

**Insurance—License Lees—Statutes Construed, Chap 98
of the 1917 Session Laws.**

Chapter 98, Session Laws of 1917, relating to license fees of Insurance Companies is unconstitutional.

August 23, 1917.

Hon. R. G. Poland,
State Auditor and Commissioner
of Insurance, ex-Officio,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of July 24th, in which you state:

"The Department of Insurance is having numerous inquiries from foreign insurance companies, other than fire and life companies, with regard to the application of Section 3 of House Bill No. 409, act approved March 1, 1917, and I desire your opinion as to its meaning."

"It would seem to nullify the provisions of Section 4017 R. C., as amended in 15, in so far as they apply to miscellaneous, casualty and surety companies. If so, the state will be deprived of many thousands of dollars annually in license fees collected from such insurance companies under the old law."

An examination of Chap. 98, Session Laws, 1917, (H. B. 409) and the Sections of the Revised Codes 1907 and amendatory acts affected thereby, discloses the following:

The purpose of Chap. 98, Session Laws, 1917, (H. B. 409), as stated in the title, and also in the body thereof, is to construe, interpret and settle ambiguities or doubt arising from the provisions of Sec. 4044, Rev. Codes 1907, Sec. 4050 Rev. Codes, 1907, as amended by Chap 48 Session Laws 12th Session, and Chap. 114 Session Laws 12th Session, and Section 4062 Rev. Codes, 1907, as amended by Chap. 37 Session Laws 13th Session, and to provide for the payment of a license fee by insurance companies other than fire and life insurance companies.

Section 4016 Rev. Codes 1907, (being a part of Chap. 1, Title III, Part IV. Div. I, of the Civil Code, entitled General Regulation of Insurance Companies, provides that corporations, associations and societies doing any of the several kinds of business therein specified shall be deemed to be insurance corporations, while Section 4017 of the same Chapter, fixes the amount of license fees to be paid by such insurance companies.

Section 4044 Rev. Codes 1907, (being a part of Chap. II, Title III, Part IV, Div. I Civil Code, entitled Stock and Mutual Fire Insurance Companies), provides that the amount of the capital of every corporation formed under the provisions of this chapter shall be not less than \$200,000, and not more than \$1,000,000, while Section 4050, of the same chapter, before amendment, provided that any corporation organized under the provisions of this chapter and doing business in the state should have power to carry on certain kinds of insurance business therein specified; this section also contained a provision that "No

corporation shall be organized to issue policies of insurance for more than one of the above mentioned purposes; and no corporation that shall have been organized for either one of said purposes shall issue policies of insurance for any other." Said section also contained certain restrictions with reference to the amount of risks, with a provision that such restrictions should not apply to corporations organized to guarantee the fidelity of persons, or that receive on deposit and guarantee for safe keeping, books, money, papers and other property.

Chapters 48 and 114 Session Laws 1911 (12th Session), both amending Section 4050 Rev. Codes, 1907, are identical, except that in Section I of Chap. 48 it is made unlawful for any insurance company to carry on insurance business in the state, while Section I of Chap 114 makes it lawful for insurance companies to carry on such business in the state. Evidently Chap. 114 was enacted for the purpose of curing the error in Chap. 48 caused by the use of the word "unlawful" instead of "lawful" in Section I thereof.

By Chap. 114 Session Laws 1911 (12th Session), Section 4050 Rev. Codes 1907 was amended in the following particular:

1. By specifying several kinds of insurance which insurance companies might be organized to transact, in addition to those specified in Section 4050; containing the same restrictions as to amount of risks, and the same provision that such restrictions should not apply to companies organized to guarantee the fidelity of persons, or to receive on deposit and guarantee the safe keeping of books, papers, money and other property.

2. By eliminating the provisions of Section 4050 which provides that "No corporation shall be organized to issue policies of insurance for more than one of the above mentioned purposes; and no corporation that shall have been organized for either of said purposes shall issue policies of insurance for any other."

Chapter 114 also contained provisions that nothing in the act should be construed as to alter, change, modify or repeal any existing statute which provided or established the amount of capital required of any, or all classes of insurance corporations; that combinations may be permitted of different classes therein established, under one incorporation, except that fire insurance companies may not transact any other character of business than that designated in paragraph 1 of Section 4050 as amended by said Chapter 114; that where such combinations may be formed the minimum capital shall be equal to the amount provided by law for each of the different classes so combined; (Section 2 of said chapter); that nothing in the act should be construed preventing the transaction of health and accident insurance in combination with life insurance, provided that the minimum capital of such corporation shall equal the amount required of both classifications. (Section 3 of said chapter).

Section 4062 of Rev. Codes, 1907, (being also a part of Chap II, Title III, Part IV, Div. I, Civil Code, entitled Stock and Mutual Fire Insurance Companies), prior to amendment, provided that it should be unlawful for any insurance company organized or incorporated by or

under the laws of any other state, the United States, or any foreign company, to transact business in the state unless possessed of a capital of \$200,000, provided, however, that plate glass, accident, steam boiler and livestock insurance companies, shall not be required to have a larger capital than \$100,000, and containing other provisions with reference to such companies transacting business in the state.

By Chapter 39, Session Laws 1913, (13th Session), the provisions of Section 4062 Rev. Codes with reference to foreign insurance companies transacting business in the state, were amended, the provision contained in said Section 4062 requiring any such company to be possessed of a capital of \$200,000, being retained and the provisions with reference to the capital of plate glass, and other like companies, being amended so as to provide that "any company formed for the purpose of carrying on the business of plate glass, health, accident, livestock, steam boiler, hail and cyclone, or other liability insurance both foreign and domestic, shall have not less than \$100,000 of capital stock.

Chapter 37, Session Laws 1913, (13th Session), referred to in the title and body of Chapter 98, Session Laws 1917, is an act to amend Section 79, Rev. Codes 1907, as amended by Chap. 45, of 1913 Session Laws, (13th Session), relating to the compensation of certain officers and employes of the legislative assembly and has no reference to insurance companies or corporations.

An examination of the history of Chapter 98, Session Laws 1917, (H. B. 409), discloses that this bill was introduced in the house on Feb. 16th, and referred to the Committee on Corporations other than municipal, and this committee on the same day reported it back to the House with a recommendation that it be referred to the Judiciary Committee, which was done. When introduced the title of the bill made no reference to the payment of a license fee by insurance corporations, other than fire and life insurance companies, and the body of the bill contained no provisions relating to such license fees. On February 24th the Judiciary Committee reported the bill back to the House without amendment and with the recommendation that it pass, such report being adopted by the House. On March 1st it came back before the House in Committee of the Whole, and was referred back to the Judiciary Committee, which on the same day reported it back to the House with certain amendments and with the recommendation that it pass as amended. The amendments inserted by the Judiciary Committee on March 1, and referred to in its report to the House, was an amendment adding to the title the provision with reference to the payment of license fees by insurance corporations other than fire and life companies, and an amendment inserting in the body of the bill provisions with reference to the payment of such license fees, and which now appears as Section 3 of said Chapter 98. The Senate having refused to receive from the House any bills, except appropriation and revenue bills, passed by the House after the fiftieth day of the session, and this bill coming up in the House in committee of the whole after the fiftieth day it is evident that it was referred back to the Judiciary Committee and the amendments inserted to the title and in the body of the bill solely for

the purpose of giving it the appearance of a revenue bill, and thus induce the senate to receive and consider it.

After carefully considering this Act, I am of the opinion that it cannot stand.

First it is in violation of Section 23 of Article V. of the Constitution which provides that no bill, except general appropriation bills and bills for the codification and general revision of the laws shall be passed containing more than one subject, which shall be clearly expressed in its title. This bill when originally introduced contained but one subject, that of construing, interpreting and settling abiguities or doubt arising from the provisions of certain sections of the Revised Codes; and acts amendatory thereof and referred to in the title and in the body of the bill, but by the amendments inserted in the title and body of the bill a second subject was embodied in the bill, that subject being the license fees required to be paid by insurance companies other than life and fire insurance companies, so that the bill as finally passed and now appearing as Chap. 98, Session Laws 1917, embraces both in its title and in its body two separate and distinct subjects.

Second, it is in violation of Section 25 of Article V of the Constitution which provides that no law shall be revised, or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

Chapter 98, Session Laws 1917, is nothing more nor less than an attempt to amend the various sections and acts therein referred to so as to give each of them a certain meaning, harmonious as a whole, but without re-enacting and publishing at length each of the sections and acts so attempted to be amended.

And that portion of said Chapter 98 contained in Section 3 thereof, fixing the license fees of insurance companies, other than fire and life insurance companies, is an attempt to amend Section 4017, fixing the license fees to be paid by all insurance companies, without re-enacting and publishing at length Section 4017.

Third, the title of the act and the body of the Act both refer to Section 4062 Rev. Codes, as amended by Chap. 37 of the Session Laws 13th Session, as being one of the sections to be construed and interpreted and the Chapter thus referred to, (Chap. 37, Acts 13th Session), is not an act amending Section 4062, Revised Codes, but is an act amending Chap. 79 of the Rev. Codes 1907, as amended by Chap. 45, laws of the 11th Session, relating to compensation of certain officers and employes of the legislative assembly, and has no reference whatever to the insurance laws of the state.

It is, therefore, my opinion that Chap. 98, (H. B. 409), Session Laws 1917, is unconstitutional, and that in collecting license fees from insurance companies of all kinds you should be governed solely by the provisions of Section 4017, Rev. Codes.

Respectfully,

S. C. FORD,

Attorney General