Life Insurance Legislation in Nebraska

Review of the Laws from the Beginning, With an Account of the Changes from Time to Time and an Analysis of the New Code

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The first session of the legislature of the then territory of Nebraska was held at Omaha, commencing January 16, 1855. No insurance legislation was passed at that session nor in fact until the one held in 1864. An act was passed in that year and approved February 15, entitled "An act in relation to insurance companies," but as stated in the act, it should not be construed as in any manner applying to life insurance companies.

There was no further legislation until the session of 1866, when there was passed as one act what was known as the Revised Statutes of Nebraska. Chapter 25, was entitled, "Incorporations" and sections 1 to 14, inclusive, dealt with insurance companies. These provisions were quite similar to those of the act of 1864, with the exception that the limitation of the act to fire and marine insurance was removed, and the act applied to all insurance companies. Our laws stood in this condition until 1873, when another act was passed, entitled, "An act regulating insurance companies." By section 1 of this act, corporations formed under it were limited to companies other than life insurance companies, and section 41 expressly repealed all that portion of chapter 25 of the Revised Statutes of 1866 and all acts and parts of acts amendatory thereto, "except so far as the same relates to the business of life insurance companies." By this act of 1873 the original act of 1864 as carried into the revision of 1866 was repealed, except as the same applied to life insurance companies. We have, therefore, presented the rather odd spectacle of a law, which in its inception related only to fire and marine insurance, by amendments, to apply to only life insurance companies. This fact explains some of the inconsistences and strange provisions, which were in our insurance laws, governing old line life insurance companies organized on the stock plan.

Basis of Nebraska Law.

The act of 1866 was the basis of all the law in Nebraska governing old line life insurance companies organized on the stock plan until 1913. There were fourteen sections. Section 1 dealt with the original statement which every domestic company had to file with the auditor. This statement, I take it, applied to companies already organized when the act was passed as well as to all companies organized thereafter. Section 2 made provision as to what the annual, or as it stood originally, the semi-annual statement of the affairs of the company should contain. Section 3 subjected the president and secretary of the company to a penalty of $100 if they failed to comply with the provisions of Sections 1 and 2. Section 4 prohibited any company in this state from holding any real estate save what was necessary for the transaction of its legitimate business of insurance. Section 5 provided what the statement must contain which each agent of an insurance company incorporated by any other state or territory had to file before it could procure a certificate from the auditor permitting it to transact any business in Nebraska. Section 6 was in the nature of a resume of all that had preceded and to some extent a construction of it, in that it explains the word "company" as used in prior sections to include "company or association, partnership, firm or individual, or any member or agents thereof,' 'and either foreign or domestic, and made it unlawful for any of them to transact business unless there had been a compliance with all the provisions of the chapter together with some additional requirements. Section 7 provided that the statement and evidences of investment required by the act should be renewed annually. Section 8 defined who was an agent of a company and what acts performed by any one would constitute such person an agent.

Certified Copies Called For.

Section 9 provided that certified copies of all papers required to be deposited in the office of the auditor should be received as evidence the same as the originals. Section 10 provided a penalty for violating any of the provisions of the act. Section 11 provided that the single statement and evidences required for one agent should be sufficient for all. Section 12 required that the companies of any other state whose laws required a guarantee deposit to be made by the companies of this state should make a like deposit with the auditor of this state. Section 13 related to requirements of mutual companies of other states to do business in this state, and Section 14 required publication of a copy of the statement to be filed with the auditor to be made in counties where an agent was seeking to establish an agency. This section was repealed in 1905.

It will thus be seen from an explanation of these various sections that the amount of capital stock which a domestic life insurance company should pay in before it was authorized to do business was not fixed. Neither was it under the general incorporation laws of the state. Until 1895 the capital stock might have been nominal, $1,000, or $5,000, or even less. In that year there was pending before the legislature "an act to regulate the organization and operation of mutual benefit associations." This act as originally drawn did not contain sections 18a and 18b, but was confined to the organization and operation of certain forms of assessment insurance companies. Late in the session the title of the bill was amended by adding the words "life insurance and life insurance companies" making the title then to read after the amendment "an act to regulate the organization and operation of mutual benefit associations, life insurance and life insurance companies." Section 18a is what is known as the reciprocity provison, which gave to the auditor of public accounts the power to do unto outside companies as their states did unto ours.

Section 18b is as follows:

No company organized under the laws of this state for the purpose of transacting the business of life insurance with a capital stock shall continue or commence business until such company has transferred to and deposited with the auditor of public accounts for the security of its policyholders the sum of $150,000 in the kinds of securities as provided by the laws of this state; but in no case shall such securities be received at a rate above their par value nor above their current market value.

Big Deposit Required.

It will be noted that this section made it necessary for any life insurance company with a capital stock to deposit with the auditor of public accounts securities to the amount of $100,000. It is worth noting, however, in passing from this branch of the subject that the act under discussion was so broad in its title and provisions as to relate both to assessment and old line life insurance companies.

The act of 1895 was amended in 1903 by adding to section 2 a provision in regard to the valuation of policies, which is as follows:

He (the auditor) shall also on or before February 1 in each year cause to be made a valuation of the policies of all joint stock legal reserve life insurance companies organized under the laws of this state and ascertain the reinsurance reserve thereof computed upon the basis of the so-called "actuaries or combined experience table of mortality," with compound interest at 4 per cent per annum. He shall also, when requested so to do by the proper officers of any such company, ascertain the amount of such reinsurance reserve upon the basis of the so-called "American Experience Table of Mortality," with compound interest at the rate of 4½ per cent per annum, and the amounts ascertained upon said basis shall be legal reserve."

The same section was amended again in 1905 to the effect that each company should file an annual, and not a semi-annual, statement of its affairs with the auditor.

In the year 1905 the act was further amended by the addition of two sections, one in reference to the deposit of $100,000 of securities with the auditor and the other, the reciprocal provision. These two sections are the same, word for word, as the two sections which were added to the mutual benefit act and passed as a part of it in the year 1895, and to which reference has already been made. But it was thought best to make them a part of the act governing old line stock companies. Hence the amendments of 1905.

Provides for Publication.

In 1907 section 2 was again amended. This time the amendment consisted in requiring a summary of the annual statement to be published in two newspapers instead of one, and requiring the certificate of the auditor to be attached to such statement to the effect that the company had complied with the laws of the state relating to insurance; also in requiring of domestic companies a full, complete and specifically itemized statement of all expenses of every kind and nature whatsoever.

Section 5 relating to foreign companies was similarly amended except as to the requirement with reference to the statement as to expenses.

An entirely new section was also added which related to the fee chargeable to companies for filing statements, obtaining certificates for agents and authority to do business.

Governing Domestic Mutuals.

Until 1909 there was no law governing domestic mutual legal reserve companies. In that year a bill comprising thirty-one sections and entitled "An act to regulate the organization and operation of life insurance companies on the mutual, level premium, legal reserve plan" was passed. Those who were unfriendly to the bill succeeded in having incorporated therein certain amendments. As originally drawn it provided that bona fide applicants for insurance on at least 250 lives and aggregating $500,000 or more had to be received and approved and the first annual premium paid thereon, and a deposit of securities aggregating $10,000 made with the auditor of public accounts before any company organized under the act could transact business. The provision regulating the amount of deposit was amended so as to read $100,000. No mutual company could be organized in Nebraska until it had first deposited $100,000 in the securities required by that act with the auditor of public accounts and secured applications on at least 250 lives for insurance aggregating $500,000 on which the first annual premiums at adequate rates had been paid. This provision in regard to the deposit made the organization of mutual companies in this state practically prohibitive. A stock company could be organized and begin to issue policies at once when the deposit of $100,000 in securities had been made with the auditor. In addition to this deposit of $100,000 a mutual company had to secure applications on 250 lives aggregating $500,000 of insurance and the applicants for insurance must have paid the first annual premium. The securing of 250 applicants for $500,000 insurance before a company can issue a single policy is no slight undertaking. Before the whole 250 are secured some may conclude that they will drop out and there is no way of keeping them in. It would seem to be much harder to get these original 250 applicants in a paper or prospective company, if they are bona fide applicants who pay the first annual premium, than it would in one organized and ready to issue a policy as soon as an application is received and approved.

Necessary to Qualify.

By one of the provisions of that act existing companies could qualify under it if they had assets aggregating $50,000 and the requisite amount of insurance in force, namely, $500,000 and 250 policyholders. That provision, however, applied only to companies then in existence, although one company organized later was permitted to qualify under the act.

By the act of 1909, the so-called one-year preliminary term plan of valuing policies was adopted in Nebraska so far as mutual companies were concerned. In making valuations the rate of interest assumed shall not be greater than 4 per cent per annum and the rate of mortality shall be that of the American or Actuaries Experience tables. The act did not require an annual accounting or distribution of surplus. The only provision in reference to a distribution was as follows:

"All companies doing business under this act may make distribution among their policyholders, and contract holders of such part of the surplus as may accumulate as their board of directors may from time to time deem desirable, which distribution shall be made from no other fund and shall be in proportion to the amount of reserve to which each policy, or contract holder is entitled, and the individual allottment thereof shall be conclusive upon all persons entitled to

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share in any such distributions. To determine the amount of its surplus each company shall deduct from its assets, first, an amount equal to the net value as defined in the preceding section of all its outstanding policies, and, second, an amount sufficient to meet all expenses, matured claims and all other liabilities."

The act required that each whole life and endowment policy should provide for paid-up or extended insurance after three annual premiums should have been paid and that tables of minimum surrender values in paid-up or extended insurance shall be endorsed in figures on all such policies and the time within which the same shall be applied for by the insured. There is no requirement as to the amount of the reserve, which should be used to purchase paid-up or extended insurance. There were no provisions either in regard to discriminations or rebating. No amendments were made to this act.

System of Patchwork.

Such, in brief, were the laws of this state governing oldline insurance companies. As has been seen, it was a system of patchwork so far as stock companies were concerned. And as to both stock and mutual, many important requirements are conspicuous by their absence. Certain provisions should be common to both kinds of companies. There were omissions, duplications and incongruities, like the fee for filing the annual report. The stock companies paid $20 and the mutual companies $10 for exactly the same thing.

A fairly complete law was passed in 1899 known as the "Weaver Bill," which was declared unconstitutional by the supreme court. No attempt was again made to codify the insurance laws until 1913.

Probably this review of insurance legislation, which so far has only covered legal reserve companies, should include a few words in reference to the amendments to the Mutual Benefit act passed in 1899. The more important of those amendments were:

1. Including the term "stipulated premium" in section 1 of the act.

2. Including stipulated premium companies within the definition of a "mutual benefit association" as defined by section 16 of the original act; and the prohibition of any companies organized under the act other than those operating on the natural premium or stipulated premium plan from giving cash surrender values, extended or paidup insurance, or endowment insurance in any form.

3. The addition of a new section relating to the distribution of surplus, which might be paid in cash or received in payment or reduction of future dividends, or for extended and paidup insurance and for an equitable cash surrender value of policies.

4. The prohibition of companies organized under the act and transacting their business upon the natural premium or stipulated premium plan from charging a less premium than the net premium computed on the basis of the American Table of Mortality and 4½ per cent.

New Era of Legislation.

The year 1913 marks a new era in insurance legislation in this state. The legislature has just passed a comprehensive insurance code which repeals all existing laws and enacts a new code from beginning to end. Some provisions of the existing laws were re-enacted and many radical changes were made. To begin with, the insurance department, which heretofore has been under the control of the auditor of public accounts, is transferred to a state insurance board, which consists of the governor, the auditor of public accounts and the attorney general. This board shall elect a secretary who is styled the insurance commissioner, who may be empowered by the board to do any and all things that it may do except as the law provides the board shall perform while in session. In actual practice the insurance commissioner will be the board and he will administer the law. A new department, in effect, is created.

Among the powers conferred upon this board is a quite important one, namely, that of liquidating insolvent companies. Heretofore this has been done entirely through a receiver appointed by the court. By this code, while the court retains general jurisdiction, an insolvent company is in effect liquidated through the commissioner of insurance. This will save to the creditors of such a company many thousands of dollars. For if there has been one thing above another that in the past has subjected courts to more or less criticism, it has been the way in which corporations have been wound up through receiverships.

Changes in the Law.

Article VI classifies insurance companies, fixes the capital stock required of stock companies and provides generally the manner and method of organizing stock and mutual companies. A mutual life insurance company may be organized much easier under the new law than under the old. These requirements are that such a company shall:

1. Issue simultaneously policies upon 200 or more lives, each within a maximum single risk which is prescribed in another section.

2. Shall hold a fund in cash or invested, as provided by law, equal to ten times the maximum single risk to be assumed; and

3. Shall have received in cash one annual premium upon each outstanding risk.

It will be observed that the number of policyholders is cut down from 250 to 200, and if the company issues policies of $1,000 or less, the aggregate amount of insurance required is only $200,000 and not $500,000. Instead of a mutual company being compelled to deposit $100,000 in securities in order to start in business, the new law requires only $10,000, if the maximum risk assumed is not over $1,000.

During the passage of the bill it was charged in the newspapers and by some of the opponents of the bill in the senate that the requirements to organize mutual companies were so stringent that no new companies would be organized in the future. The reverse of the proposition is the actual fact.

Article V fixes the reserve which all kinds of companies are required to maintain. The amount required of accident companies is decidedly low, although it is in advance of that required under the old law, as no premium reserve whatever was exacted of them. No reserve is required of assessment companies as they meet their losses and expenses from assessments levied upon the members. Mutual companies that charge a fixed premium and in effect are the same as stock companies, without a capital stock, are required to maintain the same reserve as stock companies. The liability of a member in a mutual company is limited to the premium stated in his policy. The liability for any one year of a member of an assessment association organized to insure property may be limited in its by-laws to not less than one-and one half times the regular rate charged by stock companies for like insurance.

When the bill was before the legislature it was charged by different ones that the Farm Fire associations would be required to maintain the same reserve as stock companies. These associations are not mutual companies as defined in the insurance code, but are assessment associations, and, therefore, not required to maintain any reserve as previously stated.

Article VI deals with standard forms and provisions. This is one of the most important of the eleven articles in the code. The New York standard fire policy is made the Nebraska standard fire policy with certain exceptions and modifications.

Provisions Affecting Life Companies

Section 101 deals with the provisions which all life insurance companies are required to put into their polices. Among these provisions are many which are in the interest of the policyholder, such as:

1. Requiring a grace of one month in the payment of all premiums after the first year.

2. A provision that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

4. A provision that the policy shall be incontestible after the second year from its date except for non-payment of premiums and except for violations of the conditions of the policy relating to naval and military service in time of war.

5. A provision that if the age of the insured has been misstated the amount payable under the policy shall be such as the premium paid would have purchased at the correct age.

6. A provision that the policy (if a participating one) shall participate in the surplus of the company and that beginning not later than the end of the third policy year, the company shall annually ascertain and apportion the amount of divisible surplus to which all such policies as a separate class are entitled, which amount shall be carried as a distinct and separate liability in favor of such policies. Upon written request of the insured, the company is required to furnish him with a statement of the amount of surplus provisionally set aside on his policy. Under annual dividend policies, the insured has the right each year to have the dividend arising from such participation paid in cash.

7. A provision that after three full years' premiums have been paid, the company will advance on proper assignment of the policy, a certain sum, depending upon the number of premiums paid less a limited surrender charge.

8. A provision that in event of default after three annual premium payments, a policyholder shall be entitled, without action on his part, to a stipulated form of insurance, depending upon the number of premiums paid less a limited surrender charge. This provision is one of the greatest importance to a policyholder as his equity in the policy cannot be forfeited by the company after he has paid three annual premiums. The "Stipulated Form of Insurance" mentioned above means that the policyholder is given a paid-up policy (that is one on which no more premiums are payable) or his policy is continued in force for a certain number of years and days, and if his death occurs within that period of extended insurance, the company is required to pay the policy.

9. A provision under what conditions a policy may be reinstated after it has lapsed for nonpayment of premiums.

Coupons Are Forbidden.

Section 102 deals with provisions which a company is prohibited from placing in any policy. Among these prohibited provisions is one on the use of coupons or other evidence of indebtedness to be used

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Certificate of Publication

STATE OF NEBRASKA

OFFICE OF

Auditor of Public Accounts

LINCOLN, FEB. 1st, 1913.

It is hereby certified that The Bankers Reserve Life Company of Omaha, in the State of Nebraska, has complied with the insurance law of this state, applicable to such companies, and is therefore authorized to continue the business of life insurance in this state for the current year ending Jan. 1st, 1914.

Summary of Report Filed for Year Ending Sept. 31st, 1912:

INCOME

Premiums	$1,122,641.42	
All other sources	167,566.64	
Total		$1,290,208.06

DISBURSEMENTS

Paid policy holders	$ 373,062.51	
All other payments	351,631.38	
Total		$ 724,693.89

ADMITTED ASSETS $3,702,215.67

LIABILITIES

Net Reserve	$2,890,165.00	
Net Policy Claims	19,000.00	
All other liabilities	126,446.22	$3,035,611.22
Capital stock paid up	100,000.00	
Surplus beyond Capital Stock and other liabilities	566,604.45	$ 666,604.45
Total		$3,702,215.67

Witness my hand and seal of the insurance department the day and year first above written.

W. B. HOWARD,
Auditor of Public Accounts.
L. B. Brian, Deputy.