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## Insurance

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## INSURANCE

**T**HE most notable changes in the Texas law of insurance in 1947 were brought about by legislative action. The most significant of these was the statutory permission given insurance companies authorizing them to use new mortality tables in computing their policy reserves.<sup>1</sup> Others include; a. change of basis for computing non-forfeiture values to conform to the new tables;<sup>2</sup> b. statutory permission to allow insurance companies to have their own pension and retirement plan;<sup>3</sup> c. extension of group insurance to include governmental groups;<sup>4</sup> d. enlargement of the types of securities in which insurance companies may invest;<sup>5</sup> e. creation of a burial association rate board;<sup>6</sup> and f. other changes designed to prevent discrimination between mutual and stock insurance companies.<sup>7</sup> Minor modifications will be discussed briefly in the body of this article along with the Texas cases of 1947 as decided by the Supreme Court and Courts of Civil Appeals.

### NEW MORTALITY TABLES

The 1947 amendments to articles 4688,<sup>8</sup> 4784,<sup>9</sup> and 4764a<sup>10</sup> permit the use of the more modern mortality tables in Texas. These tables supplement the existing tables now used in computing policy reserves.<sup>11</sup>

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<sup>1</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4688, art. 4748, and 4764a.

<sup>2</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4732, and art. 4764b.

<sup>3</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4730.

<sup>4</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4764a.

<sup>5</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4725.

<sup>6</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 5068-7.

<sup>7</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 5068-6, art. 4800 and art. 4860a-6.

<sup>8</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4688.

<sup>9</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4784.

<sup>10</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4764a.

<sup>11</sup> "The reserve is that portion of premiums paid on level premium policies of life insurance, usually called old line insurance, which the law says must be set aside and held in trust to meet future claims; to make loans upon policies as provided in such

Since 1868,<sup>12</sup> the American Experience Table of Mortality has been used widely in the United States as the legal standard of computation for policy reserves and for the cash and non-forfeiture values of life insurance policies. Due to advances in medical science, and the introduction of new, effective curative drugs, the rate of mortality reflected by this table, especially at the younger ages, is and has been for many years in excess of the true rate experienced.<sup>13</sup> The need for a new table to accurately reflect the true modern experience of mortality has long been recognized, and as early as 1918 the Actuarial Society of America issued the American Men Ultimate Table of Mortality,<sup>14</sup> which did not come into wide use, merely because the statutes of the states permitted the use of no other table than the already obsolete American Experience Table.<sup>15</sup> Subsequently, at a meeting of the American Insurance Commissioners of the various states,<sup>16</sup> a committee of actuaries was appointed, and they compiled the Commissioners 1941 Standard Mortality Table, the 1941 Sub-Standard Industrial Mortality, and the Commissioners 1941 Standard Industrial Mortality Tables.<sup>17</sup> These tables accurately reflected the modern experience of insured lives. The Committee concluded that, while the use of the outmoded table resulted in no higher premium payments, still the new tables should be used to permit more equitable distribution of costs and a more equitable basis for the cash and non-forfeiture values of life insurance policies.<sup>18</sup>

Since the statutes of most states did not allow use of any table

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contracts; to pay cash surrender values, etc. It is a fund which the company must keep and invest until called for by one of the many obligations of its policy contracts, and with which it must charge itself as a liability." Cox, R. L., *In the Matter of Proposed Legislation to Compel Life Insurance Companies to Invest Funds in Certain States; Brief in Opposition Thereto*, appearing in MACEE, LIFE INSURANCE 268 (1939).

<sup>12</sup> See MACLEAN, LIFE INSURANCE 75 (6th ed. 1945).

<sup>13</sup> *Id.* at 78; MACEE, LIFE INSURANCE 174 (1939).

<sup>14</sup> MACLEAN, *op. cit. supra*, note 12, at 78.

<sup>15</sup> *Id.* at 79.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Id.* at 125.

other than the American Experience,<sup>19</sup> it became evident that the statutes would have to be amended, so this committee drew up two model laws, known as the *Standard Valuation law*, and the *Standard Non Forfeiture Law*, both giving legal authorization for the adoption and use of the modern tables.<sup>20</sup> These now have been adopted in many states, some making them mandatory. Therefore, insurance companies operating on nationwide basis would be forced to use two separate sets of tables. Thus it is apparent why the present legislation became urgent.

The present statutes<sup>21</sup> authorize the use of the new Tables in Texas on an optional basis. Therefore those insurance companies operating interstate would probably prefer, and by the statute would be authorized, to use the new tables for convenience, while local companies could continue to operate under the old tables, as before.<sup>22</sup>

#### NON-FORFEITURE

The non-forfeiture value of a life insurance policy is the amount given the holder after the policy has lapsed by non payment of premiums.<sup>23</sup> These values are computed by the use of the same mortality tables as is used in computing policy reserves. Therefore, to avoid a conflict with the statutes previously discussed, it became necessary to allow the use of the new mortality tables to compute non-forfeiture values. Article 4732,<sup>24</sup> sections 6, 7 and 8 brought about this change.

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<sup>19</sup> *Id.* at 126.

<sup>20</sup> *Ibid.*

<sup>21</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4688, art. 4748 and art. 4764a.

<sup>22</sup> The writers of this article would like to express their appreciation to Mr. P. V. Montgomery, Actuary and Vice President of Southland Life Insurance Company, who assisted in writing this portion of the article, and for the use of his unpublished manuscript pointing out the need for new mortality tables in Texas.

<sup>23</sup> MACLEAN, *op. cit. supra*, note 12, at 181.

<sup>24</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4732. Section 6 is changed slightly to eliminate the distinction between the loan value and cash value of a policy. Section 7 of the same article is amended so as not to be in conflict with the Standard Non-Forfeiture Law, which law requires that every policy contain the method of computing the cash values. This section, while not adopting the Standard Law, requires all

As previously stated,<sup>25</sup> the adopted change was an eagerly anticipated revision, for it will permit uniformity in the operation of insurance companies in the United States.

### PENSIONS

Texas insurance companies may now have pensions and retirement plans as well as group insurance.<sup>26</sup> This statute was an express repeal of the old statutes,<sup>27</sup> forbidding pension plans by insurance companies.

### SECURITIES

The group of securities in which an insurance company may invest, has always been limited by statute, but has from time to time been extended to include wider groups of securities. Article 4725<sup>28</sup> has been amended in several respects, the most important of which, being the addition of two new sections which add four large fields of securities in which they may now invest; stock in reinsuring companies; Building and Loan Association stock; stock of Federal Savings and Loan Associations; and bank stock both State and Federal. Of course, certain restrictions are imposed on the amounts of these investments.<sup>29</sup>

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policies to state the method, the rate of interest and the mortality tables used for computing the reserves of the policy. This amendment permits the use of 130% of the rate of mortality, according to the adopted table, in computing extended insurance. This is in line with the Standard Non-Forfeiture Law. Section 8, of Article 4732 also changes only the phrase loan value to cash value. *TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4764b* pertains to the provisions to be contained in a policy of industrial insurance and the changes made correspond in every major respect to the changes made by the previous statute in regard to ordinary life insurance.

<sup>25</sup> See paragraph immediately preceding section on non-forfeiture values.

<sup>26</sup> *TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4730.*

<sup>27</sup> *TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4730.*

<sup>28</sup> *TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4725.*

<sup>29</sup> *TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4725, section 4* provides that life insurance companies may not invest more than 10% of its capital surplus and contingent funds in more than 20% of the capital stock of any other insurance company whose principal business is re-insurance of risks ceded to it by other life insurance companies. Section 5 provides that no investment shall exceed 20% of outstanding shares of Building and Loan or Savings and Loan Association. Federal and State banks are also included within the last mentioned group.

### GROUP INSURANCE

The only material change in the law of group insurance was the enlargement of the eligible groups to include governmental employees.<sup>30</sup> The premiums on other group insurance has previously been paid, either in part or whole, by the employer, and the new amendment,<sup>31</sup> states that as to government employees' policies, premiums shall be paid solely by the employees. The Attorney General has ruled in two opinions<sup>32</sup> that without this statute it would be unconstitutional since the Texas Constitution<sup>33</sup> provides that no public funds shall be used for a private purpose. It would seem that, although there seems to be a conflict, this would not be a use of public funds for private purpose, since the welfare of public employees, and the appointment of capable ones by added inducement, would be a worthwhile public purpose.

Also included in the new groups eligible for this insurance are common debtors of a single creditor.<sup>34</sup> There must be at least fifty debtors, and the creditor is limited by the fact, that the insurance on any one debtor cannot exceed \$10,000.<sup>35</sup>

### MUTUAL COMPANIES

Previous to 1947, Mutual Insurance Companies were forbidden to write fidelity and surety bonds.<sup>36</sup> Now, if certain requirements of capital are met,<sup>37</sup> they may write such bonds.<sup>38</sup> Another statute,<sup>39</sup>

<sup>30</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4764a, section 1, subsection 3.

<sup>31</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4764a, § 1, subsection 3b.

<sup>32</sup> OPS. ATTY. GEN. 4, No. V-488 (1948); OPS. ATTY. GEN. 44, No. V-147 (1947).

<sup>33</sup> TEX. CONST. ART. XVI, § 6; TEX. CONST. ART. III, §§ 51, 52 and 53.

<sup>34</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4764a, § 1, subsec. 4a.

<sup>35</sup> *Ibid.*

<sup>36</sup> TEX. VERNON'S ANN. CIV. STAT. (1925) art. 4860a-6.

<sup>37</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4860a-6 (which provides in part that the mutual company must be possessed of a surplus over and above all its liabilities equal to the capital stock required of a stock insurance company transacting the same kind of business.

<sup>38</sup> TEX. VERNON'S CIV. STAT. (Supp. 1947) art. 4860a-6.

<sup>39</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 5068-6.

provides for uniform regulation of all statewide mutual assessment companies.

#### LIMITED CAPITAL STOCK COMPANIES

Certain restrictions which have previously restricted limited capital stock companies have now been removed by statute.<sup>40</sup> Formerly these companies could only write weekly and monthly premium plan insurance, but this requirement has now been removed.<sup>41</sup> Insurance coverage has also been raised in regard to both natural and accidental death policies.<sup>42</sup> However, certain restrictions were imposed, requiring such companies to reinsure in a legal reserve company when its net capital and surplus is not more than \$35,000 over the \$1,000 death benefits.<sup>43</sup>

#### BURIAL RATE BOARD

Article 5068-7<sup>44</sup> creates a burial association rate board providing for the appointment, compensation, duties, etc., of its members.<sup>45</sup> The statute also makes it unlawful for any person or agent to charge a fee greater than the one established by this board.<sup>46</sup> An annual fee is levied upon all burial associations,<sup>47</sup> and also makes it unlawful for two or more burial associations to combine.<sup>48</sup>

#### 1947 CASES

The Supreme Court and the Courts of Civil Appeals in 1947 decided several cases, all of which were assertions of previously announced rules and their application to only slightly different

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<sup>40</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4752.

<sup>41</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4752, § 2.

<sup>42</sup> *Ibid.* § 1, which provides in part that no policy shall be issued promising to pay more than \$5,000 natural death and \$10,000 for accidental death.

<sup>43</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 4752, § 1.

<sup>44</sup> TEX. VERNON'S ANN. CIV. STAT. (Supp. 1947) art. 5068-7.

<sup>45</sup> *Id.* § 1.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Id.* § 2.

fact situations. For the sake of completeness to the picture of the law of 1947, as it was announced by both the legislature and the courts in regard to the law of insurance, a brief mention will be made of the rules announced and the cases will be cited which applied them.

Since the insurer drafts the insurance contract, it has become settled that when the writing is susceptible of more than one meaning, the language will be interpreted strictly against the insurer and liberally in favor of the insured.<sup>49</sup>

Where a policy of insurance provides for the cancellation by the insured or insurer by mailing notice of the cancellation, then the cancellation is effective as soon as the letter of cancellation is properly stamped, addressed, and mailed, regardless of whether or not it is ever received.<sup>50</sup> Likewise, where payment of the premium is, by the contract, permitted to be made by mail, performance is complied with when the letter is properly prepared for mailing and mailed.<sup>51</sup>

The Supreme Court, in 1947, reasserted the firmly adopted rule that false statements in an insurance application must have been made wilfully and with a design to deceive or defraud, in order to defeat recovery on a policy of life insurance.<sup>52</sup> This rule was followed by the Court of Civil Appeals<sup>53</sup> with the added elements that in a mutual life insurance policy, the statement must also be material to the risk of the insurer and must also be relied upon by it. Also if an insurance contract has a provision that the policy is void if a false statement is made by the insured, the policy is

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<sup>49</sup> *Franklin Life Insurance Company v. Woodyard*, 206 S. W. (2d) 93 (Tex. Civ. App. 1947); *Gulf Insurance Company v. Riddle*, 199 S. W. (2d) 1000 (Tex. Civ. App. 1947); *Hall et al. v. Gulf Insurance Company of Dallas et al.*, 200 S. W. (2d) 450 (Tex. Civ. App. 1947).

<sup>50</sup> *Gulf Insurance Company v. Riddle*, 199 S. W. (2d) 1000 (Tex. Civ. App. 1947).

<sup>51</sup> *Lawrence v. Continental Fire & Casualty Insurance Corporation*, 203 S. W. (2d) 967 (Tex. Civ. App. 1947).

<sup>52</sup> *Clark v. National Life and Accident Insurance Company*, 145 Tex. 575, 200 S. W. (2d) 820 (1947).

<sup>53</sup> *Bankers Standard Life Insurance Company v. Atwood et al.*, 205 S. W. (2d) 74 (Tex. Civ. App. 1947).

not void if a false statement, immaterial to the injury, is made.<sup>54</sup>

The Court of Civil Appeals applied Article 4930<sup>55</sup> in a case apparently aimed at by the statute, in holding that the insured's breach or violation of a condition in a fire insurance policy does not render it void, or constitute a defense to the suit thereon after destruction of the property by fire, unless such breach or violation causes the destruction.<sup>56</sup>

A provision of an insurance policy regarding notice and proof of loss is for the benefit of the insurer and may be waived by it by a denial of liability under the policy. Such a waiver enables the insured to maintain suit on the policy without furnishing such proofs of loss. This rule was announced by the Supreme Court<sup>57</sup> as well as by the Court of Civil Appeals<sup>58</sup> in 1947.

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<sup>54</sup> Commercial Casualty Insurance Company *et al.* v. Holmes, 206 S. W. (2d) 882 (Tex. Civ. App. 1947).

<sup>55</sup> TEX. VERNON'S ANN. CIV. STAT. (1925) art. 4930.

<sup>56</sup> Trinity Universal Insurance Company v. Daniel *et al.*, 202 S. W. (2d) 266 (Tex. Civ. App. 1947).

<sup>57</sup> Sanders v. Aetna Life Insurance Company, ... Tex. ...., 205 S. W. (2d) 43 (1947).

<sup>58</sup> Franklin Life Insurance Company v. Woodyard, 206 S. W. (2d) 93 (Tex. Civ. App. 1947).