NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 2

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 60.

Insurance and Insurance Companies.

Section 1. The Contract of Insurance.
Sections 2- 12. The Insurance Commissioner. Powers and Duties.
Sections 13- 17. Unauthorized Insurers.
Sections 18- 25. Deposit of Securities with Treasurer of State.
Sections 26- 28. Issue of Contract of Insurance by Incorporated Companies.
Section 29. Definitions of "Domestic" and "Foreign."
Sections 30- 65. Organization of Companies under General Law.
Sections 66- 81. Stock Companies.
Sections 82-103. Domestic Mutual Fire Insurance Companies.
Sections 104-110. Fire Insurance.
Sections 111-115. Lien of Mortgagees on Fire Policies.
Sections 116-129. Accident and Sickness Insurance.
Sections 130-131. Life Insurance.
Sections 132-137. Standard Nonforfeiture Law.
Sections 138-145. Standard Valuation Law.
Sections 146-158. Unfair Methods of Competition and Trade Practices.
Sections 159-162. Miscellaneous Provisions.
Section 163. Group Insurance for Certain Employees.
Section 164. Group Life Insurance Definition.
Section 165. Group Life Insurance Standard Provisions.
Section 166. Group Life Insurance Notice of Conversion Privilege.
Section 167. Exceptions.
Sections 168-169. Pension Plans and Life Insurance for Employees.
Section 170. Annuity Companies.
Sections 171-178. Domestic Fraternal Beneficiary Associations.
Sections 179-182. Foreign Fraternal Beneficiary Associations.
Section 183. Associations for Casualty Insurance.
Sections 184-197. Licenses to Agents. Supervision.
Sections 198-201. Foreign Associations for Casualty Insurance.
Sections 202-207. Whole Family Protection.
Sections 208-222. Foreign Surety Companies. Credit Insurance and Title Insurance.
Sections 223-235. Casualty Insurance on Assessment Plan.
Sections 236-243. Reciprocal Contracts of Indemnity.
Sections 244-257. Nonprofit Hospital or Medical Service Organizations.
Sections 258-263. Motor Vehicle Road or Tourist Service.
Sections 264-272. Insurance Emergency.
Sections 273-277. Insurance Agents and Brokers.
Sections 278-293. Qualifications of Life Insurance Agents.
Sections 294-300. General Provisions Concerning Agents and Brokers.
Section 301. Rights of Assignees.
Section 302. Liability Absolute When Loss Occurs.
Section 303. Judgment Creditor May Have Insurance.
Section 304. Inquests into Insurance Frauds.
Sections 305-306. Automobile Finance Business.
Sections 307-312. Sale of Lightning Rods.
Section 313. Recovery of Fines. Jurisdiction of Courts.
Section 314. Fees Payable to Insurance Commissioner.
Sections 315-330. Fire, Marine and Inland Marine Insurance Rate Regulation.
Sections 331-347. Casualty and Surety Insurance Rate Regulation.
Sections 348-352. Hearings.

See c. 16, § 137, et seq., re taxation of insurance companies.

The Contract of Insurance.

Sec. 1. Contract of insurance.—A contract of insurance, life excepted, is an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the assured upon the destruction or injury of something in which the other party has an interest. (R. S. c. 56, § 1.)

Cross references.—See § 236, re reciprocal contracts of indemnity; c. 11, § 13, re insurance on state owned buildings and property; c. 100, § 56, re traveling circus or amusement shows.

Insured must have subsisting contract and insurable interest.—In view of the provisions of this section, to entitle a plaintiff to recover in an action on a fire insurance policy, it is incumbent upon him to establish both an insurable interest in the property destroyed and a valid subsisting contract of insurance at the time of its destruction. Buffalo Fertilizer Co. v. Aroostook Mut. Fire Ins. Co., 109 Me. 483, 84 A. 1078.

In order to recover insurance, a plaintiff must have both an interest and an existing contract at the time of the destruction of or injury to the property. Lyford v. Connecticut Fire Ins. Co., 99 Me. 273, 58 A. 916.

The Insurance Commissioner. Powers and Duties.

Sec. 2. Commissioner, appointment, term and duties; deputy commissioners.—An insurance commissioner, as heretofore appointed and hereinafter in this chapter called the "commissioner," shall be appointed by the governor and council and shall hold his office for 4 years and until his successor has been appointed and qualified, but shall not at the same time be bank commissioner. His office shall be at the state capitol. He may administer oaths in the performance of his official duties in any part of the state and at any time. He shall keep a correct account of all his doings and of all fees and moneys received by him by virtue of his office, and pay over the same to the treasurer of state forthwith. He shall receive an annual salary of $7,000. He may appoint, subject to the provisions of the personnel law, not to exceed 2 deputy commissioners, one of whom, by virtue of such appointment, shall be and perform all the duties of the first deputy insurance commissioner. In the event of a vacancy in the office of the insurance commissioner or during the absence or disability of that officer, the first deputy insurance commissioner so appointed under the provisions of this section shall become during such vacancy, absence or disability of that officer the acting insurance commissioner. (R. S. c. 56, § 2. 1947, cc. 182, 387. 1949, c. 349, § 90. 1951, c. 412, § 15.)

Cross references.—See c. 16, §§ 2-4, re bonds for state officials and employees; c. 22, § 75, re motor vehicle liability policy; c. 97, §§ 21-31, re fires; c. 97, § 43, re duty to make regulations respecting explosives and illuminating substances; c. 97, § 57, re fire safeguards; c. 100, § 56, re licenses for public exhibitions; c. 100, § 57, re buildings used for dances; c. 100, § 60, re certain structures used by public as spectators of motor vehicle racing; c. 100, § 69, re merry-go-rounds; c. 100, § 72, re cinematograph and moving pictures; c. 100, § 93, re electrical installations; c. 137, § 22, re permits for fireworks; c. 141, § 9, re buildings for manufacture of powder as nuisances.

Cited in Houlton v. Titcomb, 102 Me. 272, 66 A. 733.

Sec. 3. Notice of organization; license to do business.—Every domestic insurance company, upon organization, shall inform the commissioner thereof. No such company shall commence business by issuing policies until the said commissioner has examined and ascertained that it has complied with the terms of its charter, paid in its capital stock and become qualified to act; and he shall then issue to it his certificate of that fact, and annually thereafter upon examination, so long as the same is found solvent and responsible to do business, he shall issue to it a like certificate. (R. S. c. 56, § 3.)

See c. 10, § 22, sub-§ XXIX, re business to commerce within 2 years of incorporation.

Sec. 4. Powers of commissioner in re exchange of stock by domestic companies. — Upon application of any domestic insurance company, the commissioner is authorized to approve the fairness of the terms and conditions of the issuance by any such insurance company of any shares of its capital stock and bonds or its other securities or obligations in exchange for one or more bona fide outstanding securities, claims or property interests of any other insurance company, domestic or foreign, or partly in such exchange and partly for cash; but only after a hearing has been held by such commissioner upon the fairness of such terms and conditions at which all persons, to whom it is proposed to issue securities in such exchange, shall have the right to appear and be heard. At least 14 days' notice of any such hearing shall be published or given in such manner as the commissioner may determine to all persons to whom it is proposed to issue securities in such exchange. (R. S. c. 56, § 4.)

Sec. 5. Noncompliance. — Any insurance company incorporated in the state, having a specific capital, which does not within 3 months after receiving notice from the commissioner that its capital is impaired, satisfy him that it has fully complied with the law relating thereto, shall be proceeded against according to the provisions of section 10. (R. S. c. 56, § 5.)

Sec. 6. Insurance companies notified.—If the commissioner shall notify any insurance company doing business in the state that any policy form or form of endorsement used or proposed to be used by any such company does not meet with the approval of the commissioner, for the reason that it does not comply with the statutes of this state or is otherwise illegal or is misleading or capable of a construction which is unfair to the assured or the public, such policy form or form of endorsement shall not thereafter be used by such company in the state. The commissioner in notifying any such insurance company of his failure to approve of any such policy form or form of endorsement shall state his reason for disapproval thereof. Any such insurance company, receiving such notice from the commissioner, may within 30 days thereafter file an appeal in the superior court to be holden in Kennebec county stating therein its reasons and containing a copy of the commissioner's notification, and after such notice as it shall order, and upon hearing, said court shall determine whether or not the reasons assigned by the commissioner are valid and thereupon sustain or annul said ruling. During the pendency of any such appeal, such policy form or form of endorsement shall not be used. (R. S. c. 56, § 6.)

See c. 16, §§ 2, 4, re bonds of state officials and employees.

Sec. 7. Annual statement of condition; neglect. — Every insurance company doing business in the state shall annually, by the 1st day of March, render to the commissioner either an exact statement, under oath, of its condition as it existed on the 31st day of the previous December or its last exhibit, setting forth its condition as required by blanks approved by the commissioner and any company, association or society which neglects or refuses to comply with the provisions of this section forfeits $5 a day for each day's neglect. (R. S. c. 56, § 7. 1947, c. 188, § 7.)

See c. 16, §§ 137-148, re taxation; c. 16, § 153, re failure to make return and pay tax; c. 97, § 29, re special tax on fire companies.

Sec. 8. Statements preserved. — The commissioner shall preserve in proper form, the statement of the condition of every company examined or caused to be examined by him, and all statements rendered to him as required under the provisions of this chapter. (R. S. c. 56, § 8.)

Sec. 9. Examination of domestic companies; refusal.—The commissioner shall, whenever he deems it necessary and at least once in every 5 years,

examine or cause to be examined every domestic insurance company, in order to ascertain its ability to meet its engagements and do a safe insurance business; and shall make such other examinations as he regards necessary for the safety of the public or the holders of policies. He may require the officers to produce for examination all books and papers of the company, and to answer, on oath, all questions propounded to them in relation to its condition and affairs; and any officer who refuses to produce any such book or papers upon his demand, or to be sworn, or to answer any such questions forfeits not more than $200. Provided, however, that a domestic mutual insurance company doing its direct business entirely within the state of Maine shall be examined biennially. (R. S. c. 56, § 9. 1947, c. 12. 1953, c. 299, § 1.)

Sec. 10. Application for injunction against domestic company; proceedings.—If on examination the commissioner thinks that any domestic insurance company is insolvent, or that it is in such a condition as to render its further proceedings hazardous to the public or its policyholders, he shall apply to a justice of the supreme judicial court or of the superior court to issue an injunction restraining the company in whole or in part from proceeding further with its business. Any justice of either of said courts may thereupon, either with or without notice, issue such temporary injunction, or if on notice, such temporary or permanent injunction, as he thinks proper, either of which he may afterwards modify, vacate or perpetuate and may pass such orders and decrees, appoint receivers to receive the assets of the company and masters and do any other act conformable to the general rules of chancery practice which in his opinion is requisite for the safety of the public and for the best interests of all parties concerned, all of which orders and decrees he may in like manner enforce. All such proceedings shall be at once made known to the clerk of courts for the county, who shall enter them on his docket, place them on file and record them in the records of the court. The clerk's fees shall be audited and allowed by the court and paid from the assets of the company. (R. S. c. 56, § 10.)

Order may be returnable in vacation.—Under the provisions of this section and the general rules governing chancery practice, an order, upon the petition of a receiver of an insolvent insurance company asking for authority to levy an assessment upon the premium notes of the company, may be made returnable upon a day in vacation. Havey v. Hancock Mut. Fire Ins. Co., 110 Me. 492, 87 A. 51.

This section authorizes any justice of the court, in connection with other duties imposed by the section, to do "any other act conformable to the general rules of chancery practice which in his opinion is requisite for the safety of the public and for the best interests of all parties concerned, all which orders and decrees he may in like manner enforce." The general rules of chancery practice authorize a petition to be made returnable on a day in vacation. Havey v. Hancock Mut. Fire Ins. Co., 110 Me. 492, 87 A. 51.

Cited in Insurance Com'r v. Provident Aid Society, 89 Me. 413, 36 A. 627.

Sec. 11. Appointment of receiver of domestic life insurance company.—No bill in equity, or other proceedings for the appointment of a receiver of a domestic life insurance company, or to wind up its affairs, shall be maintained by any other person than the commissioner. If it appears to the said commissioner that the assets of such company are less than its liabilities, reckoning the net value of its policies according to the combined experience or actuaries' table of mortality, with interest at 4% a year, he shall suspend the right of such company to do business and apply to a justice of the supreme judicial court or of the superior court to proceed as provided in section 10; but if it appears that the assets are greater than its liabilities, computed as aforesaid, such proceedings shall not be commenced or, if commenced, they shall be dismissed and the company allowed to resume the transaction of business. (R. S. c. 56, § 11.)

Sec. 12. Receivers. — Receivers appointed under the provisions of this chapter shall have the same power and rights of action, and the course of proceed-

ings so far as applicable shall be the same, as is prescribed for receivers of savings banks. (R. S. c. 56, § 13.)

See c. 59, § 71, et seq., re receivers of savings banks.

Unauthorized Insurers.

Sec. 13. Purpose.—The purpose of sections 13 to 16, inclusive, is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. (1949, c. 96, § 1.)

Sec. 14. Service of process.—

I. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer:

A. The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein,

B. The solicitation of applications for such contracts,

C. The collection of premiums, membership fees, assessments or other considerations for such contracts, or

D. Any other transaction of the business of insurance,

is equivalent to and shall constitute an appointment by such insurer of the insurance commissioner and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

II. Such service of process shall be made by delivering to and leaving with the insurance commissioner or some person in apparent charge of his office 2 copies thereof and the payment to him of such fees as may be prescribed by law. The insurance commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

III. Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection II be valid if served upon any person within this state who, in this state on behalf of such insurer, is soliciting insurance, or making, issuing or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment or other consideration for insurance; and a copy of such process is sent within 10 days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

IV. No plaintiff or complainant shall be entitled to a judgment by default or to have his bill taken pro confesso under the provisions of this section until the expiration of 30 days from date of the filing of the affidavit of compliance.

V. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law. (1949, c. 96, § 1.)

See note to c. 53, § 127, re general statute providing for appointment by foreign corporation of process agent not applicable to insurance companies.

Sec. 15. Defense of action.—

I. Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either

A. Deposit with the clerk of the court in which such action, suit or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or

B. Procure a certificate of authority to transact the business of insurance in this state.

II. The court in any action, suit or proceeding, in which service is made in the manner provided in subsections II or III of section 14 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection I of this section and to defend such action.

III. Nothing in subsection I of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsections II or III of section 14 on the ground either

A. That such unauthorized insurer has not done any of the acts enumerated in subsection I of section 14, or

B. That the person on whom service was made pursuant to subsection III of section 14 was not doing any of the acts therein enumerated. (1949, c. 96, § 1.)

Sec. 16. Attorney fees.—In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the

insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed 12½% of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $25. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause. (1949, c. 96, § 1.)

Sec. 17. Unauthorized insurance; exceptions. — No insurance company domiciled in this state will be permitted to insure persons, property or other risks in any other state unless such company is authorized pursuant to the laws of such state to transact such insurance therein. Provided, however, that this section shall not apply:

I. To insurance companies organized in compliance with the insurance laws of this state, which cannot be properly authorized in other states because the laws of such states do not permit the writing of the class or kind of insurance written by such companies;

II. To contracts entered into where the person insured or proposed to be insured is, when he signs the application, personally present in a state in which the insurer is authorized to transact business;

III. To the issuance of certificates under any lawfully transacted group life, group accident or other group disability policy, entered into in a state in which the insurer is then authorized to transact business;

IV. To the renewal, reinstatement, conversion or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of the provisions of this section;

V. To insurance written in any state which does not have a similar provision in its insurance laws.

The commissioner shall annually mail to each domestic insurance company of this state notice specifying those states having a similar law. (R. S. c. 56, § 12. 1949, c. 96, § 2.)

Deposit of Securities with Treasurer of State.

Sec. 18. Deposit of securities with treasurer of state. — When any company, incorporated in this state, desires to deposit any portion of its stocks or other securities with any officer of the state, as a prerequisite to the establishment of agencies in any other state in compliance with the law thereof, the treasurer of state shall receive such stocks or other securities and hold the same on deposit and in trust for the benefit of all the policyholders in said company. (R. S. c. 56, § 14.)

Sec. 19. Certificate furnished. — The treasurer of state shall furnish such company mentioned in section 18 with a certificate or certificates of the fact, in his official capacity, embracing the items of the security so deposited, the amount and par value of each, and his opinion of their value. (R. S. c. 56, § 15.)

See c. 18, § 1, re fee for certificate.

Sec. 20. Interest or dividends; securities.—The treasurer of state shall hold the securities deposited under the provisions of section 18 on deposit in accordance with the provisions of sections 18 and 19, but the company may receive and collect the interest or dividends thereon and withdraw them from time to time, on depositing in their place other securities whose market value shall be

equal to the par value of those withdrawn; and the treasurer of state shall make such exchange, if the governor and council, upon application of the company, shall find and certify to him that the market value of the securities offered is not less than the par value of those proposed to be withdrawn; and thereupon the said treasurer shall issue a new certificate as provided in the preceding section. The treasurer of state on being satisfied of the repeal or alteration of the law of such other state described in section 18, disqualifying the depositing company from continuing its business therein, shall return the securities on demand. (R. S. c. 56, § 16.)

Sec. 21. Company may relinquish its business out of state.—When a company described in section 18 desires to relinquish its business out of the state, the treasurer of state, on application thereof and on the oath of the president and secretary that its assets are ample to meet all the existing demands against it, shall deliver up its securities. (R. S. c. 56, § 17.)

Sec. 22. Deposit by accident or health stock companies. — Every stock insurance company incorporated in the state for the purpose of writing accident or health insurance shall make and maintain a deposit, with the treasurer of state, of securities to the market value of at least $100,000, to be held in trust for the benefit of all the policyholders in said company before it shall have the right to transact any business. The treasurer of state shall receive such stocks or other securities and hold the same on deposit and in trust for the benefit of all the policyholders in said company. (R. S. c. 56, § 18.)

See c. 18, § 1, re fee for certificate.

Sec. 23. Certificates furnished. — The treasurer of state shall furnish such company described in section 22 with a certificate or certificates in accordance with section 19; and shall hold the securities deposited as provided in section 22, under the provisions thereof, and the provisions of section 20 shall be applicable thereto. (R. S. c. 56, § 19.)

Sec. 24. Return of securities.—When any company described in section 22 shall satisfy the commissioner that it has no policies in force and all its obligations to policyholders have been fully satisfied, the treasurer of state shall return its securities on demand. (R. S. c. 56, § 20.)

Sec. 25. Proceedings when company fails.—If any company depositing securities as provided in sections 18 and 22 fails to meet its obligations to its policyholders while its securities are so on deposit, the treasurer of state shall demand of its secretary or clerk, and he shall furnish, a full and complete list of the names and residences of all policyholders and others having claims upon the company; and they shall be notified forthwith through the postoffice by the treasurer of the condition of the company; and he shall state in the notice that the securities held by him will be disposed of and the proceeds, after paying expenses, paid over in a ratable proportion upon their claims properly authenticated, and the time when such dividend will be made. Nothing in the foregoing provisions imposes any liability on the state on account of any delinquency of said treasurer. Any company which has made such deposit, or the commissioner or any creditor of such company may at any time commence a suit in equity in the supreme judicial court or in the superior court against the state and other parties properly joined therein to enforce, administer or terminate the trust created by such deposit. The process in such suit shall be served on the treasurer of state and attorney general, who shall appear and answer on behalf of the state and perform such orders and decrees as the court may make therein. (R. S. c. 56, § 21.)

See c. 18, § 1, re fee of treasurer of state.

Issue of Contract of Insurance by Incorporated Companies.

Sec. 26. Insurance business carried on by corporations; Lloyd's.— The business involving the issuance of insurance contracts in this state shall be carried on only by duly incorporated insurance companies. All incorporated insurance companies may exercise the powers and are subject to the duties and liabilities contained herein and in chapter 53 so far as consistent with their charters. Associations of individuals now formed or which may hereafter be formed, upon the plan known as Lloyd's, for the purpose of transacting marine insurance business, may exercise all rights, powers and privileges granted under the laws of this state. (R. S. c. 56, § 22.)

Cross reference.—See § 236, re reciprocal contracts of indemnity.

Quoted in part in York County Mut. Fire Ins. Co. v. Knights, 48 Me. 75.

Cited in Young v. Aetna Ins. Co., 101 Me. 294, 64 A. 584.

Sec. 27. Number of directors; tenure; vacancies. — The business of incorporated insurance companies shall be managed by not less than 7 directors, who shall be chosen by the stockholders at the time and place and in the manner provided in their by-laws; they shall be stockholders and hold their offices for 1 year and until others are chosen and qualified in their stead. Vacancies may be filled at a meeting called for the purpose. In elections and other business, stockholders have 1 vote for each share. The directors shall choose one of their number president. (R. S. c. 56, § 23.)

Sec. 28. Directors divided into classes; terms of office; vacancies. —All insurance companies, stock or mutual, established in the state may, by their by-laws, divide their directors into 2 or 3 classes, to hold their office for 2 or 3 years, according to the number of classes and until others are chosen in their stead. At the first election after such classification, the company shall designate the term for which each director is elected, in such manner that 1 class shall thereafter go out of office annually. Vacancies shall be filled for the remainder of the term of the class in which they occur. The repeal of such by-laws shall not affect the term of the directors then in office; but all directors elected before such repeal shall hold office until the expiration of the term for which they were originally elected. (R. S. c. 56, § 24.)

Definitions of "Domestic" and "Foreign."

Sec. 29. "Domestic" and "foreign" defined. — The word "domestic," when used in this chapter, means companies incorporated by this state; and the word "foreign" means companies not so incorporated. (R. S. c. 56, § 38.)

Organization of Companies under General Law.

Sec. 30. Insurance companies; rights and privileges; purposes. — Any 10 or more persons, residents of the state, associated by such an agreement in writing as is hereinafter described, with the intention of constituting a corporation for the transaction of insurance business shall, upon complying with the provisions of section 42, become and remain a corporation with all the powers, rights and privileges and be subject to all the duties, liabilities and restrictions set forth in all the general laws relating to insurance corporations. Corporations may be organized as herein provided, upon the stock or mutual principal for the following purposes:

I. To insure against loss or damage to property and loss of use and occupancy by fire; explosion, fire ensuing; explosion, no fire ensuing, except explosion of steam boilers and fly wheels; lightning or tempest and tornadoes on land; by water and breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and of water pipes or against accidental injury to such sprinklers, pumps or other apparatus.

II. To insure vessels, freights, goods, money, effects and money lent on bottomry or respondentia against the perils of the sea and other perils usually insured against by marine insurance companies, including risks of inland navigation and transportation; also to insure against loss or damage to motor vehicles, their fittings and contents, whether such vehicles are being operated or not and wherever the same may be, resulting from accident, collision or any of the perils usually insured against by marine insurance, including inland navigation and transportation.

III. To insure against loss or damage to property of the assured, or loss or damage to the life, person or property of another for which the assured is liable, caused by the explosion of steam boilers or their connections or by the breakage or rupture of machinery or fly wheels; and against loss of use and occupancy caused thereby.

IV. To insure any person against bodily injury or death by accident, or any person, firm or corporation against loss or damage on account of the bodily injury or death by accident of any person, for which loss or damage said person, firm or corporation is responsible and to make insurance upon the health of individuals.

V. To insure against breakage or damage to glass, local or in transit.

VI. To insure the owners of domestic animals against loss resulting from death or injury to the animals insured and to furnish veterinary's services.

VII. To guarantee the fidelity of persons in positions of trust, private or public, and to act as surety on official bonds and for the performance of other obligations.

VIII. To insure against loss or damage by burglary, theft or housebreaking.

IX. To carry on the business commonly known as credit insurance or guaranty.

X. To examine titles of real estate and personal property, furnish information relative thereto and insure owners and others interested therein against loss by reason of encumbrances or defective titles.

XI. To insure against loss or damage to automobiles, except loss or damage by fire or while being transported in any conveyance, either by land or water; including loss by legal liability for damage to property resulting from the maintenance and use of automobiles.

XII. To insure any goods or premises against loss or damage by water, caused by the breakage or leakage of sprinklers, pumps, water pipes or plumbing and its fixtures and against accidental injury from other cause than fire or lightning to such sprinklers, pumps, water pipes, plumbing and fixtures.

XIII. To insure against loss or damage to property arising from accidents to elevators, bicycles and vehicles, except rolling stock of railroads, from other causes than fire or lightning.

XIV. To insure the payment of compensations and benefits under any workmen's compensation law now existing or hereafter enacted in this state, or in any other state, so far as the same may be permissible under the laws thereof.

XV. To insure against loss or damage to property, including loss of use and occupancy by tractors, vehicles, smoke and smudge, earthquake, hail, frost or snow, weather or climatic conditions, including excess or deficiency of moisture, flood, rain or drought.

Also to insure against loss or damage by insects or disease to domestic animals and to farm crops or products and loss of rental value of land used in producing such crops or products.

Also to insure against loss or damage, including loss of use or occupancy by water entering through leaks or openings in buildings.
Also to insure against loss or damage to aircraft, whether stationary or in motion, which shall include all or any of the hazards of fire, explosion, transportation or collision.
Also to insure against loss by legal liability for damage to property or for bodily injury or death resulting from the maintenance and use of motor vehicles or aircraft or any object falling therefrom excepting explosives or missiles in time of war, insurrection or civil strife.
Also to insure against loss by vandalism, sabotage or malicious mischief to any and all kinds of property, or the wrongful conversion, disposal or concealment of motor vehicles or aircraft.

XVI. Any policy insuring against liability resulting from or incident to the ownership, maintenance or use of a vehicle or aircraft may contain a provision for payment on behalf of the injured party or for reimbursement of the insured for payment, irrespective of legal liability of the insured, of medical, hospital, surgical and disability benefits to persons injured and funeral and death benefits to dependents, beneficiaries or personal representatives of persons who are killed as the result of an automobile accident, and such provision shall not be deemed to be an accident insurance policy within the life, personal accident or health insurance provisions of the revised statutes. [1953, c. 417]. (R. S. c. 56, § 25. 1953, c. 417.)

Sec. 31. Multiple line insurance.—Any foreign company authorized to transact the kinds of business specified in any 1 of subsections I, II, IV, VII, XI or XIV of section 30 may, except with respect to policies of life and endowment insurance and contracts for the payment of annuities and pure endowments, reinsure risks of every kind and description and may write any and all kinds of insurance other than the policies and contracts hereinbefore excluded; provided that it maintains a surplus to policyholders, including any guaranty capital, of a sum not less than that required of such companies by the statute or regulation of the state in which they are incorporated. (1949, c. 84.)

Sec. 32. Merger of domestic mutual insurance companies.—

I. Any 2 or more mutual insurance companies organized or to be organized under the provisions of this chapter or existing under the laws of this state may consolidate into a single company which may be any one of said companies, or a new company organized under the laws of this state to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the directors of the respective companies and signed by the duly authorized officers, and under the respective seals of said companies, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not the consolidated company shall be one of the constituent companies or a new company created by such consolidation, and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of insurance companies organized under this chapter and as are pertinent in the case of a consolidation, together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating companies before an officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said companies.

II. Subject to provisions of by-laws with reference to membership in the companies, said consolidation agreement shall be submitted to the members of record of each company at a meeting thereof called separately for the purpose

of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of members of each company representing a majority of the voting power present at said meeting, on a proposal to consolidate said company with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each company and the agreement so signed, acknowledged, adopted and certified, after it has been examined by the insurance commissioner and the attorney general and been by them certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, and within 60 days after the day of the meeting at which said consolidation agreement is adopted by the members, a copy thereof shall be filed in the office of the secretary of state, who shall enter the date of filing thereon, and on the original agreement, certified as aforesaid, to be kept by the consolidated company, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said companies and said original consolidation agreement or a certified copy thereof shall be evidence of the existence of such consolidated company and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation.

III. Notice of such special meeting of members shall be made by publishing once weekly on 3 successive weeks in a newspaper printed in each county of this state in which the company is chartered to operate, the last publication to be at least 7 days prior to such meeting. (1951, c. 138, § 1.)

Sec. 33. Change of purposes.—Any mutual insurance company organized for one or more of the purposes set forth in section 30 may at an annual meeting, or at a special meeting the call for which shall give notice of the proposed action, change its purposes by altering or abridging the same or by enlarging the same to include one or more of the purposes set forth in section 30, except subsections III, all of IV, excepting that portion which permits the writing of automobile medical payment coverages, VI, VII, IX, X, XIV, and the 2nd and 4th paragraphs of subsection XV, or make any other change or alteration in its certificate of organization as originally filed or subsequently amended that may be desired, provided such change or alteration is not otherwise specifically provided for and would be proper to insert in an original certificate of organization. A certificate of such changes shall be submitted to the insurance commissioner who, if it appears that the provisions hereinafter recited have been complied with, shall certify that fact and his approval of the certificate by endorsement thereon. Such certificate shall thereupon be filed with the secretary of state together with a fee in the sum of $20 for the use of the state, whereupon the secretary shall cause the same with his endorsement thereon to be recorded and shall issue a certificate as provided in section 42. Any such mutual company which changes its purposes to include the writing of any class or kind of insurance other than fire, marine or glass shall have a guaranty capital of not less than $100,000 divided into shares of $100 each, and no policy shall be issued until ¼ at least of its guaranty capital has been paid in, in cash, and invested as provided in section 71. If a company operating under the provisions of this section fails to comply with a request of the insurance commissioner to increase its paid-in guaranty capital, it shall cease to write any class or kind of insurance other than fire, marine or glass until such time as the commissioner's request has been complied with. The holders of certificates of such guaranty capital shall not receive dividends in excess of 7% in any 1 year and in no case unless such dividends are properly earned after providing for all expenses, losses, reserves and liabilities then incurred. The holders of such certificates of guaranty capital shall have no voting rights. Said guaranty capital may be retired by vote of the policyholders when the surplus funds of the

company, over and above all liabilities including guaranty capital, shall equal or exceed the amount of such guaranty capital. Provided that the net retention of liability on any 1 risk written by any company operating under the provisions of this section shall not exceed 5% of its policyholders' surplus. (1951, c. 285, § 1. 1953, c. 144.)

Sec. 34. Dissolution of domestic mutual insurance companies. — Whenever at any meeting of the policyholders of a domestic mutual insurance company, except life, called for the purpose by notice published once weekly on 3 successive weeks in a newspaper printed in each county of the state in which the company is chartered to operate, the last publication being at least 7 days prior to such meeting, the majority of the policyholders and shareholders present and voting, vote to dissolve such company, a bill in equity against the same for dissolution thereof may be filed by any officer, shareholder, member or creditor in the supreme judicial court or the superior court in the county in which it has its principal place of business. Upon said bill, notice shall be given by the clerk of courts to the attorney general and the insurance commissioner and such notice shall be given to others as may be ordered by any justice of either of said courts, in term time or in vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity that said corporation be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation and no existing assets thereof requiring distribution among the shareholders, said court may dissolve said company without the appointment of trustees or receivers. Assets remaining after payment of the costs of dissolution, claims against the company and repayment of the guaranty capital shall be paid to the treasurer of state for the use of the state. (1951, c. 138, § 2.)

Sec. 35. Articles of agreement; capital and guaranty fund; liability of policyholders and stockholders.—The agreement described in section 30 shall set forth the fact that the subscribers thereto associate themselves with the intention to constitute a corporation, the name by which it shall be known, the class or classes of insurance for the transaction of which it is to be constituted, the plan or principle upon which its business is to be conducted, the town or city in which it is established or located, and if a stock company, the amount of its capital stock, and if a mutual company with a guaranty capital, the amount thereof. The capital stock of a stock company organized for any of the purposes hereinbefore mentioned shall not be less than $100,000; a mutual company incorporated to transact any class or kind of insurance other than fire, marine or glass shall have a guaranty capital as provided in section 36 and holders of certificates of such guaranty capital shall not receive dividends in excess of 7% in any 1 year, and in no case unless such dividends are properly earned after determining all liability as required by the commissioner. Mutual companies may be incorporated to transact fire, marine and glass insurance and may operate in accordance with the provisions of section 85 and other provisions of the laws of this state relating to such companies, provided the net retention of liability by any company on any 1 risk shall not exceed $200 until its gross assets exceed $2,000, after which its net retention of liability on every risk shall not exceed 10% of its gross assets, including the amount at any time due on its premium notes; mutual companies which do not so limit their business may incorporate for any of the foregoing purposes but before doing any business they shall establish a guaranty fund or capital of not less than $10,000 which may be divided into shares of not less than $100 and certificates issued therefor. A dividend not exceeding 7% in any 1 calendar year may be paid from the net earnings of the company after providing for all expenses, losses, reserves and liabilities then incurred. Such guaranty fund or capital shall be invested as provided in section 71 and shall be deposited with the treasurer of state. When the cash and other available assets of the company are exhausted such part of said fund as may be required shall, with the approval of the commissioner, be drawn and used to pay losses then due.

When such fund is so drawn upon, the directors shall make good the amount so drawn by assessments upon the contingent funds or notes of the company and unless such fund is restored within 6 months from date of withdrawal, the shareholders shall be assessed in proportion to the amount of stock owned by them for the purpose of restoring said capital. Shareholders and members of such companies shall be subject to the same provisions of law relative to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies; said guaranty capital may be retired, by vote of the policyholders, when the surplus funds of the company over and above all liabilities, including guaranty capital, shall equal or exceed the amount of such guaranty capital, or any part of said guaranty capital may be retired; provided that the amount of net surplus and guaranty fund shall not be less than $10,000. Said guaranty capital shall be retired when the net cash assets of the company are equal to three times the amount of guaranty capital. Any mutual fire, marine or glass insurance company, which has established a guaranty capital as provided herein and has obtained applications for insurance as required by section 37, shall be authorized by the commissioner to write business and such company may take a premium note as provided in section 85, or in lieu of said note it may charge and collect a premium in cash and by its by-laws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to and in addition to the cash premium written in his policy and in no case less than 1% of the maximum liability of the company under said policy. The total amount of the liability of the policyholder shall be plainly and legibly stated upon the filing-back of each policy. Whenever any reduction is made in the contingent liability of members, such reduction shall apply proportionally to all policies in force. (R. S. c. 56, § 26. 1951, c. 183, § 1.)

Sec. 36. Organization of mutual company; policies.—Any mutual insurance company may be organized under the provisions of sections 30 to 45, inclusive, with a guaranty capital of not less than $100,000, divided into shares of $100 each; and no policy shall be issued by such corporation until ¼, at least, of its guaranty capital has been paid in, in cash, and invested as provided in section 71. The remainder of the guaranty capital shall be paid in and invested as provided in section 71, in such amounts and at such times as in the opinion of the insurance commissioner is necessary for the adequate protection of the policyholders. The holders of such guaranty capital may receive dividends for the like amount provided for the guaranty capital of mutual fire insurance companies in section 35, and said guaranty capital may be retired in the same manner as provided in said section. (R. S. c. 56, § 27. 1951, c. 285, § 2.)

Sec. 37. Amount of applications required before policies issued.—No policy shall be issued by a purely mutual company until applications have been made in good faith for insurance to the amount of $50,000; and no policy shall be issued by a stock company until its capital stock has been paid in, in cash, and invested as provided in section 71. (R. S. c. 56, § 28.)

Sec. 38. Corporate name; objection by commissioner. — Any name not previously in use by an existing corporation or company may be adopted, provided that one or more of the words "insurance," "surety," "fidelity," "casualty," "bonding" or "fire" constitute a part of such title. The word "mutual" shall also appear in the title of all companies operating on the mutual plan. The commissioner may refuse his certificate hereinafter provided, until the adoption of a different name if, in his judgment, the name adopted too closely resembles the name of an existing corporation or company or is likely to mislead the public. (R. S. c. 56, § 29.)

Sec. 39. Notice of first meeting.—The first meeting for the purpose of an organization shall be called by a notice signed by 1 or more of the subscribers

to such agreement, stating the time, place and purpose thereof, a copy of which notice shall 7 days at least before the day appointed be given to each subscriber, left at his usual place of business or residence or deposited in the post office, prepaid and addressed to him at his usual place of business or residence. Such notice shall be proved by affidavit of the person giving it. (R. S. c. 56, § 30.)

Sec. 40. Organization; record of proceedings; quorum.—At the first meeting mentioned in the preceding section, including any adjournment thereof, an organization shall be effected by the choice by ballot of a temporary clerk, who shall be sworn to the faithful discharge of his duties; by the adoption of by-laws consistent with the constitution and laws of the state, and by the election in the manner provided by law of directors and such other officers as the by-laws require, but at such first meeting no person shall be a director who has not subscribed to the articles of association. The temporary clerk shall record the proceedings until and including the qualification of the secretary of the corporation by his being sworn. No organization shall be effected at any such meeting or its adjournment, unless a majority of the subscribers to the articles of agreement and association are present and vote. (R. S. c. 56, § 31.)

Sec. 41. Officers.—The directors chosen under the provision of section 40 shall elect a president, a secretary and other officers which under the by-laws they are authorized to choose. (R. S. c. 56, § 32.)

Sec. 42. Certificates of articles of association; approval; filed and recorded; certificate of organization.—The president, secretary and a majority of the directors shall forthwith make, sign and swear to a certificate setting forth a copy of the articles of association, with the names of the subscribers thereto, the date of the first meeting and of any adjournment thereof, and shall submit such certificate and the records of the corporation to the inspection of the commissioner, who shall examine the same, and may require such other evidence as he may deem necessary. The commissioner, if it appears that the requirements of the 2 preceding sections have been complied with, shall certify that fact and his approval of the certificate by indorsement thereon. Such certificate shall thereupon be filed in the office of the secretary of state by said officers, and upon being paid by them the fees or duties required by law, the secretary shall cause the same, with the indorsement thereon, to be recorded and shall thereupon issue to said corporation a certificate in the following form:

"STATE OF MAINE.

Be it known, that whereas" [names of subscribers to the association] "have associated themselves with the intention of forming a corporation, under the name of ....., for the purpose" [here the purpose declared in the articles of association shall be inserted,] "with a capital stock of $....., and have complied with the provisions of the statutes of the state in such case made and provided, as appear from the certificate of the president, secretary and directors of said corporation, duly approved by the insurance commissioner and recorded in this office: Now, therefore, I, ..., secretary of the state of Maine, hereby certify that" [subscribers' names] "their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of the ..... company, with all the powers, rights and privileges, and subject to the duties, liabilities and restrictions which by law appertain thereto. Witness my official signature, hereunto subscribed, and the seal of the state of Maine hereunto affixed, this ..... day of ....., A. D. 19..."
(In case of purely mutual companies, so much as relates to capital stock shall be omitted.)

The secretary of state shall sign the same, and cause the seal of the state to be thereto affixed, and such certificate shall have the force and effect of a special charter and be conclusive evidence of the organization and establishment of such

corporation. Said certificate shall be duly recorded in the office of the secretary of state, and a duly authenticated copy of such record may be used in evidence, with like effect as the original certificate. (R. S. c. 56, § 33.)

Sec. 43. Increase of capital stock; authority to transact business on increased capital.—Any stock insurance company may, at a meeting called for the purpose, increase the amount of its capital stock and the number of shares therein; and within 30 days after the payment and collection of the last installment of such increase shall present to the commissioner a certificate, setting forth the amount of such increase and the fact of such payment, signed and sworn to by the president, secretary and a majority of the directors of such corporation. The commissioner shall examine the certificate and ascertain the character of the investments of such increase and, if the same conforms to law, shall indorse his approval thereon, and upon payment of the fees required by section 75 of chapter 53, such certificate so approved shall be filed with the secretary of state, and thereupon the company shall be authorized to transact business upon the capital so increased and the commissioner shall issue his certificate to that effect; and any mutual insurance company with a guaranty capital may increase it in the same manner. (R. S. c. 56, § 34.)

Sec. 44. Dividends; capital stock increased by amount of certificates of profits issued.—Any stock insurance company organized under the laws of this state may declare cash dividends on their capital stock; and any such company may issue, pro rata to its stockholders, certificates of such portion of its profits and income as the directors from time to time determine, not including therein any portion of the premium money of risks not terminated, and after providing for all expenses, losses and liabilities then incurred; and the capital stock of such company shall be increased by the amount of the certificates of stock so issued; and whenever any increase of capital stock is made by any insurance company under the provisions of the preceding section, a certificate thereof shall be filed with the commissioner, who shall certify to the amount of the capital stock of the company so increased, as provided in said section. (R. S. c. 56, § 35.)

Sec. 45. Office and meetings in state and majority of directors citizens. — All insurance companies incorporated and organized under the laws of this state shall have their principal place of business in some city or town in the state and a majority of the directors shall be citizens of the state. The meetings of the directors shall be held in the state. (R. S. c. 56, § 36.)

Sec. 46. Change of location by mutual fire insurance companies.—A mutual fire insurance company organized under the laws of this state, at any legal meeting of its policyholders, of which all policyholders of record shall have been given notice as hereinafter provided, may change the location of its principal place of business from one city or town to another in this state. A copy of so much of the proceedings of such meeting as relates to such change of location certified by the secretary of said company shall be returned to the office of the commissioner for his approval within 30 days after adjournment of such meeting, and when so approved, shall forthwith be filed by the company in the office of the secretary of state for record; the date of filing shall be entered on the record thereof, and when said copy, bearing the approval of the commissioner, is so filed, the location shall be deemed to be changed. A notice in writing of the time and place of such meeting, stating the fact that a change of location will be considered, mailed to all policyholders of record, postage prepaid, to their last known post-office address at least 30 days prior to the date of said meeting, shall constitute notice above required. (R. S. c. 56, § 37.)

Sec. 47. Capital required of stock company; assets required of a mutual company; business authorized.—No foreign fire or marine insurance

company shall be admitted to do business in the state unless it has a bona fide, paid-up, unimpaired capital, if a stock company, of at least $200,000, well invested in or secured by real estate, bonds, stocks or securities other than names alone; or if a mutual company, net cash assets to the amount aforesaid; or if a mutual company doing fire insurance only, that it possesses net cash assets of not less than $50,000 and contingent assets of not less than $300,000, or net cash assets of not less than $75,000 with contingent assets of not less than $150,000, or net cash assets equal to its total liabilities and contingent assets of not less than $100,000, provided that such capital and assets, other than contingent, are well invested and immediately available for the payment of losses in this state and that it insures on any single hazard an amount no larger than 1/10 of its net assets. In addition to fire and marine insurance a stock or mutual company may be authorized to transact inland marine, tornado and sprinkler insurance and insurance upon automobiles or damage caused thereby, also for loss of use and occupancy by fire or other cause. Mutual fire insurance companies incorporated under the laws of other states, which insure only factories or mills or property connected with such factories or mills, may be authorized to transact business in this state. No life, casualty, accident, health, liability, plate glass, steam boiler or fly wheel, burglary and theft or sprinkler insurance company shall be admitted to do business in the state unless it has a bona fide, paid-up, unimpaired capital, if a stock company, of at least $100,000, well invested in or secured by real estate, bonds, stocks or securities other than names alone; or if a mutual company, net cash assets to the amount aforesaid. After July 9, 1943 any foreign mutual fire insurance company admitted to do business in this state in accordance with the requirements of this chapter shall be allowed to write a nonassessable policy if its cash surplus to policyholders is kept and maintained in excess of $200,000, as determined by the commissioner in accordance with the provisions of this chapter. If such a company, after qualifying to issue nonassessable policies, shall fail to maintain such a surplus it shall cease to issue a nonassessable policy until it has again met and maintained such a surplus for a period of 1 year. (R. S. c. 56, § 39. 1945, c. 118, § 4. 1947, c. 15, § 4.)

Cross reference.—See § 48, re interpretation of this section.

Cited in Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

Sec. 48. Interpretation of §§ 47, 83 and 85.—The provisions of sections 47, 83 and 85 shall not be construed as limiting any rights existing on July 9, 1943, of any mutual companies, other than mutual fire insurance companies, to issue nonassessable policies. (R. S. c. 56, § 40.)

Sec. 49. License; requirements.—No foreign insurance company shall transact any insurance business in the state, unless it first obtains a license from the commissioner. Before receiving such license, it shall furnish the commissioner with:

I. A certified copy of its charter and by-laws;

II. A statement, under oath, signed by its president or secretary, showing its financial condition according to a form supplied by the commissioner who shall have authority to examine or cause to be examined such company. In lieu of such examination, the commissioner may accept the certificate of the insurance commissioner or superintendent or director of insurance of the state where such company was incorporated as to its financial standing and condition, provided that such certificate is predicated on an examination completed within the 12 months immediately prior to date of request for admission by such company to do business in this state. Evidence satisfactory to the commissioner shall be presented to establish that the condition of the company and its methods of operation are not such as would render its operation hazardous to the public or its policyholders in this state; (1947, c. 13)

III. A power of attorney appointing the commissioner to be the true and lawful attorney of such company in and for this state, upon whom all lawful process in an action or proceeding against the company may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree on the part of the company, that any lawful process against the company which is served on said attorney shall be the same in legal force and validity as if served on the company, and that the authority shall continue in force irrevocable so long as any liability remains outstanding against the company in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of said commissioner and copies certified by him shall be received in evidence in all courts of this state. Upon receiving the papers herein enumerated the commissioner may, if he deems it advisable, grant a license authorizing the company to do insurance business in this state by constituted agents resident therein subject to its laws, until the 1st day of the next July, and annually thereafter such license may be renewed so long as he regards the company as responsible and safe, but in all cases to terminate on the 1st day of the succeeding July. (R. S. c. 56, § 41. 1947, c. 13.)

Cross reference.—See § 54, re revocation of license.

Under this section, the commissioner's business is to deal with such companies as can, when licensed, issue legal policies. His act cannot confer legality upon companies doing illegal business. State v. Towle, 80 Me. 287, 14 A. 195.

Stated in part in Medico v. Employers' Liability Assur. Corp., 132 Me. 422, 172 A. 1; Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

Cited in Scottish Commercial Ins. Co. v. Plummer, 70 Me. 540.

Sec. 50. Deposit in trust for policyholders in United States. — No foreign insurance company incorporated or associated under the laws of any government or state, other than the United States or one of the United States, shall be licensed to do business in this state until, besides complying with the provisions of law relating to the admission of companies of other states, it has made a deposit with the treasurer of this state or with the financial officer or insurance commissioner of some one of the other states of the United States, of a sum not less than the capital or assets required of like companies organized under the laws of other states to entitle them to admission to this state. Such deposit must be in exclusive trust for the benefit and security of all the company's policyholders and creditors in the United States and may be in securities under the same restrictions as the investments of companies of other states. (R. S. c. 56, § 42.)

Sec. 51. Real estate and securities held by trustees; books and accounts examined.—All real estate, securities and assets of any such company in the United States shall be held by trustees who are citizens thereof, for the benefit of all its creditors in the United States. These trustees shall be appointed by such company, and a certified copy of the vote by which they are appointed and of the deed of trust shall be filed in the office of the commissioner, and he may examine such trustees or the agents of such company under oath, and its assets, books and accounts in the same manner as he may examine the officers, agents, books and accounts of any company authorized to do insurance business in the state. (R. S. c. 56, § 43.)

Sec. 52. Licenses.—When a foreign insurance company shall have complied with the provisions of sections 47 to 51, inclusive, and the commissioner is satisfied that it is solvent in the United States, he may issue to it a license to transact business in this state and may, except as hereinafter provided, renew the licenses of the company and agents on the 1st day of July, annually, so long as he finds the company solvent. The commissioner shall not refuse to renew the license of any foreign insurance company doing business in this state unless the

commissioner shall have, on or before the 1st day of June, notified said company in writing by registered mail, at its principal office in the United States, of his intention not to renew its license, together with a detailed statement of his reasons therefor.

If, upon application by said company, the commissioner shall refuse for 5 days to countermand such notice of intention not to renew said license, said company shall have the right of appeal in the same manner and effect as is provided in section 60. Upon appeal said justice may, after hearing, make an order continuing the right of said company to do business in this state until final decision. If the decision of the justice reverses the decision of the commissioner, the commissioner shall, forthwith, issue the license. (R. S. c. 56, § 44.)

Sec. 53. Reciprocal provisions.—When by the laws of any other state of the United States or Province of the Dominion of Canada, any fines, penalties, licenses, fees or deposits in excess of those imposed by the laws of the state upon foreign insurance companies and their agents are imposed on insurance companies of this state and their agents, the same fines, licenses, fees or deposits shall be imposed upon all insurance companies of such state of the United States or Province of the Dominion of Canada and their agents doing business in or applying for admission to this state. All insurance companies incorporated by another country shall be regarded for the purposes of this section as though incorporated in the state where they have elected to make their deposit and establish their principal agency in the United States. (R. S. c. 56, § 45. 1945, c. 118, § 5. 1947, c. 15, § 5.)

Sec. 54. License revoked for violation.—The commissioner may revoke the license of any foreign insurance company authorized to do business in the state that shall neglect or refuse to comply with the laws thereof, or that shall violate any of the provisions of sections 49 and 273. (R. S. c. 56, § 46.)

Sec. 55. Examination.—The commissioner, whenever he deems it necessary for the protection of policyholders, shall visit and examine any insurance company, doing business by agencies in this state, but not incorporated therein. He may employ necessary assistants; provided that in relation to the affairs of any company incorporated by or organized under the laws of any of the United States, it shall be optional with said commissioner to accept the certificate of the insurance commissioner or superintendent of the state where said company was organized, as to its standing and condition, or to proceed to investigate its affairs as hereinbefore provided. (R. S. c. 56, § 47.)

Sec. 56. Books, papers and officers examined; refusal. — For the purposes set forth in the preceding section, the commissioner or any person whom he may empower shall have free access to all the books and papers of any insurance company doing business in the state, and may examine under oath its officers or agents relative to its business and condition. If any such company, its officers or agents refuse to submit to such examination or to comply with any provision of this chapter in relation thereto, the authority of such company to do business in the state shall be revoked until satisfactory proof is furnished to the commissioner that the company is in a sound and solvent condition. (R. S. c. 56, § 48.)

Sec. 57. Suspension. — When the commissioner thinks that any licensed foreign insurance company is in failing condition or unsafe, he may suspend its right to do business in this state until such disability is removed; and if the company or any of its agents, after such suspension and notice thereof to such agent or the injunction mentioned in section 10, issues any new policies, such agent or company forfeits not exceeding $200. To enable the commissioner to act in the

premises, he may require of such company a full statement of all its affairs bearing upon its responsibility, in the form prescribed by him. (R. S. c. 56, § 49.)

Cited in State v. Towle, 80 Me. 287, 14 A. 195.

Sec. 58. Receivers, appointment, powers.—When a foreign insurance company doing business in this state is dissolved, restrained or prohibited from doing business in the place where it is incorporated, and when under the provisions of the preceding section the commissioner regards the proceedings advisable, he may apply to the supreme judicial court or the superior court, or any justice of either of said courts, either in term time or vacation, setting forth the facts, and thereupon the court or justice may appoint a receiver or receivers to take possession of the assets of the company in this state, and collect, sell or dispose of the same as the court or justice may decree, and divide the proceeds pro rata among such creditors in this state as prove their claims before said court or justice before the dividend is made; and the balance, if any, shall be paid to the company or its assigns. The proceedings herein provided for shall conform to section 10. The receivers may maintain an action for any such assets in their own names as receivers, subject to all equities existing between the original or previous parties. (R. S. c. 56, § 50.)

Sec. 59. Insolvent company suspended; policies issued thereafter.—When the commissioner learns that the net cash funds of any foreign life insurance company doing business in this state are not equal to its liabilities, including the net value of its policies according to the combined experience or actuaries' table of mortality, with interest at 4% a year, he shall give notice to such company and its agents to cease issuing policies within the state. He may buy and use the life valuation tables adopted by the insurance department of Massachusetts for all purposes of valuation. When he is satisfied that the funds of such company have become equal to its liabilities, valuing its policies as aforesaid, he shall give notice to such company and agents that its business may be resumed. If any officer or agent, after such notice of suspension is given, issues any new policy in behalf of such company, he forfeits for each offense not more than $300; and the delivery of a policy in the state by mail or otherwise shall be deemed an issuing of such policy. (R. S. c. 56, § 51.)

Sec. 60. Appeal.—When the commissioner suspends the operations of a company or, on application, refuses to countermand such suspension, it may appeal to a justice of the supreme judicial court or of the superior court by presenting to him a petition therefor in term time or vacation, and he shall fix a time and place of hearing which may be at chambers and in vacation, and cause notice thereof to be given to the commissioner; and after the hearing, he may affirm or reverse the decision of the commissioner; and the decision of such justice is final. (R. S. c. 56, § 52.)

Sec. 61. Annual statement of condition published; life companies excepted; neglect.—Every foreign insurance company, life excepted, doing business in the state shall annually, before the 1st day of May, publish 3 weeks successively in some daily or weekly paper printed in every county where it has a duly authorized agent or issues policies, a condensed statement of its condition conformable to its last annual report to the commissioner, and any such insurance company which neglects or refuses to publish such statement forfeits not less than $50. (R. S. c. 56, § 53.)

Sec. 62. Suits against; judgment; suspension unless judgment paid within 30 days; company notified of service of process.—Any person having a claim against any foreign insurance company may bring a trustee action or any other appropriate suit therefor in the courts of this state. Service made

upon the commissioner or upon any duly appointed agent of the company within the state shall be deemed sufficient service upon the company and the judgment rendered therein shall bind the company as valid in every respect, whether the defendants appear or not. Unless such judgment is paid within 30 days after demand, the commissioner may, on notice and hearing of the parties, suspend the power of the company to do business in this state until it is paid and if the company or any agent thereof issues any policy in the state during such suspension, said company and agent each forfeits not exceeding $200; but any policy so issued is binding on the company in favor of the holder. Whenever lawful process against an insurance company shall be served on the commissioner, he shall forthwith notify the company of such service by letter and within a reasonable time forward a copy of the process served on him, by mail, postpaid and directed to the officers of the company. (R. S. c. 56, § 54.)

Cross references.—See note to c. 53, § 127, re general statute providing for appointment by foreign corporation of process agent not applicable to insurance company; c. 112, § 22, re service on foreign insurance company.

This section does not limit or restrict the jurisdiction of the courts of the United States. It does not do so in terms. Nor does it by implication. The object of the section was to prevent foreign corporations from acting in the state, unless they would submit to its jurisdiction so far as to be sued within its limits. It was not to exclude the courts of the United States, but enable Maine citizens to enforce their claims in Maine without resorting to another jurisdiction. To do this, it provides how service of any writ of process may be made,—and, being made, the courts of the state have jurisdiction. Being served, and the parties being before the court, all the incidents to a suit where one of the parties is a citizen of another state attach. The service thus made is declared to be legal, and is declared sufficient service upon the principal. It has the like effect as if the company had existed and been duly served with process in this state. That is, the party defendant is rightly in court. If the action is not removed, judgment may be rendered. If removed, then judgment is to be rendered in the court to which the removal is made. But there is nothing prohibitory of removal or infringing upon the jurisdiction of the courts of the United States. Hobbs v. Manhattan Ins. Co., 56 Me. 417.

Judgment entitled to full faith and credit.—The state had an unquestioned right to impose upon foreign corporations the conditions prescribed by this section. A judgment recovered in the courts of this state, when service was made according to its provisions, would be entitled to full faith and credit. Hobbs v. Manhattan Ins. Co., 56 Me. 417.

Section only applicable to action on claim against insurance company.—In an action not on a claim against an insurance company, but against a third party, service on a "duly appointed agent" of the company, cannot be justified under this section. Ouellette v. City of New York Ins. Co., 133 Me. 149, 174 A. 462.

Applied in Medico v. Employers' Liability Assur. Corp., 132 Me. 422, 172 A. 1.

Cited in Waterhouse v. Gloucester Fire Ins. Co., 69 Me. 409.

Sec. 63. Notices and processes served; company bound by agent's knowledge of risk.—All notices and processes which, under any law, by-law or provision of a policy, any person has occasion to give or serve on any such company, may be given to or served on its agent or on the commissioner, as provided in the preceding section, with like effect as if given or served on the principal. Such agents and the agents of all domestic companies shall be regarded as in the place of the company in all respects regarding any insurance effected by them. The company is bound by their knowledge of the risk and of all matters connected therewith. Omissions and misdescriptions known to the agent shall be regarded as known by the company and waived by it as if noted in the policy. (R. S. c. 56, § 55.)

I. General Consideration.

II. Service of Process.

III. Application of Section.

A. In General.

B. Knowledge of Agent Is Knowledge of Company.
C. Acts of Agent Binding on Company.

Cross references.

See § 300, re notice to agent; c. 112, § 22 re service on foreign insurance companies.

I. GENERAL CONSIDERATION.

Purpose of section.—The purpose of the section is that those seeking insurance and those afterwards holding policies may as safely deal with the agents, with whom alone they ordinarily transact their business, as if they were dealing directly with the companies themselves. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284; Maxwell v. York Mut. Fire Ins. Co., 114 Me. 170, 95 A. 877; Bradbury v. Insurance Co. of Pa., 119 Me. 417, 111 A. 609; Spaulding v. York County Mut. Fire Ins. Co., 128 Me. 512, 149 A. 143; Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918; Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

Previous to the enactment of the insurance law, policies had become so loaded down with provisos, limitations and conditions that in many cases they secured to the insured nothing better than an unsuccessful lawsuit in addition to the loss of his property. And one of the purposes of this section was to put an end to this evil. Day v. Dwelling-House Ins. Co., 81 Me. 244, 16 A. 894.

There is no limitation in this section. The statute recognizes what common experience teaches. Men commonly do all their insurance business with agents,—agents appointed by the companies. They have no direct dealings with the companies. They go to the agents on matters of occupancy, alteration and assignment. They go to the agents when losses have occurred, and to pursue the steps pointed out by them in proving the losses. To the insured the agent is for all practical purposes the company. Good public policy then requires that the companies that appoint these agents and hold them out as their representatives shall be bound by what they do, and that if an agent acts without authority, or in excess of authority, his principal should bear the consequences, rather than the insured who trusted him. The section was enacted to give effect to that policy. Such was the legislative intent. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284; Tracy v. Standard Accident Ins. Co., 119 Me. 131, 109 A. 490; Bradbury v. Insurance Co. of Pa., 119 Me. 417, 111 A. 609.

The statute is best construed by interpreting it just as it reads. The agent stands "in the place of the company," is the company "in all respects regarding any insurance effected by him." LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284; Maxwell v. York Mut. Fire Ins. Co., 114 Me. 170, 95 A. 877; Bradbury v. Insurance Co. of Pa., 119 Me. 417, 111 A. 609; Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918.

The phrase that the agent "shall be regarded as in the place of the company" is interpreted as meaning that the agent is the company in all respects regarding any insurance effected by him. Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

This section is a basic provision of Maine law, and citizens of the state are thereby apprized of the fact that they may rely upon the knowledge and acts of the agents of foreign companies in insurance matters, just as they can with agents of domestic companies. Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

And parties held to contract with knowledge of section.—Parties must be held to have contracted with a knowledge of this section and subject to it. The legislature has deemed it wise to enact the law, and parties will be held to its observance, notwithstanding it may nullify stipulations which they see fit to insert in their contracts contrary to its mandates. Marston v. Kennebec Mut. Life Ins. Co., 89 Me. 266, 36 A. 389.

And their agreement does not nullify its provisions.—An applicant's agreement in his application that "statements made to an agent not herein written shall form no part of the contract to be issued hereon", does not relieve the company of the provisions of this section. The parties cannot agree to that which is controlled by the section, and thereby nullify its plain spirit and meaning. Marston v. Kennebec Mut. Life Ins. Co., 89 Me. 266, 36 A. 389.

A provision in the application for insurance which limits the authority of the agent to such an extent that his acts and knowledge in respect to the risk is not binding on the company is in direct conflict with this section which expressly provides that the agent "shall be regarded in the place of the company in all re-

spects" and that it shall be bound by his "knowledge of the risk and of all matters connected therewith," and that "omissions and misdescriptions known" to him "shall be regarded as known by the company, and waived by it as if noted in the policy." Marston v. Kennebec Mut. Life Ins. Co., 89 Me. 266, 36 A. 389

This section must be held to be paramount to any agreement or stipulation which is in conflict with its terms. It is imperative and must control. Marston v. Kennebec Mut. Life Ins. Co., 89 Me. 266, 36 A. 389.

But this section does not render void the contract of insurance which contains provisions at variance with its requirements. Its effect is to render null and void such provisions and stipulations, leaving the contract in all other respects in full force. Marston v. Kennebec Mut. Life Ins. Co., 89 Me. 266, 36 A. 389.

"Effected" defined.—This section applies to insurance "effected by agents." The word "effected" in this case means "procured" by the agent. When the agent solicited the insurance, obtained the application and premium, forwarded them to the company at its home office and the company sent the policy back to the agent and he delivered the policy to the insured, the policy was "effected" by the agent within the meaning of this section. Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

Insurance may be "effected" orally.—The application of this section is not made to depend upon the issuance of an insurance policy, but upon the question whether insurance has been "effected" by the agent. And if the agent orally covered the insured with temporary insurance on his property pending approval or rejection of his application, then insurance was "effected" by him, within the meaning of this section. Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918. See note to § 74, re oral contract of insurance not prohibited by that section.

And that the application has to be sent to the home office of the company does not prevent the policy from being "effected" by the agent. Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

This section does not discriminate against foreign companies. Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

And a foreign company cannot avoid the effect of the provisions of this section which, in exact terms, is designed to apply to its contracts, by asserting that such contracts are not executed in this state. Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

This section will not permit an authorized agent to escape responsibility by using dummies. Thorne v. Casualty Co. of America, 106 Me. 274, 76 A. 1106.

Applied in Mailhoit v. Metropolitan Life Ins. Co., 87 Me. 374, 32 A. 989.

Quoted in part in Farrow v. Cochran, 72 Me. 309; Grant v. Patrons Androscoggin Mut. Fire Ins. Co., 117 Me. 567, 104 A. 625.

Stated in Waterhouse v. Gloucester Fire Ins. Co., 69 Me. 409.

Cited in Richmond v. Phoenix Assur. Co., 88 Me. 105, 33 A. 786.

II. SERVICE OF PROCESS.

Service may be on commissioner or agent in fact.—In the absence of an estoppel on the part of the company to set up the revocation of an agent's authority, a plaintiff has the option of serving its summons either on the commissioner or on one who was an agent of the company in fact. Ouellette v. City of New York Ins. Co., 133 Me. 149, 174 A. 462.

But service on agent whose authority has been revoked not authorized.—Service of process on an agent of the company whose authority to act as such agent has been revoked by the company is not authorized by this section. See Ouellette v. City of New York Ins. Co., 133 Me. 149, 174 A. 462.

III. APPLICATION OF SECTION.

A. In General.

The language of this section is most comprehensive and it was intended to be so. The section itself seems to place no limits. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284; Maxwell v. York Mut. Fire Ins. Co., 114 Me. 170, 95 A. 877; Bradbury v. Insurance Co. of Pa., 119 Me. 417, 111 A. 609.

Section applicable to both mutual and stock companies.—The provision of this section regarding the acts of agents includes agents of mutual companies as well as stock companies. Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918.

And to life insurance companies as well as to fire insurance companies.—Marston v. Kennebec Mut. Life Ins. Co., 89 Me. 266, 36 A. 389; Thorne v. Casualty Co. of America, 106 Me. 274, 76 A. 1106; Strick-

land v. Peerless Casualty Co., 112 Me. 100, 90 A. 974.

And to accident and health companies.—Strickland v. Peerless Casualty Co., 112 Me. 100, 90 A. 974.

And section is applicable to all agents.—The provisions of this section should not be limited in their application to the agents through whom insurance is effected, or to those whose names are borne upon policies. They were intended to apply to all the agents of insurance companies; to agents appointed to investigate the circumstances attending fires and to adjust losses, as well as to those through whom the insurance is effected. Day v. Dwelling-House Ins. Co., 81 Me. 244, 16 A. 894; Frye v. Equitable Life Assur. Society, 111 Me. 287, 89 A. 57; LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284.

For a more recent case in which it was said that this section limits the agency "to those whose names are borne on the policy, and upon whom service of all notices and processes may be made," see Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465. See also § 300.

This section is not limited to acts alone, or knowledge obtained, by the agent before the policy is issued. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284.

Thus, an alteration made by an agent in the policy itself after it was issued is binding on the company. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284.

But the section does not apply in cases of fraud on the part of the applicant or collusion between the applicant and agent. Mercier v. John Hancock Mut. Life Ins. Co., 141 Me. 376, 44 A. (2d) 372.

By this section, the company is bound by the agent's knowledge, not by his falsehoods, not by the falsehoods of the insured to the agent, unless the agent knew them to be false. Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465.

This section, making the knowledge of the authorized agent the knowledge of the company, is wise and salutary, but when invoked to accomplish a fraud on the company it should be strictly limited within the boundary prescribed, the knowledge of the agent. The section thus construed safeguards the insured in every legitimate respect and protects the company against material fraudulent representations not known to it or its agent. Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465.

B. Knowledge of Agent Is Knowledge of Company.

Under this section, the company is charged with the knowledge of the agent. Tracey v. Standard Accident Ins. Co., 119 Me. 131, 109 A. 490.

Under this section, so far as the insured is concerned, the agent is the company and his knowledge is that of the company. Harwood v. United States Fire Ins. Co., 136 Me. 223, 7 A. (2d) 899.

By this section, knowledge possessed by the agent when the policy is issued, is imputed to the principal. And the section goes further. It provides that "omissions and misdescriptions" known to the agent shall be deemed to be noted in the policy and waived. Handley v. Metropolitan Life Ins. Co., 127 Me. 361, 143 A. 465.

Knowledge of the agent may read itself into the insurance contract. Handley v. Metropolitan Life Ins. Co., 127 Me. 361, 143 A. 465.

Agent's knowledge of other insurance is company's knowledge.—The knowledge of the agent of a fire insurance company that an applicant's property is insured by another company is, in law, the knowledge of his company. Bigelow v. Granite State Fire Ins. Co., 94 Me. 39, 46 A. 808.

Notice of prior existing insurance given to the agent is notice to the company. Bradbury v. Insurance Co. of Pa., 119 Me. 417, 111 A. 609.

This section makes the agent stand in the place of his company regarding "any insurance" effected by him; that is all insurance. If it applies to the knowledge of an existing policy of insurance when placing a subsequent policy, it should with equal force apply to the knowledge of the issuing of a subsequent policy while continuing as the agent of the company which has issued the existing policy. Bradbury v. Insurance Co. of Pa., 119 Me. 417, 111 A. 609.

As is agent's knowledge concerning occupancy.—An agent's knowledge that the insured premises are unoccupied is the knowledge of the defendant under this section. Hilton v. Phoenix Assur. Co., 92 Me. 272, 42 A. 412.

Where the agent of a fire insurance company knew buildings insured were unoccupied when the application was made, it must be held that the company waived the requirement of occupancy and that the policy was not invalidated. Guptill v. Pine Tree State Mut. Fire Ins. Co., 109 Me. 323, 84 A. 529.

And mental and physical condition of applicant.—Under this section, there can

be no question that the knowledge of the agent who represents an insurance company in dealing with an applicant must be regarded as the knowledge of the company with reference to every physical and mental condition of the applicant of which the agent had knowledge, and of the medical or other treatment which he knew the applicant had received, whether administered in a sanatorium or elsewhere; and any misrepresentations in the application, which were within the knowledge of the agent, however obtained, were the knowledge of the company, and must be deemed as "waived by it as if noted in the policy." Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465.

For a case wherein it was held that the agent's knowledge of an existing disease was insufficient to constitute waiver of the terms of a health policy, see Handley v. Metropolitan Life Ins. Co., 127 Me. 361, 143 A. 465.

Agent's knowledge of false representations binding on company.—So far as the knowledge of the agent covers false representations made by the insured, that knowledge, by force of this section, binds the company. Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465.

But false statement to medical examiner not binding on company.—Yet a false statement by the insured to the medical examiner, communicated by him to the company, itself, would not be the knowledge of the company, unless it had knowledge of the falsity; a fortiori, a false statement to the medical examiner, communicated by him to the agent is not the knowledge of the agent, unless the agent had actual knowledge of its falsity. Hence, the medical examiner, not being an officer whose knowledge is the knowledge of the company, is not an officer whose knowledge is the knowledge of the agent. The medical examination, accordingly, adds nothing to the actual knowledge of the agent, in regard to the facts therein stated. Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465.

So far as material false representations to a medical examiner are known to the agent, they are known to the company; but, on the other hand, any material false representation made to the medical examiner, which was not known to the agent, is not made the knowledge of the company either by this section or common law. That is, just so far as material false representations to the medical examiner, coincide with the agent's knowledge thereof, they are constructively known to the company, and binding upon it; but beyond such coincidence, such false representations are not constructively known to the company, will not be deemed to be waived, will operate as a fraud and vitiate the policy. Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465.

Unless agent had knowledge of its falsity.—The plain language of the statute is that the company is bound by the agent's "knowledge of the risk and all matters connected therewith." There is no limitation upon the source of his knowledge. A reasonable interpretation clearly imparts to the statute an intent to hold the company responsible for material false representations made to the medical examiner, although not known by him to be false, provided they were, in fact, known to the agent to be false. In such case the knowledge of the agent is the constructive knowledge of the company. Accordingly, when the company is once charged with constructive knowledge of facts, false representations in the medical examination, in regard to the same facts, become immaterial, as the company cannot be deceived in regard to what it already constructively knows, through the knowledge of its agent, and will be bound by this knowledge in all dealings with its policy holders. Hughes v. Metropolitan Life Ins. Co., 117 Me. 244, 103 A. 465.

Knowledge of general agency's agent.—The knowledge of an agent of a general insurance agency becomes the knowledge of the general agency and its knowledge, under this section, becomes that of the company. Thorne v. Casualty Co. of America, 106 Me. 274, 76 A. 1106.

C. Acts of Agent Binding on Company.

The acts of an agent may constitute a waiver of the terms of the policy, and the company is bound by such waiver. Bilodeau v. Narragansett Mut. Fire Ins. Co., 116 Me. 355, 102 A. 42.

Thus, agent may waive requirement of written report of loss or injury. — Under this section, which provides that "the agents of insurance companies shall be regarded as in the place of the company in all respects regarding any insurance effected by them," an agent has power to waive the requirement in the policy for a written report of loss or injury; and directions given to the insured by an agent as to procedure touching the subject matter of the insurance, are binding upon the company, whether given before or after liability has been incurred. The agent stands in the place of the company in all respects. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284.

Under this section, agents have the power to waive a requirement that the notice of loss should be given in writing, and that it should be sent to the home office, notwithstanding the provision in the policy that "no condition or provision of this policy shall be waived or altered except by written endorsement, signed by the Secretary." LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284.

And an agent can in effect waive the filing of proof of loss within the required time, although the policy declared that no act of any agent, except the president or secretary, should be construed as a waiver. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284.

The act of the agent of the company in filling out an application is that of the company. Guptill v. Pine Tree State Mut. Fire Ins. Co., 109 Me. 323, 84 A. 529.

And insurer estopped from denying truth of statements made therein. — Where the application for insurance is drawn by the authorized agent of the insurer, and the answers to the interrogations contained therein are written by him in filling out the application, without fraud or collusion on the part of the applicant, the insurer is estopped from controverting the truth of such statements in an action upon the instrument between the parties thereto. Marston v. Kennebec Mut. Life Ins. Co., 89 Me. 266, 36 A. 389; Washburn v. United States Casualty Co., 108 Me. 429, 81 A. 575.

Thus, the company is bound by its agent's description of the location of the property written into the application and is estopped to question its correctness. Giberson v. York County Mut. Fire Ins. Co., 127 Me. 182, 142 A. 481.

And by agent's misrepresentation as to other insurance. — Where a statement in an application for fire insurance that there was no other insurance on the property was a misrepresentation which would have avoided the policy if made by the applicant, if such statement was not made by him but by the agent of the insurer, who by virtue of this section is the company, the company, having made the statement on its own responsibility, is estopped from denying the truth thereof. And, having issued its policy on the strength of its own misrepresentation, is bound by the contract just as conclusively as though it had given its consent in writing to the carrying of additional insurance. Spaulding v. York County Mut. Fire Ins. Co., 128 Me. 512, 149 A. 143.

Agent's acknowledgment of receipt of proof of loss and renewal agreement binds company. — Under this section, providing that a duly appointed insurance agent shall be regarded as in the place of the insurance company in all respects regarding any insurance effected by him, a letter written by such an agent acknowledging the receipt of a proof of loss and renewal agreement under an accident policy, binds the company, and the fact that the agent was forbidden by the company to make any agreement in relation to the matter after the death of the insured is wholly immaterial. Washburn v. United States Casualty Co., 106 Me. 411, 76 A. 902.

An agent's consent to alterations in the insured property, though in contravention of the terms of the policy is binding. LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284.

Sec. 64. Jurisdiction of courts.—No conditions, stipulations or agreements shall deprive the courts of this state of jurisdiction of actions against foreign insurance companies or associations, nor limit the time for commencing actions against such companies or associations to a period of less than 2 years from the time when the cause of action accrues. (R. S. c. 56, § 56.)

Cross references.—Sec c. 46, § 63, re railroad companies have insurable interest in property along route; c. 57, § 13, re insurance of church in actual occupancy of parrish; c. 112, § 112, re foreign insurance companies have benefit of statute of limitations under certain circumstances; c. 131, § 7, re penalty for burning property with intent to defraud the insurer.

Stipulation limiting time for commencement of action to less than 2 years not valid. — Under this section, a stipulation in a policy limiting the time for the commencement of an action to twelve months after the occurrence of the loss is not binding on the assured. The section is just as effective against the validity of the stipulation as though its insertion in a policy of insurance was prohibited under a penalty. Dolbier v. Agricultural Ins. Co., 67 Me. 180.

Sec. 65. Dividend.—Any dividend due from a foreign mutual fire insurance company under a policy of insurance issued by it shall be payable at the

place of business of its duly commissioned agent in this state 7 days subsequent to a demand for the payment thereof made by the assured or by his authorized representative; upon failure to so make such payment, an action therefor may be maintained. (R. S. c. 56, § 57.)

Stock Companies.

Sec. 66. Secretary and other officers. — Every stock company or its directors, as often as once a year shall, by ballot, elect a secretary, who shall be the clerk of the company and be sworn to the faithful discharge of his duty; besides other duties required by the by-laws of the company, he shall keep a true record of all the votes of the stockholders and of the directors, and a true list of the stockholders and of the number of shares held by each, and record every transfer of shares in a book kept for the purpose. The directors may appoint such other officers as they think necessary. (R. S. c. 56, § 58.)

No vote of directors required to authorize performance of duty enjoined by section.—The duty of keeping a true list of the stockholders and of the number of shares held by each is enjoined by this section. No vote of the directors is necessary to authorize the secretary to perform these acts. Starrett v. Rockland Fire & Marine Ins. Co., 65 Me. 374.

Sec. 67. Manner of calling meetings.—The secretary shall call special meetings of a stock company, besides any meeting for which the by-laws provide, to be held at the time and place, and for the purposes required in writing, by the proprietors of 1/5 of the capital stock; if the by-laws of such company prescribe no mode of calling such meeting, it may be notified in the manner prescribed in the act of incorporation for calling the first meeting. (R. S. c. 56, § 59.)

Sec. 68. Capital.—No insurance company shall be incorporated with a capital of less than $100,000, to be paid in at the periods and in the proportions required by the charter. (R. S. c. 56, § 60.)

Sec. 69. Capital stock reduced. — Whenever, after setting aside an amount equal to 50% of the premiums in force or the actual unearned portions of such premiums for fire risks; and for marine risks, 50% of the amount of premiums written in its policies upon yearly risks and upon risks covering more than 1 passage not terminated, and the full amount of premiums written in policies upon all other marine risks not terminated; the net assets of any insurance company with a specific capital do not amount to more than ¾ of its capital stock, the company shall restore its capital to the legal amount, provided that whenever the capital stock of any insurance company is impaired as aforesaid, it may, by a majority vote of the stock, at a meeting of the stockholders legally called, reduce its capital by canceling its shares pro rata to the number thereof, or it may reduce the par value of its shares; but no such company shall reduce its capital stock, as aforesaid, more than 20% thereof nor to a sum less than $100,000. (R. S. c. 56, § 61.)

Sec. 70. Liability of stockholders, in certain cases. — If any stock company becomes insolvent before its whole capital is paid in by the stockholders, any creditor thereof may have his action on the case against any 1 or more of the stockholders, whose proportion of the whole stock allowed by the charter is not paid in, to recover against them in their individual capacity towards his debt, an amount not exceeding the sum due from them on their shares. (R. S. c. 56, § 62.)

Sec. 71. Capital and assets invested.—An amount equivalent to the aggregate par value of all issued and outstanding shares of capital stock of stock insurance companies incorporated in this state, or in the case of any such com-

panies having no par value stock, an amount equivalent to the amount of capital represented by shares of no par value stock issued and outstanding, and such part of the surplus of such companies as the commissioner may direct shall be invested in such manner and in such funds, stocks and bonds as savings banks of this state may invest, as provided in section 42 of chapter 59, and said insurance companies shall be restricted in their investments of the above amounts in the same manner as are the savings banks of this state. (R. S. c. 56, § 63.)

See c. 92, §§ 18, 19, re taxation of stock and investments of insurance companies.

Sec. 72. Loans on respondentia or bottomry.—Stock companies may loan to citizens of the state, any portion not exceeding ½ of its capital stock, on respondentia or bottomry; but not unless at least ¾ of all the directors agree to such loan and enter their consent thereto at large on the records of the corporation, to be laid before the stockholders at their next meeting. (R. S. c. 56, § 64.)

Sec. 73. What property insured; limit of risk.—Stock companies may make insurance on vessels, freight, money, goods and effects, or money lent on bottomry and respondentia, against fire on dwellings or other buildings, and on merchandise or other property within the United States and fix the premiums and terms of payment; but no risk on any 1 bottom or on 1 building and contents shall exceed 10% of its capital stock actually paid in. (R. S. c. 56, § 65.)

Cross reference.—See note to § 74, re powers granted by this section not abridged by § 74.

The language of this section does not confine stock companies to any particular mode of insurance, either verbal or written, but gives them authority to make contracts of insurance, with all their incidents and accessories, in as broad and ample a manner as that enjoyed by natural persons. This provision makes it a corner-stone principle of their franchise, that they have authority to do in the way of insurance, as corporators, whatever private persons may do in their individual capacity. Walker v. Metropolitan Ins. Co., 56 Me. 371.

Sec. 74. Policies executed.—All policies of insurance shall be signed by either the chairman of the board, the president, a vice-president, an assistant vice-president or any 2 of the directors and countersigned by either the treasurer, an assistant treasurer, the secretary or assistant secretary; and they shall be binding upon the company as if executed under its corporate seal. (R. S. c. 56, § 66.)

Purpose of section.—The purpose of this section undoubtedly was to designate the mode in which the corporate sanction of "policies" of insurance should be expressed, and to relieve the assured from the burden of proving the authority of the persons who thus execute a policy, to bind a corporation. Walker v. Metropolitan Ins. Co., 56 Me. 371.

This section does not in terms, or by implication, abridge the powers granted in § 73, in respect to the mode of effecting insurance. It provides that insurance companies can make valid policies of insurance only when attested in the mode prescribed, and that, when thus verified, they shall bind the company, though they do not bear its corporate seal. Walker v. Metropolitan Ins. Co., 56 Me. 371.

And does not prohibit oral contract of insurance. — This section, providing that all policies of insurance shall be signed in a certain manner by certain designated officers is not concerned with oral contracts of temporary insurance, but only with formal policies of insurance, and does not deprive a company of its common-law right of making an oral contract of insurance. Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918.

The language of this section is not "all contracts of insurance," as it would have been if it had been the intention to prohibit all other modes of insurance, but it is "all policies of insurance." Insurance companies may still exercise their right at common law, of making parol contracts of insurance, if there is nothing in their charter to prevent it. But, when they insure by issuing a policy, they must conform to the statutory mode. Walker v. Metropolitan Ins. Co., 56 Me. 371.

Sec. 75. Companies, not to trade.—Stock companies shall not, directly or indirectly, be concerned in buying or selling any goods, wares, merchandise or commodities. (R. S. c. 56, § 67.)

Sec. 76. Dividends.—The directors, at such times as their charter or by-laws prescribe, shall make dividends of so much of the profits of the company as they think advisable; but moneys received and notes taken for premiums on risks, which are undetermined at the time of making such dividends, shall not be part of said profits. (R. S. c. 56, § 68.)

Sec. 77. Loss of capital.—After diminution of the capital stock by losses, depreciation or otherwise, no dividend shall be made until such diminution is supplied by actual funds or the value is restored. (R. S. c. 56, § 69.)

Sec. 78. Marine companies may divide certain profits.—Any marine insurance company may, by by-laws or votes duly passed for that purpose, divide among the stockholders thereof and the persons insured therein, in proportion to the stock owned by such stockholders and to the amount of premiums paid by the insured on risks terminated, all the clear profits of the company above 6% a year on its capital stock. Before such division is made, all arrearages of dividends to stockholders required to make up their annual dividends equal to 6% a year, shall first be paid. (R. S. c. 56, § 70.)

Sec. 79. Triennial statements.—Once in every 3 years, and oftener if required by the stockholders, the directors shall lay before them at a meeting an exact and particular statement of the affairs of the company, showing their profits, if any, after deducting losses and dividends. (R. S. c. 56, § 71.)

Sec. 80. Not to insure, after loss of capital.—If the company sustains losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who made such insurance or who consent thereto shall be jointly and severally liable for the amount of any loss which occurs under such insurance. (R. S. c. 56, § 72.)

Sec. 81. Certain provisions not applied to mutual companies.—The provisions in the foregoing sections relating to the amount of capital stock to be owned by any insurance company, and the division of the same into shares, and dividends of profit thereon, and other provisions incidental to the nature of its fund, and such of said provisions as relate to the liability of directors or stockholders in case of deficiency of capital, and the regulations concerning the business of any such company contained in sections 72 and 73 are not applicable to mutual fire insurance companies; but the other preceding provisions and the following are binding on such companies, so far as is consistent with their charters. (R. S. c. 56, § 73.)

Quoted in Bellatty v. Thomaston M. F. Ins. Co., 61 Me. 414.

Domestic Mutual Fire Insurance Companies.

Sec. 82. Insurance by mutual companies regulated. — Domestic mutual fire insurance companies may make insurance for a term, not exceeding 7 years, on dwelling houses, stores, shops and other buildings, and on household furniture, merchandise and other property against loss or damage by fire originating in any cause other than by design on the part of the assured, and for such other purposes as are now or may be hereafter enumerated in section 30. (R. S. c. 56, § 74.)

Cited in Buffalo Fertilizer Co. v. Aroostook Mut. Fire Ins. Co., 109 Me. 483, 84 A. 1078.

Sec. 83. Indorsements on policies.—Every domestic mutual fire insurance company shall cause to be printed or written on the outside of every policy that it issues, under the number, name of the assured and date of expiration, the

words "Total liability to assessment" and the figures showing such liability, except nonassessable policies. (R. S. c. 56, § 75.)

See § 48, re interpretation of § 83.

Sec. 84. Insured to be members.—Every person insured by a domestic mutual fire insurance company, or his legal representatives or assigns, continuing to be insured therein, is a member of the company and subject to its by-laws during the term of insurance specified in his policy. (R. S. c. 56, § 76.)

Acceptance by a mutual fire insurance company of an application for insurance makes the insured a member of the company. Greenlaw v. Aroostook County Patrons Mut. Ins. Co., 117 Me. 514, 105 A. 116.

And every person who takes insurance in a domestic mutual fire insurance company, is both an insurer and insured. He insures not only his own property, but he helps to insure the property of all the other members, during the term of his own membership in the mutual system corporation; that is to say, during the term of his policy. Greenlaw v. Aroostook County Patrons Mut. Fire Ins. Co., 117 Me. 514, 105 A. 116.

Test of membership is whether person insured. — The test of membership in a mutual assessment fire insurance company is not whether a policy has been issued, but whether or not the applicant was insured at the time in question. The length of time for which he was insured, or the manner in which the insurance had been effected is immaterial, if he was then in fact insured. Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918.

And one may be insured before policy made out.—While this section makes all policy holders members, yet it does not require that all members must be policy holders at the time of the destruction of the property by fire. A policy of insurance is merely evidence of the fact that the person to whom it has been issued is insured. But one may be insured in a mutual assessment fire insurance company even before a policy is made out. Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918.

By-laws may be part of contract by reference.—The by-laws may be a part of the contract of mutual fire insurance, even by reference. Greenlaw v. Aroostook County Patrons Mut. Fire Ins. Co., 117 Me. 514, 105 A. 116.

Interpretation of policy determines whether by-law part thereof.—Whether a by-law of a mutual fire insurance company is a part of the contract between the company and the insured will depend, not on the fact that the by-law has existence, but on the correct interpretation of the terms of the policy. By that instrument the conventional obligations of the company are fixed. Greenlaw v. Aroostook County Patrons Mut. Fire Ins. Co., 117 Me. 514, 105 A. 116.

By-laws may be waived. — Under the doctrine of consent and waiver, the company may waive the by-laws, in whole or in part. When the by-laws and the policy conflict, if the contract is within the power of the corporation, the policy will prevail over the by-laws, and determine the rights and liabilities of the parties. Greenlaw v. Aroostook County Patrons Mut. Fire Ins. Co., 117 Me. 514, 105 A. 116.

Quoted in Knowlton v. Patrons' Androscoggin Fire Ins. Co., 100 Me. 481, 62 A. 289.

Sec. 85. Assessments on premium notes and contracts of insurance; limits of liability stated.—The insured, before receiving his policy, shall deposit his note for the sum determined by the directors, which shall not be less than 5% of the amount insured, and such part of it as the by-laws require shall be immediately paid and indorsed thereon. The remainder shall be assessed in such installments as the directors from time to time require for the payment of losses, accrued expenses and a reasonable overlay, to be assessed on all who are members when such losses or expenses happen, in proportion to the amounts of their notes. Provided that a mutual company which collects a cash premium of not less than the tariff rate charged by stock companies may take a premium note for an equal amount and such companies shall maintain a premium reserve equal to 50% of the cash premium on its policies in force. No domestic mutual insurance company shall insure in 1 risk an amount exceeding 25% of its gross assets, including the amount at any time due on its premium notes; provided, nevertheless, that in each case the net retention of liability shall be determined by

section 35. Any mutual company in place of the premium note required by law may provide in the policy of insurance as a condition of the insurance made by the policy that the insured and legal representatives shall pay in addition to the stipulated premium of such policies such sum as may be assessed by the directors of the company pursuant to the laws of this state, but such contingent liability of a member shall not be less than an amount equal to the cash premium written in his policy. The total amount of the liability of the policyholder shall be plainly and legibly stated upon the filing-back of each policy. The delivery of the policy and payment of the premium by any assured shall be deemed an acceptance of the contract.

Any domestic mutual insurance company may, without pledging any of its assets, receive advances or borrow funds necessary for the purpose of its business or to enable it to comply with any surplus requirement or to make good any impairment or deficiency or other requirement of the laws of this state, or to defray the reasonable expenses of its organization, or to provide any fund to be voluntarily contributed to surplus, upon an agreement that such moneys and such interest thereon as may be agreed upon, said interest not exceeding 6% per year, shall be repaid only out of free and divisible surplus of such insurer with the approval of the commissioner whenever, in his judgment, the financial condition of such insurer warrants it. Any such sum or sums so advanced or so borrowed shall not form a part of the legal liabilities of such insurer and shall not be a basis of any setoff; but until repaid all statements published by such insurer or filed with the commissioner shall show, as a footnote thereto, the amount thereof then remaining unpaid. No such contract or agreement shall be valid unless first approved by the commissioner in writing as not unfair, misleading or contrary to any law of this state.

Provided, however, that a domestic mutual fire insurance company from and after July 9, 1943 may issue nonassessable advance cash premium policies in this state upon compliance with either of the following requirements, notwithstanding the provisions of any special law or charter previously enacted by the legislature:

I. It shall have and maintain a surplus to policyholders, as determined by its latest annual statement filed with the commissioner, of not less than $100,000, or

II. It shall have and maintain a surplus to policyholders, as determined by its latest annual statement filed with the commissioner, of not less than $75,000, provided its unearned premium reserve is at all times less than its surplus to policyholders.

If such a company, after qualifying to issue a nonassessable advance cash premium policy, shall fail to maintain one of the above requirements it shall cease to issue a nonassessable policy until it has again met and maintained the above requirements for a period of 1 year. If such a company issues both assessable and nonassessable advance cash premium policies, any assessment levied under the contingent liability provisions of this chapter shall be for the exclusive benefit of holders of policies subject to assessment and such policyholders shall not be liable to an assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the assessable business bears to the total deficiency. (R. S. c. 56, § 77. 1951, c. 183, § 2.)

Cross reference.—See § 48, re interpretation of § 83.

Promises and undertakings of parties mutual and dependent.—By the express provisions of § 88, the insured's premium note and the company's policy of insurance form one contract. The promises and undertakings of the parties are mutual and dependent. The company's promise to indemnify the plaintiff for loss is dependent upon the insured's promise specified in his note to pay the company the premium in such installments as its directors should require agreeably to its by-laws and the laws of the state. If the insured brings an action upon that contract, it is incumbent upon him to establish the fact that his undertakings under that contract had been

performed or waived. Russell v. Oxford County, etc., Mut. Fire Ins. Co., 107 Me. 362, 78 A. 459.

And the fact that the company has a right of action against the insured for the assessment does not relieve him of the necessity of performance of his part of the mutual contract before he can maintain an action upon that contract. A right of action to enforce performance is not an equivalent of performance. Russell v. Oxford County, etc., Mut. Fire Ins. Co., 107 Me. 362, 78 A. 459.

By-laws regarded as part of contract as to assessments.—In ascertaining the mutual and dependent agreements of the contract of insurance between the insured and a mutual domestic fire insurance company, of which he was a member, and to which he had given a deposit note under the requirements of this section, promising therein to pay the premium for his insurance at such times and in such assessment as the directors should require "agreeably to their by-laws, and the laws of the state," the provisions of those by-laws, especially so far as they relate to assessments and the effect of nonpayment thereof, are to be regarded as a part of the contract of insurance. Russell v. Oxford County, etc., Mut. Fire Ins. Co., 107 Me. 362, 78 A. 459.

Note held not "deposit note".—A note which is payable at a definite time; is to be paid irrespective of the termination of the risk for which it is given; and the payment of which does not depend upon assessments to be made by directors contingent in amount upon the losses of the company, is not a deposit note within the meaning of this section. Union Ins. Co. v. Greenleaf, 64 Me. 123.

Collection of assessment not waiver of forfeiture.—The making of an assessment upon a premium note by a mutual insurance company, and the collection and retention of the assessment after the loss has occurred and after the company has become informed of the facts which create a forfeiture, is not a waiver of the forfeiture, and does not revive a void policy. The reason is that although the policy may become void, the note is not thereby cancelled. It still remains an obligation of the maker, and the maker is not excused from the payment of assessments made afterwards. So that, by insisting upon payment of such an assessment, the company is only enforcing its contract right against the insured, irrespective of whether the insurance remains in force or not, and it waives nothing. Towle v. Dirigo Mut. Fire Ins. Co., 107 Me. 317, 78 A. 374. See Knowlton v. Patrons' Androscoggin Fire Ins. Co., 100 Me. 481, 62 A. 289.

Stated in part in Greenlaw v. Aroostook County Patrons' Mut. Fire Ins. Co., 117 Me. 514, 105 A. 116.

Sec. 86. Statement published; neglect or refusal. — Every domestic mutual fire insurance company shall publish annually, 3 weeks successively in some daily or weekly paper printed in the county where it is located, a condensed statement of its condition, conformable to its last annual report to the commissioner; and any such company which neglects or refuses to publish such statement forfeits not less than $50. (R. S. c. 56, § 78.)

Sec. 87. Liability of agents of domestic fire companies; licenses for agents. — Any person who solicits insurance on behalf of any domestic mutual fire insurance company or transmits for a person other than himself an application for, or a policy of insurance to or from such company, or in any manner acts in the negotiation of such insurance, or in the inspection or valuation of the property insured shall be deemed the agent of such company and, except as hereinafter provided, shall become liable to all the duties, requirements, liabilities and penalties to which an agent of any insurance company is subject. Said companies shall procure licenses for their agents as provided in section 273, but no fee shall be required by the commissioner for licenses issued to the agents of such companies. (R. S. c. 56, § 79.)

Applied in Hurd v. Maine Mut. Fire Ins. Co., 139 Me. 103, 27 A. (2d) 918.

Sec. 88. Policy and note 1 contract, and claims set off against it; if company fails, liability of maker; when insurance ends, note surrendered.—A policy of insurance issued by a life, fire or marine insurance company domestic or foreign, and a deposit note given therefor are 1 contract; and a loss under such policy or other equitable claims may be proved in defense to

said note, though it was indorsed or assigned before it was due; and when a company becomes insolvent, the maker of the note is only liable for the equitable proportion thereof which accrued during the solvency; and if the insolvency occurs within 60 days of the date of the note, it is void except for the amount of the maker's claim, if any, on the company. No insured shall be held to contribute to any losses or expenses beyond the amount of his deposit note. At the expiration of his term of insurance, his note, on payment of all assessments for which it is liable, shall be relinquished to him, except as provided in the next section. (R. S. c. 56, § 80.)

The deposit note as described in § 85 is the one to which reference is had in this section. Union Ins. Co., v. Greenleaf, 64 Me. 123.

Purpose of section.—Previous to the enactment of this section, it had been held that the policy and note were independent contracts (New England Mut. Fire Ins. Co. v. Butler, 34 Me. 451). Hence, the manifest reason for the enactment was to supersede that decision by a statutory provision that thereafter the agreements of the parties, as contained in the policy on the one side, and the premium note on the other, should be treated as mutual and dependent undertakings constituting but one contract. Russell v. Oxford County, etc., Mut. Fire Ins. Co. 107 Me. 362, 78 A. 459.

Note need not be copied into policy, written upon its margin, etc.—It is not improper to regard the terms of the premium note as a part of the insurance contract because the note in full is neither copied into the policy, nor written upon its margin or across its face or attached to it by a slip or rider according to the requirements of § 104, paragraph V. Under the express provision of this section, the policy and deposit note "are one contract," and effect must be given to this provision if it was in force at the time the contract was made. Russell v. Oxford County, etc., Mut. Fire Ins. Co., 107 Me. 362, 78 A. 459.

Sec. 89. Lien on insured real estate. — Any fire insurance company shall have a lien against the assured, on the buildings insured and the land appurtenant thereto, for the amount at any time due on said note, to commence from the time of the recording of the same, as hereinafter provided, and to continue 60 days after the expiration of the policy on which such note is given; if the company causes a certificate of its claim to such lien, signed by the secretary, to be recorded by the register of deeds for the county or district; and, during the pendency of such lien, an attachment of such property, in a suit on said note in favor of the company, has priority of all other attachments or claims; and execution, when recovered, may be levied on it accordingly. (R. S. c. 56, § 81.)

Quoted in part in Knowlton v. Patrons' Androscoggin Fire Ins. Co., 100 Me. 481, 62 A. 289.

Cited in Buffalo Fertilizer Co. v. Aroostook Mut. Fire Ins. Co., 109 Me. 483, 84 A. 1078.

Sec. 90. Remedy, if assessment not paid.—If any assessment, made as provided in section 85, is not paid by some person liable to pay the note, within 30 days after written demand by the company or its agent, the directors may declare the policy suspended until the assessment is paid or may at their option sue for and collect the amount due on such note; and the full amount collected may remain in the treasury of the company subject to the payment of such sums as might otherwise be assessed on the note; and the overplus at the termination of the policy shall be returned to the assured. Forwarding such notice to the assured by mail to his last known address, or delivering it to him in hand by an authorized agent or officer of the company, shall be deemed conclusive proof that said notice has been duly given. (R. S. c. 56, § 82.)

Quoted in part in York County Mut. Fire Ins. Co. v. Knight, 48 Me. 75.

Sec. 91. Lien continues on property of deceased persons insured; policy good for benefit of estate.—Upon the death of a member, the lien of the company remains good on the property insured to the amount due on the deposit note, and the policy descends to the executor or administrator of the

deceased for the benefit of the estate during its continuance, unless voluntarily surrendered or forfeited by the provisions of the charter of the company. (R. S. c. 56, § 83.)

Sec. 92. Annual statements by directors. — The directors of every mutual company shall cause a detailed account of their expenses for the year preceding, the amount of property actually insured at that time, the amount due on their premium notes and the amount of all debts due to and from the company to be laid before the policyholders at the annual meeting. (R. S. c. 56, § 84.)

Sec. 93. Compensation of officers; votes by proxy limited. — The salary or compensation for services of the directors, treasurer and secretary shall be fixed by the policyholders at their annual meeting and no policyholder or other person is allowed more than 15 votes by proxy. (R. S. c. 56, § 85.)

Sec. 94. Assessments examined by court on application of parties interested; adjustment of claims, when directors neglect to make assessments.—Whenever the directors of a mutual fire insurance company or a mutual marine insurance company make an assessment or call on its members for money, or by vote determine that there exists a necessity for such assessment or call, they, or any person interested in the company as an officer, policyholder or creditor, may apply to the supreme judicial court or to the superior court in any county, by a petition in the nature of a bill in equity, praying the court to examine said assessment or call or to determine the necessity therefor and all matters connected therewith, and to ratify, amend or annul the assessment or call or to order that the same be made as law and justice may require; provided that such application, when made by any party except the corporation, or a receiver or the commissioner, shall rest in the discretion of the court. And whenever the directors unreasonably neglect to make an assessment or call, to satisfy an admitted or ascertained claim upon the company, any judgment creditor, or any person holding such admitted or ascertained claim or the commissioner may make the application. Upon such application, if made by the directors, or upon order of court if made by application of any other party, the directors shall set forth the claims against the company, its assets and all other facts and particulars appertaining to the matter. (R. S. c. 56, § 86.)

Cited in Havey v. Hancock Mut. Fire Ins. Co., 110 Me. 492, 87 A. 51.

Sec. 95. Order of notice to parties interested and proceedings. — The court before which the petition described in the preceding section is filed shall order notice to all parties interested, by publication or otherwise, and the petition may be filed in vacation, in which case the order of notice may be made by any justice of the court; and upon the return thereof, the court shall proceed to examine the assessment or call, the necessity therefor and all matters connected therewith; any parties interested may appear and be heard thereon, and all questions that may arise shall be heard and determined as in other equity cases. The court may refer the apportionment or calculation to any competent person, and upon the examination may ratify, amend or annul the assessment or call, or order one to be made. In case the assessment or call is altered or amended, or one is ordered, the directors shall forthwith proceed to vote the same in legal form and the record of such vote shall be set forth in a supplemental bill or answer. (R. S. c. 56, § 87.)

Cited in Havey v. Hancock Mut. Fire Ins. Co., 110 Me. 492, 87 A. 51.

Sec. 96. Proceedings before master or auditor.—Whenever the court appoints a master or auditor to make the apportionment or calculation for an assessment under the foregoing provisions, such master or auditor shall appoint a

time and place to hear all parties interested in the assessment or call, and shall give personal notice thereof, in writing, to the commissioner, and through the post office or in such other manner as the court directs, so far as he is able, to all persons liable upon said assessment or call. Said auditor or master shall hear the parties and make report to the court of all his doings respecting such assessment or call, and all matters connected therewith, and all parties interested in such report or assessment have a right to be heard by the court, respecting the same, in the same manner as is above provided. (R. S. c. 56, § 88.)

Cited in Havey v. Hancock Mut. Fire Ins. Co., 110 Me. 492, 87 A. 51.

Sec. 97. Assessments, when final; control of funds and payment of assessments. — When an assessment or call has been ratified, ascertained or established as provided for in the 3 preceding sections, a decree shall be entered which shall be final and conclusive upon the company and all parties liable to the assessment or call as to the necessity of the same, the authority of the company to make or collect it, the amount thereof and all formalities connected therewith; and where an assessment or call is altered or amended by vote of directors and decree of the court thereon, such amended or altered assessment or call is binding upon all parties who would have been liable under it as originally made, and in all legal proceedings shall be held to be such original assessment or call. All proceedings above provided for shall be at the cost of the company, unless the court for cause otherwise orders; and in all cases the court may control the disposal of the funds collected under these proceedings, and may issue all necessary processes to enforce the payment of such assessments against all persons liable therefor. (R. S. c. 56, § 89.)

Cited in Havey v. Hancock Mut. Fire Ins. Co., 110 Me. 492, 87 A. 51.

Sec. 98. Assessment not sufficient, collection stayed by court. — Whenever it shall appear to the presiding justice of the court before which the petition provided for in section 94 is pending, that the net proceeds of any assessment or call will not be sufficient to furnish substantial relief to those having claims against the company, he may decree that no assessment shall be collected; and when, on application of the commissioner or any person interested, said justice is of opinion that further attempts to collect an assessment then partially collected will not benefit those having claims against the company, he may stay its further collection. (R. S. c. 56, § 90.)

Cited in Havey v. Hancock Mut. Fire Ins. Co., 110 Me. 492, 87 A. 51.

Sec. 99. Domestic mutual fire insurance or assessment casualty companies, when insolvent or in hazardous condition.—Whenever any domestic mutual fire insurance company or assessment casualty company is found after examination to be insolvent, or is found to be in such condition that its further transaction of business will be hazardous to its policyholders, its creditors or to the public, or when it has willfully violated its charter or any law of the state, or has refused to submit its books, papers, accounts and affairs for examination, the commissioner may, the attorney general representing him, apply to any justice of the supreme judicial court or of the superior court, in term time or vacation, for an order directing such corporation to show cause why the commissioner should not take possession of its property and conduct its business, and for such other relief as the nature of the case and the interests of its policyholders, creditors or the public may require. (R. S. c. 56, § 91.)

See § 10, re injunctions.

Sec. 100. Injunction; hearing.—On the application provided for in the preceding section or at any time thereafter, the court may, in its discretion, issue

an injunction restraining such corporation from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the commissioner or his successor in office forthwith to take possession of the property and conduct the business of such corporation, and retain such possession and conduct such business until, on the application either of the commissioner, the attorney general representing him, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the commissioner to take possession has been removed and that the corporation can properly resume possession of its property and the conduct of its business. (R. S. c. 56, § 92.)

Sec. 101. Decree of sequestration.—If on the application provided for in section 99, the court shall direct the commissioner to take possession of the property, conserve the assets of such corporation and conduct the business of the company, the rights of the said commissioner with reference to such corporation and its said assets shall be the same as those exercised by receivers and masters in chancery appointed by the courts for liquidation of insurance companies. (R. S. c. 56, § 93.)

Sec. 102. Special deputies, counsel and assistants.—For the purposes of sections 99 to 103, inclusive, the commissioner shall have power to appoint, under his hand and official seal, one or more special deputies as his agent or agents, and to employ such counsel, clerks and assistants as may be by him deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The compensation of such special deputies, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any such corporation, shall be fixed by the commissioner, subject to the approval of the court and shall, on certificate of the commissioner, be paid out of the funds or assets of such corporation. The commissioner may, subject to the approval of the court, make and prescribe such rules and regulations as to him shall seem proper. (R. S. c. 56, § 94.)

Sec. 103. Removal of office and papers.—At any time after the commencement of proceedings under an order of liquidation made pursuant to the 4 preceding sections, the commissioner may remove the principal office of the corporation in liquidation to the city of Augusta. In event of such removal the court shall, upon the application of the commissioner, direct the clerk of the judicial courts in the county wherein such proceeding was commenced to transmit all of the papers filed therein with such clerk, to the clerk of the judicial courts in the county of Kennebec; and the proceedings shall thereafter be conducted in the same manner as though they had been commenced in the county of Kennebec. (R. S. c. 56, § 95.)

Fire Insurance.

Sec. 104. Only standard policy issued; exceptions. — No fire insurance company shall issue fire insurance policies on property in this state, other than those of the standard form set forth in the following section, except as follows:

I. A company may print on or in its policies its name, location and date of incorporation, the amount of its paid-up capital stock, the names of its officers and agents, the number and date of the policy and, if it is issued through an agent, the words, "This policy shall not be valid unless countersigned by the duly authorized agent of the company at ." (1947, c. 170, § 1)

II. A company may print or use in its policies, printed forms of description and specification of the property insured.

III. A company incorporated or formed in this state may print in its policies

any provisions which it is authorized or required by law to insert therein; and any company not incorporated or formed in this state may, with the approval of the commissioner, so print any provision required by its charter or deed of settlement or by the laws of its own state or country, not contrary to the laws of this state; provided that the commissioner shall require any provision which, in his opinion, modifies the contract of insurance in such way as to affect the question of loss, to be appended to the policy by a slip or rider as hereinafter provided. The commissioner may authorize the issuance of deductible policies, i. e., policies under which the insured agrees to bear the loss up to an amount specified in the policy, and under which he contracts for indemnity against a loss in excess of that amount. (1947, c. 170, § 1. 1953, c. 97)

IV. The blanks in said standard form may be filled in print or writing. (1947, c. 170, § 1)

V. A company may write upon the margin or across the face of a policy, or write, or print in type not smaller than 8-point, upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form; and all such slips, riders and provisions must be signed by the officers or agent of the company so using them. (1947, c. 170, § 1)

VI. A company may print upon policies issued in compliance with the preceding provisions of this section, the words, "Maine standard policy." (1947, c. 170, § 1)

VII. The 1st page of the standard fire insurance policy may in form approved by the commissioner be rearranged to provide space for the listing of amounts of insurance, rates and premiums for the basic coverages or perils insured under endorsements attached, and such other data as may be conveniently included for duplication on daily reports for office records. Companies organized under the laws of a country other than the United States may execute their policies in the names of the United States resident officers whose positions correspond to those of secretary and president. [1947, c. 170, § 1]. (R. S. c. 56, § 96. 1947, c. 170, § 1. 1953, c. 97.)

Cross reference.—See § 106, re penalty.

Section constitutional. — The legislature is not inhibited by any provision in the Constitution of the United States, or of Maine, from exercising the power of thus limiting incorporated insurance companies to the issuance of one standard form of fire insurance policy, even though such standard form contains a clause (§ 105, clause 13) that there shall be no right of action on the policy until the amount of the loss or damage be determined by three arbitrators, or there is a waiver of such clause by both parties. Opinion of the Justices, 97 Me. 590, 55 A. 828.

This section does not offend against the 14th Amendment to the Constitution of the United States, since it bears equally upon all fire insurance companies, domestic and foreign, without attempting any discriminations, and does not deprive any person of life, liberty or property without due process of law. Opinion of the Justices, 97 Me. 590, 55 A. 828.

The words "fire insurance company" as used in this section mean incorporated companies, or corporations, and are not to be extended beyond them. Opinion of the Justices, 97 Me. 590, 55 A. 828.

Indemnity may be altered by rider.— Under subsection V, the company may modify or limit the indemnity by a rider, so as to make the amount to be paid dependent upon the value of the property. Such a modification seems to come precisely within the language of that subsection permitting the use of slips or riders. Rolfe v. Patrons' Androscoggin Mut. Fire Ins. Co., 106 Me. 345, 76 A. 879.

Subsection V does not require a separate slip or rider for each provision adding to or modifying those in the policy. Such an interpretation of the word "separate" in the subsection is too narrow. The word "separate" was used to express the idea of something separate from, or not physically a part of, the policy; something originally distinct, apart from the policy, but "to be attached thereto." This subsection empowers an insurance company either to write additional or modifying provisions upon the margin or across the face of the

policy itself, or to write them on slips or riders, separate from the policy, but to be attached to it. Rolfe v. Patrons' Androscoggin Mut. Fire Ins. Co., 106 Me. 345, 76 A. 879.

Deposit note given under § 85 need not be copied into policy, written on margin, etc.—See note to § 88.

Applied in Young v. Aetna Ins. Co., 101 Me. 294, 64 A. 584.

Quoted in part in Home Ins. Co. v. Bishop, 140 Me. 72, 34 A. (2d) 22.

Stated in part in Russell v. Oxford County, etc., Mut. Fire Ins. Co., 107 Me. 362, 78 A. 459.

Cited in Gould v. Maine Farmers Mut. Fire Ins. Co., 114 Me. 416, 96 A. 732; Bryson v. American Eagle Fire Ins. Co., 132 Me. 172, 168 A. 719.

Sec. 105. Form of standard policy.—The standard form of fire insurance policy shall be plainly printed, and no portion thereof shall be in type smaller than 8-point, with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer, and shall be as follows:

No. .....

In Consideration of the Provisions and Stipulations herein or added hereto and of ..... Dollars Premium this Company, for the term from the .... day of ..... 19...., at noon, Standard Time, to the ..... day of .... 19...., at (location of property involved) ....., to an amount not exceeding ..... Dollars, does insure ..... and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, This Company has executed and attested these presents, but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at .....

.....

Secretary. President.

Countersigned this ..... day of ....., 19.... .....

Agent.

Concealment, fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to reference or to any examination provided for herein.

Cancellation of policy. This policy shall be canceled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this Company by giving to the insured, and to any mortgagee to whom this policy is made payable, a ten days' written notice of cancellation with tender of the excess of said premium above the pro rata premium for the expired time. If the premium on this policy has not been paid to the company or its agent, or to the duly licensed insurance broker through whom the contract of insurance was negotiated, this policy may be canceled by the company in the manner herein provided without tendering to the assured any part of the premium.

Mortgagee interests and obligations. If this policy shall be made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee or his agents, or those claiming under him, shall affect such mortgagee's right to re-

cover in case of loss on such real estate. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by giving to such mortgagee a ten days' written notice of cancellation. If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty days thereafter and shall be subject to the provisions hereof relating to reference and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give written notice to this Company of any loss within a reasonable time, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described; and shall produce for examination all books of accounts, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Reference. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, or both, then on written demand of either, it is mutually agreed that said value or loss, or both if said failure to agree includes both, shall be referred to three disinterested persons, the Company and the insured each choosing one out of the three persons to be named by the other and the third being selected by the two so chosen; the award in writing by a majority of the referees shall be conclusive and final upon the Company and the insured as to the actual cash value and the amount of loss or damage so referred and such reference unless waived by the Company and the insured shall be a condition precedent to any right of action in law or equity to recover for such loss; but no person shall be chosen or act as a referee against the objection of either the Company or the insured who has acted in a like capacity within four months.

Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or value determined by reference, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustained in any court of law or equity unless commenced within two years next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company. (R. S. c. 56, § 97. 1947, c. 170, § 2.)

I. General Consideration.
II. Concealment, Fraud and False Swearing.
III. Other Insurance.
IV. Liability Suspended by Vacancy.
V. Cancellation.
VI. Mortgagee Interests and Obligations.
VII. Notice of Loss.
VIII. Reference.
A. In General.
B. Necessity of Reference.
C. Scope of Reference.

Cross references.

See § 106, re penalty; 1947, c. 170, § 4, re use of existing forms.

I. GENERAL CONSIDERATION.

Standard policy treated as voluntary contract between parties.—The Maine standard policy, though its form is prescribed by statute, is not to be treated as a legislative enactment after it has been accepted by the parties, but as a voluntary contract which, like any other contract, derives its force and efficacy from the consent of the parties. Dunton v. Westchester Fire Ins. Co., 104 Me. 372, 71 A. 1037.

Former provisions of section.—For a case under a former provision of the standard form that the policy would be void if, without assent of the insurer, "the situation or circumstances affecting the risk shall * * * be so altered as to cause an increase of such risks," see Giberson v. York County Mut. Fire Ins. Co., 127 Me. 182, 142 A. 481.

For a case concerning former provisions of the tenth clause, see Home Ins. Co. v. Bishop, 140 Me. 72, 34 A. (2d) 22.

Applied in Bigelow v. Granite State Fire Ins. Co., 94 Me. 39, 46 A. 808; Towle v. Direго Mut. Fire Ins. Co., 107 Me. 317, 78 A. 374.

Quoted in part in Oakes v. Pine Tree State Mut. Fire Ins. Co. 112 Me. 52, 90 A. 707.

II. CONCEALMENT, FRAUD AND FALSE SWEARING.

What constitutes concealment. — Concealment, in the law of insurance, is the designed and intentional withholding of any fact material to the risk which the insured in honesty and good faith ought to communicate. A fraudulent concealment is tantamount to fraudulent misrepresentation. Giberson v. York County Fire Ins. Co., 127 Me. 182, 142 A. 481.

The mere failure of the insured to give information as to matters with reference to which no questions are asked is not necessarily a concealment which will avoid the

policy. To have such effect the undisclosed matter must not only be material, but there must be a fraudulent intent to deceive. Giberson v. York County Mut. Fire Ins. Co., 127 Me. 182, 142 A. 481.

What constitutes fraud and false swearing.—False swearing consists in knowingly and intentionally stating upon oath what is not true. A false statement intentionally and knowingly, or fraudulently made, constitutes fraud; and the statement of a fact as true which a party does not know to be true, and which he has no reasonable ground for believing to be true, is fraudulent. Linscott v. Orient Ins. Co., 88 Me. 497, 34 A. 405; Atherton v. British America Assur. Co., 91 Me. 289, 39 A. 1006.

Statements must be knowingly and intentionally untrue.—It is not enough to forfeit a policy that the insured's statements in his proof are shown to be untrue, but they must be shown to be knowingly and intentionally untrue. Hilton v. Phoenix Assur. Co., 92 Me. 272, 42 A. 412.

Whether the insured is guilty of fraud and false swearing is a question addressed to the judgment of the jury. Atherton v. British America Assur. Co., 91 Me. 289, 39 A. 1006.

Deliberate over-valuation fraudulent in itself.—If a plaintiff knowingly puts a false and excessive valuation on any single article, or puts such false and excessive valuation on the whole as displays a reckless and dishonest disregard of the truth in regard to the extent of the loss, such knowing over-valuation is itself fraudulent and such plaintiff cannot recover at all. Rovinsky v. Northern Assur. Co., 100 Me. 112, 60 A. 1025.

False statement as to loss precludes recovery even for actual loss.—Even when the actual losses, truly stated in a proof of loss, exceed the whole amount of the insurance, a wilful false statement on oath in the proof of loss of other pretended losses will destroy the insured's claim for his actual losses. Dolloff v. Phoenix Ins. Co., 82 Me. 266, 19 A. 396.

When an insured knowingly makes false statements of losses he did not sustain, in addition to those he did sustain, he loses all standing in a court of justice as to any claim under the policy. The court will not undertake for him the task of separating his true from his false assertions. Fraud in any part of his formal statement of loss, taints the whole. Dolldoff v. Phoenix Ins. Co., 82 Me. 266, 19 A. 396.

If the insured knowingly and purposely makes false statements on oath in his proofs of loss in relation to the amount of value of the goods destroyed, the policy is thereby voided both as to the buildings and personalty covered by it, although the actual losses, truly stated in the proofs of loss, may exceed the whole amount of the insurance. The forfeiture of all claim under the policy is the penalty for wilfully false swearing, whether such false swearing in fact operates to defraud the company or not. Hanscom v. Home Ins. Co., 90 Me. 333, 38 A. 324.

It is firmly established legal doctrine that if a plaintiff in an action on a policy of fire insurance falsely and knowingly inserts in his sworn proof of loss, any articles as burned which were not burned, or knowingly puts such a false and excessive valuation on single articles or on the whole property as displays a reckless disregard of truth, he cannot recover. His own fraudulent acts prohibit it. Pottle v. Liverpool & London & Globe Ins. Co., 108 Me. 401, 81 A. 481. See Rovinsky v. Northern Assur. Co., 100 Me. 112, 60 A. 1025.

Actual loss considered in determining if excessive valuation wilfull.—In determining whether an excessive valuation of any article of personal property was the result of wilfully false swearing, or of an error in judgment, misinformation, misrecollection or mistake, it is material and important to consider the amount of the actual loss in relation to the amount of insurance, and to inquire whether the insured could have any motive to swear falsely in order to swell the amount of the loss, when it was already conceded that the loss, honestly stated, would exceed the amount of insurance. Erroneous estimates and innocent misstatements are not a cause of forfeiture. Hanscom v. Home Ins. Co., 90 Me. 333, 38 A. 324.

Immaterial whether fraud and false swearing charged conjunctively or disjunctively.—In charging the jury on a defense based on the first clause of the standard policy, it is immaterial whether the language employed is "fraud and false swearing," or "fraud or false swearing." The significance of these expressions is the same when taken in connection with the issue before the jury, and the subject matter to which they relate. Linscott v. Orient Ins. Co., 88 Me. 497, 34 A. 405.

Fraud cannot be presumed.—To knowingly and intentionally overestimate a loss, either in items or amount, is a fraud, but like all other frauds it must be proved. It cannot be presumed or surmised. A misstatement honestly made, or a mistake of judgment or memory differs from one which is knowingly and intentionally false.

The latter is fraudulent, the former not. Hilton v. Phoenix Assur. Co., 92 Me. 272, 42 A. 412.

The burden is upon the company to prove the fraud charged. Fraud cannot be presumed. Giberson v. York County Mut. Fire Ins. Co., 127 Me. 182, 142 A. 481.

III. OTHER INSURANCE.

No liability where provision prohibiting other insurance is violated.—Where a policy prohibits other insurance except with the written assent of the company, there is no liability for loss, if the company, when it issued the policy, had no knowledge or notice of other insurance and had no other knowledge of the fact until after the loss occurred, if it did not assent in writing to such prior contract of insurance. Bigelow v. Granite State Fire Ins. Co., 94 Me. 39, 46 A. 808.

But such provision may be waived by company.—An insurance company may, for the benefit of the assured, waive express stipulations concerning other insurance contained in its policy. Bigelow v. Granite State Fire Ins. Co., 94 Me. 39, 46 A. 808.

As where policy issued and loss paid after knowledge of other insurance. — Where a policy prohibits other insurance except with the written assent of the company, the fact that the company issued its policy with knowledge of other insurance and further fact that it did not deny its liability under the policy, but paid its proportion of the loss, are sufficient evidence that the company waived the prohibition. Bigelow v. Granite State Fire Ins. Co., 94 Me. 39, 46 A. 808. See note to § 63, re imputation of agents's knowledge of other insurance to company.

IV. LIABILITY SUSPENDED BY VACANCY.

Vacancy need not increase risk to suspend liability.—Vacancy beyond 60 days suspends the company's liability irrespective of the question whether such vacancy materially increases the risk or not. Knowlton v. Patrons' Androscoggin Fire Ins. Co., 100 Me. 481, 62 A. 289.

What constitutes occupancy.—The fact that the insured left a dwelling house furnished and in charge of his tenant who kept a house nearby, and whose wife visited and aired the dwelling every few days, will not satisfy the condition of occupancy. For a dwelling to be occupied, it must be used by human beings as their customary place of abode. Knowlton v. Patrons' Androscoggin Fire Ins. Co., 100 Me. 481, 62 A. 289.

The mere presence of goods in the house and a supervision over it, is not "occupancy"; that requires "living" in it. Knowlton v. Patrons' Androscoggin Fire Ins. Co., 100 Me. 481, 62 A. 289.

A house in which no one lives but in which a former occupant had left some trifling articles of furniture, not of such character as to be valuable for use elsewhere is "vacant and unoccupied" within the meaning of those terms as used in a fire insurance policy. Knowlton v. Patrons' Androscoggin Fire Ins. Co., 100 Me. 481, 62 A. 289.

V. CANCELLATION.

Burden of proving legal cancellation.—In a suit on a fire insurance policy, the burden of proving a legal cancellation rests upon the company. Bard v. Fireman's Ins. Co., 108 Me. 506, 81 A. 870.

Company must give required notice and tender payment of unearned premium.—In order for the company to cancel a fire policy, the two conditions precedent must be complied with: ten days' notice in writing and payment or tender of the unearned premium. The reason of these conditions is self evident; the former is designed to give the assured a reasonable time in which to procure other insurance, and the latter to place the parties in statu quo as in all other cases of rescission of contract. Bard v. Fireman's Ins. Co., 108 Me. 506, 81 A. 870.

The tender of unearned premiums is precedent to the right of cancellation. Bard v. Fireman's Ins. Co., 108 Me. 506, 81 A. 870.

And the failure to comply with these conditions is fatal. Bard v. Fireman's Ins. Co., 108 Me. 506, 81 A. 870.

The notice of cancellation given by the company must be unequivocal. It is not enough to give notice of a desire to cancel, or to deliver the policy for cancellation. Clark v. Insurance Co. of North America, 89 Me. 26, 35 A. 1008.

Purpose of notice requirement.—Under the cancellation clause, a policy cannot be cancelled by the company until the expiration of ten days after written notice to the assured. The obvious purpose of this provision is to protect the assured from the possible results of immediate cancellation and to allow him ample time in which to procure other insurance. Rosen v. German Alliance Ins. Co., 106 Me. 229, 76 A. 688.

Insured may waive notice requirement.—The parties have a right to cancel a policy at once by mutual agreement, that is the insured has a right to waive the provision as to notice if he sees fit to do so, but on

this point the burden of proof is on the company. Rosen v. German Alliance Ins. Co., 106 Me. 229, 76 A. 688.

But burden on company to show waiver.—The burden of proof is on the defendant insurance company to show a waiver by the insured of the provision of the Maine standard policy requiring ten days' written notice before the cancellation of such policy. Rosen v. German Alliance Ins. Co., 106 Me. 229, 76 A. 688.

And requirement not waived by insured ignorant of its existence.—Where an insurance company issued a fire insurance policy of the Maine standard form and attempted to cancel the same in violation of the provision therein requiring ten days' written notice of cancellation, and the insured were ignorant of such provision, and a loss occurred after such attempted cancellation, it was held that the insured did not waive the ten days' written notice of cancellation and that the insurance company was liable on the policy. Rosen v. German Alliance Ins. Co., 106 Me. 229, 76 A. 688.

Where an insured was in fact ignorant of the requirement for ten days' written notice of cancellation and ignorantly consented to a cancellation of his policy, it was no waiver of his contract right to notice. A waiver is the voluntary relinquishment of a known right. Bragg v. Royal Ins. Co., 115 Me. 196, 98 A. 632.

Mortgagee's rights not affected by attempted cancellation by company and insured.—The company has no right to cancel the policy except by mutual consent of the insured and the mortgagee, or by giving to the insured and the mortgagee ten days' notice in writing, as specified in the policy, and the mortgagee's right to recover for the loss is not affected by the act of the insured and the company in their attempted cancellation of the policy. Gilman v. Commonwealth Ins. Co., 112 Me. 528, 92 A. 721.

VI. MORTGAGEE INTEREST AND OBLIGATIONS.

Purpose of "union mortgage clause".—Prior to the insertion in the standard form of the "union mortgage clause," the mortgagee might be deprived of his protection by some act or neglect of the mortgagor of which he had no knowledge and to protect himself would be compelled to take out separate insurance in his own name. It was to avoid this that the "union mortgage clause" was inserted. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

The intent of the legislature in including "the union mortgage clause" was to relieve the mortgagee of the burden of taking out his own insurance and to safeguard his interest against every act of a mortgagor of which he had no knowledge or notice, and this clause should be construed with that intent in view. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

The provisions in the standard policy in favor of a mortgagee are intended to afford to the mortgagee full indemnity to the extent of the insurance under his interest in the property, unless the policy is avoided by some act of his, or of his agents, or of those claiming under him, and the mortgagee in certain events comes under obligations to the insurance company to pay for any increase of risk and to assign to it his mortgage. Gilman v. Commonwealth Ins. Co., 112 Me. 528, 92 A. 721.

Policy must be payable to mortgagee.—The tenth clause of the standard form cannot be taken advantage of by a plaintiff where the policy is not made payable to the plaintiff as mortgagee. Towle v. Dirigo Mut. Fire Ins. Co., 107 Me. 317, 78 A. 374.

Mortgagee's contract is separate and independent.—The effect of the mortgage clause is to make an entirely separate insurance of the mortgagee's interest, and he takes the same benefit from his insurance as if he had received a separate policy from the company, free from the conditions imposed upon the owners. The plain and obvious meaning of the language is that the insurance of the mortgagee shall not be affected or in anywise impaired or lessened by any act or neglect of the owner, although in the same policy issued to the owner, yet the insurer and the mortgagee were entering into a perfectly separate contract of insurance, by which the mortgagee's interest alone was to be insured, and it would be most natural to provide that no act or neglect of the owner should invalidate, that is, impair any portion of the insurance thus separately secured. Gilman v. Commonwealth Ins. Co., 112 Me. 528, 92 A. 721.

The contract with the mortgagee is a separate and independent contract, and the right of the mortgagee to enforce it does not depend upon whether the owner has kept his engagements with the insurance company or not. Gilman v. Commonwealth Ins. Co., 112 Me. 528, 92 A. 721.

By the insertion of the provision of the 10th paragraph of the standard form, commonly referred to as the "union mortgage clause," a new relation is entered into be-

tween the insurer and the mortgagee, viz: that of insurer and insured, independent of the contract with the mortgagor, and insuring the interest of the mortgagee. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

The insurance of the mortgagee's interest under this clause is a separate and independent contract based on a consideration, viz: the promise of the mortgagee to pay extra premium if there should be increased hazard not paid for by the mortgagor and to assign the entire mortgage and debt in case the mortgage debt is paid in full by the insurer instead of the amount of the insurance. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

And may be valid regardless of validity of mortgagor's contract. — Under this clause, regardless of whether the policy is valid as to the mortgagor, a valid contract of insurance based on a sufficient consideration may be created between the insurer and mortgagee. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

Acts or neglect of mortgagor will not invalidate rights of mortgagee.—Any acts or neglect of the mortgagor or owner, whether prior or subsequent to the inception of the policy, will not invalidate the rights of the mortgagee under a "union mortgage clause." Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

Under a "union mortgage clause," a mortgagee is protected against any act of a mortgagor which invalidates the policy as to him, whether done before or after the issuance of the policy. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

If unknown to mortgagee.—The "union mortgage clause" protects the mortgagee against any act or neglect of the mortgagor either at or subsequent to the inception of the policy. But in reason and based on the authorities, a mortgagee under such a clause is protected only where the act or neglect of the mortgagor or owner is unknown to him. If he has actual knowledge of any act or neglect that would invalidate the policy, or such knowledge of facts as would induce a man of ordinary prudence to make further inquiries, which would have disclosed acts or neglect by the mortgagor that would void the policy, either at its inception or afterward, then the provisions of the "union mortgage clause" will not protect him. He is in such cases chargeable with knowledge of all facts which by the exercise of reasonable diligence he would have ascertained. The means of knowledge under such circumstances are the same as knowledge itself. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243, holding that the mortgagee had sufficient knowledge of the mortgagor's misrepresentation to put him on inquiry.

And mortgagee not bound by representations of mortgagor.—The mortgagor, in obtaining a fire policy, does not act as agent for the mortgagee in making application for the policy in his own name and the mortgagee is not bound by any representations the mortgagor may make of which the mortgagee has no knowledge, except such as may affect the mortgagee's interest in the premises. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

To the extent of arranging for the insurance of the mortgagee's interest under a policy containing a "union mortgage clause" and in compliance with a covenant in his mortgage, the mortgagor may perhaps be regarded as acting as agent of the mortgagee in the insertion of a "payable in case of loss clause" in the policy; but in so far as he acts in obtaining a policy on his own interest and in his own name as owner, he is clearly not acting as agent for the mortgagee. Union Trust Co. v. Philadelphia Fire & Marine Ins. Co., 127 Me. 528, 145 A. 243.

VII. NOTICE OF LOSS.

Notice must be given within reasonable time.—As originally enacted, the 12th clause required the assured to render his proof of loss "forthwith." Subsequently, "within a reasonable time" was substituted for "forthwith." Evidently the legislature intended that somewhat greater latitude should be allowed to the assured than would be naturally inferred from the more restricted word "forthwith" and that a reasonable time, considering all the circumstances of the case, should constitute the true rule. Bard v. Fireman's Ins. Co., 108 Me. 506, 81 A. 870.

Whether notice of loss is given within a reasonable time is a question of fact for the jury to determine and in deciding it they are at liberty to consider all the conditions surrounding the assured at the time when he was bound to act. Bard v. Fireman's Ins. Co., 108 Me. 506, 81 A. 870.

VIII. REFERENCE.

A. In General.

Purpose of reference.—The stipulation

in the standard form as to referees is in furtherance of justice and the legislative purpose must have been to secure an adjustment of the amount of the loss more speedily, cheaply and accurately than could be done by a court and jury. Young v. Aetna Ins. Co., 101 Me. 294, 64 A. 584.

The purpose of the reference provision in the standard policy is to provide a speedy method of determining the loss by an impartial tribunal which might view the property, hear the parties and, without being hampered by the strict rules of court procedure, adjust the question most often in dispute between the parties, thus saving expensive litigation in the courts. Oakes v. Franklin Fire Ins. Co., 122 Me. 361, 120 A. 53.

Reference clause construed as similar contracts without legislative sanction. — The fact that the legislature put forward the Maine standard policy as a form for a contract to be executed by the parties, affords no reason for giving to the arbitration clause any different construction from that heretofore given by the courts to all similar contracts made without legislative sanction. Dunton v. Westchester Fire Ins. Co., 104 Me. 372, 71 A. 1037.

Referees need not be learned in law.— In a great majority of references under the arbitration clause of insurance policies, the referees are not selected from the legal profession, for the reason that they are required to perform the functions of simple appraisers and not of general arbitrators. Under the terms of the Maine policy, neither of the three persons named for referees by each of the parties is required to be learned in the law. Dunton v. Westchester Fire Ins. Co., 104 Me. 372, 71 A. 1037.

But must be disinterested.—The statutory method of selection of referees takes from the parties the freedom of choice which they would have in an ordinary reference in choosing those who are to sit in determining a very vital question. The insured is forced to agree to such provision of the contract or go without insurance. The court should, because of such compulsion against the insured, be meticulous in its examination of the facts to determine that the statutory requirement that the referees should be disinterested has been fulfilled. Lawler v. Hartford Fire Ins. Co., 143 Me. 40, 54 A. (2d) 685.

Where a person was not a disinterested referee as required by this clause, the award must be adjudged not binding and must be set aside. Young v. Aetna Ins. Co., 101 Me. 294, 64 A. 584.

In the sense that judges and jurors are disinterested.—Something more than absence of pecuniary interest and relationship is required to constitute disinterestedness under the reference clause. The persons who act as referees in these cases are not officials acting in behalf of the state under the sanction of official oath and responsibility. They are mere private persons holding no permanent commission from public authority and not required to take any oath to safeguard their action. The spirit of this clause requires that the three referees shall be as free from pecuniary interest and relationship as judges and jurors are required to be, and also be as free from bias, prejudice, sympathy and partisanship as judges and jurors are presumed to be. Young v. Aetna Ins. Co., 101 Me. 294, 64 A. 584; Bradbury v. Insurance Co. of Pa., 118 Me. 191, 106 A. 862.

The referees shall be "disinterested" not only in the narrow sense of being without relationship and pecuniary interest, but also in the broad, full sense of being competent, impartial, fair and open minded, substantially indifferent in thought and feeling between the parties, and without bias or partisanship either way. Young v. Aetna Ins. Co., 101 Me. 294, 64 A. 584; Lawler v. Hartford Fire Ins. Co., 143 Me. 40, 54 A. (2d) 685.

And partisanship, bias, etc., may be inferred from referees' conduct and award.— The reference clause contemplates a fair and honest hearing, and not one unfair and dishonest, because not known to be unfair and dishonest by either of the parties. As the bias, prejudice or sympathy of a jury is inferred from their deliberations in the jury room, translated into a verdict, so may the partisanship, incompetency, bias, prejudice or sympathy of the referees in an insurance case be inferred from their conduct and award. Bradbury v. Insurance Co. of Pa., 118 Me. 191, 106 A. 862.

Mode of submission to reference may be prescribed by agreement of parties.—The reference clause was not designed to prescribe and it does not intend to prescribe any form of submission. It only gives certain leading features of the submission. The capacity of the parties to contract cannot be restricted by the policy so that they could not waive its requirements and make a submission to suit themselves, provided, of course, it is not otherwise unlawful. So far, therefore, as there is any material difference respecting the duties of the appraisers between the provisions of the policy and the terms of a written agreement for a submission, the former is presumptively super-

seded by the latter, and in such a case the duties of the appraisers are to be ascertained and their conduct examined with reference to the terms of the submission actually signed by the parties. Bangor Savings Bank v. Niagara Fire Ins. Co., 85 Me. 68, 26 A. 991.

Rights of parties should be fully protected.—Where rights are to be conclusively determined, those acting as referees should see to it that the rights of all parties are fully protected. Oakes v. Franklin Fire Ins. Co., 122 Me. 361, 120 A. 53.

And parties should have opportunity to be heard.—The reference provision contemplates something more than a mere appraisement by the referees upon a view and such information as they see fit to obtain, and requires notice to the parties and an opportunity to present evidence and be heard. The legislature, having made the result of such reference conclusive and binding on the parties, must have intended that the parties should have the right to be present at all hearings and also to be heard upon any matters pertaining to the amount of the loss. Oakes v. Franklin Fire Ins. Co., 122 Me. 361, 120 A. 53.

It may be admitted that the referees have the right to determine what kind of evidence they will receive and are not bound by the strict rules governing procedure in court, but that does not give them the right to arbitrarily exclude either party from participating in the proceedings to determine the loss. To exclude either of the parties and all testimony whatsoever may well be viewed as evidence of such bias and prejudice on the part of a referee insisting upon it, as to alone invalidate an award. Oakes v. Franklin Fire Ins. Co., 122 Me. 361, 120 A. 53.

The purpose of the reference clause will not be served if the proceedings on reference are permitted to relapse into a mere arbitrary appraisal on view or from personal knowledge of the referees. If it is to result in an award which shall be conclusive on the parties in a court of law, full opportunity to be heard after notice must be granted both parties by referees who are disinterested and impartial. Oakes v. Franklin Fire Ins. Co., 122 Me. 361, 120 A. 53.

Award of referees may be impeached for fraud.—Although an award made by the referees under the reference clause of the standard form may be regular and sufficient in form, it may be impeached for fraud or misconduct on the part of the referees, or on other grounds which vitiate all awards. Bangor Savings Bank v. Niagara Fire Ins. Co., 85 Me. 68, 26 A. 991.

Waiver of arbitration provisions.—See § 108 and note.

Reference clause constitutional. — See note to § 104.

B. Necessity of Reference.

Submission to arbitration condition precedent to right of action.—The submission of the question of damages to arbitration as required by the terms of the standard form, is expressly made a condition precedent to the insured's right of action. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

Except where company denies liability.—An unqualified denial by the insurance company of all liability under the policy renders inoperative a provision therein for an arbitration as to the amount of the loss as a condition precedent to a right of action to recover such loss. Oakes v. Pine Tree State Mut. Fire Ins. Co., 112 Me. 52, 90 A. 707.

A distinct denial of all liability by the insurance company is equivalent to a declaration that it will not pay if the amount of the loss should be determined; and the law will not require the useless and expensive formality of an arbitration when the insurer, for whose benefit it was provided, has rendered it superfluous. Oakes v. Pine Tree State Mut. Fire Ins. Co., 112 Me. 52, 90 A. 707.

And plaintiff must show compliance with reference clause or reason for noncompliance.—A determination by arbitration of the amount of loss having been especially made by the parties a condition precedent to any right of action for recovery of damages for the loss, it is incumbent upon the plaintiff, in an action for recovery on the policy, to prove performance or a valid excuse for nonperformance. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

An action can only be maintained to recover the amount determined upon by the arbitrators, or, if their determination and award were invalid, then the plaintiff must allege and prove either that the amount of the plaintiff's loss has been determined by other arbitrators chosen in the manner stipulated by the parties, or some sufficient reason why such a determination has become unnecessary or impossible. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

And ineffectual attempt is not compliance.—An ineffectual attempt to perform the requirements of the reference clause is not a compliance with the conditions of the clause, when no reason is shown why there

should not have been full performance. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

The parties, having made a valid agreement that in case of loss no action upon the policy should be maintained until the amount of the loss had been first determined in the manner provided, an attempted performance of the condition, which has failed without the fault of the company, is not such a compliance as will satisfy the condition of the contract and allow the insured to maintain an action to recover, not the amount determined upon by the arbitrators, but damages irrespective of their award. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

Thus, failure to select third referee does not justify suit on policy.—Ascertainment of the amount of loss by appraisement is a condition precedent to a right of action, and, if the appraisers selected fail to agree upon a third, this does not in itself justify a suit for the amount of the loss. In the absence of bad faith or acts intended to defeat arbitration on the part of the insurer, the insured must propose the selection of other arbitrators, to the end that an award may be agreed upon and the basis for action determined. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

And where award set aside due to no fault of company new reference necessary.—Under the reference clause, if an award is set aside for misconduct of the referees, not participated in or caused by the insurer, the agreement for an appraisement still remains in force, and a new appraisement, unless it has become impossible, is still a condition precedent to a right of action on the policy, unless waived. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

If the award of the arbitrators was invalid for reasons not the company's fault, it is the duty of the insured to seek a new determination of the amount of his loss in the manner provided by the contract before instituting suit on the policy. The action in such a case is upon the policy, but the damages recoverable are such as have been previously ascertained and determined by the arbitrators, unless the plaintiff shows some sufficient reason why such a determination could not have been obtained. Consequently, there can be no action until performance of the condition or excuse shown for nonperformance. And it is not sufficient to show an award which the plaintiff repudiates and is not willing to be bound by. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

But new agreement need not be entered if one party has acted in bad faith.—Under the reference clause in a policy of insurance it is the duty of the parties to the contract to act in good faith, and if either acts in bad faith, so as to defeat the real object of the clause, the other is absolved from compliance therewith and is not bound to enter into a new arbitration agreement. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282; Bradbury v. Insurance Co. of Pa., 118 Me. 191, 106 A. 862.

If the arbitration fails by reason of one party's fault, the other party is not bound to enter into a new arbitration agreement. Bradbury v. Insurance Co. of Pa., 118 Me. 191, 106 A. 862.

C. Scope of Reference.

General stipulation ousting courts of jurisdiction not enforced.—A general stipulation in a contract to refer to arbitration all matters of difference that may arise respecting both the right to recover and the amount of damage will not be sanctioned or enforced so as to divest the courts of their established jurisdiction. Dunton v. Westchester Fire Ins. Co., 104 Me. 372, 71 A. 1037.

But reference provided for in standard form does not oust court of jurisdiction.—While a stipulation in a contract providing for the settlement by arbitration of all controversies and disputes that might subsequently arise between the parties is invalid, because its effect would be to oust the courts of their jurisdiction, if the arbitration agreement such as that provided for in the standard form clause relates only to the determination of some preliminary matter, such as the amount of damages to be recovered, and does not apply to the whole question of liability, such provision, when a reasonable and definite method is provided for choosing the arbitrators, is valid and enforceable. Fisher v. Merchants Ins. Co., 95 Me. 486, 50 A. 282.

And referees concerned only with question of amount of damages.—The standard policy simply provides a reasonable method of estimating and ascertaining the amount of the loss and leaves the general question of liability to be determined by the courts. Only matters which relate to the amount of damages are in issue before the referees, those going to the cause of action being immaterial and outside their jurisdiction. Thus, no waiver can arise from a failure on the part of the company to raise the question of its liability before the referees. Bryson v. American Eagle Fire Ins. Co., 132 Me. 172, 168 A. 719.

The rights of the insured to recover the

loss is not submitted to the referees. Even in the event of a valid award, the right of the insured to recover any amount may have to be determined in court and, if so, it must be done by an action upon the policy, in which the plaintiff must show, having established his right to recover, the amount of the loss, which he may do by offering the award of the referees as conclusively determining it. Oakes v. Franklin Fire Ins. Co., 122 Me. 361, 120 A. 53.

Thus, referees not authorized to determine ownership.—A stipulation for the settlement of the question of damages by arbitration under the standard form is not construed to require or authorize the referees to determine the question of the plaintiff's title to the property insured, as a condition precedent to the plaintiff's right of action on the policy. It is not competent for the parties to stipulate that the determination of the question of the ownership of the property by arbitration should be a condition precedent to the plaintiff's right of action. Dunton v. Westchester Fire Ins. Co., 104 Me. 372, 71 A. 1037.

The reference clause signifies a proceeding to appraise and estimate the damage to the property described, but does not embrace the question of ownership or any other matter which goes to the root of the cause of action. Dunton v. Westchester Fire Ins. Co., 104 Me. 372, 71 A. 1037.

Sec. 106. Willful violation of §§ 104, 105. — Any insurance company or agent who shall make, issue or deliver a policy of fire insurance in willful violation of sections 104 or 105 shall forfeit for each offense not less than $50 nor more than $200; but such policy shall nevertheless be binding upon the company issuing the same. (R. S. c. 56, § 98.)

Sec. 107. Cancellation of policy for nonpayment of premium.—An insurance company issuing fire insurance policies on property in this state, under the standard form required by sections 104 or 105, may cancel any such policy in the manner provided by law without tendering to the assured a ratable proportion of the premium, if the premium has not been paid to the company or its agent, or to a duly licensed insurance broker through whom the contract of insurance was negotiated. (R. S. c. 56, § 99.)

Sec. 108. Parties fail to agree as to amount of loss.—In case of loss under any fire insurance policy, issued on property in this state, in the standard form set forth in section 105, and the failure of the parties to agree as to the amount of loss, if the insurance company shall not, within 10 days after a written request to appoint referees under the provision for arbitration in such policy, name 3 men under such provision, each of whom shall be a resident of this state and willing to act as one of such referees; or if such insurance company shall not, within 10 days after receiving the names of 3 men named by the insured under such provision, make known to the insured its choice of one of them to act as one of such referees, it shall be deemed to have waived the right to an arbitration under such policy and be liable to suit thereunder, as though the same contained no provision for arbitration as to the amount of loss or damage. In case of the failure of 2 referees, chosen respectively by the insurance company and the insured, to agree upon and select within 10 days from their appointment a 3rd referee willing to act in said capacity, either of the parties may within 20 days from the expiration of said 10 days make written application setting forth the facts to the commissioner to appoint such 3rd referee, and said commissioner shall thereupon make such appointment and shall send written notification thereof to the parties. (R. S. c. 56, § 101.)

Purpose of section.—This section declares that if the insurance company shall not, within ten days after a written request to appoint referees, name three men, each of whom shall be a resident of this state and willing to act as one of such referees, it shall be deemed to have waived the right to arbitration. It was apparently enacted for the special purpose of removing the previously existing uncertainty in regard to the mode of procedure, and of definitely prescribing the conditions under which the privilege of arbitration might be enjoyed or the right deemed to be waived. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

This section is manifestly one of more than ordinary importance to the parties. In concise and definite terms, it states the conditions upon which the insured is compelled to surrender his right to a jury trial if he should prefer a jury trial upon the question of damages, as well as the obligations to be discharged by the company, if it would receive any advantage that might be derived from a settlement of the damage by arbitration. It fixes a brief and definite limit of ten days within which the names must be presented and a referee chosen for the obvious purpose of securing a more prompt administration of justice. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

Section not merely directory.—There is no suggestion that the provisions of this section might be construed as merely directory. They are treated as definite, imperative and controlling. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

Section not exclusive as to means of waiver.—The provision of this section concerning waiver was not intended to specify the only mode by which the insurance company could waive the arbitration provision, but its manifest purpose was to provide a necessary and effective means to prevent the company, by nonaction on its part in selecting the referees, from depriving the insured of his right of action under the policy. It declares that certain nonaction on the part of the company should be "deemed" a waiver of the right to arbitration, but it does not declare that the waiver of that right mentioned in the policy should be limited to that particular nonaction. The company may waive the right in other ways, and such waiver may be inferred from the conduct of its agents and representatives. Oakes v. Pine Tree State Mut. Fire Ins. Co., 112 Me. 52, 90 A. 707.

It is not a question of the good faith or actual intentions which deprives the company of the right of arbitration. It is not an intentional waiver, but a statutory waiver and a statutory waiver may be established without proof of an actual intention to relinquish a known right. If the company fails to comply with a definite and positive requirement of the statute, it is immaterial whether such failure was the result of a controversy respecting the legal duty of the company, or of its misfortune in selecting for referee one who was not willing to act as such at the time he was required to serve. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

Section fails to provide procedure when person named is unwilling to serve.—The section requires the company, within ten days after request, to name three men each of whom shall be willing to act as one of the referees. It gives the insured the right to select from three who are willing to serve. It contains no provision which gives the company the right to present a new name in lieu of the one refusing to serve. Respecting the course to be pursued in the event that one or two of the three named shall refuse to serve, the statute is silent. It fails to anticipate such a contingency. It contains no provision giving the company the right either to present a new name in lieu of one refusing to serve, or to name three new men from whom the insured could make a second selection. If it should be held that in the contingency named the company should have the opportunity to present either one or three new names, no limitation of time is fixed by the statute within which such a new submission of names might be made. It specifies no limit beyond the single term of ten days. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

And company waives right to arbitration by failure to name 3 disinterested men willing to serve.—To avoid waiver of arbitration, the company must name three persons each of whom is willing to act as one of the referees, not only at the time he is named, but at the time he is required to serve. If it fails to comply with the imperative terms and absolute conditions of the section, it must be held legally responsible for the failure of the arbitration and according to the language of the section be deemed to have waived the right to it. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

Where an insurance company, under the arbitration clause of the Maine standard policy, named three persons as referees, in accordance with the terms of the policy, from whom the plaintiff might select one, and the person selected by the insured declined to act, the company failed to name three persons each of whom was willing to act as one of the referees not only at the time he was named, but at the time he was required to serve, and therefore failed to comply with the imperative terms and absolute conditions of this section, and be deemed to have waived the right to arbitration. Mowry & Payson v. Hanover Fire Ins. Co., 106 Me. 308, 76 A. 875.

An allegation, the truth of which is admitted by the demurrer, that the defendant company offered three interested men for choice of a referee, without alleging scien-

ter by the company, will sustain a common-law action on an insurance policy. Bradbury v. Insurance Co. of Pa., 118 Me. 191, 106 A. 862.

Applied in Bradbury v. Rhode Island Ins. Co., 120 Me. 1, 112 A. 714.

Cited in Young v. Aetna Ins. Co., 101 Me. 294, 64 A. 584.

Sec. 109. Insurance on furniture, owned part by husband and part by wife.—Insurance, effected by a husband or wife on a dwelling house owned by the insured and on the furniture therein, is valid for all the furniture, although part is owned by the husband and part by the wife. (R. S. c. 56, § 102.)

Sec. 110. Time limit for adjusting and paying fire losses.—In case of physical loss by fire to property insured by any company transacting insurance business in this state, said company or its representative shall begin adjustment of such loss within 20 days after the receipt of the notice provided for by section 105; but no fire insurance company shall pay any loss or damage until after the expiration of 45 days from the date of loss; provided that nothing contained in this section shall prevent the payment of a loss to any property owner when the aggregate loss under all policies covering the risk does not exceed $100; provided also that upon application from an insurance company or its authorized representative, written permission to make earlier payment on any loss may be given said company or its authorized representative by the commissioner, and immediately upon issuance of such permit, the commissioner shall notify and grant permits to any other companies known to be interested in the risk. For any violation of the provisions of this section the commissioner may suspend the authority of the company to transact business in this state for such length of time, not exceeding 1 year, as he may deem advisable. In any statute relating to fire insurance or in any policy of fire insurance reference to the date of loss or the time when a loss occurs shall mean the day of the fire against which the policy insures. (R. S. c. 56, § 103. 1947, c. 32.)

Cross reference.—See c. 97, §§ 28, 31, re reports to insurance commissioner.

Stated in Otis v. Springfield Fire & Marine Ins. Co., 122 Me. 239, 119 A. 612.

Lien of Mortgagees on Fire Policies.

Sec. 111. Lien of mortgagee upon policy.—The mortgagee of any real estate or the mortgagee of any personal property shall have a lien upon any policy of insurance against loss by fire procured thereon by the mortgagor, to take effect from the time he files with the secretary of the company a written notice, briefly describing his mortgage, the estate conveyed thereby and the sum remaining unpaid thereon. If the mortgagor, by a writing by him signed and filed with the secretary, consents that the whole of the sum secured by the policy, or so much as is required to discharge the amount due on the mortgage at the time when a loss occurs, shall be applied to the payment of the mortgage, it shall be so paid by the company and the mortgagee's receipt therefor shall be a sufficient discharge of the company. (R. S. c. 56, § 104.)

In the absence of a statute such as this section, a mortgagee would have no more right than any other creditor to claim the benefit of insurance effected by the mortgagor. Donnell v. Donnell, 86 Me. 518, 30 A. 67.

And mortgagee must show compliance with terms of section.—It is not the insurer by the requirement of this section that must be satisfied as to notice. In order to establish a lien, the claimant must show conformity to the statute which creates the lien. Pittsfield Nat. Bank v. Dyer, 125 Me. 465, 134 A. 689.

No lien until notice filed with company.—By this section, a mortgagee's lien takes effect from the time he files his notice with the company. Until that is done, he can have no lien. Burns v. Collins, 64 Me. 215.

And notice must be given before loss settled.—In order for a mortgagee to secure his lien, he must give notice to the company before the loss under the policy is settled. True, under § 112 the mortgagee has sixty days after a loss to enforce his lien by suit. But that implies that he has a lien. Burns v. Collins, 64 Me. 215.

To secure a lien under this section, the

notice to the company must briefly describe the mortgage, or the estate conveyed thereby, or the sum remaining unpaid thereon. Knowlton v. Black, 102 Me. 503, 67 A. 563.

The notice which this section prescribes is "a written notice briefly describing his mortgage, the estate conveyed thereby and the sum remaining unpaid thereon." Pittsfield Nat. Bank v. Dyer, 125 Me. 465, 134 A. 689.

Notice held insufficient.—A letter to the insurer which does not, except inferentially, name the mortgagor, does not give the date of the mortgage nor state when, where or whether it is recorded, nor give any information as to the location of the mortgaged premises does not "describe the mortgage, the estate conveyed thereby and the sum remaining unpaid thereon," and is not sufficient notice under this section. Pittsfield Nat. Bank v. Dyer, 125 Me. 465, 134 A. 689.

Applied in Nickerson v. Nickerson, 80 Me. 100, 12 A. 880.

Cited in Buck v. Phoenix Ins. Co., 76 Me. 586.

Sec. 112. Lien enforced by suit.—If the mortgagor does not consent as provided for in the preceding section, the mortgagee of any real estate may, at any time within 60 days after a loss, and the mortgagee of any personal property may at any time within 30 days after a loss, enforce his lien by a suit against the mortgagor, and the company as his trustee, in which judgment may be rendered for what is found due from said company upon the policy, notwithstanding the time of payment of the whole sum secured by the mortgage has not arrived, and which said suit shall be commenced and service made on such trustee within said 60 or 30 days. (R. S. c. 56, § 105.)

Suit must be instituted within required time.—Any suit against the insurance company as trustee of the mortgagor of real estate must be instituted within sixty days after the loss, to preserve and enforce the lien. Knowlton v. Black, 102 Me. 503, 67 A. 563.

And proofs of loss necessary to subject company to trustee process.—The insurance company cannot be subjected to trustee process in favor of a mortgagee until the required preliminary proofs of loss have been furnished or waived. Nickerson v. Nickerson, 80 Me. 100, 12 A. 880.

But mortgagee may furnish such proofs in his own name.—After the notice provided by § 111 has been given by a mortgagee of real estate, he becomes the equitable owner of the policy qua his mortgage, and, inasmuch as preliminary proofs are required to fix the liability of the insurance company, and he must commence his action within sixty days after the loss, he may furnish the requisite proofs of loss in his own name, if the assured neglects or refuses to furnish them. Nickerson v. Nickerson, 80 Me. 100, 12 A. 880.

And may avail himself of waiver of proofs.—If the mortgagee may furnish the preliminary proofs of loss in his own behalf, it follows that he may avail himself of any waiver of the same by the insurance company. Nickerson v. Nickerson, 80 Me. 100, 12 A. 880.

Company discharged as trustee if loss settled prior to notice of lien.—In an action to enforce a mortgagee's lien under this section, the company should be discharged as trustee when it is shown that the loss under the policy was settled with the mortgagor prior to the notice to the company of the mortgagee's claim. Burns v. Collins, 64 Me. 215. See note to § 111.

Stated in Pittsfield Nat. Bank v. Dyer, 125 Me. 465, 134 A. 689.

Cited in Buck v. Phoenix Ins. Co., 76 Me. 586; Towle v. Dirigo Mut. Fire Ins. Co., 107 Me. 317, 78 A. 374.

Sec. 113. Application of amount recovered. — The amount recovered under the provisions of section 112 shall be applied first to the payment of the costs of the suit and officer's fees on the execution and next to the payment of the amount due on the mortgage; and the balance, if any, shall be retained by the company and paid to the mortgagor. If the company assumes the defense, it shall be liable to the plaintiff for costs in the same manner as the principal defendant, defending the suit, would be. (R. S. c. 56, § 106.)

Sec. 114. Priority of mortgagees.—When 2 or more mortgagees claim the benefit of the 3 preceding sections, their rights shall be determined according

to the priority of their claims and mortgages by the principles of law. (R. S. c. 56, § 107.)

A mortgagee whose lien has not taken effect cannot successfully invoke this section as against another who has established his lien in the manner provided by law. Pittsfield Nat. Bank v. Dyer, 125 Me. 465, 134 A. 689.

Sec. 115. Mortgagee's policy void, unless consented to.—When any mortgagee claims the benefit of sections 111 to 114, inclusive, any policy of insurance which he had procured or subsequently procures on his interest in the same property by virtue of his mortgage is void, unless consented to by the company insuring the mortgagor's interest. (R. S. c. 56, § 108.)

Accident and Sickness Insurance.

Sec. 116. Definition.—The term "policy of accident and sickness insurance" as used in sections 116 to 119, inclusive, includes any policy or contract providing insurance against loss resulting from bodily injury or death by accident, or from sickness or both.

"Noncancellable disability insurance" means insurance against disability resulting from sickness, ailment or bodily injury, but not including insurance solely against accidental injury, under any contract which does not give the insurer the option to cancel or otherwise terminate the contract at or after 1 year from its effective date or renewal date. (R. S. c. 56, § 109. 1949, c. 421.)

Sec. 117. Approval and disapproval of policies and filing of rates.—No such policy shall be delivered or issued for delivery to any person in this state, nor shall any application, rider or endorsement be used in connection therewith until a copy of the form thereof and of the classification of risks and the premium rates, or, in the case of cooperatives or assessment companies the estimated cost pertaining thereto, have been filed with the insurance commissioner. No such policy shall be so delivered or issued for delivery, nor shall any application, rider or endorsement be used in connection therewith, until the expiration of 30 days after it has been so filed unless the commissioner shall sooner give his written approval thereto.

The commissioner may, within 30 days after the filing of any such form, disapprove such form (1) if the benefits provided therein are unreasonable in relation to the premium charged, provided that clause (1) shall not apply in the case of policy forms approved or disapproved in accordance with the provisions of section 124, or (2) if it contains a provision or provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of such policy. If the commissioner shall notity the insurer which has filed any such form that it does not comply with the provisions of this section or sections 6, 118 or 119, it shall be unlawful thereafter for such insurer to issue such form or use it in connection with any policy. In such notice, the commissioner shall specify the reasons for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer.

The commissioner may at any time, after a hearing of which not less than 20 days' written notice shall have been given to the insurer, withdraw his approval of any such form on any of the grounds stated in this section. It shall be unlawful for such form to be delivered or issued for delivery in this state after the effective date of such withdrawal of approval. The notice of any hearing called under this paragraph shall specify the matters to be considered at such hearing, and any decision affirming disapproval or directing withdrawal of approval under this section shall be in writing and shall specify the reasons therefor. (R. S. c. 56, § 110. 1949, c. 421. 1953, c. 114, § 1.)

Former provision of section. — For a consideration of a former provision of this section providing for disapproval if the exceptions in the policy were not printed in the same size type as the other parts of the policy, see Tracey v. Standard Accident Ins. Co., 119 Me. 131, 109 A. 490.

Sec. 118. Form and content of policy.—

I.

A. No such policy shall be delivered or issued for delivery to any person in this state unless:

1. The entire money and other considerations therefor are expressed therein; and

2. The time at which the insurance takes effect and terminates is expressed therein; and

3. It purports to insure only 1 person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children on any children under a specified age which shall not exceed 19 years and any other person dependent upon the policyholder; and

4. The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than 10-point with a lower-case, unspaced alphabet length not less than 120-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

5. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in subsection II, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS" or "EXCEPTIONS AND REDUCTIONS," provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

6. Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

7. It contains no provisions purporting to make any portion of the charter, rules, constitution or by-laws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

B. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in this section.

II.

A. Required provisions. Except as provided in paragraph C of this subsection, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this subsection; provided, however, that the insurer may, at its option, substitute for 1 or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually

by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

1. A provision as follows:

ENTIRE CONTRACT; CHANGES. This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

2. A provision as follows:

TIME LIMIT ON CERTAIN DEFENSES.

a. After 3 years from the date of issue of this policy, no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 3-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 3-year period, nor to limit the application of subparagraphs 1, 2, 3, 4 and 5 of paragraph B of subsection II in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "**INCONTESTABLE**":

"After this policy has been in force for a period of 3 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

b. No claim for loss incurred or disability (as defined in the policy) commencing after 3 years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

3. A provision as follows:

GRACE PERIOD. A grace period of ..... (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision:

"subject to the right of the insurer to cancel in accordance with the cancellation provision hereof."

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

"Unless not less than 5 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address

as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted,")

4. A provision as follows:

REINSTATEMENT. If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least 5 years from its date of issue.)

5. A provision as follows:

NOTICE OF CLAIM. Written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the 1st and 2nd sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given.")

6. A provision as follows:

CLAIM FORMS. The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

7. A provision as follows:

PROOFS OF LOSS. Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required.

8. A provision as follows:

TIME OF PAYMENT OF CLAIMS. Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

9. A provision as follows:

PAYMENT OF CLAIMS. Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $..... (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at

the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services, but it is not required that the service be rendered by a particular hospital or person.")

10. A provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY. The insurer, at its own expense, shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

11. A provision as follows:

LEGAL ACTIONS. No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

12. A provision as follows:

CHANGE OF BENEFICIARY. Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

B. Other provisions. Except as provided in paragraph C of this subsection, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this subsection; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

1. A provision as follows:

CHANGE OF OCCUPATION. If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to

date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

2. A provision as follows:

MISSTATEMENT OF AGE. If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

3. A provision as follows:

OTHER INSURANCE IN THIS INSURER. If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of $..... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.
(or in lieu thereof:)
Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

4. A provision as follows:

INSURANCE WITH OTHER INSURERS. If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision, when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision, there shall be added to the caption of the foregoing provision the phrase: "; **EXPENSE INCURRED BENEFITS.**" The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition, such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provi-

sion with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage.")

5. A provision as follows:

INSURANCE WITH OTHER INSURERS. If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision, there shall be added to the caption of the foregoing provision the phrase: "; **OTHER BENEFITS**". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition, such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

6. A provision as follows:

RELATION OF EARNINGS TO INSURANCE. If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such cover-

age upon the insured below the sum of $200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time. (The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

7. A provision as follows:

UNPAID PREMIUM. Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

8. A provision as follows:

CANCELLATION. The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than 5 days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term, the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

9. A provision as follows:

CONFORMITY WITH STATE STATUTES. Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

10. A provision as follows:

ILLEGAL OCCUPATION. The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

11. A provision as follows:

INTOXICANTS AND NARCOTICS. The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being

intoxicated or under the influence of any narcotic, unless administered on the advice of physician.

C. Inapplicable or inconsistent provisions. If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

D. Order of certain policy provisions. The provisions which are the subject of this section, or any corresponding provisions which are used in lieu thereof in accordance with this section, shall be printed in the consecutive order of the provisions in this section or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse or likely to mislead a person to whom the policy is offered, delivered or issued.

E. Third party ownership. The word "insured," as used in sections 116 to 119, inclusive, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

F. Requirements of other jurisdictions.

1. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of sections 116 to 119, inclusive, and which is prescribed or required by the law of the state under which the insurer is organized.

2. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

III. Lapse of policy. No policy of insurance referred to in sections 116 to 119, inclusive, issued or delivered in this state, except a policy which by its terms is cancelable by the company or is renewable or continuable with its consent, or except a policy the premiums for which are payable monthly or at shorter intervals, shall terminate or lapse for nonpayment of any premium until the expiration of 3 months from the due date of such premium, unless the company, within not less than 10 nor more than 45 days prior to said due date, shall have mailed, postage prepaid, duly addressed to the insured at his last address shown by the company's records, a notice showing the amount of such premium and its due date. If such a notice is not so sent, the insured may pay the premium in default at any time within said period of 3 months. The affidavit of any officer, clerk or agent of the company, or of any other person authorized to mail such notice, that the notice required by this subsection has been duly mailed by the company in the manner hereinbefore required, shall be prima facie evidence that such notice was duly given. No action shall be maintained on any policy to which this subsection applies and which has lapsed for nonpayment of any premium unless such action is commenced within 2 years from the due date of such premium. (R. S. c. 56, § 111. 1949, c. 421. 1953, c. 114, § 1.)

Sec. 119. Miscellaneous requirements.—

I. Conforming to statute.

A. Other policy provisions. No policy provision which is not subject to section 118 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to section 118.

B. Policy conflicting with § 118. A policy delivered or issued for delivery to any person in this state in violation of section 118 shall be held valid but shall be construed as provided in section 118. When any provision in a policy subject to section 118 is in conflict with any provision of section 118, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of section 118.

II. Application.

A. The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within 15 days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

B. No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

C. The falsity of any statement in the application for any policy covered by section 118 may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

III. Notice; waiver. The acknowledgment by any insurer of the receipt of notice given under any policy covered by sections 116 to 119, inclusive, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

IV. Age limit. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force, subject to any right of cancellation, until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

V. Nonapplication to certain policies. Unless otherwise specifically stated, nothing in sections 116 to 119, inclusive, shall apply to or affect (1) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract. (R. S. c. 56, § 112. 1949, c. 421. 1953, c. 114, § 1.)

Sec. 120. Group accident and sickness insurance defined.—

I. Any policy or contract of insurance against death or injury resulting from accident or from accidental means which covers more than 1 person, except blanket accident policies as defined in section 121 and family accident and sickness policies conforming to subsection I of section 118, shall be deemed a group accident insurance policy. Any policy or contract which insures against disablement, disease or sickness of the insured, excluding disablement which results from accident or from accidental means, and which covers more than 1 person, except blanket sickness insurance policies as defined in section 121 and family accident and sickness policies conforming to subsection I of section 118, shall be deemed a group sickness insurance policy or contract. Any policy or contract of insurance which combines the coverage of group accident insurance and of group sickness insurance shall be deemed a group accident and sickness insurance policy. No policy or contract of group accident, group sickness or group accident and sickness insurance, and no certificate thereunder, shall be delivered or issued for delivery in this state unless it conforms to the requirements of subsection II and the requirement of section 122. (1953, c. 114, § 1-A)

II. No policy or contract or group accident, group sickness or group accident and sickness insurance, except as otherwise provided by law, shall be delivered or issued for delivery in this state unless the group of persons thereby insured conforms to 1 of the following descriptions:

A. A policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

1. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of 1 or more subsidiary corporations and the employees, individual proprietors and partners of 1 or more affiliated corporations, proprietors or partnerships, if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership or contract. The policy may provide that the term "employees" shall include the individual proprietor or partners, if the employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for in-

surance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

2. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees, or wholly from funds contributed by the insured employees. A policy on which any part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.

A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at least 25 employees at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

B. A policy issued to a labor union or to an incorporated or unincorporated association of employees, which association has a constitution and by-laws and has 50 or more members and is organized and maintained in good faith for purposes other than that of obtaining insurance and has been so organized and maintained for a period of not less than 2 years prior to the issuance of such policy or contract, which shall be deemed the policyholder to insure members of such union or association for the benefit of persons other than the union or association or any of its officials, representatives or agents, subject to the following requirements:

1. The members eligible for insurance under the policy shall be all of the members of the union or association or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union or association, or both.

2. The premium for the policy shall be paid by the policyholder, either wholly from the union's or association's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at least 25 members at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union or association.

C. A policy issued to the trustees of a fund established by 2 or more employers in the same industry or by 1 or more labor unions, or by 1 or more

employers and 1 or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

1. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

2. The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both. No policy may be issued on which any part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance, except that any coverages provided under the policy with respect to the insured person's dependents may be paid entirely or in part by funds contributed by such insured person. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if either:

a. The participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for the same or similar benefits under a plan maintained by their employer, or

b. The total number of persons covered at date of issue exceeds 600. (1953, c. 287)

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers or unions.

III. The benefits payable under any policy or contract of group accident, group sickness or group accident and sickness insurance shall be payable to the employee or other insured member of the group or to some beneficiary or beneficiaries designated by him, other than the employer or the association or any officer thereof as such; but if there is no designated beneficiary as to all or any part of the insurance at the death of the employee or member, then the amount of insurance payable for which there is no designated beneficiary shall be payable to the estate of the employee or member, except that the insurer may in such case, at its option, pay such insurance to any 1 or more of the following surviving relatives of the employee or member: wife, husband, mother, father, child or children, brothers or sisters; and except that payment of benefits for expenses incurred on account of hospitalization or medical or surgical aid, as provided in subsection IV, may be made by the insurer to

the hospital or other person or persons furnishing such aid. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

IV. Any policy or contract of group accident, group sickness or group accident and sickness insurance may include provisions for the payment by the insurer of benefits for expenses incurred, by the employee or other member of the insured group, on account of hospitalization or medical or surgical aid for himself, his spouse, his child or children, or other persons chiefly dependent upon him for support and maintenance.

V. Anything in sections 120 to 128, inclusive, to the contrary notwithstanding, any policy or contract of group accident, group sickness or group accident and sickness insurance may provide for readjustment of the rate of premium based on the experience thereunder at the end of the 1st year or of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies and any dividend paid under such policies may be used to reduce the employer's contribution to group insurance for the employees of the employer, and the excess over such contribution by the employer shall be applied by the employer for the sole benefit of the employees.

VI. Nothing contained in this section shall be deemed applicable to any contract issued by any corporation defined in sections 244 to 257, inclusive. (R. S. c. 56, § 113. 1949, c. 421. 1953, c. 114, § 1-A; c. 287.)

Sec. 121. Blanket accident and sickness insurance defined.—

I. Any policy or contract of insurance against death or injury resulting from accident or from accidental means which insures a group of persons conforming to the requirements of 1 of the following paragraphs A to E, inclusive, shall be deemed a blanket accident policy. Any policy or contract which insures a group of persons conforming to the requirements of one of the following paragraphs C or E against total or partial disability, excluding such disability from accident or from accidental means, shall be deemed a blanket sickness insurance policy. Any policy or contract of insurance which combines the coverage of blanket accident insurance and of blanket sickness insurance on such a group of persons shall be deemed a blanket accident and sickness insurance policy.

A. Under a policy or contract issued to any railroad, steamship, motorbus or airplane carrier of passengers, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier, insuring such passengers against death or bodily injury either while or as a result of being such passengers.

B. Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employees against death or bodily injury resulting while or from being exposed to such exceptional hazards.

C. Under a policy or contract, covering students or teachers, issued to a college, school or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.

D. Under a policy or contract issued in the name of any volunteer fire department, which shall be deemed the policyholder, having not less than 10 members, covering all of the members of such department.

E. Under a policy or contract issued to and in the name of an incorporated

or unincorporated association of persons having a common interest or calling, which association shall be deemed the policyholder, having not less than 50 members, covering all of the members of such association.

II. All benefits under any blanket accident, blanket sickness or blanket accident and sickness insurance policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, as shall be specified in the policy, except that if the person insured be a minor, such benefits may be made payable to his parent, guardian or other person actually supporting him, or to a person or persons chiefly dependent upon him for support and maintenance.

III. Nothing contained in this section shall be deemed to affect the legal liability of policyholders for the death of or injury to any such member of such group. (1949, c. 421.)

Sec. 122. Group or blanket accident and sickness insurance policy provisions.—

I. No policy of group or blanket accident or sickness insurance or accident and sickness insurance and no certificate thereunder shall, except as provided in subsection III, be delivered or issued for delivery in this state, unless the policy contains in substance each and all of the provisions set forth in the following paragraphs or provisions, which in the opinion of the commissioner are more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders:

A. A provision that no statement made by the applicant for insurance shall avoid the insurance or reduce benefits thereunder unless contained in the written application signed by the applicant; and a provision that no agent has authority to change the policy or to waive any of its provisions; and that no change in the policy shall be valid unless approved by an officer of the insurer and evidenced by indorsement on the policy, or by amendment to the policy signed by the policyholder and the insurer.

B. A provision that all statements contained in any such application for insurance shall be deemed representations and not warranties.

C. A provision that all new employees or new members, as the case may be, in the groups or classes eligible for such insurance must be added to such groups or classes for which they are respectively eligible.

D. A provision stating the conditions under which the insurer may decline to renew the policy.

E. Except in the case of blanket accident, blanket sickness or blanket accident and sickness insurance, a provision that the insurer shall issue to the policyholder, for delivery to each member of the insured group, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage of such employee or such member, to whom the benefits thereunder are payable, and in substance the provisions of paragraphs F to L, inclusive.

F. A provision specifying the ages, if any there be, to which the insurance provided therein shall be limited; and the ages, if any there be, for which additional restrictions are placed on benefits and the additional restrictions placed on the benefits at such ages.

G. A provision that written notice of sickness or of injury must be given to the insurer within 30 days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible

to give such notice and that notice was given as soon as was reasonably possible.

H. A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

I. A provision that the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after the insurer receives notice of any claim under the policy, the person making such claim shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

J. A provision that the insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law.

K. A provision that all benefits payable under the policy, other than benefits for loss of time, will be payable not more than 60 days after receipt of proof, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each period of 30 days during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.

L. A provision that no action at law or in equity shall be brought to recover on the policy prior to the expiration of 60 days after proof of loss has been filed in accordance with the requirements of the policy and that no such action shall be brought at all unless brought within 2 years from the expiration of the time within which proof of loss is required by the policy.

II. Any portion of any such policy, delivered or issued for delivery in this state, which purports, by reason of the circumstances under which a loss is incurred, to reduce any benefits promised thereunder to an amount less than that provided for the same loss occurring under ordinary circumstances, shall be printed in such policy and in each certificate issued thereunder, in bold face type and with greater prominence than any other portion of the rest of such policy or certificate, respectively; and all other exceptions of the policy shall be printed in the policy and certificate with the same prominence as the benefits to which they apply. If any such policy contains any provision which affects the liability of the insurer because of any violation of law by the insured during the term of the policy, it shall be in the following form: The insurer shall not be liable for death, injury incurred or disease contracted, to which a contributing cause was the insured's commission of or attempt to commit a felony, or which occurs while the insured is engaged in

an illegal occupation. If any such policy contains any provision which affects the liability of the insurer because of the insured's use of intoxicating liquor or narcotics during the term of the policy, it shall be in the following form: The insurer shall not be liable for death, injury incurred or disease contracted while the insured is intoxicated or under the influence of narcotics unless administered on the advice of a physician.

III. The commissioner may approve any form of blanket accident or sickness or accident and sickness insurance policy, or any form of certificate to be issued under such policy, which omits or modifies any of the provisions hereinbefore required, if he deems such omission or modification suitable for the character of such insurance and not unjust to the persons insured thereunder.

IV. Any such group or blanket policy may include benefits payable on account of hospital or medical or surgical aid for an employee or other member of the group insured by such policy, his or her spouse, child or children or other dependents, and may provide that any such benefits be paid by the insurer directly to the hospital, physician, surgeon doctor, nurse or other person furnishing services covered by such provision of said policy. (1949, c. 421.)

Sec. 123. Policies under franchise plan.—

I. Accident and sickness insurance on a franchise plan is declared to be that form of accident and sickness insurance issued to:

A. Five or more employees of any corporation, copartnership or individual employer or any governmental corporation, agency or department thereof, or

B. Ten or more members of any trade, occupational or professional association, or of a labor union, or of any other association having had an active existence for at least 2 years where such association or union has a constitution or by-laws and is formed in good faith for purposes other than that of obtaining insurance;

where such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons, under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of such employer or association.

II. Notwithstanding the provision of paragraph B of subsection VII of section 149, such section shall not prohibit different rates charged, or benefits payable, or different underwriting procedure for individuals insured under a franchise plan, provided rates charged, benefits payable or underwriting procedure used do not discriminate between franchise plans. [1953, c. 308, § 77]. (1949, c. 421. 1953, c. 308, § 77.)

Sec. 124. Application of § 117; rules and regulations.—All policy forms mentioned in sections 120 to 123, inclusive, shall be filed with and approved or disapproved by the commissioner in accordance with the provisions of section 117. The commissioner may make reasonable rules and regulations necessary to effect the purpose of sections 116 to 125, inclusive, and this authorization shall include the right to make the following requirements:

When a policy, other than a noncancellable policy, has neither a brief description nor a separate statement printed on the 1st page and on the filing back, referring to the renewal conditions of the policy, a separately captioned provision, setting forth the conditions under which the policy may be renewed, must appear on the 1st page of the policy. The caption shall be clear and definite and

shall be approved by the commissoner; but any 1 of the following captions is acceptable:

"RENEWAL SUBJECT TO CONSENT OF COMPANY.

RENEWAL SUBJECT TO COMPANY CONSENT.

RENEWABLE AT OPTION OF COMPANY."

If the policy is not renewable, a separate, appropriately captioned provision on the 1st page of the policy shall so state.

If the policy contains a cancellation provision, it must be separately set out and captioned "**CANCELLATION**"; and the existence of the cancellation provision shall be made known on the 1st page of the policy and a specific cross reference thereto made in the renewal provision.

The term "noncancellable," as used herein, means a policy which the insured may rightfully continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least 5 years from its date of issue. (1949, c. 421. 1953, c. 87.)

Sec. 125. Revocation and suspension of license.—Any person, partnership or corporation willfully violating any provision of sections 116 to 125, inclusive, or an order of the commissioner made in accordance with the provisions of those sections, shall forfeit to the people of the state a sum not to exceed $500 for each such violation, which may be recovered by a civil action. The commissioner may also suspend or revoke the license of an insurer or agent for any such willful violation. (1949, c. 421.)

Sec. 126. Appeal.—Any order or decision of the commissioner, issued under the provisions of sections 116 to 125, inclusive, shall be subject to review by a justice of the superior court, in term time or vacation, by an appeal taken within 15 days after the date of such order or decision to the superior court held in and for the county of Kennebec at the instance of any party in interest and aggrieved by said order or decision. Such appeal shall be prosecuted by petition to which such party shall annex the order or decision of the commissioner and the record upon which such order or decision is based and in which the appellant shall set out the substance of and the reasons for the appeal. Upon the filing thereof, the court in term time, or a justice thereof in vacation, shall order notice thereon. Upon the evidence and after hearing, which shall be held not less than 7 days after notice thereof, the court or any justice thereof may modify, affirm or reverse the order or decision of the commissioner in whole or in part in accordance with law and the weight of the evidence. The court or a justice thereof shall, upon hearing, determine whether the filing of the appeal shall operate as a stay of any such order or decision of the commissioner pending the final determination of the appeal, and may impose such terms and conditions as may be deemed proper.

Exceptions shall lie to the law court from the decision of the superior court. (1949, c. 421.)

Sec. 127. Copy of application. — Every accident, sickness or casualty policy of insurance issued to a resident of this state by any insurance company, assessment association or fraternal order, which contains a reference to the application of the insured, either as a part of the policy or as having any bearing thereon, shall have attached thereto a correct copy of the application, and unless such copy is so attached, the application shall not be considered a part of the policy or be received in evidence. (1949, c. 421.)

Sec. 128. False or fraudulent statement.—Any person who knowingly or willfully makes a false or fraudulent statement or representation in or relative to any application for accident, sickness or casualty insurance, or who makes any such statement for the purpose of obtaining a fee, commission, money or

benefit in a corporation transacting such business in this state, shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 30 days nor more than 11 months, or by both such fine and imprisonment; and a person who willfully makes a false statement of any material fact or thing in a sworn statement as to the death or disability of a policy or certificate holder in any such corporation, for the purpose of procuring payment of a benefit named in the certificate of such holder, shall be guilty of perjury. (1949, c. 421.)

Sec. 129. Exceptions.—The provisions of sections 116 to 128, inclusive, shall not apply to any contracts or policies of group, blanket or franchise plan insurance entered into or issued prior to September 1, 1949 nor to any extensions, renewals or modifications thereof or amendments thereto whenever made. (1949, c. 421.)

Life Insurance.

Sec. 130. Minimum nonforfeiture values after March 31, 1877.—Every life insurance policy issued after the 31st day of March, 1877, and before the 1st day of September, 1931, by any company chartered by this state, which may be forfeited for nonpayment of premiums, including all notes given for premiums or loans, or interest thereon, after it has been in force 3 full years, and which does not provide for a surrender value, at least equivalent to the value arising under the terms of this and the following section, is nevertheless continued in force to an extent and for a period to be determined as follows, to wit: the net value of the policy, when the premium becomes due and is not paid, shall be ascertained according to the combined experience or actuaries' table of mortality, with interest at the rate of 4% a year; from such net value, there shall be deducted the present value of the differences between the future premiums named in the policy, and the future net premiums on said policy, ascertained according to the rates of mortality and interest aforesaid, in no event, however, to exceed ¼ of said net value, and in ascertaining said net value, when the premium is payable semiannually or quarterly, there shall be deducted from the net value of the policy, assuming net annual premiums, the net premiums for the unpaid semiannual or quarterly installments for that year which shall not be considered an indebtedness, but as forborne premiums; what remains, after deducting any indebtedness to the company on account of the policy or notes held by the company against the insured, which notes shall be canceled, shall be considered as a net single premium of temporary insurance, and the term for which it will insure shall be determined according to the age of the party at the time of the lapse of the policy and the assumptions of mortality and interest aforesaid; but if the policy is an endowment, payable at a time certain, or at death if it should previously occur, then, if what remains as aforesaid, exceeds the single net premium of temporary insurance for the balance of the endowment term for the full amount of the policy, such excess shall be considered a net single premium for simple endowment, payable only at the same time as the original endowment, and in case the insured survives to that time; and the amount thus payable by the company shall be determined according to the age of the party at the time of the lapse of the policy and the assumptions of mortality and interest aforesaid.

If the death of the insured occurs within the term of temporary insurance covered by the value of the policy as determined in the preceding paragraph, and if no condition of the insurance other than the payment of premiums has been violated by the insured, the company shall pay the amount of the policy, as if there had been no lapse of the premium, anything in the policy to the contrary notwithstanding; provided, however, that notice of the claim and proof of the death shall be submitted to the company in the manner provided by the terms of the policy within 1 year after the death; provided also, that the company may

deduct from the amount insured in the policy the amount compounded at 7% a year of the ordinary life premiums at age of issue, that had been forborne at the time of the death, including the whole year's premium in which the death occurs, not exceeding 5 in number; but any such company may issue to a resident of any other state or country, a policy conforming to the laws of such state or country, and not subject to this and the preceding paragraph. (R. S. c. 56, § 114.)

Sec. 131. Minimum nonforfeiture values on and after September 1, 1931.—The legal minimum standard of value for life insurance policies issued on or after the 1st day of September, 1931, by any life insurance company chartered by this state, shall be the American experience table of mortality with interest at 3½% per year; provided, however, that any such life insurance company may, at its option, value its insurance policies issued on and after said day, in accordance with their terms on the basis of the American men ultimate table of mortality with interest not higher than 3½% per year by the level net premium method. Any such life insurance company may voluntarily value its policies, or any class thereof, according to either of the said tables of mortality at a lower rate of interest than that above prescribed, but not lower than 3% per year.

Whenever any policy of life insurance issued on or after September 1st, 1931, by any life insurance company chartered by this state, after being in force 3 full years, shall by its terms lapse or become forfeited by the nonpayment of any premium or any note therefor or any loan on such policy or of any interest on such note or loan, the reserve on such policy computed according to the standard of value adopted by said company in accordance with the preceding paragraph of this section, together with the value of any dividend additions upon said policy, after deducting any indebtedness to the company and the sum of $2.51 for each $100 of the face of said policy, shall upon demand not later than 2 months after the date of lapse with surrender of the policy be applied as a surrender value as agreed upon in the policy, provided that if no other option expressed in the policy be availed of by the owner thereof, and if the policy itself does not direct what option shall become operative in default of selection by the owner, the same shall be applied to continue the insurance in force at its full amount including any outstanding dividend additions less any outstanding indebtedness on the policy but without future participation and without the right to loans, so long as such surrender value will purchase nonparticipating temporary insurance at net single premium rates by the standard adopted by the company, at the age of the insured at the time of lapse or forfeiture, provided in case of any endowment policy if the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in the policy, the excess shall be used to purchase in the same manner pure endowment insurance payable at the end of the endowment term named in the policy on the conditions on which the original policy was issued, and provided further, that any attempted waiver of the provisions of this paragraph in any application or policy, or otherwise, shall be void, and provided further, that any value allowed in lieu thereof shall at least equal the net value of the temporary insurance or of the temporary and pure endowment insurance herein provided for. Anything herein to the contrary notwithstanding the net single premium rate employed in computing the term of temporary insurance or the amount of pure endowment insurance granted as a nonforfeiture value under any life insurance policy may at the option of the company be based upon a table of mortality showing rates of mortality not greater than 130% of those shown by the American men ultimate table of mortality instead of the table used in computing the reserve on the policy, or in case of substandard policies not greater than 130% of the rates of mortality shown by the table of mortality approved by the commissioner for computing the reserve on the policy. The term of tem-

porary insurance herein provided for shall include the period of grace, if any. Any such life insurance company may issue to a resident of any other state or country a policy conforming to the laws of such state or country and not subject to the provisions of this section. (R. S. c. 56, § 115.)

Standard Nonforfeiture Law.

Sec. 132. Issuing of life insurance policies. — In the case of policies issued on or after the operative date of sections 132 to 137, inclusive, as defined in section 137, no policy of life insurance, except as stated in section 137, shall be issued or delivered in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

I. That, in the event of default in any premium payment, the company will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

II. That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance or 5 full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

III. That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default.

IV. That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the 3rd policy anniversary in the case of ordinary insurance or the 5th policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

V. A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

VI. A statement of the method to be used in calculating the cash surrender value and the paid-up nonforfeiture benefit available under the policy on any policy anniversary with an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash sur-

render value for a period of 6 months after demand therefor with surrender of the policy. (R. S. c. 56, § 116. 1945, c. 203, § 1.)

Sec. 133. Cash surrender value.—Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by section 132, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

I. The then present value of the adjusted premiums as defined in section 135, corresponding to premiums which would have fallen due on and after such anniversary, and

II. The amount of any indebtedness to the company on the policy. Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by section 132, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy. (R. S. c. 56, § 117.)

Sec. 134. Paid-up nonforfeiture benefits.—Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by the provisions of sections 132 to 137, inclusive, in the absence of the condition that premiums shall have been paid for at least a specified period. (R. S. c. 56, § 118.)

Sec. 135. Adjusted premiums.—The adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

I. The then present value of the future guaranteed benefits provided for by the policy;

II. 2% of the amount of insurance, if the insurance be uniform in amount, or the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

III. 40% of the adjusted premium for the 1st policy year;

IV. 25% of either the adjusted premium for the 1st policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

Provided, however, that in applying the percentages specified in subsections III and IV, no adjusted premium shall be deemed to exceed 4% of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this section shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits,

if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy.

All adjusted premiums and present values referred to in sections 132 to 137, inclusive, shall be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table for Ordinary Insurance and the 1941 Standard Industrial Mortality Table for Industrial Insurance and the rate of interest, not exceeding 3½% per year, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table. Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner. (R. S. c. 56, § 119.)

Sec. 136. Calculation of cash surrender value of certain policies in case of default.—Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in sections 133, 134 and 135 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Nothwithstanding the provisions of section 133, additional benefits payable:

I. In the event of death or dismemberment by accident or accidental means,

II. In the event of total and permanent disability,

III. As reversionary annuity or deferred reversionary annuity benefits,

IV. As decreasing term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, sections 132 to 137, inclusive, would not apply, and

V. As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by the provisions of sections 132 to 137, inclusive, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits. (R. S. c. 56, § 120.)

Sec. 137. Exceptions; title.—The provisions of sections 132 to 137, inclusive, shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of 15 years or less expiring before age 66, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in section 135, is less than the adjusted premium so calculated, on such 15-year term policy issued at the same age and for the same initial amount of insurance, nor to any policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

The provisions of sections 132 to 137, inclusive, shall be known as the "Standard Nonforfeiture Law." Any company may file with the commissioner a written notice of its election to comply with the provisions of such sections after a specified date before January 1, 1948. After the filing of such notice, then upon such

specified date, which shall be the operative date for such company, the provisions of sections 132 to 137, inclusive, shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date for such company shall be January 1, 1948. (R. S. c. 56, § 121. 1945, c. 203, § 2.)

Standard Valuation Law.

Sec. 138. Calculation of reserve liabilities. — The commissioner shall annually value, or cause to be valued, the reserved liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods, net level premium method or other, used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. (R. S. c. 56, § 122.)

Sec. 139. Minimum standards.—The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of the standard nonforfeiture law shall be that provided by the laws in effect immediately prior to such date. The minimum standard for the valuation of all such policies and contracts issued on or after the operative date of the standard nonforfeiture law shall be the commissioners reserve valuation method defined in section 140, 3½% interest, and the following tables:

I. For all Ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table.

II. For all Industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table.

III. For Annuity and Pure Endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 Standard Annuity Mortality Table.

IV. For Total and Permanent Disability benefits in or supplementary to Ordinary policies or contracts—Class (3) Disability Table (1926) which, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

V. For Accidental Death benefits in or supplementary to policies—the Inter-Company Double Indemnity Mortality Table combined with a mortality table permitted for calculating the reserves for life insurance policies.

VI. For Group Life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner. (R. S. c. 56, § 123. 1945, c. 203, § 3.)

Sec. 140. Commissioners reserve valuation method defined. — Reserves according to the commissioners reserve valuation method, for the life in-

surance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of I over II, as follows:

I. A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the 1st policy year, divided by the present value, at the date of issue, of an annuity of 1 per year payable on the 1st and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such policy.

II. A net 1-year term premium for such benefits provided for in the 1st policy year.

Reserves according to the commissioners reserve valuation method for:

A. Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,

B. Annuity and pure endowment contracts,

C. Disability and accidental death benefits in all policies and contracts, and

D. All other benefits, except life insurance and endowment benefits in life insurance policies,

shall be calculated by a method consistent with the principles of the preceding subsection. (R. S. c. 56, § 124.)

Sec. 141. Amount of aggregate reserves. — In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of the standard nonforfeiture law, be less than the aggregate reserves calculated in accordance with the method set forth in section 140 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies. (R. S. c. 56, § 125. 1945, c. 203, § 4.)

Sec. 142. Calculation of reserves.—Reserves for all policies and contracts issued prior to the operative date of the standard nonforfeiture law may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the commissioner, issued on or after the operative date of the standard nonforfeiture law, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies issued on or after the operative date of the standard nonforfeiture law may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than ½% the

company issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided. (R. S. c. 56, § 126. 1945, c. 203, § 5.)

Sec. 143. Deficiency reserve; title. — If the gross premium charged by any life insurance company on any policy or contract issued on or after the operative date of the standard nonforfeiture law is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

The provisions of sections 138 to 143, inclusive, shall be known as the "Standard Valuation Law". (R. S. c. 56, § 127. 1945, c. 203, § 6.)

Sec. 144. Bonds valued on principles of amortization.—All bonds or other evidences of debt having a fixed term and rate, held by a life insurance company authorized to do business in this state, may, if amply secured and not in default as to principal and interest, be valued upon the principles of amortization, provided that the commissioner shall have full discretion in determining the method of calculating values according to the foregoing principles, and the values found by him in accordance with such method shall be final and binding; provided further, that any such corporation may return such bonds or other evidences of debt at their market value or book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing principles. (R. S. c. 56, § 128.)

Sec. 145. Reinsurance of risks.—No life insurance company organized or incorporated under the laws of this state shall reinsure its risks except by permission of the commissioner; but nothing in this chapter shall be construed to prevent any life insurance company from reinsuring a fractional part, not exceeding ½ of any individual risk. (R. S. c. 56, § 129.)

Unfair Methods of Competition and Trade Practices.

Sec. 146. Purpose.—The purpose of sections 146 to 158, inclusive, is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the act of congress of March 9, 1945 (Public Law 15, 79th Congress), by defining or providing for the determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. (R. S. c. 56, § 130. 1949, c. 319.)

The true construction of §§ 146-158 is to require insurance companies to give equal terms to those persons whom it insures that are of the same class, and to stipulate the terms of insurance in their policies, and to accord to none any other. State v. Schwarzschild, 83 Me. 261, 22 A. 164.

Cited in Rivard v. Continental Casualty Co., 116 Me. 46, 100 A. 101.

Sec. 147. Definitions.—When used in sections 146 to 158, inclusive:

I. "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society

and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

II. "Commissioner" shall mean the insurance commissioner of this state. (R. S. c. 56, § 131. 1949, c. 319.)

Sec. 148. Prohibitions. — No person shall engage in this state in any trade practice which is defined in sections 146 to 158, inclusive, as, or determined pursuant to sections 146 to 158, inclusive, to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. (R. S. c. 56, § 132. 1949, c. 319.)

Sec. 149. Unfair methods of competition and unfair or deceptive acts or practices defined.—The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

I. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit or surrender his insurance.

II. False information and advertising generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

III. Defamation. Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer and which is calculated to injure any person engaged in the business of insurance.

IV. Boycott, coercion and intimidation.

A. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance.

B. Entering into agreement to commit any act of boycott, coercion or intimidation, or in pursuance thereof monopolizing or attempting to monopolize any part of the business of insurance.

V. False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to

be made, published, disseminated, circulated, delivered to any person or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

VI. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

VII. Unfair discrimination.

A. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

B. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of accident or sickness insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

VIII. Rebates.

A. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and sickness insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling or purchasing or offering to give, sell or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

B. To knowingly receive or accept, directly or indirectly, any rebate of premium or part thereof, or agent's, solicitor's or broker's commission thereon payable on any policy of insurance, or any special favor or advantage in the dividend or other benefit to accrue thereon, or receive anything of value as inducement to such insurance or in connection therewith, which is not specified, promised or provided for in the policy of insurance.

C. Nothing in subsection VII or paragraph A of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

1. In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole

or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

2. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

3. Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the 1st or any subsequent policy year of insurance, thereunder, which may be made retroactive only for such policy year;

4. The right of any life insurance company doing business in this state from issuing policies of group insurance with or without annuities at rates less than the usual rate of premiums for individual policies as otherwise provided for by law, nor to prohibit an agent from receiving commissions from his company for insurance on himself.

History of subsection. — See Frye v. Equitable Life Assur. Society, 111 Me. 287, 89 A. 57.

Subsection prohibits rebate agreements not expressed in policy.—The intention of the legislature was that no agreement should be made regarding rebates or discriminations in the insurance contract unless the same was plainly expressed in the policy. Frye v. Equitable Life Assur. Society, 111 Me. 287, 89 A. 57.

And nonexistence in policy must be alleged.—It is not inconsistent that a policy should provide a discount from the stated premiums upon certain conditions that might be thought just and desirable, nor would such stipulation in a policy be in violation of this subsection. Therefore, its non-existence should be alleged in order to charge a violation of the subsection. The allegation "unlawfully and contrary to the form of the statute" is not equivalent to such negation. State v. Schwarzschild, 83 Me. 261, 22 A. 164.

An indictment which charges that the defendant did allow to an assured a rebate of premiums payable on his policy, but which fails to allege that such rebate was not stipulated in the policy, is not sufficient. State v. Schwarzschild, 83 Me. 261, 22 A. 164.

Subsection stated in part in Rivard v. Continental Casualty Co., 116 Me. 46, 100 A. 101.

IX. Any violation of sections 160, 273 to 276, inclusive, sections 294, 295, 297 and 298. (R. S. c. 56, § 133. 1947, c. 14. 1949, c. 319.)

Sec. 150. Power of commissioner.—The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 148. (R. S. c. 56, § 134. 1949, c. 319.)

Sec. 151. Hearings, witnesses, appearances, production of books and service of process.—Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section 149, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 14 days after the date of the service thereof.

At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall

permit any person to intervene, appear and be heard at such hearing by counsel or in person.

Nothing contained in sections 146 to 158, inclusive, shall require the observance at any such hearing of formal rules of pleading or evidence.

The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence and shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence or other documents which he deems relevant to the inquiry. The commissioner, upon such hearing may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the superior court of Kennebec county or the county where such party resides, or a justice thereof, in term time or vacation, on application, of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

Statements of charges, notices, orders and other processes of the commissioner under sections 146 to 158, inclusive, may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions or by registering and mailing a copy thereof to the person affected by such statement, notice, order or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same. (R. S. c. 56, § 135. 1949, c. 319.)

Sec. 152. Cease and desist orders.—If, after such hearing, the commissioner shall determine that the method of competition or the act or practice in question is defined in section 149 and that the person complained of has engaged in such method of competition, act or practice in violation of sections 146 to 158, inclusive, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice. The commissioner in addition to issuing a cease and desist order may revoke or suspend any license issued to any such company, association, society, agent or broker for a period not exceeding 1 year.

Until the expiration of the time allowed under the 1st paragraph of section 153 for filing a petition for review if no such petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the superior court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued or action taken by him under this section.

After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued or action taken by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require. (R. S. c. 56, § 136. 1949, c. 319.)

See § 156, re penalty.

Sec. 153. Judicial review of cease and desist orders. — Any person required by an order of the commissioner under section 152 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 149 or whose license has been suspended or revoked may obtain a review of such order or act by filing in the superior court in Kennebec county, in term time or vacation, within 30 days from the date of the service of such order, a written petition praying that the order of the commissioner be set aside. A copy of such petition shall be forthwith served upon the commissioner, and thereupon the commissioner forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon such filing of the petition and transcript, such court or justice thereof, in term time or vacation, shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order or act of the commissioner and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in such transcript a decree modifying, affirming or reversing the order or act of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order or act of the commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which, if supported by substantial evidence, shall be conclusive and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

A cease and desist order issued by the commissioner under section 152 shall become final:

I. Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in the 2nd paragraph of section 152; or

II. Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

No order of the commissioner under sections 146 to 158, inclusive, or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state. (1949, c. 319.)

Sec. 154. Unfair methods of competition and unfair or deceptive acts or practices which are not defined.—Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 149, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 14 days after the date of the serv-

ice thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 151. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.

If such report charges a violation of sections 146 to 158, inclusive, and if such method of competition, act or practice has not been discontinued, the commissioner may, through the attorney general of this state at any time after 30 days after the service of such report, cause a petition to be filed in the superior court of this state within the county wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

A transcript of the proceedings before the commissioner including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice. (1949, c. 319.)

Sec. 155. Judicial review by intervenor. — If the report of the commissioner does not charge a violation of sections 146 to 158, inclusive, then any intervenor in the proceedings may, within 30 days after the service of such report, cause a petition to be filed in the superior court in Kennebec county, in term time or vacation, for a review of such report. Upon such review, the court or a justice thereof, in term time or vacation, shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the commissioner, constitutes a violation of sections 146 to 158, inclusive. (1949, c. 319.)

Sec. 156. Penalty.—Any person who violates a cease and desist order of the commissioner under section 152, after it has become final and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state a sum not to exceed $50, which may be recovered in a civil action, except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed $500. (1949, c. 319.)

Sec. 157. Provisions of §§ 146 to 158 additional to existing law. —The powers vested in the commissioner by sections 146 to 158, inclusive, shall be additional to any other powers to enforce any penalties, fines, revocations or forfeitures authorized by law with respect to the methods, acts and practices declared to be unfair or deceptive. (1949, c. 319.)

Sec. 158. Immunity from prosecution.—If any person shall ask to be

excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must none the less comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred or to be conferred pursuant to the insurance law of this state. Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced, such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced. (1949, c. 319.)

Miscellaneous Provisions.

Sec. 159. Policies exempt from claims of creditors; rights of beneficiaries and assignees.—Certain policies of insurance shall be exempt from claims of creditors, and the rights of beneficiaries and assignees thereof shall be protected, as herein set forth.

If a policy of life, endowment or accident insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself or, except in cases of transfer with intent to defraud creditors, if a policy of life, endowment or accident insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; provided that subject to the statute of limitations, the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount claimed.

If an annuity contract, whether heretofore or hereafter issued, is effected by any person, based upon his own life or on another life, payable to a person other than himself, the lawful beneficiary or assignee thereof, other than the person so effecting such contract or his executors or administrators, shall be entitled to its proceeds and avails against the creditors and representatives of the person effecting such contract, to the same extent and under the same conditions here-

inbefore provided with reference to the proceeds and avails of policies of life and accident insurance.

If any group annuity contract or pension trust, whether heretofore or hereafter issued, is effected by an employer for the benefit of his employees, whether or not requiring any contribution toward the cost thereof by such employees, the interest of any employee, beneficiary or joint or contingent annuitant in any policy, certificate or fund in connection therewith and his interest in any payments or proceeds thereof and in any optional or death benefits shall not in any way be subject to execution, levy, attachment, garnishment, trustee process or any other legal or equitable process. (R. S. c. 56, § 137. 1947, cc. 152, 153.)

Cross reference. — See c. 170, § 21, re disposal of life insurance in estates.

Applied in Wyman v. Gay, 90 Me. 36, 37 A. 325; Pulsifer v. Hussey, 97 Me. 434, 54 A. 1076.

Cited in Galder v. Chandler, 87 Me. 63, 32 A. 784.

Sec. 160. Benefits paid by life insurance companies.—No corporation organized or authorized under the laws of this state to transact life insurance or to pay benefits shall provide in any policy, certificate, contract or agreement issued or made by it for the payment of any insurance, indemnity or benefit in services, goods, wares or merchandise of any kind. (R. S. c. 56, § 138.)

See § 149, re violation unfair practice.

Sec. 161. Minors make valid contracts for life insurance.—In respect to insurance heretofore or hereafter issued upon the life of any person between the ages of 15 and 21 years for the benefit of such minor or for the benefit of the father, mother, husband, wife, child, brother or sister of such minor, the insured shall not, by reason only of such minority, be incompetent to contract for such insurance, or for the surrender of such insurance, or to give a valid discharge for any benefit accruing or for money payable under the contract, provided that such surrender or discharge shall be given with the consent of the beneficiary. (R. S. c. 56, § 139.)

Sec. 162. Life insurance policies incontestable after 2 years; exceptions.—The policy of life insurance together with the application and the medical examination therefor, a copy or photograph of which application without the medical examination shall be indorsed upon or attached to the policy and made a part thereof, shall constitute the entire contract between the parties and shall be incontestable after it shall have been in force during the lifetime of the insured for 2 years from its date, except for nonpayment of premiums and except for violations of the policy relating to the naval or military service in time of war and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted. (R. S. c. 56, § 140.)

Group Insurance for Certain Employees.

Sec. 163. Group insurance for employees of the state, county, city or town.—The state, any county, city or town may make contracts of insurance with any insurance company authorized to transact business within the state insuring its employees or any class or classes thereof under a policy or policies of group insurance covering life, health or accident insurance and may contract with any such company granting annuities or pensions for the pensioning of such employees and, for such purposes, may agree to pay part or all of the premiums or charges for carrying such contract, raise money by taxation therefor and appropriate out of its treasury money necessary to pay such premiums or charges or portions thereof. Like authority to make contracts of insurance and appropriate out of its treasury, money necessary to pay such premiums or charges or portions thereof is granted to any water district or other quasi-municipal corporation char-

tered and organized as such under the laws of this state. Any such water district or other quasi-municipal corporation may provide for the retirement and pensioning of its employees and for such purpose may create and set aside out of its treasury, funds for a reserve or reserves, or it may contract with any insurance company authorized to transact such business within the state and grant annuities for the retirement and pensioning of its employees, and for such purposes may agree to pay a part or all of the premiums or annual charges for carrying out such contracts or for creating such annuity reserves. (R. S. c. 56, § 141.)

Group Life Insurance Definition.

Sec. 164. Group life insurance defined.—No policy of group life insurance except as otherwise provided by law shall be delivered in this state unless it conforms to 1 of the following descriptions:

I. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

A. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of 1 or more subsidiary corporations, the employees of 1 or more corporations with which the employer, having not less than 25 employees of its own, is under contract to provide specified services at cost and the employees, individual proprietors and partners of 1 or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership or contract. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. (1951, c. 102)

B. The premium for the policy shall be paid by the policyholders, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

C. The policy must cover at least 25 employees at date of issue.

D. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance

on any employee which together with any other term insurance under any group life insurance policy or policies issued to the employers or any of them or to the trustees of a fund established in whole or in part by the employers or any of them exceeds $20,000. (1951, c. 102)

II. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

A. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of 1 or more subsidiary corporations and the debtors of 1 or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.

B. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

C. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured.

D. The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor, or $5,000, whichever is less.

E. The insurance shall be payable to the policyholder. Such payments shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

III. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

A. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

B. The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be

placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

C. The policy must cover at least 25 members at date of issue.

D. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides term insurance on any union member which together with any other term insurance under any group life insurance policies issued to the union exceeds $20,000.

IV. A policy issued to the trustees of a fund established by 2 or more employers in the same industry or by 1 or more labor unions, or by 1 or more employers and 1 or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

A. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if an individual proprietor or partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

B. The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both. No policy may be issued on which any part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

C. The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if

1. Either
   a. The participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for group life insurance or
   b. The total number of persons covered at date of issue exceeds 600; and

2. The policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

D. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers or unions. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to the employers, or any of them, or to the trustees of a fund established in whole or in part by the employers, or any of them, exceeds $20,000. (1949, c. 316. 1951, c. 102.)

See § 167, re exception.

Group Life Insurance Standard Provisions.

Sec. 165. Group life insurance standard provisions.—No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however,

I. That paragraphs F to J, inclusive, of subsection III shall not apply to policies issued to a creditor to insure debtors of such creditor; (1953, c. 308, § 78)

II. That the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

III. That if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

A. A provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

B. A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for 2 years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime nor unless it is contained in a written instrument signed by him.

C. A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

D. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

E. A provision specifying an equitable adjustment of premiums or of bene-

fits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

F. A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $250 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

G. A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in paragraphs H, I and J.

H. A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the 1st premium paid to the insurer, within 31 days after such termination, and provided further that,

1. The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

2. The individual policy shall be in amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in 1 sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

3. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs and to his age attained on the effective date of the individual policy.

I. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 5 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by paragraph H, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of

1. The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination, and

2. $2,000.

J. A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with paragraphs H or I and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the 1st premium therefor has been made. (1949, c. 316. 1953, c. 308, § 78.)

See § 167, re exception.

Group Life Insurance Notice of Conversion Privilege.

Sec. 166. Group life insurance notice of conversion privilege.—If any individual insured under a group life insurance policy delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the 1st premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then, in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section. (1949, c. 316.)

See § 167, re exception.

Exceptions.

Sec. 167. Exceptions.—The provisions of sections 164 to 166, inclusive, shall not apply to any contracts or policies entered into or issued prior to August 6, 1949 nor to any extensions, renewals or modifications thereof or amendments thereto whenever made. (1949, c. 316. 1951, c. 266, § 74.)

Pension Plans and Life Insurance for Employees.

Sec. 168. Officer and employee pension plans. — Any insurance company organized under the laws of this state may pay, pursuant to the terms of a pension plan or any modifications thereof, heretofore or hereafter adopted by the board of directors of such company and approved by the commissioner, the whole or any part of the cost of retirement or disability pensions for such of its officers or employees as are specified in said plan or any modifications thereof. In lieu of such pensions, and if so specified in the plan, actuarially equivalent benefits may be paid to such officers or employees or to their designated beneficiaries. (R. S. c. 56, § 142. 1949, c. 304, § 1.)

Sec. 169. Life insurance and other benefits for officers and employees.—Any such company may, by vote of its board of directors, pay the cost, in whole or in part, of providing life insurance and sickness, accident, hospitalization, medical, surgical and related benefits for such of its officers and employees as said board may from time to time determine. (R. S. c. 56, § 143. 1949, c. 304, § 1.)

Annuity Companies.

Sec. 170. Annuity companies subject to life insurance law. — All corporations, whether incorporated in this state or elsewhere, which issue con-

tracts whereby such corporations, in consideration of a premium to be paid annually or otherwise, agree to pay an annuity commencing in the future, or a sum fixed or to be ascertained by given methods, are made subject, in relation to doing business in this state, to all the provisions of law relating to life insurance, including all provisions relating to taxation. (R. S. c. 56, § 144.)

Domestic Fraternal Beneficiary Associations.

Sec. 171. "Beneficiary association" defined; form of organization, and benefit fund; not subject to insurance laws.—A fraternal beneficiary association is defined to be any corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit. Each association shall have a lodge system, with ritualistic form of work and representative form of government, and shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in the case of sickness, temporary or permanent physical disability, either as the result of disease, accident or old age, provided the period in life at which payment of physical disability benefits on account of old age commences shall not be under 70 years, subject to compliance with its constitution and laws. The fund from which the payment of such benefits shall be made and the fund from which the expenses of such association shall be defrayed shall be derived from assessments or dues collected from its members. Death benefits shall be payable to any beneficiary designated by the member; provided that the society may by its by-laws make restrictions as to who may be beneficiary. After the issuance of the original certificate, each member shall have the right to change his beneficiary from time to time in accordance with the by-laws of the society; and no beneficiary shall have or obtain any vested interest in said benefits until the same have become due and payable upon the death of the member. Such association shall be governed by sections 171 to 197, inclusive, and shall be exempt from the provisions of insurance laws of this state, except as therein provided, and no law passed after the 21st day of March, 1901 shall apply to them unless they be expressly designated therein. Any such fraternal beneficiary association may create, maintain, disburse and apply a reserve or emergency fund in accordance with its constitution or by-laws. (R. S. c. 56, § 145. 1949, c. 95.)

Former provision of section. — For a case concerning proper beneficiaries under this section when it specifically listed the classes of persons to whom death benefits could be paid, see Grand Lodge of A. O. U. W. v. Conner, 116 Me. 224, 100 A. 1022.

Sec. 172. Organization of fraternal beneficiary associations.—Seven or more persons, residents of the state, desiring to form a fraternal beneficiary corporation for the above purposes, and having signed an agreement therefor, declaring therein the purposes of such corporation, may organize as such in the manner provided in sections 1, 2 and 3 of chapter 54, and such corporation shall have all the powers, privileges and immunities, and be subject to all the liabilities named in said section 3. (R. S. c. 56, § 146.)

Sec. 173. Certificate of organization; recorded.—The president, secretary and a majority of the directors or other officers corresponding thereto, shall forthwith make, sign and swear to a certificate setting forth a true copy of the agreement and declaration of the purposes of the association, with the names of the subscribers thereto, the date of the 1st meeting and the successive adjournments, if any, and shall submit such certificate and the records of the corporation to the commissioner, who shall make such examination and require such evidence as he deems necessary; and if it appears that the purposes of the corporation conform to law, he shall certify his approval thereof, and the certificate shall then be filed by said officer in the office of the secretary of state, who shall cause the

same with the indorsements to be recorded and shall thereupon issue a certificate in the following form:

"STATE OF MAINE.

Be it known that whereas" (here the names of the subscribers to the agreement of the association shall be inserted) "have associated themselves with the intention of forming a corporation under the name of" (here the name of the corporation shall be inserted) "for the purpose" (here the purpose declared in the agreement of association shall be inserted) "and have complied with the provisions of the statutes of this state in such case made and provided, as appears from the certificate of the officers of the corporation, duly approved by the insurance commissioner and recorded in this office: Now, therefore, I," (here the name of the secretary shall be inserted) ", Secretary of the State of Maine, do hereby certify that said" (here the names of the subscribers to the agreement of association shall be inserted) ", their associates and successors, are legally organized and established as and are hereby made an existing corporation under the name of" (here the name of the corporation shall be inserted) ", with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto. Witness my official signature hereunto subscribed, and the seal of the state of Maine hereunto affixed, this day of in the year " (day, month and year inserted).

The secretary shall sign the same and cause the seal of the state to be thereto affixed and such certificate shall be conclusive evidence of the existence of such corporation at the date of such certificate. He shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence, with like effect as the original certificate. (R. S. c. 56, § 147.)

Sec. 174. Business commenced within 1 year or discontinued for 1 year; charter void.—No charter granted under the provisions of the 2 preceding sections shall be valid after 1 year from its date unless the organization has been completed and business begun thereunder, and when any domestic corporation has discontinued business for the period of 1 year its charter shall become null and void. (R. S. c. 56, § 148.)

See c. 10, § 22, sub-§ XXIX, re acts of incorporation void if business not commenced within 2 years.

Sec. 175. Any association may reincorporate under the provisions of §§ 171-197.—Any fraternal beneficiary corporation existing under the laws of this state and engaged in transacting business herein on the 21st day of March, 1901, may reincorporate under the foregoing provisions; provided that nothing herein contained shall be construed as requiring any such corporation to reincorporate; and any such corporation may continue to exercise all the rights, powers and privileges conferred by sections 171 to 197, inclusive, and by its articles of incorporation not inconsistent herewith, and shall be subject to the requirements and penalties of said sections the same as if reincorporated thereunder. (R. S. c. 56, § 149.)

Sec. 176. Association not to do business until authorized.—No association, hereafter organized under the provisions of sections 172 and 173, shall incur any liability or issue any benefit certificate until it has received from the commissioner a certificate to the effect that it has complied with the requirements of law and is duly authorized to transact business in this state. Before such certificate is granted the association must present satisfactory evidence to the commissioner that it has established mortuary assessment rates which are not lower than those now indicated as necessary by the national fraternal congress mortality tables and that at least 500 persons have each paid 1 advance mortuary assessment on the rates so established and become a bona fide member of a local branch of the association, and that it has deposited with the treasurer of

state at least $1,000 as a part of its emergency or reserve fund for the benefit and protection of certificate holders in said association, which fund shall be held and used as hereinafter provided. (R. S. c. 56, § 150.)

Sec. 177. Reserve fund; application to payment of death benefits; minimum amount; company in default.—Each such association organized under the foregoing provisions, after the 21st day of March, 1901, shall, on or before the 31st day of December in each year deposit with the treasurer of state to the credit of its emergency or reserve fund not less than 15% of its total mortuary receipts for the year then ending, until the amount so deposited amounts to not less than $50,000. These amounts shall be deposited in such interest-bearing securities as any insurance company or savings bank may from time to time be authorized to hold for purpose of investment, and the securities shall be held in trust by the treasurer of state, but the association shall have at all times the right to exchange any part of said securities for others of like amount and character, and the income from said fund shall be paid by said treasurer to the association. When deemed advisable by the majority of the directors or other officers corresponding thereto, such part of the fund as may be considered necessary may, with the written approval of the commissioner, be applied from time to time to the payment of death benefits but for no other purpose; provided, however, that such fund shall not at any time be reduced below an amount equal to 1 assessment or periodical call upon all of its members, nor to less than $1,000. The commissioner shall annually, in February, certify to the treasurer of state the minimum amount of reserve fund required to be kept on deposit in the treasury by each such association doing business under the provisions of sections 171 to 207, inclusive. If said association shall neglect for 60 days to satisfy any judgment against it, in any court in this state, then the said treasurer shall convert into money any of said securities and forthwith satisfy such judgment, and said association shall not transact any further business until said deposit is restored. When any such association shall discontinue business, any justice of the supreme judicial court or of the superior court may appoint a receiver or agent to administer any unexhausted portion of such fund, which shall be used, less compensation not to exceed 5% as such court or justice may allow the receiver or agent, first, in the payment of accrued mortuary or indemnity claims upon certificates or policies. If such fund is insufficient to pay such claims in full, they shall be paid, pro rata. If a balance remains after the payment of such claims, such balance shall be distributed to the holders of certificates then in force, pro rata, in accordance with the total mortuary payments of said members, after first paying all expenses incident to such distribution. If, upon the 31st day of December of any year, the emergency or reserve fund of any such association is found to be less than the amount of 1 assessment or periodical call upon all the members thereof, said association shall, within 6 months thereafter, collect from its members a sum sufficient to bring said emergency or reserve fund up to 1 assessment or periodical call upon all its members and deposit the amount with the treasurer of state to the credit of said fund. (R. S. c. 56, § 151.)

Sec. 178. Association not to reinsure unless contract is approved by a 2/3 vote of such association; voting by proxy forbidden.—No such association shall reinsure with or transfer its membership certificates or funds to any organization, unless the said contract of transfer or reinsurance is first submitted to and approved by a 2/3 vote of the members of each association present at meetings called to consider the same, of which meetings written or printed notice shall be mailed to each certificate holder at least 30 days before the date fixed for said meeting; nor unless the said contract of transfer or reinsurance is first submitted to and approved by the commissioner. The members of fraternal beneficiary associations shall not vote by proxy. (R. S. c. 56, § 152.)

Foreign Fraternal Beneficiary Associations.

Sec. 179. Certain foreign associations may continue business; other foreign associations must obtain license.—Fraternal beneficiary associations organized under the laws of another state or country which were transacting business in this state as herein defined on the 28th day of February, 1889, or which subsequently thereto have been legally admitted to transact business in this state and which now report or which shall report when requested to the commissioner, may continue such business subject to the provisions of sections 171 to 197, inclusive. A fraternal beneficiary association which was not transacting business in this state on the 28th day of February, 1889, and which has not since been legally admitted to transact business therein and which may desire to do so, shall first obtain a license therefor from the commissioner. Before receiving such license it shall file with the commissioner a duly certified copy of its charter or articles of association and a copy of its constitution or laws, certified by its secretary or corresponding officer; a power of attorney to the commissioner, as hereinafter provided; a statement under oath of the president and secretary or corresponding officers in the form required by the commissioner of its business for the preceding year; a certificate from the proper official in its home state or country that the company is legally organized and that similar associations of this state may be admitted to transact business in said state or country; a copy of its application and policy or certificate, which must show that benefits are provided for by assessments upon persons holding similar contracts; and shall furnish the commissioner with such other information as he may deem necessary to a proper exhibit of its business and standing and plan of working; if he deems it expedient he may license such association to do business in this state in accordance with the provisions of sections 171 to 207, inclusive; provided, however, that no license shall be issued to any such company unless it shall have adopted and have in force mortuary assessment rates which are not lower than those now indicated as necessary by the national fraternal congress mortality tables. (R. S. c. 56, § 153.)

Sec. 180. Commissioner as attorney upon whom service made; notice to association when process served.—Each such association which, on the 21st day of March, 1901, was doing or was thereafter admitted to do business within this state, and not having its principal office within this state and not being organized under the laws of this state shall appoint in writing the commissioner and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by said commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against any such association is served upon said commissioner, he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall within 2 days after such service forward to such officer, in the same manner, a copy of the process served on him. (R. S. c. 56, § 154.)

Sec. 181. Certificates valid on condition that all dues paid; money collected for indemnity purposes not used for expenses.—No certificate issued by any such association transacting business under the provisions of sections 171 to 207, inclusive, shall be valid or legal which shall be conditional upon an agreement or understanding that the beneficiary shall pay the dues and assessments, or either of them for said member. Every call for a payment by the policy or certificate holders shall distinctly state the purpose of the same. No

part of the money collected for mortuary or indemnity purposes or for the emergency or reserve fund shall be used for expenses; provided that any such association transacting business in this state on the 21st day of March, 1901, and whose laws provide for and which is now using such funds for expenses, may continue to do so, but not to exceed the amount named for that purpose in such existing laws. (R. S. c. 56, § 155.)

Sec. 182. Fraternal beneficiary associations; organizations included.—Fraternal beneficiary associations transacting business in this state on the 28th day of February, 1889, as heretofore defined and named in section 179, shall include those so transacting business through their supreme bodies, or by a subordinate body, or by one affiliated therewith or rendering allegiance thereto, or by an organization embracing a portion of the territory of any such association and at that time or subsequent thereto contributing to its funds, or by one using its ritualistic work and calling its members by the same general name; and no change since that time or hereafter, in the internal divisions or operations of any such association or its relations with subordinate bodies shall deprive it of the power to so transact business through its supreme body and subordinate and affiliated divisions or agents, or to prevent such subordinate or affiliated bodies from doing business, so long as death benefits are paid and they shall be considered as legally organized and duly authorized for such purpose under the provisions hereof and may transact business in this state as independent bodies only in the event that said supreme body shall cease to transact business herein. (R. S. c. 56, § 156.)

Associations for Casualty Insurance.

Sec. 183. Fraternal associations paying accident benefits incorporated.—Any fraternal beneficiary association or order, which is carried on for the sole benefit of its members or their beneficiaries, and not for profit, which has a lodge system with a ritualistic form of work and representative form of government, and which provides benefits for the death or disability of its members resulting from accidental injuries, and does not obligate itself to pay natural death or funeral benefits, may be organized in this state in accordance with the provisions of sections 171 to 197, inclusive; and any such association or order duly incorporated under the laws of another state or country may be authorized to do business in this state upon complying with the provisions of said sections: provided, however, that no such association shall be obliged to adopt mortuary assessment rates or to require a medical examination. (R. S. c. 56, § 157.)

Licenses to Agents. Supervision.

Sec. 184. Certificate of appointment of agents; licenses.—Any association authorized to transact business as defined in sections 171 to 197, inclusive, may employ paid agents in soliciting business but no person shall act as such agent until the association or its authorized manager has filed with the commissioner a certificate certifying that such person has been appointed as the agent of the association. Upon receiving such certificate the commissioner may issue a license to such person, authorizing him to transact business in this state in accordance with the provisions of said sections and such license shall expire on the 1st day of the next July, but no license shall be issued under the provisions of this section to firms or corporations. If any person acts as such agent without first receiving such license, or fraudulently assumes to be an agent and solicits or procures risks or receives money for premiums or assessments, he forfeits not less than $50 nor more than $100 for each offense; but any policy or certificate issued on such application binds the association, if otherwise valid. (R. S. c. 56, § 158.)

Sec. 185. Soliciting for associations not authorized. — Any person

who shall solicit membership for or in any manner assist in procuring membership in any such association doing a business not authorized by sections 171 to 197, inclusive, or who shall solicit membership for or in any manner assist in procuring membership in any such association, not authorized as herein provided to do business as therein defined in this state, shall be punished by a fine of not less than $50 nor more than $200. (R. S. c. 56, § 159.)

Sec. 186. Annual report; neglect to make returns. — Every association doing business as a fraternal beneficiary association as herein defined shall annually, on or before the 1st day of March, report to the commissioner the names and addresses of its president, secretary and treasurer or other officers corresponding thereto, and shall make under oath such further statements of its membership and financial transactions for the year ending on the preceding 31st day of December, with other information relating thereto, as said commissioner may deem necessary to a proper exhibit of its business and standing; and the commissioner may at any other time require any further statement he may deem necessary to be made relating to such association. Any such association which neglects or refuses to make the returns required by this section shall forfeit $5 a day for each day's neglect; and for willfully making a false statement, the association and the persons making oath thereto or subscribing the same shall severally be punished by a fine of not less than $100 nor more than $500. (R. S. c. 56, § 160.)

Sec. 187. Benefit, charity or relief funds not liable to attachment. —The money or other benefit, charity, relief or aid to be paid, provided or rendered, or which has been paid, provided or rendered by any fraternal beneficiary association authorized to do business under the provisions of sections 171 to 207, inclusive, and as herein provided, shall not be liable to attachment by trustee or other process and shall not be seized, taken or appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debt or liability of a certificate holder or any beneficiary thereof existing at the death of such holder; provided that the foregoing provisions shall not apply to debts contracted for the purpose of paying assessments or dues in order to keep such certificates in force. (R. S. c. 56, § 161.)

Cross reference. — See c. 170, § 21, re life insurance intestate and insolvent estates.

Former provision of section. — For a case holding that under this section, as it formerly read, money received by a beneficiary from such an organization did not continue to be exempt from attachment, or seizure upon execution, after it had come into his possession, and that the section gave protection and exemption only to the money "to be paid," and not to money paid and in a debtor's possession, see Hathorn v. Robinson, 96 Me. 33, 51 A. 236.

Cited in Hathorn v. Robinson, 98 Me. 334, 56 A. 1057.

Sec. 188. False statements by agent or physician; perjury. — Any solicitor, agent or examining physician who shall knowingly or willfully make any false or fraudulent statement or misrepresentation in or with reference to any application for membership, or for the purpose of obtaining any money or benefit, in any such association transacting business under the provisions of sections 171 to 207, inclusive, shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 30 days nor more than 11 months; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association, for the purpose of procuring the payment of the benefit named in the certificate of such holder, shall be guilty of perjury and upon conviction shall be punished accordingly. (R. S. c. 56, § 162.)

See c. 135, § 1, re perjury.

Sec. 189. Exemption of certain orders and associations.—Nothing

contained in sections 171 to 197, inclusive, shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows, Knights of Pythias or similar orders, organized or incorporated under the laws of this state and which do not have as their principal object the issuance of insurance certificates. Nor shall anything therein contained apply to domestic corporations or voluntary associations which limit their membership to the employees of a particular city or town, designated firm, business house or corporation; nor to domestic lodges, orders or associations of a purely religious, charitable or benevolent description which do not operate with a view to profit and which do not provide for a funeral benefit of more than $100 or sick or disability benefits of more than $150 to any 1 person in any 1 year. Provided always, that any association which has more than 300 members and which issues to any person a certificate providing for the payment of benefits shall not be exempt by the provisions of this section, and such associations shall comply with all requirements of sections 171 to 207, inclusive, relating to fraternal beneficiary associations. The commissioner may require of any association such information relating to its membership and certificates as will enable him to determine whether it is exempt from the provisions hereof; and no association which is exempt by the provisions of this section from the requirements hereof shall employ paid agents or give or allow to any person any compensation for procuring new members. (R. S. c. 56, § 163.)

Sec. 190. Examination; when business becomes hazardous; receiver; fees.—The commissioner, in person or by deputy, shall have the power of visitation and examination into the affairs of any domestic association subject to the provisions of sections 171 to 207, inclusive, provided that he shall not be required to make periodical examinations of domestic associations. Whenever after examination the commissioner is satisfied that any domestic association is not paying the maximum amount named in its policies or certificates in full or is in such condition as to render further proceedings hazardous to the public or its policyholders or is transacting its business fraudulently; or whenever such domestic association shall, after the existence of 1 year or more, have a membership of less than 300, the commissioner may present the facts in relation to the same to any justice of the supreme judicial court or of the superior court; and said justice shall thereupon notify the officers of such association of a hearing and unless it shall then appear that some special and good reason exists why the association should not be closed, some person shall be appointed receiver of such association and shall proceed at once to take possession of the books, papers, moneys and other assets of the association and shall forthwith, under the direction of the court, proceed to close the affairs of such association and to distribute to those entitled thereto its funds in the manner provided in section 177. For this service the receiver may be allowed out of any funds in possession of the association or which may come therefrom into his hands, such sum as the court may determine to be reasonable and just. When the affairs of the association shall be finally closed, the court shall decree a dissolution of the same. (R. S. c. 56, § 164.)

Sec. 191. Certain associations may continue business. — Fraternal beneficiary associations, organized or incorporated under the laws of this state, which were transacting business herein on the 21st day of March, 1901, and which limit their membership to the members of some particular order, class or fraternity may continue such business by complying with the provisions of sections 171 to 207, inclusive. (R. S. c. 56, § 165.)

Sec. 192. Foreign associations examined; if refusal, association suspended.—Whenever the commissioner deems it prudent for the protection of the policy or certificate holders in this state he, or any person whom he may appoint, may examine any foreign fraternal beneficiary association applying for admission or transacting business in this state and such association shall pay the

expenses of the examination. The commissioner may employ assistants and for the purposes aforesaid he, or any person he may appoint, shall have free access to all the books and papers that relate to the business of such association and to the books and papers kept by any of its organizers and may summon and qualify as witnesses under oath, and examine the directors, officers, agents, organizers and trustees of such association and other persons in relation to its affairs, transactions and condition. He may accept in lieu of such examination the examination of the insurance department of the state or country where such foreign association is organized. If any such association or its officers or agents refuse to submit to such examination or to comply with the provisions of this section relating thereto, the authority of such association to transact business in this state shall be suspended until satisfactory evidence is furnished the commissioner relating to the standing and affairs of the association, and during such suspension the association shall not transact any business in this state. (R. S. c. 56, § 166.)

Sec. 193. License revoked; appeal.—When the commissioner, on investigation, is satisfied that any association organized under the laws of another state or country and transacting business under the provisions of sections 171 to 197, inclusive, has exceeded its powers, or has failed to comply with any provision of law, or is conducting business fraudulently, or that its condition is such as to render further proceedings hazardous to the public or to its certificate holders, or in case any such association shall vote to discontinue its business, he shall notify the president and secretary or other officers corresponding thereto of his findings and state the grounds therefor; and after 30 days' notice, require said association on a date named to show cause why its license should not be revoked and its authority to transact business in this state terminated. If on the date named in said notice such objections have not been removed to the satisfaction of the commissioner or the association does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of such association to continue business in this state. When the commissioner suspends or revokes the authority of any association to continue business in this state or on application refuses to countermand such suspension or revocation, the association may within 30 days apply to any justice of the supreme judicial court or of the superior court by presenting to him a petition therefor, in term time or vacation, and he shall fix a time and place of hearing which may be at chambers and in vacation, and cause notice thereof and a copy of said petition to be served on the commissioner, and after said hearing he may affirm or reverse the decision of the commissioner and the decision of such justice shall be final. (R. S. c. 56, § 167.)

Sec. 194. Issuance of policies.—No association organized or doing business under the provisions of sections 171 to 197, inclusive, shall issue any policy or certificate upon the life of any person more than 60 years of age, nor on the life of any person who has not been examined by a reputable, practicing physician and passed a satisfactory medical examination; provided, however, that any such organization may, upon such terms and conditions as the commissioner shall approve, issue policies or certificates without medical examination in amounts not exceeding $3,000 upon the life of any person not over 45 years of age. No person shall be admitted to membership in any such organization unless he has first filed an application with and been initiated in and becomes a member of a local branch. The by-laws of such association shall provide that meetings of such branches shall be held at least once each month. (R. S. c. 56, § 168.)

Sec. 195. Reciprocity regarding fines and penalties.—When the laws of any state or country, under which any such association is organized or incorporated, impose on fraternal associations of this state any additional or greater fees, fines, penalties, prohibitions or obligations than are imposed upon similar associations of other states or countries, the same fees, fines, penalties, prohibi-

tions or obligations shall be imposed upon the associations of such state or country applying for admission or transacting business in this state. (R. S. c. 56, § 169.)

Sec. 196. Penalties and prosecutions. — Any association neglecting or refusing to comply with or violating any of the provisions of sections 171 to 207, inclusive, relating to fraternal beneficiary associations, shall be punished by a fine of not more than $200 upon conviction thereof. Prosecutions for such violations may be commenced by complaint and warrant before any municipal judge or trial justice as in the case of other offenses not within the final jurisdiction of such judge or justice. (R. S. c. 56, § 170.)

Sec. 197. "Association" defined. — The word "association" as used in the 26 preceding sections shall be taken and construed as meaning a corporation, society or voluntary association. (R. S. c. 56, § 171.)

Foreign Associations for Casualty Insurance.

Sec. 198. Foreign fraternal beneficiary associations transacting casualty insurance licensed.—Any association organized or incorporated under the laws of another state or country as a fraternal beneficiary association and which does not conduct its business upon the lodge system with a ritualistic form of work and a representative form of government, in accordance with the provisions of section 171, and which is not subject to the statutes of this state regulating fraternal beneficiary associations, but which confines its membership to the members of some particular order, class or fraternity and which has the membership and qualifications required in sections 171 to 207, inclusive, may be licensed by the commissioner to transact the business of casualty insurance on the assessment plan and to provide for the payment of death or funeral benefits of not more than $100 to the beneficiaries of deceased members, subject to and in accordance with the provisions of the 3 following sections. (R. S. c. 56, § 172.)

Sec. 199. License prerequisites; termination. — No such association shall transact any business in this state without a license from the commissioner. Before receiving such license it shall file with the commissioner a duly certified copy of its charter or articles of association; a copy of its constitution and by-laws certified by its secretary; a power of attorney to the commissioner as provided by section 180; a statement under oath of its president and secretary, in the form required by the commissioner, duly verified by an examination of its business for the preceding year, made in accordance with the provisions of section 192, which statement and examination must show that the association had at least 5,000 members in good standing at the date of such report and that it had on that date available assets in excess of all known liabilities of not less than $20,000; a copy of its policy and application, which must show that benefits are provided for by assessments upon or other payments by persons holding similar contracts; and a certificate of deposit from the treasurer of state as hereinafter provided; and it shall furnish the commissioner with such further information as he may deem necessary to a proper exhibit of its business and plan of working. Upon compliance with the foregoing provisions the commissioner may license such association to transact business in this state as herein defined until the 1st day of the succeeding July, and such license may thereafter be renewed annually, but in all cases to terminate on the 1st day of the next succeeding July. The provisions of sections 180, 184, 186, 187, 188, 192, 193 and 231 shall apply to such associations. (R. S. c. 56, § 173.)

Sec. 200. Deposit with treasurer of state; in trust for policyholders.—No license shall be issued to any such association until it has deposited with the treasurer of state securities which are a legal investment for savings banks of this state amounting to not less than the maximum policy issued by such association nor to less than $1,000. The treasurer of state shall receive such se-

curities and hold the same on deposit and in trust for the benefit of all the policyholders of the association in this state and shall receipt for and hold the same in the manner provided in sections 19 and 20, but he shall retain and hold the same as long as any liability remains outstanding in this state. Whenever any judgment obtained in a court of competent jurisdiction in this state, by a policyholder or any beneficiary thereof, remains unsatisfied for more than 60 days after legal demand upon the association and no appeal from the decision of said court is pending, said court may issue an order directing the treasurer of state to immediately convert so much of said deposit as may be necessary into cash and to forthwith satisfy said judgment and such additional costs appertaining thereto as said court may allow, and the treasurer shall immediately comply with said order and the association shall not transact any further business in this state until such deposit is restored. When any such association discontinues business in this state, and the commissioner is satisfied upon investigation that the association has no liabilities outstanding therein, he shall so certify to the treasurer of state, who shall thereupon return said deposit to the association. (R. S. c. 56, § 174.)

Sec. 201. Assessments; reserve fund not used for expenses.—Every call for a payment by the policyholders of any such association shall distinctly state the purpose of the same, and no part of the money collected for the payment of indemnity claims or death or funeral benefits and no part of the reserve or emergency fund shall be used for expenses. (R. S. c. 56, § 175.)

Whole Family Protection.

Sec. 202. Fraternal beneficiary societies may insure children under 18 years of age; benefits.—Any fraternal beneficiary society authorized to do business in this state and operating on the lodge plan may provide in its constitution and by-laws in addition to other benefits provided for therein, for the payment of death, endowment or annuity benefits upon the lives of children under 18 years of age. Any such society may at its option organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total death benefits for each $1,000 of insurance payable as above provided shall in no case exceed the following amounts based on age at last birthday prior to death: birth, $100; 6 months, $200; 1 year, $400; 2 years, $600; 3 years, $800; 4 years, $1,000; and thereafter the full amount of the policy shall be paid. A double indemnity policy may be written for a child over 15 years of age. (R. S. c. 56, § 176. 1949, c. 383.)

Sec. 203. Subscriptions to aggregate 500 before benefit certificate issued.—No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner in accordance with the laws of the society; nor shall any such benefit certificates be issued until the society shall have at least 500 subcriptions therefor, on each of which at least 1 assessment has been paid, nor where the number of lives represented by such certificates fall below 500. The death benefit contributions to be made upon such certificates shall be based upon the "Standard Industrial Mortality Table" or the "English Life Table Number Six" and a rate of interest not greater than 4% per year or upon a higher standard; provided that contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws, and provided further, that extra contributions shall be made if the reserves hereafter provided for become impaired. (R. S. c. 56, § 177.)

Sec. 204. Reserve; certificate changed when child reaches minimum age of initiation; original beneficiary to have no claim on new certificate.—Any society entering into such insurance agreements shall main-

tain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 203, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized; provided that a society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society, provided that such surrender will not reduce the number of lives insured in the branch below 500, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. (R. S. c. 56, § 178.)

Sec. 205. Separate financial statement; accounts separate as long as certificates remain in force.—An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the commissioner by any society availing itself of the provisions of sections 202 to 207, inclusive. The separation of assets, funds and liabilities required shall not be terminated, rescinded or modified, nor shall the funds be diverted for any use other than as specified in section 204 as long as any certificates issued under the provisions of sections 202 to 207, inclusive, remain in force, and this requirement shall be recognized and enforced in any liquidation reinsurance, merger or other change in the condition or the status of the society. (R. S. c. 56, § 179.)

Sec. 206. Constitution and by-laws provide for specified payments.—Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide. (R. S. c. 56, § 180.)

Sec. 207. Child's certificate continued. — The benefit certificate as to any child may be continued for the benefit of the estate of the child, provided the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. (R. S. c. 56, § 181. 1945, c. 104.)

See § 160, re death benefits payable only in money.

Foreign Surety Companies. Credit Insurance and Title Insurance.

Sec. 208. Foreign surety, credit and title insurance companies may do business in this state.—Any company incorporated and legally organized under the laws of any foreign country or of any state of the United States, other than the state of Maine, for the purpose of transacting business as surety on obligations of persons or corporations, or the business of credit insurance or title insurance, may transact such business in this state upon complying with the provisions of the 11 following sections and not otherwise. (R. S. c. 56, § 182.)

Sec. 209. Commissioner appointed attorney; service of process; certificate of appointment filed.—No company as described in section 208 not incorporated under the authority of this state shall take, directly or indirectly, risks or transact business in this state until it shall have first appointed, in writ-

ing, the commissioner to be the true and lawful attorney of such company in and for this state, upon whom all lawful process, in any action or proceeding against the company, may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree on the part of the company that any lawful process against the company which is served on said attorney shall be of the same legal force and validity as if served on the company and that the authority shall continue in force so long as any liability remains outstanding against the company in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the commissioner and copies certified by him shall be received in evidence in all the courts of this state. Service upon such attorney, or upon any duly appointed agent of the company within this state, shall be deemed sufficient service upon the company. (R. S. c. 56, § 183.)

Sec. 210. Copy of all processes forwarded.—Whenever lawful process against a company described in section 208 shall be served upon said commissioner, he shall forthwith forward a copy of the process served on him, by mail, postpaid and directed to the secretary of the company. (R. S. c. 56, § 184.)

Sec. 211. No person to act as agent, unless company has $250,000 capital paid up.—No person shall act within this state, as agent or otherwise, in procuring or securing applications for suretyship upon the bond of any person or corporation, or for credit insurance or title insurance, or aid in transacting the business of such suretyship or insurance for any company incorporated or organized under the laws of any other state or country, unless such company is possessed of $250,000, paid-up, unimpaired capital, exclusive of any obligations of the stockholders of any description, well invested in or well secured by real estate, bonds, stocks or securities other than names alone, or if a mutual company, net cash assets of the amount aforesaid. (R. S. c. 56, § 185.)

Sec. 212. Persons deemed agents; liabilities. — Every person who shall so far represent any company described in section 208 established in any other state or country as to receive or transmit applications for suretyship or insurance, or to receive for delivery bonds or policies founded on applications forwarded from this state or otherwise to procure suretyship to be effected by such company upon the bonds of persons or corporations in this state, or upon bonds given to persons or corporations in this state, or otherwise to procure such insurance in the state, shall be deemed to be acting as agent for said company and shall be subject to the restrictions and liable to the penalties herein made applicable to agents of such companies. (R. S. c. 56, § 186.)

Sec. 213. Copy of charter and statement of condition deposited before license issued.—Every company described in section 208, before transacting any business, shall deposit with the commissioner a copy of its charter and also a statement, signed and sworn to by the president and secretary of the company, stating the amount of its capital and the manner of its investments, designating the amount invested in mortgages, in public securities, in the stock of incorporated companies, stating what companies and also the amount invested in other securities, particularizing each item of investment, the amount of existing policies issued by said company or of existing bonds upon which such company is surety, stating what portion thereof is secured by the deposit with such company of collateral security, the amount of premium thereon and the amount of liabilities, specifying therein the amount of outstanding claims adjusted or unadjusted, due or not due and stating the names and addresses of all its attorneys in fact within this state together with the scope of authority of each such attorney in fact; and thereupon said commissioner may grant a license, authorizing said company to transact surety business or the business of credit insurance or title insur-

ance in this state subject to its laws, until the 1st day of July next following, and such license may be renewed annually thereafter. (R. S. c. 56, § 187.)

Sec. 214. Annual statement filed.—Every company described in section 208 shall, in the month of January, annually, also deposit with the commissioner a similar statement of its capital, assets and liabilities, and the investments and risks as required in the preceding section, to be made up to the 31st day of December next preceding, signed and sworn to by the president and secretary of the company, and the commissioner in his annual report shall publish an abstract thereof. (R. S. c. 56, § 188.)

Sec. 215. Agents not to act until requirements of law complied with.—No person shall act as agent of any company described in section 208 until such company and such agent shall have complied with all the requirements of the laws of the state relating to such companies and their agents, and every person acting without such compliance shall be punished by a fine of $100. (R. S. c. 56, § 189.)

Sec. 216. Answers under oath, if annual returns obscure or defective; refusal to answer.—The commissioner shall annually examine the statements and returns required to be made as provided for in sections 208 to 215, inclusive, by the companies described in section 208, and if in his opinion any return shall be obscure, defective or unsatisfactory, he shall immediately require answers under oath from the officer or officers by whom such obscure, defective or unsatisfactory return shall have been made, to such interrogatories as he may deem necessary or proper in order to explain such return and exhibit a full and accurate view of the business and resources of the company. Every such company, the officers of which shall refuse or neglect to answer such interrogatories for the space of 30 days may be suspended from transacting business in this state until satisfactory answers are made by them. (R. S. c. 56, § 190.)

Sec. 217. Examination of companies; results published; license revoked; expenses.—The commissioner, either personally or by a committee appointed by him, consisting of 1 or more persons not directors, officers or agents of any company described in section 208 doing business in this state, may at any time examine into the affairs of such companies. The officers or agents of such companies shall exhibit their books to said commissioner or committee and otherwise facilitate such examination, and the commissioner or committee may examine, under oath, the officers and agents of such companies in relation to their affairs; and said commissioner shall, if he deems it necessary or proper, publish the result of such investigation in 1 or more newspapers published in the state. Whenever it shall appear to the said commissioner, from the statement or from an examination of the affairs of any such company, not incorporated under the authority of this state, that such company is insolvent, or is conducting its business fraudulently or refuses or neglects to comply with the laws of the state relating to such companies, he shall revoke the license issued to such company and its agents and shall cause a notice thereof to be published in 1 or more newspapers published in this state, and the agent or agents of such company, after such notice, shall transact no further business in this state. All the expenses of an examination made under the provisions of this section shall be paid to the commissioner by the company examined. (R. S. c. 56, § 191.)

Sec. 218. Violations reported to attorney general. — The commissioner shall report to the attorney general any violation of the provisions of law relating to companies described in section 208 which shall come to his knowledge and the attorney general shall institute proper legal proceedings in the name of the state against any person or company violating any such provision. (R. S. c. 56, § 192.)

Sec. 219. Any company organized for certain purposes with sufficient capital, accepted as surety on bonds required by law.—Any company with a paid-up capital of not less than $250,000, duly incorporated and organized for the purpose of transacting business as surety on obligations of persons or corporations, and which has complied with all the requirements of the law regulating the admission of such companies to transact business in the state, may be accepted as surety upon the bond of any person or corporation required by the laws of the state to execute a bond, and if such surety company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional surety may be exacted, but other surety or sureties may, in the discretion of the official authorized to approve such bond, be required, and such surety company may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals, it being the true intent and meaning of this section to enable corporations created for that purpose to become surety on bonds required by law, subject to all the rights and liabilities of private individuals. (R. S. c. 56, § 193.)

Applied in Littlefield v. Maine Central R. R., 104 Me. 126, 71 A. 657.

Sec. 220. Premiums on bonds.—Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond may, whenever such person or corporation has given any such surety company as surety upon said bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety. The premiums on account of all official bonds required by law to be given by county officials shall be paid from the treasuries of their several counties. (R. S. c. 56, § 194.)

Sec. 221. Registers of probate notified of authorization of surety companies.—Whenever any foreign or domestic surety company complies with all the requirements of law regulating the admission of such companies to transact business in this state and is authorized to transact business therein, the commissioner shall forthwith transmit to each register of probate the name of such company and the names of all agents of such company who have been licensed by him, their places of residence and the dates when their licenses will expire, and the names and addresses of all attorneys in fact registered with him whose addresses are in the county of such register; and he shall on the 1st days of February and August of each year forward to each register of probate a list containing the names of all surety companies, foreign and domestic, which are then licensed or qualified to transact business in the state, the names of all agents of said companies who have been licensed by him, and their places of residence and the dates when their respective licenses will expire; he shall from time to time communicate to the registers of probate the names of all surety companies which cease to qualify to transact business in this state. The registers shall preserve such lists on the files of the courts. (R. S. c. 56, § 195.)

Sec. 222. Company estopped to deny corporate power.—Any company which shall execute any bond as surety under the provisions of section 219 shall be estopped in any proceedings to enforce the liability which it shall have assumed to incur, to deny its corporate power or the authority of its attorney in fact within the scope of his power of attorney filed in accordance with the provisions of section 213, to execute such instrument or assume such liability or the authority of any licensed agent to countersign such instrument. (R. S. c. 56, § 196.)

Casualty Insurance on Assessment Plan.

Sec. 223. Contract defined; business carried on only by duly organized corporation. — Every contract whereby a benefit is to accrue to the party or parties named therein upon the accidental death only, or the physical

disability from accident or sickness of a person, which benefit is in any degree or manner conditioned upon the collection of an assessment upon persons holding similar contracts, shall be deemed a contract of casualty insurance on the assessment plan, and the business involving the issuance of such contracts shall be carried on in this state only by duly organized corporations which shall be subject to the provisions and requirements of this and the 12 following sections; but nothing herein contained shall be construed as applicable to fraternal beneficiary associations conducting their business in accordance with the laws of this state. (R. S. c. 56, § 197.)

Sec. 224. Formation of corporations to carry on casualty insurance on assessment plan; guaranty fund; authorization to write business; liability of policyholder stated on policy.—Seven or more persons, citizens of this state, may form a corporation to carry on the business of casualty insurance on the assessment plan. Such corporations shall be organized and the proceedings thereunder shall conform to sections 1, 2 and 3 of chapter 54; but no such corporation shall begin to do business until at least 500 persons have subscribed, in writing, to be insured therein and have each paid in 1 full disability assessment; nor until it shall have established a guaranty fund or capital of not less than $10,000, which may be divided into shares of not less than $100 and certificates issued therefor. A dividend not exceeding 7% in any 1 calendar year may be paid from the net earnings of the company after providing for all expenses, losses, reserves and liabilities then incurred. Such guaranty fund or capital shall be invested as provided in section 71 and shall be deposited with the treasurer of state. When the cash and other available assets of the company are exhausted, such part of said fund as may be required shall, with the approval of the commissioner, be drawn and used to pay losses then due. When such fund is so drawn upon, the directors shall make good the amount so drawn, either from the receipts of the company or by assessments upon the contingent funds of the company; and unless such fund is restored within 6 months from date of withdrawal, the shareholders shall be assessed in proportion to the amount of stock owned by them for the purpose of restoring said capital. Shareholders and members of such companies shall be subject to the same provisions of law relative to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies. Said guaranty fund or capital may be retired by vote of the policyholders when the surplus funds of the company over and above all liabilities, including guaranty capital, shall equal or exceed the amount of such guaranty fund or capital, or any part of said guaranty fund or capital may be retired; provided that the amount of net surplus and guaranty fund or capital shall not be less than $10,000. The guaranty fund or capital shall be retired when the net cash assets of the company equal twice the amount of said guaranty fund or capital. The corporation shall not begin business until it has filed with the commissioner a certified copy of the record of its organization and by-laws which has been approved by him; nor until the commissioner has certified that it has complied with the provisions of this chapter relating to insurance on the assessment plan and is authorized to transact business. No organization under the provisions of this section shall continue valid more than 1 year unless the organization has been completed and business begun thereunder. When such company has established a guaranty fund or capital as provided herein and has complied with the other requirements of the laws of this state, it shall be authorized by the commissioner to write business; and such company may charge and collect a premium in cash and by its by-laws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to and in addition to the cash premium written in his policy. The total amount of the liability of the policyholder shall be plainly and legibly stated upon the filing-

back of each policy. Whenever any reduction is made in the contingent liability of members such reduction shall apply proportionally to all policies in force. (R. S. c. 56, § 198.)

Sec. 225. Business conducted fraudulently; corporation closed; receiver; dissolution. — When the commissioner, on investigation, is satisfied that any corporation transacting the business of casualty insurance on the assessment plan in this state under the provisions of this chapter has exceeded its powers, failed to comply with any provision of law or is conducting business fraudulently, he shall report the facts to the attorney general, who shall thereupon apply to a justice of the supreme judicial court or of the superior court for an injunction restraining such corporation from the further prosecution of business; and the said justice upon hearing the matter may issue such injunction or decree the removal of any officer and substitute a suitable person to serve in his stead until a successor is duly chosen, and may make such other order and decrees as the interest of the corporation and the public may require. Whenever any domestic corporation transacting the business of casualty insurance on the assessment plan shall, after an existence of 1 year or more, have a membership of less than 300, the commissioner may present the facts in relation to the same to any justice of the supreme judicial court or of the superior court; the said justice shall thereupon notify the officers of such corporation of a hearing and unless it shall then appear that some special and good reason exists why the corporation should not be closed, some person shall be appointed receiver of such corporation, and shall proceed at once to take possession of the books, papers, moneys and other assets of the corporation and shall forthwith, under the direction of the court, proceed to close the affairs of such corporation and to distribute to those entitled thereto its funds. For this service the receiver may be allowed out of any funds in possession of the corporation or which may come therefrom into his hands, such sum as the court may determine to be reasonable and just. When the affairs of the corporation shall be finally closed, the court may decree a dissolution of the same. (R. S. c. 56, § 199.)

Sec. 226. Transfer of risks or reinsurance in another corporation. —No casualty insurance corporation organized under the laws of this state shall transfer its risks to or reinsure them in any other corporation, unless the said contract of transfer or reinsurance is first submitted to and approved by a 2/3 vote of those present and voting at a meeting of the insured called to consider the same, of which meeting a written or printed notice shall be mailed to each policy or certificate holder at least 10 days before the day fixed for said meeting; and, in case said transfer or reinsurance shall be approved, every policy or certificate holder of the said corporation who shall file with the secretary thereof, within 5 days after the said meeting, written notice of his preference to be transferred to some other corporation than that named in the contract, shall be accorded all the rights and privileges, if any, in aid of such transfer as would have been accorded under the terms of the said contract had he been transferred to the corporation named therein. (R. S. c. 56, § 200.)

Applied in Insurance Com'r v. Provident Aid Society, 89 Me. 413, 36 A. 627.

Sec. 227. Reserve fund; investment and payment of claims. — Any corporation organized under the provisions of section 224 or any corporation of this state doing assessment insurance business under the provisions of this chapter or its charter shall keep on deposit with the treasurer of state a reserve fund for the benefit and protection of certificate holders in said corporation; for the creation of which it shall, on or before the 31st day of December of each year, deposit with said treasurer a sum sufficient to make the total deposit with said treasurer not less than the amount of 1 assessment or periodical call on all its policyholders for benefit and expense funds, until the reserve fund so accumu-

lated shall amount, together with the amount there deposited prior to the 1st day of March, 1889, to not less than $25,000. These amounts may be deposited in such interest-bearing securities as the governor and council may approve or in such securities as any insurance company or savings bank may, from time to time, be authorized to hold for purpose of investment. These securities shall be held in trust by the treasurer of state, but the corporation shall have at all times the right to exchange any part of said securities for others of like amount and character. When deemed advisable by a majority of the directors, such part of the fund as may be considered necessary may be applied from time to time, to the payment of claims under insurance contracts and the expense necessarily incident thereto, and for no other purpose. Provided, however, that said fund shall not at any time be reduced below an amount equal to 1 assessment or periodical call upon all of its members for benefit and expense funds nor to less than $1,000. (R. S. c. 56, § 201.)

Sec. 228. Duty of commissioner; satisfaction of judgments. — The commissioner shall annually, in February, certify to the treasurer of state the minimum amount of reserve fund required to be kept on deposit in the state treasury by each corporation doing business on the assessment plan under the provisions of this chapter. If said corporation shall neglect for 60 days to satisfy any judgment against it, in any court in this state, then the said treasurer shall convert into money any of said securities and forthwith satisfy such judgment, and said corporation shall not transact any further business until said deposit is restored. When any such corporation shall discontinue business, any justice of the supreme judicial court or of the superior court may appoint a receiver or agent to administer any unexhausted portion of such fund which shall be used, less compensation not to exceed 5% as such court or justice may allow the receiver or agent; 1st, in the payment of accrued indemnity claims upon certificates or policies or if insufficient to pay such claims in full, they shall be paid pro rata; 2nd, if a balance remains after the payment of such claims, such balance shall be distributed to the holders of certificates then in force, pro rata, in proportion to the total payments by each policyholder after first paying all expenses incident to such distribution. If, upon the 31st day of December of any year, the reserve fund of any such corporation is found to be less than the amount of 1 assessment or periodical call upon all the members thereof, said corporation shall, within 1 year thereafter, collect from its members a sum sufficient to bring said reserve fund up to 1 assessment or periodical call upon all its members and deposit the amount with the treasurer of state to the credit of said fund. (R. S. c. 56, § 202.)

Stated in part in Smith v. Maine Mut. Accident Ass'n, 86 Me. 229, 29 A. 991.

Cited in Grindle v. York Mut. Aid Ass'n, 87 Me. 177, 32 A. 868.

Sec. 229. Authorization of foreign corporations; authority to do business in the state granted, renewed and revoked.—Any corporation organized under authority of another state or government to issue policies or certificates of casualty insurance on the assessment plan, as a condition precedent to the transaction of business in this state, shall deposit with the commissioner a certified copy of its charter; a statement under oath, of its president and secretary, in the form by the commissioner required, of its business for the preceding year; a certificate, under oath, of its president and secretary, that it has the ability to pay and for the 12 months preceding has paid the maximum amount named in its policies or certificates in full; a certificate from the proper authority in its home state that corporations of this state, engaged according to the provisions of this chapter in casualty insurance on the assessment plan, are legally entitled to do business in such state; a copy of its policy or certificate and application, which must show that benefits are provided for by assessment upon policy or certificate holders; evidence satisfactory to the commissioner that the corpo-

ration accumulates a fund, equal at all times in amount to not less than the proceeds of 1 assessment or periodical call on all policy or certificate holders thereof, that such accumulation is permitted by the law of its incorporation, and is a trust for the benefit of policy or certificate holders and is securely invested; provided that no such company shall be hereafter authorized, unless such company shall have a guaranty fund or capital or net cash assets equal to the amount required of domestic companies incorporated after the 12th day of July, 1913. Every such corporation, and agent of such corporation, shall also comply with the provisions of sections 57, 273 and 274. The commissioner may thereupon issue or renew the authority of such corporation to do business in this state and such authority to the corporation and its agents shall be revoked whenever the commissioner, on investigation, is satisfied that such corporation is not paying the maximum amount named in its policies or certificates in full or has violated the provisions of section 231, and the commissioner shall enforce the provisions of section 57. Upon such revocation the commissioner shall cause notice thereof to be published in the state paper and no new business shall be thereafter done by said corporation or its agents in this state. (R. S. c. 56, § 203.)

Sec. 230. Purpose of calls for payment stated; proceeds. — Every call for payments upon the policy or certificate holders of any corporation doing business in this state as a casualty insurance company on the assessment plan shall distinctly state the purpose of the same, whether for indemnity claims or for expenses, and the proceeds of indemnity calls, less a commission actually paid for collecting the same not exceeding 3% thereof, shall be used for payment of claims under policy contracts for investigating and contesting policy claims believed to be fraudulent and for deposit with the treasurer of state in a reserve fund and for no other purpose. (R. S. c. 56, § 204.)

Sec. 231. Words: "This policy is subject to assessments" on face of policy. —In every policy or certificate issued after the 1st day of July, 1899, to a resident of this state by any casualty or accident insurance company doing business on the assessment plan, there shall be printed in bold type, making one of the principal lines near the top thereof, the words "This policy is subject to assessments" and in or upon every application, circular, card, advertisement and printed document issued by such corporation within the state there shall be printed conspicuously the words "assessment plan". (R. S. c. 56, § 205.)

Sec. 232. Benefit or relief not liable to attachment; beneficiary changed.—The money or other benefit, charity, relief or aid to be paid, provided or rendered by any corporation authorized to do casualty insurance business on the assessment plan under the provisions of this chapter shall not be liable to attachment by trustee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process or by operation of law to pay any debt or liability of a policy or certificate holder or any beneficiary named therein. The beneficiary named in any certificate may be changed by the insured at any time under such regulations as the corporation may prescribe. (R. S. c. 56, § 206.)

See c. 170, § 21, re disposal of life insurance in estates.

Sec. 233. False representation by solicitor, agent or physician. — Any solicitor, agent or examining physician who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for insurance or for the purpose of obtaining any money or benefit in any corporation transacting business on the assessment plan under the provisions of this chapter shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 30 days nor more than 11 months. (R. S. c. 56, § 207.)

Sec. 234. Annual report; corporations examined. — Every corporation doing business on the assessment plan under the provisions of this chapter or its charter shall annually, on or before the 31st day of January return to the commissioner, in such manner and form as he shall prescribe, a statement of its affairs for the year ending on the preceding 31st day of December, and the said commissioner, in person or by deputy, shall have the powers of visitation of and examination into the affairs of any such corporation which are conferred upon him in the case of life insurance companies by this chapter; but such corporation doing business under the provisions of this chapter shall not be subject to any other provisions or requirements of this chapter, except as set forth in sections 53, 62 to 64, inclusive, section 118 and in sections 223 to 235, inclusive. (R. S. c. 56, § 208. 1945, c. 378, § 57. 1949, c. 349, § 91. 1951, c. 266, § 75.)

Sec. 235. Fees for filing statement, etc.—The fees for filing statements, certificates or other documents required of casualty insurance companies or for any service or act of the commissioner and the penalties for any violation of the provisions of sections 223 to 235, inclusive, by such companies shall be the same as provided in the case of life insurance companies. (R. S. c. 56, § 209.)

Reciprocal Contracts of Indemnity.

Sec. 236. Contracts of indemnity; declaration filed by attorneys or agents.—The making of contracts between individuals, firms or corporations, providing indemnity among themselves from casualty or other contingencies or from loss or damage to their own property, shall constitute the business of insurance; provided, however, that the provisions of subsection III of section 49, requiring companies to do insurance business in this state by constituted agents resident herein subject to its laws, and the provisions of sections 273 to 297, inclusive, relating to insurance agents and brokers, shall not apply to the attorney in fact of a reciprocal or interinsurance exchange nor to the traveling salaried home office representatives of such exchanges operating on a salary basis and receiving no commissions, but any reciprocal or interinsurance exchange that operates under the agency system in this state and appoints agents on a commission basis shall be subject to and conform to the provisions of the sections hereinabove mentioned. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred. Where such contracts are exchanged through an attorney, agent or other representative acting for such individuals, firms or corporations, the said attorney, agent or other representative shall file with the commissioner a declaration in writing, verified by the oath of such attorney, agent or other representative, setting forth:

I. The name of the attorney, agent or other representative through whom such contracts are exchanged.

II. A copy of the form of policy, contract or agreement under which such insurance is to be exchanged.

III. A copy of the form of power of attorney or other authority of such attorney, agent or other representative under which such contracts are to be exchanged.

IV. The location of the office or offices from which such contracts or agreements are to be issued.

V. That applications have been made for indemnity upon at least 100 sepa-

rate risks as represented by bona fide applications to become concurrently effective and that there is on deposit with such attorney, or properly constituted trustees, a sum in cash or convertible securities sufficient to pay at least 1 total loss equal to the maximum line on any 1 risk. (R. S. c. 56, § 210. 1947, c. 242.)

See § 242, re penalty.

Sec. 237. Suits; service of process.—Concurrently with the filing of the declaration provided for by the terms of the preceding section, the attorney shall file with the commissioner an instrument in writing, executed by him for said subscribers, agreeing that upon the issuance of the certificate of authority provided for in section 243, in all suits in this state arising out of such policies, contracts or agreements, action may be brought in the county or state in which the property insured is situated, that service of process may be made on the commissioner, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney and that the authority of such instrument shall continue in force irrevocable so long as any liability remains outstanding in this state against the subscribers. Three copies of such process shall be served and the commissioner shall file 1 copy, forward 1 copy to said attorney and return 1 copy with his admission of service. Said attorney, agent or other representative is authorized to file the above-mentioned instrument appointing the commissioner to receive service of process, which instrument shall be binding upon all the subscribers. (R. S. c. 56, § 211.)

See § 242, re penalty.

Sec. 238. No subscriber to assume more than 10% of his net worth.—Such attorney, agent or other representative, filing as provided for in the preceding section, shall file with the commissioner of this state a statement verified by his oath, showing the maximum amount of indemnity upon any single risk; and such attorney, agent or other representative, whenever and as often as shall be required, shall file with the commissioner a statement verified by his oath to the effect that he has examined the commercial rating of all subscribers to the power of attorney above referred to, as shown by the reference book of a commercial agency having at least 100,000 subscribers, and that from such examination or other information in his possession, it appears that no subscriber has assumed on any single risk an amount greater than 10% of the net worth of said subscriber. (R. S. c. 56, § 212.)

See § 242, re penalty.

Sec. 239. Reserve sum.—There shall at all times be maintained by the contracting parties described in section 236, as a reserve, a sum in cash or convertible securities or in bona fide agreements to pay, sufficient to pay at least 1 total loss equal to the maximum line on any 1 risk. (R. S. c. 56, § 213.)

See § 242, re penalty.

Sec. 240. Attorney to report; books and records open to inspection.— The attorney, agent or other representative described in section 236 shall make a report to the commissioner for the calendar year on or before the 31st day of January, showing the financial condition of affairs at the office where such contracts are issued and shall furnish such additional information and reports as he may require; provided, however, that such attorney shall not be required to furnish the names and addresses of any subscribers. The books, records, assets and affairs of the subscribers at the office of the attorney shall be subject to examination by the commissioner or his authorized representative, and reasonable expense incurred in making such examination shall be borne by said subscribers. (R. S. c. 56, § 214.)

See § 242, re penalty.

Sec. 241. Corporations may exchange contracts. — Any corporation, now or hereafter organized under the laws of this state shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange contracts of the kind and character mentioned in the 5 preceding sections. The right to exchange such contracts is declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred. (R. S. c. 56, § 215.)

See § 242, re penalty.

Sec. 242. Violation of §§ 236-241. — Any attorney, agent or other representative who shall, except for the purposes of applying for the certificate of authority as herein provided, exchange any contracts of indemnity of the kind and character specified in the 6 preceding sections, or directly or indirectly solicit or negotiate any applications for the same without first complying with the foregoing provisions, or in case of an employee of said attorney, agent or other representative, unless his principal shall have first complied with the foregoing provisions, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $1,000. (R. S. c. 56, § 216.)

Sec. 243. Annual certificate.—Each attorney, agent or other representative by or through whom are issued any policies of or contracts for indemnity of the character referred to in the 7 preceding sections shall procure from the commissioner, annually, a certificate of authority stating that all the requirements of sections 236 to 243, inclusive, have been complied with, and upon such compliance and the payment of the fees therefor the commissioner shall issue such certificate authorizing such attorney, agent or representative to do business in this state, subject to the provisions of said sections, until the 1st day of the next July and such certificate may be renewed annually thereafter. In case of a breach of any of the conditions imposed by the provisions of said sections, the commissioner may revoke the certificate of authority issued thereunder. (R. S. c. 56, § 217.)

Nonprofit Hospital or Medical Service Organizations.

Sec. 244. Scope. — Any corporation organized under special act of the legislature, or under the provisions of chapter 54 for the purpose of establishing, maintaining and operating a nonprofit hospital service plan whereby hospital care is to be provided by a hospital, or a group of hospitals, with which such corporation has a contract for such purpose, or such corporation as may establish, maintain and operate a nonprofit medical service plan whereby medical or surgical service or expense indemnity is provided to such persons or groups of persons as shall become subscribers to such plan under contracts with said corporation, may be licensed by the commissioner on the terms and conditions hereinafter provided for in sections 245 to 257, inclusive. (R. S. c. 56, § 218. 1951, c. 47, § 1.)

Sec. 245. Incorporation.—The articles of incorporation, and amendments thereto, of every corporation organized under the provisions of sections 244 to 257, inclusive, shall be submitted to the commissioner, whose approval thereof shall be indorsed thereon before the same are filed with the secretary of state.

There shall be not less than 7 directors and at least a majority of the directors of such corporation must be at all times administrators, corporators, trustees or members of the clinical staff of the hospital or hospitals which have contracted with such corporation to render hospital service to the subscribers and the physicians who have contracted with such corporation to render medical, surgical, obstetrical or related professional service to the subscribers. (R. S. c. 56, § 219. 1951, c. 47, § 2.)

Sec. 246. Contracts.—Such corporation mentioned in section 244 may enter into contracts for the rendering of hospital service to the subscribers only with hospitals approved by the departments of health and welfare of the several states. All contracts for hospital service issued by such corporation shall constitute direct obligations of the hospital or hospitals with which such corporation has contracted for hospital care. Contracts issued under the medical service plan shall provide that the private physician-patient relationship shall exist between the patient and physician, that the patient shall have a free choice of any physician able and willing to perform medical service and may provide for medical expense indemnity, all of which shall be based upon definite agreements covering medical or surgical care provided through duly licensed physicians. All contracts for medical, surgical, obstetrical and related professional service issued by such corporation shall constitute a direct obligation of any physician with which such corporation has contracted for professional services, said obligation being to the subscriber accepted for service. Any such physician, however, shall be free to refuse service for appropriate professional reasons. Nothing in this section shall be construed to prohibit reciprocal arrangements for the exchange of hospital, medical or surgical service between nonprofit hospital and medical service plans. (R. S. c. 56, § 220. 1951, c. 47, § 3.)

Sec. 247. License.—Application for the license provided for in section 244 shall be made in such form as may be required by the commissioner and shall contain such information as he shall deem necessary. Each application for such certificate or license shall be accompanied by copies of the following documents:

I. Certificate of incorporation;

II. By-laws;

III. Proposed contracts between the corporation and participating hospitals and physicians showing terms under which hospital, medical or surgical service is to be furnished to subscribers; (1951, c. 47, § 4)

IV. Contracts to be issued to subscribers showing a table of the rates to be charged and the benefits to which they are entitled;

V. Financial statement of the corporation, including the amounts of contribution paid or agreed to be paid to the corporation for working capital, and the name or names of each contributor and the terms of each contribution, total of which said contribution shall not be less than $5,000.

The commissioner shall issue a certificate of authority or license upon payment of a fee of $20 and upon being satisfied on the following points:

I. That the applicant is established to provide a bona fide nonprofit hospital or medical service plan. (1951, c. 47, § 5)

II. That the contracts between the applicant and the participating hospitals or physicians obligate each participating party to render service to which each subscriber may be entitled under the terms and conditions of the contract issued to the subscribers. (1951, c. 47, § 5)

III. That the rates charged and benefits to be provided are fair and reasonable.

IV. That contributions to the working funds of the corporation are repayable only out of earned premiums over and above operating expenses, payments to participating hospitals and physicians and such reserve as the commissioner deems adequate. (1951, c. 47, § 5)

V. That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate. (R. S. c. 56, § 221. 1951, c. 47, §§ 4, 5.)

Sec. 248. Reports.—Every corporation organized under the provisions of sections 244 to 257, inclusive, shall annually on or before the 1st day of April file in the office of the commissioner a statement verified by at least 2 of the principal officers of said corporation showing its condition on the 31st day of December, then next preceding, which shall be in such form and shall contain such matters as the commissioner shall prescribe. (R. S. c. 56, § 222. 1951, c. 47, § 6.)

Sec. 249. Visitation.—The commissioner, or any deputy or examiner or any other person whom he shall appoint, shall have the power of visitation and examination into the affairs of any corporation described in section 244 and free access to all of the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath to examine its officers, agents or employees or other persons in relation to the affairs, transactions and conditions of the corporation. (R. S. c. 56, § 223.)

Sec. 250. Investments. — Any corporation subject to the provisions of sections 244 to 257, inclusive, shall be restricted in its investments in the same manner as are savings banks in this state. (R. S. c. 56, § 224.)

See c. 59, § 42, re investments by savings banks.

Sec. 251. Disputes.—Any dispute arising between a corporation subject to the provisions of sections 244 to 257, inclusive, and any hospital or physician with which such corporation has a contract for hospital, medical or surgical service may be submitted to the commissioner for his decision with respect thereto. Any decision and findings of the commissioner made under the provisions of said sections shall not be any bar to constituted legal procedure for the review of such proceedings in a court of competent jurisdiction. (R. S. c. 56, § 225. 1951, c. 47, § 7.)

Sec. 252. Dissolution. — Any dissolution or liquidation of a corporation subject to the provisions of sections 244 to 257, inclusive, shall be conducted under the supervision of the commissioner who shall have all power with respect thereto granted to him under the provisions of law with respect to the dissolution and liquidation of insurance companies. (R. S. c. 56, § 226.)

Sec. 253. Taxation.—Every corporation subject to the provisions of sections 244 to 257, inclusive, is declared to be a charitable and benevolent institution and its funds and property shall be exempt from taxation. (R. S. c. 56, § 227.)

Sec. 254. Agents.—No person, for himself or in behalf of any individual, firm, association or corporation, shall sell or offer to sell, any such hospital, medical or surgical service as is provided for in sections 244 to 257, inclusive, without being licensed therefor by the commissioner. (R. S. c. 56, § 228. 1951, c. 47, § 8.)

Sec. 255. Agents' licenses; fees.—The commissioner shall grant a license to sell such service as is provided for in sections 244 to 257, inclusive, in behalf of any individual, firm, association or corporation licensed therefor, to any applicant who shall furnish the commissioner with satisfactory evidence of his integrity and authority to sell the service offered. Such license, when granted, shall expire on January 1st thereafter, and annually thereafter may be renewed so long as the commissioner shall be satisfied of the licensee's integrity, authority and responsibility to provide the service stipulated.

The fee for each license issued shall be $2, payable to the commissioner for the use of the state. (R. S. c. 56, § 229. 1951, c. 266, § 76.)

Sec. 256. Revocation.—The commissioner may revoke a license granted

under the provisions of sections 244 to 257, inclusive, for cause at any time after hearing. (R. S. c. 56, § 230.)

Sec. 257. Penalty. — Any person, firm, association or corporation, or any officer, agent, servant or employee thereof, who shall violate any of the provisions of sections 244 to 257, inclusive, shall be punished by a fine of not more than $300, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 56, § 232.)

Motor Vehicle Road or Tourist Service.

Sec. 258. Motor vehicle road service. — No individual, firm, association or corporation shall perform or offer to perform in this state, for a stipulated fee covering a certain period, any form of road or other tourist service relating to the repair, operation and care of automobiles or to the protection and assistance of automobile owners or drivers, other than licensed insurance companies, or to furnish or offer to furnish tourist service by selling or offering to sell to any proprietor of any so-called roadside house or camp furnishing or offering to furnish meals or lodging to the traveling public, any form of sign or other insignia indicating that said roadside house or camp has been approved by any individual, firm, association or corporation, without being licensed therefor by the commissioner. (R. S. c. 56, § 233.)

Sec. 259. Licenses; fee.—If the commissioner is of the opinion that an applicant is reliable and entitled to confidence, such applicant shall be granted a license to perform such road or other service in this state, and such license shall expire on January 1st succeeding the date of issuance but may be renewed annually thereafter so long as the commissioner shall regard such licensee as financially responsible and entitled to confidence.

The fee for each license issued shall be $20, payable to the commissioner for the use of the state. (R. S. c. 56, § 234. 1951, c. 266, § 78.)

Sec. 260. Agents.—No person, for himself or in behalf of any individual, firm, association or corporation, shall sell or offer to sell any such road or other service without being licensed therefor by the commissioner. (R. S. c. 56, § 235.)

Sec. 261. Agents' licenses; fee.—The commissioner shall grant a license to sell such service in behalf of any individual, firm, association or corporation licensed therefor to any applicant who shall furnish the commissioner with satisfactory evidence of his integrity and authority to sell the service offered. Such license, when granted, shall expire on January 1st thereafter, and annually thereafter may be renewed so long as the commissioner shall be satisfied of the licensee's integrity, authority and responsibility to provide the service stipulated.

The fee for each license issued shall be $2, payable to the commissioner for the use of the state. (R. S. c. 56, § 236. 1951, c. 266, § 79.)

Sec. 262. Revocation.—The commissioner may revoke a license for cause, at any time, after hearing. (R. S. c. 56, § 237.)

Sec. 263. Penalty.—Any person, firm, association or corporation, or any officer, agent, servant or employee thereof, who shall violate any of the provisions of sections 258 to 263, inclusive, shall be punished by a fine of not more than $300, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 56, § 239.)

Insurance Emergency.

Sec. 264. Insurance emergency.—Whenever it shall appear to the governor that the welfare of the state or any section thereof, or the welfare and se-

curity of insurance companies under the supervision of the commissioner in sections 264 to 272, inclusive, referred to as "insurers" or their insureds or beneficiaries require, the governor may proclaim that an insurance emergency exists and the provisions of said sections shall thereupon become effective. (R. S. c. 56, § 240.)

Sec. 265. Rules and regulations.—During the period of any insurance emergency described in the preceding section, the commissioner shall have power to make, amend or rescind such rules and regulations governing the business of any insurers as he deems expedient in order to adopt and maintain sound methods of protecting the interests of insurers, insureds, beneficiaries or the public. (R. S. c. 56, § 241.)

Sec. 266. Companies regulated; suspended. — During any insurance emergency period as described in sections 264 and 265, the commissioner is empowered to suspend for such time or times as he may determine the transaction of insurance functions of any insurer licensed in the state, whether domestic or foreign, solvent or otherwise, and to limit its insurance business in volume or character to such particular amounts or classifications and for such time or times as he may deem advisable. (R. S. c. 56, § 242.)

Sec. 267. Payments deferred.—During any insurance emergency period as described in sections 264 and 265, the commissioner shall have authority to postpone or defer, by rules or orders made and issued by him, for such time or times as he may determine, the payment of any amount payable under the terms of any policy of insurance, annuity or pure endowment contract, and the payment of judgments, notes, drafts, checks, bills of exchange or other forms of payment of claims due from insurers to any person, firm or corporation, whether such claim is liquidated or unliquidated, due or to become due at a day certain, and defer the payment of premiums on policies affected by such postponements or suspensions and may direct payment in full or in part whenever in his discretion such payment may be safely consummated. (R. S. c. 56, § 243.)

Sec. 268. "Insurer" defined. — The words "insurer" or "insurers" as used in sections 264 to 272, inclusive, shall include corporations, interinsurers, associations, societies and orders as well as partnerships and individual agents representing such organizations. (R. S. c. 56, § 244.)

Sec. 269. Personal responsibility of the commissioner limited.—The commissioner shall not be held legally responsible for any act or failure to act in the premises when such act or failure to act shall have been shown to be the result of good faith. (R. S. c. 56, § 245.)

Sec. 270. Penalties.—Any violation of any order issued by virtue of the provisions of sections 264 to 272, inclusive, or any rule or regulatory provision made by the commissioner pursuant thereto shall be punished by a fine of not more than $1,000, or by imprisonment for less than 1 year, or by both such fine and imprisonment. (R. S. c. 56, § 246.)

Sec. 271. Jurisdiction of courts. — During any emergency insurance period as described in sections 264 and 265, the commissioner is authorized to issue such directions, rules or orders as in his discretion the circumstances may warrant, and any justice of the supreme judicial or superior courts shall have full jurisdiction to enforce the provisions of sections 264 to 272, inclusive, by appropriate decrees in equity. (R. S. c. 56, § 247.)

Sec. 272. Duration of §§ 264-272 at will of the governor. — The authority and power given the commissioner under the provisions of sections 264 to 272, inclusive, shall terminate and be of no effect when the governor shall proclaim that any insurance emergency has ceased to exist. (R. S. c. 56, § 248.)

Insurance Agents and Brokers.

Sec. 273. Licenses of agents; agent personally liable for unlawful contracts.—The commissioner may issue a license to any person to act as an agent of a domestic insurance company, or to solicit, receive or forward applications for life insurance as an agent of a foreign life insurance company or for accident and sickness insurance as an agent of a foreign life insurance company which also writes accident and sickness insurance and which has received a license to do business in this state as provided in section 49, upon his filing with the commissioner a certificate from the company or association, or its authorized agent, empowering him so to act; provided, however, that all applications for life or accident and sickness insurance solicited, received and forwarded by nonresident agents for foreign life insurance companies or foreign life insurance companies which also write accident and sickness insurance shall be placed through a duly licensed resident agent of such company in this state; and provided further, that a nonresident may only be so licensed in this state to act as an agent for a foreign life insurance company or a foreign life insurance company which also writes accident and sickness insurance if, under the laws of the state of his residence, residents of Maine may be licensed in similar manner; and to any resident of the state to act as an agent of any other foreign insurance company, which has received a license to do business in the state as provided in section 49 or section 213, upon his filing such certificate. Such license shall continue until the 1st day of the next July.

A license shall be refused or a license duly issued shall be suspended or revoked or the renewal thereof refused by the commissioner if he finds that the applicant for or holder of such license has obtained or attempted to obtain such license not for the purpose of holding himself out to the general public as a fire or casualty agent, but primarily for the purpose of soliciting, negotiating or procuring contracts of fire or casualty insurance indemnifying himself or the members of his family or the officers, directors, stockholders, partners, employees of a partnership, association or corporation of which he or a member of his family is an officer, director, stockholder, partner or employee.

If any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he shall be punished by a fine of not more than $200, or by imprisonment for not more than 60 days, for each offense; but any policy issued on such application binds the company if otherwise valid. Agents of duly authorized insurance companies may place business which they are duly licensed to solicit with agents of other duly authorized insurance companies transacting the same kinds of business, when necessary for the adequate insurance of property, persons or interests. An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state. Nothing herein contained shall require a duly licensed insurance agent or broker to obtain any license for an employee doing only clerical office work in the office of said agent or broker. No judge of probate, register of probate or any clerk or employee in the office of such judge or register of probate shall be licensed to write surety bonds. (R. S. c. 56, § 249. 1949, cc. 161, 421. 1951, c. 256.)

Cross references.—See § 54, re revocation of license; § 87, re licenses of agents of domestic mutual fire insurance companies; § 149, re violation unfair practice.

Purpose of section.—The purpose of this section is undoubtedly for the protection of the public. It is clearly not for revenue. Black v. Security Mut. Life Ass'n, 95 Me. 35, 49 A. 51.

This section is prospective in operation and cannot be invoked to impair rights existing prior to its enactment. Spaulding v. New York Life Ins. Co., 61 Me. 329.

This section and § 274, providing for the licensing of insurance brokers, do not confer upon such brokers an authority to

bind insurance companies from whom they may obtain insurance for their principals. Richmond v. Phoenix Assur. Co., 88 Me. 105, 33 A. 786.

Section presupposes appointment of agent by principal.—The provisions of this section, providing for the licensing of an agent by the insurance commissioner, presuppose his appointment by the principal. Ouellette v. City of New York Ins. Co., 133 Me. 149, 174 A. 462.

But to obtain a new license under this section, a new appointment of the agent is not necessary. When the annual license expires, in order to renew it, a certificate that the agency continues, not a new appointment, is required of the company. There can be nothing in this to limit the agency to one year. Scottish Commercial Ins. Co. v. Plummer, 70 Me. 540.

An indictment under this section should allege the capacity in which the defendant acted or assumed to act. State v. Hosmer, 81 Me. 506, 17 A. 578.

As a person is liable, under this section, only when he acts or assumes to act, as the agent of the company for which he solicits the application for insurance, without a license as such agent. State v. Hosmer, 81 Me. 510, 17 A. 579.

And failure to allege defendant acted as agent for insurance company is fatal.—The offense created by this section consists in acting as an agent for any insurance company in soliciting, receiving or forwarding any risk, or application for insurance, to the company without a license therefor. Under the terms of the section, one can be licensed only to act as agent for some particular insurance company, after furnishing the required evidence of his appointment as such agent. The offense consists in acting as such agent without first complying with the section and receiving a license to act as such agent. An indictment which does not allege that the defendant, in soliciting the applications for insurance, as set forth, acted or claimed to act as agent for an insurance company is not sufficient to charge a violation of the section. State v. Hosmer, 81 Me. 506, 17 A. 578.

Name of person solicited should be alleged.—To render the charge of the offense reasonably specific, an indictment under this section should allege the name of the person from whom the risk was solicited, so that the defendant may know the act charged against him, that he may be able to prepare his defense. State v. Hosmer, 81 Me. 506, 17 A. 578.

As should fact that money procured for insurance in particular company.—An indictment under this section is bad which does not allege the person or persons from whom the risks were procured and the money received, nor that the risks were procured and the money received for insurance in any particular company. State v. Hosmer, 81 Me. 506, 17 A. 578.

No violation of section if policy sold illegal whether agent licensed or not.—A person cannot be convicted for acting as an agent without a license under this section, if the policy sold by him would be illegal and void whether he had a license or not. See State v. Towle, 80 Me. 287, 14 A. 195.

Unlicensed agent cannot recover compensation for services.—Although this section contains no express provision preventing a recovery for his services by one who acts as an agent of an insurance company without such license, and does not expressly provide that contracts for such services shall be void, it prohibits the performance of such services without the license referred to under the penalty therein provided. And, in accord with the general proposition that, where a license is required for the protection of the public and to prevent improper persons from engaging in a particular business, and the license is not for revenue merely, a contract made by an unlicensed person in violation of the act is void, an unlicensed agent cannot recover for the services performed by him in direct contravention of this section. True, the section provides that a policy issued in such a case shall not thereby be void, but this does not apply to the contract between the company and the agent by virtue of which the latter performs services in obtaining application for insurance, which the section prohibits, unless the person performing such service has a license therefor. Black v. Security Mut. Life Ass'n, 95 Me. 35, 49 A. 51.

Sec. 274. License of insurance brokers; acting without license; revocation; countersigning fee.—The commissioner may license any resident as broker to negotiate contracts of insurance for others than himself for a compensation, by virtue of which license he may effect insurance with any domestic or foreign company or its agents; or any nonresident of the state to negotiate such contracts and effect insurance with the agents of any domestic or foreign company who have been licensed to do business in this state as provided in sec-

tions 49 and 273 but with no others; said license shall remain in force 1 year unless revoked as hereinafter provided. A license shall be refused or a license duly issued shall be suspended or revoked or the renewal thereof refused by the commissioner if he finds that the applicant for or holder of such license has obtained or attempted to obtain such license not for the purpose of holding himself out to the general public as an insurance broker, but primarily for the purpose of soliciting, negotiating or procuring contracts of fire or casualty insurance indemnifying himself or the members of his family or the officers, directors, stockholders, partners or employees of a partnership, association or corporation of which he or a member of his family is an officer, director, stockholder, partner or employee. Whoever, without such license assumes to act as such broker, shall be punished by a fine of not more than $200, or by imprisonment for not more than 60 days, for each offense.

Any resident agent or agency licensed to write fire insurance who countersigns for a duly licensed nonresident broker a fire insurance policy covering property located in this state shall receive not less than 50% of the commission as a countersigning fee.

The commissioner, after reasonable notice, may revoke the license of any agent or broker for violation of the insurance laws; or the license of any agent upon receipt of written request therefor from the company filed in the office of said commissioner. (R. S. c. 56, § 250. 1951, c. 112; c. 277, § 1.)

Cross reference.—See § 149, re violation unfair practice.

Quoted in part in State v. Hosmer, 81 Me. 506, 17 A. 578.

Cited in Ouellette v. City of New York Ins. Co., 133 Me. 149, 174 A. 462.

Sec. 275. Firms and corporations may be licensed as insurance agents and brokers.—The commissioner may issue licenses to firms and corporations in the manner provided in the 2 preceding sections, authorizing said firms and corporations to act as insurance agents and brokers. The application for said license shall, in case of a firm, give the name of the firm by which the business is to be transacted and the name and residence of each individual member thereof, and in case of a corporation, the corporate name in which the business is to be transacted and the name and residence of each officer or member of such corporation authorized to transact business therefor; the license issued to such firm shall give the firm name and the name of each individual member thereof, and the license issued to such corporation shall give the corporate name and the name of each officer or member thereof authorized to transact business therefor under such license, and such licenses shall authorize the persons named therein to transact business for and in the name of the firm or corporation only. Provided further, that upon request of the members of a partnership, the names of 1 or more employees, each of whom shall have qualified as an insurance agent, may be authorized to act and sign in behalf of the partnership, and such employee or employees shall be listed in licenses issued to such partnership. (R. S. c. 56, § 251. 1951, c. 192, § 1. 1953, c. 187.)

See § 149, re violation unfair practice.

Sec. 276. Personal examination of applicants.—Before an agent or broker is licensed as provided in the 3 preceding sections he shall file with the commissioner a statement under oath, giving his name, residence, present occupation, his occupation for the 5 years next preceding the date of such statement and such other information, if any, as the commissioner may require. After the statement herein provided for is filed, the commissioner may, if he is satisfied that the appointee is a suitable person, issue to him a license in accordance with said sections; provided, however, that it shall not be necessary for an applicant once qualified as a broker, or as an agent for any particular company, to requalify. The commissioner may at any time after granting such license, for cause shown and after a hearing, determine any person so appointed or any person theretofore ap-

pointed as agent, to be unsuitable to act as such agent and shall thereupon revoke such license and notify both the company and the agent of such revocation. Before any person is licensed as hereinbefore provided as a first-time agent of any casualty or foreign fire insurance company or as a first-time insurance broker, he shall pay to the commissioner a fee of $10 and appear in person at such time and place as the commissioner, his deputy or any person delegated by the commissioner or his deputy shall designate in writing for that purpose for a personal written examination as to his qualifications to act as such agent or broker; provided that no personal examination or examination fee shall be required of a resident of the state when applying for a license to solicit insurance in behalf of any company or companies authorized to transact business in this state, when the annual premium on each policy to be sold under such license does not exceed $2.

Said fee shall be used solely to defray all the expenses of conducting examinations and said examinations shall be in writing and kept on file with the commissioner for at least 6 months. The examiner shall be satisfied that such person is of good character, of appropriate experience or preparation and is otherwise qualified for the license he desires; that he intends to hold himself out in good faith as an insurance agent or broker and that no part of the commission on the business of such agent or broker shall be paid to any person, firm or corporation other than a duly licensed agent, broker or insurance company.

Upon the death or disability of a licensed agent or the termination of the employment of an agent, the commissioner may issue to a suitable person appointed by an insurance company without examination a license for a limited period of time, not to exceed 6 months, to act as an agent for said company, if in his opinion such temporary license is necessary for the continuation of the business of the agency thereby affected. (R. S. c. 56, § 252. 1951, c. 277, § 2. 1953, c. 115.)

See § 149, re violation unfair practice.

Sec. 277. Coercion in the placing of insurance on real estate or personal property.—No trustee, director, officer, agent or other employee of any person, firm, corporation, bank, loan and building association or other financial institution engaged in the business of making loans of money to the public or financing the purchase of real or personal property or the lending of money on the security of real or personal property shall directly or indirectly require that the person, firm or corporation, for whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed, negotiate any policy of insurance or renewal thereof covering such property through a particular insurance company or insurance agent or broker, as a condition precedent to financing the purchase of such property or to loaning money upon the security of a mortgage thereon, or as a condition prerequisite for the renewal or extension of any such loan or mortgage, or for the performance of any act in connection therewith. Any person violating the provisions of this section shall be punished by a fine of not more than $100, or by imprisonment of not more than 60 days, or by both such fine and imprisonment; and if he holds a license from the commissioner, he shall forfeit the same. Any justice of the supreme judicial or superior court, in term time or vacation, on complaint by any person that the provisions of this section are being violated, may issue an injunction against such violation and may hold in contempt and punish therefor in case of disregard of said injunction. This section shall not prevent the exercise by any such person, firm, corporation, trustee, director, officer, agent or employee of the right to approve or disapprove of the insurance company to underwrite the insurance. (1951, c. 192, § 2. 1953, c. 308, § 79.)

Qualifications of Life Insurance Agents.

Sec. 278. Life insurance agent defined.—

I. The term "life insurance agent" means any authorized or acknowledged

agent of an insurer and any sub-agent of such agent, who acts as such in the solicitation of, negotiation for, or procurement or making of a life insurance or annuity contract; except that the term "life insurance agent" shall not include any regular salaried officer or employee of a licensed insurer or of a licensed life insurance agent, who does not solicit or accept from the public applications for any such contract. A regular salaried officer or employee of an insurer authorized to do business in this state shall not be deemed to be a "life insurance agent" by reason of rendering assistance to or on behalf of a licensed life insurance agent, provided that such salaried officer or employee devotes substantially all of his time to activities other than the solicitation of applications for life insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of business obtained.

II. The term "sub-agent" means any person, except as provided in subsection I, who acts for or on behalf of a licensed life insurance agent in the solicitation of, negotiation for, or procurement or making of a life insurance or annuity contract, whether or not he is designated by such agent as a sub-agent or a solicitor or by any other title, including the members of a partnership and the officers, directors or stockholders of a corporation named in the license issued to a partnership or corporation as hereinafter provided. Each sub-agent shall be deemed to be a life insurance agent, as defined above, and wherever in the following sections, the term "life insurance agent" is used, it shall include sub-agents, whether or not they are specifically mentioned. Each such person shall individually file an application for license and submit to a written examination as hereinafter provided for applicants for a life insurance agent's license.

III. Any resident of this state or any partnership or corporation located in this state may be licensed as a life insurance agent upon compliance with the provisions of sections 278 to 293, inclusive; provided, however, that the articles of partnership or incorporation shall authorize the partnership or corporation applying for such license specifically to engage in such business. The application for a license by and the license issued to a partnership or corporation shall name the members of such partnership or the officers, directors or stockholders of such corporation who are authorized to act as agents thereunder, and no such license shall be issued unless and until the persons named in the application therefor have qualified for individual licenses as hereinafter provided. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 279. Acting for unauthorized companies.—

I. No person, partnership or corporation shall, within this state, solicit, procure, receive or forward applications for life insurance or annuities, or issue or deliver policies for or in any manner secure, help or aid in the placing of any contract of life insurance or annuity for any person other than himself, directly or indirectly, with any insurer not authorized to do business in this state.

II. Any person, partnership or corporation shall be liable, personally, for the full amount of any loss sustained on any contract of life insurance or annuity made by or through him or it, directly or indirectly, with any insurer not authorized to do business in this state and, in addition, for any premium taxes which may become due under any law of this state by reason of such contract. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 280. Acting as agent without license; no commissions to unlicensed persons.—

I. No person, partnership or corporation shall act as a life insurance agent within this state until he shall have procured a license as required by the laws of this state.

II. No insurer or licensed life insurance agent or insurance broker doing business in this state shall pay directly or indirectly any commission, brokerage or other valuable consideration to any person, partnership or corporation for services as a life insurance agent within this state, unless such person, partnership or corporation shall hold a current valid license to act as a life insurance agent or an insurance broker as required by the laws of this state; nor shall any person, partnership or corporation, other than a duly licensed life insurance agent or insurance broker, accept any such commission, brokerage or other valuable consideration; provided, however, that the provisions of this section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person, partnership or corporation solely because such person, partnership or corporation has ceased to hold a license to act as a life insurance agent. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 281. Application for license.—

I. Each applicant for a license to act as a life insurance agent within this state shall file with the commissioner his written application on forms furnished by the commissioner. The application shall be signed and duly sworn to by the applicant. The prescribed form shall require the applicant to state his full name, residence, age, occupation and place of business for 5 years preceding date of the application; whether applicant has ever held a license to solicit life or any other insurance in any state; whether he has been refused or has had suspended or revoked a license to solicit life or any other insurance in any state; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this state he has had or expects to have; whether any insurer or general agent claims applicant is indebted under an agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto; whether applicant has had an agency contract canceled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent and, if part only, how much time he will devote to such work and in what other business or businesses he is engaged or employed; whether, if applicant is a married woman, her husband has ever applied for or held a license to solicit life or any other insurance in any state and whether such license has been refused, suspended or revoked; such other information as the commissioner in his discretion may require.

II. The application shall be accompanied by a certificate on forms furnished by the commissioner and signed by an officer or properly authorized representative of the insurer, stating that the insurer has investigated the character and background of the applicant and is satisfied that he is trustworthy and qualified to act as its agent and to hold himself out in good faith to the general public as a life insurance agent, and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this state.

III. The application, when filed, shall be accompanied by the annual license fee in the amount of $2 and, in the case of applicants required to take an examination as hereinafter prescribed, by an examination fee in the amount of $5, except that the examination fee will be waived if the applicant pays the examination fee prescribed by section 276 and is examined on the same day for a license to solicit accident and sickness insurance and to act as a life insurance agent for the same company; and such examination fees shall be used solely for the purpose of conducting such examinations as are required by law. In the event an applicant fails to qualify for or is refused a license, the annual license fee shall be returned to him; the examination fee shall not be returned for any reason. [1949, c. 421. 1953, c. 88]. (1947, c. 162. 1949, c. 421. 1953, c. 88; c. 308, § 80.)

Sec. 282. Examination of applicant for license.—

I. Each applicant for a license to act as a life insurance agent within this state shall submit to a personal written examination to determine his competence with respect to life insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this state and shall pass the same to the satisfaction of the commissioner; except that no such written examination shall be required of:

A. An applicant for a renewal license, unless the commissioner determines that such examination is necessary to establish the competency or trustworthiness of such individual; or unless a license had not been issued to such applicant within 2 years preceding the date of filing his application;

B. An applicant who shall act under a restricted license only as an agent with respect to accident insurance tickets primarily covering risks of travel;

C. In the discretion of the commissioner an applicant whose license to do business or act as a life insurance agent in this state was suspended less than 1 year prior to the date of application.

II. The commissioner may establish rules and regulations with respect to the scope, type and conduct of such written examinations and the times and places within this state where they shall be held; provided that applicants shall be permitted to take such examinations at least once in each week at the principal office of the commissioner.

III. No person who shall have taken and failed to pass 2 examinations given pursuant to this section shall be entitled to take any further examination until after the expiration of 6 months from the date of the last examination in which he failed. If such person shall thereafter fail to pass 2 or more such examinations, he shall not be eligible to take any further examination until after the expiration of 1 year from the date of his last unsuccessful examination. No examination fee shall be paid for a 2nd examination within any 6-month period.

IV. The commissioner shall appoint an advisory board to make recommendations to him with respect to the scope, type and conduct of written examinations and the times and places within the state where they shall be held. This advisory board shall consist of citizens of this state experienced in the life insurance business and may include life insurance company officers and employees, general agents and managers and licensed life insurance agents. The members of the board shall serve without pay but, upon the authorization of the commissioner, shall be reimbursed for their reasonable expenses in attending meetings of the advisory board. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 283. Issuance or refusal of license.—If the commissioner is satisfied that the applicant is trustworthy and competent and the applicant, if required, has passed his written examination, a license shall be issued forthwith, limited to the insurer and kind of insurance for which the agent is to be appointed. If the applicant has not passed his written examination, or for any of the reasons set forth in section 289, the commissioner shall notify the applicant and the insurer in writing that a license will not be issued to him. In any case where a license is applied for to represent an insurer authorized in this state to transact an accident and sickness as well as a life insurance business, the commissioner may issue a license authorizing the applicant to represent the insurer with respect to both types of business, provided that the applicant, in addition to qualifying under the provisions of sections 278 to 293, inclusive, has satisfied the commissioner as required by the laws of this state and the regulations of the commissioner, if any, that he is competent to represent such insurer with respect to accident and sickness insurance. (1947, c. 162. 1949, c. 421. 1953, c. 308, § 80.)

Sec. 284. Nonresidents licensed.—

I. A person not resident in this state may be licensed as a life insurance agent upon compliance with the provisions of sections 278 to 293, inclusive, provided that the state in which such person resides will accord the same privilege to a citizen of this state.

II. The commissioner is further authorized to enter into reciprocal agreements with the appropriate official of any other state waiving the written examination of any applicant resident in such other state, provided:

A. That a written examination is required of applicants for a life insurance agent's license in such other state;

B. That the appropriate official of such other state certifies that the applicant holds a currently valid license as a life insurance agent in such other state and either passed such written examination or was the holder of a life insurance agent's license prior to the time such written examination was required;

C. That the applicant has no place of business within this state nor is an officer, director, stockholder or partner in any corporation or partnership doing business in this state as a life insurance agent;

D. That in such other state, a resident of this state is privileged to procure a life insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 285. Agent licensed to represent additional insurers.—

I. Any life insurance agent licensed in this state may apply to the commissioner, at any time while his license is in force, for an additional license or licenses authorizing him to act as a life insurance agent for an additional insurer or insurers. Such application shall set forth each insurer which the applicant is then licensed to represent; a certificate from the insurer to be named in each additional license applied for that it desires to appoint the applicant as its agent; and such other information as the commissioner may require. Upon receipt of each such application the commissioner may issue such additional license without examination of or further investigation concerning the applicant. Any life insurer may file a request with the commissioner for notification that any life insurance agent authorized to represent it has been appointed to represent another life insurer. Pursuant to such request for notice, the commissioner shall notify such insurer of such additional appointments.

II. Agents of duly authorized life insurance companies may place risks with agents of other duly authorized life insurance companies when necessary for the adequate insurance of persons or interests. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 286. Expiration and renewal of agent's license.—

I. Each license issued to a life insurance agent shall expire on July 1 following the date of issue, unless prior thereto it is revoked or suspended by the commissioner or the authority of the agent to act for the insurer is terminated.

II. In the absence of a contrary ruling by the commissioner, license renewals may be issued from year to year upon request of the insurer, without further action on the part of the agent.

III. Each request for renewal of license shall show whether the agent devotes all or part of his efforts to acting as a life insurance agent, and, if part only,

how much time he devotes to such work and in what other business or businesses he is engaged or employed.

IV. Upon the filing of a request for renewal of license and payment of the required fees prior to its date of expiration, the current license shall continue in force until the renewal license is issued by the commissioner or until the commissioner has refused for cause to issue such renewal license, as provided in section 289, and has given notice of such refusal in writing to the insurer and the agent. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 287. Temporary license in case of death.—The commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license without requiring the applicant to pass a written examination, as follows:

I. To the executor or administrator of the estate of a deceased person who at the time of his death was a licensed life insurance agent;

II. To a surviving next of kin of such a deceased person, if no administrator or executor has been appointed and qualified, but any license issued under this subsection shall be revoked upon issuance of a license to an executor or administrator under subsection I;

III. No license issued under the provisions of this section shall be effective for more than 90 days. The commissioner, in his discretion, may renew such license once upon proper application and for good cause. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 288. Company to notify commissioner of termination of contract; communications privileged.—

I. Every insurer shall, upon termination of the appointment of any life insurance agent, immediately file with the commissioner a statement of the facts relative to the termination of the appointment and the date and cause thereof. The commissioner shall thereupon terminate the license of such agent to represent such insurer in this state.

II. Any information, document, record or statement required to be made or disclosed to the commissioner pursuant to the provisions of this section shall be deemed a privileged communication and shall not be used as evidence in any court action or proceeding. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 289. Refusal, suspension or revocation of licenses.—

I. A license may be refused or a license duly issued may be suspended or revoked or the renewal thereof refused by the commissioner if, after notice and hearing as hereinafter provided, he finds that the applicant for or holder of such license:

A. Has willfully violated any provision of the insurance laws of this state; or

B. Has intentionally made a material misstatement in the application for such license; or

C. Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

D. Has misappropriated or converted to his own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or

E. Has otherwise demonstrated lack of trustworthiness or competence to act as a life insurance agent; or

F. Has been guilty of fraudulent or dishonest practices; or

G. Has materially misrepresented the terms and conditions of life insurance policies or contracts; or

H. Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any life insurance or annuity contract legally issued by any insurer, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

I. Has obtained or attempted to obtain such license, not for the purpose of holding himself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or members of his family, or the officers, directors, stockholders, partners, employees or debtors of a partnership, association or corporation of which he or a member of his family is an officer, director, stockholder, partner or employee.

II. Before any license shall be refused, except for failure to pass a required written examination, or suspended or revoked, or the renewal thereof refused hereunder, the commissioner shall give at least 14 days' notice of his intention to do so to the applicant for or holder of such license and the insurer whom he represents or who desires that he be licensed, and shall set a date when the applicant or licensee may appear to be heard and produce evidence. In the conduct of such hearing, the commissioner, or any regular salaried state employee specially designated by him for such purpose, shall have power to administer oaths, to require the appearance of, and to examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer concerned. (1953, c. 257)

III. No licensee whose license has been revoked hereunder shall be entitled to file another application for a license as a life insurance agent within 1 year from the effective date of such revocation or, if judicial review of such revocation is sought, within 1 year from the date of final court order or decree affirming such revocation. Such application, when filed, may be refused by the commissioner unless the applicant shows good cause why the revocation of his license shall not be deemed a bar to the issuance of a new license. (1947, c. 162. 1953, c. 257; c. 308, § 80.)

Sec. 290. Appeal.—Any person aggrieved by an act of the commissioner under the provisions of sections 278 to 293, inclusive, may appeal therefrom within 30 days after receipt of notice thereof to any court of competent jurisdiction. Thereafter, such proceeding shall proceed as in the case of any other civil cause. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 291. Change of address of agent.—Every licensed life insurance agent shall inform the commissioner promptly in writing of a change of his principal business address. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 292. Penalty. — Any person, partnership, association or corporation violating any of the provisions of sections 277 to 293, inclusive, shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than $500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment, each such violation being a separate offense hereunder. In addition, if such offender holds a license as a life insurance agent, such license may be suspended or revoked as hereinbefore provided. (1947, c. 162. 1953, c. 308, § 80.)

Sec. 293. Rules and regulations.—The commissioner is authorized to establish and from time to time to amend reasonable rules and regulations concerning all matters included in sections 278 to 292, inclusive. (1947, c. 162. 1953, c. 308, § 80.)

General Provisions Concerning Agents and Brokers.

Sec. 294. Licenses to special insurance brokers; conditions upon which insurance procured; licensee to keep account of business done and report; bond.—The commissioner may annually issue licenses, subject to revocation at any time, to citizens of this state already agents of 1 or more duly authorized fire insurance companies, permitting the person named therein to procure policies of insurance on fire or casualty risks in this state in foreign insurance companies not authorized to transact business in this state. The person named in such a license shall in each case make application to the commissioner setting forth his reasons for desiring to insure the particular risk with companies not authorized in this state, and said commissioner shall, if he deems it advisable, grant permission to procure such insurance. He shall give notice to the commissioner not later than 5 days after the risk is insured, giving the name of the owner, location of the property and name of the company or companies issuing policies thereon. In case the commissioner finds that any company named by a special broker under the provisions of this section is not financially sound and is not believed to be a responsible and reliable company, he shall so notify the special broker who shall forthwith substitute another company, submitting the name of the substitute company to the commissioner for approval. Each person so licensed shall keep a separate account of the business done under the license which shall be open to the inspection of the commissioner or his representative. He shall monthly file with the commissioner a statement showing the amount of insurance placed for any person, firm or corporation, the location of each risk, the gross premium charged thereon, the companies in which the insurance is placed, the date of the policies and the term thereof and such further information as the commissioner may require. He shall also report in the same detail all policies canceled during the month covered by the report showing the return premiums thereon. Before receiving such license he shall execute and deliver to the treasurer of state a bond in the penal sum of $1,000, with such sureties as the commissioner shall approve, with a condition that the licensee will faithfully comply with all the requirements of this section and will file with the treasurer of state, in January of each year, a sworn statement of the gross premiums charged for insurance procured or placed and the gross returned premiums on such insurance canceled under such license during the year ending on the 31st day of December next preceding, and at the time of filing such statement will pay into the treasury of state a sum equal to 2% of such gross premiums, less such returned premiums as are reported. (R. S. c. 56, § 253.)

See § 149, re violation unfair practice;
§ 296, re penalty.

Sec. 295. Revocation of license.—Whenever the commissioner shall become satisfied that any insurance agent licensed in this state has willfully violated any of the insurance laws of this state, or has willfully overinsured property located in this state, or has willfully misrepresented any policy of fire insurance, or has dealt unjustly with or willfully deceived any citizen in this state in regard to any fire insurance policies, or has failed or refused to pay either to the company which he represents or has represented, any money or property in the hands of such agent belonging to the company, when demanded, or has in any other way become unfit for such position, he may, after a hearing, revoke the license of such agent for all the companies which he represents in this state for such length of time as he may decide, not exceeding 1 year; provided, however, that the commis-

sioner shall give said agent 10 days' notice of such revocation of license or licenses and the reasons therefor. (R. S. c. 56, § 254.)

See § 149, re violation unfair practice;
c. 132, § 9, re larceny by insurance agent.

Sec. 296. Violation of § 294.—Any person licensed under the provisions of section 294, who shall procure or act in procurement or negotiation of insurance in any unauthorized foreign company and shall neglect to make and file the statements and affidavits herein required, or shall willfully make a false affidavit or statement, shall forfeit his license and be punished by a fine of not more than $100 or by imprisonment for not more than 60 days; and whoever without such license assumes to act as a special insurance broker shall incur like punishment. (R. S. c. 56, § 255.)

Sec. 297. Adjusters of losses; examination; licenses and revocation; fees. — No insurance company transacting insurance business in this state shall permit any representative to adjust a loss until such representative has been licensed in accordance with the provisions of this section; but a license as an adjuster shall not be required of a duly licensed insurance agent or company representative residing in this state to adjust losses on his companies' risks, or of attorneys at law duly licensed to practice by the state, or of licensed life insurance agents. If any person adjusts or fraudulently assumes to be an adjuster, without first receiving such license, he shall be punished by a fine of not more than $200 or by imprisonment for not more than 60 days for each offense. Upon the receipt of an application from any person for an adjuster's license the commissioner shall require such person to take an examination and if such person shall pass such examination to the satisfaction of the commissioner and the commissioner shall satisfy himself that the applicant is a suitable person to act as an adjuster, the commissioner shall grant such person a license and such license shall continue in force until the last day of the next December. The commissioner may at any time after the granting of such license, for cause shown and after a hearing, determine that any person so licensed is unsuitable to act as an adjuster and shall thereupon revoke such license and shall notify the adjuster of such revocation.

The fee for such examination shall be $10 and shall be used solely to defray all the expenses of conducting examinations and said examinations shall be in writing and kept on file with the commissioner for at least 6 months.

Anything to the contrary notwithstanding any person holding an adjuster's license in full force and effect on August 13, 1947 shall not be required to take such examination. (R. S. c. 56, § 256. 1947, c. 155. 1949, c. 349, § 92.)

See § 149, re violation unfair practice.

Sec. 298. Discrimination or rebates on premiums for fire or liability insurance.—No insurance company transacting fire or liability insurance in this state and no agent or broker transacting fire or liability insurance, either personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, as an inducement to fire or liability insurance on any risk in this state, now or hereafter to be written, any rebate of or part of the premium payable on any policy or of the agent's commission thereon; nor shall any such company, agent or broker, personally or otherwise, offer, promise, allow, give, set off or pay, directly or indirectly, as an inducement to such fire or liability insurance, any earning, profit, dividends or other benefit founded, arising, accruing or to accrue on such insurance, or therefrom, or other valuable consideration, or any special favor which is not specified, promised or provided for in the policy of insurance; nor shall any such company, agent or broker, personally or otherwise, offer, promise, give or sell as an inducement to such insurance any stocks, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, nor, except as specified in the policy, offer, promise or give any other thing of value whatsoever,

or purchase any stocks, bonds, securities or other property for which shall be paid or agreed to be paid more than the fair and reasonable value thereof.

Any insurance company, agent or broker who violates any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $100 for each and every violation or, in the discretion of the court, by imprisonment for not more than 6 months. The commissioner may revoke the license of any company, agent or broker violating the provisions of this section. (R. S. c. 56, § 257.)

See § 149, re violation unfair practice.

Sec. 299. Transactions between companies or agents lawful; dividends to policyholders.—The provisions of the preceding section shall not prevent any insurance company from paying to another insurance company or to any duly authorized agent or broker of this or any other state who holds himself out and carries on an insurance business in good faith as such, or prevent an insurance company, agent or broker from receiving a commission on any policy under which it, itself or he, himself is insured or any mutual company from paying dividends duly earned to policyholders. (R. S. c. 56, § 258.)

Sec. 300. Person deemed agent; notice binding.—An agent authorized by an insurance company, whose name is borne on the policy, is its agent in all matters of insurance; any notice required to be given to said company or any of its officers, by the insured, may be given to such agent. (R. S. c. 56, § 259.)

Cross reference.—See § 63, re service of notices and processes.

Applied in Emery v. Piscataqua F. & M. Ins. Co., 52 Me. 322; Caston v. Monmouth Mut. Fire Ins. Co., 54 Me. 170.

Quoted in LeBlanc v. Standard Ins. Co., 114 Me. 6, 95 A. 284; Maxwell v. York Mut. Fire Ins. Co., 114 Me. 170, 95 A. 877.

Stated in Waterhouse v. Gloucester Fire Ins. Co., 69 Me. 409.

Cited in Campbell v. Monmouth Mut. Fire Ins Co., 59 Me. 430; Thayer v. Providence Washington Ins. Co., 70 Me. 531; Packard v. Dorchester Mut. Fire Ins. Co., 77 Me. 144; Richmond v. Phoenix Assur. Co., 88 Me. 105, 33 A. 786.

Rights of Assignees.

Sec. 301. Suit by assignee of policy.—The assignee of any policy, the assignment of which has been assented to by the insurance company or its agent, may sue the company on the policy in his own name, and all sums due thereon may be recovered in such suit, subject to any defense existing against the original party; the assignees so suing shall hold the judgment or its proceeds subject to the claims and equities of any other parties interested therein. (R. S. c. 56, § 260.)

Cross reference.—See c. 113, § 170, re assignee of nonnegotiable choses in action may sue.

Cited in Biddeford Savings Bank v. Dwelling-House Ins. Co., 81 Me. 566, 18 A. 298.

Liability Absolute When Loss Occurs.

Sec. 302. Liability of insurance company absolute when loss occurs.—The liability of every company which insures any person, firm or corporation against accidental loss or damage on account of personal injury or death or on account of accidental damage to property shall become absolute whenever such loss or damage, for which the insured is responsible, occurs; and the rendition of a final judgment against the insured for such loss or damage shall not be a condition precedent to the right or obligation of the insuring company to make payment on account of such loss or damage. (R. S. c. 56, § 261.)

This section makes the liability of an insurer absolute except under the conditions set forth in § 303. Laforge v. LeBlanc, 137 Me. 208, 18 A. (2d) 138.

But there must be policy in force.—Before liability can become absolute there

must be a policy in force under which the liability may arise. Clapperton v. United States Fidelity & Guaranty Co., 148 Me. 257, 92 A. (2d) 336.

Cited in Medico v. Employers' Liability Assur. Corp., 132 Me. 422, 172 A. 1; Lord v. Massachusetts Bonding & Ins. Co., 133 Me. 335, 177 A. 704; Bowley v. Aetna Life Ins. Co., 134 Me. 13, 180 A. 924; Rioux v. Employers' Liability Assur. Corp., 134 Me. 459, 187 A. 753; Coffey v. Gayton, 136 Me. 141, 4 A. (2d) 97; Poisson v. Travelers Ins. Co., 139 Me. 365, 31 A. (2d) 233.

Judgment Creditor May Have Insurance.

Sec. 303. Application of insurance money after final judgment; company entitled to notice of accident or injury; bill not brought until 20 days after final judgment; exceptions.—Whenever any person, administrator, executor, guardian, firm or corporation recovers a final judgment against any other person, firm or corporation for any loss or damage specified in the preceding section, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment by bringing a bill in equity, in his own name, against the insuring company to reach and apply said insurance money; provided that when the right of action accrued, the judgment debtor was insured against said liability and that before the recovery of said judgment the insuring company had had notice of such accident, injury or damage; provided also that the insuring company shall have the right to invoke the defenses described in this section in said equity proceedings. None of the provisions of this paragraph and the preceding section shall apply:

I. When the automobile, motor vehicle or truck is being operated by any person contrary to law as to age or by any person under the age of 16 years where no statute restricts the age; or

II. When such automobile, motor vehicle or truck is being used in any race or speed contest; or

III. When such automobile, motor vehicle or truck is being used for towing or propelling a trailer unless such privilege is indorsed on the policy or such trailer is also insured by the company; or

IV. In the case of any liability assumed by the insured for others; or

V. In the case of any liability under any workmen's compensation agreement, plan or law; or

VI. When there is fraud or collusion between the judgment creditor and the insured.

No bill in equity shall be brought against an insurance company to reach and apply said insurance money until 20 days shall have elapsed from the time of the rendition of the final judgment against the judgment debtors. (R. S. c. 56, § 262.)

Plaintiff must prove judgment debtor insured by defendant.—In an action under this section, it is incumbent upon the plaintiff to prove that the judgment debtor was insured against liability by the defendant company, unless by its conduct the company excuses the necessity of such proof. Colby v. Preferred Accident Ins. Co., 134 Me. 18, 181 A. 13.

For cases wherein it was held that the policy of insurance did not cover the judgment debtor and, therefore, the judgment creditor could not recover from the company in a suit under this section, see Johnson v. American Auto. Ins. Co., 131 Me. 288, 161 A. 496; Rioux v. Employers' Liability Assur. Corp., 134 Me. 459, 187 A. 753; Lunt v. Fidelity & Casualty Co., 139 Me. 218, 28 A. (2d) 736; Poisson v. Travelers Ins. Co., 139 Me. 365, 31 A. (2d) 233.

Coverage inferred by company's defense of action against insured.—The fact of the assumption by the company of the defense of an action against the insured justifies a finding, as an inference from facts proven, that there was no reservation by the company of a right to deny liability on the ground of noncoverage. Colby v. Preferred Accident Ins. Co., 134 Me. 18, 181 A. 13.

And company estopped to deny coverage in action under this section.—Where

an insurance company takes control of the proceedings in an action brought against the insured, it is thereby estopped to say that the liability claimed is not within the terms of the contract when an action is brought by the judgment creditor under this section. Colby v. Preferred Accident Ins. Co., 134 Me. 18, 181 A. 13.

An insurance company, by assuming and conducting the defense of the main action with knowledge of all the facts and without reservation, cannot defend against liability to pay the judgment obtained in the action so defended. Colby v. Preferred Accident Ins. Co., 134 Me. 18, 181 A. 13.

Lack of cooperation and fraud or collusion not synonymous.—This section enumerates certain defenses open to the insurer in cases such as this, among which lack of cooperation does not appear but fraud or collusion between the judgment creditor and the insured is included. The two defenses are not synonymous. Lack of cooperation may include fraud or collusion or may consist simply in refusal to act. Medico v. Employers' Liability Assur. Corp., 132 Me. 422, 172 A. 1.

And fraud must be proved by clear and convincing evidence.—As there is no relation of trust between the assured and the insurer, in an action by a judgment creditor under this section, the general rule obtains that he who asserts fraud must prove it by clear and convincing evidence. Laforge v. LeBlanc, 137 Me. 208, 18 A. (2d) 138.

But false testimony by insured amounts to fraud.—The giving by the insured of intentionally false testimony, material in its nature and prejudicial in its effect, in the action against him under this section, amounts to fraud or collusion. Medico v. Employers' Liability Assur. Corp., 132 Me. 422, 172 A. 1.

Nonresident insured need not be joined as party.—In a proceeding under this section by a judgment creditor, the fact that the insured was a nonresident relieves the plaintiff from joining him as a party, even though, had he been a resident, it might have been necessary to do so. Medico v. Employers' Liability Assur. Corp., 132 Me. 422, 172 A. 1.

Applied in Lord v. Massachusetts Bonding & Ins. Co., 133 Me. 335, 177 A. 704; Bowley v. Aetna Life Ins. Co., 134 Me. 13, 180 A. 924; Coffey v. Gayton, 136 Me. 141, 4 A. (2d) 97.

Inquests into Insurance Frauds.

Sec. 304. Insurance frauds. — On application in writing to the commissioner by an officer of any insurance company doing business in the state, stating that he has reason to believe and does believe that any person has, by false representations, procured from said company an insurance, or that the company has sustained a loss by the fraudulent act of the insured or with his knowledge or consent, and requesting an investigation thereof, said commissioner, or his deputy or such magistrate as he appoints, shall summon and examine, under oath, at a time and place designated by him, any persons and require the production of all books and papers necessary for a full investigation of the facts and make report thereof, with the testimony by him taken, to the company making such application. (R. S. c. 56, § 263.)

See §§ 307, 308, re licenses for the manufacture and sale of lightning rods; c. 97, §§ 22-29, re investigation of fires.

Automobile Finance Business.

Sec. 305. Financing of time sales on motor vehicles; license; fee; refusal to issue or renew; appeal.—Any person, firm or corporation not under the supervision of the bank commissioner, except a national bank, desiring to conduct the business of financing time sales on motor vehicles shall annually make application to the commissioner for a license to conduct said business and said application shall be made on forms prepared and furnished by the commissioner and shall state such information as may be asked for thereon. The commissioner shall examine the facts stated in said application for license and may issue or renew a license to said applicant authorizing said applicant to engage in said business. Said licenses shall expire on the 30th day of June of each calendar year. All applications for such licenses shall be accompanied by a fee of $50, which said fee shall be re-

turned in the event that application is denied. If the commissioner, after investigation, shall find that the applicant is not of good repute or has been guilty of fraudulent or unfair business practices or misrepresentations to the public, he may refuse to issue or renew the license so applied for and he shall in writing notify the applicant of his failure to approve of said application and to issue or renew a license based thereon, and shall also state in writing his reasons for said refusal. If said refusal shall be to renew a license previously issued, said refusal shall not become effective until 15 days from the date thereof, and the license previously issued shall continue in full force and effect during said period of 15 days notwithstanding that said period may extend beyond the 30th day of June. Any applicant receiving from the commissioner notice of his refusal to so issue or renew a license to said applicant may within 60 days after the receipt of said notice file an appeal to the superior court in and for the county in which the applicant has a place of business, and if said appeal shall be from the refusal of the commissioner to renew a license previously issued, such license shall continue in full force and effect pending final decision on said appeal notwithstanding that said period may extend beyond the 30th day of June. After such notice as it shall order and upon hearing, said court shall determine whether or not the reasons assigned by the commissioner for said refusal are valid and said court shall thereupon sustain or reverse the ruling of the commissioner. If said court shall find that the reasons assigned by the commissioner for his refusal to issue or renew said license are not sufficient, and shall reverse the decision of said commissioner, the commissioner shall immediately issue the license or renewal of license so applied for. The commissioner may, after notice and hearing, revoke or suspend any license issued by him, which said order of revocation or suspension shall become effective at the end of 15 days from the date of issuance, and said licensee shall have the same right to an appeal from such suspension or revocation as is above provided. Pending final decision on any appeal from an order revoking or suspending any license previously issued, the license shall continue in full force and effect. Any person conducting the business of financing time sales on motor vehicles without being licensed by the commissioner shall be punished by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both such fine and imprisonment. (R. S. c. 56, § 264. 1949, c. 349, § 93. 1951, c. 361, § 1.)

Sec. 306. Seller to itemize charges.—It shall be unlawful for any person, firm or corporation to sell a motor vehicle as defined by section 1 of chapter 22 by an installment sale contract without having before the consummation of the sale furnished the buyer an itemization in writing signed by the seller separately disclosing to the purchaser the finance charge, insurance costs and other charges which are paid or to be paid by the purchaser.

The seller shall be deemed to have fully complied with the requirement of this section when he has furnished the purchaser, before consummation of the sale, an itemization in writing which clearly discloses:

I. The delivered price of the motor vehicle, including accessories or extras, if any; and

II. The amounts to be credited as down payment and trade-in, if any; and

III. The time balance owed by the buyer to seller, the amount of each installment payment to be made by the buyer and the number of such installment payments and the due dates thereof; and

IV. The cost of insurance and emergency benefits included in the transaction, the coverage and benefits provided and the party or parties to whom the insurance is payable; and

V. The finance charge; and

VI. Other charges making up the total consideration paid or to be paid by the purchaser, included in the time balance, the amounts and nature of each to

be separately stated; or when all said required information is clearly set forth in the installment sales contract, chattel mortgage or other instrument evidencing the purchase transaction and a true copy of such instrument is furnished to the purchaser before or at the time of the execution thereof.

Provided, however, that subsections I, II, III, IV and V need not be stated in the sequence or order above set forth and that additional items may be included which serve to explain the calculations involved in determining the stated time balance to be paid by the purchaser; and provided further, that when all the said required information is clearly set forth in an installment sales contract, chattel mortgage or other instrument evidencing the purchase transaction, and a true copy of such instrument is furnished to the purchaser before or at the time of his execution thereof, no additional itemization need be furnished to the purchaser.

In the execution of an installment sale contract it shall be unlawful for the seller to procure the purchaser to sign a contract or receipt in blank to be filled in subsequently by the seller or financing institution; provided, however, that where such a contract or receipt contains a clear and sufficient description of the motor vehicle fully adequate to identify it readily, then blanks for insertion of identifying serial numbers and marks when knowledge of such numbers or marks are not available to the seller at the time of execution of the contract need not be filled at the time of execution, provided that such identifying numbers and marks are subsequently inserted in the contract upon delivery of the motor vehicle.

Violation of this section shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. Any person, firm or corporation knowingly financing installment sales contracts made in violation of this section shall be subject to the same penalties; and any license or licenses issued to such person, firm or corporation to conduct the business of financing time sales on motor vehicles may be revoked. (1951, c. 361, § 2.)

Sale of Lightning Rods.

Sec. 307. Manufacturer selling lightning rods licensed.—No manufacturer, whether a person, firm or corporation, shall sell or offer for sale material used for the protection of buildings from damage by lightning until licensed to do so by the commissioner as hereinafter provided. (R. S. c. 56, § 265.)

Sec. 308. Conditions of license; bond; guarantee.—No such license shall be issued until the commissioner has approved of the material made by such manufacturer for protection from lightning and of the manner and system of installing such material, nor until such manufacturer has filed a bond with the commissioner in the penal sum of $10,000, with surety or sureties satisfactory to the commissioner, conditioned for fulfilling the guarantee agreement provided for by this section together with a written stipulation that legal process affecting such manufacturer or his agent, served upon the commissioner for the time being, shall have the same effect as if personally served upon such manufacturer or his agent within the state. The manufacturer shall also file with the commissioner a copy of the guarantee agreement to be issued by him, which shall be in a form approved by the commissioner and must provide in substance that in the event of damage by lightning to property equipped by said manufacturer or his agent, any money paid for the equipment of said building shall be returned to the owner thereof or the damage to said building repaired. When the manufacturer has complied with the foregoing requirements and the commissioner is satisfied that the manufacturer is safe and reliable as to assets, business standing and methods and is entitled to confidence, the commissioner shall issue a license to such manufacturer, to continue in force 1 year from date of issue. The license may be revoked at any time by the commissioner for good cause after a hearing. (R. S. c. 56, § 266.)

See § 311, re penalty; license not transferable.

Sec. 309. Agent's license. — Upon written notice from a manufacturer, licensed under the provisions of the preceding section, of the appointment of a suitable person, who must be a resident of the state, to act as his agent in this state, and upon the presentation of a certificate of the good reputation and moral character of such person, signed by the mayor or selectmen of the city or town of which he is a resident, the commissioner may, if he is satisfied that the appointee is a suitable person and a resident of this state, issue to him a license as such agent. For the purposes of the provisions of sections 307 to 312, inclusive, "such agent" shall be construed to mean the duly licensed resident of this state who purchases, sells and installs such lightning rod material. Such license shall continue in force until the 31st day of December following the date of issue but may be revoked at any time by the commissioner for good cause after a hearing. (R. S. c. 56, § 267.)

See § 311, re penalty; license not transferable.

Sec. 310. Agent to exhibit license when requested by public officer. —Every agent shall, upon demand, exhibit his license to any mayor, selectman, sheriff or his deputy, constable or police officer and to any person to whom he sells or offers to sell lightning rods, and shall furnish a copy of sections 307 to 312, inclusive, to every person to whom he sells such lightning rods. If he neglects or refuses to do so, he shall be liable to the penalty provided by the following section for acting as such agent without a license. (R. S. c. 56, § 268.)

Sec. 311. Selling without license; license not transferable.—Whoever sells or offers for sale such lightning rods or other material, without being licensed as provided by section 308 or section 309, shall be punished by a fine of not more than $200 or by imprisonment for 6 months for each offense. The licenses provided for by sections 308 and 309 are valid for only 1 person, firm or corporation and are not transferable. (R. S. c. 56, § 269.)

Sec. 312. Holder of guarantee agreement may bring suit on bond. —The holder of any guarantee agreement issued under the provisions of section 308 may bring suit in the name of the commissioner upon the bond provided by said section and have the same procedure and remedies thereon as in the case of official bond of sheriffs, but the amount of damages need not be first ascertained. Whenever legal process against such manufacturer is served upon the commissioner, he shall take such action as is provided in the case of the service of legal process against foreign insurance companies. (R. S. c. 56, § 270.)

See c. 89, §§ 165-168, re actions on sheriff's bond.

Recovery of Fines. Jurisdiction of Courts.

Sec. 313. Recovery of fines; jurisdiction of courts.—Penalties for violation of any law of the state relating to insurance may be recovered in an action of debt in the name and to the use of the state or enforced by indictment. The county attorney for the county where the penalties are incurred shall prosecute therefor at the direction of the commissioner or may prosecute therefor on complaint made to him by any citizen. Prosecutions may be commenced by complaint and warrant before any municipal judge or trial justice, as in the case of other offenses not within the final jurisdiction of such judge or justice. (R. S. c. 56, § 271.)

Fees Payable to Insurance Commissioner.

Sec. 314. Fees payable to commissioner.—The commissioner shall receive:

For each license issued to a foreign insurance company, or foreign surety com-

pany, or credit insurance or title insurance company, or to a foreign fraternal beneficiary association to do business in this state, and for each renewal thereof, a fee of $30. For each certificate of qualification of a domestic insurance company to act under its charter and for each annual renewal thereof, a fee of $30, except that domestic fire insurance companies writing on the assessment plan only are exempt from this requirement. For certificate of authority to make reciprocal contracts of indemnity under the provisions of sections 236 to 243, inclusive, and every renewal thereof, a fee of $30. For each annual statement filed by any insurance company, domestic or foreign, a fee of $30, except that domestic mutual fire insurance companies writing on the assessment plan only are exempt from this requirement. All said fees shall be used solely to defray administrative charges and salaries for examinations required by law, for examining and auditing filed annual statements and for the carrying out of any rate regulation imposed by the laws of this state. Every insurance company shall also pay all traveling expenses incurred by order of the commissioner in making the examination required by law, except, however, that a domestic mutual insurance company doing its direct business entirely within the state shall not be required to pay any of the expenses of the examination.

For each license issued to citizens of this state authorizing them to procure policies of fire insurance in foreign insurance companies not authorized to transact business in this state, $20, payable annually.

For each license issued to a resident insurance broker, $25 and to a nonresident broker, $50.

For each license issued to a firm or corporation to act as insurance brokers, $25 for each resident and $50 for each nonresident named in the license.

For each license issued to a resident agent of any insurance company, except a domestic mutual fire insurance company, or to a resident agent of any fraternal beneficiary association, foreign surety company, credit insurance or title insurance company and each renewal thereof, $2, and for each nonresident agent of such company, $10.

For each license issued to a firm or corporation to act as insurance agents, and each renewal thereof, $2 for each resident and $10 for each nonresident named in the license.

For each license issued to an adjuster of losses, $2.

For each license issued to a manufacturer of lightning rods, $20; for each license issued to an agent of such manufacturer, $2.

For approving organization of fraternal beneficiary association, $5.

For receiving service of process against any foreign insurance company, foreign surety, credit insurance or title insurance company, or foreign fraternal beneficiary association or against persons making reciprocal contracts of indemnity, $2, which shall be paid by the plaintiff at the time of such service; and shall be recovered by him as a part of the taxable costs, if he prevails in the suit.

For investigating insurance frauds, $10 a day and his expenses, together with the fees of witnesses, to be taxed as in the supreme judicial court, which shall be paid by the company requesting the investigation, to the commissioner or magistrate appointed by him. (R. S. c. 56, § 272. 1945, c. 118, § 6; c. 378, § 58. 1947, c. 15, § 6. 1953, c. 299, § 2.)

See c. 18, § 1, re fees for certificate of securities deposited with state treasurer; c. 53, § 12, re fees payable by insurance corporations; c. 21, re fees due secretary of state for certificate of organization and for certificate of increase of capital stock of an insurance company.

Fire, Marine and Inland Marine Insurance Rate Regulation.

Sec. 315. Purpose.—The purpose of sections 315 to 330, inclusive, 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 reg-

ulate cooperative action among insurers in rate making and in other matters within the scope of said sections. Nothing in sections 315 to 330, inclusive, is intended to prohibit or discourage reasonable competition or to prohibit or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. Sections 315 to 330, inclusive, shall be liberally interpreted to carry into effect the provisions of this section. (1947, c. 275.)

Sec. 316. Scope.—Sections 315 to 330, inclusive, apply to fire and allied lines, marine and inland marine insurance, on risks located in this state. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance.

Sections 315 to 330, inclusive, shall not apply:

I. To reinsurance, other than joint reinsurance to the extent stated in section 325;

II. To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

III. To insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft;

IV. To motor vehicle insurance nor to insurance against liability arising out of the ownership, maintenance or use of motor vehicles;

V. To insurance written on an assessment or post-loss basis by domestic mutual insurers.

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to the provisions of sections 315 to 330, inclusive, is also subject to regulation by another rate regulation of this state, an insurer to which both regulations are otherwise applicable shall file with the commissioner, a designation as to which rate regulation shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage. (1947, c. 275.)

Sec. 317. Rates.—

I. Rates shall be made in accordance with the following provisions:

A. Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated;

B. Rates shall not be excessive, inadequate or unfairly discriminatory;

C. Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state and to all other relevant factors within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

II. Except to the extent necessary to meet the provisions of paragraph B of subsection I, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

III. Nothing in this section shall be taken to prohibit as unreasonable or un-

fairly discriminatory the establishment of classifications or modifications of classifications of risks based upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

IV. Nothing in sections 315 to 330, inclusive, shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

V. Rates made in accordance with the provisions of this section may be used subject to the provisions of sections 315 to 330, inclusive. (1947, c. 275.)

Sec. 318. Rate filings.—

I. An insurer shall file, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, any manual, minimum, class rate, rating schedule or rating plan and any other rating rule and every modification of any of the foregoing which it proposes to use. Every such filing shall state the effective date thereof and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of the provisions of sections 315 to 330, inclusive, he may require such insurer to furnish the information upon which it supports such filing. Any filing may be supported by the experience or judgment of the insurer or rating organization making the filing, the experience of other insurers or rating organizations or any other factors which the insurer or rating organization deems relevant. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

II. An insurer may satisfy its obligation to make such filings by becoming a member of or a subscriber to a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in sections 315 to 330, inclusive, shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

III. Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph B of subsection I of section 317.

IV. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

V. No insurer shall make or issue a contract or policy except in accordance with filings which are in effect for said insurer as provided in sections 315 to 330, inclusive, or in accordance with subsections III or IV of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required. (1947, c. 275.)

Sec. 319. Disapproval of filings.—

I. If at any time the commissioner has reason to believe that a filing does not

meet the requirements of sections 315 to 330, inclusive, he shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of said sections, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

II. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of sections 315 to 330, inclusive, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of said sections, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

III. No such order shall be issued by the commissioner with respect to the rate of an insurer if such rate is one used by any other insurer unless such order applies equally to all insurers using such rate; provided, however, that such order may be issued to an insurer without being applicable to all other insurers using the same rate if the basis for such order is that the insurer affected thereby could not otherwise, with safety to the public and to its policyholders, be permitted to continue to transact business. (1947, c. 275.)

Sec. 320. Rating organizations.—

I. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith:

A. A certified copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business,

B. A certified list of its members and subscribers,

C. The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organizations may be served,

D. A statement of its qualifications as a rating organization, and

E. A power of attorney appointing the commissioner to be the true and lawful attorney of such organization in and for this state, upon whom all lawful process in any action or proceeding against the organization, other

than an action or proceeding instituted by the said commissioner, may be served with the same effect as if the organization existed in this state.

Whenever any process against such organization shall be served upon said commissioner, he shall forthwith forward a copy of the process served on him, by mail, postpaid and directed to the secretary of the organization.

If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivision or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him.

Licenses issued pursuant to this section shall remain in effect until the 1st day of the next July and annually thereafter such license may be renewed but in all cases to terminate on the 1st day of the succeeding July. The fee for said license and for each annual renewal thereof shall be $30 and shall be subject to the same provisions regarding license fees as set forth by section 314.

Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in its constitution, its articles of agreement or association, or its certificate of incorporation and its by-laws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

II. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers or the refusal of any rating organization to admit an insurer as a subscriber shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it is made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

III. No rating organization shall adopt any rule, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

IV. Cooperation among rating organizations or among rating organizations

and insurers in rate making or in other matters within the scope of sections 315 to 330, inclusive, is authorized, provided the filings resulting from such cooperation are subject to all the provisions of said sections which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of sections 315 to 330, inclusive, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of sections 315 to 330, inclusive, and requiring the discontinuance of such activity or practice.

V. Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within 60 days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

VI. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination. (1947, c. 275.)

Sec. 321. Deviations.—Every member of or subscriber to a rating organization shall adhere to any filing made on its behalf by such organization, except that any such insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance or class of risk within a kind of insurance or combination thereof. Such application shall specify the basis for the modification and a copy thereof shall also be sent simultaneously to such rating organization. The commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than 10 days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In considering the application for permission to file such deviation, the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 317. The commissioner shall issue an order permitting the deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of 1 year from the date of such permission unless terminated sooner with the approval of the commissioner. (1947, c. 275.)

Sec. 322. Appeal by minority.—Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and

subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order. (1947, c. 275.)

Sec. 323. Information furnished insureds; hearings and appeals of insureds.—Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within 30 days after written notice of such action, appeal to the commissioner who, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. (1947, c. 275.)

Sec. 324. Advisory organizations.—

I. Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under the provisions of sections 315 to 330, inclusive, shall be known as an advisory organization.

II. Every advisory organization shall file with the commissioner:

A. A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its by-laws, rules and regulations governing its activities,

B. A list of its members,

C. The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and

D. An agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 326.

III. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of sections 315 to 330, inclusive, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections, and requiring the discontinuance of such act or practice.

IV. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate-making recommendations furnished to it by an advisory organization which has not complied with the provisions of this section or with an order of the commissioner involving such statistics or recommendations issued under the provisions of subsection III. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation. (1947, c. 275.)

Sec. 325. Joint underwriting or joint reinsurance.—

I. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall be subject to regulation with respect thereto as herein provided; subject, however, with respect to joint underwriting, to all other provisions of sections 315 to 330, inclusive, and, with respect to joint reinsurance, to sections 326, 329 and 330.

II. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of sections 315 to 330, inclusive, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections, and requiring the discontinuance of such activity or practice. (1947, c. 275)

Sec. 326. Examinations. — The commissioner shall, at least once in 5 years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 320 and he may, as often as he may deem expedient, make or cause to be made an examination of each advisory organization referred to in section 324 and of each group, association or other organization referred to in section 325. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. (1947, c. 275.)

Sec. 327. Rate administration.—

I. Recording and reporting of loss and expense experience. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 317. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate 1 or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

II. Interchange of rating plan data. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

III. Consultation with other states. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

IV. Rules and regulations. The commissioner may make reasonable rules and regulations necessary to effect the purposes of sections 315 to 330, inclusive.

V. Administrative division. For the purpose of administrating sections 315 to 330, inclusive, and any other provision of law pertaining to the regulation of insurance rates and rating organizations and for the purpose of conducting the examinations of insurance companies required by law, there is set up within the office of the commissioner a division to be known as the Division of Rating and Examinations. The division shall be supervised by a deputy commissioner who shall be subject to all the provisions of the personnel law and he shall receive such compensation as is provided by the rules and regulations of the personnel board for state employees in similar capacities. (1947, c. 275.)

Sec. 328. False or misleading information.—No person or organization shall willfully withhold information from or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, any rating organization or any insurer which will affect the rates or premiums chargeable under the provisions of sections 315 to 330, inclusive. A violation of the provisions of this section shall subject the one guilty of such violation to the penalties provided in section 329. (1947, c. 275.)

Sec. 329. Penalties. — Any person or organization willfully violating any provision of sections 315 to 330, inclusive, shall be subject to a penalty of not more than $500 for each such violation. Such penalty may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization specifying the alleged violation. (1947, c. 275.)

Sec. 330. Hearing procedure and appeal.—

I. Any insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing may, within 30 days after notice of the order to the insurer or organization, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within 20 days after receipt of such request and shall give not less than 10 days' written notice of the time and place of the hearing. Within 15 days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and

decision thereon the commissioner may suspend or postpone the effective date of his previous action.

II. Nothing contained in sections 315 to 330, inclusive, shall require the observance at any hearing of formal rules of pleading or evidence.

III. Any order or decision of the commissioner shall be subject to review by a justice of the superior court in term time or vacation by an appeal taken within 15 days after the date of such order or decision to the superior court held in and for the county of Kennebec at the instance of any party in interest and aggrieved by said order or decision. Such appeal shall be prosecuted by petition to which such party shall annex the order or decision of the commissioner and the record upon which such order or decision is based and in which the appellant shall set out the substance of and the reasons for the appeal. Upon the filing thereof the court in term time or a justice thereof in vacation shall order notice thereof. Upon the evidence and after hearing which shall be held not less than 7 days after notice thereof, the court or a justice thereof may modify, affirm or reverse the order or decision of the commissioner in whole or in part in accordance with law and the weight of the evidence. The court or a justice thereof shall, upon hearing, determine whether the filing of the appeal shall operate as a stay of any such order or decision of the commissioner pending the final determination of the appeal and may impose such terms and conditions as may be deemed proper.

Exceptions shall lie to the law court from the decision of the superior court. (1947, c. 275.)

Casualty and Surety Insurance Rate Regulation.

Sec. 331. Purpose. — The purpose of sections 331 to 347, inclusive, 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 said sections. Nothing in sections 331 to 347, inclusive, is intended to prohibit or discourage reasonable competition, or to prohibit or encourage, except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. Said sections shall be liberally interpreted to carry into effect the provisions of this section. (1947, c. 274.)

Sec. 332. Scope.—The provisions of sections 331 to 347, inclusive, apply to casualty insurance, including fidelity, surety and guaranty bonds, and to all other forms of motor vehicle insurance, on risks or operations in this state, except:

I. Reinsurance, other than joint reinsurance to the extent stated in section 341;

II. Accident and sickness insurance;

III. Insurance against loss of or damage to aircraft or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;

IV. Workmen's compensation shall first be subject to the provisions of chapter 31 but any parts of sections 331 to 347, inclusive, not inconsistent with such chapter shall also apply. The filings required by subsection II of section 6 of chapter 31 may be made on behalf of any workmen's compensation insurer by a rating organization licensed in accordance with the provisions of section 336.

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to the provisions of sections 331 to 347, inclusive, is also subject

to regulation by any other rate-regulatory law of this state, an insurer to which any of such laws are otherwise applicable shall file with the commissioner a designation as to which rate-regulatory law shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage. (1947, c. 274. 1949, c. 421.)

Sec. 333. Rates.—

I. All rates shall be made in accordance with the following provisions:

A. Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state and to all other relevant factors within and outside this state;

B. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;

C. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

D. Rates shall not be excessive, inadequate or unfairly discriminatory.

II. Except to the extent necessary to meet the provisions of paragraph D of subsection I, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

III. Nothing in this section shall be taken to prohibit as unreasonable or unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard or any other reasonable considerations, provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

IV. Nothing in the provisions of sections 331 to 347, inclusive, shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

V. Rates made in accordance with the provisions of this section may be used subject to the provisions of sections 331 to 347, inclusive. (1947, c. 274.)

Sec. 334. Rate filings.—

I. An insurer shall file any manual of classifications, rules and rates, any rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of sections 331 to 347, inclusive, he may

require such insurer to furnish the information upon which it supports such filing. Any filing may be supported by:

A. The experience or judgment of the insurer or rating organization making the filing,

B. The experience of other insurers or rating organizations, or

C. Any other factors which the insurer or rating organization deems relevant.

A filing and any supporting information shall be open to public inspection after the filing becomes effective.

II. An insurer may satisfy its obligation to make such filings by becoming a member of or a subscriber to a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in sections 331 to 347, inclusive, shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

III. Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph D of subsection I of section 333.

IV. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

V. No insurer shall make or issue a contract or policy except in accordance with filings which are in effect for said insurer as provided in sections 331 to 347, inclusive, or in accordance with subsection III or IV. (1947, c. 274.)

Sec. 335. Disapproval of filings.—

I. If at any time the commissioner has reason to believe that a filing does not meet the requirements of sections 331 to 347, inclusive, he shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of said sections, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

II. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon; provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under the provisions of this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established and that such grounds otherwise justify holding such a hearing, he shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

If, after such hearing, the commissioner finds that the filing does not meet

the requirements of sections 331 to 347, inclusive, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of said sections, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

III. No such order shall be issued by the commissioner with respect to the rate of an insurer if such rate is one used by any other insurer unless such order applies equally to all insurers using such rate; provided, however, that such order may be issued to an insurer without being applicable to all other insurers using the same rate if the basis for such order is that the insurer affected thereby could not otherwise, with safety to the public and to its policyholders, be permitted to continue to transact business. (1947, c. 274.)

Sec. 336. Rating organizations.—

I. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith:

A. A certified copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business,

B. A certified list of its members and subscribers,

C. The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organizations may be served,

D. A statement of its qualifications as a rating organization, and

E. A power of attorney appointing the commissioner to be the true and lawful attorney of such organization in and for this state, upon whom all lawful process in any action or proceeding against the organization other than an action or proceeding instituted by the said commissioner may be served with the same effect as if the organization existed in this state.

Whenever any process against such organization shall be served upon said commissioner he shall forthwith forward a copy of the process served on him, by mail, postpaid and directed to the secretary of the organization.

If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him.

Licenses issued pursuant to this section shall remain in effect until the 1st day of the next July and annually thereafter such license may be renewed but in all cases to terminate on the 1st day of the succeeding July. The fee for said license and for each annual renewal thereof shall be $30 and shall be subject to the same provisions regarding license fees as set forth by section 314.

Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization

ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in its constitution, its articles of agreement or association, or its certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

II. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

III. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

IV. Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of sections 331 to 347, inclusive, is authorized, provided the filings resulting from such cooperation are subject to all the provisions of said sections which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of sections 331 to 347, inclusive, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections and requiring the discontinuance of such activity or practice. (1947, c. 274.)

Sec. 337. Deviations. — Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization, except that any such insurer may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance comprised of a group of manual classifications which is treated as a separate unit for rate-making purposes, or for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall

be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization. The commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than 10 days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. The commissioner shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory. Each deviation permitted to be filed shall be effective for a period of 1 year from the date of such permission unless terminated sooner with the approval of the commissioner. (1947, c. 274.)

Sec. 338. Appeal by minority.—Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in paragraph B of subsection I of section 333, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in section 333. (1947, c. 274.)

Sec. 339. Information furnished insureds; hearings and appeals of insureds.—Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within 30 days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. (1947, c. 274.)

Sec. 340. Advisory organizations.—

I. Every group, association or other organization of insurers, whether lo-

cated within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under the provisions of sections 331 to 347, inclusive, shall be known as an advisory organization.

II. Every advisory organization shall file with the commissioner:

A. A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its by-laws, rules and regulations governing its activities,

B. A list of its members,

C. The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and

D. An agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 342.

III. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of sections 331 to 347, inclusive, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections, and requiring the discontinuance of such act or practice.

IV. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt ratemaking recommendations, furnished to it by an advisory organization which has not complied with the provisions of this section or with an order of the commissioner involving such statistics or recommendations issued under the provisions of subsection III. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation. (1947, c. 274.)

Sec. 341. Joint underwriting or joint reinsurance.—

I. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall be subject to regulation with respect thereto as herein provided; subject, however, with respect to joint underwriting, to all other provisions of sections 331 to 347, inclusive, and, with respect to joint reinsurance, to sections 342, 346 and 347. (1953, c. 308, § 81)

II. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of sections 331 to 347, inclusive, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections, and requiring the discontinuance of such activity or practice. [1953, c. 308, § 81]. (1947, c. 274. 1953, c. 308, § 81.)

Sec. 342. Examinations. — The commissioner shall, at least once in 5 years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 336 and he may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section 340 and of each group, association or other organization referred to in section 341. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization or group, association or other organization examined upon presentation to it of a detailed

account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. (1947, c. 274.)

Sec. 343. Rate administration.—

I. Recording and reporting of loss and expense experience. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 333. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate 1 or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

II. Interchange of rating plan data. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

III. Consultation with other states. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

IV. Rules and regulations. The commissioner may make reasonable rules and regulations necessary to effect the purposes of sections 331 to 347, inclusive. (1947, c. 274.)

Sec. 344. False or misleading information.—No person or organization shall willfully withhold information from or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, any rating organization or any insurer which will affect the rates or premiums chargeable under the provisions of sections 331 to 347, inclusive. A violation of the provisions of this section shall subject the one guilty of such violation to the penalties provided in section 346. (1947, c. 274.)

Sec. 345. Assigned risks. — Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree

among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. (1947, c. 274.)

Sec. 346. Penalties.—Any person or organization willfully violating any provision of sections 331 to 347, inclusive, shall be subject to a penalty of not more than $500 for each such violation. Such penalty may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization specifying the alleged violation. (1947, c. 274.)

Sec. 347. Hearing procedure and appeal.—

I. Any insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing, may, within 30 days after notice of the order to the insurer or organization, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within 20 days after receipt of such request and shall give not less than 10 days' written notice of the time and place of the hearing. Within 15 days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

II. Nothing contained in sections 331 to 347, inclusive, shall require the observance at any hearing of formal rules of pleading or evidence.

III. Any order or decision of the commissioner shall be subject to review by a justice of the superior court in term time or vacation by an appeal taken within 15 days after the date of such order or decision to the superior court held in and for the county of Kennebec at the instance of any party in interest and aggrieved by said order or decision. Such appeal shall be prosecuted by petition to which such party shall annex the order or decision of the commissioner and the record upon which such order or decision is based and in which the appellant shall set out the substance of and the reasons for the appeal. Upon the filing thereof the court in term time or a justice thereof in vacation shall order notice thereof. Upon the evidence and after hearing which shall be held not less than 7 days after notice thereof, the court or a justice thereof may modify, affirm or reverse the order or decision of the commissioner in whole or in part in accordance with law and the weight of the evidence. The court or a justice thereof shall, upon hearing, determine whether the filing of the appeal shall operate as a stay of any such order or decision of the commissioner pending the final determination of the appeal and may impose such terms and conditions as may be deemed proper.

Exceptions shall lie to the law court from the decision of the superior court. (1947, c. 274.)

Hearings.

Sec. 348. Duties of commissioner at hearings. — The commissioner shall hold a hearing if required by any provision of the revised statutes. Such hearing may be conducted by the commissioner, the deputy commissioner or by any competent salaried employee of the department whom the commissioner may authorize to act. The hearing shall be held at the place designated by the commissioner, and shall be open to the public, unless the commissioner or person holding the same shall determine that a private hearing would be in the public interest, in which case it shall be private. Application for a hearing made to the commissioner pursuant to any provision of the revised statutes shall be in writing, and shall specify in what respects the person so applying was aggrieved and the grounds to be relied upon as the basis for relief to be demanded at the hearing. In any case the commissioner may require that the application be signed and sworn to by a person competent to be a witness in civil courts. Nothing herein shall require the observance at such hearing of formal rules of pleading or evidence except that formal rules of evidence shall be followed at the election of any party who communicates notice of such election to all other parties not less than 5 days prior to the date of the hearing. The commissioner shall hold such hearing applied for within 30 days after receipt of the application, unless the commissioner shall require the application to be sworn to; in which case, he shall hold the hearing within 30 days after the application has been sworn to.

The commissioner shall, not less than 14 days in advance, give notice of the time and place of the hearing, specifying the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons directly affected by such hearing; provided, however, that by mutual or common consent, the above notice may be waived and the hearing held at such time as may be agreed upon. Provided further, that in any case in which the commissioner is required by law to conduct an examination of a company or to conduct an investigation of a fire or other casualty, or to approve buildings, premises or equipment for licensing, no previous notice of such examination or investigation need be given. (1953, c. 380.)

Sec. 349. Conduct of hearings.—The commissioner or person conducting the hearing may administer oaths, examine and cross-examine witnesses, either personally or by counsel or other representative, and receive oral and documentary evidence. He may subpoena witnesses and require the production of books, papers, records, correspondence and other documents relevant to the inquiry. He may in any case cause a complete stenographic record to be made of the evidence and proceedings at the inquiry; and at the expense of and at the written request seasonably made by a person affected by the hearing, the commissioner or other persons conducting the hearing shall cause a complete stenographic record to be made by a competent stenographic reporter, and such record shall be made a part of the commissioner's record of the hearing. A copy of such record shall be furnished to any other party upon the written request and at the expense of such party. Parties in interest shall be allowed to be present in person and by counsel during the giving of all testimony, and shall be allowed a reasonable opportunity to inspect all documentary evidence, to examine and cross-examine witnesses and to present evidence of their respective interests. The validity of any hearing held in accordance with the notice thereof shall not be affected by the failure of any person to attend or to remain in attendance. If the hearing is conducted by some person other than the commissioner, such person shall report his findings as if taken by the commissioner. Such report, if accepted by the commissioner, may be the basis of any determination made by him or by his authority. Within 15 days after the hearing, the commissioner shall make his order thereon, setting forth his action thereon, the effective date of the order, together with such sum-

mary of his findings as may be necessary. The commissioner shall give a copy of such order to each person to whom notice of the hearing was given or required to be given. (1953, c. 380.)

Sec. 350. Appeal. — Any person aggrieved by an order of the commissioner or by any rule or regulation promulgated by the commissioner may appeal therefrom to a justice of the supreme judicial court or the superior court. Such appeal shall be taken within 30 days, unless a shorter or different time is specified in a particular statute, but the commissioner or person conducting the hearing may for cause shown allow a longer time. The appellant shall present to a justice of either of the above courts a petition, in term time or vacation, setting forth the grounds for appeal, and such justice shall fix a time and place for hearing and cause notice thereof to be given the commissioner and other interested parties as in equity. The appeal shall be heard on legal evidence, and after such hearing the justice may affirm, modify or reverse the decision of the commissioner, and shall remand the cause to the commissioner for further proceedings in accordance with the court decree. (1953, c. 380.)

Sec. 351. Duties of a witness.—Every person subpoenaed to appear at any hearing, examination or investigation held by the commissioner or by his authority is required to obey the subpoena, testify truthfully, conduct himself with decorum and do nothing that might in any way obstruct the purpose of the hearing. No person shall be excused from attending and testifying in obedience to a subpoena issued hereunder on the ground that the proper witness fee was not paid or tendered, unless the witness shall have made demand for such payment as a condition precedent to attending such hearing or investigation and unless such demand shall not have been complied with. Witnesses shall be entitled to the same fees and allowances as witnesses in the superior court; provided, however, that no insurer, insurance agent, insurance broker or other person subject to the provisions of this chapter, whose conduct, condition or practices are being investigated, and no officer, director or employee of any such insurer, insurance agent, insurance broker or other person shall be entitled to witness or mileage fees. (1953, c. 380.)

Sec. 352. Commissioner's orders, how enforced.—Whoever, without reasonable excuse, fails to appear when summoned as a witness, or refuses to answer a lawful and pertinent question, or refuses to produce a book or writing when directed to do so by the person lawfully conducting a hearing or investigation, or deports himself in a disrespectful or disorderly manner at such inquiry, or obstructs the proceedings by any means, whether or not he be in the presence of the person lawfully conducting the inquiry, or willfully neglects or refuses to obey any lawful order of the person conducting the inquiry is guilty of contempt and may be dealt with as follows: The commissioner, or other person lawfully conducting the inquiry, may address to a justice of the supreme judicial court or the superior court a petition, setting forth under oath the facts constituting the contempt and asking for an order returnable in not less than 2 nor more than 5 days, directing the alleged contemner to show cause before the justice who signed the order, or before any other justice of the supreme judicial court or superior court to whom the order may be made returnable, why he should not be punished for contempt; upon the return of such order, the justice before whom the matter shall come for hearing shall examine under oath the alleged contemner and the alleged contemner shall be given an opportunity to be heard; and if the justice shall determine that the respondent has committed any alleged contempt, the justice may punish the offender as if the contempt had occurred in an action arising in or pending in said court. (1953, c. 380.)