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Insurance

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developed. If, as has been suggested, this new tinned milk may be genuinely competitive with fresh milk, the price-fixing apparatus will have to be extended, or the new competitor kept out by artificially high sanitary requirements.³²

Serious questions may be raised whether, if concentrated milk becomes available on a continuing and reliable basis from producing areas far removed from urban markets, there will continue to be justification for elaborate control mechanisms "designed solely to protect, encourage, or handle local seasonal surplus in areas that would otherwise be characterized as milk deficient."³³ Questions are also being raised as to whether the benefits of improved dairy technology, the fruits of intensive research often carried on at public expense, may not be denied to producers and consumers by regulation which may be designed to "protect established market relationships rather than the public's health."³⁴

INSURANCE

*G. Frank Purvis, Jr.**

The 1962 legislature covered a wide variety of insurance subjects although the enactments in this field of law were relatively few.

I. ORGANIZATIONAL AND FINANCIAL REQUIREMENTS

(a) *Initial Minimum Surplus*

Previous legislatures had increased the capital and surplus required for the organization and operation of certain types of insurers and the 1962 legislature followed this up by making similar requirements of mutual and reciprocal insurers. Act 49 amended Section 121 of the Insurance Code to increase the initial minimum surplus required of domestic mutual insurers transacting life insurance only, health and accident insurance only, or a combination of these, from \$150,000 to \$200,000. Act 50

32. *Ibid.* Concentrated milk sold in hermetically sealed containers is presently exempted from the Louisiana act. LA. R.S. 40:940.1(1) (Supp. 1962).

33. *Id.* at 21.

34. *Id.* at 12.

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amended Section 435 of the Code to increase the initial minimum surplus required of domestic reciprocal insurers transacting health and accident insurance from \$150,000 to \$200,000. Each of these acts also requires existing insurers to meet these increases in surplus on or before August 1, 1965.

(b) Organizational Bonds

Formerly the law required only the incorporators of domestic insurers in the process of organization "whose minimum capital or initial minimum surplus exceeds one hundred thousand dollars" to give the two organization bonds of \$10,000 each. This obviously exempted the insurers with smaller capital and initial surplus requirements. Act 47 amended Section 36 of the Code to eliminate this language, thus making the organizational bond requirement applicable to all incorporators of domestic insurers.

(c) Escrow of Advance Premium Payments for Organization of Mutual Insurer

An additional clause has been added to Paragraph (1) of Section 124 of the Code by Act 48. This requires the escrow of all premiums paid in advance by prospective policyholders or members during the organization of a mutual insurer with a depository satisfactory to the Commissioner of Insurance. The conditions of the escrow agreement must provide that the organizers or promoters of the mutual insurer cannot withdraw these sums until sufficient initial minimum surplus shall have been raised in the time prescribed by law. If the funds are not so raised, all escrowed funds shall be refunded to the payers by the escrow agent.

(d) Increase in Capital Stock — Method and Payment

While all the changes made by the acts mentioned above have granted extra protection to both the insureds of existing insurers and the public participating in the organization of both stock and mutual insurers, Act 304 amending Section 73 of the Code could have the opposite effect. Where the old law required payment in cash only for any increase in capital stock, the amendment now permits payment in cash or "in assets qualifying for investments for domestic insurance companies as defined in R.S. 22:844." No provision is made for fixing the value of these

assets, as is done in the business corporation act. Such a liberalization could lead to abuses.

II. DIRECTORS' MEETINGS

For many years the law has required meetings of the board of directors of each domestic insurer at least monthly. Act 306 has amended Section 81 of the Code to reduce this requirement to "at least six times a year." It is believed that this was intended to require meetings at least every two months, but the change in language as shown by the quotation makes no reference to spacing.

III. GROUP LIFE INSURANCE

Section 175 of the Code defining group life insurance was the subject of three separate amending acts, each of which liberalized it.

Amending paragraph A of Section 175, Act 307 reduced the required number of employees (or members) from 25 to 10. It also enlarged the groups permitted to secure such coverage to include "an organized trade union" and "a trade association." With this change the term "employee" was given a broadened definition and now includes "the members of the board of directors of the corporation and/or one or more subsidiary corporations" and "the regularly dues paying members of an organized trade union or trade association, whether or not such members are employed by a common employer." The former prohibition that no policy could be issued on which "the entire premium is to be derived from funds contributed by the insured employees" was eliminated.

The basic definition of the term "association of employees" was unchanged, but that portion of it which specified the includible members was enlarged from

"and including only employees of a common employer as defined above when all such employees are bona fide, full rank, voting and contributing members"

to

"and including any employees whether they are employees of a common employer or not, when all such employees are bona fide, full rank, voting and contributing members."

This obviously recognizes the broadened coverage which permits trade unions and trade associations to be policyholders.

Paragraph B of Section 175 was amended in two particulars. Subparagraph (4), which defines and permits group creditor life coverage, was changed by Act 158 increasing the maximum insurance on any one life to \$20,000, but retaining the limit to the extent of the indebtedness, if less.

Subparagraph (5) (d), permitting the issuance of group life coverage to an association of public employees, was amended by Act 38 increasing the amount of insurance which may be granted on a single life under such a policy to \$5,000 (previously \$3,000) in the case of members and retired members, and to \$2,500 (previously \$500) on members and retired members over the age of sixty-five.

IV. INDUSTRIAL INSURANCE—FUNERAL POLICIES

Another liberalization in the underwriting powers of the insurers is found in Act 329. This amendment to Section 253 of the Code now permits, by inference if not directly, the inclusion in a funeral policy of benefits providing for the "payment for a burial lot, tombstone, marker, plot, tomb, vault or coping." The policy must state the dollar value of such benefits, and in the event such services are not furnished or paid for by the insurer, the amount shall be paid in cash to the beneficiary if he so elects. Such policy benefits are to be reserved at the stated value without the benefit of the reduction granted on some funeral policy reserves under R.S. 22:162.

V. DIRECT ACTION STATUTE—VENUE CHANGE

The frequently used direct action provision of the Insurance Code, Section 655, was again amended. This time only a minor change insofar as language is concerned was made. While the existing law fixed the venue in the parish where the accident or injury occurred or in the parish where the insured or insurer is domiciled, or has its principal place of business in Louisiana, Act 471 broadened this by the use of the following language:

"The injured person or his or her survivors or heirs hereinabove referred to, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly

and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Art. 42, Code of Civil Procedure.”

VI. INVESTMENTS

Two changes were made in the investment provision of the Insurance Code. Act 51 brought the requirement for hazard insurance on improvements on mortgage property in line with a former amendment to Section 855 which permits a loan up to 75% of value by domestic insurers on first mortgage property. When the change was made by a former legislature increasing the amount which could be loaned from 66-2/3% to 75% the hazard insurance requirement was not changed to recognize this, hence the 1962 amendment.

Act 168 adds a new Paragraph (14) to Section 844 and permits domestic companies to invest their funds in bonds or other obligations issued or guaranteed by the Inter American Development Bank.

VII. AGENTS LICENSING AND APPOINTMENT

A significant change in Louisiana law with respect to the licensing of life insurance agents was made with the enactment of Act 296, amending Section 1114 of the Insurance Code. This act now requires for the first time that a written examination be taken by applicants for a life insurance agent's license. It becomes effective on December 1, 1962, because of a special provision in the act. The examination prescribed is to be administered by the Commissioner of Insurance and his department and is to determine the competence of the applicant to act as such an agent and his familiarity with the pertinent provisions of the laws of this state. The Commissioner is authorized to establish rules and regulations with respect to the scope and type of written examination to be given and the time and place for holding such examination, which must be within this state. Examinations must be held at reasonably accessible places and at dates not more than three months apart. Examinations can be taken by applicants in the office of the Insurance Department in Baton Rouge at any time during usual business hours. The law provides that the Commissioner of Insurance shall prepare a quiz manual and distribute it to applicants upon

request. All examination questions are to be prepared from the context of such agents' quiz manual.

There are certain exceptions from the examination requirement. Its exceptions cover an applicant already holding a license in force at the effective date of the act, an applicant whose license has expired less than one year prior to the date of his application for renewal license, transportation ticket-selling agents of common carriers who act as insurance agents only in reference to the issuance of accident insurance policies in connection with the transportation provided by the tickets they sell, and applicants who act only as agents for credit life, health and accident insurance. Additionally, applicants who wish licenses to sell industrial insurance or service insurance on a weekly or monthly premium basis are excepted if they complete a training course offered by an insurer appointing them. The training course shall consist of a minimum three days of company instructions on forms, policies, and company procedure, and a minimum of seven days field experience under supervision of a qualified insurance agent. The course must be completed within ninety days from the date of the application.

The law governing the appointment of agents other than life was changed by Act 72. This act amended Section 1170 of the Code to require *annual* filing of certificates of appointments by the insurers and the annual payment of fees therefor. The former provision that the certificate of authority issued upon the appointment of such an agent remain in effect until revoked by the Commissioner of Insurance or until cancelled by the insurer was deleted. Renewal is now required annually upon application in writing by the insurer upon the payment of the annual appointment fee. Such appointments are to be made before April 1st of each year and a penalty is provided for any insurer who fails to comply with the appointment provision.

VIII. LOUISIANA INSURANCE RATING COMMISSION AND RATE REGULATION

The salary of the chairman of the fire insurance division of the Louisiana Insurance Rating Commission was increased from \$6,000 to \$10,000 per year and of each other member thereof from \$5,000 to \$6,800 by Act 82 amending paragraph D of Section 1401.

A new paragraph G was added to Section 1405 by Act 53 to provide specifically for debit fire insurance policies.

The law defines debit fire insurance policies as those issued by companies writing fire insurance through debit agents operating on a debit agency system with the method of premium payment on a monthly or more frequent basis. Rates are to be filed directly with the fire insurance division and they are to be approved and supervised both as to initial filings and requested changes by that division. In all other respects the Commissioner of Insurance is to have sole supervision and regulation of debit fire insurance and allied lines in the State of Louisiana, such insurers being specifically exempt from the assessments levied by the Bureau.

Act 296 amended Section 1419 to give the Commissioner of Insurance \$60,000 annually out of the assessments made by the Commission for the operating fund of the office of the Commissioner of Insurance.

IX. UNINSURED MOTOR VEHICLE COVERAGE

The legislature provided in Act 187 that all automobile liability insurance policies covering liability for the ownership, maintenance, or use of any motor vehicle, delivered or issued for delivery in Louisiana, with respect to any motor vehicle registered or principally garaged in this state, must contain coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. The limits of such coverage shall be not less than the limits prescribed in the Motor Vehicle Safety Responsibility Law of Louisiana. The coverage required under the section can be deleted from the policy where the insured named in the policy rejects it. The act specifically deals with the definition of an uninsured motor vehicle, provides for the effect of insolvency of the liability insurer, for the right of subrogation, and recognizes the right to issue more favorable coverage than that required. This act, although dealing with the insurance contract, actually amends Section 1406 by adding a new Paragraph D, thus becoming a portion of Part XXX of the Code rather than a portion of Part XIV, where it might have been more logically placed. Doubtless, the choice was made because of the effect it will have upon automobile rates which are administered by the casualty insurance division whose specific duties are the subject of Section 1406.