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IMPROVING STATE REGULATION OF INSURANCE

By Lester B. Orfield*

STATE INSURANCE REGULATION PRIOR TO 1944

The states began to regulate insurance during the nineteenth century. The first state to provide for continuing supervision by an administrative agency was New Hampshire which created an insurance commission in 1851. Massachusetts and Rhode Island speedily followed. By 1890 when the Sherman Act was passed by Congress, seventeen states had supervisory authorities. At the present time every state has an agency for insurance regulation.† In 1871 the insurance officials of the states established an organization now called the National Association of Insurance Commissioners, to study state and interstate problems and to recommend desirable improvements to the states.

In 1869 the United States Supreme Court seemed to accept the principle of state regulation when in the well known case of Paul v. Virginia it stated: “Issuing a policy of insurance is not a transaction of commerce.” Subsequently at intervals the Court reaffirmed this doctrine.‡

Paralleling the decisions of the Court were repeated refusals by Congress to provide for federal supervision of insurance.§ Between 1865 and 1933 individual members of Congress, several insurance companies, and others made unsuccessful efforts to secure

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‡(1869) 8 Wall. 168, 183. The case involved a Virginia statute which regulated foreign insurance companies.


In the Deer Lodge case Justices Hughes and Van Devanter dissented; and Dean Roscoe Pound made the argument that insurance was commerce.

For the advantages of state regulation of local insurance matters, see Fouse, The State Regulation of Insurance, (1903) 24 Annals 69; Wolfe, State Supervision of Insurance Companies, (1905) 26 Annals 137; Symposium on Federal Regulation of Insurance (1940) 25 A. B. A. J. 900-913; Patterson, The Future of State Supervision of Insurance, (1933) 23 Texas L. Rev. 18; Sawyer, Insurance as Interstate Commerce 56-57, 127-139 (1945); Eighty-Sixth Preliminary Report of the Superintendent of Insurance (N.Y. 1944) 44. For the advantages to be derived from national control of insurance, see Huebner, Federal Supervision and Regulation of Insurance, (1905) 26 Annals 681; Hubbard, Too Many Governments, (1924) 10 A. B. A. J. 207.
federal regulation or supervision. The Temporary National Economic Committee which conducted the most recent extensive study of insurance recommended improvement of state supervision but "without interjecting the Federal Government into the general field of insurance regulation."

Consequently the States developed their systems of regulation and taxation unchecked by federal legislation or court decisions. The insurance business and the state insurance departments reasonably assumed that insurance was not commerce and consequently not subject to the federal anti-trust acts.

**THE S.E.U.A. CASE**

These views, long and firmly held, were upset in a four to three decision by the Supreme Court on June 5, 1944, in *United States v. South Eastern Underwriters Association*. This case held not only that insurance was commerce, but that it was also subject to the Sherman Anti-Trust Act. The dissenting judges disagreed with the conclusion that the insurance business fell within the scope of the Sherman Act. But they did not deny that insurance might have aspects or manifestations which would bring it within the commerce clause.

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8. For reasons not disclosed Justices Roberts and Reed did not participate in the decision.
10. Mr. Justice Jackson stated that he would hold insurance to be interstate commerce whenever Congress chose to regulate it. His vote plus those of Justices Black, Murphy, Douglas and Rutledge made five, a majority of the full court. The two other dissenting judges, Chief Justice Stone and Justice Frankfurter, made it clear that they would uphold federal regulation of insurance where based on the theory that the activities of the industry "affected" interstate commerce, although the effect might be upon the interstate transmission of the money and documents of the insurance companies themselves. See Sawyer, Insurance as Interstate Commerce 43-44 (1945).
At the date of the decision the feeling was that numerous state laws were now in conflict with certain acts of Congress. Federal administrative agencies could investigate and Congress could legislate on many phases of insurance. State regulation now became subject to a mass of decisions of the Supreme Court concerning interstate commerce. The most serious doubts were raised as to several phases of state legislation and regulation. The States feared the loss of large revenues received from taxation of the insurance business. There was a wide spread impression that insurance executives were subject to criminal prosecution under federal anti-trust laws if they acted in accordance with the requirements of many state statutes.

It is of course true of the decision that "some students of the law had foreseen it in principle." It is also conceded that this decision related to a federal statute whereas prior decisions had involved state statutes. Nevertheless the decision left the law extremely unsettled and came as a great shock to many. It placed on the States the obligation to reconsider their insurance statutes and to repeal or revise many of them. As leading authorities on constitutional law and insurance law pointed out:

"The understructure on which those laws have heretofore been rested, has been swept away... by the South Eastern decision. We do not suggest that there is no other basis for an adequate


12. See the report of the sub-committee on federal legislation of the National Association of Insurance Commissioners in Proceedings, 76th Session, 1945, 23-31. See also Sawyer, Insurance as Interstate Commerce 50-51 (1945). A few days after the decision, however, Attorney General Biddle stated that "the Department has not only determined to give every reasonable time for the States and Companies and the Federal Government to take such action as they might deem appropriate, but after consideration, after that period elapses, we would consider filing bills in equity rather than criminal procedures." Joint Hearings, Subcommittees of the Committees on the Judiciary, on S. 1362, H. R. 3269 and H. R. 3720, Part 6, 78th Cong, 2d Sess, 635-640 (1944).


14. Patterson, The Future of State Supervision of Insurance, (1944) 23 Texas L. Rev. 18, 19. The decision "merely tore away an illusory veil from a door that was open all the time." See also Berge, Insurance and Anti-Trust Laws, Proceedings of the Section of Insurance Law, American Bar Association, 1946, 29-31.
and appropriate statutory structure. We think there is, though that basis may not be broad enough to support to the full the kind of structure which the States have previously built.\(^1\)

Mr. Justice Jackson in his dissenting opinion observed that the decision "at very least will require an extensive overhauling of state legislation relating to taxation and supervision. The whole legal basis will have to be reconsidered."\(^2\)

**THE McCARRAN ACT**

The *S.E.U.A.* decision indicated that the federal government might exercise very broad powers in the field of insurance. But it raised more problems than it settled. The Supreme Court refused to rehear the case though briefs of *amicus curiae* for a rehearing were submitted by the attorneys general of forty-one states. Thus a declaration of Congressional intent became necessary if state regulation, supervision, and taxation were to be effectively continued.\(^3\)

Efforts were immediately made to obtain blanket exemption of the insurance business from the application of the Sherman and Clayton anti-trust acts. The House of Representatives passed such a bill on June 22, 1944.\(^4\) The bill was reported favorably by the Senate Judiciary Committee in September, 1944, but it died on the calendar.

Soon after the 79th Congress convened in January, 1945, S.340, based on a model prepared by a committee of the National Association of Insurance Commissioners was introduced. In considerably amended form this bill, known as the McCarran-Ferguson bill, passed both houses, and was signed by President Roosevelt on March 9th.\(^5\)

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17. "On the whole, then, it seems to me very unlikely that the basic plan of state supervision will be overturned by the Supreme Court as a result of its recent decision. . . . However, the chief threat to the continuance of state supervision, I believe, is not from the Court but from the Congress." Id. at 29.


The legislative intent appears in the first section:

"... the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states."

Under Section 2(a) insurance is to be subject to state regulatory and tax laws. Under Section 2(b) state laws regulating and taxing insurance shall not be invalidated by any act of Congress unless the latter relates specifically to insurance, but after January 1, 1948, the Sherman Act, the Clayton Act, and the Federal Trade Commission Act "shall be applicable to the business of insurance to the extent that such business is not regulated by state law."

Under Section 3(a) a moratorium was provided until January 1, 1948, during which these federal acts and the Robinson-Patman Anti-discrimination Act were not to apply to insurance. Later, the effective date for application of these federal statutes was extended to June 30, 1948. Under Section 3(b), Sherman Act provisions as to boycott, coercion, or intimidation are immediately applicable to insurance, no moratorium being provided. Under Section 4 provision is made for application to insurance of the National Labor Relations Act, the Fair Labor Standards Act, and the Merchant Marine Act of 1920.

Many different opinions have been expressed as to the proper interpretation of McCarran Act. But all concur in believing that the moratorium provisions invite the States to occupy the field with respect to the federal anti-trust laws, and that if the States fail to do so, the federal acts will apply on June 30, 1948.

Much attention has been given two phrases appearing in Section 2(b), namely, "to the extent that" and "regulated by state law." The first phrase seems to mean that a state law must "reach" the


matters dealt with by the federal statutes. As to the second phrase, it seems agreed rather widely that "an activity is 'regulated by state law' if there is in existence in the State a valid statute, or regulation having the force of law, plus a means of enforcement which deals 'affirmatively' and effectively with the activity in question and under which the business is governed and directed according to stated standards."^{22}

Of course it should always be borne in mind that the Congressional policy established in McCarran Act can be altered or repealed at any time. Under the S.E.U.A. decision, the Federal government has plenary power to regulate those aspects of insurance which are interstate in character. The present policy, laid down in the McCarran Act is to continue state regulation and to afford time in which the States may make necessary adjustments.\(^{23}\)

It is of interest that the Senate, through its Judiciary Committee, is keeping closely in touch with the progress of the States in revising their systems of insurance regulation.\(^ {24}\)

\^22^ Special Committee on Legislation, American Mutual Alliance, Preliminary Memorandum Re the Effect upon the Insurance Business of the Clayton, Robinson-Patman, and the Federal Trade Commission Acts (1945) 4-5.

"Does the Law require each rate to be affirmatively approved by the State to constitute 'regulation' by the State within the meaning of Public Law No. 15? Legal opinion is divided on this question. Many eminent authorities, including former Attorney General Biddle, believe that the term 'regulation' as used in the Act calls for affirmative action by the State, thus requiring specific approval by the State for each and every insurance rate. The author does not agree with this conclusion. In his opinion the law is fully satisfied if the state sets up a statutory standard for insurance rates. A statute which provides that all rates shall be reasonable, adequate, and not unfairly discriminatory would, in his opinion, constitute 'regulation' by the state as the word is used in the McCarran Act. Further provisions could include filing of rates, rating plans, manuals and any amendments thereto," Naujoks, Regulation of the Insurance Business and Public Law No. 15, (1946) 30 Marq. L. Rev. 77, 91.


\^24^ The insurance industry and the States "should not forget that the Senate Judiciary Committee has appointed a sub-committee to watch what steps are being taken in conformity with Public Law 15." Address of June 1945 by Newell R. Johnson to the National Association of Insurance Commissioners.
VIEWS OF FEDERAL OFFICIALS AS TO INSURANCE REGULATION

Several expressions of opinion by high federal officials have assisted in clarifying the attitude of the Federal government and thus made it easier for the States to ascertain the scope of needed State legislation. Repeatedly before the passing of the McCarran Act it was stated that Congress had two main objectives: to protect the continued regulation and taxation of insurance by the States, and to secure adequate regulation and control of the insurance business.25

President Roosevelt in a letter to Senator Radcliffe in January, 1945, stated: "The responsibility for the regulation of the business of insurance has been left with the States; . . . this administration is not sponsoring federal legislation to regulate insurance or to interfere with the continued regulation and taxation by the States of the business of insurance."

Generally speaking federal officials have stressed the fact that the States must regulate effectively and affirmatively. President Roosevelt stated the day after signing the act: "Congress did not intend to permit private rate fixing, which the Anti-trust Act forbids, but was willing to permit actual regulation of rates by affirmative action of the State."26 Attorney General Biddle stated before the Drafting Committee of the Council of State Governments on November 11, 1944: "... the view we hold toward insurance is not unlike our policy toward railroad rates, that the fixing of rates by private groups in either field without active and definite state approval, is a clear contravention, not only of the act, but of the whole theory that underlies the act, the theory that competition should be free unless it is specifically regulated by the appropriate body." Speaking before the Insurance Federation of New York on December 5, 1945, Senator O'Mahoney attacked "smart egalistic construction" or "narrow construction" of the McCarran Act, and called for "adherence to the spirit of the law."27

It thus seems to be the view of federal officials that simply going

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25. Sen. Rep. No. 20, H. R. Rep. Nos. 143 and 213, 79th Cong., 1st Sess. (1945) passim; 91 Cong. Rec. 1442 passim, 1477 passim (1945). However, the House Judiciary Committee emphasized that it "is not the intention of Congress in the enactment of this legislation to clothe the States with any power to regulate or tax the business of insurance beyond that which they had been held to possess prior to the decision." House Report No. 143, supra at 3.


27. He also stated: "The aim is . . . only to prevent abuses through agreements or combinations among private groups to fix prices or control the industry or to make it difficult for any private group to engage in the insurance business at all except on the terms of another private group."
through the form of legislating without effectively covering the subject matter of the federal anti-trust laws does not constitute adequate regulation, and would not prevent the operation of the Sherman, Clayton, and other acts. In an analogous case the Supreme Court seemed to adopt a like approach. In *Parker v. Brown*\textsuperscript{28} the Supreme Court stated: "... a State does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or declaring their action is lawful." Nevertheless the Court found not a violation of the Sherman Act a regulatory program created by the state of California which "would violate the Sherman Act if it were organized and made effective solely by virtue of a contract, combination, or conspiracy of private persons, individual or corporate."

Recognition by officers of the federal government and by members of Congress seems to have been given to the desirability of certain collaborative practices in the insurance business. During the consideration of the McCarran Act, there was a favorable attitude taken towards the propriety of certain forms of concerted activities when effectively regulated. At the same time Congress did not intend to require insurance companies to be members of rating bureaus or to charge uniform rates. Thus Congress seems to have sought the preservation of a balance between the use of sound industry practice and the protection of competition. President Roosevelt stated in a letter to Senator Radcliffe dated January 1, 1945: "The anti-trust laws do not conflict with affirmative regulation of insurance by the States, such as agreed insurance rates, if they are affirmatively approved by state officials." Senator Radcliffe stated during the Senate debate on the McCarran-Ferguson Bill: "Whether a new or old company desires to go under a rating bureau or not will be decided by its management." Senator Ferguson stated during the same debate: "This bill would permit—and I think it is fair to say that it is intended to permit—rating bureaus, because in the last session we passed a bill for the District of Columbia allowing rating. What we saw as wrong was the fixing of rates without statutory authority in the States; but we believe that states' rights should permit a state to say that it believes in a rating bureau. I think the insurance companies have convinced many members of the legislature that we cannot have open competition in fixing rates on insurance. If we do, we shall have chaos. There will be failures, and failures always follow losses."\textsuperscript{29} With respect to the Michigan

\textsuperscript{28} (1943) 317 U. S. 341, 351.
\textsuperscript{29} 91 Cong. Rec. 1481, 1483 (1945).
fire insurance law which permitted under state regulation the existence of and membership in rating bureaus and deviations from such rules of rates provided they are uniform in application to all risks in a given class, Attorney General Biddle stated: "The Michigan statute would seem to be very much in sympathy with enforcement of the Anti-trust Act."\(^3\) Manuel M. Gorman, Special Assistant to the Attorney General in speaking before the Insurance Section of the American Bar Association, in 1946, stated: "It is not difficult to accept the premise that experience should be combined for ratemaking purposes. Only in this way can the insurance industry determine what may be called its costs. But the vital issue in state regulation is to preserve the delicate balance between the use of sound industry practice and the protection of competition."\(^3\)

It is not enough that there be adequate state regulatory laws. State insurance departments must all be strengthened. As Senator O'Mahoney stated: "It will not be sufficient ... merely to announce the principle or to pass laws in the several States which formally assert state authority. If there is to be state regulation, the States must have insurance departments which are competent to regulate, that is to say, which are competent to examine, audit and understand the complexities of the insurance business."\(^3\)

**RECENT SUPREME COURT DECISIONS ON STATE TAXATION AND REGULATION OF INSURANCE**

Following the *S.E.U.A.* decision, despite the McCarran Act, doubts were raised as to the constitutionality of state laws taxing and regulating insurance.\(^3\) Statutes levying a higher tax rate

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against foreign companies than against domestic companies and statutes requiring insurance agents to be licensed and excluding foreign companies which failed to meet requirements established to safeguard solvency were questioned. Two 1946 decisions of the Supreme Court appeared to settle most of the issues in favor of the States.

The decision in *Prudential Insurance Company v. Benjamin* upheld a South Carolina statute which enforced a tax of three per cent on gross premiums of foreign insurance companies received for business in the state, there being no corresponding tax levied on domestic insurance companies. The court pointed out that Congress, in passing the McCarran Act, acted with full knowledge and expressly sanctioned existing state tax and regulatory statutes. This sanction was within the power of Congress under the commerce clause. This case makes it clear that the Act will serve as a general protection to state taxing systems.

In *Robertson v. California* a California statute providing that no person shall act as insurance agent without a license, and excluding foreign companies which fail to meet minimum reserve requirements was upheld. Without resort to the McCarran Act, the Supreme Court held the statute was "not invalid as violative of the interstate commerce clause, since it regulates activities which vitally affect the State and its residents, and it neither discriminates against nor substantially obstructs commerce."

**Federal Anti-Trust Laws Potentially Applicable to Insurance**

The McCarran Act, as amended, expressly provides for the application of the federal anti-trust laws to the business of insurance after June 30, 1948 "to the extent that such business is not regulated by state law." But immediately applicable are the Sherman Act prohibitions of boycott, coercion, and intimidation.

The main objective of the anti-trust acts is to keep competition free and unfettered. Combinations, agreements and trade practices

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whose effect is to lessen competition or to promote discrimination are considered violative of the Acts.36

The purpose of the Sherman Act is to offer protection against price manipulations though the prohibition of monopolies and combination in restraint of trade.37 It makes unlawful all contracts, combinations, and conspiracies in restraint of trade, and attempts to monopolize any part of trade whether with or without the use of boycott, coercion, or intimidation. Agreement to fix or maintain prices have been held illegal. The decision in the S.E.U.A. case specifically applied the Sherman Act to insurance. The Sherman Act would seem directly to challenge all concerted rate-making practices and agreements now in common use in many branches of the insurance business.

The Clayton Act,38 and the Robinson-Patman Act which is largely amendatory to the Clayton Act, were aimed to prevent the creation of monopoly in its incipiency. They prohibit certain practices where the effect may be to lessen competition. Whether or not these acts apply to insurance hinges to a large degree on whether the sale of insurance and the issuance of an insurance policy constitute commerce in "goods" or "commodities," the terms used in the acts.39

Practices prohibited when their effect may be to lessen competition include acquisition of the stock of a competitor, interlocking directorates, "tying contracts," price discrimination between different purchasers, gratuity discounts not based on actual cost differences, and indirect discriminations through brokerage and advertising allowances. There are also provisions with respect to acceptance of commissions, brokerage, or other compensation, and knowingly causing or receiving discriminatory prices. The application of these acts may call for additional regulation of the follow-

38. See Naujoks, supra note 37 at 82-84, 95-96. Sawyer, Insurance as Interstate Commerce 59-60 (1945); Graham, Life Insurance Looks at the Clayton Act, Proceedings of the American Life Convention, 1945, 75-85.
39. See Naujoks, supra note 37 at 87-89, 96-97; Sawyer, Insurance as Interstate Commerce 60-61 (1945).
ing practices in insurance: stock acquisition, interlocking directorates, consolidation of companies, practices associated with reinsurance, various types of discrimination, and payment of commission to insurance brokers.40

The Federal Trade Commission Act was designed to supplement the anti-trust acts. The Act forbids "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce," and vests the Commission with broad regulatory and investigatory powers and with the power to issue cease and desist orders.41 The commission is empowered to investigate violations and enforce certain provisions of the other anti-trust laws. It is therefore difficult to treat the Federal Trade Commission Act provisions apart from the other anti-trust acts.

STATE REFORMS MADE NECESSARY BY MCCARRAN ACT

Extent of Additional State Regulation Required

Regulation by the States of the rates charged by insurance companies and of rate-making organizations operating in branches of the insurance industry is universally conceded to be the principal present reform required.42 This is especially true if the States desire to continue to permit practices and agreements within the business which are commonly thought to serve the public interest but which are in conflict with the regulatory theory of the federal anti-trust laws. Members of Congress have expressed a willingness that such practices be continued but only under effective state

40. "Life insurance companies and fraternal benefit societies, in the author's opinion, generally are not affected by these provisions of the Clayton Act... Other branches of the insurance industry, including automobile, casualty and surety, are more vitally concerned because of the need for fleet operation or other forms of underwriting of sufficient resources to cover single risks of tremendous size. In order that all branches of the insurance industry be in the clear under the Clayton Act, state statutes could be adopted which would provide for something less than outright prohibition, by permitting under proper safeguards, such stock ownership and interlocking directorates as might be in the public or policy holders' interest and where in fact no attempt is made to restrain trade or establish a monopoly." Naujoks, supra note 37 at 95-6.


supervision.\textsuperscript{43} It would appear that the McCarran Act is not a mandate to extend rate agreements and rate regulation to life insurance, where rate agreements and rate regulation have not been general.\textsuperscript{44}

Of almost equal importance is state legislation enabling the State to define, discover, and control unfair practices and other matters dealt with by the Federal Trade Commission. A considerable number of state officials and representatives of the insurance industry are of the opinion that the Federal Trade Commission Act offers the greatest threat to continued state supervision of insurance.

The states should also review the provisions of their existing insurance laws dealing with interlocking directorates, stock acquisitions, company consolidations, commissions and brokerage, licensing and related subjects. If it be concluded that the public welfare is best served by continuing part or all of these activities, with, however, adequate regulation by the insurance commissions, the statutes should be examined to determine whether they reflect that conclusion. On the other hand if the state policy concerning these matters is in conformity with federal policy, the state regulatory jurisdiction can be maintained only by a state statute implementing that policy.

Since affirmative regulation by the States obviously depends on effective administration as well as upon adequate legislation, most states should give careful attention to both. The powers and staff available to the commission should be adequate to accomplish the duties imposed on him. Especially is this true as to rate regulation. If state regulation of rates is to be effective . . . ‘the state legislatures must be prepared to increase insurance department budgets in order to provide personnel of sufficient quantity and quality.’\textsuperscript{46}

\textit{Rates and Rate-making Organizations}

Rates charged by insurance companies should be reasonable, adequate, and fair. They should be reasonable in order that the

\begin{itemize}
\item National Association of Insurance Commissioners, Sub-Committee of the Committee on Rates and Rating Organizations, Report, May 22-23, 1946.
\item Round Table Discussion held by Berge and Gorman, Proceedings of the Section on Insurance Law, American Bar Ass'n, 1946, 29-44, 301-304; Naujoks, supra note 37 at 91, 94-95; Scheufler, supra note 41 at 30; Hogg, Annual Report of the Manager, Proceedings American Life Convention, 1945, 19, 27-28; Keesling, supra note 37 at 72; Dechert, Proceedings of the American Life Convention, 1945, 90, 91-92.
\item Dineen, The Rating Problem, Proceedings of the Section of Insurance Law, American Bar Ass’n, 1945, 11, 13. See also Patterson, The Future of State Supervision of Insurance, (1944) 23 Tex. L. Rev. 18, 35.
\end{itemize}
insured party is not over charged. They should be adequate so that the insurer may have the financial ability to furnish sound insurance and to meet its obligations. They should be fair, so that they do not discriminate unfairly among policy holders. The States having the longest and best record of rate regulation have employed these standards. They are similar to those set forth in the Casualty and Surety Rate Regulatory Bill and the Fire, Marine and Island Marine Regulatory Bill46 unanimously approved by the National Association of Insurance Commissioners at Portland, Oregon, on June 12, 1946,47 subsequent to unanimous approval by its Special Committee on Rates and Rating Organizations.

Experience has demonstrated that competition alone is an insufficient means of achieving reasonable, adequate or nondiscriminatory rates.48 On the other hand, action by companies in concert unregulated by law may injure the public welfare and also violate the Sherman Act.

The basic problem, then, is to determine those types of joint action which are in the public interest and to allow their continued existence subject to adequate state regulation.49 At the same time adequate provision should be made for independence of action on the part of these insurers which do not desire to engage in joint action, subject of course to compliance with the statutory standards of reasonableness, adequacy, and fairness. A proper balance must be struck between regulated joint action and independent action. Such a balance appears to have been achieved in the two


47. Section 1 of those acts entitled "Purpose of Act" provides: "The purpose of this Act is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory."

48. The California Department of Insurance recently stated in "A Study of the Necessity and Form of State Regulation of Insurance Rates" (1945) 6-8: "The experience of Insurance Commissioners throughout the land, acting as liquidators or conservators of insolvent insurers, affords ample evidence of the destructive character of competition in insurance, uncontrolled in the matter of rates ... If the security of the insuring public depended solely on a monetary finding of a state of solvency, based upon an appraisal of the assets and liabilities of an insurer at a given point of time, the responsibility of the state officials charged with the supervision of insurance would be comparatively simple. But unless such finding is based also on a justifiable and well-founded reliance upon the soundness and adequacy of the insurer's premium rates, it may be built on sand, for the cumulative effect of inadequate rates sooner or later is insolvency."

49. "To preserve the advantages and yet not permit or condone undesirable features, it becomes necessary to permit salutary features of combinations, and at the same time, to allow wholesale competition in the public interest." Scheufler, supra note 41 at 30.
bills above mentioned approved by the National Association of Insurance Commissioners. Section One of these bills provides:

"The purpose of this Act is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this Act. Nothing in this Act is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the afore-mentioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This Act shall be liberally interpreted to carry into effect the provisions of this section."

Concerted rate-making practices developed to a large degree in order to derive rates based on a broader hence more nearly accurate statistical base, or to furnish types of insurance protection which no single company could supply. This situation exists in such lines of insurance as casualty, surety, fidelity, fire, marine, and inland insurance. It is true as to certain types of risks as cotton pools, grain pools, lumber pools, oil and gas pools, and other similar pooled risks. Such practices are necessary and for the public welfare.

In order to pool their loss experience the insurance companies have established private rating bureaus. At the date of the S.E.U.A. decision fire insurance rating bureaus were in operation in 43 states. Such private-operated rating bureaus were prohibited altogether in Iowa and Nebraska. In Louisiana, Texas and Virginia control of rate-making was an official function of the state government. Upon an analysis of the statutes of the 43 states in which private rating bureaus operated, the Department of Justice concluded that 20 or 22 made inadequate provision for regulation and left the public "virtually at the mercy of fire insurance com-

50. President Dineen of the National Association of Insurance Commissioners stated in an address before the National Association of Independent Insurers, dated October 14, 1946: "The Commissioners committee which participated in the drafting of these bills, of which I was a member, never lost sight for a moment of the Congressional mandate that full opportunity for price competition should be provided and that independence of action for those who wanted it should be guaranteed."

51. "Mortality tables are based upon the certainty that everyone must die. In the other fields of insurance there is no guarantee that the contingency insured against will occur. As a result the rates can only be estimated, using previous periodic experience as a guide. Since rates in these fields are based on the law of averages it is manifest that the broader the statistical base the more accurate the average. The experience of individual companies is seldom a reliable guide for rate-making purposes." Executive Committee of the National Association of Insurance Commissioners, Report of Subcommittee on Federal Legislation, August 28-29, 1944.
panies which fix and maintain the rates to be charged by their members."

After the S.E.U.A. case, and prior to 1947, rate regulatory laws were passed in thirteen states. Many other states considered similar legislation or established study commissions to review and recommend regulatory measures. Thirty-five states, including Minnesota, and Alaska and Hawaii passed rate regulatory laws in 1947.

The rate regulatory bills approved by the National Association of Insurance Commissioners were unanimously indorsed by the All-Industry Committee representing numerous segments of the insurance business. The bills have been the products of months of study by committees of the National Association of Insurance Commissioners and representatives of the insurance industry.

The major features of the bills are:

1. Insurance rates and information supporting the rates must be filed with the insurance commissioner, either by the individual insurer or by a licensed rating organization for member or subscriber insurers. Like information must be made available on request to purchasers of insurance regarding rates they are charged.

2. Uniformity among insurers in any matters relating to rate-making is neither prohibited nor required, except to the extent necessary to assure that the rates shall not be excessive, inadequate, or unfairly discriminatory.


55. Copies of the proposed acts are obtainable from the Council of State Governments, 1313 East 60th St., Chicago, Ill.
3. Speedy approval or disapproval of the filings is required. As to rates susceptible of that treatment advance approval or disapproval is provided. A “deemer” clause provides that filings are deemed approved if not disapproved within a statutory waiting period or extension thereof. As to rates not susceptible of advance review disapproval subsequent to the effective date is provided. At any time after rates take effect rates may be voided by the commissioner upon written notice and hearing.

4. Licensed rating organizations may exist under state regulation and must be open to members and subscribers, but membership is not compulsory. Rates and regulations of such organizations are subject to review by the commissioner. Rating organizations are prohibited from adopting rules that might affect the payment of dividends, savings or unabsorbed premium deposits by insurers.

5. Member and subscriber companies are permitted to deviate from bureau rates subject to approval of their individual filings by the commissioner. Such deviations are to be effective for one year unless sooner terminated with the approval of the commissioner. Any member may appeal from decisions or actions of the rating organization to the commissioner.

6. Joint underwriting, joint reinsurance, and advisory organizations which assist insurers in the making of rates are allowed subject, however, to regulation and periodic examination by the commissioner.

7. The commissioner is given the power to examine and investigate the affairs of insurers and groups, associations, and organizations of insurers, and to prohibit and punish activities and practices which are unfair, unreasonable, or otherwise inconsistent with the provisions of the Acts.

8. The commissioner, insurers, and rating organizations are permitted to consult with similar agencies in other States in regard to rate-making and rating systems in order to further uniform administration of rate regulatory laws.

These bills appear to provide the required affirmative regulation. They make provision for competition and deviation in rates charged when these can be justified by experience. At the same time they safeguard the public interest by assuring reasonable and fair rates and by protecting company solvency.
Sizeable groups in the insurance industry and even high officials of the federal government are of the opinion that the above model bills go beyond what is required by the S.E.U.A. case and the McCarran Act. Spokesman for stock insurance companies, so-called "independent companies" which do not act in concert in rating matters, and organizations of agents and brokers to some extent share this view, as do representatives of the Department of Justice. Though these groups differ widely as to their interests and as to the means for carrying out their views, they generally favor plans providing a lesser degree of state regulation of rates.

Many supporters of the model bills believe that there should be strict state regulation of all companies' rates. They would confer nearly the same degree of control on all carriers, whether members or not of price-fixing combinations. On the other hand, many persons on the West Coast believe that state regulation of rates and rate-making activities should be limited to insurers who by agreement fix and maintain rates. This could leave non-members of the combination and statistical organizations virtually unregulated.

Using another approach, one considerable group, advocates a restricted scope for concerted action as being in closer harmony with the free, full, honest, open, and fair competition which the anti-trust laws are designed to secure. It is true that this group concedes that loss experience of companies should be combined, to protect solvency, for determining a basic or "pure" cost, also called a "pure premium." But it believes that the additional expenses, such as administrative expense, acquisition costs, and profit, which are included in the general rate charged the purchaser need not be determined by a bureau, but should be arrived at by individual companies acting on a competitive basis. This approach, together with safeguards of solvency, is thought by its proponents to permit a maximum of competition and to require a minimum


58. See California Department of Insurance, A Study of the Necessity and Form of State Regulation of Insurance Laws (January 29, 1945).
of additional regulation.\(^{59}\) The plan proposed by the opponents of the model bills approved by the National Association of Insurance Commissioners differ in significant respects.\(^{60}\)

All groups agree, however, that preservation of state jurisdiction is desirable and extremely important. Differences of opinion exist only as to the means for securing this. It is not easy to obtain a formula which is both effective and simultaneously represents a minimum of regulation. Local conditions may call for changes in details. It may be the safer course to adopt the model bills.

**State Regulation of Unfair and Deceptive Practices**

Federal statutes afford authority under which unfair and deceptive practices prejudicial to the public good can be sought out and eliminated. The Clayton, Robinson-Patman, and Federal Trade Commission Acts are so designed. They will become applicable to insurance after June 30, 1948, to the extent that insurance is not regulated by state law. For the States to regulate adequately the field of insurance they must have legislative provisions corresponding in scope with the federal statutes.\(^{61}\)

Prior to 1947 state laws concerning unfair competition have varied widely. With respect to life insurance, all States have statutes prohibiting certain well-defined unfair practices, including discrimination, misrepresentation, and rebating, and conferring powers of investigation and enforcement as to these unfair acts. Aside from life insurance statutes and state anti-trust acts, in 1945 only 22 states passed unfair competition statutes.\(^{62}\) Only 26 states have statutes regulating advertising by insurance companies and

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59. See addresses by Stone and Berge, supra notes 56 and 57.

60. See Robert E. Dineen, The National Association of Insurance Commissioners Bills and the Alternatives, address before the National Association of Independent Insurers, Oct. 14, 1946. They include the Stone plan, proposed by Edward C. Stone of Boston; the Rhode Island plan (H.B. 932 in 1946 R.I. Legislature); the brokers' plan proposed by the National Association of Insurance Brokers and the National Association of Casualty and Surety Agents; a plan developed by California insurers and circulated in November 12, 1946; Assembly Bill 1092 in the 1945 California legislature.

61. The Federal Trade Commission Act Sub-Committee of the All-Industry Committee has concluded that "existing state laws must be strengthened if the business is to be in a position to demonstrate that the States are adequately covering the field and, in this connection, unfair trade practices, recognized as such and already dealt with by the Federal Trade Commission must be considered in the drafting of an effective bill." See address by Dave E. Satterfield, Jr., before the Legal Section, American Life Convention, October 7, 1946.


agents. A recent study under the auspices of the All-Industry Committee indicated that state legislation dealing with unfair practices is "exceedingly spotty." In 1945 it could be said: "In no state do the statutes cover the entire field in which the Federal Trade Commission might operate, and only one law—rebating—appears in some form everywhere." 63

Numerous state groups, the All-Industry Committee, and the National Association of Insurance Commissioners have recommended that the States consider and enact laws dealing with unfair and deceptive practices, with which the Federal Trade Commission is concerned. Although it seems generally to be conceded that the power of the Federal Trade Commission to investigate the insurance business cannot be excluded, it is thought that adequate state statutes, vesting in state agencies the power to investigate and prevent unfair and deceptive practices, will make it less necessary or desirable for the Commission to act. 64

The National Association of Insurance Commissioners, through its Committees on Rates and Rating Organizations and on Federal Legislation, has developed and reported favorably two alternative methods of dealing with this problem. The two acts "Relating to Unfair Practices in the Business of Insurance" enumerate specific unfair methods of competition and unfair or deceptive business acts or practices which are generally known. Both acts enumerate the following in Section 3 under the title of "Methods, Acts and Practices Which are Defined Herein as Unfair or Deceptive:" Misrepresentations and false advertising of policy contracts, false information and advertising generally, defamation, boycott, coercion, and intimidation, false financial statements, stock operations and advisory board contracts, discrimination, and rebates. This enumeration is in line with the "definitive approach" developed by the All-Industry Committee and its subcommittees. 65

In addition to enumerating unfair trade practices, the two acts


64. Report of the Nebraska Legislative Council Subcommittee on Taxation and Regulation of Insurance Companies to the Nebraska Legislative Council (August, 1946) 22-23. Committees of the National Association of Insurance Commissioners studying the problems are "unanimous upon the proposition that the regulation of unfair acts and practices should not be left to the Federal Trade Commission in Washington." Joint Report of Committees on Rates and Rating Organizations and Federal Legislation, Oct. 23-26, 1946, 4.

in Section 4 provides for the identification and prohibition "of other unfair competition, acts and practices." This provision is the outgrowth of a feeling that "the enumeration of specific acts and practices would not completely occupy the field and that therefore provisions had to be made for an omnibus section to cover unenumerated acts and practices." 66

The chief difference in the two proposals is with respect to procedure for defining unenumerated unfair practices and for enforcement. Section 4 of the basic plan prescribes an administrative procedure similar to that in the Federal Trade Commission Act and empowers the insurance commissioner after a hearing, to define additional unfair practices and to issue cease and desist or orders as to all unfair practices. Section 4 of the alternative plan grants to the courts through the Attorney General the power to adjudicate as to unfair acts and to issue cease and desist orders. Both plans provide for judicial review.

Fifteen states, including Minnesota, passed fair trade practice acts in 1947, substantially similar to the Commissioners' and All-Industry drafts. In Utah and Washington new insurance codes included provisions along different lines.

Payment of Commissions to Insurance Brokers

The payment of commissions after 1947 to insurance brokers in States which recognize such brokers is of concern to branches of the insurance industry. This problem arises because Section 2(c) of the Clayton Act as amended by the Robinson-Patman Act prohibits the allowance of brokerage, except for services rendered, to the other party to the transaction or to an agent of the other party. Insurance brokers operate as agents of the purchaser, but receive commissions from the sellers. 67

Whether or not the practice of brokerage should be recognized in the insurance business is a matter reflecting state policy. According to a recent survey, brokers are not recognized in thirteen states: Florida, Georgia, Iowa, Kansas, Kentucky, Michigan, Minnesota, Montana, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin. 68 In seventeen states they are recognized by statutes

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68. All-Industry Committee, Supplemental Report Submitted in Behalf of Robinson-Patman Act Subcommittee, September 4-6, 1946.
thought to be adequate to continue the payment of brokerage. In eighteen states in which brokers are recognized, the statutes are, however, believed to be inadequate to authorize continued payment of brokerage.

The All-Industry Committee has recommended legislative authorization of the payment of commissions to insurance brokers “in each State whose laws recognize brokers.” Section 7 of the Brokers Act recommended by the All-Industry Committee provides: “An insurance company or agent thereof may pay money, commission or brokerage, or give or allow anything of value, for or on account of the solicitation or negotiation of contracts for insurance of the kind or kinds enumerated in Section 2 of this Act, to a duly licensed broker.” In many cases, a simple amendment of existing law would be sufficient. The joint committees of the National Association of Insurance Commissioners have unanimously approved this recommendation. Those States which desire to continue the payment of Commissions to insurance brokers, but have inadequate laws for the continuation of the practice, should give consideration to these recommendations.

**Accident and Health Insurance—Title Insurance**

The regulation of the accident and health insurance business is receiving continuing study from a number of public and industry groups, such as the National Association of Insurance Commissioners and the All-Industry Committee. During 1947, accident and health insurance bills, so sponsored, were adopted by seventeen states, including Minnesota. Concerted action in the field of title insurance has brought the regulation of that branch of insurance to the attention of the National Association of Insurance Commissioners. It has been suggested that these branches of insurance be subjected to rate regulation as in the case of casualty, surety, fire, marine, and other lines.

**Summary of a Program of State Insurance Reform**

**Beyond Compliance with McCarran Act**

The program of reform so far discussed obviously covers only part of improvements needed in the regulation of insurance. It was designed principally to meet the pressures on the States arising

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69. Ibid. The states are: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Maryland, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, South Carolina, and Virginia.

from the S.E.U.A. decision and the McCarran Act. The writer wishes to direct attention to additional improvements. It is in both the public interest and that of insurance companies that they receive attention since "the business of insurance finds itself subject to three marked pressures: broader and more intensive governmental regulations, proposals for governmentally managed insurance, and informed buyer activity."^{71}

1. Rating

State Rating Officials

The States must maintain rating bureaus of their own, staffed by men who have had the necessary technical training and experience. State insurance budgets should be increased correspondingly. If need be, rating bureaus of neighboring states should be used.^{72}

This is essential if state regulation of rates is to be effective. Insurance companies, or rating organizations of which they are members or subscribers, retain many competent men familiar with the various aspects of rating, whom they compensate substantially because of their superior knowledge and experience. The state rating employees acting in an advisory role review the rate filings and submit their views thereon to the state insurance commissioner who has the final authority to approve or disapprove the rate. If the system is to work fairly and equitably for both the public and the companies the men on both sides must be of comparable competency.

Great strides in the field of interstate cooperation have been made in recent years, and there are no legal bars to borrowing personnel. It reduces expenses, saves unnecessary duplication of personnel, and yet makes available to the insurance commissioner of a lightly populated state the full facilities of its more populous neighbor. Over twenty years ago Delaware used the Pennsylvania rating expert.

Supervision of Rating Bureaus

In supervising rating organizations the degree of supervision should be much greater with respect to rating organizations in which the rate structure is so complicated that it is impractical

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On April 24, 1946 the French National Constituent Assembly decreed the nationalization of forty-five of France’s largest insurance companies by a vote of 487 to 63. However, the first constitution submitted to a popular vote was rejected. Insurance has also been nationalized in Czechoslovakia.

for a company to make its own rates than with respect to rating bureaus which are operated primarily as a matter of convenience to companies which join them and where there may be competing bureaus in the field. The former enjoy a virtual monopoly in their field.

**Grading of Municipalities**

The fire insurance grading of each municipality, whether done by a state or regional insurance inspection bureau or by a national underwriting organization, should be filed with the insurance commissioner of the state in which the municipality is located and a copy transmitted by the rating organization to the head of the municipal government, which will have the right to appeal to the state insurance commissioner or to the courts. The grading schedule filed for each municipality should include an itemized listing of all deficiency points or charges upon which the grading classification of the municipality is predicated.

Fire insurance rates in each municipality are based upon a classification of the city determined by deficiency charges made by the fire underwriters inspection organization having jurisdiction. Cities of over 25,000 population are customarily graded by the National Board of Fire Underwriters, 85 John Street, New York City; smaller cities are graded by state or regional insurance inspection bureaus. Each 500 deficiency points charged out of a maximum possible 5,000 deficiency points, places the city in a less favorable grading classification. Cities frequently have great difficulty in obtaining an itemized listing of the deficiency points charged against them. In some areas of the country even the total number of deficiency points charged against a city are kept secret by the underwriters. In many instances removal of a few deficiency points would place the entire city in a more favorable classification but city officials are unable to determine what these charges are in order to have them removed.

**Rating Advantages to Special Groups**

State rating regulation should not discriminate in favor of segments of the industry.

In the past there has been a tendency for various groups to seek not only legislative measures to protect their own methods
of operation but legislative advantages. For instance, in 1945 one state passed a casualty rating law containing a provision for deviation and a fire law containing no such provision. In the casualty bill membership in a rating bureau was optional. In the fire bill every company was required to belong to a rating bureau. In the casualty bill provision was made for an appeal to the commissioner by any member of a rating bureau whose proposal to broaden or change any form of coverage was denied by the bureau. In the fire bureau, whose membership was mandatory, no such relief was available. If the states pass much legislation of this kind, there will arise a strong demand for federal regulation. The continued seeking of legislative advantage in rating laws by various segments of the business does neither the business nor the cause of state regulation any good. There must be a disposition to view the problem broadly and fairly.

Compulsory Membership in Rating Bureau

The States should not pass further legislation requiring membership in a state bureau or rating organization. Further extension of such compulsory requirements will simply encourage federal instead of state regulation. Insurance companies must pay the cost of operating these bureaus and must be represented upon the committees through which the bureaus function. The activities of these bureaus often duplicate each other and the work of national rating organizations. The expense of insurance to the public is increased. A state bureau is more likely to adopt exceptions to national uniformity.

Interstate Risks

The States should take steps to secure adequate handling of the rating of interstate risks. The States should collaborate in determining the over-all experience of an interstate risk and agree upon the percentage modification to which the risk is entitled.

The power of a state to regulate rates is limited to rates applicable to that part of a risk which is within its jurisdiction. It cannot regulate rates applicable to parts of a risk beyond its borders. If a risk can be rated as a unit, as it is when it is wholly within the State, it receives the full benefits of economies and savings in which size is a factor. If there must be separate risks for

76. Sawyer, Insurance as Interstate Commerce 122-123 (1945); Berge, Insurance and the Anti-Trust Laws, Proceeding of the Section of Insurance Law, American Bar Ass’n, 1946, 29, 33.
77. Dineen, supra note 72 at 20, 21; Sawyer, Insurance as Interstate Commerce 123-125 (1945).
each state in which the insured operates, a big risk is split up into several small risks with resulting increases in cost. Agitation for federal control is bound to be the result if the States fail to collaborate.

2. General Regulation by States, Excepting Rating

Objects of Government Control

The principal objects of governmental regulation of insurance should be solvency, fair practices, and competent service.

The greatest of these is solvency. The ability of an insurer to meet its obligations depends on its financial conditions. In turn, its financial condition depends on sound investments, accurate estimates of liabilities, and the maintenance of adequate assets to cover liabilities and unforeseen contingencies. The statutes of the leading insurance states have set high standards. The state insurance departments have done excellent work in enforcing these standards through systems of reports, examinations, audits, and regulations.

The second most important object is the regulation of practices in order that they may be fair to the insuring public and between insurers. Examples are regulation of the provisions of policy contracts, the making and application of premium rates, adjustment methods, and advertising. The purpose of regulation of practices is to eliminate unsound, unfairly discriminatory, and dishonest methods.

The third and newest object of regulation is competence. This is being sought in the field of agency and brokerage, and to some extent in adjusting and management. Basic standards of competence are set up in qualification laws which specify education and experience requirements and give state administrative officials a good deal of latitude in ascertaining by examination and otherwise whether candidates for licenses measure up to the required level. Until recently, licensing has been too largely a matter of fees and forms.

Uniformity of State Legislation

There should be a high degree of uniformity as between systems of state insurance regulation. To secure such uniformity state revision commissions should work together with the National Association of Insurance Commissioners and with the insurance companies of the nation.\footnote{President Newell R. Johnson stated to the National Association of Insurance Commissioners in his address of June 1945:}

"First let us have a sub-committee of the Executive Committee on uni-
Unless uniformity is secured the public and the insurance companies as well may become disposed to contrast the simplicity and uniformity of exclusive federal regulation. Congress through the McCarran Act has negatived the implication that its silence with respect to insurance is to be construed as its will that insurance is not to be regulated, thus permitting the States to apply their police power to phases of insurance that should be regulated uniformly. Furthermore, Congress has subjected all insurance and all engaged in insurance to the regulating laws of the States. If state regulation should result in gross want of uniformity, there is nothing to prevent Congress from reasserting its broad powers.

The States should carefully consider whether or not they should repeal statutes requiring insurance companies to do what is unqualifiedly forbidden by the laws of another state or states.

The States should recognize the need for uniform accounting methods in that portion of the insurance business subject to rate regulation.\(^7\)

Illustrations of desirable uniformity are readily found. In 1939 the National Association of Insurance Commissioners recommended a new standard fire insurance policy form.

In 1943, fourteen states adopted the Guertin bill, recommended by the National Association of Insurance Commissioners after a five year study by its special committee of experts. This bill provides for a new standard valuation law and a new standard non-forfeiture law with respect to life insurance.\(^8\)

In 1938 the National Conference of Commissioners on Uniform State Laws approved the Unauthorized Insurers Act. This act was adopted by Arkansas and South Dakota in 1939, Louisiana in 1940, South Carolina in 1943, and North Carolina in 1945. The act prohibits one from acting as agent in the state for an unlicensed insurer or for any insured in placing insurance with an unauthorized insurer.

Commissioner James M. McCormack of Tennessee, formerly President of the National Association of Insurance Commissioners form State Legislation, just as we have a sub-committee on Federal Legislation. Let that Committee go to work the day this Conference adjourns.\(^7\)

79. At the 1946 meeting of the National Association of Insurance Commissioners, Commissioner Harrington of Massachusetts offered a Model Uniform Accounting Statute. He recommended it as an important corollary of the uniform rating bills subsequently endorsed. See also Eighty-Sixth Preliminary Report of the Superintendent of Insurance (New York, 1944) 17-21.

recently stated: "It is high time that we explore the advisability of recommending a uniform statute setting up high standards of state supervision—a uniform statute governing the organization and qualifications of the various insurance departments."  

One of the most troublesome diversities of state legislation is with respect to the classes or kinds of insurance which the same company may be authorized to issue. A uniform statute on the insuring powers of insurance companies does not seem to be beyond attainment.

Commissions

The States should regulate commissions.

In 1932 the Superintendent of Insurance of New York urged that the principles of state regulation effective in life insurance be applied to other forms of insurance. New Jersey had acted as early as 1935.  

The largest factor in acquisition cost is commissions. Discrimination in commissions is an inseparable part of the main problem of scotching discrimination in rates.

Commissions are important for two reasons: (1) They occupy a large part of the rate structure, and supervisory officials cannot satisfactorily pass upon the reasonableness of the rate unless they are satisfied as to the reasonableness of this factor. Moreover, when rates are based upon assumed expense and commission rates, any payment for acquisition costs in excess of that assumed must encroach upon the allowance made for the payment of losses. (2) Commissions are also important because they open avenues for discrimination. The most undesirable form of such discrimination is that where high commissions are paid for preferred risks. Risks are preferred because of their low loss experience. The benefit of such experience, if it is to be lost to the companies, should be reflected in a lower rate to the assured, rather than being given to the agent.

Reserves

Uniform state statutes with respect to reserves should be adopted.  

Such statutes should not attempt to regulate the business and practices of an insurance company outside its borders, even though in regulating reserves within its borders it takes into consideration the business of the insurer as a whole.

Proper reserves only for business done in one state would be of

little avail as a guaranty of solvency of an insurer doing business in many states. Uniform statutes are therefore desirable.

Deposits

Uniform state statutes with respect to deposits should be adopted.84

The requirement of a deposit of securities within a state as a guaranty that an insurer's obligations will be met protects the citizens of the state. But there should be some relation between the amount of the deposit and the purpose for which it is made. If each state requires sizable amounts, the funds of an insurer may be as widely dispersed as to impede its operation. Uniform statutes should protect the public without unduly burdening the business.

Statements and Visitation

Uniform state statutes with respect to statements and visitations should be adopted.85

It is in the public interest to require periodical statements of an insurer's business and to provide for visitation within and without the state to examine the affairs of an insurer. Uniform state laws could provide a method of visitation that would protect the public without resulting in duplication of work.

Multiple-Line Underwriting

The States should enact uniform laws permitting fire and casualty insurance companies, etc., to write all risks but life coverage, as long as it is not contrary to public policy.86 The present classification of carriers into life, fire and marine, and casualty is an

83. Sawyer, Insurance as Interstate Commerce 112-113 (1945).
84. Id. at 113.
85. Id. at 113-114.
86. "One of the first jobs that should be undertaken is an overhauling of statutory provisions granting powers to insurance carriers. The present classification of carriers into life, fire-and-marine, and casualty is an historical accident. Its continuance has little justification beyond the convenience of insurance executives. It is one of the principal causes of the inability of insurance carriers to do a thorough comprehensive job for policy holders. Further divisions between lines operate in the same way, though some progress has been made in the direction of breaking down the walls." Blanchard, The Lawyer and Insurance, Proceedings of the Section of Insurance Law, American Bar Ass'n, 1945, 23, 24-25.

For an able defense of multiple line coverage see the address "Multiple Line Coverage" by Commissioner C. C. Fraizer, Proceedings of the National Association of Insurance Commissioners, 1944, 111-124. See also the Report of the Multiple Line Underwriting Committee, id. at 125-129; Presidential Address by Charles F. J. Harrington, id. at 97, 108-109; Sawyer, Insurance as Interstate Commerce 114-115 (1945).
historical accident. Statutory provisions conferring powers to insurance carriers need overhauling.

Such a bill was introduced in the New York Legislature on February 5, 1946. It was sponsored by the Risk Research Institute, New York, a national association of nearly 200 corporate insurance buyers. This legislation would make it possible for individuals and businesses to obtain one policy in coverage of their ordinary risks, as against the present necessity of insuring through several companies according to the various kinds. There should, of course, be adequate specified minimums of guaranteed capital and policy holders' surplus. The proposed bill was not passed.

If an insurer domiciled in State A is chartered to write all kinds of insurance except life insurance, it seems dubious that State B, as a condition precedent to permitting this insurer to operate within its borders, may require it to limit its writings to fire insurance only or casualty insurance only. Higher standards may, of course, be required from multiple line companies. But such a requirement is greatly different from a flat denial of the right. A uniform statute should solve the problem.

Limitation of Risk

Uniform state laws with respect to limitation of risk would be adopted.\textsuperscript{87}

Many states have statutory limitations upon the obligations which an insurer may assume in connection with one risk. The customary limitation is 10 per cent of the insurer's capital and surplus. But such a statute possibly cannot have extraterritorial effect so as to govern the activities of an insurer in another state. Probably a state may refuse permission to an insurer to transact business within its borders if anywhere it subjects itself to greater loss on one risk. Uniform laws should be adopted to prevent frustration of one state's law by lack of a comparable provision in other states.

Sales of Securities

Uniform state laws with respect to the sale of securities by insurance companies should be adopted.\textsuperscript{88}

It is not clear that the States can control the sale of securities in other states. Through it may control such sales within its borders, it is not certain that it may protect its citizens from

\textsuperscript{87} Id. at 115.
\textsuperscript{88} Id. at 115-16.
poor financing in other states in which the insurer transacts business.

Liquidation

The States should adopt uniform laws with respect to liquidation of insurers.\(^8^9\)

It is not clear to what extent a state may exert its power to affect transactions outside its borders. If an insurer domiciled in State A becomes involved in financial difficulties and is taken over by State A for rehabilitation or liquidation, it is not clear to what extent State A may regulate practices in States B, C, and D, nor to what extent States B, C, and D may regulate practices on State A. The States should adopt uniform statutes that will enable the state of domicile to take charge of rehabilitation or liquidation and the others to provide all necessary ancillary regulation.

In the alternative it has been proposed that the National Bankruptcy Act be amended to permit any state insurance commissioner to apply to the appropriate United States district court to bring about the liquidation or reorganization of insurance companies. This proposal was rejected by the Section of Insurance Law of the American Bar Association.

Investments

Uniform state laws should be adopted regulating investments of insurance companies.\(^9^0\)

It is not clear that a state may regulate investments of an insurer made outside its borders. If it cannot, its efforts to protect its citizens may be futile. Uniform state laws may solve the problem. States should not too strongly stress investment in securities of the supervisory state.

Investment laws should be liberalized to permit insurance companies to invest a relatively small percentage of their funds in common stock.\(^9^1\)

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89. Id. at 116. See Notes (1944) 31 Va. L. Rev. 190; (1933) 33 Col. L. Rev. 722.
90. Sawyer, Insurance as Interstate Commerce 117 (1945).
91. "The investment problems of recent years have already produced modernization of the investment laws of many states. A few states already had broad investment laws. Recently changes have been made to recognize as proper investments for life insurance companies housing projects, ownership of income producing property other than housing, common and preferred stock in due proportion, etc. These changes are realistic, and serve to keep investment laws up-to-date. . . ."

"All these considerations lead your Committee to look with favor on that type of investment law which regulates in simple and in broad terms and which includes provision for the exercise of unrestricted business judgment for
This should stimulate healthier financial structures and have a wholesome effect on the economy. More extensive powers should be given to life insurance companies since loss experience on death claims when spread over a large number of risks shows little variation. On the other hand, fire and casualty insurance companies are faced with the possibility of greatly increased losses due to public catastrophe or changed economic conditions, so that a large part of their assets must be in liquid, short-term investments, which practically means government bonds.

This proposal would not prevent breaking down interlocking directorates. Certain safeguards could be set up: (1) Limits could be placed upon the proportion of common stock that any one insurance company holds. (2) Limits can be placed upon the total capitalization of any one company that can be held by any one insurance company. (3) Sterilization of the vote of any common shares held by an insurance company so that it could only vote under stated circumstances, such as for a change in capitalization, but not for directors, might be provided.

In 1945 Connecticut and Wisconsin passed laws permitting investment freedom as to 5% of admitted assets. In Indiana it was provided that a life company may invest not more than 10% of its assets, or aggregate of its capital, surplus and contingency reserves, whichever is less, in investments not otherwise allowable.

Kinds of Insurance

The state statutes defining the classes of insurance should be modernized to the extent that they are incomplete and out-of-date. A uniform state act should be developed by the States.

For instance, in 1945 North Carolina passed a statute defining twenty-one different kinds of insurance authorized in North Carolina, the definitions being borrowed from the New York Insur-

a small portion of investments. This approach is illustrated generally by the increasing number of states which have adopted for trust funds the so-called 'prudent man' theory of investment. In the insurance business this approach is illustrated by Connecticut and Wisconsin whose legislatures this year passed laws permitting freedom as to 5% of admitted assets. This type of law permits management to make studies and eventual commitments in securities, mortgages, income real estate, housing, etc., not included in any specific schedules of investment laws.”


North Carolina adds as a twenty-second kind "Miscellaneous Insurance," meaning insurance against any other casualty authorized by the charter of the company, but not included in the 21 kinds of insurance previously defined. New risks will develop with technological advances.

The insurance law of the State of New York makes provision for twenty-two major kinds of insurance: life, annuity, accident and health, fire, miscellaneous property, water damage, burglary and theft, glass, boiler, and machinery, elevator, animal, collision, personal injury, liability, property damage liability, workmen's compensation, fidelity and surety, credit, title, motor vehicle and aircraft, marine, marine protection and indemnity, and insurance of life of property.

Mutuality

Policy holders should be given assistance so that they may participate more directly in the management of their companies.

It may be desirable for the States to permit policyholders of stock companies to elect at least a minority of directors to the boards of such companies. They contribute the great bulk of the assets. There might be developed a more adequate system of notifying policyholder of their right to make nominations and of the actual results of elections held. Policyholders should be permitted to have access to lists of policyholders and to examine the books and records of their companies under restrictions similar to those placed on stockholders. Perhaps some directors should be selected with due regard to their knowledge of and residence in different areas of the country. Possibly the staggered system of selecting directors should be abolished. Possibly one or more public directors should be appointed by the Governor of the State in which the company is domiciled.

Insurance of State Property

The States should consider becoming self-insurers of state property.

North Carolina took such action in 1945. State buildings in recent years have been of fireproof construction, and the risk of a large conflagration is slight. There should ensue a saving of considerable money to the state, and at the same time there would be adequate protection. Unlike an individual, the State can afford to

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96. Wettach, supra note 94 at 303-4.
take such risks just as some large corporations have become self-insurers.

In 1942, the Council of State Governments received data from the insurance commissioners of 37 states with respect to insurance of state-owned physical property. Eighteen states had some form of self-insurance. Fifteen states relied on private insurance companies. Four had some other method of replacing losses due to fire.

State-insured property was financed by specific appropriations in 7 of the 18 state-insured states, by premiums in 3 states, by periodic contributions in 4 states, and by a general appropriation in 2 other states.

The 18 states were:

Alabama California Florida
Illinois Kansas Kentucky
Michigan Minnesota Mississippi
Nebraska North Dakota Ohio
Oklahoma Oregon Pennsylvania
Rhode Island South Carolina South Dakota

The method of specific appropriation was used in:

California Ohio Mississippi
Nebraska Pennsylvania Oklahoma
Kansas

The premium method was used in: Florida, North Dakota, and South Carolina.

Periodic contributions were used in: Kentucky, Michigan, Oregon, and Rhode Island.

General appropriations were used in: Minnesota and Illinois. Kentucky switched from private insurance companies to its own fund in 1936, Minnesota changed to self-insurance in 1923 and South Carolina set up its sinking Fund Commission in 1900.

Laws providing for self-insurance were repealed in Georgia and Louisiana.

Who May Be Agents

No agent should be licensed whose premium writings for the general public do not exceed those on insurance for himself, members of his family, his employer or employees.

This prevents persons becoming licensed as agents in order to write their own insurance or the insurance of their families, employers or employees, and as a result receiving preferential treatment over those who buy insurance from real agents. The practice
is objectionable since it amounts to rebating the commission. North Carolina passed such a statute in 1945.97

Agency Practices

Closer regulation and supervision of agency practices are desirable.98 Laws for licensing agents should not be administered purely as revenue measures. Agents should be required to show more adequate training, better prospects for financial success, and greater knowledge of insurance. State supervisory officials should give more attention to such matters as company training courses, sales contests compensation arrangements, etc.

Policy Forms

The number of policy forms should be reduced, and greater attention given to establishing standardized policy forms or policy provisions acceptable in all states.

One or two life insurance companies have had over 130 technically different forms of policy which could be presented.

In 1913, the National Association of Insurance Commissioners began a study of the standard fire insurance policy form and recommended a revised form, which was adopted in New York in 1917 and is known as the New York Revised Form of 1918. Again in 1936 the National Association of Insurance Commissioners engaged in a study of the standard fire insurance policy form, and in 1937 they recommended a new revised form to the States. Nothing was done until 1943, when New York adopted its 1943 Standard Fire Insurance Policy. All but seven states have adopted the same, or substantially the same form of policy, known as the Third Standard fire insurance policy.99

State insurance departments should be strengthened so that they will be better equipped to judge the adequacy of policy forms.

Unauthorized Insurance

Insurance companies have often sold insurance in states other than the domicile of the company through the medium of advertising in newspapers and over the radio. At their 1946 meeting the National Association of Insurance Commissioners went on record as re-endorsing a Uniform Unauthorized Insurers Act which

97. Id. at 302.
98. Sawyer, Insurance and Interstate Commerce 114 (1945).
99. For the history of the standard fire insurance policies see Patterson, Insurance Law During the War Years, (1946) 46 Col. L. Rev. 345, 346-348.
has already been adopted by twelve states. The Uniform Act prohibits one from acting within the state as agent for an unauthorized insurer or as agent for an insured in placing insurance with an unauthorized insurer. The Commissioners rejected an indorsement of a federal measure, the Hobbs Bill, which seeks to get at the same problem.

3. Taxes

Insurance Tax Rates Discriminating Against Foreign Companies

The States should repeal rate differentials which discriminate against out-of-state companies. Considerations of economic and social policy, not requirements of constitutional law, dictate such a policy.

The more conventional barriers to entry of out-of-state businesses are set up in each state which imposes higher minimum rates on foreign than on domestic companies. Examples in 1942 of states with differential rates adverse to foreign life insurance companies were Alabama, Iowa, and South Dakota (1 per cent on domestic companies, 2.5 per cent on foreign), Maine (1 per cent and 2 per cent) Texas (.0625 per cent and 4.65 per cent), and Washington (1 per cent and 2.25 per cent).

The predominant form of tax on life and fire insurance companies, both domestic and foreign, is the gross premiums tax. For example, in 1942, 45 states applied the gross premiums tax to foreign life insurance companies, and 46 to foreign insurance companies. Gross premium taxes also predominate in the taxation of domestic companies, but several other methods of taxation, under both general and special tax acts, are applied. Among the special

100. 9 U. L. A. 725 and 1946 Supp. 163. See also Proceedings of the National Association of Insurance Commissioners, 1944, 56-57; Sawyer, Insurance as Interstate Commerce 112 (1945); Wettach, supra note 94 at 299-300.


102. "The foregoing discussion reveals four barrier effects of State insurance taxation: (1) The combination of retaliatory laws and high discriminatory rates on foreign companies imposes a barrier to the exit of domestic companies; (2) discrimination in rates discourages entry of foreign companies into the taxing state; (3) tax concessions for investment of assets or reserves in State and local securities act as artificial impediments to the free flow of investment; and (4) complexity and diversity of laws impose a greater burden of compliance on these companies which venture into numerous states. While the differentials in insurance company burdens are too low to have seriously discouraged the interstate transaction of insurance business and while fiscal rather than protective methods have usually been involved, the problem of trade barriers in the insurance field has considerable potential importance." Federal, State and Local Government Fiscal Relations, Sen. Doc. No. 69, 78th Cong., 1st Sess. 259-260 (1943).
IMPROVEMENT OF INSURANCE LAWS

Tax Concessions to Companies Investing Their Assets in Securities Specified by Taxing State

States should cease making tax concessions for investment of assets or reserves in state and local securities. 104

Such laws tend to distort the natural flow of investment of insurance company assets. In 1942 in Colorado, Georgia, Idaho, Louisiana, Mississippi, Montana, New York, South Carolina, Texas, and Washington the taxes on life insurance companies were reduced if stipulated percentage of the assets of the company were invested in approved state or local securities. For instance, the standard minimum rate in Georgia is 1.5 per cent, but if one quarter of the total assets are invested in prescribed Georgia securities, the tax is 1 per cent while if three-fourths are so invested, the tax is 0.25 per cent. 105 These efforts to retain or import foreign capital and, incidentally, to strengthen the market for state and local securities are similar in principle to the granting of tax concessions to migratory industries.

In 1946, the Mississippi Commissioner in his report to the Governor and Legislature recommended the repeal of the Mississippi law and it was repealed. In 1945, Washington repealed its law.

103. For detailed analysis see Kastner, supra note 101 at 132. See also Cox, Discussion of the S. E. U. A. Case and Public Law 15, Proceedings of the American Life Convention, 1945, 66, 67-68.

104. See Federal, State and Local Government Fiscal Relations, supra note 102 at 259-60.

105. For other illustrations see Kastner, supra note 101 at 132-33.
Retaliatory Insurance Tax Laws

The States should repeal their retaliatory insurance tax laws.\(^{106}\)

As of 1942, reciprocity or retaliation in life insurance taxation was authorized in forty-two states and the district of Columbia. In Connecticut, reciprocity is used throughout its insurance tax system and New Jersey uses it for life insurance only. In all other states, retaliation is the method. Retaliatory clauses are found in 37 state laws taxing foreign fire insurance companies.

Such laws commonly provide that foreign companies doing business in the taxing state shall pay either a specified minimum rate on gross premiums or that rate which the home states of such companies apply to the domestic companies of the taxing state. Such retaliatory treatment is not confined simply to tax rates, deductions, and bases. It extends even to the regulations prescribing conditions under which foreign companies may do business in a given state. Thus, the effect of increasing taxes upon foreign companies is to increase the taxes on domestic companies. The defenders of retaliatory laws believe or contend that this protects the domestic companies from excessive taxes by states other than their home states since it is thought that the home states will hesitate to raise rates on foreign companies and thereby invoke higher rates on their own companies. It is argued that retaliatory provisions thus tend to discourage discrimination and to keep state insurance taxes reasonable and uniform.

Unfortunately, however, several states have not been persuaded to accept such reasoning, and have imposed high and discriminatory rates on foreign companies. Since under such statutes the tax payable by a domestic company to the home state is low while the tax payable to each state with a retaliatory law is high, these states have as a net result created bars to the extension of their own domestic companies' business beyond the home-state borders.\(^{107}\)

But if the taxing state has low minimum rates on foreign companies, and no differentials in favor of home companies, there is no obstruction to the flow of interstate commerce. The company, whose home state has a high tax rate and a minimum of deductions and extensive regulations and prohibitions applicable to foreign companies, is most injured by the retaliatory laws while companies from states

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\(^{106}\) See Federal, State and Local Government Fiscal Relations, supra note 102 at 259-60, 456-68.

with low rates and a maximum of deductions and a minimum of regulations are the least affected. The anomalous result is that the home state can build up or remove other states’ tax barriers to its domestic companies. The combination of retaliatory laws and high discriminatory rates on foreign companies imposes a barrier to the exit of domestic companies.

The growth of retaliation, carried to great detail for regulatory as well as for tax purposes, in all likelihood has encouraged state insurance departments to retain their tax functions since they are the most familiar with the comprehensive requirements as to admissions of companies. But insurance departments are not always in position to do a careful job of tax administration, hence virtual self-assessment by companies may result.

Retaliatory laws have not secured uniformity in taxation, but have increased the lack of uniformity. They greatly burden tax administration. On the whole the disadvantages of retaliation exceed its advantages. A better way to secure uniformity is through administrative and legislative cooperation.

In 1945 fourteen states\(^\text{108}\) repealed their retaliatory laws, or at least that portion thereof dealing with taxes, while two states (Connecticut, Pennsylvania) broadened the scope of their retaliatory laws. Five other states considered but failed to enact repeal legislation.\(^\text{109}\) But in 1947, following Prudential Insurance Co. v. Benjamin, three of these states, Maine, Maryland and Oregon, re-enacted the retaliatory laws repealed in 1945.

Uniformity of Tax Rates, Deduction, and Bases

The States should seek to secure greater uniformity of tax rates, deductions, and bases.\(^\text{110}\)

Diverse insurance laws may to some extent be barriers to the free flow of insurance business. Whether or not they are, it would seem that they are inimical to the development of such business. The National Association of Insurance Commissioners has given some attention and study to the problem of uniformity of the base of insurance taxes and has made a number of recommendations. The New York Commission on Interstate Cooperation has repeat-
erly urged state cooperation to secure greater simplicity and uniformity. A uniform act prescribing a uniform base and relatively uniform practice as to rate, is needed. Domestic and foreign, stock and mutual companies, and different forms of insurance written, should be given similar treatment.

It would seem that a separate base of insurance taxation, apart from other business taxes, is desirable. But what is the best uniform base is debatable. Possibly it should include allocated gross income from investments as well as premiums from underwriting. Interstate cooperation appears to hold greater promise of results than retaliation and reciprocity. Complexity and diversity of laws impose a great burden of compliance on those companies which venture into numerous states.

The premiums base is defined differently in almost every state. There is lack of uniformity as to premiums taxable and allowances for deductions. This want of uniformity may result in double taxation, escape from taxation, and increase in the cost of compliance. The premiums base has been variously defined as premiums received from residents; all first premiums on business in a state and all renewal premiums received in or out of a state on lives in a state; all premiums received in a state or remitted to the home office; such gross premiums as are not taxed elsewhere; etc. There are about twenty variations in the legal definition of the nature of premiums. Likewise, there is great diversity in provisions concerning deductions.

4. Administration

State Insurance Commissioners

(1) Insurance commissioners should be appointed by the governor subject to confirmation by the upper chambers of the state legislatures. Their selection should be made exclusively on the basis of the appointees' experience and qualifications.

(2) The term of office of the state insurance commissioner should be increased substantially. A minimum of four years is recommended, and removal should be permitted subject only to cause, and reviewable by the courts. To the greatest extent possible competent commissioners should be continued in office regardless of their political affiliation.

(3) The salaries of insurance commissioners should be substantially increased. A minimum of $6,000 a year is suggested.

(4) Insurance commissioners should not be obliged to under-
take any duties other than the regulation and supervision of insurance companies. From one-half to two-thirds now have other duties. The insurance department should be subordinate only to the governor.

(5) There should be substantial increases in the budget for insurance departments in most states.

(6) The personnel of most insurance departments should be increased. Civil service should be extended to the personnel. The employment of special outside examiners should be discontinued.

In 1940 the States collected $114,000,000 in taxes from insurance corporations, of which less than 5 per cent was used for the maintenance of the insurance department and regulation of the industry.

At the 1946 meeting of the National Association of Insurance Commissioners, Commissioner McCormack of Tennessee proposed a Model Statute establishing State Insurance Departments. His proposal attracted but little interest, and was postponed for further consideration at later meetings.

Examination Procedures

Examination procedures should be strengthened especially as to companies domiciled within the state. There should be more frequent examinations, more competent examiners, greater publicity to and full release of all examination reports, and examination which will give greater attention to the insurance operations as contrasted with the purely financial aspects of the business. The States should adopt uniform standards of examination.

Administrative Discretion

The administrative discretion of state insurance commissioners should be increased. The Statutes should require the commissioner to make findings of fact in support of his official decisions.

This is true with respect to both (1) the power of the Commissioner to make findings of fact which will be conclusive on judicial review, and (2) the power of the Commissioners to choose from among two or more means of effectuating the legislative policy.

As to both of these the state insurance commissioner has less discretionary power than is granted to most federal administra-

tive agencies. If state administration is to be adequate these powers must be conferred or increased.

Findings of fact serve three purposes: (1) a publicity safeguard against arbitrary action; (2) a check within the administrative agency itself; and (3) a basis for judicial review. The power to make findings of fact that will be conclusive on judicial review if supported by competent evidence, would make the commissioner more like an adjudicative official and less like a policeman or a prosecuting attorney.

Very few statutes confer the power to choose between two or more means of carrying out a legislative policy or to approve several of them. Such statutes should help eliminate the diversity and conflict between state insurance laws now drawn in rigid terms. Greater discretion should of course be accompanied by a high order of ability in the insurance commissioner and his personnel.

Administrative Procedure

The state statutes should require the insurance commissioner to give notice and a hearing before making an administrative decision which adversely affects the interests of those engaged in the insurance business.112

Only New York has given distinct recognition to the procedural provisions of the insurance department. Notice and hearing provisions are rather uncommon in the States except as to rating orders and revocation or suspension of agents' and brokers' licenses. The office of insurance commissioners has developed gradually from a tax-collecting and record-keeping bureau into an adjudicative and regulatory agency. There should be legislation which recognizes that the commissioner makes decisions having important legal and factual consequences, and which therefore places adequate procedural limitations on the making of such decisions. Informality of procedure should of course be prescribed.

Administrative Regulations

(1) Notice should be given in advance to those who will be directly affected by a proposed administrative regulation, so that objections may be presented.113

112. See Patterson, supra note 111 at 36. See also Report of the Committee on Insurance Law Practice and Procedure, Proceedings of the Section of Insurance Law, American Bar Ass'n, 1946, 344-345.

113. See Patterson, supra note 111 at 37.
(2) Official regulations should be officially promulgated so that copies are distributed to or at least may be obtained by all interested persons.

Insurance departments have for years been giving out informal rulings interpreting statutory provisions and approving or disapproving certain practices. When such rulings are merely reasons for making particular decisions, they constitute administrative case-law rather than legislation. On the other hand, when a ruling purports to lay down a general rule for the future, it assumes the character of a supplement to the statute, a piece of subordinate legislation. Compliance may have serious consequences. Fairness would seem to require that the making of an official regulation be preceded by notice and a hearing. The requirement of notice and filing of regulations will tend to greater care in the drafting of regulations, as well as fair consideration of all the facts and interests to which they will apply. During recent years a considerable number of states have passed statutes requiring the publication and filing of rules and regulations of state agencies and boards.