part of these are anti-rebating, or anti-discrimination and anti-rebating laws, general or partly general in character. In the main, these are derived from the life-insurance anti-discrimination and anti-rebating laws, adapted in some cases, by merely cutting out the anti-discrimination provisions, in others by trying to generalize them; in still others by uniting an anti-discrimination law applicable to life companies with a general anti-discrimination provision. There are some yet more curious specimens: inserting a life anti-discrimination clause plus a general anti-discrimination clause: a fire anti-discrimination clause plus a general anti-discrimination clause: or all three together.

The anti-rebating provisions generally follow the tenor of the life forms. California has expanded the provisions into a regular code. There are other cases: but the insurance laws, by and large, are not long on originality.

The provision as to issue of stock, advisory board contracts, etc. appears from time to time in general form. Another type of law, seemingly old, but retained in a number of states, is a provision forbidding agents, etc., to charge fees, perquisites and the like in addition to the premium written in the policy. This may be reminiscent of days when agents' commissions were 5% plus a fee collected from the insured.

Conclusion

The rate-regulatory laws exhibit a very large field and a considerable diversity of policies and methods. The question naturally arises, are there any real principles which determine whether rates shall or shall not be regulated, and, once regulation has been decided upon, what degree and what method of regulation shall be imposed. In so complex a matter it is perilous to generalize, and what is here offered is set forth with considerable inward misgiving.

Competition and Standardization.—The anti-compact laws declare the policy of free competition. The rate-regulatory laws declare policies of standardization. Competition and standardization are naturally opposed: each standard erected narrows competitive possibilities up to a certain point. Standardization aids wise competition in so far as it eliminates reckless and foolish competition: beyond that point competition tends progressively to disappear.

Competition is an integral and necessary part of human nature: the natural expression of the restless life within that must seek to exist, to strive and to overcome, and that, as Nietzsche says, ever seeks to surpass itself. Vitality, energy, quick appraisal of present situations and problems, ready resource in devising solutions are its virtues and to these we owe great part of our progress, great part of our new ideas: from these we derive initiative, purpose, and will to achieve. Its vices are, egotism, selfishness, self-assertion, non-cooperation, contempt of logic, impatience of restraint, and an ethics of contest, inconsistent with the ethics of a peaceful, ordered society. Standardization is also fundamental. There is something within us that makes for peace, harmony, reason and equity: that moves us to consider our fellows, not solely as our antagonists or our prey, but persons like ourselves, with reciprocal rights and duties: part of a social harmony which it is our duty to further and improve. From this side of us flow peace and order, cooperation, rule of reason, rule of law and of government; its vices are, a flagging of energy and ambition, a slowing of progress, an exaltation of system, routine and discipline, and a depressing and soul-deadening uniformity and rigidity.

Competition is the quality natural to youth and early maturity: standardization is the quality of the years when we seek to preserve what we have and round out our days in peace. In the state, the virtues and vices of competition are to a degree those of the politician: standardization dwells with the statesman, administrator and bureaucrat. In a private organization the competitive vices and virtues are like to appear in its selling organization: those of standardization in those who order its business affairs and direct its clerical, financial, technical and productive activi-

ties. Thus, in respect to a line of insurance or an insurance company, the effect of a predominance of the actuary is to bring it into sympathy with the administrative and bureaucratic side of the state. It accepts regulation rather naturally and probably needs it least. Where the voice of the agent and the selling organization is strong and predominant, it accepts regulation least graciously—and probably needs it most.

Anti-Discrimination and Anti-Rebating.—The point on which the states come nearest speaking with one voice is with respect to discriminations and rebates. General anti-rebating laws are very common: general anti-discrimination laws somewhat less so. These are in the form of simple prohibitions; and similar provisions applying specifically to life insurance appear in almost every law, with a fair number appearing, applicable specifically to fire insurance, casualty insurance or both. Anti-discrimination clauses appear in the standard provisions law of accident and health insurance: anti-discrimination provisions coupled with administrative procedure for removing discriminations have a very prominent place in fire insurance rating laws, appearing more sparingly in those applying to workmen's compensation, automobile and other casualty insurance. Non-discrimination is generally a feature of laws prescribing how rates shall be made or providing for administrative control thereof.

Now anti-rebating laws are directed exclusively at selling of insurance: and anti-discrimination provisions point in part the same way. The elaborate provisions in the fire rating laws for publicity, furnishing information, filing of rates, rules and rating plans, filing and control of deviations, and defining departure from rates on file as discriminations, all seem directed at incidents of selling practices, and point perhaps to the conclusion that a very measurable part of the regulatory problem in fire insurance emanates from the selling side.

Anti-discrimination has, however, a significance beyond a mere rigid and uniform application of rates and rating plans on file. It has reference also to the reasonableness of the classifications made, the reasonableness of the rating plans adopted and the reasonableness of the differentials effected by classification rates or by rating plans. This is the sense in which it is used in laws undertaking to prescribe how rates shall be made, or undertaking to provide for an administrative approval.

Thus the form of the anti-discrimination provision needs to be moulded with respect to what is desired to be accomplished. The life anti-discrimination provisions make reference to but two kinds of differentials—differentials achieved by classifications and differentials measuring expectation of life. Consequently, when new rating methods were introduced, as in group insurance, or differentials based on cost, as in case of insurances on their own employees, or in industrial insurance, in case of premiums paid at the

company office, there arose at once a question as to whether the law did not forbid this: and in consequence a number of laws are well-loaded with exceptions. To some degree this is true in case of general laws framed on the life insurance model. The discussion of the effect of anti-discrimination provisions in competition made in Sections II and III hereof need not be repeated. This point, however, should be ever borne in mind, and consideration given as to whether any measurable good is accomplished by turning the anti-discrimination provisions into a means for securing a rigid and uncompromising uniformity that leaves this or that group of companies helpless before its competitors.

Adequacy and Reasonableness.—Beyond discrimination, semblance of agreement ceases. Regulation of rates stopped at that point with regard to life insurance and very generally with regard to accident and health. Supervisory officials were, by and large, satisfied with the way life insurance companies set up their reserves and made their rates. The rating method involved a simple and understandable classification system: and more than once a supervisory official with a life insurance background has voiced a lament that other lines do not exhibit a similar simplicity. There was no disposition to rating compacts: no little competition. Rates could be kept adequate, were generally adequate: the prevalence of the mutual system, and competition alike kept the problem of reasonableness from coming to the fore. There was, to be sure, a recurrent disposition of legislatures to inquire into expense, and states in which this was acute enacted expense limitations. Nothing more was needed.

Accident and health insurance was a highly competitive field with little disposition to the formation of compacts. The diversity of policy forms made a standardization of rating practices difficult if not impossible. The states enacted standard provisions laws and went no further.

The reason why rate-regulatory legislation took place in fire insurance was due in part to the selling situation, in part to a lack, and a very understandable one, of comprehension of the methods used. Speaking in 1911, soon after the enactment of the first rate regulatory laws, Mr. H. E. Dean said:*

"As the Illinois Commission so tersely stated, "In fire insurance all roads lead to the rating question," and the facts all converge into inexorable proof that our long misunderstanding with the public, and the brutal injustice of much of our fire insurance legislation, have arisen more from our lack of an accredited system of measurement, which would extend to everybody reasonable justice, than from a high fire waste and high rates."

At the time, certainly, there was no little unrest on the subject; sus-

* The Philosophy of Fire Insurance, Vol. III, P. 160.

picion that rates were higher than they should be and suspicion of the motives of company organizations. As to how far this is justified is not here material: the unrest was substantial enough to bring about investigation by several state commissions, and a rapid multiplication of rate regulatory laws. These laws tended to emphasize non-discrimination, and, so far as they undertook rate regulation, reasonableness. Adequacy was less prominently mentioned.

The workmen's compensation rating provisions date back to about the same era. The existence of company agreements and the selling situation appear less prominent as motives than a conviction that in the interest of employers and employees alike, rates must be adequate. Adequacy therefore takes first place as a rating standard, with reasonableness and non-discrimination less stressed.

The other casualty lines follow in the wake of the two major classes of law. Motor vehicle insurance is a big line, and compulsory insurance provisions appear here and there, calling as in workmen's compensation for some control of rates. The general laws applicable to the minor lines are not as a rule very stringent.

Adequacy obviously requires, for careful application, an actuarial evaluation of the underlying hazard of loss. This must be the foundation of rates and is presumably common to all carriers. To determine the reasonableness of classification differentials, and of rating plan modifications, actuarial and statistical methods have further application. To this extent, rate regulatory laws indicate the necessity of bringing the actuary into the picture: and it seems likely that state departments generally would be the more favorably inclined to rate systems and rate computations with a sound statistical and actuarial basis behind them.

In all lines this may not be possible. A line abounding in risks that require specific ratings; a line where volume is small; a line with multifarious policy forms; a highly competitive line or a line where catastrophe hazard is very prominent, may require statistical and actuarial analysis to be very highly qualified with judgment; and indeed, wherever he may operate, the actuary is none the worse for having his determinations reviewed in the light of common sense. Too intimate an association with formulas and figures occasionally warps sense of proportion and fitness.

Methods of Regulation.—Substantially there are three methods of regulating rates:

(a) *Review of Specific Rates.*—The common method of regulation as to discrimination, fairly common too as to adequacy and reasonableness, is by administrative order, after notice and hearing. The proceedings may be on complaint or on the supervisory official's own motion. The order is, that the rate be removed and a proper rate substituted.

(b) *Filing and Approval.*—A common method of procedure is to require the filing of rates, rules, rating plans, etc., with power in the supervisory official to approve or disapprove. There are several forms of laws of this kind. The general practice in workmen's compensation acts is to require filing in all cases, and approval as a condition precedent to use. The New York law, while making this requirement for workmen's compensation and compensation and compulsory automobile liability coverage, as to other lines requires filings at the discretion of the superintendent and empowers him to disapprove a filing and order it withdrawn.

(c) *Periodic General Rate Revisions.*—This is the common method in fire rating laws: though the other two methods are used also. Some laws indeed have all three methods.

The writer's preference is for the second method, after the New York practice. The mischief of the third method is, that it may require a revision at a time when no one really wants it. Under the second method the supervisory official can have a revision any time he wants one: and that is quite often enough. The first method is a handy one for inquiry into specific rates, but the second seems a better means of dealing with a general rate procedure.

Single or Multiple Standards.—There is a good deal of divergence in policy on the point of the extent to which the state shall go in its rate determinations. The fire rating laws abound in deviation provisions. Where the state regulates rates for companies individually, the deviation is merely a rate change. Where it deals with companies collectively, deviations are departures from a common rate standard. If deviations are permitted by a mere filing, the standard has no more than a persuasive effect. If what the law wants is adequacy, deviations downward should generally not be permitted: or permitted only after a showing of reasonable cause. Similarly, if the approved rates are regarded as a standard of reasonableness, deviations upward should similarly not be permitted. Reasonableness and adequacy do not necessarily mean the same thing: it is quite possible to establish standards of adequacy and reasonableness and leave an interval in between, as is done in the Wisconsin Compensation Act. But it is more common, where right of deviation is absolutely foreclosed, to establish a single set of rates, styling them both adequate and reasonable.

There are samples of all these types of law in Appendixes I and II. The difficulty with a law of the extreme type is that, if a single rate standard be applied to all sorts of carriers, participating and non-participating, it is inevitably more favorable to one group than the other. The law ought to admit, in such case, of rate levels suited to the reasonable necessities of both sides: then, at least, it deals out even-handed justice to both. If the

loss cost factor is properly determined, deviation and competition should, and may properly be limited to the expense element.

Rate Systems.—In the writer's opinion it is an error to tie up rate regulation too closely to a particular method or system. No particular method has any assurance of permanence; none is so good it cannot be better; and a method good today may not fit the needs of next year. Hence, simple, summary provisions, whereunder any and all reasonable methods of classifying and rating risks may be presented for supervisory approval are better than provisions that detail existing methods.

Bureaus.—Bureaus are forbidden under anti-compact laws; hinted at in common expert provisions; recognized by reference in some laws; authorized under others; required under still others. Last in line comes the statutory bureau with compulsory membership.

That the bureau very obviously has come into favor is doubtless due to the fact that bureau practice and departmental practice are closely akin, and contemplate many of the same ends. Recognition or requirement of bureau depends on the necessities of the situation. Unless necessary, the voluntary bureau is to be preferred to the compulsory bureau, if for no other reason, because if a company cannot get out of a bureau, it is at the complete mercy of the majority control. It is at least conceivable, also, that those vested with responsibilities of managing a bureau will seek more sedulously to achieve the virtues inherent in the standardization type of mind and avoid the correlative vices, if they have to justify their existence and hold their membership than if both existence and membership are confirmed by law.

More could be said on this most abounding theme: but perhaps enough has been said for a better understanding of the subject of rate regulation. In closing, be it said, that he who accepts another man's digest of statutes or cases does so at his peril. The writer knows better than most how easily misstatements and omissions are made.

APPENDIX I

RATE-REGULATORY LAWS APPLYING SPECIFICALLY TO FIRE INSURANCE AND ALLIED LINES *

Arkansas

Pope's Digest, 1937, sec. 7722 et seq.

Section 7722 of this law, enacted in 1913, is applicable to all insurers, and requires them to file with the commissioner "a schedule of rates of premium to be charged and collected on contracts of insurance or indemnity." Rates are required in all cases to be "a fixed percentage of the amount insured," a provision which would cause a deal of trouble if rigidly and technically applied. It is also provided that premiums shall be "uniform" for all risks rated under the same schedule. Companies are granted permission to use "common experts" to inspect risks and make advisory rates. This is intended doubtless as a qualification of the anti-compact law. The remaining sections, dating from 1919, constitute a bureau law of the first, or permissive type. The rate-regulatory provisions are:

Filing Provisions.—The filing provisions contained in Section 7722 are cited above. The following sections add the common provision authorizing the commissioner to require the filing of schedules, rates, forms, regulations, etc. with the proviso that surveys and completed schedules shall be asked for only in case of complaints.

Schedule Rating.—The usual provision requiring the inspection of risks rated on schedule, the making and recording of a written survey, and furnishing the owner or his representative a copy thereof on request.

Rate Compacts and Agreements.—The common prohibition of agreements requiring the whole or any part of an insurance to be placed with a particular company, insurer, agent or group thereof; also the common prohibition of agreements as to the making, fixing or collecting of rates except in accordance with the provisions of the law, with provisions that such agreements may be made if in writing and filed with the commissioner and giving the commissioner power to disapprove the same.

Deviations.—Deviations are permitted on notice to the commissioner and the bureau, and the filing of a provision for a uniform deviation on all risks of a particular class or classes, such deviations to be uniform throughout the state. The explicit statement is added that the act is not intended to prevent competition.

Discrimination.—The common anti-discrimination provision, quoted in the summary.

Removal of Discrimination.—The ordinary administrative provision for removal of discriminations on notice and hearing, with right of appeal, and simple provision for the refunding of overcharges.

Rate Control.—Provision is made for the tabulation of company experience of premiums, losses and expenses. Where the tabulation for a five year period shows an underwriting profit in excess of a definite 5%, the Commissioner may order a reduction calculated to produce merely a 5% profit. Reductions ordered may, with the approval of the commissioner, be applied to such class or classes of business as the insurer or bureau may select. An appeal provision is written into the section.

Exceptions.—Apparently none.

Application.—Section 7722 is general in its application; the others apparently relate solely to fire insurance.

Litigation.—*Bullion* v. *Aetna Ins. Co.,* 237 S.W. 716 (1922).

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* For laws which have application to fire insurance and allied lines, other than those cited in this Appendix, see other appendices for states listed as indicated.
Alabama, V; Alaska, V; Arizona, V; California, V; Colorado, V; Connecticut, V; Delaware, V; Florida, IV; Georgia, V; Hawaii, V; Idaho, V; Illinois, V; Indiana, V; Iowa, V; Kansas, V; Kentucky, V; Louisiana, V; Maine, III; Massachusetts, V; Michigan, V; Minnesota, V; Montana, V; Nebraska, V; North Dakota, V; Ohio, V; Pennsylvania, V; Rhode Island, V; South Carolina, V; South Dakota, V; Texas, V; Utah, V; Vermont, III; Virginia, V; Washington, V; Wisconsin, V.

Colorado

Colorado Statutes, Ann. 1935, c. 87, sec. 146 et seq.

This act, originally passed in 1919, is of the second type, requiring a company either to maintain or to be a member of a rating bureau. Each bureau must maintain an office in the state, with the exception of reciprocal insurers making their own rates, which may maintain their rating bureau at their home office anywhere in the United States. Rate-regulatory provisions are:

Filing Provisions.—

(a) Reciprocal insurers not maintaining an office in the state are required to make rate filings with the commissioner.

(b) Rating bureaus are required to file with the commissioner flat rates and rates on farm property.

(c) The common provisions authorizing the commissioner to require the filing of schedules, rates, forms, regulations, etc. with the common stipulation as to written surveys and completed schedules, as in Arkansas. This is supplemented by an unusual provision empowering the commissioner to require the filing of rules and regulations "except such as are in force in all other states," and on written complaints, to order such rules and regulations suspended. A power of appeal is provided; but the appeal does not suspend the order.

(d) Deviations must be filed with the commissioner.

Schedule Rating.—The usual provision requiring the inspection of risks rated on schedule making a written survey and recording the same and furnishing a copy of the schedule to the owner on request. It is stipulated that it shall be without expense to the owner.

Rate Contracts and Agreement.—

(a) The common provisions prohibiting agreements designed to control the placing of the whole or any part of the insurance, qualified by the phrase "except as contained in the policy or in the usual agreement for other insurance."

(b) The common provisions as to agreements for making, fixing and collecting rates.

Deviation.—Permitted on giving notice to the Commissioner and the Bureau and filing of the deviation showing the amended basis rate and amended charges and credits and the application to individual risks in the class or classes affected. It is required that the deviation be uniform in application to all risks in the class for which variation is made.

Discrimination.—The common anti-discrimination provision quoted in the summary, with insertion of the words "territorial classification."

Removal of Discrimination.—The common provision for administrative removal of discriminations after notice and hearing with rights of appeal to the Courts.

Rate Control.—The act provides for the annual filing of experience in general accordance with the classifications of the National Board of Fire Underwriters. The commissioner is empowered to order a revision downward in cases where a five year tabulation indicates a profit in excess of "a reasonable amount." The commissioner is required to give consideration to the conflagration hazard within and without the state. The reduction ordered may be applied to such class or classes of risks as the company or bureau may select. There is no specific requirement for approval by the commissioner. A court review is provided with simple provision for refunding of excess charges.

Exceptions.—Local mutual companies are excepted from the act, and insurance on the rolling stock of railroads, or on property in transit while in the possession of railroads or common carriers or on the property of common used in the transportation of freight, merchandise or passengers.

Application.—The act apparently applies mainly to insurance against the hazards of fire and lightning.

Hawaii

Revised Laws 1935 secs. 6831 et seq.

This is a bureau law of the type requiring every company to maintain or be a member of a Rating Bureau. No rate control is provided other than for discrimination. The

bureau is required to be located in the territory and to keep there a permanent record of schedules, surveys and rates. The rate-regulatory provisions are:

Filing.—The common provision authorizing the commissioner to require the filing of schedules, rates, forms, regulations, etc.

Deviations are required to be filed.

Schedule Rating.—The act provides in the usual way for the inspection of risks rated on schedules and the making and recording of written surveys. In place, however, of the usual provision for furnishing a copy of the survey to the owner on request, the act in a separate section provides that all policies must carry a statement that on request to the agent issuing the policy the insured or his representative is entitled to a detailed statement of the rate or rates at which the policy is written, suggestions if any whereby rates charged may be reduced, and a copy of the survey of the property, if such survey is on file either in the office of the agent or the bureau.

The act contains also a provision authorizing the rating of risks on tentative survey where no survey has been made by the bureau.

Rate Contracts and Agreements.—The act contains merely the provision prohibiting agreements seeking to control the placing of all or any part of the insurance.

Deviations.—Deviations or variations may be made on notice to the commissioner and the bureau affected, together with amended and corrected schedules of the class for which the variation is filed. The variation must be uniform for all risks in the class for which it is made.

Discrimination.—The common anti-discrimination provision, as quoted in the summary.

Removal of Discrimination.—The common administrative procedure for the removal of discrimination after notice and hearing. The act provides for hearing before a salaried employee of the insurance department as well as before the commissioner, and provides that discrimination may not be removed by increasing the rate unless the commissioner finds the increase justifiable.

Rate Control.—No provisions.

Exceptions.—Apparently none.

Application.—The act apparently applies to fire insurance only.

Idaho

Code, Ann., 1934 secs. 40-1601 et seq.

A bureau law of the permissive type, dating from 1923. The form differs considerably from the regular models, though the substance is not so very dissimilar save in a few respects. Any resident company or resident person may maintain a rating bureau. The bureau must maintain an office in the state. A bureau is defined as being public service in character, and to be conducted on a non-profit basis, except as to reasonable compensation for service rendered. The bureaus must keep records of work performed in rating and inspection work, showing all receipts and disbursements, and must be open during the regular office hours the inspection and examination of the director of insurance and his officers. The law contains an elaborate provision for stamping policies, and an anti-discrimination provision, but no other type of rate control. Rate-regulatory provisions are:

Filing.—

(a) A provision that all bureaus must, before publishing or furnishing any rates, file their rating schedules with the director of insurance.

(b) A provision that every insurance company that has not given notice of its acceptance of the rates of a bureau must make a similar filing. But companies are forbidden to file the rates of a bureau less a certain percentage.

(c) A provision that every company shall file its short rate table for cancellation of policies.

(d) Variations from bureau rates must be filed.

Schedule Rating.—Substantially the common provision for inspection of risks rated on schedule, making and recording a written survey and furnishing a copy to the owner on request.

Stamping Provisions.—Rating bureaus are required to appoint a "chief examiner" not engaged in any way in making rates for the bureau. Applications and daily reports are

submitted to him, and it is his duty to examine them and report to the director of insurance all discriminations, deviations and violations of the law. He endorses his approval on the application or daily report if correct, or notifies the company or agent of errors, and in case errors are not corrected, reports the same to the director. A somewhat parallel provision is made with regard to the keeping of records by companies who are not members of a rating bureau and for the report by them to the director if their agents refuse to correct errors in their policies.

Rate Compacts and Agreements.—The Act contains in substance the prohibition of agreements looking towards control of the placing of all or any part of the insurance, with an added prohibition of agreements as to the time of any rates shall remain in effect.

Deviations.—The law prohibits deviations from rates on file or from the short rate table on file, but permits bureau members to make variations from bureau rates on 30 days' notice to the director and the bureau and by filing the variation which must be uniform throughout the territorial classification. Every insurer is expressly permitted to make variations from the bureau rate.

Discrimination.—The anti-discrimination provision differs from the regular form quoted in the summary merely in using the term "physical, climatic or other hazard," instead of "hazard."

Removal of Discriminations.—Substantially, the common administrative provision for removal of discriminations. Discriminations may not be removed by increasing rates unless the director finds and states in his order that the increase is justified. The act provides for an appeal to the District Court, and from an appeal from the District Court to the Supreme Court.

Rate Control.—None.

Exceptions.—Exceptions is made of county mutual companies, unless they apply for bureau membership and agree to become subject to the chapter.

Application.—Apparently to insurance against fire and lightning.

Illinois

Smith-Hurd Illinois Ann. Sts. c. 73 secs. 1036 et seq.

A bureau law of the type requiring every company to maintain or be a member of a rating bureau. The law requires companies to obtain their rates from rating organizations authorized to operate in the state, of which they shall be members or subscribers. A bureau is required to procure a certificate of authority, paying a fee of $50, and must maintain an office in the state and keep complete records of its proceedings there.

Filing.—

(a) Bureaus are required at the time of applying for a certificate to file their schedules or methods to be used for the determination and promulgation of rates, and all rules and regulations pertaining to the price of fire insurance.

(b) The director is empowered to require filing of schedules, forms, rules, regulations and amendments thereto.

(c) Deviations are required to be filed.

Schedule Rating.—Rating organizations are required on written request to furnish to a person on whose property or risk a rate has been made full information as to rating, and if such property is rated on schedule, with a copy of the "make-up" of such rating.

Rate Compacts and Agreements.—

(a) Prohibition of agreements designed to require the whole or any part of insurance to be placed in a particular way or at a particular rate.

(b) Prohibition of rules and regulations prohibiting the issues of policies providing for a contingent liability or for participation company earnings.

Deviations.—Deviations from bureau rates are generally permitted on condition that the deviation is filed with the rating organization and with the director, provided the expense of the company warrants such deviation, provided the deviation is a uniform

percentage deviation to apply to all insurance written by the company in the state, and provided the deviation is approved by the director.

A deviation if approved remains in effect for one year and may be renewed annually. The law permits rates higher than bureau rates to be charged with the knowledge and consent of the assured. The law permits any company to issue a current policy providing for annual payment at a reduced current rate.

Discrimination

Removal of Discrimination

Rate Control.—These subjects are covered by a simple prohibition against determining or promulgating a rate which is "unjust, unreasonable, discriminatory or preferential." No statutory machinery is set up for taking action on rates; but probably none is needed, the rating organization doing business by virtue of a certificate of authority issued by the director. Provision is made that special schedules, methods, rules and regulations may be used for rating single risks if a special inspection service is maintained by the rating organization.

Exceptions.—The act makes no company exceptions but excepts the following types of business:

(a) Marine, inland marine and transportation insurance except householder's personal property, floater risks.

(b) Motor vehicle insurance.

(c) Insurance covering property of interstate common carriers.

The exceptions from the rate-regulatory clause of risks written with special inspection service has been noted.

Application.—Generally, to fire insurance only.

Litigation.—None.

Indiana

Burns' Indiana Sts. 1933, sec. 39-4310

A bureau law of the type requiring every insurer to maintain or be a member of a rating bureau. It includes not only fire insurance but a number of collateral lines, and also automobile, fire and theft.

The concluding section applies to automobile casualty lines. The law as it stands is the modification of an older law, formerly Section 39-2201 *et seq.* The law requires rating bureaus to maintain a rating office in the state, except rating bureaus maintained only by mutual companies which may maintain an office anywhere in the United States. Bureaus must within 60 days make certain filings with the insurance department, but there seems no definite provision for a certificate of authority, except the reference thereto in the penalty provision.

Rate Filings.—

(a) A bureau must file within 60 days after its establishment, its schedules used in making rates, the classification of each town in the state, and the basis or table rate used therein, and all regulations and rules used.

(b) Changes in schedules, rules, regulations, contracts or agreements must be submitted to the Department in writing. After 20 days, the Department holds a public hearing, and makes such order as it may see fit. A court appeal is provided.

(c) The Department has authority to require filing of schedules, written reports of surveys, rates, forms, rules and regulations. Surveys and completed schedules may be required only where there is a written complaint pending before the Department.

(d) Deviations must be filed with the Department.

(e) There is a special provision as to schedules, etc. on the automobile casualty lines.

Schedule Rating.—The common provision for inspection of risks rated on schedules, making written surveys and reporting the same, and furnishing a copy of the survey with the owner of the risk on request. The section also provides that flat rates used be recorded in the bureau office. The survey must be furnishd the owner without cost.

Rate Compacts and Agreements.—The act contains the common provisions noted in the summary as to agreeements for the making, fixing and collecting of rates, but not the common prohibition against contracts as to controlling the placing of all or any part of the insurance.

Deviations.—Deviations must be filed with the bureau and with the Department, 15 days before taking effect. The deviation must be uniform in application to all risks for which the variation is made. The filing must show the amended basis rates and the amended charges and credits. The act provides that every company is permitted to make uniform percentage reductions in the specific rates of any bureau which is a member, and bureaus are permitted to make rules and regulations forbidding such reductions. There is a special deviation provision for the casualty automobile lines.

Discrimination.—The common prohibition of discriminations including the words "territorial classifications."

Removal of Discrimination.—The common administrative method for removng discriminations after notice and hearing, with court appeal from the order. The act provides for the refunding of overcharges.

Rate Control.—Changes in schedules, rules, regulations, contracts or agreements must be filed in writing with the department, and after a public hearing, not less than 20 days after the filing, the department may make findings and orders with respect thereto, subject to a right of appeal.

Rate revisions are based on tabulations of premiums, receipts and losses, in accordance with the classification of the National Board of Fire Underwriters, "as approved by the insurance commissioners' convention" are provided for. The period tabulated is five years. Provision is made for consideration of the conflagration hazard, within or without the state. The department has authority to order reductions upon any class or classes of risks which show an underwriting profit in excess of reasonable amount; and is required to increase the rates in any class or classes or risks that fail to show a reasonable underwriting profit. Notice and a hearing are provided for; all orders are subject to court review.

Exceptions.—The act does not apply to farmers' mutual insurance companies organized under the laws of the state. The exception of bureaus organized by mutual companies from the law requiring the location of an office in this state has been noted.

The act does not apply to rolling stock of railroad companies, property in transit while in possession of common carriers, or to the property of common carriers used or employed in carrying freight, passengers, etc.

Application.—Insurance against fire, lightning, windstorm, sprinkler leakage, use and occupancy, and insurance upon automobiles and other vehicles against loss or damage by fire and theft. There is a concluding section applying to insurance on automobiles against theft, collision, personal injuries and property damage.

Discussion of this latter section is deferred to Section III.

Iowa

Code 1939 sec. 8961

Iowa is an anti-compact state, giving its chief attention to policy forms rather than rates. In connection with the regulation of cancellation, the commissioner is required to prepare and publish a table of short rates, and companies are forbidden to make or charge a greater sum than those fixed by the table. Short rates table must be printed or attached to the policy. The law applies to all companies other than life.

Kansas

Revised Sts. 1935 secs. 40-911 et seq.

This law dating from 1909, is the pioneer rate-regulatory law. It is not a bureau law, the regulations being of individual companies. Rating bureaus are recognized in a way in section 922 which authorizes the commissioner to investigate all fire insurance rates and visit or examine all rating bureaus. If a bureau refuses to permit examination, the commissioner is empowered to refuse to permit the schedules of rates made by such bureau to be filed by any fire insurance company in the state.

Rate Filings.—

(a) Every life insurance company is required to file with the commissioner of insurance "general basis schedules" showing the rates or all classes of risks insurable by such companies in the state, and all charges, credits, terms, privileges and conditions which affect the rate, or the value of the insurance to the assured.

(b) Changes in rates which have been filed must be made on 10 days' notice to the commissioner, who may however allow a filing on short notice either by general or special order.

(c) When a company writes insurance for which no rate has been filed, it must file a schedule thereof within thirty days, conforming to the general requirement for filing.

Schedule Rating.—No specific provision.

Rate Compacts and Agreements.—No special provisions in the rating law; but Kansas has an anti-compact law.

Deviations.—Companies are forbidden to write insurance unless the schedule of rates has been filed as required, and are forbidden to write insurance at any different rates, or to extend to the insured any special privilege or inducement or concession other than is contained in the schedule.

Discrimination.—Companies are forbidden to "collect or receive from any person or persons a greater or less or different compensation for the insurance of any property located in the state that it charges, demands, collects or receives from any other person or persons for like insurance on risks of a like kind and hazard under similar circumstances conditions."

Removal of Discrimination.—No administrative provisions.

Rate Control.—The commissioner is authorized, in case he determines a rate is excessive or unreasonably high, or inadequate to the safety or soundness of the company granting the same, to direct such company to publish and file a higher or lower rate, commensurate with the character of the risks, and in any case, reasonable. Provision is made for notice and hearing, and for an appeal to the courts. The courts are authorized to permit any company appealing to write insurance at rates that prevailed, prior to the order, on condition that the excess above the rates complained of shall be deposited with the commissioner, to be paid over by him at the conclusion of the appeal to the party entitled thereto. The court may authorize a surety bond in lieu of a deposit.

Exceptions.—None.

Application.—The act applies to fire insurance companies and to all risks insurable by such fire insurance companies. Presumably this would include all collateral lines, so far as Section 40-911 is concerned: The application of other sections is more questionable, save as to windstorm, tornado and hail, which are specifically included by an added section.

Litigation.—The Kansas Act has been the subject of two rate cases of importance and several minor ones concerning discrimination.

Aetna Ins. Co. v. *Lewis,* 142 Pac. 954 (1914)
German Alliance Ins. Co. v. *Kansas,* 238 U. S. 389
Aetna Ins. Co. v. *Travis,* 257 Pac. 337, 259 Pac. 1068 (1926, 1927)
Graff v. *National Liberty Ins. Co.,* 193 Pac. 356, *Bagley Co.* v. *Merrick,* 253 Pac. 562, *Van Arsdale-Osborne Brokerage Co.* v. *Stull,* 293 Pac. 523

The first three cases are discussed in the text of the paper. The other cases all involve the question, is an insurance contract, written at a discriminatory rate void. None of them decided the question squarely. The two latter cases are chiefly interesting as indicating that the Kansas rating law applies to hail, windstorm and tornado insurance, though possibly not as to all its provisions.

Kentucky

Carroll's Kentucky Sts. 1936, sec. 762b 25 et seq.

A bureau law, requiring every company to maintain or be a member of a rating bureau. Bureaus are required to maintain an office within the United States. The act dates from 1920.

Filing Provisions.—

(a) The usual provision authorizing the auditor to require the filing of schedules, rates, forms, rules and regulations, with the common exception that surveys and completed schedules shall be filed only if necessary to determine a question of discrimination.

(b) The usual requirement for filing deviations.

Schedule Rating.—The usual provision requiring the inspection of risks specifically rated on schedule, making and recording of a written survey and delivery of a copy of the survey to the owner on his request. There is added the provision that on the making of a survey the bureau shall promptly present to the owner a statement of the rate and the removable defects found with suggestions for improvement and the removal of such defects.

Rate Compacts and Agreements.—The common provision prohibiting agreements to control the placing of insurance is tacked on to the deviation section in a fashion which suggests an error. The common provisions as to contracts for the making, fixing or collecting of a rate appear in the usual form.

Deviations.—The common provision that deviations must be filed with the bureau and with the auditor. Deviations must be uniform in application to all risks in the class for which variation is made. As indicated above this section as it stands is confused by having an anti-compact provision most illogically tacked on to it.

Discrimination.—The common prohibition of discrimination as quoted in the summary, coupled with an unusual provision which prohibits the use of any method of computing "unearned premium" on policies to be cancelled covering farm property other than that used on other classes of property of like character located in cities and towns.

Removal of Discrimination.—The common provision for administrative removal of discriminations after notice and hearing, but containing no specific provisions for a court appeal.

Rate Control.—The auditor is empowered to investigate the necessity for reduction of rates, and if the result of the business of stock fire insurance companies in the commonwealth for five years preceding the investigation discloses the profit in excess of a reasonable amount, is empowered to order a reduction; but not a reduction which will prevent a reasonable aggregate profit. Reductions ordered may be applied to classes declared by companies and rating bureaus, subject to the approval of the auditor. The auditor is required to give proper consideration to losses and liabilities, both within and without the commonwealth.

Exceptions.—No general exceptions.

Application.—To fire insurance only.

Litigation.—*Reed* v. *General Ins. Co. of America,* 96 S.W. 2nd. 259. This involves the question of discrimination as between a policy for one year renewable annually over a period of five years, and a five year policy payable in installment notes.

Louisiana

Dart's Louisiana General Sts., 1939, secs. 4221 et seq. See also Act 47, Acts of 1940.

This law, dated from 1926, is a bureau law of the third type, that is, a law establishing a single bureau of which all stock insurance companies are required to be members. Special supervisory authority is erected in the form of an insurance commission of three members whose salaries and expenses are met out of a fund collected from the company bureau members, and placed at the disposal of the commission. The act provides for the organization of the bureau, which is of course a strictly local affair with main offices in New Orleans, branch offices located as is advisable. The board of directors are required to be residents of Louisiana. The state fire marshal is by the terms by the act a member of the bureau, and a member of the board of directors and the executive committee. The insurance commission acts in a supervisory capacity, but is entitled to notice of all meetings, and privileged to attend the same. The insurance commission has certain jurisdiction over the licenses of fire insurance companies and their agents, being authorized to suspend and revoke the same. Certain of the loss provisions contemplates supervision over commissions paid to agents, and over their dealings with respect to rating matters. An anti-rebating provision is written into the law.

The Bureau replaces a fire prevention bureau organized under Act No. 189 of 1904.

Rating provisions are as follows:

Filing Provisions.—

(a) Carriers are required annually, in connection with anti-discrimination provisions, to file with the commission "A schedule of rates as well as all other compensation whatsoever which the company will pay to its respective local agents within the state for the ensuing calendar year." There follows a provision that rates of commission and all other compensation shall be uniform throughout the state.

(b) Carriers are required to file "within a reasonable time after the organization of the bureau" a schedule of rates of premium for insurance of the kinds covered by the act.

(c) The bureau must furnish the commission with a copy of its proceedings, must answer inquiries and may be required to file forms and regulations. No rates, rules or regulations may be promulgated until approved by the commission.

Schedule Rating.—The usual provision for inspection of risks rated on schedule, making and recording written surveys. To this is added a provision that the survey shall give in detail the defects either of construction or occupancy or both. The rate must be stated, together with the relative measure which each defect bears to the fire hazard as a whole, and to the basic cost of the same, and the consequence proportional value of improvement, so that the insured may be informed as to his rating, and as to how it may be reduced. Copies of surveys are to be furnished to the owner or any person in interest on request and without expense.

Rate Compacts and Agreements.—The common provision prohibiting agreements designed to control a placing of the whole or any part of an insurance premium.

Deviation.—Companies are generally required to write insurance at the rates fixed by the bureau, with the exception of fire, windstorm and hail insurance on public property, as to which the rates are advisory only. Deviation from bureau rates may be made on written notice to the commission and the bureau, and the filing of a special provision for uniform reduction or deviation by schedule from the rates on all risks of any particular class or classes, uniform on all such classes throughout the state. Approval by the insurance commission is required.

Discrimination.—

(a) In the section setting forth the powers of the bureau it is provided that rates shall be "undiscriminating" and a prohibition is added in the common form.

(b) Stock insurance carriers and their agents are prohibited from making "any distinction or discrimination" in favor of any person insured, and from rebating.

(c) In the same section it is provided that commissions to agents and other compensation shall be uniform and equal as to all local agents of a particular company throughout the state. This, and the previous provision are implemented by requirements for sworn returns; for investigation and examination and for penalties for violation or for refusal to disclose records, etc.

(d) The provision for removal of discrimination contains what is probably intended to be repetition of the common anti-discrimination provision, but is, as stated in the law, somewhat different.

Removal of Discrimination.—A somewhat abbreviated form of the usual provision for administrative determination, after notice and hearing, that discrimination exists, and ordering the discriminatory rate removed and another substituted which is not discriminatory.

Rate Control.—

(a) In the provision setting forth the powers of the bureau it is provided that rates shall be "equitable and undiscriminating," and that no rates, rules and regulations fixed by the bureau shall be promulgated without the approval of the commission.

(b) Stock fire insurance companies are required to sign an agreement to abide by and comply with the rates and rules and regulations promulgated by the bureau and approved by the commission; subject however to the right to ask for a deviation.

(c) Companies are forbidden under penalty to do business except in accordance with bureau rules, regulations and rates, except in case of approved deviations, and except as to insurances on public property.

(d) Rates complained of as "excessive" may be proceeded upon as is provided for the removal of discrimination.

(e) Provision is made for annual return by customary classification of premiums, losses and expenses, the latter figured on a percentage basis of allocation. If on a five year compilation the commission finds that the rates charged are "excessive and unreasonable," in that the five year results show an underwriting profit in excess of a reasonable amount, the commission shall promulgate rates calculated to yield the companies a five per cent profit on business transacted in the state.

The commission is required to give consideration to the conflagration hazard, within and without the state and make reasonable allowance therefor. Rate changes are to be applied only to policies thereafter written. They are to be applied to classes of risks which have proved most profitable, designated in writing by the bureau and approved by the commission.

(f) The provision requiring all stocks carriers to file their rates after the organization of the bureau contains a provision that rates shall be in all cases a fixed percentage of the amount insured by the policy; that premiums shall be charged and collected in accordance with the schedule of rates and regulations on file with the commission as fixed from time to time thereafter: and that, except as otherwise provided, premiums shall be uniform for all licensed companies for all risks rated under the new schedules and classifications.

Approval by the commission is required before any schedule or rates or changes and amendments therein are applied. Approval may be in whole or in part, it being stipulated that the rates shall be "fair and just to the people of the state, and compensatory to the insurance companies doing business in this state, and in line with the rates of insurance charged by the said companies in other states, taking into consideration all factors of the cost of insurance." Appeals from decisions of the commission by the attorney general are provided.

The above provisions for control are sufficiently numerous, to say the least, but somewhat confusing and somewhat indifferently tied together.

Exceptions.—The act is prolific in exceptions.

(a) Mutuals and reciprocal exchanges are excepted but may become subscribers to the bureau, and when so subscribing are required to use bureau rates: though it is provided that their plans for participating dividends shall not be restricted. No mutual or reciprocal may subscribe unless all mutuals or reciprocals under the same management also subscribe.

The section makes specific reference to five sections of the act as applying to mutuals and reciprocals who subscribe; presumably the rest of the sections do not apply. One of these sections is the one setting forth the general powers of the bureau; one the section for procedure on rates claimed to be excessive or discriminatory; one the section relating to deviations; the other two relating to expenses.

(b) Classes of business excepted generally are, rolling stock of railroad corporations; property in transit while in possession of railroads or common carriers; property of common carriers used in business of transporting freight, merchandise or passengers; insurance on marine or transportation risks or hazards other than automobile insurance.

(c) It is provided that insurance rates for fire, windstorm and hail insurance on public property shall not be compulsory, but advisory only.

Application.—The act applies to insurance against fire, windstorm, hail and automobile fire and theft. Many of the sections are made specifically applicable to stock fire insurance companies, and the anti-discrimination provisions make such specific references to fire that it is not certain how far they apply to the other lines.

Litigation.—See

Hanover Fire Ins. Co. v. *Southern Amusement Co., Inc.,* 150 So. 92
New Orleans Real Estate Board v. *Ins. Comm.,* 150 So. 286
Jung Hotel, Inc. v. *Ins. Comm.,* 154 So. 448

Maryland

Flack's Ann. Code, 1939, Art. 48 A, sec. 45

A long and detailed anti-discrimination and anti-rebating law applicable specifically to fire and miscellaneous insurance. The anti-discrimination provision reads: "no corporation . . . . . shall, with intent to discriminate, make or permit any distinction in rates

applied or premiums charged or dividends or other benefits returned, or in the terms or conditions of insurance whereby a person whose property is insured in a particular company is favored as compared to another whose property is insured in the same company, and is of the same character and condition, and similarly situated as to exposure, ownership, control, portection or occupancy and risk at his." This statute is implemented by provisions for investigation, production of documents, and by a penal provision.

Massachusetts

Annotated Laws, c. 175 sec. 104 (see also c. 26 sec. 8)

A very brief statutory provision providing for appeals by any person aggrieved by any rating of a fire insurance company or board making premium rates for fire insurance to a board consisting of the insurance commissioner or his deputy and two appointed members, styled the board of appeal on fire insurance rates. The complaint must state in detail the grounds on which the complaint is founded. The board then notifies all persons in interest and sets a time and place for hearing the complaint. After hearing, the board makes a finding as to whether the established rate is "excessive, unfair or discriminatory" and makes such recommendation as it deems advisable. Finding and recommendation are matters of public record. There is no power to order rates modified.

Michigan

Michigan Sts. Ann. c. 242, secs. 24-49 et seq.

A bureau law of the permissive type. The act provides that a company may maintain its own bureau, or that companies may maintain rating bureaus "subject to the anti-monopoly law of the state," may write insurance independent of bureau ratings, subject to the provision for deviations. The law establishes a special rating division in the insurance department and charges the commissioner with the duty of investigating the subject of fire insurance rates, including methods of estimating fire hazards, fire protection, prevention devices, cost of operation, the expense of insurers, and rating systems. Bureaus must obtain licenses, and a majority of the management or directorate must be residents of the state. License fees are substantial, $250 annually for the head bureau, $50 for each branch office. Officers and employees engaged in the rating or inspection of risks must also be licensed, the fee being $25 annually. Offices must be located within the state. Rating provisions are:

Filing Provisions.—

(a) Bureaus are required to file with the commissioner at time of applying for license and from time to time thereafter, copies of basic schedules used in rate making and all rules and practices, including amendments, rules and practices, interpretations and instructions to agents, inspectors and employees with relation thereto. Filings are not to be effective until approved, and are not to be used if disapproved.

(b) The commissioner may request the bureau to furnish him with a copy of a completed survey of a risk rated on schedule.

(c) The commissioner may require information as to organization, maintenance or operation of the bureau and must require the filing of schedules, rates, forms, rules and regulations.

Schedule Rating.—The usual provision for the inspection of risks specifically rated on schedules, for the making and recording of written surveys and furnishing a copy to the owner on request. This is supplemented:

(a) by a requirement that a copy be furnished the commissioner on request

(b) that the schedule shall show the name or names of the rater or raters who inspected the risk and computed the rates.

Rate Compacts and Agreements.—

(a) Agreements in regard to the collecting of any rate for fire insurance in violation of this act or any other law of the state are prohibited.

(b) The usual provision forbidding agreements looking to the control of the placing of the whole or any part of any insurance.

The anti-compact law of Michigan doubtless has application, save as modified by the act.

Deviations.—Deviations by any company from the schedule of rates must be uniform in application to all risks in the class for which deviation is made, and no deviation shall be effective unless notice and the reason therefor shall be filed with the commissioner and has been approved by him.

Discrimination.—

(a) Companies or insurers are forbidden to charge rates for fire insurance which discriminate unfairly between risks in the application of like charges or credits, or which discriminate unfairly between risks of essentially the same hazards, wherever located, regard being had to the relative degree of protection against fire, or which discriminate unfairly against or in favor of classes, or communities as a whole. This is implemented by a provision for revocation of the license of a rating bureau that fixes, finds or advises any insurance company in regard to a rate discriminatory within the meaning of the chapter.

(b) In a succeeding section, a rate which is excessive or inadequate is to be deemed *prima facie* discriminatory.

Removal of Discrimination.—The act sets up a commission consisting of the attorney general, the commissioner of banking and the commissioner of insurance to act on written complaints or on information of the commissioner that discrimination in rates exists. After notice and hearing the commission may find the rate is discriminatory and order it removed; but discrimination may not be removed by increasing rates unless the increase is found by the commission to be justifiable. The court appeal provision provides that the order of the commission is not suspended unless bond is given for the repayment of overcharges to policyholders. In addition to this bond the companies securing a stay must file a statement with the court giving the name, address and policy number of every policyholder in the class affected by the order, and deposit as the court may order a sufficient sum of money to make restitution for overcharges.

Rate Control.—

(a) The commissioner has authority to determine the adequacy or reasonableness of any rate charged by any fire insurance company, either on complaint or on his own motion, and may suspend any rate found to be excessive and order substituted a just and reasonable rate therefor, based on "relative hazards, local conditions and all other reasonable elements entering into fire insurance ratings and risks." Provision is made for hearing and court review as in case of proceedings for removal of discriminations.

(b) Prohibition is made of the charging of rates that are "excessive," implemented by a provision for the revocation of the license of a bureau that fixes, finds, or advises any insurance company to charge any rate which is excessive.

(c) Questions of adequacy and reasonableness may apparently be gone into in proceedings for the removal of discrimination.

(d) The rate must not include a surcharge or other charge in addition to the normal rate applicable to the risk.

Exceptions.—The act does not apply to fire insurance companies not charging an advance premium, nor to certain local mutual companies.

Application.—Apparently to fire insurance only.

Litigation.—

Otsego Township School District v. *American Ins. Co.*, 262 Mich. 385
Opinions, Atty. Gen., 1919, P. 75 1921,—1922 p. 391

Minnesota

Mason's Minnesota Sts. 1927, secs. 3604 et seq. 1940 Supp. secs. 3608, 3609.

A bureau law of the second type, requiring every company to maintain or be a member of a rating bureau. Bureaus are required to maintain an office within the United States.

Filing Provisions.—

(a) The commission may require the filing of schedules, rates, forms, rules, regulations, etc.

(b) Deviations from bureau rates are required to be filed.

(c) Filing of rating agreements is required.

Schedule Rating.—Usual provision for inspection of risks specifically rated on schedules making and recording a written survey thereof and furnishing a copy to the owner on request.

Rating Compacts and Agreements.—The act contains the common provision with regard to agreements for the making, fixing or collecting of any rates, except in compliance with the act. The act however provides positively that the agreement must be in writing and prior to its taking effect must be approved by the commissioner and a copy of the agreement and the order of approval filed with the commissioner and any rating bureau of which the company is a member.

Deviations.—Deviations must be filed with the commissioner and with the bureau of which the company is a member together with a written statement of the variation. The variation must be uniform and applicable to all risks of essentially the same hazard in the class for which variation is made. Variations below bureau rates or below rates fixed by the commissioner may not be increased for the term of a year without the approval of the commissioner.

A declaration by an insurer of its intention to write insurance at a uniform variation of a certain percent form the bureau rates is regarded as sufficient compliance with the requirements of the section.

Discrimination.—The usual form of prohibition of discrimination.

Removal of Discrimination.—A very simply phrased administrative procedure for holding hearings on rates deemed discriminatory, with power to order the discrimination removed and a non-discriminatory rate established as the bureau rate. A court appeal is provided with simple provision for refunding overcharges.

Rate Control.—

(a) The proceeding for removal of discrimination is available for the correction of rates that are "unjust."

(b) It is provided that no increase in fire insurance rates affecting the general rates or rating classification in the entire state, or in an entire zone, city, village, town, county or other political subdivisions shall go into effect until approved by the commissioner after notice and hearing. The commissioner may also in his discretion hold a hearing on any decrease of rates. Provision is made for appeals as in case of orders for the removal of discriminations.

Exceptions.—Exception is made of county and township mutual companies.

Application.—Apparently to fire insurance only.

Mississippi

Code 1930 sec. 5302 et seq. am., 1935, Extraordinary Session, c. 34 (Supp. 1938, P. 1175).

A bureau law, dating from 1924, creating a single bureau of which all companies are required to be members. The act sets up a board known as the insurance commission, consisting as amended of the insurance commissioner ex-officio as chairman and three appointed members. The board is charged generally with the supervision of the bureau. The act makes provision for the organization of the bureau, to be composed of persons resident in the state, skilled in fire rating, etc. Some latitude is allowed as to the form of organization. The bureau is required to maintain an office in the City of Jackson. All stock fire insurance companies are required to be members of the bureau. The act has some resemblance to the Louisiana law.

Filing of Rates.—

(a) Companies are required after the organization of the bureau and from time to time thereafter to file with the commission a schedule of rates of premium. Before applying any schedule or amendment, the same must be approved.

(b) The bureau has power to advise and submit to the commission for approval changes in schedules filed.

(c) The bureau is required to furnish the commission with copies of its proceedings for organization, and to answer inquiries to as to organization, maintain and operation. The commission may require the filing of forms, regulations, etc.

(d) Deviations must be filed with commission.

(e) Copies of complete surveys are to be furnished the commission on request.

Schedule Rating.—The usual provision for inspection of risks rated on schedule, making and recording a written survey, and furnishing a copy to the owner or other person in interest on request.

Rating Compacts and Agreements.—The common prohibition against agreements to control the placing of the whole or any part of any insurance.

Deviations.—A company may on notice in writing to the insurance commission file a special provision for uniform deviation from the rates upon a particular class or classes: but the deviation must be uniform on all classes throughout the state, and if it provides for an increase in rates, must be approved by the commission.

Discrimination.—The bureau is forbidden to fix rates which discriminate unfairly in the same territorial classification between risks in the application of like charges and credits or between risks of essentially the same hazards and having the same degree of protection against the fire. There is also an anti-rebating provision prohibiting generally the making of distinctions or discriminations.

Removal of Discrimination.—The common provision for administrative procedure on notice and hearing to remove an unfair discrimination and order a lawful rate substituted. A court appeal is provided.

Rate Control.—

(a) In connection with the provisions requiring companies to file their schedules and rates, it is provided that they must be approved by the commission before taking effect. An annual approval at the time of filing the annual report is provided.

(b) It is provided that rates as filed are the legal rates and it is unlawful to use others except as provided in case of deviations.

(c) Provision is made for annual reporting of underwriting experience and the commission is directed to make compilation showing experience for five years. If the compilation shows an underwriting profit in excess of five per cent the commission is directed to order rates reduced so as to yield a profit of five percent. Consideration is to be given the conflagration hazard, within and without the state, and proper allowance made therefor.

Rate reductions are operative only on policies written subsequent to the order, and are to be applied to such class or classes of risks as may prove most profitable, to be designated by the bureau.

(d) The commissioner is directed to make annual inquiry as to rates of commission and to advise the bureau as to the majority opinion as to the amount or rate of commission to be paid local agents. The amount or rate of commission is to be kept at all times uniform as to classes or risks throughout the state "in order that the profits of the stock fire companies doing business in this state may be accurately ascertained."

Provisions are made for appeal to the courts.

Exceptions.—

(a) The act is not to apply to mutual companies or reciprocal exchanges unless they elect to become subscribers to the bureau. The bureau must not discriminate against them because of their plans for operation. The bureau rates become the lawful rates, but without prejudice to their participation plans. They have the same rights to file deviations as other carriers. A mutual or reciprocal may not become a subscriber unless all similar companies under the same management become subscribers. The sections of the act relating to expenses of the bureau, the provisions relative to discrimination and the removal thereof, appeal provisions, penal provisions and provisions against rebating apply.

(b) The act does not apply to insurance on rolling stock of railroad companies; property in transit while in possession of railroads or common carriers; property of carriers employed in transportation of freight, merchandise or passengers; marine or transportation risks other than automobile insurance.

Application.—Apparently to fire insurance only.

Missouri

Statutes, Ann., secs. 5860 et seq.

A bureau law of the permissive type, dating from 1919, and the prime storm-center of litigation involving rate regulation. It succeeded a law passed in 1915. The law requires every company to maintain a "public rating record" including general basis schedules embodying basis rates, charges, terms, conditions, permits and credits, forms and endorsements, and changes of rate to be made on account of forms and endorsements." This is designed for public inspection and information. A company is permitted to use the public rating record of an actuarial bureau provided such record shows the true and correct rates charged by such company. The drafter of the law evidently considered it possible that company might be a bureau member and not adhere to its rates. The publicity provisions make the maintenance of a local office necessary. There is a provision for licensing inspectors; but the licensing fee is considerably lower than in Michigan, merely $5.00.

Filing Requirements.—

(a) Copies of all public rating records, whether kept by companies or bureaus must be filed with the superintendent and notice of all changes therein must be immediately given. Changes in rate upward must be approved by the superintendent.

(b) The superintendent may address inquiries as to organization, maintenance and operation of any bureau or insurer and may require the filing of schedules, forms, rules, regulations, agreements, etc.

Schedule Rating.—

(a) Companies are required to furnish the policyholders on the issuance of a policy with a written or printed analysis of the rate or premium charged, showing the items of charge and credit determining the rate.

(b) The common provision is made for inspection of each risk specifically rated, and making and recording a written survey thereof. To this are added:

(1) a requirement that each risk rated shall be given a uniform classification number

(2) a requirement that inspections be made by competent inspectors licensed by the department

(3) a stipulation that when directions or information as to changes or improvements in rates are made by an inspector and the insured makes the changes and improvements, the company or bureau represented by the inspector is obligated to give proper credits for the improvements made.

Rate Compacts and Agreements.—

(a) A prohibition of agreements to continue to use the rating record of any actuarial bureau, to refrain from maintaining any individual rating record or to maintain the rates fixed by such actuarial bureau.

(b) A prohibition of making and fixing rates or schedules of rates on condition that all or any part of the insurance on a risk shall be placed with subscribers of a particular actuarial bureau, or written or placed with any particular company, insurer, agent or group thereof.

(c) Companies are prohibited from paying different percentages of commissions to any agent or agents on condition that they represent or do not represent companies belonging to same or different associations.

Deviations.—There is no formal deviation provision: but a company is prohibited from receiving any premium different from the rate of premium indicated by its public rating record. If it does not adhere to bureau rates, it must apparently maintain its own public rating record. Any changes in its rates must be placed in the public rating record and filed with the Superintendent, and if they involve an increase in rates must be approved by him.

Discrimination.—

(a) The act contains the common anti-discrimination provision.

(b) There is an anti-rebating section forbidding companies or agents by special rates, drawbacks, rebates, commissions, devices or subterfuges to charge or collect any compensation or premium different from that indicated by its public rating record. Companies are forbidden to discriminate unfairly between risks of essentially the same hazard and substantially the same degree of protection. This differs from the concluding clause

of the common provision by omitting the words "against fire," and is probably necessary because the law applies to insurance against hazards other than fire.

(c) The provision against discrimination in agents' commissions is noted above.

Removal of Discrimination.—The common administrative provision for ordering discriminations removed after notice and hearing, with the provision that discriminations may not be removed by increasing rates unless it shall appear to the superintendent that such increase is justifiable and an order of approval filed. There is a general provision for court review, applicable to all orders of the superintendent.

Rate Control.—

(a) Changes in the public rating record must be approved if they involve an increase in rates.

(b) The superintendent is empowered to order companies to compile and file with the superintendent or bureau statistics of net amount of insurance in force and written, net premiums received and net losses paid for each class within the state. When required, the bureau must compile and file the total of the reports of their members. Uniform schedules and classifications for such reports are required, so far as practicable.

Stock companies must annually report to the superintendent the total amount of premiums, losses and expenses for or on account of business in the state for the preceding year. They are required to report expenses in the following detail:

(1) commissions paid to agents; (2) salaries paid; (3) taxes paid; (4) other underwriting disbursements.

There is a further provision for a five year report to be made immediately after the effective date of the act.

The superintendent or on complaint or on his own motion may investigate the necessity for a reduction of rates. If the aggregate profits of stock companies for the preceding five year period are in excess of what is reasonable, he is required to order such reduction as will in his opinion produce a reasonable profit. The reductions are to be applied by the companies subject to the superintendent's approval. In the event that the companies fail within 30 days to submit a classification or classifications meeting his approval, he must apply the reduction in such a way as appears to him just and equitable.

The superintendent is required to give consideration

(1) To the conflagration liability, within or without the state.

(2) To acquisition cost, administration expense, and all earnings, including investment profits.

(3) To the degree of economical administration of underwriting, and safety and reasonableness of investment policies.

A court review is provided. In the review, all issues are tried *de novo* and the burden of proof as to unreasonableness or injustice of any order rests upon the complainant. An order requiring a reduction of rates is suspended during review, but companies must deposit an amount equal to the difference between rates fixed by the superintendent's order and those in effect prior thereto, to await the result of the review, and then to be returned to policyholders or to companies as the case may be. Funds are to be deposited with the superintendent and by him in banks, and there are provisions as to the interest to be paid by banks on such deposits.

(c) There is a special provision calling for notice and the filing of the schedule of any increase in rates with the superintendent. Unless approved by him, the increase is deemed unreasonable and unjustifiable, and is not to be used until approved.

Exceptions.—County mutuals, farm mutuals and town mutuals, organized under chapter 37, articles 14, 15 and 16 of the Revised Statutes are excepted. A number of the sections of the act specifically apply to stock companies, and presumably to no other kinds of carriers.

Application.—The act applies to insurance against risks of loss by fire, lightning, hail and windstorm.

Litigation.—(See text of paper, Pp. 363 *et seq.*)

Nevada

Compiled Laws, 1929, Supp., 1931-1941, sec. 3656-121.

This is not a bureau law. Fire companies are required before receiving a license or renewal of license to file with the commissioner their special, specific and tariff rates,

which tariff rates are to be approved by the commissioner before any policy of insurance shall be written or furnished by such company or its agent. Companies and agents are required to observe rates so filed and not to deviate therefrom until amended or corrected rates have been filed with the commissioner and approved by him. The act applies to fire companies only.

New Hampshire

Public Laws, 1926, c. 271, sec. 14.

Not a bureau law. The act provides simply that a person who feels aggrieved by the rates charged by a fire insurance company doing business in the state may make complaint to the commissioner, who shall hear the parties, and, if it appear to him that the rate charged is excessive, shall fix a reasonable rate, and the rate so fixed shall be binding on all companies doing business in the state. A fine of $200 is provided for refusal to insure property at the rate fixed by the commissioner.

New Jersey

Stats., Ann., 17:29—1 et seq.

Not exactly a bureau law, but an anti-discrimination and anti-rebating law, generally applicable, with certain exceptions, and implemented by provisions for a rate filing and a statutory process for removal of discrimination. It contains certain provisions applicable specifically to fire insurance.

Filing Provisions.—No insurer against the hazards of fire, etc., shall make any such insurance except in accordance with general basis schedules, filed with the commissioner, and embodying basis rates, charges, credits, terms, conditions, permits, standards and other data necessary to the computations of equitable rates and rules of practice for the insurance, or with the amendments to the general basic schedules which shall be filed with the commissioner from time to time.

Bureau Provisions.—Any one or more insurers, singly or jointly, may employ for the making of the general basic schedules and rates at the filing thereof, the services of such experts as they may deem advisable for the purpose.

Schedule Rating.—This apparently applies generally. Every insurer or agent is required within ten days to furnish to any person on whose risk a rate has been made by the insurer or his authorized representative full information as to the rate, and if the property on such risk is rated by schedules, applying particularly to such risk, a copy of the schedule. The act contains a provision for the granting of hearings to persons requesting changes in rates.

Discrimination.—This is also generally applicable.

(a) No insurer shall fix or make a rate or schedule of rates or charge, claim, collect or receive, directly or indirectly, or through any special rates, tariff, drawback, rebate, concession, device or subterfuge, a rate for insurance which discriminates unfairly between risk in the state of essentially the same hazard.

(b) Insurers must not allow compensation to any local agent in excess of that allowed anyone of its local agents on such risks in the state.

(c) An anti-rebating provision is added.

Removal of Discrimination.—The ordinary provision for administrative removal of discrimination after notice and hearings. Discriminations are not to be removed by increasing the rates unless it is made to appear to the commissioner that the increase is justifiable.

Exceptions.—Life insurance: marine or transportation hazards other than automobile: insurance on property on risks outside the state. The act apparently does not apply to compensation insurance. There is a provision which practically excepts contracts for the introduction of automatic sprinklers, containing provisions for obtaining or guaranteeing insurance against loss and damage by fire or water for a specified time at a specified rate.

Litigation.—The provision as to agents' commissions has been litigated, one case going to the Supreme Court of the United States, where its constitutionality was upheld.

O'Gorman & Young v. *Phoenix Assurance Co.,* 146 Atl. 370
O'Gorman & Young v. *Hartford Fire Ins. Co.,* 282 U. S. 251

New Mexico

Statutes, Ann., 1929, Supp. 1938, secs. 71-148, 71-162, 71-167, 71-216.

The first of these sections is a general anti-discrimination and anti-rebating provision. The second is a provision requiring the filing of forms, rates, manuals, applicable to life, accident and health companies, coupled with a provision applicable to all other lines of insurance requiring companies on demand to furnish the Superintendent with information as to the method employed in fixing rates on any particular risk or classes of risks. The third is a provision authorizing any two or more companies to employ a common expert for rating purposes. The fourth prohibits discrimination in hail insurance.

New York

McKinney's Consolidated Laws, Book 27, secs. 180 et seq.

This is a bureau law, permissive in character, applying generally, with certain exceptions. The law is long and very complete, and has been recently revised. Its original goes back to the early days of rate regulation and has gone through a series of modifications. A distinction is made between rating organizations, defined as organizations for making rates to be used by more than one insurer and service organizations. The law permits complete liberality as to method of organization, but requires the filing of organization data and list of membership, and the obtaining of a license before operation. The bureau is required to furnish services without discrimination, to admit any authorized insurer, not a member, as a subscriber. It is required to give hearings on requests for rate changes. It may not charge membership fees or licenses to licensed brokers, or refuse to do business with, or permit payment of commissions to, such brokers except for refusal to adhere to the reasonable rules of the organization. Examination is at the discretion of the superintendent.

Service organizations must file organization details, but are not required to obtain a license, and the other regulatory provisions noted are not applicable.

Filing Provisions.—

(a) Insurers and rating organizations are required to file with the superintendent upon request every rate, manual, schedule of rates, classification of risks, rating plan and every other rating rule made or used by it, and all other information concerning the application and calculation of rates made or used by it.

An insurer who becomes a member of or subscriber to a rating bureau may authorize the superintendent to accept bureau filings on its behalf.

(b) Filings must state or clearly indicate the character and extent of coverage to which any rate or modification thereof will be applied.

(c) No insurer shall file any rate, manual or schedule of any organization except as a member or subscriber thereof.

Schedule Rating.—Rating organizations and insurers making and filing their own rates shall furnish on demand and on the payment of reasonable charges to any assured or his authorized representative, all pertinent information as to such rate, and if it be rated on schedule with a copy of the schedule.

Rate Compacts and Agreements.—The common prohibition, addressed to bureaus and to insurers making their own rates, against the making of rates to be applied to a risk on condition that the whole or any specified part of the insurance shall be placed with bureau members or with the insurer.

Deviations.—The deviation provisions are unusually extensive.

(a) Members or subscribers of rating bureaus are prohibited from making deviations from bureau rates, except as provided.

(b) Insurers and their agents, employees and representatives and insurance brokers are forbidden to charge, demand or receive a rate or premium which deviates from rates made and last filed by or on behalf of such insurer or to issue a policy involving a violation of such filings.

(c) An insurer may apply to the superintendent for approval on its behalf of a uniform percentage increase or decrease in the rates established and publishd by a rating organization of which it is member or subscriber. Application must be made 30 days prior to effective date and notice given to the bureau. The superintendent may refuse approval

on the grounds that the proposed rates are likely to be inadequate, unfairly discriminatory or unreasonable. Within 30 days after such ruling, the insurer may request a hearing. If the application is approved, the decrease or increase shall be uniformly applied to all risks rated by the rating organization; but if the organization established rates for more than one kind of insurance, it may with the superintendent's approval be limited to one or more kinds. The superintendent is required to give consideration to available statistics showing statewide experience of all insurers with respect to such kind of insurance and class or classes of risks. In case of fire insurance this experience must cover a five year period.

Approvals are for the period of one year unless sooner withdrawn by the insurer with consent of the superintendent.

Discrimination.—

(a) No rates shall discriminate unfairly between risks involving substantially the same hazards and *expense elements* or between risks in the application of like charges and credits.

(b) There are a number of provisions as to rebates.

Removal of Discrimination.—Ordinary provisions for administrative removal of unfair discrimination after notice and hearing. Discriminations are not to be removed by increasing rates unless the increase is approved by the superintendent as reasonable. Before making an order the superintendent is required to notify the rating organization affected and all persons he deems likely to be affected. Rating organizations are required to notify their members.

Rate Control.—

(a) Rate organizations and insurers are required to make and adopt basic classifications, minimum classes, flat or schedule rates.

(b) Rates must be adequate and reasonable for the classes to which they apply.

(c) Rates must not make unfair discriminations.

(d) Consideration must be given (a) to past and prospective loss experience including conflagration and catastrophe hazard, if any, both within and without the state (b) to all features reasonably attributable to the class of risks (c) to a reasonable profit (d) to policyholders dividends, in case of participating carriers.

(e) In case of fire insurance rates, consideration must be given to the experience of fire insurers during a period of not less than five years.

(f) Provision is made for annual filings and compilation of experience of premiums and losses classified by kinds and types of insurance. They may be made with a rating organization or an agency approved by the superintendent. Forms of return and classifications may be established from time to time by the superintendent. Provision is made for the consolidation of returns. Mutual fire insurance companies insuring sprinklered risks are permitted to make returns on the basis of comprehensive coverage.

(g) If the superintendent finds that any rate filings made with him are not in compliance with the provisions of the article, or that they provide rates or rules which are inadequate, excessive, unfairly discriminatory or otherwise unreasonable, he may order the same withdrawn, and at expiration of 60 days the same shall be regarded as no longer on file. Notice and hearing are provided.

(h) Rate filings for workmen's compensation insurance, motor vehicle insurance required by law and surety bonds given in lieu of required motor vehicle insurance, must not be made effective until approved by the superintendent.

(i) Provision is made for ordering, on notice and hearing, that the rates on any class of risks, found to be excessive, discriminatory, inadequate or unreasonable be adjusted. The superintendent is empowered to approve reasonable classifications of risks, with due regard to past and prospective loss experience, conflagration or catastrophe hazards, reasonable profit, and in case of participating companies to policyholders' dividends.

Exceptions.—The following are excepted: (a) contracts of reinsurance, (b) insurance on risks located outside the state, or motor vehicles and aircraft principally garaged and used outside the state, (c) policies of assessment cooperative fire insurance companies, (d) annuities, life insurance, including non-cancellable disability benefits, marine insurance, other than contracts of insurance on automobiles and aircraft, marine protection and indemnity insurance, accident and health insurance. The superintendent may, however, make investigation of these classes of risks and call on rating organizations to furnish data.

Application.—General, except as above.

Litigation.—There has been some little litigation under the New York law, none of a very spectacular kind. A good part of it includes workmen's compensation cases, which are here given because they have some application to the meaning of the law.

(1) *Rosensweig* v. *Whitney*, 222 N. Y. S. 87. This case concerned the status of associations set up by rating organizations for special purposes, and indicated that a plan imposing certain obligations on brokers in connection with business placed by them was illegal.

(2) *Importers' Ins. Co.* v. *Rhoades*, 146 N.E. 648. See also 205 N. Y. S. 628. This case held that a rating organization could not refuse to furnish service because of refusal to maintain the rules of the rating organization as to commissions, brokerages and number of agencies.

(3) *Opinion of Attorney General*, 1935, p. 195. This indicates that ratemaking associations are not public or quasi-public organizations within the scope of the Employees' Retirement system.

(4) *Kaplan* v. *Travelers Ins. Co.*, 269 N. Y. S. 560, 277 N. Y. S. 95—A workmen's compensation case upholding the validity of classifications, rules and rates determined by the superintendent.

(5) *Buffalo Ass'n of Fire Underwriters* v. *Noxsel-Dimick Co.*, 253 N. Y. S. 40, 256 N. Y. S. 263, 184 N.E. 142. The taking of power from underwriters' association to deal with premium rates is held in this case to take away also their power to maintain uniform commissions to brokers.

(6) *Peabody* v. *Travelers Ins. Co.*, 205 N. Y. S. 536, 148 N.E. 661, 150 N.E. 547. This declares illegal and void an agreement between a broker and an insurance company that a policy of workmen's compensation insurance should be issued and carried at a certain rate, irrespective of the fact that higher premium rates be thereafter fixed and approved by the rating bureau and by the superintendent.

(7) *Employers' Liability Assurance Co.* v. *Success Uncle Sam Cone Co.*, 208 N. Y. S. 510. Upholds the validity of rectification of classification and rate, after effective date of policy in accordance with bureau rules and rates approved by the superintendent, the policy containing the provision that rates were subject to modification.

(8) *Employers' Liability Assurance Co.* v. *Hayes Const. Co.*, 213 N. Y. S. 795, 153 N.E. 68. Upholds the validity of rectification of rates in a policy containing a provision as in the foregoing case, and making the rectification date back to the date of issue of the policy.

(9) *Great American Indemnity Co.* v. *Abbott Glass Co.*, 267 N. Y. S. 523
Independence Indemnity Co. v. *Albert A. Volk Co.*, 226 N. Y. S. 457

These cases involved the question as to what notice shall be given to the assured in case of modification in compensation rates.

(10) *New Jersey Fidelity, Etc. Inc. Co.*, v. *Van Schaick*, 259 N. Y. S. 108, 185 N.E. 721. This indicates that the superintendent has no authority to impose penalties on a fire insurance company for issuing policies at rates other than filed, but should give notice of the violation to the attorney-general.

(11) *People* ex rel *N. Y. Fire Ins. Exchange* v. *Phillips*, 196 N. Y. S. 202, 142 N.E. 574. This case involved the anti-discrimination law, holding that the superintendent could not, under that law, declare the bureau guilty of unjust discrimination for refusing to give credit for an automatic sprinkler device not submitted to or approved by its testing department, on a finding that the third device was as effective as one for which a reduced rate had been allowed.

(12) *Matter of Groh*, 167 N. Y. S. 883
American Smelting, Etc. Co. v. *Stettenheim*, 164 N. Y. S. 253
Kennedy v. *Supreme Council*, 177 N. Y. S. 268
Tanenbaumy Rothenberg, 194 N. Y. S. 315, 142 N.E. 267
Arcim Corp'n v. *Pink*, 2 N. Y. S., 2nd, 709 21 N.E. 2nd 213
Opinions of Atty. Gen., 1912 P. 535, (1918) 17 State Dept. Reports 478, 1929, P. 217
Munch Brewery Co. v. *Grief*, 6 N. Y. S. 2nd 989, 11 N. Y. S. 2nd 126
Simmonds Corp'n v. *Conway*, 245 N. Y. S. 879, 177 N.E. 168
Goldman v. *Pink*, 1 N. Y. S. 2nd 562
Sturm v. *Truby*, 282 N. Y. S. 433.

These cases all deal with discriminations and rebates.

North Carolina

Code, 1939, secs. 6388 et seq.

A bureau law, general in scope, but rather brief. Bureaus serving more than one insurer in "suggesting, approving or making rates" for insurance, including surety bonds, on property or risks in the states are required to file with the insurance commissioner copies of organization papers and by-laws, with any amendment thereto, together with its business address, and a list of the members represented by it. There is no licensing provision.

Filing Provisions.—Bureaus and insurance companies must file with the commissioner whenever he may call therefore, any and every schedule of rates and such other information concerning such rates, as may be suggested, approved or made by such bureau or insurer.

Schedule Rating.—Provision is made for keeping records of proceedings and for furnishing to any person or his authorized representative full information as to his rate, and if the risk is rated on schedule, a copy of the schedule. Provision is made for giving hearings on requested changes in rates.

Rate Compacts and Agreements.—Rates, schedules, etc., are not to be fixed on the condition that the whole or any part of the insurance is to be placed at such rate or with the members or subscribers of such rating organizations.

Deviations.—No provisions.

Discrimination.—No rate or schedule is to be fixed and no rates to be charged which discriminate unfairly between risks of essentially the same hazard. In case of fire insurance rates, unfair discrimination is forbidden between risks in the application of like charges and credits, or between risks or essentially the same hazard and having the same degree of public protection against fire.

Removal of Discriminations.—The usual method of administrative removal of discriminations after notice and hearing, with provision that discrimination shall not be removed by increasing rates unless it appears to the commissioner that the increase is justifiable.

Rate Control.—(Applies to fire insurance only.) Complaint is filed with the commissioner stating in detail the grounds on which the complainant asks for relief. After notice and hearing, the commissioner makes a finding as to whether the established rate is excessive or unfair, and makes recommendations.

Exceptions.—(a) Life insurance, (b) marine or transportation risks other than contracts for automobile insurance, (c) insurance on property or risks located outside the state, (d) title and credit insurance. (Companies on the mutual or cooperative plan were formerly excepted.)

Application.—General, except as above.

North Dakota

Civil Code, Supp. 1925, sec. 4922, Laws 1929, c. 152.

The first of these references is a prohibition generally applicable of discrimination in the issue or cancellation of policies. The second applies to fire insurance only and contains:

(a) The common provision that a rating bureau shall inspect risks specifically rated on schedule and make a written survey thereof with provision that copy shall be furnished to the commissioner and to the owner on written request.

(b) On a written complaint that the survey is not correctly made up in accordance with standard methods of rating used in the state, the commissioner is empowered to make full investigation and to order the rating corrected to conform to standard procedure. A copy of the complaint is to be furnished the bureau.

(c) A provision for notice and hearing. There is a provision that rate be suspended pending the hearing "and in the event final determination shall be that such rate is excessive, any overcharge on account of such rate found to be excessive shall be refunded to the *insurer.*" (Italics those of the writer.)

Ohio

Page's Ohio General Code, Ann. sec. 9592 1 et seq. See also Constitution, VIII, 6.

The constitutional reference contains a general power to regulate rates. The code reference contains a bureau law of the type requiring every insurer to be a member of or to maintain a rating bureau. Bureaus are required to maintain offices in the state. The organization data are to be filed on request.

Filing Provisions.—

(a) The superintendent may order the filing of rates, schedules, forms, rules, regulations, etc.

(b) Deviations are required to be filed.

Schedule Rating.—The usual provision for the inspection of risks rated on schedule, making written survey and recording the same and furnishing a copy of the survey to the owner on request.

Rate Compacts and Agreements.—

(a) The usual prohibition against agreements for controlling the placing of the whole or any part of any insurance.

(b) The usual regulation of agreements with regard to making, fixing or collecting of any rate.

(c) It is stipulated that the act does not repeal or affect the anti-trust provisions of the general law.

Deviations.—Deviations may be made after notice to superintendent and bureau, with filing of schedules providing for the same. Deviations must be uniform for all risks in the class for which deviation is made. No approval is required.

Discrimination.—The common form of anti-discrimination provision.

Removal of Discrimination.—The common form of administrative removal of discrimination after notice and hearing. Discriminations not to be removed by increasing rates unless it is made to appear to the satisfaction of the superintendent that the increase is justifiable.

Rate Control.—No provisions.

Exceptions.—Mutual protective associations are excepted.

Application.—Applies to insurance against fire and lightning.

Litigation.—
Brand v. *Safford,* 160 N.E. 464
General Ins. Co. v. *Bowen,* 196 N.E. 774

The first of these cases relates to the power of the superintendent to investigate and disapprove an agreement between companies and their rating bureau. The second of these cases involved questions of discrimination and deviation arising from a company quoting the same annual rates for a full five year term policy payable in advance and for a five year policy payable in annual installments and terminable at the end of any year, the rate being relatively lower than that for a one year policy. It was held that there was a lack of uniformity in application to all risks of the same class, and therefore discrimination.

Oklahoma

Statutes, Ann., Tit. 36, secs. 131 et seq.

This act follows generally the lines of the Kansas act, and like that law is directed to companies rather than to bureaus. The references to bureaus are slight and incidental. A board of three consisting of the insurance commissioner, the state fire marshal and a third appointed member who acts as secretary administers the act. Its jurisdiction is over rates of fire, tornado, plate glass and employers' liability insurance, over rating bureaus and over agents' licenses.

Filing Provisions.—Companies are required to file with the board a general basis schedule showing rates on all classes of risks insurable by such company, and all charges, rates, terms, privileges and conditions affecting such rates or the value of the insurance to the insured. Changes in schedule must be made on 10 day notice to the board stating

the changes to be made in schedules on file and the effective date. The change must be shown by filing new schedules or by reference to schedules already on file. Changes on less 10 days notice may be made by permission of the board. A company writing a risk for which no rate has been filed is required to file within thirty days a schedule of the property or liability showing the rate thereon. The schedule must conform to the general basic schedule required as above.

Deviations.—There are no special deviation provisions but a new schedule must be filed before a deviation is made. Companies are forbidden to write business until their schedules of rates have been filed, or to write business at a rate different from that contained in the schedule or to remit or refund in any way any portion of the rate or extend to any person any privilege or inducement not specified in the policy.

Discrimination.—The anti-discrimination provision is like that of the Kansas law and in effect forbids the charging of a greater, less, or different compensation for insurance of any property or liability in the state than it charges, collects or receives from any other person or persons for like insurance for risks of like kind and hazards under similar circumstances and conditions. Violation of this provision is declared to be unjust discrimination.

Removal of Discriminations.—No administrative provision.

Rate Control.—When the board shall determine that any rate made by the insurance company in the state is excessive, unreasonably high or inadequate to the safety and soundness of the company it is authorized to direct the company to file a higher or lower rate, commensurate with the risk, but in all cases the rate must be reasonable. Court appeal is provided. If the court suspends the order complained of, the petitioners must furnish a bond for the repayment of overcharges, and the court may require them to keep a record and make reports to the insurance board, with names and addresses of persons to whom overcharges are to be refunded as ordered by the court.

Exceptions.—The exceptions are somewhat extensive owing to the sweeping nature of the filing provisions.

Kinds of insurance excepted are (a) life insurance, (b) marine insurance, (c) insurance on growing crops of grain, cotton or fruit, (d) transportation risks or hazards other than automobile liability, (e) insurance on property located outside the state, (f) contracts of title insurance or mortgage guarantee, (g) hail insurance.

Provision is made that the exception does not apply to employers' liability insurance. A second section forbidding rebating, makes exception of domestic mutual fire insurance companies. A concluding section declares the act not applicable to fraternal associations.

Application.—The act applies to companies writing fire, tornado, plate glass, and insurance against the legal liability of employers.

Litigation.—*Ins. Co. of North America* v. *Welch,* 154 Pac. 48 (1918). Sustains constitutionality of act.

Associated Industries v. *State Ins. Board,* 46 Pac. 2nd 361. Sustains (a) right of board to give consideration to losses incurred, as well as of losses paid, (b) to fix the experience period to be used as the basis of ratemaking, (c) to determine the expense loading on expert evidence and other testimony.

(A workmen's compensation case)

Georgia Home Ins. Co. v. *Choctaw Cotton Oil Co.,* 5 Pac. 2nd 152

Metropolitan Life Ins. Co. v. *Lillard,* 248 Pac. 841

These refer to the anti-discrimination provisions.

Oregon

Code 1930, Supp. 1935 secs. 46-107, 47-1605. (In Compiled Laws, ann., these references are, secs. 101-107, 101-1605).

The first of these references applies generally to every foreign company, other than marine. Each company is required to file with the commissioner its rating schedule and policy forms. Deviation is forbidden until amended or corrected rating schedules have been filed. Discrimination between risks of essentially the same hazard is forbidden. There is a provision that these provisions are not to prevent the operation of participating plans. Acceptance of the schedule of a rating bureau authorized under section 1605 is considered a sufficient compliance with the act.

Section 1605, is a bureau law closely resembling that of Idaho, and applying generally to fire insurance. Bureaus may be maintained by insurers or persons, residents of the

state. Bureaus must maintain local offices, and are regarded as engaged in public service. Offices are to be open during regular office hours for information of citizens of the state. The commissioner may inquire as to details of organization, maintenance and operation. Records are required to be kept, showing work performed, and receipts and disbursements.

Filing Provisions.—

(a) Rating bureaus are required before publishing or furnishing rates to file their rating schedule with the commissioner, and not deviate therefore until amended schedules are filed.

(b) Insurance companies must file rating schedules or give written notice to the commissioner of the acceptance of the schedules of a rating bureau; but may accept schedules of a bureau in part and file their own schedules as to other classes, uniform throughout the territorial classification. A company may on 30 days notice abandon the schedules of a bureau and file its own schedules.

(c) The Idaho provision for filing the short rate cancellation table is made with a certain exception.

Schedule Rating.—The usual provision for inspecting risks rated on schedules, making written surveys and recording the same, and furnishing copy of the survey to the owner on request. This coupled with a. provision for giving hearings on request for changes of rates.

Stamping Provision.—The law contains provisions like those of Idaho for the appointment of a chief examiner, with duties to inspect applications and daily reports, approve them if in accordance with filed schedules, request correction if they are not, and notify the commissioner of failure to make correction. The provisions made in Idaho as to companies filing their own schedules are included.

Rating Compacts and Agreements.—Agreements with the insured as to time the rate shall remain in effect or as to placing the whole or any part of the insurance forbidden.

Deviations.—Deviations may be made only if amended classifications are filed. Companies are permitted to adopt bureau rates in part only, or to cease to use bureau rates, but must in such case file schedules of their own.

Discrimination.—Anti-discrimination provision similar to that in the Idaho law.

Removal of Discrimination.—A somewhat elaborately stated administrative process for the removal of discrimination after notice and hearing. The usual provision that discriminations shall not be removed by increasing a rate unless the commissioner finds the increase justified. As in Idaho a double right of appeal is provided.

Rate Control.—No provisions.

Exceptions.—An exception is made as to companies which have done business in the state for five years and have confined 95% of their business to a single classification of risk exclusively.

Application.—Generally to fire insurance only. It is specifically provided that the word "exchange" or "insurer" shall mean a reciprocal exchange or a mutual fire insurance company.

Litigation.—*Ocean Acc. & Guar. Corp'n* v. *Albina Marine Iron Works,* 260 Pac. 229. As to charging of rates other than those filed.

General Ins. Co. v. *Earle,* 65 Pac. 2nd 1414. Participation plan not a deviation. There are numerous opinions of the attorney-general construing this law.

Pennsylvania

Purdon's Pennsylvania Sts. Tit. 40 secs. 53, 55, 691-702.

A bureau law, permissive in character. A company must file its own schedule of rates or be a member of a rating bureau. The sections as to examination and the power of the commissioner to require information are detached from the rest of the act.

Filing Provisions.—

(a) A company must file a schedule of rates with the commissioner or be a member of a rating bureau.

(b) The commissioner may require filing of schedules, rates, forms, rules, regulations, etc.

(c) Surveys and completed schedules are to be filed only on complaint.

(d) Deviations must be filed.

Schedule Rating.—The common provision for inspection of risks specifically rated on schedule, making and recording written surveys thereof and furnishing a copy of the survey to the owner on request.

Rate Compacts and Agreements.—

(a) The common provision prohibiting agreements to control the placing of the whole or any part of an insurance.

(b) The common provision regulating agreements with regard to the making, fixing, or collecting of any rate.

Deviations.—May be made on notice to the bureau and to the commissioner. The reason for the deviation must be filed with the commissioner. With the notice to the bureau must be filed a schedule showing the deviation. The deviation must be uniform in application to all risks in the class for which deviation is made.

Discrimination.—The ordinary form of anti-discrimination provision.

Removal of Discriminations.—No special statutory procedure for the purpose.

Rate Control.—No provisions.

Exceptions.—The act is applicable to mutual fire insurance companies and reciprocal associations only if they have filed with a rating bureau, in their application for membership, an agreement, to become subject to the provision of sections 691-702.

Application.—To insurance against fire and lightning.

South Carolina

Code, 1932, secs. 8003 et seq.

A bureau law of the type requiring every company to maintain or be a member of a rating bureau.

Filing Provisions.—

(a) The commissioner may order the filing of schedules, rates, rules, regulations, etc. The proviso is added that completed schedules of surveys shall be filed only when there is a complaint pending.

(b) Deviations must be filed.

(c) Affidavits must be filed when a rate is requested to meet competition.

Schedule Rating.—The usual provision as to inspection of risks specifically rated on schedules, making written surveys and recording the same, and furnishing copy to owner on request. A provision is added that a written survey furnished by a rating special agent shall be deemed sufficient compliance with the section.

Rate Agreements and Compacts.—

(a) The usual provision against agreements designed to control the placing of the whole or any part of an insurance.

(b) The usual provisions as to agreements with regard to the fixing, charging or collecting of any rate.

(c) Prohibition of agreements with agents not to write insurance in non-bureau companies. Prohibition of company agreements not to deal with agents who write insurance in non-bureau companies.

Deviations.—May be made on notice to the commissioner and bureau, and filing the variation from the bureau rates, which shall be uniform throughout the territorial classification. A company is permitted to make uniform variations from the bureau rates. Approval of the deviations is not required.

Discrimination.—The usual prohibition against discrimination. To this is added a very unusual provision permitting a company to file affidavit as to the existence of competition with a non-license or unauthorized company, and requiring the commissioner to grant permission to make a rate for the specific risk to meet the competition.

Removal of Discrimination.—The usual provision for administrative removal of discrimination after notice and hearing. A provision is given for a reviewal of orders by a special board of three members, known as the South Carolina insurance commission.

Rate Control.—The common provision for ordering general reduction in cases where the compiled experience for five years shows an excessive profit. The reduction is to be

applied to such class or classes as the bureau may elect, and it is provided that companies shall not be required to reduce rates in classes that have not shown a reasonable underwriting profit for the five year period. It is specified that consideration be given the conflagration hazards within and without the state. An appeal lies to the South Carolina Insurance Commission, and thence to the court.

Exceptions.—

(a) Mutual fire companies operating on the investment plan.

(b) Property protected in whole or part by automatic sprinklers and insured in connection with an inspection service.

(c) Rolling stocks of railroad companies and other common carriers.

(d) Property of common carriers used or employed in business of carrying freight, merchandise, or passengers.

(e) A provision that the act shall not be construed to prohibit contracts to the installation of automatic sprinklers and containing provisions for obtaining a guaranteeing insurance against loss or damage by fire or water for a specified time and at a fixed rate.

Application.—To insurance against fire and lightning.

South Dakota

Code, 1939, secs. 31-3701 et seq.

This is a fragment of a bureau law, permissive in character. Companies are required to report membership in bureaus, and bureaus are required to file data as to organization, maintenance and operation, and are subject to an examination.

Filing Provisions.—The commissioner may require the filing of schedules, rates, forms, rules, regulations, etc.

Schedule Rating.—The usual provision as to inspection of risks specifically rated on schedule, making written surveys and recording same, and furnishing copy to owner on request.

Rate Compacts and Agreements.—An unusual prohibition against compacts for the purpose of making, establishing or maintaining a general flat advance or reduction of state-wide basis rates, terms, estimates, or conditions affecting the cost of premium of fire, lightning and tornado insurance or city, town, village or county property situated in the state, except such agreements as may be filed with and approved by the commissioner. It is provided that appeals may be withdrawn, and that any order of the commissioner may be appealed from.

Discrimination.—The usual prohibition of discrimination.

Exceptions.—County or township mutual companies are accepted.

Application.—Fire, lightning and tornado insurance.

Tennessee

Williams' Code, 1934, secs. 6176-6178.

A brief provision, making prohibition of discrimination, the provision following the usual fire form. It is implemented by the provision authorizing the commissioner to require the filing of schedules, rates, forms, rules, regulations, etc. and by a penal provision. It applies to fire and casualty companies and to insurance "against the risks of fire, lightning or windstorm, casualty or indemnity contracts."

Texas

Vernon's Texas Statutes, 1936, Art. 4878 et seq.

This is not a bureau law. Rates are fixed, determined and promulgated by the state insurance commission. The various points as to rating matters may be taken in the order in which they come.

(1) The commissioner has sole and exclusive authority to "prescribe, fix, determine and promulgate" the rates of premium to be charged by fire insurance companies with power to change same. The commission is required to ascertain the annual fire losses and amount of premiums collected, in such manner as to enable it to determine equitable rates, methods of reducing losses and reducing rates.

(2) The rates promulgated are maximum rates. Companies may write insurance at less rates, but not at greater, but if they write at less rates, the rates charged must be applicable to all risks of like character in the community.

(3) The law applies to all companies issuing contracts or policies of insurance against loss by fire on property within the state, whether the property is fixed or removable, stationary or in transit, or whether billed for shipment to another state or country. It includes the shore end of marine risks insured against loss by fire.

(4) The commission has large powers to require various kinds of information from companies, their officers and agents, to make visitations and examinations, require production of books and documents, and take testimony under oath.

(5) Rates are required to be reasonable. Schedules shall show all charges, credits, prvileges, terms and conditions affecting rates. Copies of schedules are to be furnished to companies and to citizens of the state at court. Rates take effect on the entering of an order, and notice is required to be given to companies affected. The commissioner and any inspector, who shall inspect any risk for rating purposes is required to furnish the owner at the time of inspection with a copy of the report, showing all defects that may operate as a charge to increase the rate.

(6) Companies issuing policies are required to furnish the policyholder with a written or printed analysis of the rate. Every local agent of a company is required to have and exhibit to the public copies of the schedules covering risks on which he is authorized to write insurance.

(7) The commission may change any rate on 30 days notice, or prescribe that it may be in effect for a limited time. When no rate is fixed by the commission, companies may determine the rate, notify the commission thereof, and the rate collected, which is subject to review by the commission.

(8) *Companies may petition for changes in rates.*

(9) The commission has authority to give cities, towns, etc. credit for hazards removed and for added fire equipment, and to give credit for good fire records.

The commission may compel companies to give policyholders credit for hazards removed, and make proportionate returns of unearned premiums.

(10) Rates are revised by the commission on 30 days' notice. No policy in force prior to the changes is affected thereby.

(11) The commission is required to give hearings as to rates on complaints by citizens, policyholders, insurance companies or civic associations or civil authorities. There are extensive provisions as to giving notice, holding hearings, issuing orders and giving rights of appeal.

(12) Companies are required to write insurance in accordance with the terms of the law. If writing at less than the established rates, they must furnish the commission with an analysis of the rate. Rebates and discriminations are prohibited.

(13) Companies may make rules and regulations for collection of their rates. Bona fide extension of credit is not a discrimination.

(14) Exception is made of purely mutual and purely profit-sharing domestic fire insurance companies not carried on for a profit, nor to purely cooperative inter-insurance and reciprocal exchanges, not carried on for profit.

(15) The law applies to insurance against lightning, tornado, windstorm and hail as well as fire, with the exception of insurance against loss by hail or on farm crops, flood or rising water.

Vermont

Public Laws, 1933, c. 281, secs. 7118 et seq.

A general bureau law, compact and quite complete. Bureaus which make rates for more than one underwriter, including surety bonds, must file with the commissioner a document pertaining to their organization, their business address and a list of their members. The commissioner has authority to visit and examine.

Filing Provisions.—Filing of rates is to be made with the commissioner as he may call therefor.

Schedule Rating.—Organizations are required to keep records, to furnish to insured or agent full information as to rates, and if property or risk be rated on schedule, a copy of the schedule. Provisions are annexed for granting hearings on applications for changes in rates.

Rate Compacts and Agreements.—Rating organizations are prohibited from charging fees to licensed brokers, or from refusing to do business with a broker because he will not agree to secure insurance only at the rates fixed by the rating organization or the parties to an agreement.

Deviations.—No provisions.

Discrimination.—A general prohibition of fixing or charging rates that discriminate unfairly between risks of essentially the same hazards, with the usual fire form of anti-discrimination law added for fire risks.

Removal of Discriminations.—A simple form of administrative procedure for the removal of discrimination after a hearing. Discriminations are not to be removed by increasing rates unless it appears to the commissioner's satisfaction that the increase is justifiable.

Rate Control.—A person aggrieved by any rate may complain to the commissioner, who shall call a hearing before a board consisting of himself, the auditor of accounts and a third party named by the bureau or other person making the rate. If the board finds the rates charged are excessive, they are empowered to fix a reasonable rate, binding on all companies doing business in the state.

Exceptions.—(a) Life insurance, (b) marine and transportation risks and hazards other than the automobile insurance line, (c) insurance on property or risks outside the state.

Application.—To all other than the above.

Virginia

Code 1936, secs. 4314 (1) et seq.

A bureau law of the single bureau type. It was enacted in 1928, replacing an earlier law enacted in 1920. Supervision is in the state corporation commission. The law applies generally to all fire insurance companies and to all lines written by such companies except marine and transportation risks, and automobile fire and theft. Provision is made for the organization of the Virginia Insurance Rating Bureau. Government is vested in the members. By-laws, rules and regulations are subject to approval by the corporation commission. The office is required to be in Richmond, Virginia, with branch offices located elsewhere with the approval of the corporation commission.

Filing Provisions.—

(a) No rate, premium charge, schedule, rating method, rule, by-law, agreement or regulation shall become effective or be charged, applied or enforced by a bureau or a company until it shall have first been filed with and approved by the corporation commission. Rates produced by approved schedules may be used pending such approval.

(b) Deviations must be filed and approved.

Schedule Rating.—The usual provision for the inspection of risks rated on schedule, making written survey and recording same, and furnishing copy to the owner on request, without expense to such owner. To this is added a provision for keeping a permanent record and permitting the use of surveys in the possession of the bureau instead of making new surveys.

Rate Compacts and Agreements.—Agreements for making, establishing and collecting rates must be in conformity with the act.

Deviations.—Must be filed with the bureau and approved by the corporation commission. Must be uniform in application to all risks in the class for which variation is made.

Discrimination

Removal of Discrimination.—The commission is empowered after investigation to order removed any discrimination existing between individual risks, classes of risks, or territorial classes of risks or territorial classifications.

Rate Control.—(a) Rates may not be used until filed with and approved by the corporation commission. Rates may be in accordance with an approved schedule may be used pending approval.

(b) Provision is made for investigation of the necessity of a general reduction of rates. If the commission finds that the rates charged over a period of five years are producing a profit in excess of what is reasonable, the commission shall order such reduction of rates as will produce a reasonable profit only. The commission is empowered to consider all phases of business within and without the state. A reduction order shall be applied by the companies subject to the commission's approval. If the companies do not within

30 days submit a classification or classifications which meet with the approval of the commission, it shall apply the reduction in such manner as seems just and equitable.

Exceptions.—No exception as to kinds of companies. Exceptions as to kinds of business are:

(a) Marine insurance, other than shore marine.

(b) Transportation insurance, other than automobile fire and theft.

(c) With approval of the corporation commission, companies insuring flour mills, grain elevators, lumber yards, lumber mills, in connection with an inspection service, may file rates and schedules applicable thereto directly with the corporation commission and not through the bureau.

(d) Provisions of acts do not apply to risks protected in whole or part by automatic sprinklers and insured in connection with an inspection service. A special provision for reports as to such risks is made, and provision for excluding experience from such risks in rate determinations.

Application.—To insurance against all hazards insured by fire insurance companies, except as above.

Litigation.—*Aetna Ins. Co.* v. *Com.,* 169 S.E. 859

Washington

Remington's Revised Sts. (1940 Pocket Part) secs. 7118, 7119-7119d.

An old rating law, dating from 1911, and amended in 1915, was redrafted in 1935, and the first section amended in 1939. There are really two laws, one general in character, the other applicable to fire insurance. Both are bureau laws of the permissive type.

Sec. 7118 applies to all companies except life, accident and health and marine insurance companies. It contains two regulatory devices only; a filing provision and a provision for control of deviations.

Filing and Approval Requirements.—Every company with the exceptions noted, must, as to any business it transacts, file with the commissioner to be approved by him before being made effective, its policy forms, rules, and rating schedule, or it may adopt entirely the advisory rates of any rating bureau organized as provided in section 7119.

A company that has maintained and used in the state its own forms, rules and rating schedules may maintain the same, or amendments thereto, as to the particular class or classes covered by such forms, etc., and adopt the advisory rules and rates of a bureau as to the balance of the class or classes of its business. A company that has not been authorized or has not transacted business in this or any other state for at least five years prior to January 1, 1939, is not permitted to file its own forms, rules and schedules but must be a member of or subscriber to a rating organization until it has had an experience of five continuous years.

Deviations.—Companies and their agents must observe the policy forms, rules and rating schedules as filed, and must not amend the same or deviate from them except as provided. Companies which adopt all or any of their own rating schedules must not amend or correct the same until the amendments have been filed at least fifteen days and have been approved by the commissioner.

Companies which adopt all or any of the advisory rates of a bureau must file written notice of such adoption, and shall not deviate therefrom until after 30 days notice to the commissioner and approval by him.

(a) Approvals may not be granted unless the financial condition of the company and the general experience of all companies over a period of not less than five years warrants the deviation.

(b) No deviation shall be approved for a company having less than five years experience in this or some other state, if it is greater than any deviation in effect.

(c) Deviations must be by uniform percentages of increase and decrease applicable to all rates on all classes adopted by the company, and shall continue in force without change for one year after approval.

Section 7119 applies to fire insurance only. The bureau provisions are similar to those in Idaho and Oregon, i.e., The bureau must be organized and maintained by residents, is regarded as public service in character, etc. The act contains no stamping provisions; though the prohibition against stamping of policies formerly in the Washington law does not appear in the amended form. The law is permissive in character.

Filing Provisions.—Bureaus must before publishing or furnishing any rates, file their rating schedules in the office of the commissioner, and must not vary therefrom until amended or corrected schedules have been filed and approved. Carriers are forbidden to make rates not in accordance with filed schedules. Provision is made for annual filing of experience of premium writings and losses by classifications approved by the commissioner.

Discrimination and Rate Control.—Companies and bureaus are forbidden to fix or make any rate or schedule of rates which is excessive, inadequate, unjust or unreasonable, or which discriminates unfairly between risks and the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazards, having substantially the same degree of protection against fire. Administrative process for proceeding on notice and hearing in case of rates which in the opinion of the commissioner are excessive, inadequate, unjust, unreasonable or unfairly discriminatory. The commissioner has power to order the "discriminations" removed. An appeal is provided.

The intent of the law, and the provisions of section 7118 indicate a power in the commissioner to approve or withhold approval from rate filings as made.

Litigation.—See *State* ex rel. *Northwestern Nat'l Ins. Co.* v. *Sullivan,* 35 Pac. 2nd, 24, 25.

West Virginia

Code 1937, sec. 3370 et seq. Supp., 1941 for amendment to sec. 3379.

A bureau law, dating from 1913, much amended and in need of a careful revision. The bureau provisions are somewhat numerous (a) the greater part of the law relates to rating bureaus. A company must maintain or be a member of a rating bureau. The usual provisions as to such bureaus are included. (b) Section 3379 as amended required all companies to be members of "a statistical or actuarial service bureau." Provisions as to such bureaus follow in a general way those of rating bureaus but curiously, while ordinary rating bureaus are not required to maintain a local office, statistical and actuarial service bureaus are. (c) Adjusters and adjustment bureaus serving more than one insurer are required by Section 3380 to make adjustments for all companies making request therefore on a pro rata charge basis.

Filing Provisions.—

(a) A rating bureau is required to file with the commissioner a copy of its articles of association and by-laws, and any and all schedules used in making rates. It is also required to file the table or base rates used in each town in the state, and all regulations and rules.

(b) There is the common provision for addressing inquiries as to organization, etc. and authority to require the filing of schedules, rates, forms, rules, regulations, etc. Completed surveys and schedules are to be filed only when there is a written complaint.

(c) Changes in schedules, rules, regulations, contracts and agreements must be filed with the commissioner, who is required to order a hearing, and at the conclusion to enter an order setting forth his "findings." A court review is provided.

(d) Deviations are required to be filed.

Schedule Rating, etc.—

(a) The common provision for inspection of risks rated on schedule, making written survey and recording the same, and furnishing a copy to owner on request, without cost.

(b) In addition, bureaus are required to file in the office all flat rates.

(c) The commissioner is authorized to order resurveys.

Deviations.—Deviations are required to be filed with the bureau and the commissioner, together with schedules providing for such deviation. The deviation must be uniform as to all risks in the class for which variation is made. No approval is required. All carriers are permitted to make "uniform deviations by schedule percentage reductions" in the specific rates of any bureau of which they are members, and bureaus may not make rules which interfere with the making of such reductions.

Discriminations.—The common prohibition of discriminations.

Removal of Discriminations.—There are two provisions for removing discriminations; one in section 3373 which is properly a rate control provision and one in section 3378 the usual administrative provision for removal of discriminations on motion and hearing, with appeal provision and provision for refunding of overcharges.

Rate Control.—

(a) Provision for findings by commissioner as to changes in established schedules, rules, regulations, contracts and agreements. There is no indication that the findings are more than advisory, except for the appeal provision.

(b) After notice and hearing, the commissioner is empowered to determine that any bureau rate or rates are excessive or unreasonably high, or discriminatory, and to direct the bureau to change such rate or rates and to publish and file a rate or rates prescribed by him which are just, reasonable and non-discriminatory. Appeal to the courts, with suspension of the commissioner's order is provided, with provision for refunding of overcharges. The commissioner is given power to compel obedience to his order by mandamus, injunction or other proper court proceedings.

(c) An extremely elaborate section was added in 1939, requiring companies to be members of statistical or actuarial bureaus; regulating such bureaus, requiring carriers to transmit to such bureaus copies of daily reports of all policies written covering property in the state, and for the compilation and transmission to the commissioner, at his discretion, but not oftener than monthly, a report of gross premiums less return premiums by occupational classes, not exceeding 26, and by classification of towns. Provision is also made for reporting of losses, presumably similarly distributed. On notice and hearing the commissioner is empowered to order rate changes downward or upward in particular classes, as it appears that the results show more or less than a reasonable underwriting profit.

The commissioner is required to give consideration to the conflagration or catastrophe hazard, within or without the state, and also to degrees of public fire protection, structural standards, occupancy and exposure hazards. Court review is provided, but rates ordered by the commissioner remain in effect unless otherwise ordered by the court.

Exceptions.—

(a) Farmers mutual companies.

(b) Rolling stock of railroad companies; property in transit while in possession of common carriers; property of such carriers used or employed in transporting freight, merchandise or passengers.

(c) Properties protected by automatic sprinklers.

Application.—Apparently to fire insurance only.

Litigation.—*Aetna Cas. Co.* v. *Lawson,* 166 S.E. 811. Act does not apply to indemnity companies.

Wisconsin

Wisconsin Sts. 1939, secs. 203.23, 203.32 et seq.

A bureau law, dating from 1931, of the type requiring carriers individually to maintain or be members of an "actuarial bureau." Bureaus are for the purpose of inspection, rating risks, making underwriting rules, fire prevention rules, etc. Bureaus are required to have their offices in Wisconsin. Bureau rates are to be approved by the commissioner. If bureaus contain participating insurers, they shall be entitled to elect one member of the managing committee, and if there are as many as eight members, shall elect at least two. Bureaus must procure an annual license, and file their articles of organization, by-laws, etc., with the commissioner.

Filing Provisions.—

(a) Copies of all rating schedules, forms and underwriting rules promulgated or used by a bureau must be filed with the commissioner. Special forms need not be filed unless ordered. Rating schedules must include the basis rates and charges and credits including fire grading classifications.

(b) Deviations are required to be filed.

(c) Rates, forms, and underwriting rules are required to be filed.

(d) The commissioner may require bureaus or insurers to furnish information relating to rules, regulations, rates or underwriting experience in existence at the time the act takes effect.

Schedule Rating.—Risks specifically rated on schedule are to be inspected, and written survey made, which shall be filed in the bureau office. The survey must show basis rates

and charges and credits; copy is to be furnished the owner on request. Flat rates also are to be filed. The commissioner has authority to order rerating of any risk or class of risks, and for discharge of these duties is required to employ a qualified rater.

Stamping Provisions.—All daily reports are to be audited, and violations brought to the attention of the agent and the insurer. Failure to correct violations are to be reported to the commissioner. Each risk is to be classified by the bureau according to established classifications, including the standard fire protection grading schedule applicable thereto. Thereafter, the bureau shall stamp on the daily report of each policy the classification and grading of risks covered.

Rate Compacts and Agreements.—No fire, fire and marine and inland insurance company or its agent shall enter into any agreement, combination or compact for the purpose of establishing and maintaining rates; except such agreements as are authorized by statute, or such as may be filed with and approved by the commissioner. Such approval may be withdrawn at any time.

Deviations.—Any insurer may file a deviation upon any class of risk from the rates or from any underwriting rule established by the bureau of which it is a member. Filing must be made with the bureau and the commissioner at least five days before its effective date. Deviations on specifically rated risks must be by percentage increase and decrease and shall in all cases be reasonable and uniform in application to all risks in the same class and regional classification and unless change is authorized by the commissioner shall be effective for one year. Otherwise no insurer or agent may charge a different rate or use a different underwriting rule from those on file.

Discriminations

Rate Control.—

(a) The commissioner of insurance must file in his office the standard rating schedule of public fire protection for each city, village and town. All municipalities shall be graded and classified according to that schedule, and the commissioner after investigation and hearing may order rating of a municipality altered.

(b) General changes in basis rates of rating schedules, forms and underwriting rules are required to be notified by the commissioner to the public and to insurance companies. On request or on his own motion the commissioner may hold a public hearing and shall thereupon rule them as approved or issue a notice of disapproval. Disapproved rates, rating schedules, forms or rules are not to be used by any actuarial bureau.

(c) Schedule of rates, forms and rules are required to be reasonable, fair to the insured and the insuring public and not to discriminate unfairly between risks of essentially the same hazard and regional classification. Regional classifications shall be reasonable, and no regional classification shall be made unless it includes at least 10 adjoining adjacent counties and is first approved by the commissioner.

(d) The commissioner may on complaint or his own motion review any rate, rule or form, and must after a hearing order a change in any rate or disapprove any rule if he finds such rate or rule to be unreasonable, unfair or unfairly discriminatory. Court review is provided by a separate section (200.11) Orders are suspended pending review, with provision for refunding overcharges.

(e) Insurers are required to keep records of total insurance written and gross premiums received less return premiums and cancellations, according to standard classification and grading. Business written on deviation must be resolved into premiums based on bureau rates. Filings of underwriting experience must be filed with the commissioner or with the actuarial bureau or approved agency. Consolidated returns shall be filed by the agency with the bureau and the commissioner.

Exceptions.—

(a) Town mutuals and domestic and mutual cyclone insurance companies.

(b) Contracts for automobile insurance.

(c) Rolling stock of railroads, property in transit while in possession of common carriers, and property of common carriers used in the transportation of freight, passengers and merchandise.

Application.—To insurers by fire and lightning, windstorm and hail except on growing crops, sprinkler leakage, and when supplemental to or in combination with a policy covering direct or consequential fire, loss by explosion, riot, civil commotion, damage to other property from aircraft and self-propelled vehicles, and smoke damage.

Litigation.—*Northwestern Nat'l Fire Ins. Co.* v. *Mortensen,* 284 N.W. 13 (1938)

Wyoming

Revised Sts., 1931 secs. 57-216 et seq.

A bureau law of the type requiring each company to maintain or be a member of a rating bureau. Bureaus are required to maintain offices within the state, except that mutual companies making their own rates may maintain a bureau anywhere in the United States. The statute follows the model law quite closely.

Filing Provisions.—

(a) Rating bureaus must file with the commissioner copies of all flat rates and rates on farm property.

(b) The commissioner may address inquiries as to organization, maintenance and operation of bureaus, and may require filing of schedules, rates, forms, regulations, etc.

(c) There is a provision similar to that in Colorado for the filing of rules and regulations for writing of insurance "except such as are in force in all other states," with power in the commissioner to order same suspended.

(d) Deviations are to be filed.

Schedule Rating.—Usual provisions for inspection of risks specifically rated on schedules, making and recording a written survey and furnishing copy to owner on request without expense. This is supplemented by a provision for filing and recording flat rates and rates on farm property.

Rate Compacts and Agreements.—The common provisions against agreements relative to controlling the placing of the whole or any part of the insurance and regulating agreements as to the charging, fixing or collecting of rates except in compliance with the law.

Deviations.—Deviations must be filed with the bureau and the commissioner 15 days before taking effect. Filing must show amended basis rate and amended charges and credits, and application to individual risks. Deviations must be uniform in application to all risks in class for which made.

Discrimination.—The usual prohibition against unfair discrimination.

Removal of Discrimination.—The common administrative procedure for removal of discrimination by order after notice and hearing, with court review, and provision for suspension of order and refunding of overcharges.

Rate Control.—

(a) The commissioner has power to order certain rules and regulations suspended. Court review is provided.

(b) Provision is made for filing annual reports of premiums and losses by classifications, conforming to classifications of the National Board of Fire Underwriters. The commissioner has power to order the rates reduced, if for a five year period the returns show an aggregate underwriting profit in excess of a reasonable amount. The commissioner is required to give consideration to the conflagration hazard within and without the state. Reductions ordered are to be applied to such class or classes or risks as the bureau or bureaus may elect. There is no provision for approval of the application. A court review of the order is provided.

Exceptions.—

(a) Mutual insurance companies organized under the laws of the state.

(b) Rolling stock of railroad companies, property in transit while in possession of common carriers, property of such carriers used in transporting freight, merchandise or passengers.

Application.—Insurance against fire and lightning.

APPENDIX II

RATE-REGULATORY LAWS SPECIFICALLY APPLICABLE TO WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE *

Alabama

Code 1940, Tit. 26, secs. 309, 323.

Sec. 309.—Provides for voluntary compensation insurance by employers in insurers authorized by superintendent; partial insurances of compensation hazard specifically authorized; certain policy provisions required.

Companies must file with superintendent classification of risks, and premiums, together with basic rates and merit rating schedules; same must be approved by superintendent before use as adequate, reasonable and not excessive. Provision for preparation and mailing of copies of approved rates by superintendent to companies. Provision for filing by carriers, or by bureaus, of experience and data on which rates are calculated, at such times as superintendent may designate. In event of failure to file experience, etc., superintendent may presume rates, etc., to be excessive, unreasonable and inadequate. Power to withdraw approvals conferred. Provision securing right to issue participating policies and pay dividends.

Sec. 323.—Penalty provision for soliciting or writing insurance without complying with Sec. 309. See Opinion, attorney general, quar. rep., July-Sept., 1939, R 39. as to powers of superintendent.

Arizona

Code 1939, sec. 56-932, secs. 56-923 to 56-925.

Sec. 56-932.—Regulates insurance by private carriers. Regulatory power vested in industrial commission.

Carriers are required to write and carry all risks for which application is made, and may not cancel except with consent of employer and commission. Commission may direct cancellation of policy. Carriers are "Subject to the rules and regulations of the commission, including rates to be charged, policy forms to be used, and the method of paying compensation." (for form of policy, see 56-933)

Secs. 56-923 to 56-925.—Regulate rates for state compensation fund and state accident fund.

Arkansas

Extraordinary Session, 1939, act 319, secs. 9n, o, sec. 36 c, (see also Appendix I)

Sec. 36c.—Regulates rates for compensation carriers.

Carriers are required to secure a permit from the commissioner of insurance. The commissioner is required to approve an adequate and reasonable rate for each industrial classification, system of merit and experience rating and a minimum premium schedule. Schedule rating is to be based on relative safety conditions, experience rating solely on loss experience. Rates are to apply to all employers assigned to the several classifications, except as modified by rating plans and minimum premium schedule. No insurer is to grant any decrease, or make any increase, in rates approved by commissioner save such as may result from use of approved plans.

Insurers are required to file rates and rating plans which they propose to use. Members of a non-partizan rating bureau making rates for workmen's compensation, may adopt rates and rating plans of bureau. Rates and rating plans shall not go into effect until approved by commissioner.

Rating organizations and bureaus forbidden to make rates or schedule of rates or charge rates which discriminate unfairly between risks in state of essentially the same hazard. Provision for administrative removal of discriminations after hearing.

Provisions for hearings, summoning witnesses, production of books and papers, proceedings to compel obedience and penalty.

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* For laws other than those cited in this Appendix having possible application to workmen's compensation insurance, see for states listed below, other appendices as indicated.

Alabama, V; Alaska, V; Arkansas, I; Arizona, V; California, V; Colorado, V; Connecticut, V; Delaware, V; Florida, IV; Georgia, V; Idaho, V; Illinois, V; Indiana, V; Iowa, V; Kansas, V; Kentucky, V; Louisiana, V; Maine, III; Massachusetts, V; Michigan, V; Minnesota, V; Montana, V; Nebraska, V; Pennsylvania, V; Rhode Island, V; South Carolina, V; South Dakota, V; Tennessee, I; Texas, III, V; Utah, V; Vermont, III; Virginia, V.

Sec. 9n, o.—Relates to rating of risks in assigned risk pool. Carriers are authorized to make inspections of assigned risks for purpose of determining adequate and reasonable rates, according to rules prescribed by workmen's compensation commission. An employer may appeal to commission on ground that premium charged is unreasonable or unfairly discriminatory. On notice and hearing, commission may require carriers to adjust the premium to a rate or rates found by commission to be adequate reasonable and not unfairly discriminatory. Right of appeal to courts provided.

California

Insurance Code (Deering, 1937) secs. 11730-11742, 11820-11823.

11730-11742.—Apply to rate regulation for private insurance carriers.

11730.—Defines "merit rating," "schedule rating" and "experience rating."

11731.—Term "insurer" includes state compensation insurance fund.

11732.—Commissioner required to approve or issue as adequate for all insurers a classification or risks and premium rates relating to compensation insurance. He may approve or issue a system of merit rating. Classification and system to be uniform for all insurers.

11733.—Rating systems and classifications covering mines or mining property must provide for separation of risks and rates as to types of employment, and must, at least, make separation of rates for office, surface and sub-surface employees.

11734.—Commissioner may on hearing change any classification or system previously approved.

11735.—Classifications and system not to take account of physical impairment or dependency.

11736.—Insurers must not issue, renew, or carry beyond anniversary date any compensation insurance at rates less than rates approved by commissioner.

11737.—In application of approved system of merit rating, insurer shall show basis rates not less than approved. Reductions in rate by use of system must be clearly set forth in contracts or endorsements.

11738.—Article not to affect right to issue participating policies, but participation refunds must be made only from surplus accumulated on policies of workmen's compensation issued in state.

11739.—Makes statistics and data of industrial accident commission and state compensation insurance fund available to commissioner and requires managers and officers of fund to assist commissioner.

11740.—Authorizes commissioner to require insurers to make annual filing of loss experience.

11741-11742.—Penal provisions.

Secs. 11820-11823.—Relate to rates of state compensation insurance fund.

Colorado

Statutes, Ann., 1935, c. 97 secs. 301-303, 403-411.

Secs. 301-303.—Regulate insurance by private insurers.

Insurance must be written on forms approved by industrial commission. Insurance carriers are required to file with commission, classifications of risks, premiums relating thereto, rates and rating systems. None of these take effect until approved by commission, and commission is empowered to disapprove same as inadequate or to withdraw approvals.

Rate cutting, rebating or any methods whereby employers obtain insurance at rates lower than those fixed are prohibited under penalty.

Secs. 403-415.—Apply to making rates for insurance for state compensation insurance fund.

Connecticut

General Sts., 1930, secs. 5278, 5281.—Rates of employers' mutual insurance associations.

Delaware

Revised Code 1935, secs. 6121-6126.

Requires insurers to file with industrial accident board classification of risks, premium rates and rules, including payroll audit rules and rules for collection of premiums, together with systems of schedule or merit rating. None of these to take effect until approved by board as adequate and reasonable. Approvals may be withdrawn on ground that such classification, etc. is inadequate, unreasonable or unfairly discriminatory.

Carriers forbidden to issue, renew or carry insurance against liability for compensation, or employers' liability except in accordance with classifications, etc. approved by board.

6122.—Systems of schedule or merit rating to be uniform in application; and must be applied on inspection, and by calculation of merit deviation by a bureau or association approved by board. Schedule or merit deviations to be clearly set forth in policy.

6123.—(filing of policy forms)

6124-6125.—Anti-discrimination provision and administrative method of removing discrimination, with court appeal and provision for repaying overcharges, similar to provisions in fire bureau rating laws.

6126.—Provision for annual filing of experience of premiums and losses with board.

District of Columbia

P. A. No. 164, 73rd Congress (1934).

Requires insurers to file manual of classifications and underwriting rules with basic rates for each class, and also merit rating plans, none of which take effect until approved by the superintendent as adequate and reasonable for the group of risk to which they apply. The superintendent may withdraw his approval of any premium rate or schedule on the ground that it is inadequate or unreasonable. A court appeal is provided.

Florida

Acts 1935, c. 17481 sec. 38d.

Practically same as Arkansas Act, section 36c.

Georgia

Code, Ann., secs. 114-609, 114-613.

114-609.—Regulates rates of insurance carriers. Rates charged to be fair, reasonable and adequate, with due allowance for merit rating, and all risks of the same kind and degree of hazard must be written at same rate by same carrier. Basic rates for policies against liability for compensation to be filed with commissioner for his approval. No policy shall be valid until basic rates have been approved, nor if they have been subsequently disapproved. Plans for modification of basic rates by physical inspection or experience or merit rating to be filed and approved.

Commissioner has power to gather statistics and information. Provision made for arrangements with department of public relations for advice and statistical assistance, taking testimony and reporting. Commissioner authorized to take into consideration income and earnings from any source whatsoever.

114-613.—Relates to assignment of rejected risks. Provides that standard policy shall be used at the rate prescribed by the insurance commissioner.

Idaho

Code 1932,—43-1713.

No regulation of rates for private insurance carriers. Citation given regulates rates for state fund.

Illinois

No regulation of rates for compensation insurance or for insurance under occupational disease act.

Senate Bill 365, Session of 1937, secs. 3a, 7.—Rejected risks.

Section 3a.—Makes reference to "a rate or rates reasonably commensurate with the risk."

Section 7.—Provides that an employer whose risk is assigned under the statutory plan may appeal to the industrial commission on the ground the premium charged is not reasonable or is unfairly discriminatory. On notice and hearing the commission, if it disapproves the premium charged, shall direct the carrier to adjust the premium at a rate or rates found by the commission to be adequate, reasonable and not unfairly discriminatory.

Indiana

Burns' Indiana Statutes 1933, Title 39 c.30 (c. 323, Acts of 1935, am. c.167, laws 1941)

A bureau law, of the compulsory type establishing the Workmen's Compensation Rating Bureau of Indiana of which all carriers are required to be members. The law provides for representation of stock and non-stock carriers on all committees. Provisions are made for organization, management, membership, and apportionment of costs.

The insurance department has powers of supervision, investigation, examination, etc.; but must consult with industrial board in approving classifications, premiums and rates. Board is required to furnish department information and make its records available.

The bureau is required to procure an annual license from the department. Carriers must file with the department written authority permitting the bureau to act in their behalf and an appointment of the insurance commissioner as agent to receive service of process.

The bureau's duties with regard to rates are (1) the establishment of minimum premiums. (2) making of classifications and inspections. (3) application of schedule or merit rating system. (4) making reports to the commissioner.

Rate Regulatory Provisions are:

(1) The department must approve a maximum premium rate for each classification. Carriers may charge a premium rate less than the maximum, but may not charge more unless the department, on showing that the rate is inadequate for a particular risk, shall establish a rate for the risk in excess of the classification rate.

(2) The department must establish maximum limits of expense to be included to in the rates. Every carrier must file its expense loading, which must be approved before becoming effective.

(3) The department must approve a system or schedule or merit rating for use in the state. No system other than the one approved shall be used by bureau members. Effect of using the system shall be given consideration in determining rates.

(4) The department may require survey and report in case of complaints.

(5) The department may withdraw approvals of any rate or classification.

(6) Physical impairment of employees not to be taken into account.

(7) Department may make an experience rate for any employer, and change or revoke same. 30 days notice thereof to be given to bureau.

(8) Department to approve classifications, rules and regulations.

(9) Where doubt exists as to proper classification and maximum rate, risks may be insured subject to establishment of rate and classification by department and bureau.

(10) Payroll audits to show division by classification and be correct as to amount, must be reported to department which has authority to verify same.

Rejected Risks (Secs. 3033-3043).

Premiums to be fixed by bureau. Carriers may make inspections for determining rates for renewals. Renewal rates shall be made in consideration of risk's experience for latest 5 years and most recent bureau inspection. Rates are subject to department's approval.

Iowa

No rate regulation. Iowa is an anti-compact state, and all rates published for Iowa are published as advisory. See Appendix I for Iowa law as to short rate table.

Kansas

General Statutes 1935 sec. 44-560.

(1) Charges for insurance for insurance under act and against liability of employers rejecting act to be fair, reasonable and adequate, with due allowance for merit rating.

(2) 30 days after section becomes effective, carriers must file with commissioner classification of risks and premium rates relating thereto, and system of schedule or merit rating. The commissioner then must hold a hearing and within 60 days approve or issue as fair, reasonable and adequate for all insurance carriers a uniform classification of risks and rates relating thereto, and in his discretion a uniform system of schedule or merit rating.

On hearing the commissioner may subsequently make modifications, or issue new classifications, rates and rating plans.

(3) Carriers must not issue, renew or carry insurance at rates which are less than rates approved or issued. They may however apply approved rating plans using basis rates no less than those approved or issued, but additions or reductions in rates resulting therefrom must be clearly set forth in the policy or endorsement thereto. (As written, this is a minimum law; but deviations upward are in practice not permitted.)

(4) It is specified that act does not affect participation plans or dividends.

(5) Act does not apply to insurance on reciprocal or mutual plan; but such carriers must use classifications approved by the commissioner, and they may not charge rates less than the rates approved by the commissioner.

(6) Rejected risks may be written at a rate promulgated by the bureau and approved by the commissioner, after a hearing and a declaration that an emergency exists.

Kentucky

Carroll's Kentucky Statutes 1936 secs. 4955, 4982-4983 (relating to rates, etc. of Kentucky Employers Insurance Association).

Sec. 4955.—Applies to all insurance carriers, and to both workmen's compensation and employers' liability insurance.

(1) Rates shall be fair, reasonable and adequate, with due allowance for merit rating. All risks of same kind and degree of hazard shall be written at the same rate by the same carrier.

(2) No policy of insurance under this act shall be valid until the rate has been approved by the workmen's compensation board. No carrier shall write any policy or contract until its basic and merit rating plans have been filed with, approved and not subsequently disapproved by the board.

(3) Provision for reporting experience to state insurance commissioner, with authority in commissioner to make inspections of records and examine company officers, etc., under oath.

Louisiana

Dart's Louisiana General Statutes, 1939, secs. 4277 et seq. See also *Administrative Code of 1940, Act 47, Acts of 1940.*

The first named act set up the Louisiana Casualty and Surety Rating Commission, consisting of two appointed members and the secretary of state. This was transferred by the second act to the department of state, in which is set up a board of insurance.

(1) The commission is charged with the duty of determining and filing adequate and reasonable rates to be charged on "all casualty, surety, fidelity, guaranty and bonding risks located in this state." Rates not to be discriminatory. Rules and regulations for application of same to be made by bureau.

Commission is required to take into consideration experience of the several classes of insurers, broad enough and over a period long enough to insure determination of just, adequate and reasonable rates.

(2) Report provided for, showing by customary classifications, and on each class of risks, total premiums received less return premiums and reinsurance, and losses and expenses incurred. This report is to be made annually. Secretary of state has authority to review and examine returns made, examine books and records, etc.

(3) Rates fixed are mandatory, and carriers must write in accordance with rules and regulations adopted by the commission. Any carrier may apply for a hearing on any rates so fixed. Changes ordered by the commission not to be retroactive.

(4) Carriers must file agreements to abide by and comply with established rates, rules and regulations and to pay assessments levied for maintenance of commission.

(5) Any carrier may file an application for a uniform reduction or deviation by schedule from the rates on all risks of any particular class or classes, but reduction shall be uniform on all such classes throughout the state.
The commission may approve same in whole or in part, if it deems such schedule or changes or amendments thereto fair and just to the people of the state, compensatory to the insurers doing business in the state and in line with rates of insurance charged by said insurers in other states, taking into consideration all factors of the cost of insuring. When approved, revised rates constitute authorized rate for carrier.

(6) Administrative process for ordering adjusted rates that are excessive or unfairly discriminatory.

(7) Provision for court review.

(8) Discriminations and rebates prohibited.

(9) Commissions paid by each company to agents to be uniform and equal as to all classes of agents throughout the state.

(10) Commission not to make contracts or agreements as to placing of whole or any part of any insurance.

(11) (Provisions for assessment of carriers for payment of expenses of commissions, and for penalties.)

Maine

Revised Statutes 1930 c.55 sec. 6, II.

Each carrier to file classification of risks and premium rating, and any subsequent proposed classification, none of which shall be effective until approved as adequate for risks to which they apply.
Commissioner may require filing of specific rates, including classifications of risks, experience or other rating information, and may make investigations before giving approval and permitting rates to be promulgated.
Commissioner may withdraw approval and approve a revised classification of risks or rates.

Maryland

Flack's Annotated Code, 1939, Art. 101, secs. 17-19 (relating to rates of state fund).

Section 30, (relating to compensation insurance generally), provides:

(1) That the commissioner shall have authority to determine the adequacy of premium rates.

(2) That the commissioner shall have authority to require insurance companies to establish and maintain adequate rates to cover respective risks to which their policies are applicable.

Massachusetts

General Laws 1932 c.152 secs. 52, 52a (Generally applicable) *53* (applicable to mutual liability insurance companies) *65j, 65k* (Rejected risks).

Sec. 52.—Provides that company insuring compensation shall file with the commissioner of insurance its classification of risks and premiums relating thereto and subsequent proposed classifications and premiums, which shall not take effect until approved by the commissioner as adequate and reasonable for risks to which they apply.
Provision for court review and for withdrawal of approvals.

Sec. 52a.—Requires carriers to file agreement that they will include in their classifications of risks and premiums submitted for approval a proposed premium of insurance for silicosis benefits, which in case of granite industry shall not exceed 6% of payroll.

Sec. 53.—Permits mutual carriers with approval of commissioner to distribute risks into groups and fix premiums, dividends and assessments in accordance with experience of group.

Secs. 65j, 65k.—Provisions similar to those in Illinois law covering rejected risks: providing for company inspections of risks for determination of rates which will be adequate and reasonable, and providing for administrative process on appeal of an employer to the commissioner: for adjusting a premium to a rate found by the commissioner to be adequate, reasonable and not unfairly discriminatory. Rates determined are effective as of date of policy and binding on insurer and employer.

Michigan

Compiled Laws 1929, c.150 secs. 8465-8467 (Rates of state fund) *sec. 12637-12640* (*General*). (*Michigan Sts. Ann., c.150, secs. 17-200 et seq., c.242, secs. 24-511 et seq.*)

Secs. 12637-12640.—Apply to insurers against employers liability and workmen's compensation.

(1) Carriers must file with insurance commissioner of insurance classifications of risks and normal premiums relative thereto with any and all reasonable percentage of allowance above or below normal premium for increased or diminished hazards. The classifications, etc. so filed shall be those used by carrier until changed. (No approval required.)

(2) Carriers not to fix any classification or allowance or charge any premium which is unreasonable or which discriminates unfairly between risks in the application of like charges or credits, or which discriminates unfairly between risks of essentially the same hazards and having substantially the same protection against accident.

(3) Deviations of insurer from classifications, etc. filed with commissioner must be uniform in application to all risks in class for which deviation is made, and no deviation shall be made unless notice thereof is filed with commissioner 15 days before it is in effect.

(4) Administrative procedure before a board consisting of the state banking commissioner, the attorney general and the commsisioner of insurance, for the removal of discriminations. Court appeal with provision for refunding of overcharges provided.

(It will be noted that there are distinct similarities between the above and certain provisions of the Delaware Law. *De facto,* rate regulation exists in Michigan to a degree not indicated by the above.)

Minnesota

Mason's Minnesota Statutes 1927, 1940 Supp., secs. 3612-3634, sec. 4289-1.

Secs. 3612-3634.—Set up a special supervisory board, known as the compensation insurance board, consisting of the commissioner of insurance, a member of the industrial commission and a third appointive member; also a bureau of which all compensation insurance carriers are required to be members.

The board's duties with respect to insurance rates are:

(1) To approve a minimum and adequate and reasonable rate for each classification under which business is written. The board is required to make use of experience and other "helpful information." The board is required to approve a system of schedule merit and experience rating. No system other than the one approved is to be used.

(2) The board may require a survey and report by the bureau of any risk as to which complaint is made. The board may withdraw approvals of a rate or classification on 10 days' notice.

(3) No classification shall be effective until approved by the board. No rule or regulation filed by any insurer or the bureau shall be effective until approved.

(4) Insurance covering part of the risk of self-insured employers must be approved by the board.

(5) When the board is in doubt as to the proper classification or rate for a risk, insurance may be bound, subject to rate and classification to be established hereafter.

(6) The board may review acts of insurers, bureau and agents and make findings and orders requiring compliance with act. Notice, hearing, and court review provided and procedure regulated. (As to payroll audits, see *infra.*)

Bureau Provisions are:

(1) The bureau is a non-partizan bureau with balanced committees, tie votes to be

decided by the board. The act requires all carriers to be members: provides for organization, admissions to membership, charges and services, expenses, obtaining an annual license, rendering annual statements and examinations.

(2) The bureau is required (a) to assign risks to classifications, (b) to inspect and make written surveys of risks rated on schedule and keep same on file, (c) to give information as to classifications, etc. to all insurers at same time, (d) to furnish a copy of written survey with approved classifications and rates to the insurer of record, and on request, and, for a reasonable fee, to other insurers.

(3) The carriers are required to file a copy of every payroll audit with bureau, which checks same as to classification and rate. The board may require the bureau to file with it any such copy, and may verify same by reaudit or other means, and on complaint is required to do so.

(4) Provisions are made for keeping of records, for furnishing to an employer information as to surveys made, and methods of computing charges and credits, for granting hearings and for appeals from such hearings to the board: and for supplying the board with information.

Carriers' duties are:

(1) Carriers must not charge rates which discriminate unfairly between risks or classes, or in the application of like charges or credits in rating plans: or by granting to any employer insurance against other hazards at less than its regular rates.

(2) Carriers are required, except as otherwise ordered, to file their rates with the board, and all changes therein. Such rates are not effective until approved by board, rates filed and approved may not be changed until a substituted rate has been filed at least 15 days and has been approved.

(3) Carriers are required to write insurance at bureau rates approved by the board, with such modifications as are produced by approved rating plans, applied by the bureau. Reductions or increases produced by plans must be set forth in the policy.

Secs. 3634-1 to 3634-4.—Set forth a plan for assigning rejected risks. The initial premium for such risks is fixed by the bureau.

Sec. 4289-1.—Prohibits rates which discriminate against employees because of physical handicaps.

Mississippi

No compensation act.

Missouri

Missouri Sts., Ann., sec. 3327.

Same as Kansas, Sec. 44-560.—In Missouri, however, the rates approved by the superintendent are true minimum rates. It will be recalled that fire rates permit deviations downward but not upward unless approved. The contrary policy in compensation is noteworthy.

Montana

No rate regulation for private insurers. For rates of state fund, see *secs. 2990 et seq.*

Nebraska

Nebraska is an anti-compact state. There are no laws regulating rates, and rates computed for Nebraska are promulgated as advisory. For regulation of rates of mutual liability associations, see *Compiled Statutes 1929, secs. 44-1313, 44-1318, 44-1317.*

Nevada

Monopolistic state fund state. For regulation of rates, see *Compiled Laws 1929, secs. 2702-2703. (Supp. 1931-1941, sec. 2703.)*

New Hampshire

Public Laws, 1926, c.279 secs. 4-9.

Applies to all insurers covering liability under the compensation act.

(1) Every insurer must file with the insurance commissioner its classification of risks and premium rates, together with basic rates and schedule or merit rating plan, if used, none of which shall take effect until approved as just, reasonable and adequate for the risks to which they apply.

(2) Commissioner may withdraw approval of any rate or schedule.

(3) Insurers shall not issue, renew or carry insurance at rates greater, less or different than those approved.

(4) Systems of schedule or merit rating may be applied only by a regional rating board approved by the commissioner.

(5) The adjusted rate must be clearly set forth in the insurance contract or in an endorsement.

(6) Penalty provision.

New Jersey

Revised Statutes 1937, secs. 34: 15-88—34: 15-91.

Applies to all carriers of workmen's compensation and employers' liability.

Commissioner's Duties.—

(1) Carriers are required to file with commissioner of banking and insurance classification of risks and premiums and rules, together with basic rates and system of merit or schedule rating. The same may not be used until approved as reasonable and adequate for the risks to which they respectively apply.

(2) Commissioner may withdraw approval.

(3) Commissioner is authorized to create, organize and supervise a rating bureau.

(4) No carrier to write insurance except in accordance with rates, classifications, rules and rating plans approved by commissioner. Departures from basis rates by use of rating plans to be clearly set forth in insurance contract or endorsement.

Bureau.—

The compensation rating and inspection bureau was originally organized under *Laws 1917 c.178 p. 552.* Its duties are:

(1) To establish and maintain rules, regulations and premium rates and equitably adjust same after inspection.

(2) To adopt means for assuring uniform and accurate audit of payrolls by auditor's appointed by bureau with approval of commissioner or by other approved means.

(3) To furnish to members or to an employer information as to rating, and to encourage accident reduction through approved merit or schedule rating differentials.

All companies are required to be members of bureau; each company is entitled to one representative and one vote. Burau has authority to adopt rules and regulations and to provide income.

The commissioner appoints a special deputy to be chairman of the bureau and all officers, members of committees and employees are subject to his ratification and approval.

Actuary.—

The commissioner is authorized to employ an actuary and assistants; to compel production of books, etc. to enable actuary to compile statistics for determining pure cost of insurance; and to verify payroll records, policies, etc. of any employer.

Information in possession of actuary is available to bureau for use in fixing rates.

New Mexico

No provision: but see Appendix I for filing provisions.

New York

See Appendix I for regulation of rates, and rating bureaus; including special provision for compensation rates.

See *Consolidated Laws c.67 sec. 89* for rates of New York state fund.

North Carolina

Public Laws, 1929 c.120, sec. 73a. (Code 1939, sec. 8081 cccc).

Sec. 73a.—Applies to all carriers of compensation insurance. Rates must be fair, reasonable and adequate, with due allowance for merit rating.

All risks of same kind and degree of hazard must be written at the same rate by the same carrier.

No policy shall be valid until its rate has been approved by the commissioner. No carrier shall write a policy until its basic and merit rating schedules have been, filed with, approved, and not subsequently disapproved by, the commissioner of insurance.

C.279 Public Laws 1931. (Code 1939, secs. 8081 ffff, gggg).

This act establishes the compensation rating and inspection bureau of North Carolina. All carriers of compensation insurance must be members of the bureau. Each member is entitled to one representative and one vote. The governing committee is to be composed of equal representation by participating and non-participating companies.

Provision is made for the adoption of rules, and regulations and for meeting expenses. The commissioner of insurance or the deputy is the presiding officer at meetings of the governing committee, etc. and has authority to resolve the votes.

The commissioner has authority to compel carriers to produce data necessary for bureau's use in compiling and promulgating rates.

The bureau's functions are:

(1) Compilation and promulgation of rates, which must be approved by the commissioner.

(2) To maintain rules and regulations and fix premium rates, and equitably adjust same on inspection.

(3) To furnish on request of employer information as to rating, including method of compilation; and to encourage accident reduction through differentials of approved systems of merit or schedule rating.

(4) To make surveys of risks rated on schedule; but not to describe items or make recommendations for accident prevention.

North Dakota

Monopolistic state fund law. For rates of state fund, see *Compiled Laws of North Dakota, Supp. 1913-1925, sec. 396a.* Also *Laws 1937, c.178, sec. 4* (volunteer firemen).

Ohio

Monopolistic state fund law. For rates of state fund, see *Page's Ohio Central Code, secs. 1465-53, 53a, 1465-54, 1465-55, 1465-63, 1465-104.*

Oklahoma

See Appendix I.

Oregon

Monopolistic state fund law. For rates of state fund, see *Code 1930, secs. 49-1824 to 49-1825, sec. 49-1841. (Oregon Compiled Laws, Ann., 102-1737 to 102-1739, 102-1741 to 102-1747.)*

Pennsylvania

Act. 284, Laws 1921 sec. 654, am., Act No. 256, Laws 1941. (Purdon's Pennsylvania Sts., Tit. 40, sec. 874.)

(1) The classification of risks, underwriting risks, premium rates, and schedule or merit rating plans for compensation insurance are proposed annually by "one or more" rating bureaus, situate within the commonwealth, subject to supervision and examination by the insurance commissioner, and approved by him as adequately equipped to compile rates on an equitable and impartial basis.

(2) Schedule or merit rating plans are to be applied only by the approved bureau or bureaus.

(3) No employer is to be discriminated against or penalized because of physical impairment or any employee or number of dependents.

(4) No classification, rule, rate or rating plan is to take effect without the consent of the insurance commissioner. Approval may be withdrawn if he holds same inadequate or unfairly discriminatory.

(5) Neither state fund nor any other carrier shall issue, renew or carry any policy except in accordance with classifications, rules, rates and rating plans promulgated by bureau for the risk and approved by the commissioner for such insurer.

(6) A provision is newly added for a court appeal from rulings of the commissioner.

Sec. 655. (Provision for filing experience data.)

Rhode Island

No rate regulation.

South Carolina

Act No. 610, Acts of 1936, Act No. 667 Acts of 1937.

A bureau law of the briefest sort. All carriers are required to be members of "a non-partizan rating bureau," with committee membership chosen half by stock companies, half by non-stock companies. The commissioner of insurance has power to resolve ties. The commissioner is required to approve the rate for each classification which rate and classification is to be the same for all insurers. Commissioner is required, in determining rates to use experience and "helpful information." He must also approve a system of merit rating, and no other system may be used.

South Dakota

Code 1939 sec. 31-3411 to 31-3413.—Rates of mutual employers liability associations.

South Dakota formerly had a provision requiring filing of rates with authority in commissioner to call up rates for review and revision: (*Code 1929 Sec. 9465a.*) This does not appear in the code of 1939. There is a provision for reporting experience.

Tennessee

Code 1932 sec. 6894.

Every carrier must file with the commissioner of insurance and banking its classification of risks and premiums relative thereto, and any subsequent proposed classification, together with basic rates and schedule, if one be used, none of which shall take effect until approved by the governor, the secretary of state and the commissioner. Approval may be withdrawn on ground that rate or schedule is inadequate to provide the necessary reserves or unreasonably high.

Texas

Vernon's Texas Statutes 1936. Arts. 4907-4918.

As in case of fire insurance, compensation rates are made by the "State Insurance Commission": or rather by its successor, the Board of Insurance Commissioners (see *Art. 4682a*). The act gives the board authority over policy forms and power to gather statistics. The rate-making functions are:

(1) To make, establish and promulgate classifications of hazards and premiums applicable thereto for insurance under the workmen's compensation law and the longshoremen's and harbor workers' act. Rates promulgated are to be published 15 days before becoming effective.

(2) To assemble necessary data.

(3) To require statements of payroll and incurred losses by classification and other information.

(4) To determine hazards by classes and fix rates of premium adequate to the risks to which they apply and consistent with maintenance of solvency, creation of adequate reserves and a reasonable surplus; to adopt a system of schedule and experience rating.

Rates to be fair, reasonable and not confiscatory to any class of insurance carriers.

Experience to be taken from a territory sufficiently broad and over a period sufficiently long to assure that rates shall be just, reasonable and adequate.

(5) Board may exchange information with other states and consult any national statistical organization. Provision for hearings on grievances.

(6) Act not to prohibit participating plans, but participating dividends on workmen's compensation must be approved by the board.

Utah

Revised Statutes 1933 sec. 43-3-38. Am. c.43, laws of 1941; c.15, laws of 1941, first special session; Senate Bill 23, laws of 1941, second special session.

All companies writing workmen's compensation insurance and occupational disease insurance, and the state insurance fund are subject to rules and regulations of the industrial commission. The commission may provide uniform rates to be charged by such companies, but such rates need not be uniform with rates fixed by state fund.

Secs. 42-2-4-, 42-2-10.—Rates of state fund.

Secs. 42-1-96, 42-2-21.—Provisions for publishing classifications, rates, etc., for distribution to public.

Vermont

Public Laws, 1933, sec. 7037.—Every insurer writing workmen's compensation insurance must file with commissioner its classification of risks and premium rates, together with basic rates and schedule or merit ratings, if used, none of which shall take effect until approved as "reasonable and proper." Approvals may be withdrawn on ground of inadequacy.

Carriers must not write save at approved rates: and approved rating plans must be applied only by a regional rating bureau approved by the commissioner. Modifications due to rating plans must be clearly set forth in the policy or in endorsements.

Sec. 6750 (Rates of mutual workmen's compensation associations).

See also Appendix I for general bureau law, which is by its terms applicable.

Virginia

C.400, Laws of 1918, sec. 75a. (amended) (*Code 1936, sec. 1887* [*75*]).

Rates are to be fair, adequate and reasonable, and all risks of the same kind and degree of hazard shall be written at the same rate by the same carrier. Subject to rules prescribed by the corporation commission, basic rates may be modified by a plan of "physical or schedule, and experience rating."

Companies are required to obtain a permit from the corporation commission.

Prior to obtaining a permit, the company must file schedules showing the rates proposed to be charged. The commission either approves the rates or sets a hearing, at which time it may approve the rates as fair and reasonable, or propose modifications. If the rates are approved, or modifications accepted, the permit is issued.

Changes in approved rates are made upon proceedings as set forth in *Section 4066* of Code. Court appeals are provided.

Provision is made for reports, examinations, gathering information, and cooperation with the industrial commission.

Washington

Monopolistic state fund law.

Remington's Revised Statutes, secs. 7676, 7676-1.—Rating provisions for state fund.

West Virginia

Monopolistic state fund law.

Code 1931. c.23, Art. 2, secs. 4, 5, Art. 3, secs. 1, 2, and Art. 6, sec. 4.—Rating provision for state fund and silicosis fund.

Wisconsin

Wisconsin Statutes 1937, secs. 205.01 to 205.30.

A very elaborate bureau law.

Powers of commissioner.—

(1) The chapter is enforced and administered by the commissioner of insurance, but he is required to consult with the industrial commission in approving classifications, pure premiums or rates, and may consult with it on other matters, and has access to all its records.

(2) The commissioner may authorize any person to attend bureau meetings, hold hearings and make investigations and examinations. The person appointed has all the powers of the commissioner in relation to the particular matter.

(3) The commissioner is required to approve a minimum adequate pure premium for each classification. No company shall use a pure premium less than that approved.

(4) The commissioner is required to establish maximum and minimum limits of expense to be included in the rates. Every company must file a schedule of its expense loading, and any change therein, which must be approved before becoming effective.

(5) The commissioner is required to approve a system of schedule or merit rating. No system except the one approved may be used. Fluctuations caused by use of the system shall be taken into account in approving rates.

(6) The commissioner may require a survey and report by the bureau in case of complaint.

(7) The commissioner may withdraw approvals of rates or classifications on 10 days' notice.

(8) The commissioner may on proper showing make an experience rate for an employer on a uniform plan, and may modify or revoke such rating. 30 days' notice of rate or modification must be given to each rating bureau and to each insurer.

(9) Rates and rating plans must not take into account physical impairment of employees.

(10) Employers who apply or promote oppressive plans for physical examination and rejection of employees or applicants shall forfeit right to experience rating. Procedure and court review provided.

(11) Classifications, rules and regulations may not be effective until approved by commissioner.

(12) Payroll audits by companies must show division by classification, and be correct by amount and division. They must be reported to the industrial commission through the insurance department. The commissioner may, and on complaint shall, verify any payroll audit.

(13) The commissioner has authority to review the acts of any company, bureau or agent and make orders requiring compliance with the provisions of the chapter. Notice, hearing and court review provided.

Bureau.—

Every company is required to be a member of a bureau, maintained in the state. The bureau powers are generally the classification and inspection of the compensation risks, applying rating plans, making reports, assisting the commissioner and the companies in rating matters, and assisting in promoting safety in industry.

Provisions are made for bureau organization, government and membership and for apportioning of expense. Bureau committees are chosen, half by stock companies, half by non-stock companies, with tie votes resolved by the commissioner.

The bureau is required to procure an annual license, and reports annually to the commissioner.

Bureau rating functions are:

(1) To assign risks to classifications approved by commissioner.
(2) To inspect and make a written survey of each risk.
(3) To file with the commissioner its classification of risks, written surveys, etc.
(4) To give information as to classifications, rates, surveys, etc.
(5) To keep a record of its proceedings.
(6) To furnish to an employer on whose risk a survey has been made, full information including charges and credits fixed.
(7) An appeal from bureau decisions to the commissioner is provided.

Company Requirements.—

(1) No company shall make or charge a rate which discriminates unfairly between risks or classes, or which discriminates unfairly between risks in the application of like charges or credits in the schedule or merit rating plan in use.

No company shall discriminate by granting to any employer insurance against other hazards at less than its regular rates for such insurance, or otherwise.

(2) Every company must file with the commissioner its rates, and additions and changes. Rates are not effective until approved. Changes in rates must be filed for at least 15 days, and approved.

(3) Expense loadings and changes therein must be filed and approved.

(4) No company may, in fixing its rates use a pure premium less than that approved, but may use a higher pure premium.

(5) Companies must write at approved rates, with such changes as result from application of system of schedule or merit rating. Changes must be set forth in policy or endorsement.

(6) Companies to make reports to commissioner of insurance provision for filing reports with industrial commission.

(7) Companies to give commissioner information as required.

Rejected Risks.—

Initial premium on rejected risks assigned under *Section 205.30* to be fixed by bureau.

Wyoming

Monopolistic state fund law.

Wyoming Revised Statutes 1931, secs. 124-116, 124-117.—Regulate rates of state fund.

APPENDIX III

RATE REGULATORY LAWS APPLYING TO CASUALTY INSURANCE OTHER THAN WORKMEN'S COMPENSATION *

Alabama

Code 1940 Tit. 28 sec. 331.

Regulates premiums, state surety ins. fund.

Illinois

Insurance Code (1937). (Smith-Hurd Illinois Ann. Sts., c. 73, secs. 1028-1035).

Secs. 416-423.—Applies to motor vehicle insurance rates.

(1) Filings of rates, rating plans, classifications, rules and regulations must be filed prior to issuing policies.

Filings may be made by a bureau, provided (a) that each company shall file a statement under oath, setting forth the name and address of bureau and a statement that company will be bound by bureau filings. (b) schedules filed by bureau shall be verified by oath.

(2) Amendments may be made by filing a verified copy with the director. Changes become effective 15 days after filing unless the director finds an earlier effective date necessary.

(3) Rates, etc. must not be unjust, discriminatory or preferential, provided that special "fleet" rates may be filed. A "fleet" is not less than 5 cars owned by a single assured, and used for business purposes. Must not include motor vehicles owned by employees.

* For laws other than those cited in this Appendix having possible application to casualty insurance, see for states listed below other appendices as indicated.

Alabama, V; Alaska, V; Arizona, V; Arkansas, I; California, V; Colorado, V; Connecticut, V; Delaware, V; Florida, IV; Georgia, V; Hawaii, V; Idaho, V; Illinois, V; Indiana, V; Iowa, V; Kansas, V; Kentucky, V; Louisiana, V; Massachusetts, V; Michigan, II, V; Minnesota, V; Montana, V; Nebraska, V; North Dakota, V; Ohio, V; Pennsylvania, V; Rhode Island, V; South Carolina, V; South Dakota, V; Texas, V; Utah, V; Virginia, V; Washington, V; West Virginia, V; Wisconsin, V.

Indiana

Burns' Indiana Statutes, Ann., sec. 39-4910 (S).—

Applies to motor vehicle insurance against theft, collision, personal injuries and property damage.

(1) Insurers required to file schedules of rates used, classification of each city, etc. together with basis or table rate used therein and all rules and regulations.

(2) Changes to be made by filings 15 days before becoming effective.

(3) Discounts, rebates and deviations forbidden, except: that any insurer may make deviations and percentage discounts based on experience of the "fleet," and the insured, upon the hazard or hazards covered by the policy.

A "fleet policy" is one covering 5 or more automobiles owned by one assured and under a single operating management. Automobiles owned by employers not to be included in "fleet" policy of employer.

(See also Appendix I.)

Iowa

Code 9131 sec. 8666.

Applicable to casualty companies.

Anti-discrimination and anti-rebating law. See Appendix IV.

Sec. 8961.—Short rate table to be prepared by commissioner. Applicable generally.

Kansas

General Statutes 1935, sec. 40-1106.

Applies to accident and health, liability for personal injuries and property damage, fidelity and surety, title, guarantee, credit, elevators, boilers and machinery and miscellaneous.

(a) Rating bureaus to file with commissioner organization data, by-laws, business address, list of members, etc.

(b) Examination provision.

(c) Bureaus and companies must file at request of commissioner rates and other information.

(d) Common expert provision.

(e) Discrimination in rates or rating plans between risks of essentially same hazard prohibited administrative process for removal of discriminations. Discriminations not to be removed by increasing rate unless commissioner finds increase justified.

(f) Anti-rebating provision.

Louisiana

Dart's Louisiana General Statutes. 1939. Am. Administrative Code 1940.

Sec. 4277-1 et seq.—Applies to "All casualty, surety, fidelity, guaranty and bonding risks."

For description, see Appendix II.

Maine

Revised Statutes 1930.

C.60, sec. 30.—Applies to fire and liability insurance.

Prohibits: (a) Rebates of premium or commission. (b) Earnings, profits, dividends, etc. or other consideration not specified in policy. (c) Offer, promise, gift or sale of stocks, bonds, etc., dividends or profits, or thing of value not specified in policy.

C.66, sec. 1101.—Applies to motor liability bonds or motor liability policy.

Prohibits rebates, or premium at rate less than specified in policy.

Maryland

Flack's Annotated Code. Art. 48A. sec. 45.

Applies to fire and miscellaneous insurance.

Prohibits discriminations and rebates. See Appendix I.

Massachusetts

Annotated Laws c.175 sec. 113 B (Am. Laws 1935 c.459).

Applies to motor vehicle liability policies and bonds.

Commissioner required annually to establish, after hearing and investigation fair and reasonable classifications of risk and adequate, just, reasonable and non-discriminatory premium charges. (Rates established in Sept. for ensuing premium year.) Rates to be filed in office and copies sent to companies. Classifications and rates to be used for policies and surety bonds. Provision for publication of notice or hearing.

Provision for making alterations and amendments, for requiring companies to file information, and for issuance of orders to enforce provisions of section.

Court appeal provided.

Laws 1935 C.459 adds provision for establishing rates for insurance of liability for guest occupants under C.90 Sec. 34 A. Parties may, however, contract for higher rate.

Minnesota

Mason's Minnesota Statutes, Supp. 1941 sec. 3766-1.

Applies to automobile liability.

Prohibits: (a) Refusal to issue standard policy of automobile liability insurance. (b) Discrimination in acceptance of risks, rates, premiums, dividends or benefits. (c) Rebates.

Nebraska

Compiled Statutes 1929, sec. 44-1112, 44-1113, 44-114.

Applies to fidelity and surety contracts. Department of trade and commerce required to investigate premium rates. Empowered to fix a maximum schedule of rates of premium upon each and all the different kinds of bonds, contracts, etc.

Powers to summon witnesses and examine papers and documents.

Copies of maximum rates to be sent companies. Charging greater rates prohibited.

New Hampshire

Laws 1929 c.183 secs. 1-4.

Applies to automobile bodily injury and property damage liability insurance.

Companies are required to file classifications, rates and rating plans, with statistical information.

Rates not to be effective until approved by commissioner as adequate, reasonable and non-discriminatory.

Approvals may be withdrawn. Commissioner may enforce rate uniformity.

Laws 1937 c. 161. Policy forms and coverage, financial responsibility law.

New Jersey

Statutes, Ann. 17:28-6.

Applies to automobile insurance.

Distinctions in premium rates and rates of dividends between policies covering financed automobiles and policies covering other automobiles prohibited.

Id; 17:39-1 et seq.—Applies generally.

Anti-rebating and anti-discrimination law. For description, see Appendix I.

New Mexico

Statutes 1929 Supp. 1938.

Sec. 71-162.—Applies generally to casualty insurance.

Rate information to be filed on request of superintendent.

New York

McKinney's Consolidated Laws Book 27 sec. 314.

Applies to participating policies, stock casualty companies.

Classification of policies and method of determining dividends to be filed before dividend is declared. Superintendent must approve dividend, and may withhold approval if he finds dividends not earned or inequitable or unfairly discriminatory to other policy holders.

Id., Sec. 440.—Applies to title insurance corporations.

Must file rate manual, basic schedule of rates and classification of risks, rating plans, rules of commissions and underwriting rules, and changes therein.

Deviations and discriminations forbidden.

Id., Sec. 180-188.—Applicable generally.

Law as to rates and rating organizations. See Appendix I.

Special provision as to rate filings for motor vehicle insurance required by law or surety bonds in lieu thereof. As in case of workmen's compensation, filings must be approved before being made effective.

North Carolina

Code 1939 secs. 2621 (146) et seq. (See also 1941 Supp.).

Applies to automobile liability and property damage insurance.

Companies are required to file classification of risks, rates, rules and rating plans, made by selves or by rating organizations, of which they are members. Filings must be approved before becoming effective. Commissioner required to act on filings within 15 days. Companies required to comply with rates filed.

Commissioner has authority on notice and hearing to order adjustment of rates found to be excessive, unreasonable or discriminatory.

Act not intended to limit method of determining rates or plan of operation or refund of premium of mutuals or reciprocals.

Act creates a bureau, known as North Carolina Automobile Rate Administrative Office, a branch of compensation rating and inspection bureau. The purposes of the bureau are to maintain rules and regulations and fix maximum rates for automobile bodily injury, property damage and collision insurance and adjust same profitably among classifications established by bureau. All carriers writing automobile insurance must be members of bureau.

Bureau committees are to be non-partisan. Commissioner or deputy presides over committee and bureau meetings and has authority to resolve ties.

Id., Secs. 6388 et seq. Applies generally.

Law with respect to rates and rating bureaus. See Appendix I.

Oklahoma

Statutes, Ann. Tit. 36 secs. 131 et seq.

Applies to plate glass insurance and employers' liability.

Rate-regulatory law, see Appendix I.

Oregon

Compiled Laws, Ann. sec. 101-107 (8).

Applies generally.

Requires filing of rating schedules and policy forms.

Prohibits deviation until amended schedules have been filed.

Prohibits discrimination in rates.

Pennsylvania

Purdon's Pennsylvania Statutes Tit. 75 sec. 1273c.

Applies to automobile insurance (under Financial Responsibility Act).

Prohibits: (a) Refusal to issue policy of bond because of rate or color of applicant. (b) Discrimination in point of rate as to such persons.

Id Tit. 40 Sec. 477a (1941 pocket part).—Applies to life, health, accident, personal liability or casualty insurance, except fidelity and surety.

Prohibits discrimination in premiums, rates, terms, conditions or in any manner.

Id., Sec. 855.—Applies to boiler insurance.

Rate must be equal to or exceed 1½ times charges prescribed by city ordinance for inspection of steam boilers.

Tennessee

Williams Code 1934 secs. 6176-6177.

Applies to fire, casualty and indemnity insurance.

Anti-discrimination law with filing provision. See Appendix I.

Texas

Vernon's Texas Statutes, Supp. 1942 Art. 4918b.

Applies to workmen's compensation, motor vehicle and other casualty insurance.

Board of insurance commissioners empowered to make and promulgate special rates and rating plans for national defense projects.

Id., Sec. 5062b.—Applies generally except to life, accident and health.

Rebates by "Local recording agents" and solicitors prohibited.

Vernon's Texas Statutes Art. 4682b. Am. Supp. 1939.—Applies to motor vehicle insurance.

(1) Carriers required to file experience on motor vehicle risks annually.

(2) Commissioner (board of insurance commissioners) empowered to determine and promulgate just and adequate rates of premium for any forms of insurance on motor vehicles, including fleet or other rating plan, and an experience rating plan.

But only one plan for each form of insurance.

Provision for compiling statistics.

Includes all motor vehicles except those running on fixed tracks or rails.

(3) Insurers not to write insurance at rates different from those fixed.

(4) Commissioner may take into consideration experience gathered from a territory and over a time sufficient to ensure rates of terms determined are just, reasonable and adequate, may consult ratemaking associations.

(5) Commissioner may require sworn statements of experience and other information.

(6) (Power to prescribe policy forms.)

(7) Participating dividends to be approved.

(8) Special favors, etc. not specified in contract forbidden. Distribution of profits to be non-discriminatory.

(9) Prohibits: (a) Discriminations in premiums, dividends or benefits. (b) Rebates, special advantage in dividends, etc. or anything of value not specified in policy.

(10) (Rule-making power.)

(11) Provisions for hearings on grievances and for court appeal.

(12) Forms, rates, etc., to remain in effect until new ones approved.

Vermont

Public Laws 1933 sec. 7061.

Applies to fire and casualty insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends or benefits, terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebate of premium, special favor in dividends, or consideration not specified in policy.

(See also Appendix I.)

Virginia

Code 1936 sec. 4326a 1-4326a 6.

Applies to motor vehicle liability and collision insurance.

(1) Carriers must file with state corporation commission their manual, schedule of rates, rating plans, etc. and all deviations, increases or decreases, 30 days prior to becoming effective.

Same not to be effective unless approved within 30 days (except that rates, etc. in force at passage of act may be sued pending approval.) Temporary 90-day approvals may be made and extended.

(2) Hearing on deviations, increases and decreases, not approved within 30 days or disapproved provided. Required that same be fair, reasonable, and non-discriminatory.

(3) Reports by carriers to state corporation commission provided for.

(4) Carriers required to organize rating bureau of which all carriers must be members. (Except that Virginia Insurance Rating Bureau may be designated as administrative bureau in cases where property damage and collision insurance is written in connection with automobile fire and theft.)

Bureau to be located at Richmond.

Washington

See Appendix I for general rate-regulatory provisions.

Wisconsin

Statutes 1939, sec. 204-13.

Applies to suretyship.

(1) Ratemaking organizations required to file articles of agreement, etc., by-laws, business address, membership, and such other information commissioner may require.

(2) Surety companies permitted to employ joint experts.

(3) Discrimination in rates, schedule of rates or charges prohibited. Administrative process for removing discriminations. No discrimination to be removed by increasing rate unless commissioner finds increase justifiable.

(4) Prohibits rebates, discounts or reduction, special favor or advantage, or anything of value not stated in obligation.

Id, Sec. 204-32.—Applies to liability insurance.

(1) Prohibits discrimination or use of discriminatory rating systems.

(2) Prohibits insurance against other hazards at rates lower than regular rates for purpose of evading section.

(3) Prohibits unjust or unreasonable rates.

(4) Requires filing of rates and manuals of risks before they become effective.

(5) Requires filing of rating plans before used. Commissioner empowered to require company to modify plan found to be unfair or discriminatory.

(6) Prohibits use of rate or classification not properly applicable to risk.

(7) Administrative process for correcting rates that are discriminatory or unreasonable. Court review provided.

APPENDIX IV

RATE-REGULATORY LAWS APPLICABLE TO LIFE, ACCIDENT AND HEALTH INSURANCE *

Alabama

Code 1940. Tit. 28, secs. 29-35.

Anti-discrimination and anti-rebating law applicable to life insurance.

Prohibits: (a) Distinctions or discriminations between insurants of some class and equal expectation of life in premiums, rates, dividends or benefit, policy terms and conditions. (b) Making contracts other than as expressed in policy. (c) Giving rebates of premium, special favor or advantage in dividends or other benefits. (d) Giving paid employment, contract for services, or any valuable consideration not expressed in policy.

Arizona

Code 1939 sec. 61-701.

Anti-discrimination and anti-rebating law. Applicable to life insurance.

(1) Prohibits: (a) Distinctions or discriminations, etc. (b) Making contracts other than as expressed in policy. (c) Giving rebates of premium, special favors or advantages in dividends or benefits. (d) Giving valuable considerations or inducements not specified in policy. (e) Giving, selling or purchasing stocks, bonds, etc.

(2) Prohibits acceptance of rebates, etc.

(3) Excepts: (a) Policies of group insurance. (b) Industrial insurance, as to premiums paid at company's office. (c) Non-participating life companies as to bonuses, abatements, etc.

Arkansas

Pope's Digest, 1937, c.92, sec. 7708.

Discrimination by means of "board contracts" prohibited. Applicable to life insurance.

Sec. 7953.—Anti-discrimination and anti-rebating law. Applicable to life insurance.

Prohibits: (a) Distinctions or discriminations, etc. (b) Making contracts otherwise than as expressed in policy. (c) Giving rebates of premium, or anothing of value not specified in contract.

(See also Appendix I.)

California

See Appendix V.

Deering's Insurance Code 1937 sec. 10290.—Applicable to disability contracts. Filing provision, classifications and premium rates. Approval provision.

Does not affect compensation insurance or blanket policies.

Does not affect life insurance contracts except as to supplemental provisions.

Sec. 10401.—Applicable to disability contracts.

Forbids discrimination between insureds of same class.

Colorado

Statutes, Ann. 1935, c.87, sec. 70-74.

Anti-discrimination and anti-rebating. Applicable in part to life companies only, in part to all companies. See Appendix V.

* For laws other than those cited in this Appendix having possible application to life, accident and health insurance, see for states listed below other appendices as indicated.

Alabama, V; Alaska, V; Arizona, V; Georgia, V; Hawaii, V; Idaho, V; Illinois, V; Indiana, V; Iowa, V; Kansas, V; Kentucky, V; Louisiana, V; Massachusetts, V; Michigan, V; Minnesota, V; North Dakota, V; Pennsylvania, V; South Carolina, V; West Virginia, V; Wisconsin, V.

Connecticut

General Statutes 1930.

Sec. 4182.—Discrimination prohibited. Life insurance.

Sec. 4183.—Discrimination between white and colored persons prohibited. Life insurance.

Sec. 4185.—Penalty.

Sec. 4217.—Filing of classification of risks and premium rates. Accident and health insurance.

Sec. 4227.—Discrimination prohibited. Accident and health insurance (for exceptions, 4217-4227, see Sec. 4228).

Delaware

See Appendix V.

District of Columbia

Code, Supp. III sec. 2201.

Applicable to life insurance.

Prohibits stock transactions, etc. or advisory board contracts as inducement to insurance.

Sec. 220m.—Applicable to life insurance.

Prohibits discriminations and rebates.

(a) Discrimination in rates, dividends, terms and conditions.

(b) Contracts other than as expressed in contract.

(c) Giving, selling or purchasing stocks, bonds, etc., dividends accruing thereon or other consideration not specified in policy.

(d) Receipt of rebates.

Exception in favor of industrial life insurance.

Florida

Compiled General Laws 1927 sec. 6225.

Applicable to life companies.

Discriminations and rebates prohibited. Prohibition of rebates probably generally applicable.

(a) Distinctions and discriminations in rates, dividends, other terms and conditions.

(b) Contracts other than as expressed in policy. These apply specifically to life companies.

(c) Rebates of premium, agents commission, dividends, etc. or other valuable consideration not in policy.

(d) Gifts, sales or purchases of stocks, bonds, etc. or dividends thereon, or any other things of value, are apparently general.

Exceptions in favor of non-participating life companies, industrial life companies, group life contracts.

Idaho

Code 1932, sec. 40-1302.

Applicable to life companies.

Prohibits: (a) Discriminations in rates dividends, terms and conditions. (b) Contracts other than as expressed in policy. (c) Gifts, sales or purchases of stock, etc., dividends thereon or valuable considerations not specified in policy. (d) Receipt of rebates.

Sec. 40-1308.—Applicable to accident and health companies. Filing of rates and manual required.

Illinois

Illinois Ins. Code Ann. (Smith-Hurd Illinois Ann. Sts., c.73, secs. 848, 967, 976).

Sec. 236.—Applicable to life companies.

Prohibits discrimination in rates, dividends, terms and conditions.

Sec. 355.—Applicable to accident and health.

Filing of classifications and premium rates required.

Sec. 364.—Applicable to accident and health.

Prohibits discrimination in rates, benefits, terms, conditions, etc.

Iowa

Code 1931 sec. 8666.

Applicable to life, casualty, health or accident insurance.

Prohibits: (a) Discriminations in premium or rate, dividends, benefits, terms or conditions. (b) Contracts not expressed in policy. (c) Rebates of premium, advantage in dividends or other inducement not specified in policy.

Kansas

General Statutes, 1935, sec. 40-1106.

Applies to accident and health.

See Appendix III.

Kentucky

Carroll's Kentucky Statutes, 1936, sec. 656.

Applies to life insurance.

Prohibits: (a) Discriminations in premium, rates, dividends, benefits, terms and conditions. (b) Contracts other than as set forth in policy. (c) Rebates of premium. Special favor in dividends, etc. or consideration other than as specified in policy.

Louisiana

Dart's Louisiana General Statutes, 1939, sec. 4061.

Applies to life insurance.

Prohibits: (a) Discrimination, in premiums or rates, terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebate of premium, advantage in dividend, or consideration not expressed in policy.

Sec. 4100.—Applies to life insurance.

Requires companies to give to domestic policy holders benefit or all legislative enactments in state of domicile.

Sec. 4101.—Applies to life insurance.

Discrimination through agency appointments prohibited.

Maine

Revised Statutes 1930 c.66 sec. 137.

Applies to life insurance.

Prohibits: (a) Discrimination in amount payable on policy in premiums or rates, dividends or other benefits, or terms and conditions. (b) Rebates of premium or agents' commission. Allowance of dividends, etc., or other consideration not specified in policy. (c) Gift, etc. of stocks, bonds, etc., dividends or profits thereon or other things of value, except as specified in policy c.138. Acceptance of rebates prohibited. Applicable to life, accident and health insurance.

Maryland

Flack's Annotated Code, Art. 48A sec. 44.

Applies to life and accident insurance.

Prohibits: (a) Discrimination in premiums, rates, terms and conditions. (b) Rebates of premium. (c) Receipt of rebates, etc. (d) Rebates through agents' license.

Exceptions in favor of industrial insurance and non-participating life.

Sec. 120.—Applies to life insurance.

Company writing policies at inadequate rates may be ordered to cease doing so.

Massachusetts

Annotated Laws c.174. sec. 108.

Applies to accident and health insurance. Filing of table of rates and manual of risks provided.

Secs. 120-122.—Applies to life insurance.

Prohibits: (a) Discrimination in amount, premiums, rates, dividends or terms and conditions. (b) Agreements other than as expressed in policy. (c) Gifts, sales, purchases, etc., or stocks, bonds, etc., or dividends or profits, as inducement to insurance. (d) Discrimination between white and colored persons.

Michigan

Statutes Ann. c.242 sec. 24-275.

Applies to accident and health insurance. Requires filing of classification of risks and premium rates.

Sec. 24-293.—Applies to life insurance.

Discrimination between white and colored risks prohibited.

Minnesota

Mason's Minnesota Statutes 1927, 1940 Supp. sec. 3415.

Applies to accident and health insurance.

Filing of classification of risks and premium rates required.

Sec. 3425.—Applies to accident and health.

Discriminations in rates, benefits, terms, and conditions prohibited.

Sec. 3376-3377.—Applies to life insurance.

Prohibits: (a) Discrimination in acceptance of risks on account of race. (b) Discrimination in premiums, rates, dividends, terms and conditions. (c) Contracts other than as expressed in the policy. (d) Rebates, special favor or advantage in dividends, etc., or other consideration not specified in policy.

Mississippi

Code 1930 sec. 5171.

Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends, terms and conditions. (b) Rebates, special favor in dividends, etc., or valuable consideration not specified in policy.

Missouri

Statutes Ann., c.37 sec. 5729.

Applies to life insurance.

Prohibits: (a) Discriminations in premiums, rates, dividends, terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebates of premium, special favor or advantage in dividends, etc. Paid employment or contract for services, or any consideration not specified in policy. (d) Gift, sale or purchase of stocks, bonds, etc. dividends or profits thereon or anything of value.

Sec. 5777.—Applies to life insurance on stipulated premium plan.

Prohibits: Discrimination in premiums, dividends, etc.

Montana

Revised Codes, 1935, sec. 6286, 6287.

Applies to life companies.

Prohibits: (a) Discrimination in premiums, rates, dividends, etc., terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebate of premium special favor or advantage in dividends, etc. (d) Gift, sale or purchase of stocks, bonds, etc., dividends thereon or anything of value not specified in policy.

Prohibits issue of stock, securities, special or advisory board contracts, etc., as inducements.

Nebraska

Compiled Statutes 1929, sec. 44-1107.

Applies to life companies.

Prohibits: (a) Discrimination in premiums, rates, dividends, terms or conditions. (b) Contracts other than as expressed in policy. (c) Issuance of stock, etc., special advisory board contracts or other contracts as inducements. (d) Gifts or sales, etc., of stocks, bonds, etc., as inducement.

New Jersey

Statutes, Ann. sec. 17: 34-44 et seq.

Applies to life insurance.

Prohibits: (a) Discriminations between white and colored persons. (b) Discriminations in premiums, rates, dividends, etc., terms or conditions. (c) Contracts other than as expressed in policy. (d) Rebates of premium, special favor or advantage in dividend, etc., or any consideration not specified in contract. (e) In case of companies issuing both participating and non-participating insurance, distinctions in commission or agents compensation, based on the participating character of the policy.

Sec. 17: 35-26.—Applies to accident insurance.

Filing of classification of risks and premium rates required.

Sec. 17: 38-1.—Applies to accident and health insurance.

Filing of classification of risks and premium rates required.

Sec. 17: 38-11.—Applies to accident and health insurance.

Prohibits discrimination in premiums, rates, benefits, terms, conditions or in any other manner.

For exceptions, Sec. 17: 38-12.

Sec. 17: 48-9.—Applies to Hospital Service Corporations.

Rates must be filed and are subject to disapproval of superintendent, if excessive, inadequate or discriminatory.

New Mexico

Statutes 1929 Supp. 1938 sec. 71-162.

Applies to life, accident, and health insurance.

Requires filing of rates, rate books and agents' instructions. Superintendent may within 30 days disapprove a policy form if rates and instructions are contrary to laws of state. (See Appendix V.)

New York

McKinney's Consolidated Laws Book 27. sec. 162.

Applies to group accident and health.

Requires filing of schedule of premium rates.

Sec. 164.—Applies to accident and health insurance.

Requires filing of rate manual showing rates, rules and classifications of risks.

Sec. 209.—Applies to life, accident and health insurance.

Prohibits as to life companies:

(a) Discrimination in amount or payment or return of premiums or rates, or in dividends or other benefits, or any of terms or conditions thereof.

(b) Contracts other than as expressed in policy.

(c) Gifts, sales or purchases of stocks, bonds, etc., dividends or profits thereon, or any valuable consideration or inducement not specified in policy.

(d) Receipt of rebates.

Provision as to industrial life insurance. Giving medical examinations and diagnosis and nursing services. Prohibits as to accident and health companies:

(a) Discrimination in premiums, policy fees or rates, in benefits, or in terms and conditions or in any other manner.

Prohibits as to life companies:

Discriminations between white and colored persons.

(a) In premiums or rates.

(b) Between persons of same age, sex, general condition of health and prospect of longevity.

(c) Requiring rebate or discount on death benefit or stipulate in advance for acceptance by persons at interest of sum less than full value, save as in case of white persons.

(d) Companies not to reject application, refuse to issue policy, or make reduction in rate of fees and commissions of agents solely because applicant is wholly or partly of African Descent.

Sec. 210.—Applies to life companies.

Prohibits discriminations as to brokers.

Sec. 255.—Applies to non-profit hospital service corporations.

Requires filing of rates with superintendent and obtaining his approval. Rates may be disapproved if excessive, inadequate or unfairly discriminatory.

North Carolina

Code 1939 secs. 6388 et seq.

Applies to accident and health insurance.

General provisions as to rates and rating organizations. See Appendix I.

Sec. 6458.—Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends, terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebates of premium, special favor, dividends, any consideration or inducement not specified in policy. (d) Any stocks, bonds, etc., dividends or profits thereon, or anything of value not specified in policy.

Sec. 6477.—Applies to accident and health insurance.

Requires classification of risks and premium rates to be filed.

Sec. 6488.—Applies to accident and health insurance.

Prohibits discrimination in premiums, rates, benefits, terms, conditions or in any other manner. (For exceptions, see Sec. 6489.)

North Dakota

Compiled Laws 1913 Supp. 1925.

Sec. 4855.—Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends, etc., terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebates of premium, special favor or advantage in dividends, etc., paid employment or contract for service or any consideration not specified in policy. (d) Gift, sale or purchase as inducement of stocks, bonds, etc., dividends or profits thereon, or anything of value not specified in policy.

Ohio

Page's Code sec. 9401.

Applies to life insurance.

Discrimination between white and colored persons prohibited.

Sec. 9403.—Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends or other benefits, terms or conditions. (b) Contracts other than as expressed in the policy. (c) Rebates of premium, special advantage in dividends or benefits, date of policy or date of issue or any valuable consideration or inducement. (d) Gift, sale or purchase of stocks, bonds, etc., dividends or profits to accrue thereon, paid employment or contract for service or anything of value. (e) Separate agreements, promising to secure loan or contract for service. (f) Receipt of rebates.

Exceptions in favor of non-participating insurance, industrial insurance.

Oklahoma

Statutes Annotated, Tit. 36—sec. 195.

Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends or other benefits, terms or conditions. (b) Contracts, other than as expressed in policy. (c) Rebates of premium, special advantage in dividends or, any paid employment or contract for service or any consideration not specified in policy. (d) Gift, sale or purchase of stocks, bonds, etc., dividends or profits thereon or anything of value.

Sec. 196.—Applies to life insurance.

Prohibits receipt of rebates, etc.

Oregon

Compiled Laws, Ann., sec. 101-107, (8).

Applies generally.

Requires filing of policy forms and schedules or rates.

Forbids deviation until corrected rates are filed.

Forbids discrimination in rates.

Sec. 101-510.—Applies to life companies.

Prohibits: (a) Discrimination in premiums, rates, dividends or other benefits, terms or conditions. (b) Contracts, except as expressed in policy. (c) Rebates of premium,

special advantage in dividends or benefits or any consideration not specified in policy. (d) Gift, sale or purchase as inducements of stocks, bonds, etc., dividends or profits thereon, or anything of value not specified in policy. (e) Receipts of rebates, etc.

Exception in favor of non-participating life companies, and industrial life insurance.

Sec. 101-803.—Applies to accident and health insurance.

Requires filing of table or manual risks.

Pennsylvania

Purdon's Pennsylvania Statutes, Tit. 40 sec. 477a. (Cumulative Pocket Part.)

Applies to life, accident and health, etc.

Prohibits discriminations in premiums, rates, terms, conditions or in any other way.

Sec. 751.—Applies to accident and health insurance.

Filing of classifications and premium rates required.

Sec. 761.—Applies to accident and health insurance.

Prohibits discriminations in premiums, rates, benefits, terms, conditions or in any other manner.

Rhode Island

General Laws 1938 c.153 sec. 6.

Applies to life insurance.

(Prohibits discrimination along lines of laws forbidding discriminations between white and colored risks.)

Sec. 9.—Applies to life insurance.

Agents forbidden to make distinction as to time and manner of collecting dues upon policies.

Sec. 11.—Applies to life insurance.

Prohibits: (a) Contracts of insurance other than as expressed in policy. (b) Gifts, sales, purchases, etc. (c) Receipt of rebates, etc.

Exception as to industrial life.

South Dakota

Code 1939. sec. 31: 1512.

Applies to accident and health insurance.

Filing of classifications and rates required.

Sec. 31: 1515.—Applies to life, accident and health insurance.

Filing of classifications and rates required.

Prohibits: (a) Discrimination in premium or rates, dividends or benefits, terms, or conditions. (b) Contracts other than as expressed in policy. (c) Rebates of premium, advantage in dividends, etc., paid employment, or contract of service or consideration not specified in policy. (d) Gifts, sales, purchases, etc.

Tennessee

Williams' Code 1934 sec. 6132.

Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends, benefits, terms or conditions. (b) Contracts other than as expressed in policy. (c) Rebates of premium, special favor or advantage in dividends, etc., or consideration not specified in policy.

Texas

See Appendix V.

Utah

See Appendix V. For anti-discrimination and anti-rebating provision.

Revised Statutes, 1933, sec. 43-3-34.—Applies to life companies.

Prohibits issuance of stock, special or advisory board contracts, etc.

Vermont

Public Laws 1933 sec. 7010.

Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends or benefits, terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebates of premium, special favor in dividends, etc., or consideration not specified in policy.

Sec. 7072.—Applies to accident and health insurance.

Requires filing of classifications and rates.

Sec. 7082.—Applies to accident and health insurance.

Prohibits discrimination in premiums, rates, benefits, terms or conditions.

Virginia

See Appendix V.

Code 1936, sec. 4315.—Applies to accident and health insurance.

Requires filing of manual of risks and table of rates.

Washington

Remington's Revised Statutes, sec. 7226.

Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends or benefits, terms and conditions. (b) Rebates of premium, special favor in dividends, etc., or consideration not specified in policy. (c) Issue of stock, special or advisory board contracts, etc.

Sec. 7232.—Applies to accident and health insurance.

Usual filing provision.

West Virginia

See Appendix V.

Code 1937 sec. 3472 (9).—Applies to accident and health insurance.

Usual filing provision.

Sec. 3472 (18).—Applies to accident and health insurance.

Common anti-discrimination provision.

Wisconsin

Statutes 1937 sec. 204.31.

Applies to accident and health.

Usual filing provision.

Wyoming

Revised Statutes 1931 sec. 57-601.

Applies to accident and health insurance.

Usual filing provision.

Sec. 57-611.—Applies to accident and health insurance.

Usual anti-discrimination provision.

Sec. 57-801.—Applies to life insurance.

Prohibits: (a) Discrimination in premiums, rates, dividends or benefits, terms, and conditions. (b) Contracts other than as expressed in the policy. (c) Rebate of premium, special favor in dividends or benefits, paid employment or contract for services, or any consideration not specified in policy. (d) Gifts, sales, purchases, etc.

APPENDIX V

ANTI-DISCRIMINATION, ANTI-REBATING AND MISCELLANEOUS, NOT INCLUDED IN APPENDICES I-IV

Alabama

Code 1940 Tit. 28 sec. 17.

Anti-discrimination and anti-rebating. Applies generally.

Sec. 75.—Anti-rebating. Applies generally.

Alaska

Compiled Laws, 1933, secs. 1856-1859.

Applies generally.

Prohibits: (a) Rebates. (b) Fees or perquisites in addition to premium. Requires reports by agents to companies of exact consideration written in policy.

Arizona

Code 1939 sec. 61-331.

Prohibits rebates, etc. Applies generally.

Sec. 61-341.—Applies generally.

Prohibits fees, charges or perquisites in addition to premium.

Arkansas

(See Appendix I.)

California

Deering's Insurance Code 1937 secs. 750-767.

Applies generally.

Prohibits rebates, etc.

An elaborate provision covering rebates of premium rebates of commission, considerations not specified in policy, receipt of rebates, allowance of credit without interest, splitting commissions, misrepresentations of payroll by employer, acceptance of false payroll statements by insurer, agency appointments as means of rebating.

There is a notable list of exceptions:

(a) Participating dividends.
(b) Payment of commissions.
(c) Marine customary additional allowance.
(d) Payments by one insurer to another insurer, agent, etc., of commission on policy insuring payee.
(e) Bonuses or abatements of premium by non-participating life companies.
(f) Dividends on participating life policies.
(g) Discounts for advance payments, industrial life policies.
(h) Special compensation by life companies agreed to in contracts now in force.
(i) Group life contracts.

Sec. 1420.—Discrimination in dividends forbidden. Applicable to reciprocal insurers.

Sec. 1490.—Rebates forbidden. Applicable to reciprocal insurers.

Colorado

Statutes, Ann., c.87, secs. 70-74.

Applies generally, except as noted.

Prohibits discriminations (life companies) rebates, etc. (all companies).

The anti-rebating section prohibits: (a) Making contract of insurance otherwise than as expressed in policy. (b) (Except in case of charitable, religious or educational corporations) Rebates of premium, special favors in dividends, any paid appointment, or contract of service, or any valuable consideration not specified in policy. (c) Gifts, sales or purchase of stocks, bonds, dividends thereon or anything of value not included in policy. (d) Issue of agency company stock. Advisory board contracts, etc. (e) Rebates by agents prohibited.

Connecticut

General Statutes, 1930 sec. 4144.

Applies generally.

Rebates, etc., forbidden.

Prohibits: (a) Rebates of premium, special favor or advantage in dividends, etc., or valuable consideration or inducement not specified in policy. (b) Acceptance of rebates, etc.

Delaware

Revised Code, 1935, c.20. sec. 485.

Applies generally.

Rebates and discriminations prohibited.

Prohibits: (a) Distinctions and discriminations in rates, dividends or other benefits or policy terms. (b) Making of contracts other than as expressed in policy. (c) Rebates of premium, special favors or advantages in dividends, or any valuable consideration not specified in policy. (d) Gifts, sales or purchases of stocks, bonds, etc., or dividends thereon, or anything of value not specified in policy. (e) Division of commissions with anyone except licensed agent or broker. (f) Receiving rebates, etc. (g) Exceptions in favor of non-participating life companies, industrial life companies.

Florida

See Appendix IV.

Georgia

Code, Ann. sec. 56-218.

Applies generally.

Prohibits rebates of premium, and sale of "special contracts," "board contracts," or any other form of policy whereby discrimination is allowed.

Sec. 56-9903.—Giving rebate, making discriminatory contract or receiving benefit thereof declared misdemeanor.

Hawaii

Revised Laws 1935 sec. 6808.

Applies generally.

Prohibits contracts outside policy and giving and receiving of rebates, etc.

Idaho

Code 1932 sec. 40-1107.

Applies generally.

Prohibits: (a) Rebates of premium or of agent's commission. (b) Offering or giving inducements not provided in contract. (c) Gifts, purchases and sales of stocks, bonds, etc., dividends thereon or anything of value. (d) Receipt of rebates.

Exceptions in favor of non-participating life companies, industrial life, group life.

Sec. 40-1112.—Applies generally.

Fees, etc., not specified in policy prohibited.

Illinois

Insurance Code, Ann. (Act June 29, 1937). (Smith-Hurd Illinois Ann. Sts., c.73 secs. 763-765.)

Sec. 151-153.—Applies generally.

Prohibits: (a) Rebates of premium, etc., agent's commissions, dividends, special advantages, paid employment or contract or service or other valuable inducement not specified in policy. (b) Gifts, sales or purchases of stocks, etc., dividends thereon or any inducement not specified in policy.

Exceptions as to non-participating life, industrial policies, premium notes.

(c) Acceptance of rebates.

Indiana

Burns' Indiana Statutes, Ann., sec. 39-5030.

Applies generally.

Prohibits: (a) Rebates of premium, agents' commission, dividends or special advantages or other inducement not specified in policy. (b) Offer, gift, sell or purchase of stocks, bonds, etc., or dividends thereon or anything of value not specified in policy.

Exception as to industrial life.

(c) Receipt of rebates.

Iowa

Code 1931, sec. 8624.

Applies generally.

Prohibits sale of stock, advisory board contracts, etc., as inducement to insurance.

Sec. 8961.—Short rate table provision.

Companies not to demand or collect greater sum than provided in commissioner's table.

Kansas

General Sts., 1935, sec. 40-232.

Applies generally.

Prohibits sale of stock or special inducements, in connection with selling insurance.

Kentucky

Carroll's Kentucky Statutes 1936, sec. 762 a.19.

Applies generally.

Prohibits: (a) Rebates of premium, special advantage in dividends, etc., and considerations not specified in policy. (b) Gifts, sales or purchases of anything of value not specified in policy. (c) (Provision as to receiving rebates.)

Louisiana

Dart's Louisiana General Statutes, 1939.

Sec. 4260.—Applies generally.

Prohibits rebates. Specifically prohibits rebates on "open" policies.

Sec. 4278. 17.—(cumulative supplement) Applies generally.

Prohibits rebates by agents.

Massachusetts

Annotated Laws, c. 175 sec. 182-184.

Applies generally.

Prohibits: (a) Any valuable consideration not specified in policy or special favor or advantage. (b) Gifts, sales or of anything of value not specified in policy. (c) Giving, selling, negotiating, etc., any policy of workmen's compensation insurance, or any motor vehicle liability bond or policy at rates different from those established by commissioner. (d) Rebates. (e) Acceptance of rebates.

Michigan

Statutes, Ann., c.242 sec. 24-170.

Applies generally.

Prohibits: (a) Rebates of premium or agents' commission. Dividends or valuable consideration not specified in policy. (b) Gift, sales, purchases, etc., of stocks, bonds, etc. Dividends or profits thereon or anything of value not specified in policy.

Sec. 24-173.—Applies generally.

Receipt of rebates prohibited.

Minnesota

Mason's Minnesota Statutes 1927.

Sec. 3766.—Applies generally.

Prohibits: (a) Discriminations in premium. (b) Rebates of premium special advantage in dividends, etc., or consideration not specified in policy. (c) Gifts, sales, purchases, etc., of stocks, bonds, etc., or anything of value not specified in policy. (d) Receiving rebates.

Montana

Revised Codes 1935 sec. 6121.

Applies generally.

Prohibits: (a) Discrimination in premiums, rates, dividends, terms and conditions. (b) Contracts other than as expressed in policy. (c) Rebate of premium, special favor or advantage in dividends, etc., or any consideration not specified in contract.

Nebraska

Compiled Statutes 1929 sec. 44-339.

Applies generally.

Prohibits: fees, charges, etc., not specified in policy.

Sec. 44-1105.—Applies generally.

Prohibits: (a) Rebates of premium or commissions, dividends or, paid employment or contract of service or any consideration not specified in policy. (b) Gifts, sales or purchases of stocks, bonds, or, dividends, etc., thereon, or other thing of value not specified in policy. (c) Receipt of rebates, etc.

New Jersey

Statutes, Annotated. sec. 17-29-1 et seq.

Applies generally (except life, marine, etc.)

Anti-discrimination and anti-rebating law. For description, see Appendix I.

New Mexico

Statutes 1929. Supp. 1938. sec. 71-148.

Applies generally.

Prohibits (a) Discrimination in premiums or rates. (b) Variation in favor of any insured in premiums or rates from those filed with superintendent does not prohibit filing or use of non-discriminatory rating plans. (c) Contracts of insurance other than as expressed in policy. (d) Rebates, special advantage of any kind not expressed in policy. (e) Gifts, sales, purchases, etc., of stocks, bonds, etc., dividends thereon, or anything of value not specified in policy.

Sec. 71-150.—Applies generally.

Receipt of rebates, etc., prohibited.

Sec. 71-162.—Applies generally.

Filing provision. See Appendix I.

Sec. 71-216.—Hail insurance.

Forbids discrimination.

New York

McKinney's Consolidated Laws, Book 27, sec. 129.

Applies generally.

Brokers not to charge or receive any greater sum than premium fixed by insurer, unless charge is based on written memorandum signed by party to be charged and specifying compensation.

See Appendix I.

North Dakota

Compiled Laws 1913. Supp. 1925.

Sec. 4854 a2.—Applies generally.

Prohibits (for agents and solicitors): (a) Rebate of premium, commission, dividends, etc., special advantage in date of policy or age of issue, any paid employment or contract of service or other consideration not specified in policy contract. (b) Gift, sale, or purchase of stocks, bonds, etc., dividends or profits thereon, or anything of value as inducement to insurance.

Sec. 4854 a3.—Applies generally.

Prohibits receipt of rebates.

Ohio

Page's Ohio General Code sec. 9589-1.

Applies to companies other than life.

Prohibits: (a) Rebate of premium, special advantage in dividend, paid employment or contract for services, or any valuable consideration not specified in policy. (b) Gift, sale or purchase as inducements, or stock, bonds, etc.

Oregon

Compiled Laws Ann. sec. 101-107 (8).

Applies generally (except marine insurance).

Filing, non-deviation and non-discrimination provisions. See Appendix I.

Id, Sec. 1-1-113.—Applies generally except to life insurance.

Requires policy to bear on face true statement of premium.

Prohibits: (a) Rebate of premium or agents' commission, or dividends, etc., or other valuable consideration not specified in policy. (b) Gift, sale or purchase, as inducement, of stocks, bonds, etc., dividends or profits thereon, or anything of value not specified in policy. (c) Receipt of rebates.

Pennsylvania

Purdon's Pennsylvania Statutes Tit. 40 secs. 275-276.

Applies generally.

Prohibits, as to agents, solicitors and brokers: (a) Rebate of premium or commission, dividends, etc., special favor in date of policy or age of issue paid employment or contract of service, or other consideration not specified in policy. (b) Gifts, sales, purchases, etc.

Prohibits as to insured, receipt of rebates, etc.

Sec. 471.—Applies generally.

Substantially same provisions as Sec. 275, but applies to companies, officers, and members.

Exception as to industrial life.

Rhode Island

General Laws 1938 c.157 sec. 1.

Applies to insurance other than life.

Prohibits: (a) Contract other than expressed in policy. (b) Rebates of premium, special advantage in dividends, etc., or any consideration not specified in policy. (c) Gifts, sales, purchases, etc. (d) Rebates by brokers.

South Carolina

Code 1932. sec. 7994.

Applies generally.

Prohibits: (a) Rebates of premium, agent's commission, dividends, etc., or consideration (b) Contracts other than as expressed in policy. (c) Rebate of premium, special favor in dividends, paid employment or contract of service, or any consideration not specified in policy. (d) Gifts, sales, purchases, etc.

South Dakota

Code 1938. sec. 31-1103. (4), (5).

Applies generally.

Prohibits: (a) Rebates of premium agent's commission, dividends, etc., or consideration not specified in policy. (b) Gifts, sales, purchases, etc.

Tennessee

Williams' Code 1934 sec. 6133.

Applies generally.

Prohibits rebate of premium, special advantage in dividends, etc., or consideration not specified in policy.

Texas

Vernon's Texas Statutes, Supp. 1942. Art. 5062 B.

Applies to all insurance except life, accident and health.

Prohibits rebates, etc., by local recording agents and solicitors.

Id, Art. 5053.—Applies generally.

Prohibits: (a) Discrimination in premiums, rates, dividends or benefits. (b) Contracts other than as expressed in policy. (c) Rebates of premiums, special advantage in dividends, paid employment or contract for service, anything of value or consideration not specified in policy. (d) Gifts, sales, purchases, etc. (e) Special or board contracts.

Applies generally.

Utah

Revised Statutes 1933 sec. 43-3-32.

Prohibits receipt of rebates, etc.

Id, Sec. 43-3-33.—Applies generally except as indicated.

Prohibits: (a) Discrimination in premiums, rates, dividends or benefits, terms and conditions (applicable to life insurance). (b) Contracts, other than as expressed in policy. (c) Rebates of premium, special favor in dividends or benefits, paid employment or contract for services, or consideration not specified in policy. (d) Gifts, sales purchases, etc.

Virginia

Code 1936 sec. 4221 (b), (c).—(b) applies to life (c) applies generally.

Prohibits: (a) Discriminations by life company in premium, dividends, etc., issuance of policies at age lower than actual age prohibited. (b) (Generally applicable) contracts other than as expressed in policy. (c) (Generally applicable) rebates of premium, special favor in dividends, or inducement not specified in policy.

Exception in favor of life companies as to industrial insurance or policies on lives of own employees.

Washington

Remington's Revised Statutes sec. 7077.

Applies generally.

Prohibits: (a) Rebates of premium, commissions, dividends, etc., or consideration not specified in policy. (b) Gifts, sales, purchases, etc. (c) Receipt of rebates, etc.

West Virginia

Code 1937, secs. 3299-3302.

Applies part to life insurance, part generally.

Prohibits: (a) Discriminations in premiums, rates, dividends, benefits, terms and conditions (life companies). (b) Contracts other than as expressed in policy (life companies). (c) Unfair discrimination between risks of essentially same hazard, with administrative process for removing discrimination (all companies). (d) Contracts other than as expressed in policy (liability, casualty, accident or "hazard"). (e) Rebates, etc. (all companies). (f) Certain loan transactions (all companies). (g) Acceptance of rebates, etc.

Exceptions in favor of non-participating life insurance, industrial life insurance, group insurance, and insurance through an agency in which insured is interested.

Wisconsin

Wisconsin Statutes, 1937, sec. 201-60.

Applies generally.

Prohibits membership in or contributions to a rating bureau unless it serves without discrimination all carriers who apply, and unless it files with the commissioner its charter, by-laws, etc.

Sec. 201-53.—Applies generally.

Prohibits: (a) Contracts other than as expressed in policy. (b) Rebates, etc. (c) Contracts for service, sales of stock, etc.