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Chapter 16: Insurance

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CHAPTER 16

Insurance

J. ALBERT BURGOYNE and EUGENE LYNE

A. COURT DECISIONS

§16.1. Rate regulation: Deviation filing. In Liberty Mutual Fire Insurance Co. v. Commissioner of Insurance,1 the petitioner sought a review of the order of the Commissioner of Insurance denying its application for permission to file, under the provisions of the Fire, Marine and Inland Marine Rate Regulatory Law,2 a deviation from the filings for windstorm and hail insurance on dwellings made on behalf of its members and subscribers by the New England Fire Insurance Rating Association. This coverage, which is customarily afforded as part of the so-called “extended coverage,” is subject under the filings of the rating association to a mandatory $50 deductible. Liberty had sought unsuccessfully to persuade the rating association to file a $100 deductible windstorm and hail coverage for dwellings, as an optional alternative to the $50 deductible coverage, which would be written at a substantially reduced premium. Its application to file the optional coverage on its own behalf was rejected by the commissioner on the ground that the proposal was not properly a “deviation” within the meaning of the rate regulatory law.3

The case appears to be one of first impression in Massachusetts and elsewhere under statutes that are based upon the “all-industry” fire, marine, and inland marine rate regulatory bill, which was developed by the joint conference of the All-Industry Committee and the Subcommittee of the National Association of Insurance Commissioners on Rates and Rating Organizations, following the decision of the United

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Mr. Lyne is responsible for the material on life insurance, §§16.7 and §§16.15-16.16 of the chapter. Mr. Burgoyne has prepared all other sections of the chapter.

3 G.L., c. 174A, §9. The material portion of Section 9 reads: “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 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.” The word “deviation” in the statute is not defined.
States Supreme Court holding insurance to be commerce and within the scope of federal power when transacted across state lines\(^4\) and the enactment of the McCarron-Ferguson Act\(^5\) preserving to the states the regulation of insurance. The only case in Massachusetts involving the deviation section of the statute is *Insurance Co. of North America v. Commissioner of Insurance*,\(^6\) which held that a deviation must be from a rating rule or a rule affecting rates and that a proposal to make available a premium payment plan different from that filed by the rating association was not such a deviation. In the present case it was the position of the Commissioner of Insurance that the Liberty proposal could not be a deviation because it enlarged the provisions of the filing of the rating association without disturbing the original filing, thus providing the company, in substance, with two filings instead of one.

Simultaneously with the enactment of the fire rating law the General Court enacted the Casualty and Surety Rate Regulatory Law,\(^7\) likewise based upon the model casualty and surety rate regulatory bill developed by the All-Industry Committee. One fundamental difference between the fire rating law and the casualty rating law is the treatment of “deviations,”\(^8\) a difference that reflects the different methods of operation of the two kinds of insurance business. Under the casualty law, a deviation can be only a uniform percentage decrease or increase of the rate filed for all or a class of insured risks. The deviation provision of the fire rating law is not so limited; it permits a deviation from the filed class rates, schedules, rating plans, or rules for any kind of insurance or class of risk within a kind of insurance. With respect to deviations under the fire law there is no statutory requirement of a “uniform percentage modification”; neither is the permissible deviation limited to rates, but broadly extends to rates, rating plans, and rules affecting rates.

In the opinion of the Supreme Judicial Court, the word “deviation” in the fire rating law is synonymous with “variation.” A filing that, as here, combined a reduction in the scope of coverage filed by the rating association and a reduction of the rate based upon the coverage


\(^8\) G.L., c. 175A, §9. The material portion of Section 9 reads: “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 (1) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or (2) for which separate expense provisions are included in the filings of the rating organization.” Compare G.L., c. 174A, §9, quoted in note 3 supra.
modification may properly be made under this statutory provision and should have been entertained by the Commissioner of Insurance. The filing in question is not any less permissible because it is an optional alternative coverage and premium rather than a substitute required to be used in all cases, because nothing in the statute precludes a deviation that is to be used optionally depending upon the coverage selection made by the insured.

§16.2. General liability insurance: Assault and battery. *Bowen v. Lloyds Underwriters*¹ was a bill in equity to reach and apply the defendant insurers' obligation under an owners', landlords', and tenants' public liability policy in satisfaction of judgments against the defendant insured, and its employee, for injuries sustained by the plaintiff as a result of an assault committed by the employee. The Supreme Judicial Court rejected the argument, in support of pleas in abatement, that the action was barred by the one-year statute of limitations contained in G.L., c. 260, §4, pointing out that the one-year limitation specified in that section for suits by judgment creditors has application only to motor vehicle tort actions required to be secured by G.L., c. 90, and such actions against officers and employees of the Commonwealth. Relying upon *Sontag v. Galer*,² the Court sustained the defendant's demurrer, holding that bodily injuries caused by an assault and battery are not "accidental bodily injuries" within the meaning of the policy sued upon. It is the state of the will of the person by whose agency the injury was caused rather than that of the injured person that determines whether an injury was accidental. The underlying principle of the *Galer* case is unaffected by the circumstance that the assault was committed by an agent of the defendant and not by the defendant.

§16.3. Motor vehicle insurance: Release of liability. *Joseph v. Tata*¹ was an action by an automobile passenger for personal injuries sustained when the automobile in which she was riding was struck by an automobile operated by the defendant. The defendant's insurer interposed an affirmative defense of a written release and moved for a directed verdict, which the lower court denied. On appeal it was held that there was sufficient evidence to take to the jury the question as to whether the plaintiff had validly released her cause of action, since it could have been found that in procuring the execution of a general release the insurance company's adjuster had represented that the settlement being negotiated related only to property damage and did not cover the plaintiff's personal injuries. Even though the release that the plaintiff signed was plainly a general release and the check endorsement was even more plainly a purported release of all claims, it was, in the judgment of the Court, fraudulently procured and, therefore, did not bar the plaintiff in her subsequent personal injury action.

that the defendant insurance company should not have a directed verdict on the evidence produced by the plaintiff, seeking to recover for damage to a bulldozer tractor that had been insured by the defendant against loss or damage from malicious mischief or vandalism. The tractor, purchased at an auction that was characterized by some animosity, had apparently operated satisfactorily during a twelve-day period. On the twelfth day the tractor broke down and a mechanic drained roughly a quart of sand from the motor. The plaintiffs had the burden of proof of showing that the loss was caused by vandalism, i.e., "such wanton and malicious acts as are intended to damage or destroy the property insured." The evidence offered warranted the conclusion that there was greater probability that the sand was deliberately introduced through the oil intake than that it reached the motor by accidental or negligent means.

§16.5. Policy conditions: Notice of accident. Lexington Insurance Co. v. Seaboard Air Line R.R. was an action in the United States District Court for the District of Massachusetts for a declaratory judgment seeking construction of a policy of insurance, entered into in Massachusetts, that obligated the plaintiff insurer, a Delaware corporation, to indemnify the defendant railroad, a Virginia corporation, against liability for damage to freight cars and their contents caused by collision or derailment. Coverage afforded was $60,000, or 30 per cent of $200,000, in excess of a deductible amount of $100,000 for each loss. Printed policy provisions required of the insured a report as soon as practicable of every loss or damage that might become a claim, and the filing of a detailed sworn proof-of-loss within ninety days from the date of loss. A typewritten provision, apparently required by the insured, recited that it was often difficult to determine immediately whether a loss exceeded the deductible amount and that the insured's interests would not be prejudiced by a failure to report any loss at the time of its occurrence. It further provided that the insurer waived the time limit for filing proofs of loss provided the insured used due diligence to present proofs as soon after the occurrence as practicable.

In construing the contract in question the governing rule is supplied by the laws of Massachusetts. In the absence of the specially added typewritten condition, the printed notice and proof-of-loss provision of the policy would have required a report of loss to the insurer or its agent "as soon as practicable," which the federal district court assumed would be, under Massachusetts law, a very short period of time. "Notice of an accident is required in order to give the insurer an opportunity to investigate the cause and nature of a claim while the facts are still fresh in the minds of the parties." While, in the

§16.4. 1 340 Mass. 734, 166 N.E.2d 559 (1960).


view of the Court, the special typewritten condition did not nullify the printed provision, the two had to be read together. When so read the insured was not excused from making a report, but need not report immediately when an accident occurred. The insured had a longer time than would have been reasonable under the printed provision standing alone, an understandable modification in the policy when considered in light of the detailed investigations customarily carried out by the railroad and the substantial deductible amount to which the coverage was subjected. Reports of six accidents given to the insurer within varying periods up to thirty days following the date of each accident were timely because given within a reasonable time after the railroad had an opportunity to check the details of losses and to consider whether they exceeded the deductible amount.

§16.6. Policy conditions: Other insurance. In *Maryland Casualty Co v. Hunter,*1 Maryland Casualty Company sought a determination as to whether a judgment obtained against its insured, and admittedly covered under a Massachusetts Garage Liability Policy issued by it, was also covered by a similar Massachusetts Garage Liability Policy issued by Aetna Casualty and Surety Company. The judgment, in excess of $15,000, was obtained by McKay who was injured by an automobile owned by Bye, the operator of an automobile body business covered under the Aetna Policy, and driven by Fougere, the operator of an automobile service station covered under the Maryland policy. Repairer’s plates had been issued to both Bye and Fougere by the Registry of Motor Vehicles. The only registration plates displayed on the automobile at the time of the accident were the repairer’s plates of Fougere. The Supreme Judicial Court rejected Aetna’s contention that the automobile was not a “motor vehicle . . . under a . . . dealer’s or repairer’s registration”2 and therefore not within the coverage of its policy, since at the time of the accident it was not operated under Bye’s repairer plates. The statute permits a dealer or repairman, in lieu of registering each motor vehicle owned or controlled by him, to obtain a general distinguishing number and all motor vehicles owned or controlled by him “shall be regarded as registered under the general distinguishing number or mark assigned to him . . . provided, that number plates, furnished as hereinafter provided, are properly displayed thereon.”3 The Court regarded the foregoing proviso as conditioning only the application of blanket registration and not the insurance coverage required for such registration,4 and cited its earlier opinion in the *Kenner* case as decisive of this question:

we think that the words . . . defining “motor vehicle” in “Coverage A” as a “motor vehicle . . . under a . . . dealer’s or repairer’s registration . . .” mean a motor vehicle which the dealer or

2 Cf. Insuring Agreement IV of Massachusetts Garage Liability Policy.
3 G.L., c. 90, §5.
4 Id. §34C.
repairer may by attaching his plates lawfully use on the public ways by virtue of his blanket registration under c. 90, §5, whether or not his plates are actually upon it at the moment of any particular accident.\(^5\)

The Court also rejected Maryland's contention that since both it and Aetna were liable, each was liable for $2500, or one-half the compulsory insurance "per person" limit of $5000. The Maryland policy was written for compulsory limits only and Aetna had no liability under the excess limits provisions of its policy because of the insured's failure to give notice of the accident or notice of the claim or suit as required by the policy. Both policies contained the customary "other insurance" condition which provides that "if the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss."

Maryland argued that the Compulsory Motor Vehicle Insurance Law\(^6\) required a limit of liability for each person injured of $5000 and that this limit of coverage could not be increased by the availability to the insured of more than one policy. But, as the Court pointed out, the "other insurance" formula was specifically made applicable in each policy to the compulsory insurance, was not made inoperative if the other insurance was also compulsory insurance, and was neither prescribed by law nor forbidden by any statutory policy. In accordance with its policy provisions, each insurer is required to share proportionately the total loss, subject to the limitation that it will not be required to pay more than its applicable limit of liability. It seems unlikely that this result was intended either by the legislature or by the drafters of the insurance policy; it seems equally unlikely that situations of this kind would arise frequently enough to promote legislative correction.

\section{16.7 Life insurance. Construction of policy.} In the case of Aronson v. Suffolk Savings Bank,\(^1\) a policy rider provided: "In the event the policy is not kept in force by payment of premiums, . . . the provisions for family income benefit . . . become void. . . ." The insured died after the policy had lapsed for nonpayment of premiums, but during the period of extended term insurance effective under the terms of the nonforfeiture clause. It was held that the beneficiary could recover the face amount of the policy, but could not recover the family income benefit.

\section{Misrepresentations with intent to deceive.} In Quintiliani v. John Hancock Mutual Life Insurance Co.,\(^2\) on the issue of whether the de-

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\(^{6}\) G.L., c. 90, §34A.


\section{2} 340 Mass. 93, 162 N.E.2d 832 (1959).

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The defendant had sustained its burden of showing that answers in the application were false and made with actual intent to deceive, the Supreme Judicial Court sustained as unexceptionable a charge to the jury that it paraphrased as follows: "Were the answers false; should the applicant have known that they were false; what was the applicant's actual intent in making them?" Further exceptions were dismissed as harmless in the light of the charge.

Construction of statute. In Liberty Mutual Insurance Co. v. Health, Welfare and Retirement Trust Funds Board, the petitioners contended that the recently enacted Health, Welfare and Retirement Funds Act was not applicable to the "Pension Administration Funds" in question, and that they were, therefore, not required to register these employee benefit plans with the respondent board. The Supreme Judicial Court sustained these contentions, stating that the statute did not adequately show an intention to regulate plans that do not include the creation of a trust fund in the usual sense.

B. LEGISLATION

§16.8. Motor vehicle insurance. Early in 1953, after several months of intensive study and effort by a group of skilled technicians, the General Court enacted into law the Highway Safety Act. This act created the Massachusetts Highway Safety Committee, a "point system" to evaluate in terms of accident involvement and traffic law violations the operating records of motor vehicle registrants and others licensed to operate motor vehicles and the continuing qualification of such persons to register and operate motor vehicles, and a plan for "merit rating" motor vehicle insurance on the basis of the operating point record of the risk insured. This legislation represented the first completely integrated administrative program designed to contribute to the solution of the closely related problems of the state's disastrous highway accident record, the motor vehicle operator who should be denied the continued use of the public highways, and the insistent popular demand for an insurance rating system under which

4 G.L., c. 151D.
2 G.L., c. 90A, §§1-4.
3 Id. §§5-10.
4 Id. §§11-17.
5 The average private-passenger-car bodily-injury claim frequency for 1954-1956 in Massachusetts was 6.4 per 100 cars insured, to be compared with New York with the next highest frequency of 4.8 and the national average of 2.8. See Senate Doc. No. 466, p. 45 (January, 1959) report of the special commission under Resolves of 1956, c. 125.
6 Twenty-four states have adopted point systems designed to achieve driver improvement and uniform treatment of driving license suspension or revocation. See Institute of Government of the University of North Carolina, Driver Improvement — The Point System (1958).
the accident- and conviction-free-risk pays less than the risk with a record of accidents and convictions.\(^7\)

By its terms the merit rating provisions of the law did not become effective until January 1, 1956, at which time the premiums for motor vehicle liability policies became subject to surcharges on the basis of point accumulation records. Unhappily, it became quickly apparent that the legislature's insistence upon certain changes in the original bill, which had the effect of converting what was intended to be a system of premium-rate modifications, designed to measure comparative underwriting hazards, into a statewide, uniform level of surcharges to be treated as "penalties," coupled with the reluctance of the Registry of Motor Vehicles to administer the law fully as written, served to promote public resistance to the program. Despite a demonstrably improved accident record following enactment of the law, the General Court hastily responded to the complaints of those subjected to premium surcharging and repealed the merit rating provisions less than six weeks after they became effective.\(^8\)

In the 1960 session of the General Court, the second major portion of the original enactment, namely, the "point system" provisions, were quietly repealed.\(^9\) The apparent reason for this repeal was the non-use of the statutory provisions requiring the Registrar of Motor Vehicles to establish and to administer a point system together with a schedule of penalties, including warnings to registrants and licensees, conferences with registrants and licensees, and suspensions and revocations of motor vehicle registrations and operators' licenses, all of which have been used effectively in other states to bring about a reduction in the highway accident toll. All that remains of the Massachusetts law are the sections creating one more highway safety committee, which has proven to be considerably less effective than most such committees.

\section*{§16.9. Motor vehicle insurance: Tort actions.} Motor vehicle tort actions for bodily injuries or for death may now be commenced within two years after the cause of action accrues, under the provision of Acts of 1960, c. 271.\(^1\) Under the previous law the statute of limitations was one year, except when notice was given to the defendant by registered mail within one year, in which case a two-year period was allowed within which to bring the action.

Acts of 1960, c. 303, amends the law\(^2\) permitting the transfer of motor

\(^7\) In a rapidly increasing number of states (twenty-five states as of December 1, 1960) so-called "merit rating" plans developed by the insurance companies have recently been approved for use. It is noteworthy that the current spread of merit rating plans is the latest of several such developments in the past twenty-five years. Historically merit rating "credits" are most welcome, merit rating "debits" are highly offensive.


\(^9\) Acts of 1960, c. 390, repealing §§5-10, 16.

\section*{§16.9.} Amending G.L., c. 260, §4.

vehicle tort actions by the Superior Court to the District Courts. An action so transferred under the section shall be considered as pending in the District Court and the parties shall be subject to the procedural rules of the District Court relative to interrogatories, specifications, amendments, and all other procedural matters regulating District Court cases. It is further provided by the amendments that the justice may order the action dismissed and judgment entered on the dismissal if both parties to the action fail to appear. Upon a request for retransfer to the Superior Court any original papers filed in the District Court after transfer of the case to the Superior Court shall be transmitted to the clerk of the Superior Court.

Provision is made under the Motor Vehicle Law for the suspension of any operator's license issued to a person against whom a judgment for property damage has been obtained, if such judgment remains unsatisfied for a period of sixty days. Acts of 1960, c. 327, amends this section to provide that if the judgment debtor satisfies the clerk of the court in which the judgment was obtained that he is unable to locate the judgment creditor or his legal representative, he may deposit with the clerk the full amount of the execution with interest, and the clerk's receipt, upon presentation to the Registrar of Motor Vehicles, will be evidence of a complete discharge of the judgment debt.

§16.10. Motor vehicle insurance: Cancellation. Under the Motor Vehicle Law the Registrar of Motor Vehicles is required to revoke the registration of a motor vehicle upon the cancellation of the liability policy or bond covering the motor vehicle. Acts of 1960, c. 360, deals with the situation in which the insured registrant gives to a third party, usually a premium financing agency, a power of attorney that, among other things, authorizes the attorney to effect cancellation of the insurance required for registration. This new section specifies that no such power of attorney may be exercised until ten days notice by registered or certified mail is given to the policyholder and a statement, under the penalties of perjury, has been filed with the Registry of Motor Vehicles certifying that the notice has been given. The notice of cancellation to the insurance company must be accompanied by a statement of compliance with the new requirement, and the statute authorizes the insurance company to rely upon this statement.

Upon the issuance by an insurance company of a notice of cancellation of a motor vehicle liability policy or bond, the insured may file a written complaint with the Commissioner of Insurance, which will be heard by the Board of Appeal on Motor Vehicle Liability Policies and Bonds. Acts of 1960, c. 264, provides that if the cancellation complaint is withdrawn on or subsequent to the cancellation date shown in the insurer's notice of cancellation, the Board of Appeal

3 G.L., c. 90, §22A.
§16.10. 1 G.L., c. 90, §34K.
2 Adding new Section 34J to G.L., c. 90.
3 G.L., c. 175, §113D.
4 Amending G.L., c. 175, §113D.
§16.11. Accident and health insurance. Many policies of accident and health insurance have in recent years excluded coverage for disability treated in a hospital operated by the Veteran’s Administration or by the United States or any governmental unit when a patient otherwise entitled to services without charge is nevertheless charged for these services when insurance is known to be available. In effect, this practice subjects the buyer of insurance to an additional levy for the benefit of the tax-supported institutions. Acts of 1960, c. 339, now makes void any such policy provision that excludes liability for hospital, medical, or surgical expenses if the insured is hospitalized in a soldier’s home established by the Commonwealth.

§16.12. Group insurance: Dividends and premium refunds. A new provision was added to the labor law by Acts of 1959, c. 552, regulating the disposition of dividends declared or rate reductions made under policies of group insurance. Customarily these policies have provided that any excess of dividends or premium refunds over the premiums paid by the policyholder would be applied for the benefit of the group of insured persons. Under the terms of the new statutory provision, the excess of the aggregate dividends or rate reductions under all group insurance policies issued to the policyholder over the aggregate payments for all such policies, including the costs of administration of the policies, made by the policyholder from funds contributed by the policyholder, the employer of the insured persons, or a union to which the insured persons belong, shall be applied for the sole benefit of the insured persons.

§16.13. Group insurance: Public employees. Acts of 1959, c. 426, amended the definition of dependents under the Group Insurance Plan for Employees of the Commonwealth to include any child nine-
teen years of age or over who is mentally or physically incapable of earning his own living. Acts of 1959, c. 516, further amended the definition to include an unmarried child nineteen years of age or over who is a full-time student in an educational or vocational institution and whose program of education has not been substantially interrupted by full-time gainful employment. The premium for the child in school must be paid in full by the employee. Acts of 1959, c. 426 requires the Commonwealth to contribute 50 percent of the additional premium for the incapacitated child. Corresponding changes were made in the Group Insurance Plan for Employees of Counties, Cities, Towns and Districts by Acts of 1960, c. 214.

The state employees group insurance plan was further extended, effective January, 1961, by Acts of 1960, c. 389, to make available on an optional basis group life insurance and group accidental death and dismemberment insurance above the $2000 coverage required to be provided. The additional amounts of insurance available are based upon the employee's gross salary and must be paid for by the employee without any premium contribution by the Commonwealth.

Under the provisions of Acts of 1960, c. 505, 50 percent of the group life coverage, not including the optional additional coverage, and the group hospital, surgical, and medical benefits will be continued for retired employees of the Commonwealth, who are required to pay therefor 50 percent of the average group premium with the balance of the premium to be paid by the Commonwealth. These amended provisions apply retroactively to persons with retirement dates on or after January 1, 1956, who were insured under the plan. Provision for the payment of 50 percent of the premium required for the continuation of coverage on a retired employee of a county, city, town, or district is now permitted under Acts of 1959, c. 595, when properly authorized by vote of the county commissioners, city council, town election, or district meeting.

Acts of 1960, c. 386, amends the Group Insurance Plan for Employees of the Commonwealth and the Group Insurance Plan for Employees of Counties, Cities, Towns and Districts to permit continuation of the group hospital, surgical, and medical benefits by the surviving spouse of a deceased retired employee until the remarriage or death of the surviving spouse. The amount and method of payment of the premium will be determined by the state employees' group insurance commission or by the appropriate public authority, with the entire cost to be borne by the surviving spouse.

Heretofore the schedule of group hospital, surgical, and medical

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2 Amending G.L., c. 32A, §§8(a).
3 Amending G.L., c. 32B, §§2(b), 7(a).
4 Amending G.L., c. 32A, §§4-6, 10, and adding a new §10A.
5 Further amending G.L., c. 32A, §10.
6 Adding a new §9A to G.L., c. 32B.
7 Adding a new §11 to G.L., c. 32A.
8 Adding a new §9B to G.L., c. 32B.
benefits made available to employees of counties, cities, towns, and districts, and to the dependents of such employees, was established for each county by the county commissioners. Acts of 1960, c. 337, provides that the state employees' group insurance commission will promulgate a schedule of benefits, which is not to exceed the schedule of benefits for state employees, and which is to be the maximum schedule for employees of the counties, cities, towns, and districts of the Commonwealth. Benefits for these employees may be less than but may not exceed those provided in the schedule. To insure compliance with this requirement copies of group insurance contracts entered into by the appropriate public authority must be filed within thirty days for review by the commission and the insurer must within thirty days certify to the commission that the benefits afforded do not exceed the authorized benefit schedule.

§16.14. Insurance companies. Acts of 1960, c. 245, modifies the Administrative Procedure Act to exempt from the hearing requirements of the act the revocation by the Commissioner of Insurance of the license of a foreign insurance company upon the ground of insolvency, capital stock or guaranty fund impairment, or contingent assets or surplus deficiency.

Acts of 1960, c. 597, amends the statute regulating the negotiation by special insurance brokers of contracts of insurance with nonadmitted companies upon the filing with the Commissioner of Insurance of an affidavit that the required insurance cannot be procured from an admitted company. Under the amended statute this insurance may only be procured from a nonadmitted foreign company that has net cash assets of at least $300,000 and maintains with the proper officer of some other state a deposit of at least $400,000 held in trust for all of its policyholders in the United States and invested in securities permitted for insurance company investments in this Commonwealth.

Recognizing the rapidly increasing use of electronic data processing equipment in the business of insurance, and the very substantial investments represented by this equipment, Acts of 1960, c. 447, authorized the inclusion in the computation of the company's assets available for the payment of losses an electronic data processing machine, providing its cost is at least $100,000 and is amortized in full over a period of ten years or less.

§16.15. Life insurance: Equity funding for pension plans. Acts of 1960, c. 562, allows life insurance companies to write an entirely new form of annuity contract under certain circumstances and subject to certain limitations. Without going into specific detail, for which the

9 Amending G.L., c. 32B, §§2, 3, 5, 11, 14.
10 Id. §11.
11 Id. §3.

2 G.L., c. 175, §168.
3 Amending G.L., c. 175, §11.
reader is referred to the statute, the new section\(^1\) allows life companies to sell annuity policies as to which a certain portion of the premium is invested to produce future retirement benefits guaranteed as to amount and duration (the standard annuity) and a certain portion is invested with a view to producing future retirement benefits, the amount of which will vary depending upon investment success (the so-called "variable annuity"). To accomplish the desired purpose, the statute authorizes life companies to assign the premium receipts to a separate investment account, which is not subject to the investment restrictions imposed by G.L., c. 175, §63. The major result of this authorization is to enable investment of some portion of the account in common stocks.

This statute is of major significance. As finally enacted, it represents a compromise between proponents of the straight "variable annuity" (in which the benefits to the annuitant vary directly with the market value of the separate investment account) and those who favored the traditional annuity (in which the benefits to the annuitant are guaranteed). It may be anticipated that substantial portions of such investment accounts will be invested in common stocks, a procedure that would have produced highly successful results over any twenty-five year period in the past fifty years. If history repeats itself, this statute may enable sale of group annuity contracts that (1) produce more income to the annuitant on retirement, (2) cost less to obtain the same coverage, or (3) combine both advantages to some extent. The statute is broad enough to encompass many variations of plans.

Passage of this statute does not, however, mean that contracts based on it may be purchased immediately. The Internal Revenue Service, the Securities and Exchange Commission, and various local regulatory bodies must also pass upon certain aspects of these policies before life insurance companies can market them. Close attention to future developments is in order for all interested in such a plan.

§16.16. Life insurance companies: Loans on real estate. Acts of 1960, c. 294, amends G.L., c. 175, §63(7), to allow domestic life insurance companies to grant loans up to 75 percent, rather than 66\(\frac{2}{3}\) percent, of the fair market value of real property or leasehold estates. The section is otherwise unchanged.

§16.15. 1 G.L., c. 175, §132F.