

MAINE STATE LEGISLATURE

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TITLE 24

INSURANCE

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CHAPTER 1

GENERAL PROVISIONS

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SUBCHAPTER I

DEFINITIONS

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1. Insurance contract.
2. "Domestic" and "foreign".

§ 1. Insurance contract

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. A contract of life insurance is an agreement dependent upon human life by which one party for a consideration promises to pay money or its equivalent or to do some act of value upon the death or disability of the insured or the termination of a specified period.

R.S.1954, c. 60, § 1; 1961, c. 211.

§ 2. "Domestic" and "foreign"

The word "domestic," when used in this Title, means companies incorporated by this State; and the word "foreign" means companies not so incorporated.

R.S.1954, c. 60, § 29.

SUBCHAPTER II

INSURANCE COMMISSIONER

Sec.

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61. Appointment of receiver for domestic life companies.
62. Receivers.
63. Dissolution of domestic company.

§ 51. Appointment, term and duties; deputies

The Insurance Department, as heretofore established, includes the Division of State Fire Prevention.

The head of the department is the Insurance Commissioner.

The Insurance Commissioner, as heretofore appointed and hereinafter in this Title called "commissioner", shall be appoint-

ed by the Governor with the advice and consent of the 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 \$11,500. He may appoint, subject to 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 shall become during such vacancy, absence or disability of that officer the acting insurance commissioner.

R.S.1954, c. 60, § 2; 1955, c. 473, § 15; 1957, c. 418, § 18; 1959, c. 361, § 13; c. 378, § 40; 1963, c. 379.

§ 52. Cost of printed material recovered

The commissioner may have the directory of insurance companies and agents, examination material, the insurance laws and other related laws and regulations under his administration published in pamphlet form from time to time, and may establish the price for each copy to cover the cost of printing and mailing.

1959, c. 146.

§ 53. Notice of organization; license

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. 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. Exempt from the above shall be such shares of capital stock as shall be authorized by a majority of the company's stockholders at any meeting duly called for such purpose and reserved under such vote for stock option purposes. When options are exercised such increase in capital stock shall be duly certified to the com-

missioner for his approval as provided for in section 515. The certificate is effective until July 1st of the year following its date of issue.

R.S.1954, c. 60, § 3; 1959, c. 220, § 1; c. 346, § 1.

§ 54. Powers regarding exchange of stock

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.1954, c. 60, § 4.

§ 55. 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 section 60.

R.S.1954, c. 60, § 5.

§ 56. Notice to insurance companies of form disapproval

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 appeal to the Superior Court in Kennebec County by filing a complaint 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. It is the intent of this section that any such policy form or form of endorsement shall first be submitted to the commissioner for approval before being delivered or issued for delivery to any person in this State. No such policy form or form of endorsement may be so delivered or issued for delivery until the expiration of 30 days after it has been so submitted unless the commissioner shall sooner give his written approval thereto.

This section shall not apply to policy forms or forms of endorsement for ocean marine insurance as referred to in section 2702, subsection 2, and for insurance on specially rated inland marine risks.

R.S.1954, c. 60, § 6; 1957, c. 42; 1961, c. 317, § 181.

§ 57. Annual statement of condition; neglect

Every insurance company doing business in the State shall annually, by the first 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. Any company, association or society which neglects or refuses to comply with this section forfeits \$5 a day for each day's neglect. Except in the case of life insurance companies, the commissioner may, for good and sufficient cause shown, extend the filing date of such annual statement for a reasonable period of time.

R.S.1954, c. 60, § 7; 1957, c. 138.

§ 58. 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 this Title.

R.S.1954, c. 60, § 8.

§ 59. Examination of domestic companies; production of books and records

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. 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. A domestic mutual insurance company doing its direct business entirely within the State of Maine shall be examined biennially.

R.S.1954, c. 60, § 9.

§ 60. Injunction proceedings against domestic companies

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 the Superior Court to issue an injunction restraining the company in whole or in part from proceeding further with its business. The court may thereupon, issue such temporary restraining orders, preliminary or permanent injunctions, as it thinks proper, either of which it may afterwards modify, vacate or perpetuate and may pass such orders and decrees, appoint receivers to receive the assets of the company and referees 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 it 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.1954, c. 60, § 10; 1963, c. 414, § 58.

§ 61. Appointment of receiver for domestic life companies

No 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 the Superior Court to proceed as provided in section 60. 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.1954, c. 60, § 11; 1961, c. 317, § 182; 1963, c. 414, § 59.

§ 62. Receivers

Receivers appointed under this Title shall have the same power and rights of action, and the course of proceedings so far as applicable shall be the same, as is prescribed for receivers of savings banks.

R.S.1954, c. 60, § 12.

§ 63. Dissolution of domestic company

The commissioner shall file a complaint for dissolution of a domestic insurance company when the company has not obtained a license to transact insurance business as required by section 53 within one year of the date of its incorporation, or when it stops transacting insurance business continuously for one year.

1. Power of court. On proof of its failure to become licensed or to transact business, the court shall enjoin the company from further activity and order its dissolution or sale according to Title 13, sections 541 to 548, 555 and 556.

2. Insurance business defined. The transaction of insurance business means the issuance of contracts of insurance covering risks in this State, or the receipt of premiums for the continuation of contracts already in force.

1959, c. 152, § 1; 1963, c. 414, § 60.

SUBCHAPTER III

HEARINGS

Sec.

- 111. Duties of commissioner.
- 112. Conduct of hearings.
- 113. Appeals.
- 114. Witnesses.
- 115. Enforcement of commissioner's orders.

§ 111. Duties of commissioner

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. By mutual or common con-

sent, the above notice may be waived and the hearing held at such time as may be agreed upon. 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.

R.S.1954, c. 60, § 348.

§ 112. 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. At the expense of and at the written request seasonably made by a person affected by the hearing, the commissioner or other person 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 summary 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.

R.S.1954, c. 60, § 349.

§ 113. Appeals

Any person aggrieved by an order of the commissioner or by any rule or regulation promulgated by the commissioner may appeal therefrom to 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 file with the court a complaint, setting forth the grounds for appeal, and the court shall fix time and place for hearing and cause notice thereof to be given the commissioner and other interested parties. The appeal shall be heard on legal evidence, and after such hearing the court 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.

R.S.1954, c. 60, § 350; 1961, c. 317, § 207.

§ 114. Witnesses

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. No insurer, insurance agent, insurance broker or other person subject to this Title, 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.

R.S.1954, c. 60, § 351.

§ 115. Enforcement of commissioner's orders

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 departs 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 the Superior Court a complaint, 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 court, why he should not be punished for contempt. Upon the return of such order, the court shall examine under oath the alleged contemner and the alleged contemner shall be given an opportunity to be heard. If the court shall determine that the respondent has committed any alleged contempt, the court may punish the offender as if the contempt had occurred in an action arising in or pending in said court.

R.S.1954, c. 60, § 352; 1963, c. 414, § 85.

SUBCHAPTER IV

UNAUTHORIZED INSURERS

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- 222. Service of process.
- 223. Defense of action.
- 224. Attorney fees.
- 225. Authorization required; exceptions.

ARTICLE 2. UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT

- 271. Purpose; liberal construction.
- 272. Definitions.
- 273. Notice to supervisory official and insurer of illegal practices.
- 274. Action by commissioner against insurer.
- 275. Service on unauthorized insurer.

ARTICLE 1. GENERAL PROVISIONS

§ 221. Purpose

The purpose of sections 221 to 224 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 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 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.

R.S.1954, c. 60, § 13.

§ 222. Service of process

1. Service upon commissioner. 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 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 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.

1963, c. 414, § 61.

2. How made; notice; receipt. Such service of process shall be made by delivering to and leaving with the 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 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.

3. Service on person soliciting insurance and others; affidavit. Service of process in any such action or proceeding shall in addition to the manner provided in subsection 2 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.

1963, c. 414, § 62.

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

1963, c. 414, § 62.

5. Other service permitted by law. 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.

R.S.1954, c. 60, § 14; 1963, c. 414, §§ 61, 62.

§ 223. Defense of action

1. Cash, securities or bond filed; certificate of authority. Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it, such unauthorized insurer shall either

A. Deposit with the clerk of the court in which such action 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.

1963, c. 414, § 63.

2. Postponement of action. The court in any action or proceeding, in which service is made in the manner provided in section 222, subsections 2 or 3, may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with subsection 1 and to defend such action.

1963, c. 414, § 63.

3. Motion to dismiss a complaint or set aside service. Nothing in subsection 1 is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to dismiss a complaint or to set aside service thereof made in the manner provided in section 222, subsections 2 or 3, on the ground either

A. That such unauthorized insurer has not done any of the acts enumerated in section 222, subsection 1, or

B. That the person on whom service was made pursuant to section 222, subsection 3, was not doing any of the acts therein enumerated. (1963, c. 414, § 63.)

R.S.1954, c. 60, § 15; 1963, c. 414, § 63.

§ 224. 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.

R.S.1954, c. 60, § 16.

§ 225. Authorization required; 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. This section shall not apply:

1. **Class or kind of insurance written.** 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;

2. **Person insured is present.** 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;

3. **Group life, accident.** 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;

4. **Contracts otherwise lawful.** 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 this section;

5. Similar provision in other state. 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.1954, c. 60, § 17.

ARTICLE 2. UNAUTHORIZED INSURERS FALSE ADVERTISING
PROCESS ACT

§ 271. Purpose; liberal construction

The purpose of sections 271 to 275 is to subject to the jurisdiction of the commissioner of this State and to the jurisdiction of the courts of this State insurers not authorized to transact business in this State which place in or send into this State any false advertising designed to induce residents of this State to purchase insurance from insurers not authorized to transact business in this State. The Legislature declares it is in the interest of the citizens of this State who purchase insurance from insurers which solicit insurance business in this State in the manner set forth in the preceding sentence that such insurers be subject to sections 271 to 275. 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 exercises powers and privileges available to the State by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st Session, S. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided herein to be in addition to any existing powers of this State.

Sections 271 to 275 shall be liberally construed.

1961, c. 226.

§ 272. Definitions

When used in sections 271 to 275:

1. Commissioner. "Commissioner" shall mean the Insurance Commissioner of this State.

2. Unfair Trade Practice Act. "Unfair Trade Practice Act" shall mean The Act Relating to Unfair Methods of Competition

and Unfair and Deceptive Acts and Practices in the Business of Insurance, which consists of sections 2901 to 2905 and 2909 to 2917.

3. Residents. "Residents" shall mean and include persons, partnerships or corporations, domestic, alien or foreign.

1961, c. 226.

§ 273. Notice to supervisory official and insurer of illegal practices

No unauthorized foreign or alien insurer of the kind described in section 271 shall make, issue, circulate or cause to be made, issued or circulated, to residents of this State any estimate, illustration, circular, pamphlet or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practice Act, and whenever the commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, it shall be his duty to give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

1961, c. 226; 1963, c. 414, § 64.

§ 274. Action by commissioner against insurer

If after 30 days following the giving of the notice mentioned in section 273 such insurer has failed to cease making, issuing or circulating such false misrepresentations or causing the same to be made, issued or circulated in this State, and if the commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this State or collecting premiums on such contracts or doing any of the acts enumerated in section 275, he shall take action against such insurer under the Unfair Trade Practice Act.

1961, c. 226.

§ 275. Service on unauthorized insurer

1. Acts in the State. Any of the following acts in this State, effected by mail or otherwise, by any such unauthorized foreign or alien insurer:

A. The issuance or delivery of contracts of insurance to residents of this State,

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 insurance business,

is equivalent to and shall constitute an appointment by such insurer of the commissioner and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in section 273 under the Unfair Trade Practice Act, or in any action or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices or process is of the same legal force and validity as personal service of such statement of charges, notices or process in this State, upon such insurer.

2. How made. Service of a statement of charges and notices under said Unfair Trade Practice Act shall be made by any deputy or employee of the Insurance Department delivering to and leaving with the commissioner or some person in apparent charge of his office, 2 copies thereof. Service of process issued by any court in any action or proceeding to collect any penalty provided under said Act shall be made by delivering and leaving with the commissioner, or some person in apparent charge of his office, 2 copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one of the copies of such statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed 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 person mailing such letter showing a compliance herewith are filed with the commissioner in the case of

any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

1963, c. 414, § 65.

3. Upon other persons. Service of statement of charges, notices and process in any such proceeding or action shall in addition to the manner provided in subsection 2 be valid if served upon any person within this State who on behalf of such insurer is

A. Soliciting insurance, or

B. Making, issuing or delivering any contract of insurance, or

C. Collecting or receiving in this State any premium for insurance; and a copy of such statement of charges, notices or process is sent within 10 days thereafter by registered mail by or on behalf of the commissioner 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, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

1963, c. 414, § 66.

4. Cease or desist orders. No cease or desist order under this section shall be entered until the expiration of 30 days from the date of the filing of the affidavit of compliance.

5. Service additional. Service of process and notice under sections 271 to 275 shall be in addition to all other methods of service provided by law, and nothing in sections 271 to 275 shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law.

1961, c. 226; 1963, c. 414, §§ 65, 66.

SUBCHAPTER V

DEPOSIT OF SECURITIES WITH STATE TREASURER

Sec.

- 321. Deposit authorized.
- 322. —Certificate furnished.
- 323. Interest or dividends; securities.
- 324. Relinquishment of out-of-state business.
- 325. Deposit by accident or health stock companies.
- 326. —Certificate furnished.
- 327. Return of securities.
- 328. Proceedings when company fails.

§ 321. Deposit authorized

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.1954, c. 60, § 18.

§ 322. —Certificate furnished

The Treasurer of State shall furnish such company mentioned in section 321 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.1954, c. 60, § 19.

§ 323. Interest or dividends; securities

The Treasurer of State shall hold the securities deposited under section 321 on deposit in accordance with sections 321 and 322, 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. 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. Thereupon the said treasurer shall issue a new certificate as provided in section 322. The Treasurer of State on being satisfied of the repeal or alteration of the law of such other state described in section 321, disqualifying the depositing company from continuing its business therein, shall return the securities on demand.

R.S.1954, c. 60, § 20.

§ 324. Relinquishment of out-of-state business

When a company described in section 321 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.1954, c. 60, § 21.

§ 325. 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.1954, c. 60, § 22.

§ 326. —Certificate furnished

The Treasurer of State shall furnish such company described in section 325 with a certificate or certificates in accordance with section 322; and shall hold the securities deposited as provided in section 325, under the provisions thereof, and section 323 shall be applicable thereto.

R.S.1954, c. 60, § 23.

§ 327. Return of securities

When any company described in section 325 shall satisfy the commissioner that it has no policies in force and all its obliga-

tions to policyholders have been fully satisfied, the Treasurer of State shall return its securities on demand.

R.S.1954, c. 60, § 24.

§ 328. Proceedings when company fails

If any company depositing securities as provided in sections 321 and 325 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 post office 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 this section 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 civil action 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 action 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.1954, c. 60, § 25; 1961, c. 317, § 183.

SUBCHAPTER VI

FEES, FINES AND PENALTIES

Sec.

- 371. Commissioner's fee schedule.
- 372. Use of fees.
- 373. Company to pay examination expense.
- 374. Recovery of fines; jurisdiction.
- 375. Duly organized company required.
- 376. General penalty provisions.

§ 371. Commissioner's fee schedule

The commissioner shall charge according to the fee schedule outlined in this section.

1. Insurance company licenses. The fees for issuing or renewing company licenses and certificates are as follows:

A. License to a foreign insurance company, foreign surety company or foreign fraternal benefit society to do business in this State, \$50.

B. Certificate of qualification of a domestic insurance company to act under its charter, \$50.

(1) A domestic mutual fire insurance company writing only on the assessment basis need not pay this fee.

1961, c. 184, § 5.

2. Road or tourist service and agent's licenses. The fee for issuing or renewing a license to a road or tourist service under section 2202 is \$20. The fee for issuing or renewing to an agent under section 2204 is \$2.

3. Nonprofit hospital and medical service organization and agent's licenses. The fee for issuing or renewing a license to a nonprofit hospital or medical service organization under section 2305 is \$20. The fee for issuing or renewing a license to an agent under section 2313 is \$2.

1959, c. 378, § 50.

4. Reciprocal contract certificate. The fee for issuing or renewing a certificate of authority to make reciprocal contracts of indemnity under chapter 7, subchapter II, is \$50.

5. Agent's and broker's licenses. The fees for issuing or renewing agent's and broker's licenses are as follows:

A. License to a resident agent of any insurance company, surety company or fraternal benefit society, \$2.

(1) A resident agent of a domestic mutual fire insurance company need not pay this fee.

B. License to a nonresident agent, \$10.

C. License to a resident broker, \$25.

D. License to a nonresident broker, \$50.

E. License to an organization to act as an insurance agent, \$2 for each resident and \$10 for each nonresident named in the license.

(1) An organization acting as agent of a domestic mutual fire insurance company need not pay this fee.

F. License to an organization to act as an insurance broker, \$25 for each resident and \$50 for each nonresident named in the license.

G. License to a surplus line broker, \$20.
1961, c. 184, § 6.

6. Adjuster's license. The fee for issuing or renewing an adjuster's license is \$2.

7. Examination of agents, brokers and adjusters. The fee for examination of an agent, broker or adjuster is \$10.

A. The fee need not be paid for the first re-examination but must be paid for each further re-examination.

B. The fee is not returnable after an applicant takes the examination for which it was paid.

C. The fee need not be paid if exempted by section 2504, subsection 7.

8. Filing annual statement. The fee for filing the annual statement submitted by each insurance company or fraternal benefit society is \$50.

A. A domestic mutual fire insurance company writing only on the assessment basis need not pay this fee.

1961, c. 184, § 7.

9. Receiving service of process. The fee for receiving service of process in a civil action against any foreign insurance company, surety company or fraternal benefit society or against a person making a reciprocal contract of indemnity is \$2.

A. This shall be paid by the plaintiff at the time of the service.

B. The plaintiff may recover this fee as part of the taxable costs of the action if he prevails.

1961, c. 184, § 8; c. 417, § 158.

10. Lightning rod manufacturer's and salesman's licenses. The fee for issuing or renewing a license to a lightning rod manufacturer is \$20. The fee for issuing or renewing a license to a lightning rod salesman is \$2.

R.S.1954, c. 60, § 314; 1957, c. 48; c. 429, § 52; 1959, c. 346, § 18; c. 378, § 50; 1961, c. 184, §§ 5-8; c. 417, § 158.

§ 372. Use of fees

The fees collected under section 371, subsections 1 and 8, shall be used solely to defray administrative expenses for examining companies, reviewing and auditing annual statements, and regulating rates as required by this Title.

1959, c. 346, § 19.

§ 373. Company to pay examination expense

An insurance company shall pay all travel expenses incurred by order of the commissioner in examining the company as required by law.

1. Exception. A domestic mutual insurance company which does its direct business entirely in the State need not pay any of the expenses of its examination.

1959, c. 346, § 19.

§ 374. Recovery of fines; jurisdiction

Penalties for violation of any law of the State relating to insurance may be recovered in a civil action 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 District Court Judge, as in the case of other offenses not within the final jurisdiction of such judge.

R.S.1954, c. 60, § 313; 1961, c. 317, § 204; 1963, c. 402, § 97.

§ 375. Duly organized company required

A person or organization other than an incorporated insurance company which transacts insurance business by issuing or delivering insurance contracts in this State shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 2 years, or by both.

1. Exception. This does not apply to the issue or delivery of contracts of indemnity governed by chapter 7, subchapter II.

1959, c. 346, § 3.

§ 376. General penalty provisions

The following general penalty provisions apply to this Title:

1. Individual penalty. If a person fails or refuses to perform a duty required by this Title for which no penalty has been provided, he shall be punished by a fine of not more than \$100 or by imprisonment for not more than 10 days, or by both. If a person performs an act prohibited by this Title for which no penalty has been provided, he shall be punished by a fine of not more than \$100 or by imprisonment for not more than 10 days, or by both.

2. Organization penalty. If an organization of any type fails or refuses to perform a duty required by this Title for which no penalty has been provided, it shall be punished by a fine of not more than \$250. If an organization performs an act prohibited by this Title for which no penalty has been provided, it shall be punished by a fine of not more than \$250.

A. Any member of the organization who authorizes or participates in any act or omission in violation of this subsection shall be punished by a fine of not more than \$250 or by imprisonment for not more than 30 days, or by both.

1959, c. 346, § 20.

SUBCHAPTER VII

MISCELLANEOUS PROVISIONS

Sec.

- 421. Annuity companies.
- 422. Inquests into insurance frauds.
- 423. Actions by assignees.
- 424. Liability absolute when loss occurs.
- 425. Judgment creditor may have insurance; exceptions.
- 426. Exemption from claims of creditors; rights of beneficiaries and assignees.

§ 421. Annuity companies

All corporations, whether incorporated in this State or elsewhere, which issue contracts 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 law relating to life insurance, including all provisions relating to taxation.

R.S.1954, c. 60, § 170.

§ 422. Inquests into 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.1954, c. 60, § 304.

§ 423. Actions by assignees

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 action, 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.1954, c. 60, § 301; 1961, c. 317, § 202.

§ 424. Liability 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. 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.1954, c. 60, § 302.

§ 425. Judgment creditor may have insurance; 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 section 424, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment by bringing a civil action, in his own name, against the insuring company to reach and apply said insurance money, provided 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. The insuring company shall have the right to invoke the defenses described in this section in said proceedings. None of the provisions of this paragraph and section 424 shall apply:

1. Motor vehicle operated illegally or by one under age. 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

2. Motor vehicle used in race contest. When such automobile, motor vehicle or truck is being used in any race or speed contest; or

3. Motor vehicle used for towing a trailer. 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

4. Liability assumed. In the case of any liability assumed by the insured for others; or

5. Liability under workmen's compensation. In the case of any liability under any workmen's compensation agreement, plan or law; or

6. Fraud or collusion. When there is fraud or collusion between the judgment creditor and the insured.

No civil action 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.1954, c. 60, § 303; 1961, c. 317, § 203.

§ 426. Exemption 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 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. 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 as 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.1954, c. 60, § 159.